

ILRB  
#101

INTEREST ARBITRATION BEFORE  
LISA SALKOVITZ KOHN

SEP 15 1997

In the Matter of the Interest Arbitration )  
Between )  
VILLAGE OF ELK GROVE VILLAGE )  
("Employer") )  
 )  
and )  
 )  
VILLAGE OF ELK GROVE VILLAGE )  
FIREFIGHTERS ASSOCIATION, )  
LOCAL 3398, INTERNATIONAL )  
ASSOCIATION OF FIREFIGHTERS, )  
AFL-CIO, CLC, )  
("Union"). )

ISLRB Case No. S-MA-96-86

OPINION AND AWARD

APPEARANCES:

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On Behalf of the Employer:

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## TABLE OF CONTENTS

I.	<u>PROCEDURAL BACKGROUND</u> .....	1
II.	<u>ANALYSIS OF THE ISSUES AND THE PARTIES' FINAL OFFERS</u> .....	2
A.	<u>Introduction</u> .....	2
B.	<u>Economic Issues</u> .....	4
	1. Issue No. 1 -- Salaries for Firefighters .....	6
	2. Issue No. 2 -- Salaries for Lieutenants .....	14
	3. Issue No. 3 -- Paramedic Stipend .....	20
	4. Issue No. 4 -- EMT-B Stipend .....	22
	5. Issue No. 5 -- Retroactivity .....	24
	6. Issue No. 6 -- Cost of Medical and Dental Insurance .....	27
	7. Issue No. 7 -- Longevity Pay .....	35
	8. Issue No. 8 -- Hours of Work .....	39
	9. Issue No. 9 -- Overtime Pay for Firefighters .....	41
	10. Issue No. 10 -- Overtime Pay for Lieutenants .....	42
	11. Issue No. 11 -- Vacation Time .....	44
	12. Issue No. 12 -- Vacation Scheduling .....	48
	13. Issue No. 13 -- Holidays .....	48
	14. Issue No. 14 -- Duration of the Contract .....	49
	15. Issue No. 15 -- Subcontracting .....	50
	16. Issue No. 16 -- Pay Rate for Inspectional Services Division Work .....	53
	17. Issue No. 17 -- Fire Prevention Bureau Inspection Work .....	56
	18. Issue No. 18 -- Termination Effect .....	57
	19. Issue No. 19 -- Hirebacks .....	57
C.	<u>Non-Economic Issues</u> .....	60
	1. Issue No. 20 -- Promotions .....	60
	2. Issue No. 21 -- Decertification of Paramedics .....	63
	3. Issue No. 22 -- Grievances over Merit Pay for Fire Lieutenants .....	65
	4. Issue No. 23 -- Application of Rules .....	66
	5. Issue No. 24 -- Shift Starting Time .....	68
III.	<u>AWARD</u> .....	73

## **I. PROCEDURAL BACKGROUND**

This proceeding arises under Section 14 of the Illinois Public Labor Relations Act (IPLRA)("the Act") to resolve a bargaining impasse between the parties that arose during the course of their negotiations for a successor to the collective bargaining agreement that expired April 30, 1996. The parties waived their statutory right to a tri-partite panel, and duly appointed the undersigned Arbitrator to hear and decide the issues presented. There was no dispute as to the Arbitrator's authority and jurisdiction to decide this matter, except for the dispute as to Issue Nos. 8 and 17 discussed more fully below.

The parties also waived the requirement of Section 1230.40(e)(4) of the Rules of the Illinois State Labor Relations Board that the hearing begin within fifteen (15) days of the appointment of the neutral Arbitrator. Hearings were held in Elk Grove Village, Illinois, on October 9 and 10, November 13 and 14, and December 4 and December 5, 1996, and January 31 and February 5, 1997. At the hearing the parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of witnesses. A stenographic transcript of the hearing was made.

The parties were unable to agree on the proper scope or character of several issues, and submitted those disputes to the Arbitrator. On January 20, 1997, the Arbitrator issued a Ruling on Statement of Issues, holding that salaries for firefighters would be considered a single issue for the entire length of the contract, as would salaries for lieutenants; health insurance deductibles and co-insurance payment levels would be considered as part of a single economic issue together with employee contributions; and the shift starting time issue would be treated as a non-economic issue. Ruling on Statement of Issues, pp. 4-7. The parties exchanged their Final Offers of Settlement on January 31, 1997. Both parties filed post-hearing briefs.

On March 28, 1997, the General Counsel of the Illinois State Labor Relations Board issued her Declaratory Ruling, Case No. S-DR-97-03, that neither the Union's proposal with respect to Inspectional Services Division (ISD) work (Issue No. 17) nor the Village's proposal with respect to the length of the work day and the exclusion of meal periods and a sleep period from "hours worked" (Issue No.

8) were mandatory subjects of bargaining under the Act. The Union subsequently requested leave to amend its ISD proposal purportedly to present a proposal that would not be barred from this arbitration by the General Counsel's Ruling. The Village objected and submitted its opposition in writing. On May 20, 1997, the Arbitrator denied the Union's request.<sup>1</sup>

On September 10, 1997, the parties met in an executive session to review an unissued draft of the Arbitrator's Award, and to consider the impact of the Village's negotiations with the Metropolitan Association of Police, the police officers' union for a contract beginning May 1, 1997. Counsel for the Village made a general oral representation as to some of the tentative terms of the new police contract for the period beginning May 1, 1997. However, as of that date, the MAP had not yet presented to the Village a signed contract ratified by the bargaining unit, the Village Board had not yet officially approved and adopted a new collective bargaining agreement, and the Village therefore refused to give the Union more specific written information. Although the Arbitrator offered to delay the issuance of this award pending the final adoption of the police contract, both parties opposed further delay. Accordingly, the representations made at the executive session about the new police contract have not been considered herein.

## **II. ANALYSIS OF THE ISSUES AND THE PARTIES' FINAL OFFERS**

### **A. Introduction**

The Village Fire Department operates four fire stations, Stations 7, 8, 9 and 10. The bargaining unit represented by the Union consists of 87 sworn personnel, 18 Lieutenants and 69 Firefighters. Nine Lieutenants and 33 Firefighters are paramedics. The Fire Department has three shifts of sworn personnel, for whom the normal work shift is 24 hours long, and the normal work schedule is 24 hours

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<sup>1</sup>Several documents have been offered as exhibits by each party since the last hearing date, February 5, 1997, without objection by the other party. These exhibits are hereby admitted into evidence, including Union Exhibits 75(a) and 75(b), Village Exhibits 12B, 12C, 12D, 13C, 13D, 13E, 14B, 14C, 14D, 15B, 15C and 15D.

on, 48 hours off. A captain serves as the shift commander and has overall responsibility for all stations and all personnel assigned to the shift.

Two other groups of Village employees are collectively represented for bargaining, a unit of police officers, represented by the Metropolitan Alliance of Police ("MAP"), and a unit of public works employees represented by the International Union of Operating Engineers Local 150 ("IUOE"). The IUOE and the Village negotiated their first collective bargaining agreement, effectively September 15, 1996 through April 30, 1999. The police and the Village have negotiated three collective bargaining agreements, the most recent of which, expiring April 30, 1997, was the product of an interest arbitration award rendered in 1997 by a tripartite panel chaired by Arbitrator Elliott Goldstein, Village of Elk Grove Village and MAP Chapter No. 141, ISLRB No. S-MA-95-11 (Goldstein, Arb.)(1996) ("the Goldstein Award"). The Village is currently in negotiations with MAP for a successor agreement.

This proceeding results from an impasse in bargaining between the Village and the Union for their second collective bargaining agreement. Their first contract, for the period from May 1, 1993 through April 30, 1996, was the product of both voluntary agreements and the interest arbitration award issued by a tripartite panel of arbitrators chaired by Arbitrator Harvey A. Nathan. The contract contained a reopener provision for employee insurance contributions, deductibles and co-insurance payments for the 1995-96 fiscal year. The parties bargained over the 1995-96 insurance issues and agreed upon a Memorandum of Understanding dated December 18, 1995, setting the contributions, deductibles and co-payments for that year. Although the Memorandum was presented in this proceeding as Joint Exhibit 5, the Memorandum states that the parties agreed that the Memorandum "is being entered into on a nonprecedential basis."

For the new contract, the parties have reached many tentative agreements, which appear in this record as Village Exhibit 1. However, the parties have presented 24 issues for resolution. Of the 24 issues presented, the parties agree that Issue Nos. 1 through 19 are economic issues and Issue Nos. 20 through 23 are non-economic issues. The parties could not agree on whether the shift starting time issue, Issue No. 24, should be characterized as economic or non-economic, and the question

was presented to the Arbitrator for determination. On January 20, 1997, I ruled that the issue is not an economic issue, and the parties have proceeded accordingly.

As discussed more fully below, the parties in their final offers have effectively reached agreement on Issue Nos. 12, 14, and 18, and disagree as to whether an impasse was reached on Issue No. 23, or whether instead the Issue was resolved in bargaining prior to impasse. In addition, after the parties' designation of issues and exchange of final offers, the General Counsel of the Illinois State Labor Relations Board ruled that Issue Nos. 8 and 17 do not involve mandatory subjects of bargaining. The impact of that Declaratory Ruling on this proceeding is discussed more fully below.

### **B. Economic Issues**

By statute and the parties' stipulation, the Arbitrator must adopt the last offer on each economic issue which more nearly complies with the following factors, as applicable:

- (1) The lawful authority of the employer;
- (2) Stipulations of the parties;
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs;
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (A) In public employment in comparable communities;
  - (B) In private employment in comparable communities;

- (5) The average consumer prices for goods and services commonly known as the cost of living;
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, and 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.<sup>2</sup>

In this case, the parties do not dispute the employer's authority to enter into a contract containing any of the terms proposed, nor is there any dispute that the Village has the ability to pay the wages and benefits proposed. Indeed, the Union asserts that the Village's relative fiscal health, as reflected in its general fund balances of \$15,754,818 and \$11,655,057, for fiscal years ended April 30, 1995 and April 30, 1996, respectively, resulted in large part from the consistent payment of firefighters and lieutenants at less than the highest rates paid in the comparable communities. The employer's "exceptional ability to pay," the Union argues, should be considered a factor in tipping the scales toward the union wage proposals, which only slightly exceed the Village's offers.

The parties also agree that the appropriate group of municipalities to use for external comparisons is the group of 14 communities designated by the panel

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<sup>2</sup>In the discussion that follows, the factors most determinative of the outcome of this Interest Arbitration are highlighted. However, all the statutory factors have been considered in reaching this decision and Award.

Village of Elk Grove Village and IAFF Local 3398  
ISLRB No. S-MA-96-86

headed by Arbitrator Nathan in the October 1, 1994 award, Village of Elk Grove Village, ISLRB No. S-MA-93-231 (Nathan, Arb.)(1994) ("the Nathan Award").  
They are:

Arlington Heights	Lombard
Bensenville	Mt. Prospect
Buffalo Grove	Northbrook
Des Plaines	Park Ridge
Elgin	Rolling Meadows
Elmhurst	Skokie
Hoffman Estates	Wheeling

Against this background the economic issues must be considered.

#### 1. Issue No. 1 -- Salaries for Firefighters

In brief, the Village's final offer is a 3.5 across-the-board increase effective May 1, 1996, a 3 percent across-the-board increase effective May 1, 1997, and a 3 percent across-the-board increase effective May 1, 1998, while the Union's final offer is a 3.8 percent across-the-board increase effective May 1, 1996, a 3.25 percent across-the-board increase effective May 1, 1997, and a 3.5 percent across-the-board increase effective May 1, 1998.

More specifically, the Union's final offer on salary for firefighters is to revise Section 14.1 to read as follows:

##### Section 14.1. Firefighters Wage Schedule.

Effective May 1, 1996, all steps of the salary schedule shall be increased across-the-board by 3.8 percent. Accordingly, effective May 1, 1996, employees covered by this Agreement shall be paid on the basis of the following annual salaries:

Village of Elk Grove Village and IAFF Local 3398  
ISLRB No. S-MA-96-86

<u>Step</u>	<u>Description</u>	<u>Salary</u>
1	Starting	\$ 32,417
2	After completion of 1 year	35,369
3	After completion of 2 years	38,327
4	After completion of 3 years	41,280
5	After completion of 4 years	44,237
6	After completion of 5 years	47,190

Effective May 1, 1997, all steps of the salary schedule shall be increased across-the-board by 3.25 percent. Accordingly, effective May 1, 1997, employees covered by this Agreement shall be paid on the basis of the following annual salaries:

<u>Step</u>	<u>Description</u>	<u>Salary</u>
1	Starting	\$ 33,471
2	After completion of 1 year	36,518
3	After completion of 2 years	39,573
4	After completion of 3 years	42,622
5	After completion of 4 years	45,674
6	After completion of 5 years	48,724

Effective May 1, 1998 all steps of the salary schedule shall be increased across-the-board by 3.5 percent. Accordingly, effective May 1, 1998 employees covered by this Agreement shall be paid on the basis of the following annual salaries:

<u>Step</u>	<u>Description</u>	<u>Salary</u>
1	Starting	\$ 34,642
2	After completion of 1 year	37,796
3	After completion of 2 years	40,958
4	After completion of 3 years	44,114
5	After completion of 4 years	47,273
6	After completion of 5 years	50,429

The Village's final offer on salary for firefighters is to revise Section 14.1 to read as follows:

Section 14.1. Firefighters Wage Schedule.

Effective May 1, 1996, all steps of the salary schedule shall be increased across-the-board by three and one-half percent (3.5%). Accordingly, effective May 1, 1996, employees covered by this Agreement shall be paid on the basis of the following annual salaries:

<u>Step</u>	<u>Description*</u>	<u>Annual Salary</u>
1	Starting	\$ 32,323
2	After completion of 1 year	36,267
3	After completion of 2 years	38,216
4	After completion of 3 years	41,161
5	After completion of 4 years	44,110
6	After completion of 5 years	47,054

\* Years of service as referred to in this description column refers to length of service which counts toward completion of the probationary period and which is credited for seniority purposes as defined in Sections 12.1 and 12.2 of this Agreement.

Effective May 1, 1997, all steps of the salary schedule shall be increased across-the-board by three percent (3%). Accordingly, effective May 1, 1997, employees covered by this Agreement shall be paid on the basis of the following annual salaries:

<u>Step</u>	<u>Description</u>	<u>Annual Salary</u>
1	Starting	\$ 33,293
2	After completion of 1 year	36,325
3	After completion of 2 years	39,362
4	After completion of 3 years	42,396
5	After completion of 4 years	45,433
6	After completion of 5 years	48,466

Effective May 1, 1998 all steps of the salary schedule shall be increased across-the-board by three percent (3%). Accordingly, effective May 1, 1998 employees covered by this Agreement shall be paid on the basis of the following annual salaries:

<u>Step</u>	<u>Description</u>	<u>Annual Salary</u>
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Village of Elk Grove Village and IAFF Local 3398  
 ISLRB No. S-MA-96-86

1	Starting	\$ 34,292
2	After completion of 1 year	37,415
3	After completion of 2 years	40,543
4	After completion of 3 years	43,668
5	After completion of 4 years	46,796
6	After completion of 5 years	49,920

A review of the data from the comparable communities demonstrates that as of May 1, 1995, the Village neither led nor trailed the pack in base compensation for Village firefighters. As of May 1, 1995, Village firefighters' maximum base salary of \$45,463 ranked the Village fifth among the comparables. The May 1, 1996, maximum base salary under the Village's offer, \$47,054, would move the Village up to fourth place, while the Union's offer of \$47,320 would move the Village up to third place, behind only Hoffman Estates and Northbrook:

	Max. base <u>5/1/96</u>
Hoffman Estates	\$49,031.
Northbrook	47,473.
<b>Elk Grove Village (Union offer)</b>	<b>47,320.</b>
Rolling Meadows	47,069.
<b>Elk Grove Village (Village offer)</b>	<b>47,054.</b>
Skokie	46,945.
Des Plaines	46,945.
Arlington Heights	46,880. <sup>3</sup>
Park Ridge	46,131.
Buffalo Grove	45,500.
Mount Prospect	45,368.
Wheeling	45,171.
Elgin	44,784.
Elmhurst	44,452.
Lombard	44,199.
Bensenville	43,152.

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<sup>3</sup>Estimate based on 1995 maximum base salary increased by the 4 % increase negotiated for Arlington Heights police officers.

The data for 1997-8 and 1998-9 are limited. Under the Village's offer, effective May 1, 1997, the maximum base salary would increase to \$48,466; under the Union's offer, to \$48,724. The known salaries for May 1, 1997 in comparable communities (June 1, 1997 for Rolling Meadows) are as follows:<sup>4</sup>

Hoffman Estates	\$50,625
Rolling Meadows	50,148. (blended rate reflecting 1/1/98 increase)
<b>Elk Grove Village</b>	48,724. (Union offer)
Des Plaines	48,588
<b>Elk Grove Village</b>	48,466. (Village offer)
Wheeling	47,104. (blended rate reflecting 11/1/97 increase)
Elmhurst	46,230

These data indicate at most that both parties' offers for 1997 would maintain Elk Grove Village's ranking near the middle of the group. The data for May 1, 1998 are even sketchier, showing increases ranging from 2.75% in Skokie to 4.0% in Wheeling, with Elmhurst and Hoffman Estates paying increases of 3.0% and Northbrook paying an increase of 3.25%. Thus, considered as a whole, these external comparisons do not strongly support one offer over another.

The Union asserts that the comparison of the firefighters' "total compensation" in those communities favors its offer. Section 14(h)(6) of the Act requires the arbitrator to consider

[t]he overall compensation presently received by the employees, including direct wage compensation, wages, holidays and other excused time, insurance pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

Such comparisons, although mandated by statute, are difficult to evaluate, particularly in firefighter groups, because of the wide variation in the terms of

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<sup>4</sup>Where there is a midyear salary increase, total annual base salary is a "blended rate": the sum of half the pre-increase rate and half the post-increase rate.

medical, hospitalization and pension benefits, work schedules, shift length, the counting of hours worked for overtime, Kelly Days, etc. However, the Union's own calculations show that at the maximum salary level in May 1, 1995, Elk Grove Village was ninth out of the group of fifteen communities in "total compensation," which was defined as the sum of maximum base salary, maximum longevity pay and all other stipends. By this measure, the Village lagged only \$440 behind the median community, Buffalo Grove. This over-all comparison does not strongly favor one salary offer over the other.

Both parties presented cost-of-living data to support their economic offers. According to the Union, between their May 1, 1995 increase and December 1996, firefighters have lost purchasing power in terms of constant dollars by 4.1 % on the CPI-U (Chicago area) and 4.0% on the CPI-U (U.S. City Average). This data supports its offer, the Union contends, because the 3.8% first-year increase proposed by the Union will come closer than the 3.5 % increase proposed by the Village to bridging that gap.

Another way to consider the numbers is to note that the CPI-U (Chicago) has risen from 153 in May 1995 to 156.9 in May 1996, a 2.5% annual increase, and to 161.7 in July 1997, a 3% annual increase. (The CPI-U (U.S. City Average), CPI-W (Chicago) and CPI-W (U.S. City Average) reflect similar trends.) Both the Union's offer of first and second year increases of 3.8% and 3.25%, respectively and the Village's offer of increases of 3.5% and 3.0%, would exceed these measures of the rate of recent cost of living increases to date, and enable to the firefighters to maintain their purchasing power. Cf., City of Champaign, ISLRB Case No. S-MA-91-009 (October 29, 1991).

The use of cost-of-living data here is somewhat clouded by the December 1996 issuance of the Senate Finance Committee's Advisory Commission report entitled, "Toward a More Accurate Measure of the Cost of Living." While the Commission has concluded that the CPI will overstate changes in the true cost of living over the next few years, and estimates "the size of the upward bias looking forward [as] 1.1 percentage points per year," I agree with Arbitrator Herbert Berman that the CPI data remains the best cost-of-living data available at the moment, and must be considered by the parties and the arbitrator. City of Batavia, ISLRB No. S-MA-95-

15 (1996)(despite the Advisory Commission report, the arbitrator "cannot ignore the fact that the only reasonably accurate yardstick available to the parties and the one most universally relied upon by unions, employers and arbitrators, is one of the BLS cost of living indices, primarily the CPI-U...") In this case, it is apparent that both parties' offers exceed increases in cost of living since the last contractual increase, whether measured by local or national figures. Thus, the cost-of-living figures do not strongly support one offer over another, although they indicate that it is not necessary to choose the higher Union offer in order to preserve (as opposed to maximize) the firefighters' purchasing power.

We turn then to internal comparisons. Under the contract that expired on April 30, 1997, Village police officers were awarded the Village's final offer of a 3.5% increase effective May 1, 1996. This is the same as the Village's final offer to the firefighters for that period. The collective bargaining agreement for the Village's public works employees calls for a 3.5% increase September 15, 1996, a 3% increase May 1, 1997, and a 3% increase May 1, 1998. These increases equal those offered here by the Village, except that the firefighters' increase would become effective on May 1, 1996, rather than on September 15, 1996. The Village's unrepresented employees received a 3.5% increase effective May 1, 1996, again equal to the Village's offer to the firefighters. The Union's offer for the first year of the contract exceeds the 1996 increases for all other Village employees by 0.3%, while its offer for the second and third years of the contract exceed the increases for public works employees by 0.25% and 0.5% respectively. The Village asserts that the greater "parity" between its offer and the increases enjoyed by employees represented by the IUOE and the MAP supports its offer.

The Union, on the other hand, focusses on another internal comparison, contending that its higher first-year offer of \$47,190 (\$136 higher than the Village's offer of \$47,054) is necessary to maintain an appropriate approximate differential of \$130 between the maximum base salary for firefighters and for police officers. That differential increased from \$126 in FY 1991-1992 to \$137 in FY 1993-1994, jumped to \$1,239 in FY 1994-1995 (when the police officers were barred from receiving an increase by operation of Section 14(j)), and then dropped back to \$257 for FY 1995-6. The Union's offer would reestablish what the Union sees as the historic differential of \$130, while the Village's offer would result increase the

differential slightly to \$266.

Even if I were to agree that this record demonstrates an established differential of \$130, I do not find the Union's argument persuasive. Arbitrators Nathan and Briggs have both considered at great length the importance and drawbacks of considerations of "parity" both in negotiations and in arbitration. See, Nathan Award, pp. 22 - 28; Village of Arlington Heights, ISLRB No. S-MA-88-89 (Briggs, Arb.)(1991), quoted in the Nathan Award at pp. 24-5. Here, both parties claim to rely on "parity" -- the Union seeking to preserve an absolute dollar differential, the Village trying to preserve approximate percentage equality in increases. Complicating the picture is the fact that the "traditional parity" between the police and firefighters in Elk Grove Village is no longer a product of the parties' voluntary collective bargaining and their reasoned assessments of the equities involved. Instead, the relationship between the police and firefighter compensation is now a product of the determinations of first, Arbitrator Nathan, for the firefighters unit, and more recently, Arbitrator Goldstein, for the police unit.

Under these circumstances, the best the arbitrator can do is to try to preserve the existing relationship between the Village and the firefighters so that the interest arbitration award does not unduly interfere with the natural process of collective bargaining that will recommence for the next contract period. That relationship is not well-described in terms of an absolute dollar differential between the police and firefighters, which has varied widely over the past few years, as discussed above. If anything, the Village's offer better preserves parity by offering the firefighters same percentage increases being given to the police and other employees.<sup>5</sup>

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<sup>5</sup>However, as Arbitrator Briggs observed, in City of Elmhurst and IAFF Local 3541 (April 20, 1997),

The Arbitrator recognizes that the philosophy behind the City's final offer, if carried to its logical conclusion over many ensuing years would cause the salaries of [the municipality's firefighters] to fall farther and farther behind those of its Police Officers. That is, assigning each group the same percentage increases at each step each year would favor Police Officers over the long term because such increases would be calculated on higher base salaries than those of Firefighters

(continued...)

The external comparisons demonstrate that the Union's increase is not essential to keep the firefighters' compensation in line with their historic position within the range of comparable communities, although on the other hand the Union's offer would not be outside the range of reasonableness. The cost-of-living data demonstrates that the Village's offer is sufficient to preserve the firefighters' current economic status, and that the Union's offer, particularly during the first year, exceeds the recent increases in the cost of living, even if the purported overstatement by the CPI is ignored. Where the Union's and Village's offers are both within the bounds of reasonableness by these measures, the internal comparisons finally tip the balance toward the Village. Considering all of the applicable factors, I find the Village's offer to be more reasonable than the Union's on this issue.

## 2. Issue No. 2 -- Salaries for Lieutenants

The Union's final offer is to delete the current Section 14.2, eliminating the merit pay system for Lieutenants described in that Section, and substitute the following salary structure effective May 1, 1996, with across-the-board increases of 3.25 percent effective May 1, 1997, and 3.5 percent effective May 1, 1998:

<u>Step</u>	<u>Description</u>	<u>Salary</u>
1	Starting	\$ 49,549.00
2	After completion of 1 year	51,009.00
3	After completion of 2 years	52,649.00
4	After completion of 3 years	53,927.00

The Village's final offer is to retain the merit pay system, and to substitute for the current Section 14.2 the following:

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<sup>5</sup>(...continued)

positioned similarly on the salary grid. At some point, the balance will need to be redressed. But that issue is best resolved between the parties themselves through free collective bargaining.

1996-97

Effective May 1, 1996, the pay range maximum for fire lieutenants shall be increased by four and one-half percent (4.5%) to \$55,249. No lieutenant can receive an annual wage below the minimum of the range nor above the maximum of the range. All lieutenants shall be paid a salary that is at least 5% higher than the top step salary of firefighters.

The merit adjustments shall be between 0 percent and 5.0 percent. Employees whose annual average evaluation from their immediate supervisor on a numeric standard falls "below standards" shall receive a merit adjustment of between 0 percent and 3.25 percent. Employees whose annual average evaluation from their immediate supervisor on a numeric standard "meets standards" shall receive a merit adjustment of 3.5 percent. Employees whose annual average evaluation from their immediate supervisor on a numeric standard "exceeds standards" shall receive a merit adjustment of 4 percent. Employees may also be given an additional merit adjustment of up to 1 percent on the basis of an evaluation by the fire chief.

1997-98

Effective May 1, 1997, the pay range maximum for fire lieutenants shall be increased by three percent (3 %) to \$56,907. No lieutenant can receive an annual wage below the minimum of the range nor above the maximum of the range. All lieutenants shall be paid a salary that is at least 5% higher than the top step salary of firefighters.

The merit adjustments shall be between 0 percent and 4.5 percent. Employees whose annual average evaluation from their immediate supervisor on a numeric standard falls "below standards" shall receive a merit adjustment of between 0 percent and 2.75 percent. Employees whose annual average evaluation from their immediate supervisor on a numeric standard "meets standards" shall receive a merit adjustment of 3 percent. Employees whose annual average evaluation from their immediate supervisor on a numeric standard "exceeds standards" shall receive a merit adjustment of 3.5 percent. Employees may also be given an additional merit adjustment of up to 1 percent on the basis of an evaluation by the fire chief.

1998-99

Effective May 1, 1998, the pay range maximum for fire lieutenants shall be increased by three percent (3 %) to \$58,614. No lieutenant can receive an annual wage below the minimum of the range nor above the maximum of the range. All lieutenants shall be paid a salary that is at least 5% higher than the top step salary of firefighters.

The merit adjustments shall be between 0 percent and 4.5 percent. Employees whose annual average evaluation from their immediate supervisor on a numeric standard falls "below standards" shall receive a merit adjustment of between 0 percent and 2.75 percent. Employees whose annual average evaluation from their immediate supervisor on a numeric standard "meets standards" shall receive a merit adjustment of 3 percent. Employees whose annual average evaluation from their immediate supervisor on a numeric standard "exceeds standards" shall receive a merit adjustment of 3.5 percent. Employees may also be given an additional merit adjustment of up to 1 percent on the basis of an evaluation by the fire chief.

Fire lieutenants were paid on a merit system before they began bargaining collectively with the Village. In the arbitration that resulted in the first contract, where both parties proposed to continue to increase a merit system for part of the lieutenants' increases, Arbitration Nathan acknowledged that any such system must have objective and credible evaluation processes. The Union asserts that the adoption here of its pay step plan and the elimination of merit pay will maintain an equitable pay arrangement, while eliminating the current merit pay system that it contends is "unfair and disproportionate."

The Union cites perceived inequities of the Village's merit system as grounds for its elimination. In 1995 - 1996, the Village did not pay any lieutenant the maximum allowed under the contract, which was almost \$1000 higher than the salary of the highest-paid lieutenant. Lieutenant Goostree ranked highest in evaluations, but received a merit increase of only 1.19 percent out of a possible 1.75 percent. The other lieutenants were paid from \$160 to \$3796 less than that highest-paid lieutenant. Lieutenant Goss testified that it was not possible, as a practical matter, for a lieutenant to participate in all of the activities that would garner the full 1.75 percent increase.

According to the Union, in the two other comparable communities with merit pay systems for lieutenants, all but two lieutenants received top pay. The Union also asserts that the length of time to reach maximum pay in the Village is excessive. However, the Village's current merit award practices are consistent with its historic administration of merit systems. In the past, the Village has not awarded merit increases at the maximum amount possible. See, e.g., Nathan Award, p. 57 - 8. Even as Arbitrator Nathan adopted the Union's offer for 1993 - 1994, he observed, "[W]e have given little weight to the 2% (merit increase), believing that it will not amount to much of anything." Id., p. 58. Thus, the system now in place specifically incorporates the Village's practice of not awarding the maximum merit increase possible, even to the lieutenant with the highest evaluation.

The Union's concern that the current merit system has not operated objectively echoes complaints made about the old system at the previous arbitration. Under that system, the Chief considered not only employee evaluations but also "a range of factors beyond the evaluations" that "may have appeared to some as being without objective standards," according to Arbitrator Nathan. In adopting the Village's plan for 1994 - 1995, the Arbitrator concluded that the new plan would address the Union's concerns. Id., p. 63.

Under the current system, lieutenants have been evaluated against a series of reasonably objective standards.<sup>6</sup> The Union complains that employees were not

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<sup>6</sup>For 1993 - 1994, the "regular" merit increase was based on the average of the two previous performance evaluations, with the highest-ranked lieutenant receiving 1.10 percent, down to the lowest-rank lieutenant who received 0.33 percent. U. Ex. 2I. Although the documentation explaining the 1994 - 1995 merit increases was not available, it appears that all lieutenants received both a "general" increase as well as a "regular" merit increase based on the average of the two previous performance evaluations, except that raises for the highest-ranked lieutenant, Goostree, and for lieutenants Denna, Gauss, Goss, Langland, Miller and Rohrer, were limited to increases that put them at the top of the range. U. Ex. 2J. Finally, for 1995 - 1996, the Department applied 14 criteria in determining regular merit pay, weighted to reflect their importance to the Fire Department: Acting Captain, Budget Activity, Special Projects, Team Leader, Committee Chairman, Station Officer, ISD, Follows and Enforces Policies and Procedures, Loyal and Supportive of Management, CPR Instructor, Team Member, Committee  
(continued...)

told in advance what those standards would be nor counseled as to areas of possible improvement, and that the standards were such that it was impossible as a practical matter for any lieutenant to achieve the maximum rating. While advance notice and counseling may be desirable features of a performance evaluation program, there is no evidence that their absence here resulted in an unfair or arbitrary application of the merit increase system.

The reasonableness of its offer to eliminate merit pay is buttressed, the Union contends, by the substantial wage concessions embodied in its plan. That wage concessions have been offered cannot be denied. The Village's proposal, which continues merit pay, would increase the maximum pay rate for lieutenants to \$55,249 effective May 1, 1996; to \$56,907 effective May 1, 1997, and to \$58,614 effective May 1, 1998. Under the Union's proposal the maximum salary effective May 1, 1996 would be \$53,927, \$1,322 or 2.4 percent less than the Village's maximum; effective May 1, 1997, the maximum under the Union offer would be \$55,680, \$1,227 or 2.16 percent less than the Village's maximum; effective May 1, 1998, the maximum under the Union's offer would be \$57,629, \$985 or 1.7 percent less than the 1998 maximum under the Village's offer. This concession, according to the Union, will also increase the differential between fire lieutenant and police sergeant wages. It is true that Village police officers in 1987 successfully offered wage concessions in their first contract negotiations in return for an agreement to eliminate the merit pay system. But that situation offers little guidance here, where the Union seeks an arbitrator-imposed, rather than voluntarily negotiated, change.

In contrast, the Village offers to increase the pay range maximum by 4.5 percent in 1996, by 3 percent in 1997 and by 3 percent in 1998, preserving the requirement that all lieutenants be paid at least 5 percent more than the top step salary for firefighters. The minimum pay would therefore increase to \$49,407 (105 percent of \$47,054) in 1996, \$50,889 (105 percent of \$48,466) in 1997 and \$ 52,416 (105

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<sup>6</sup>(...continued)

Member, Fire Officer I, Fire Officer II. U. Ex. 2K. Under these standards, the newest lieutenant, also the lowest-ranked, received a merit increase of only 0.03 percent, while the highest-ranked received a merit increase of 1.19 percent. U.Ex. 2L.

percent of \$49,920) in 1998. Increases would be as follows:

Year	"Below standards"	"Meets standards"	"Exceeds standards"	Max. add'l merit
96-97	0-3.25%	3.5%	4%	1%
97-98	0-2.75%	3%	3.5%	1%
98-99	0-2.75%	3%	3.5%	1%

The maximum base salaries for 1996 - 1997 in the comparable communities, to the extent they are known are as follows:

Lombard	\$57,592.	Mt. Prospect	55,178. <sup>7</sup>
Rolling Meadows	57,479. <sup>8</sup>	Skokie	53,541.
Northbrook	57,073.	Elmhurst	53,222. <sup>9</sup>
Wheeling	57,072. <sup>10</sup>	Elgin	51,852.
Park Ridge	56,265. <sup>11</sup>	Bensenville	51,068. <sup>12</sup>
Des Plaines	55,826.	Buffalo Grove	51,562. <sup>13</sup>
Hoffman Est.	55,186.	Arlington Hts.	unknown, but at least \$54,792 <sup>14</sup>

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<sup>7</sup>The figure is an average of \$55,198, provided by the Union (U. Ex. 20), and \$55,171, provided by the Village (V. Ex. 46). The record does not indicate the source of the discrepancy, which is nominal.

<sup>8</sup>Reflects increase to \$57,479 effective January 1, 1997.

<sup>9</sup>Based on the award of Arbitrator Briggs in City of Elmhurst and IAFF Local 3541 (April 20, 1997).

<sup>10</sup>Reflects increases on November 1, 1996.

<sup>11</sup>This figure is from Village Ex. 46; the Union provided only a 1995-1996 figure.

<sup>12</sup>Reflects an average of the Union's figure of \$ 50,067 (U. Ex. 20) and the Village's figure of \$52,070 (V. Ex. 46).

<sup>13</sup>An average of \$51,825, from Union Ex. 20, and \$51,298, from Village Ex. 46.

<sup>14</sup>See U.Ex. 20.

The average 1996-1997 maximum base salary, without considering Arlington Heights or the Village, is \$54,840. The Village's offer would create a maximum base salary of \$55,249, \$600 above the average and ranked at seventh out of the 13 other communities for which 1996 - 1997 figures are in the record. This is actually an improvement from 1995 - 1996, when the Village maximum of \$52,870 placed the Village tenth out of the fifteen comparables, and \$ 200 below the average maximum base salary (U. Ex. 2H(i)).

The new maximum will continue the pattern that the maximum police sergeant salary (\$56,394) exceeds the maximum fire lieutenant salary (\$55,249). However, this is not only consistent with the history of these two groups within the Village (cf. Nathan Award, p. 27 - 28), but is also consistent with the pattern among the comparable jurisdictions: In eleven of the comparable communities, the maximum base salary for police sergeants exceeds the maximum base salary for fire lieutenants.

In light of these considerations, the other factors enumerated in the Act, and the absence of sufficient grounds to adopt the Union's radical restructuring of compensation for lieutenants, the Village's proposal for lieutenant's salaries is more reasonable than the Union's.

### **3. Issue No. 3 -- Paramedic Stipend**

The 1995-1996 paramedic stipend is \$2,225, as a result of the Nathan Award. The Union's final offer is to revise Section 14.4 to increase the paramedic stipend to \$2,600.00 per year effective May 1, 1996, to \$2,700.00 per year effective May 1, 1997, and to \$2,800.00 per year effective May 1, 1998. The Village's final offer is to revise that Section to increase the paramedic stipend to \$2,400.00 per year effective May 1, 1996, to \$2,500.00 per year effective May 1, 1997, and to \$2,600.00 effective May 1, 1998.

The 1995 - 1996 and 1996 - 1997 maximum paramedic stipends among the comparable communities, are as follows:

Village of Elk Grove Village and IAFF Local 3398  
 ISLRB No. S-MA-96-86

	95-96	96-97
Arlington Hts.	\$ 3438.	N/A
Des Plaines	3203.	3310.
Northbrook	2720.	2796.
Wheeling	2572.	3460.
Park Ridge	2454. <sup>15</sup>	2537.
Lombard	2450. <sup>16</sup>	2500. <sup>17</sup>
Rolling Meadows	2400.	2450. <sup>18</sup>
Elgin	2175. <sup>19</sup>	2250. <sup>20</sup>
Skokie	2150.	N/A
Hoffman Est.	2000.	2000.
Mt. Prospect	1216.	1254.
Bensenville	none	none
Buffalo Grove	none	none
Elmhurst	none	none
Ave. (w/o Elk Grove Village)	\$ 2434. <sup>21</sup>	2559. <sup>22</sup>

Thus the 1995 - 1996 stipend of \$2225 placed the Village eighth out of the 13 comparable communities having a stipend, approximately \$200 behind the average. The average for 1996 - 1997 of \$2559 is probably low, because it was calculated

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<sup>15</sup>Reflects increase on November 1, 1995.

<sup>16</sup>Based on the middle of the range for paramedic stipends of \$1900 to \$2900.

<sup>17</sup>Based on the middle of the paramedic stipend range of \$2000 to \$3000.

<sup>18</sup>Reflects increase January 1, 1997.

<sup>19</sup>Reflects December 24, 1995 increase.

<sup>20</sup>Assumes no increase when contract expired December 21, 1996.

<sup>21</sup>This figure differs from both the Union's calculation (U. Ex. 1D) and the Village's (cf. V. Ex. 54). The data used are taken directly from the collective bargaining agreements in the record wherever possible.

<sup>22</sup>Assumes that there is no increase in the Arlington Heights and Skokie stipends.

using the 1995 - 1996 figures for Arlington Heights and Skokie. Nonetheless, it is apparent that the Village's offer for 1996 - 1997 of \$2400 would bring the Village's stipend closer to the average, and leave the Village eighth among the comparables, while the Union's offer of \$2600 would move the Village up three places to fifth, ahead of Park Ridge.

This is a close question, and although the arbitrator ordinarily would be reluctant to adopt an economic offer that so alters the Village's standing among the comparables, there is a significant operational consideration favoring the greater increases. The Union has made a non-economic proposal to limit the length of time it takes for the Village to grant firefighter requests to decertify as paramedics. The record reflects that there is a substantial delay between the submission of a request and actual decertification, and that the delay has caused sufficient dissatisfaction for the Union to place it in issue here. Just as arbitrators consider the amount of employee turnover as a measure of the appropriate salary offer, it is appropriate here to encourage firefighters not to seek decertification, and to alleviate the apparently unavoidable waiting period for those who seek to decertify, by adopting the Union's greater offer on paramedic stipends. Particularly where there is no question that the Village has the ability to pay the higher stipends, no issue of internal comparability that would cause complications for the Village with other employee groups, and yet a public interest in encouraging and retaining skilled and experienced paramedics, the Union's offer is more reasonable and will be adopted.

#### **4. Issue No. 4 -- EMT-B Stipend**

The Union's final offer is to amend Section 14.4 to add the following paragraphs:

- (d) Effective May 1, 1996, employees who are required to undergo training and certification for the position EMT-B shall receive an EMT-B pay stipend of \$250.00 per year.
- (e) Effective May 1, 1997, employees who are required to undergo training and certification for the position EMT-B shall receive an EMT-B pay stipend of \$350.00 per year.

- (f) Effective May 1, 1998, employees who are required to undergo training and certification for the position EMT-B shall receive an EMT-B pay stipend of \$500.00 per year.

The Village opposes any EMT-B stipend.

The EMT-B certification is a new credential, which is replacing the EMT-A classification. For at least 15 years, all firefighters and lieutenants who are not paramedics have been required to be EMT-A's. By requirement of the state and the Northwest Community Hospital EMS System in which the Village participates, all EMT-A's must become EMT-B's, with the training to be completed by June 1997. The record reflects that EMT-B's will be certified to perform a variety of tasks in addition to those performed by EMT-A's: To assist a patient to take cardiac medication already prescribed for the patient; to assist in administering medications necessary to treat a respiratory or allergic response emergency if the patient already has a prescription for the medication; to assist in intubations (although the Northwest Community Hospital EMS System is not requiring this task of EMT-B's); and to use automated external defibrillators (AED's), although the Village does not currently have any AED's and the Northwest Community Hospital EMS System anticipates very little use of AED's at present. EMT-B's also receive upgraded training in patient assessment techniques. Twenty-four hours of training is required to upgrade an EMT-A to EMT-B. Despite these changes, EMT-B's, like EMT-A's, remain subject to the judgment and direction of paramedic(s) on the scene.

The Village has never paid an EMT-A stipend, and a review of the anticipated changes caused by the new certification suggests that the new tasks that EMT-B's will perform will differ only slightly from those already performed by EMT-A's. The extra duties do not on their own appear to warrant the creation of an entirely new stipend.

Only two comparable communities have stipends analogous to the stipend sought by the Union: Elmhurst, which has a \$400 stipend for EMT-A, and Lombard, which has a stipend of \$450 for "Emergency Medical Technician." Those jurisdictions have maximum base salaries significantly less than the Village's, and there is no reason for the Village to break away from the majority of the

comparables to join Elmhurst and Lombard on this point. Given that there is so little support among the comparables for any EMT stipend, the Union's offer is not reasonable. The Village's offer is adopted.

### **5. Issue No. 5 -- Retroactivity**

The Union's final offer is to amend Section 14.6 by substituting the date "May 1, 1996" for the date "May 1, 1993" in the first and second sentences of the section. Thus, under that offer, Section 14.6 would read:

The increases in salaries for both firefighters and lieutenants and the increases in the paramedic stipend shall be retroactive to the effective dates 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 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 retirement. Payment shall be made on an hour for hour basis for all regular hours actually worked since May 1, 1996, as well as all hours of paid leave and vacation, holiday pay or overtime hours between May 1, 1996, and the effective date of this Agreement. In calculating overtime, paid time off for vacations and holidays shall be counted as hours worked solely for the purpose of determining eligibility for overtime pay.

The Village's final offer is as follows:

The increases in salaries shall be retroactive to the effective dates specified herein, i.e., May 1, 1996 for employees still on the active payroll on the effective date of Arbitrator Kohn's award, provided that any employee who retired on or after May 1, 1996 but before the effective date of Arbitrator Kohn's award shall also be eligible to receive retroactive pay based on the hours worked between May 1, 1996 and the date of retirement. Payment shall be made on an hour for hour basis for all regular hours actually worked since May 1, 1996, as well as all hours of paid leave and vacation between May 1, 1996,

and the effective date of Arbitrator Kohn's award. Retroactivity shall not be paid on any non-FLSA overtime hours worked between May 1, 1996 and the effective date of Arbitrator Kohn's award.

In essence, the Village seeks to limit its recalculation of compensation due for overtime work to those overtime hours earned pursuant to the Fair Labor Standards Act. This is a variation from the calculation required under the previous contract, which included all overtime hours. Thus, on this issue, the Village seeks to alter the status quo.

The present language was drafted by the Village but reflected an agreement reached between the parties. Nathan Award, p.122. The Village asserts two reasons why this language should be changed -- the "administratively burdensome" task of going back more than one year to recalculate overtime compensation, and the support of both internal and external comparisons. Village Human Resources Officer Richard Olson testified generally that the task of identifying and recomputing a variety of different types of overtime drastically increases the Village's problems in calculating amounts due retroactively, and noted that it is difficult to make these calculations and run the payroll at the same time. As an internal comparison the Village notes that the IUOE Local 150 unit did not get any retroactivity at all for the period from May 1, 1996 to September 15, 1996. Among the 14 comparables, Hoffman Estates' contract did not provide any retroactive recalculation, but did provide a lump sum "incentive bonus" that the Village asserts was in lieu of retroactivity. Elmhurst provided no retroactivity for the period from May 1, 1993 to January 1, 1994, but also paid a lump sum payment upon ratification of the contract that expired April 30, 1996.

The Union responds by noting that the Village voluntarily agreed to recalculate retroactively all overtime in the last arbitration proceeding, and has the burden of demonstrating compelling reasons to change that agreement. The Union also notes that comparables Des Plaines, Elgin, Northbrook and Wheeling all have contracts requiring the recalculation of compensation for all overtime hours.

Indeed, in the interim between the close of the hearing and the issuance of this award, Arbitrator Steven Briggs has issued his award in Village of Elmhurst and

IAFF Local 3541 (April 20, 1997), adopting the Union's position on retroactivity over a Village proposal that would have excluded retroactivity for overtime hours. Even though the Village's proposal would have continued the practice followed under the parties' previous contract (where a lump sum payment was paid rather than retroactive increases for overtime hours), Arbitrator Briggs found "no compelling reason to restrict such retroactive salary increases by the exclusion of overtime hours." Id., p. 23. He observed, id.:

After all, Article VII of the current contract reflects the parties' agreement that overtime hours are worth one and one-half times the regular straight time hourly rate. If that rate is subject to a retroactive increase then pay for overtime hours worked should be raised accordingly.

Accord, Village of Arlington Heights, ISLRB No. S-MA-88-59 (Briggs, Arb.) (1991)(if straight time rates are being adjusted retroactively, i.e., there has been an agreement or determination that the prior rate(s) were outdated, "[i]t therefore seems reasonable to conclude that the rates at which they were paid for their overtime work were also outdated" and overtime pay should also be recalculated). Arbitrator Briggs' reasoning may be inapplicable in some circumstances, but the Village has failed to demonstrate that the recalculation process is so onerous as to provide such a circumstance.

The external comparables support the Union's, rather than the Village's, proposal. In fact, not one comparable community distinguishes between FLSA and non-FLSA overtime for the purposes of retroactivity. Even where retroactivity was not paid, the communities of Hoffman Estates and Elmhurst (under its contract that expired in 1996) paid a lump sum payment in lieu of all retroactivity. No similar quid pro quo is offered here. Internal comparisons are no more helpful: The police received retroactivity on all overtime, except where they were barred from any increase during the first year of their 1994 -1997 contract by operation of Section 14(j) of the Act. Goldstein Award, pp.71-2. The Village's IUOE unit, whose members work 8-hour shifts, agreed to forego any increase whatsoever from May 1 to September 15, 1996, but that provision was not imposed by an impasse arbitration panel, and did not distinguish between straight time and overtime hours,

or among different types of overtime. That the union may have agreed to forego retroactivity as part of its direct collective bargaining strategy does not indicate that a similar provision should be imposed by the Arbitrator here. As imposed by the Arbitrator here, a restriction on retroactivity would unduly punish the bargaining unit members for both parties' failure to avoid impasse. Thus, on balance, the Union's offer on retroactivity is more reasonable and shall be adopted.

#### **6. Issue No. 6 -- Cost of Medical and Dental Insurance**

The Union's final offer on the cost of medical and dental insurance is to delete the first two paragraphs and the last paragraph of Section 15.2 and add the following to that Section:

Effective at the first month following ratification of this Agreement or the effective date of the interest arbitration award concerning this Agreement, which ever is applicable, the preferred provider program in effect for every Village employee will be implemented for employees covered by this Agreement, and employees will be required to pay contributions of \$ 32.50 for employee coverage, \$ 68.34 for the employee plus one dependent, and \$ 74.36 for the employee plus two or more dependents. These will be monthly payments. Employees covered by the health plan, for all services not included in the PPO, shall have a deductible of \$ 300 per person per year for single coverage and a maximum family deductible of \$ 900 per year. The co-insurance payment under the health plan shall be paid by the employer at the rate of 80% for the first \$ 2,000 and 90% for the second \$ 2,000. The employee shall pay 20% of the first \$ 2,000 and 10% of the second \$2,000. The maximum out-of-pocket cost shall be \$ 900 for each family member up to maximum of \$ 2,700. For HMO coverage, the employee cost shall be the cost in effect for all Village employees as of May 1, 1996.

The Village's final offer is to revise the first paragraph of Section 15.2 to read as follows:

Effective May 1, 1996, the Village will contribute 85 percent of the designated premium costs of participation in the Village plan (including the dental plan) for single, single plus one dependent, and family coverage or 85 percent of the cost of participation in one of the HMO's offered by the Village for single, single plus one dependent and family coverage and the employee shall contribute 15 percent of the costs of the program and coverage selected.

The Village also offers, "if it is determined that the Arbitrator has jurisdiction to decide the additional items relating to the deductibles and co-pays," to revise the third paragraph of Section 15.2 to read as follows:

Employees covered by the health plan, for all services not included in the PPO, shall have a deductible of \$ 300.00 per year for single coverage and a maximum family deductible of \$ 900 per year. The co-insurance payments under the health plan shall be paid by the employer at the rate of 80 percent for the first \$ 5,000.00. The maximum out-of-pocket expense for each eligible participant shall be \$ 1,300.00 (maximum of three or \$ 3,900 regardless of family size).

Under the prior contract, as established by the Nathan Award, the employee contribution rate remained a fixed dollar amount for 1993 - 1994 and 1994-1995, and became eligible for a Village-wide PPO that provided for deductibles of \$300 per family member with a \$900 maximum, and co-insurance payments of 20% on the first \$2,000 and 10% on the second \$2,000, with an out-of-pocket maximum of \$900 per employee. There was a reopener for 1995 - 1996, as a result of which the parties entered into a Memorandum of Agreement (Jt. Ex. 5) that states in part:

The parties agree that this Memorandum of Agreement is being entered into [on a] nonprecedential basis. Neither party may rely upon this Memorandum of Agreement to support future health care proposals and a Labor Arbitrator, in any subsequent interest arbitration proceeding, may not rely upon this Memorandum of Agreement.

In other words, the Memorandum itself states that this Arbitrator is required to ignore its terms. The Village asserts that by making the Memorandum a Joint Exhibit, the Union has waived the right to bar my consideration of its terms. The submission of an exhibit redacted to show only the language quoted certainly would have avoided the question now. However, the Union preserved its objection vigorously at the hearing, and I hold that I must abide by Paragraph 2 of the Memorandum.<sup>23</sup> I cannot even compare the parties' offers to the terms set by the Memorandum, and except to note the fact that the parties negotiated successfully, I do not rely on the Memorandum in any way.

In effect the Union's offer would maintain the system of fixed dollar contribution levels used in the first two years of the previous contract, although the amount would increase from \$30.02 for single coverage and \$68.64 for employees plus two dependents in 1993 - 1995, to \$34.50 and \$74.36 respectively, while the Village would change to contribution levels determined as a percentage of the premium. The Union also proposes to retain employee co-insurance payments at their 1993 - 1995 levels and to increase out-of-pocket maximums above their 1993 - 1995 levels. The parties are agreed that the deductibles shall be \$300 per year per covered individual up to a maximum of \$900 per year per family. The Village's offer tracks the terms now in effect for all other Village employees, including those represented by MAP and IUOE Local 150.

The Village's central argument in support of its offer is this internal consistency. To permit the firefighters and lieutenants to enjoy better medical and dental coverage terms than all other Village employees would be unjustified, inequitable and unfair, the Village asserts. Indeed, Arbitrator Goldstein was convinced by this internal comparability to accept the Village's insurance proposal for the police bargaining unit. Goldstein Award, pp. 95-96. He was particularly concerned about avoiding the "administrative difficulties" that the Village would face under a multiplicity of separate and distinct health insurance programs. As a result of his Award and the IUOE contract, the Village proposal would establish a uniform

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<sup>23</sup>In particular, counsel for the Union promptly withdrew an explicit reference to other terms of the Memorandum (Tr. 205) when asked if he was waiving its nonprecedential nature. (Tr. 207.) I therefore disregard the reference made at Tr. 205.

system covering the police and public works bargaining units as well as the unrepresented employees.

The same internal comparison was presented to Arbitrator Nathan in the 1994 interest arbitration. However, he found that "there is no internal comparability here," because the Village had not offered to grant the firefighters access to the more economical PPO plan offered to other Village employees, and because the police were working under an expired contract. These factors are no longer present, and the counterbalances to internal comparability are far weaker at this time. In sum, internal comparability now strongly supports the Village's offer, even though it represents a significant modification of the 1993 - 1995 benefit structure. Accord, City of Elgin and MPA Unit #54, (Briggs, Arb.)(June 25, 1995) p.14.

The Union argues that the Village's proposal is a "breakthrough" offered without a countervailing quid pro quo to justify the change. In particular, the Union suggests that there is no evidence that significant cost increases warrant any increase in employee costs. The Union cites the testimony of Village Human Resource Officer Richard Olson that the Village is now reaping the benefit of various cost savings benefits as reason to avoid any increased cost for employees. However, the cost savings cited would inure to the employees in two ways: First, several elements of the "cost containment" programs, e.g. the vision plan and the prescription plan, are cost savings directly to the participating employees. Second, if the benefits costs decrease, the total premiums should decrease or increase more slowly, and a percentage-based employee contribution will pass that impact on to the employees.

The Union also objects to the retroactive nature of the Village's proposal. However, the Village will also pay salary increases retroactively, so the impact of the retroactive change in premiums should not be as draconian as might be the case if there were no retroactive increases to offset this retroactive change. Nonetheless, this is a significant consideration, and might be definitive were the internal comparisons not so compelling in support of the Village's offer.

Comparing the data on health plan costs from the comparable communities is one

of the more complex tasks in this case -- the benefit plans differ, the options available to employees differ, and the methods of calculating employee costs and contributions vary. It is still true, as it was in 1994, that "The features and costs of medical insurance in the comparable communities go every which way." Nathan Award, p. 95. Cf. City of Batavia, ISLRB No. S-MA-95-15 (Berman, Arb.) (1996)("Because of many differences, tangible and intangible, among health-insurance plans, including differences in coverage, out-of-pocket costs (deductibles, co-payments and maximum limits), claims adjustment policies and practices and health provider acceptability, it is difficult to compare different insurance plans.") Nonetheless, the Village's evidence gives the following employee contribution rates for family coverage (interpreted as employee plus two dependents where there are multiple family coverage levels):

Village of Elk Grove Village and IAFF Local 3398  
 ISLRB No. S-MA-96-86

	Medical	Dental	Total
Lombard	\$ 86.62	\$ 53.41	\$140.03
Bensenville	78.00 <sup>24</sup>	40.05	118.05
Rolling Meadows	47.00	69.21	116.21
Park Ridge	60.00 <sup>25</sup>	25.00	85.00
Skokie	81.27	6.10	87.37
Des Plaines	53.96	27.56	81.52
Wheeling	39.19	37.24	76.43
Elmhurst	27.84	48.50	76.34
Arlington Hts.	39.94 <sup>26</sup>	35.81	75.75
Hoffman Estates	35.00 <sup>27</sup>	36.20	71.60
Northbrook	30.00	39.26	69.26
Mt. Prospect	39.00	no benefit	39.00
Elgin	0.00	33.00	33.00
Buffalo Grove	<u>32.50<sup>28</sup></u>	<u>0.00</u>	<u>32.50</u>
AVERAGE	46.45	35.10	78.69
Union Offer			74.36 (10th out of 15)
Village Offer			87.01 (6th out of 15)

The Union's data (U. Ex. 6(a)(1)) differs significantly as to medical plan

<sup>24</sup>The record does not indicate which figure is correct, the Union's \$62.70 or the Village's \$78.00.

<sup>25</sup>Although V. Ex. 63 gives the Park Ridge employee medical plan contribution rate as \$65.00, the collective bargaining agreement (V.Ex. 4(11)) indicates that the rate is actually \$60.00.

<sup>26</sup>The record does not indicate which figure is correct: the Union's \$27.27 or the Village's \$39.94.

<sup>27</sup>According to the collective bargaining agreement, the employee contribution for medical insurance is 10% of the premium, or \$35.00, whichever is less. Therefore V. Ex. 63 incorrectly uses a contribution rate of \$47.40.

<sup>28</sup>The record does not indicate which figure is correct, the Union's \$30.00 or the Village's \$32.50.

contribution rates. Using the Union's figures (plus the Village's data on dental plan contributions, in the absence of any data from the Union), the comparable information is as follows:

	Medical	Dental	Total
Lombard	\$ 86.62	\$ 53.41	\$140.03
Rolling Meadows	47.00	69.21	116.21
Bensenville	62.70 <sup>29</sup>	45.05	107.75
Skokie	81.27	6.10	87.37
Park Ridge	60.00	25.00	85.00
Des Plaines	53.96	27.56	81.52
Wheeling	39.19	37.24	76.43
Elmhurst	27.84	48.50	76.34
Arlington Hts.	39.94 <sup>30</sup>	35.81	75.75
Hoffman Estates	35.00	36.20	71.60
Northbrook	30.00 <sup>31</sup>	39.26	69.26
Mt. Prospect	39.00 <sup>32</sup>	no benefit	39.00
Elgin	0.00	33.00	33.00
Buffalo Grove	<u>32.50</u>	<u>0.00</u>	<u>32.50</u>
AVERAGE	45.36	35.10	77.60
Union Offer			74.36 (10th out of 15)
Village Offer			87.01 (5th out of 15)

Regardless of which set of figures is used, the Village offer would put firefighters' premium costs roughly \$9 (or 11.5 percent) above the average, while the Union offer would put their premium costs roughly \$4 (or 5 percent) below the average.

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<sup>29</sup>See footnote 24 above.

<sup>30</sup>See footnote 26 above.

<sup>31</sup>Although the Union provided no contribution rate for Northbrook, the contract sets a rate of \$30.00 (V.Ex. 4(10)).

<sup>32</sup>Although U. Ex. 6(a)(1) has a rate of \$38.00 for Mt. Prospect, the contract (V.Ex. 4(9)) indicates that the correct figure is \$39.00.

It is impossible to draw meaningful conclusions about how either offer might modify the Village's ranking among the comparable communities: The Memorandum of Agreement bars consideration of the Village firefighters' 1995-1996 contribution rate, and as a result, the most recent Village firefighter rate available is the rate first paid in 1993.

The Village urges that its increase costs make the Village's offer the more reasonable. However, according to Human Resources Officer Olson, the Village's health care premium costs for the bargaining unit increased 5.9% from 1993 to 1994, but remained constant in 1994 and 1995. (U.Ex. 45.) Olson also testified that overall health care costs increased 6.2 percent from fiscal year 1994 - 1995 to fiscal year 1995 - 1996, but this figure includes cost increases for all employees, not just firefighters, and is of limited value in justifying the Village's offer. According to US Department of Labor data, benefit costs for state and local government workers nationwide increased 3 percent in 1995 and 2.2 percent in 1996, but there are no earlier benefit cost statistics in this record. In the absence of additional historic economic statistics, indicating the increase in national benefit costs over the entire term of the last contract, it is impossible to say that national trends in benefit costs justify one offer over the other.

Considering all of the available data and the internal comparisons, the Arbitrator concludes that the time has come for the firefighters and lieutenants to accept parity with all other Village employees. Unlike the situation in 1994, there are now two bargaining units, in addition to the unrepresented employees, who have the same contribution rate, deductibles, co-payments and out-of-pocket maximums and participate in the PPO program. Although "internal parity" should not become a mindless mantra, so that it bars serious and separate consideration of the particular needs and circumstances of each distinct group or unit of employees, there is no reason at present to continue the firefighters' unique package. The Union's offer would make the Village firefighters' premium contributions at least 4 percent and as much as 5.5 percent less than the average among the comparable communities. (See pages 32 and 33 above.) In light of the Village's general standing in the middle of the range of the comparable communities in other measures of compensation, the Village's offer (including contribution rates, co-payments, out-of-pocket maximums, and deductibles) is more reasonable at this time.

### 7. Issue No. 7 -- Longevity Pay

The Union's final offer on longevity pay for firefighters is as follows:

<u>Years of service</u>	<u>Longevity pay (per year)</u>
10 to 15 years of service	\$ 400.00
15 to 20 years of service	500.00
Over 20 years of service	650.00

For lieutenants, the Union proposes that the longevity pay amounts effective May 1, 1995, continue unchanged throughout this contract.

The Village's final offer of longevity pay for firefighters is that effective May 1, 1996, firefighters shall receive longevity payments as follows:

<u>Years of service</u>	<u>Longevity pay (per year)</u>
10 to 15 years of service	\$ 150.00
15 to 20 years of service	250.00
Over 20 years of service	350.00

and further, that effective May 1, 1998, the Firefighters will receive longevity payments as follows:

<u>Years of service</u>	<u>Longevity pay (per year)</u>
10 to 15 years of service	\$ 200.00
15 to 20 years of service	300.00
Over 20 years of service	400.00

For lieutenants, the Village also proposes to continue the current schedule of longevity payments throughout the contract, as follows:

<u>Years of service</u>	<u>Longevity pay (per year)</u>
10 to 15 years of service	\$ 400.00
15 to 20 years of service	500.00
Over 20 years of service	650.00

Thus, the parties have agreed on two points: the amount of longevity payments for lieutenants, and the institution of longevity payments for firefighters. However, where the Union would place firefighters on the same longevity scale as lieutenants, the Village would use a significantly lower scale for firefighters throughout the contract term.

The Union asserts that the Village's longevity payments, even at the scale proposed for lieutenants, trail those paid in comparable communities. In comparable communities, the ranges are as follows:

	Min. Amt.	Max. Amt.
Arlington Hts.	\$475 (5 yrs)	\$775 (20 yrs)
Buffalo Grove	\$200 (5 yrs)	\$500 (20 yrs)
Des Plaines (Firefighters)	\$808 (10 yrs)	\$2548 (20 yrs)
Des Plaines (Lieutenants)	not in record	\$2950 (20 yrs)
Mt. Prospect	\$275	\$275
Northbrook	\$180 (5 yrs)	\$1200 (20 yrs)
Park Ridge (Firefighters)	\$600 (10 yrs)	\$800 (20 yrs)
Park Ridge (Lieutenants)	not in record	\$850 (not in record)
Rolling Meadows	\$700 (10 yrs)	\$900 (20 yrs)
Skokie	\$300 (5 yrs)	\$600 (30 yrs)
Wheeling	\$600 (12 yrs)	\$600 (12 yrs)

The average 10-year longevity payment (paid by all of the comparables except Wheeling) is \$535. Both the Village's offer and the Union's offer lag behind this, although the Union offer is only \$135 below the average 10-year payment.<sup>33</sup>

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<sup>33</sup>In fact as of May 1, 1996, 7 firefighters have between 10 and 15 years of service, 14 have  
 (continued...)

Both longevity proposals lag by another measure. We have seen that the Village's offer on salaries, which is being adopted, places the firefighters May 1, 1996, maximum base salary in fourth place among the comparables, moving them up one rank. When the maximum base salary is added to the maximum longevity, the following rankings result:

	Max base <u>5/1/96</u>	Max long. <u>5/1/96</u>	<u>Total</u>	Rank w/o <u>Village</u>
Hoffman Estates	\$49,031.	-----	49,031	2
Northbrook	47,473.	1200.	48,673	3
Rolling Meadows	47,069.	900.	47,969	4
<u>Elk Grove Village (Union long. offer)</u>	<u>47,054.</u>	<u>650.</u>	<u>47,704</u>	*
<u>Elk Grove Village (Village offer)</u>	<u>47,054.</u>	<u>350.</u>	<u>47,404</u>	*
Skokie	46,945.	600.	47,545	5
Des Plaines	46,945.	2548.	49,493	1
Arlington Heights	46,880. <sup>34</sup>	775.	47,655	6
Park Ridge	46,131.	800.	46,931	7
Buffalo Grove	45,500.	500.	46,000	8
Mount Prospect	45,368.	275.	45,643	10
Wheeling	45,171.	600.	45,771	9
Elgin	44,784.	-----	44,784	11
Elmhurst	44,452.	-----	44,452	12
Lombard	44,199.	-----	44,199	13
Bensenville	43,152.	-----	43,152	14

The Union's offer would place the maximum firefighter salary plus longevity at fifth out of all comparables by this measure, while the Village's offer would place its firefighters at seventh behind Skokie and Arlington Heights, in either case a

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<sup>33</sup>(...continued)

between 15 and 20 years of service, and 17 have over 20 years of service, so that the vast majority of employees receiving longevity payments will be at the two higher steps of the scale. Thirty firefighters, or slightly less than half the classification, will receive no longevity payment at all. Similarly detailed demographic figures are not available for the comparable communities.

<sup>34</sup>Estimate based on 1995 maximum base salary increased by the 4 % increase negotiated for Arlington Heights police officers.

drop from the Village's ranking of fourth when only maximum base salary is considered. It should be noted that the considerable range among comparables at both 10 years (\$275 - \$808) and the maximum (\$275 - \$2548) for firefighters clearly reflects the bargains struck in individual units based on a wide variety of factors.

On the other hand, the longevity payments offered by the Village for the first two years of the contract are identical to those provided to police officers under the MAP contract. The increase offered effective May 1, 1998, will take effect after the expiration of the MAP contract, so no further comparison is possible, although the Village asserts in its brief that the increase "if accepted by the Arbitrator in this case, will in all likelihood be agreed to in the negotiations between the Village and MAP for a successor contract." Village Brief, fn. 35, p. 73. Arbitrator Goldstein was also cognizant of establishing the basis for a "pattern" in adopting the Village's proposal for new longevity payments for police, and expected his award to serve as "a guidepost" in the negotiation of the firefighters' next contract, the one in formation here. Goldstein Award, p. 79. The Village's offer is identical to the longevity structure for IUOE employees, as well.

Although the Union urges that the firefighters should receive the same longevity scale as the lieutenants, there is little support for this position. Firefighters and lieutenants are different classifications and receive different base pay. There is no reason why they should receive the same dollar amounts for longevity. The higher longevity pay for lieutenants may be seen as another incentive for firefighters to seek promotion to that rank. Thus, this internal comparison is not persuasive.

Just as the longevity payments were a breakthrough for the fire lieutenants in the 1994 case, the longevity payments for firefighters are a breakthrough here. The history of minimal turnover in the classification suggests that these longevity payments are not needed to assist the Village in retaining experienced, qualified firefighters, nor is there evidence of need for the type of equitable adjustments made in 1994. Where a balance must be drawn between the lessons of the external comparisons that favor the Union's proposal, and the internal comparison between firefighters, police officers and public works employees that strongly favors the Village's offer, the key must be not to discourage or defeat the bargaining process,

by awarding a higher benefit than reasonably might be achieved in bargaining. Here, the Village has already conceded the need to make longevity payments to firefighters in some amount. The Village's more modest proposal, which preserves the internal parity with police officers, is in order.

#### 8. Issue No. 8 -- Hours of Work

The Village proposes to revise Section 13.2(a) and to add a new subsection (c), to read as follows:

- (a) Shift Employees. The normal work day for shift employees shall be a period of 24 and one-quarter hours beginning at 0645 hrs. a.m. and ending at 0700 hrs. a.m. the following day. The normal work period for shift employees is a 28-day cycle.
  
- (c) Definition of Hours Worked for Overtime Purposes for Shift Employees. Hours worked shall include all hours actually worked, and hours not worked coded as vacation and holidays. Any other type of compensated time off such sick leave shall be counted as hours worked. Additionally, there is expressed agreement that two one-hour meal periods on each scheduled day (1200 hours for lunch and 1800 hours for dinner, Monday through Saturday, and 1000 hours for breakfast and 1600 hours for dinner on Sundays and holidays) will be excluded from the hours worked total. If an employee's meal period is interrupted by calls to duty, the Fire Chief or his designee will re-schedule the meal period as soon as convenient thereafter, unless the Fire Chief or his designee determines that work requirements will not permit rescheduling, in which event the interrupted meal period will be counted as time worked and paid accordingly. Finally, the parties expressly agree that the Village shall not count as hours worked eight (8) hours sleep time per 24 1/4 hours shift provided the employee gets at least five (5) hours of uninterrupted sleep time during the sleep period.

The Village's final offer also includes the following caveat:

(NOTE: Subsection (b) would remain as worked in the 1993-96 contract since the Village's final offer does [sic: "not" apparently intended] include any change to that subsection.)

The Union proposed to leave Section 13.2 unchanged.

The ISLRB General Counsel concluded in her March 28, 1997 Declaratory Ruling that the Village's proposal on this issue is not a mandatory subject of bargaining under the Act. The Village's proposal to establish a 24¼-hour workday and to exclude sleep and meal time from hours worked in computing overtime would deprive employees of their individual right to refuse to the overtime exclusions. The General Counsel did not find it to necessary to determine whether the Union could waive the employees' FLSA rights in this manner. She ruled that if the Union lacked the authority to waive individual employees' statutory FLSA rights, then the Village's proposal requiring that waiver would be a prohibited subject of bargaining, particularly where, as here, bargaining unit members have notified the Village in writing of their opposition to the proposed change. She further held, on the other hand, that if the Union did have the authority to waive employees' FLSA rights regardless of their individual objections, the Village proposal would be "most properly deemed a permissive rather than a mandatory subject of bargaining, in accordance with the ample precedent . . . that a bargaining proposal conditioned upon the relinquishment of a party's statutory rights is a permissive subject of bargaining." Declaratory Ruling, p. 8.

In light of this ruling, the Village has withdrawn its final offer. Village Brief, p. 79.<sup>35</sup> The Union has also requested that the Arbitrator not consider this issue.

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<sup>35</sup>The Village qualified its withdrawal by requesting the opportunity to resubmit its final offer on this issue if the Arbitrator were to assert jurisdiction and rule on the Union's offer with respect to Fire Prevention Bureau Inspection work, Issue No. 17. As noted below, the Arbitrator has not asserted jurisdiction over the Union's offer, and this award will not have the effect of adding the Union's proposed Section 19.17.

Based on the General Counsel's determination that the Village's offer was not a mandatory subject of bargaining, the Arbitrator finds that she has no authority to consider Issue No. 8 further.

### **9. Issue No. 9 -- Overtime Pay for Firefighters**

The Union's final offer on overtime pay for firefighters is to amend the third paragraph of Section 13.4 to add paid time off for sick leave to the paid time off that is counted as hours worked for the purpose of calculating eligibility for overtime. The Village's final offer is to retain Section 13.4 without change.

The third paragraph of Section 13.4 now reads:

Solely for the purpose of calculating eligibility for overtime pursuant to the provisions of this Section, paid time off for vacations and holidays shall be counted as hours worked; any other type of compensated leave such as sick leave shall not be counted as hours worked.

The Union would add "sick leave" after "vacations" as paid time off counted as hours worked, and delete the semi-colon and the material following the semi-colon. The Union relies primarily on comparison to the police officers, where the same issue was presented to Arbitrator Goldstein, who adopted the police officers' proposal based primarily on the external comparables for that unit. In addition, the Union notes that other Village employees receive the same benefit.

However, I agree with the Village that these groups of employees are not comparable to the firefighters unit on this point. Firefighters have a unique work schedule and overtime provisions: they work 24-hour shifts and are paid time-and-one-half for "all regularly scheduled hours worked in excess of 212 hours in the employee's normal 28-day work period." Section 13.4 of the Agreement. As a result, this proposal for firefighters is a far greater benefit to these employee, than it would be for another Village department. Thus, if a firefighter is on sick leave for a shift, twenty-four hours of leave would be counted as hours worked, while if a police officer is on sick leave for a shift, only eight hours would be counted as hours worked.

Firefighters receive overtime just for working a "normal" schedule of 24 hours on, 48 hours off. If the firefighter is scheduled to work ten shifts during a 28-day work cycle, he or she will work 240 hours within that cycle, and be entitled to overtime pay for the 28 hours worked in excess of 212 hours. If the firefighter is scheduled to work nine shifts during the 28-day cycle, he or she will work 216 hours in the cycle and will be entitled to overtime pay for the four hours in excess of 212. Under the Union's offer, a firefighter could take two shifts of sick leave, so that he or she works only 192 hours in a ten-shift cycle, or 168 hours in a nine-shift cycle, and still be paid overtime for 28 hours and four hours, respectively. This would be a far greater benefit than the police officers, with eight-hour shifts, receive. It is an unjustified windfall to the firefighters. Finally, it should be noted that none of the comparable communities counts sick leave as hours worked for purposes of either FLSA overtime or regular overtime for firefighters. The Union's offer is not reasonable, and Section 13.4 will be retained without change.

#### **10. Issue No. 10 -- Overtime Pay for Lieutenants**

The Union's final offer on overtime pay for Lieutenants is to amend the second sentence of Section 13.5 to read as follows (new material underlined):

Lieutenants are ineligible for overtime compensation, except when they are called back to duty outside of their scheduled hours of work to respond to an emergency or to satisfy minimum manpower requirements as established by the Fire Department and to undertake training programs and participate in the department's operational committees.

The Village's final offer is to retain Section 13.5 without change.

The Union asserts that its proposal is based on the Village's general Personnel Rules and Regulations, under which all front line supervisors, including police sergeants, are eligible for overtime "when the needs of the department are such that the first line supervisor must work additional days and/or hours because of inadequate supervisory manpower," or "when emergency situations develop which

require their supervision." Supervisors also are paid at straight time for court attendance on behalf of the Village which does not take place during their scheduled normal working hours. The Union concludes that treating fire lieutenants like all other front line supervisors requires that they be granted overtime when they are called back to duty outside of their scheduled hours of work for required training programs or to participate in the department's operational committees.

The Village cites a letter from the Department of Labor representing the Department's determination, after an audit, that fire lieutenants are "exempt" personnel under the federal FLSA. However, that finding under federal wage and hour law is independent of the determination that lieutenants are not supervisors for the purposes of the IPLRA. The question here is not entitlement under the FLSA, but what is the appropriate negotiated agreement. Accord, Nathan Award, pp. 81 - 83. The panel in the 1994 case was uncomfortable with its decision to adopt the current language, and concluded,

If the Union is unable to bargain any system of reasonable overtime for lieutenants, or if the experience under the new language results in little or no overtime for lieutenants, then the Union can return to this forum and make its case.

Considering the entire record here, it must be concluded that the Union has not yet made that case. Fire lieutenants are entitled to overtime pay under Section 13.5, "when they are called back to duty outside of their scheduled hours of work to respond to an emergency or to satisfy minimum manpower requirements." The Village asserts that Section 13.5 is comparable to the Personnel Rules and regulations on this point, because it provides the fire lieutenants with overtime compensation "when they are called back to duty outside of their scheduled hours of work to respond to an emergency or to satisfy minimum manpower requirements." In fact, the Personnel Rules do not say that front line supervisors are compensated for all work that they must do outside their regular schedule, but only that they are compensated for extra days and/or hours necessitated by "inadequate supervisory manpower." There is no evidence in this record that front line supervisors' attendance at required training or at routine committee meetings is considered compensable under the Personnel Rules.

The record indicates that fire lieutenants do have overtime opportunities under the current system. From January 1993 through December 1995, the Village paid overtime to fire lieutenants averaging \$6066 per lieutenant per year, more than ten percent of even the highest salary paid to a lieutenant. It is impossible to determine from this record how much time lieutenants must spend on committee meetings and training outside their regular schedule, a significant issue where a lieutenant can trade duty days in order to avoid working on a day he or she is otherwise scheduled off.

The Union argues that a precedent in favor of its proposal was set when three lieutenants received overtime pay in 1996 for working on a funeral detail and a physical ability test. However, the Union has failed to show that this was beyond the compensation already required by Section 13.5 for lieutenants called back because of an emergency situation or to maintain minimum staffing. Even if this compensation was not required under Section 13.5, two incidents in three years cannot be deemed a "precedent," particularly where they involved neither the committee meetings or the required training that the Union now seeks to have compensated at overtime rates.

In sum, the Union has not yet proved an operational or equitable need for the expansion of lieutenants' overtime opportunities as it proposes. The Union's proposal is rejected.

## **11. Issue No. 11 -- Vacation Time**

The Union's final offer with respect to vacation time is to increase the vacation time for firefighters and lieutenants with 5 - 9 years of service, 20 - 24 years of service or over 25 years of service, so that the new vacation entitlements would be:

**Firefighters:**

<u>Completed Years of Service</u>	<u>Annual Vacation</u>
After one year through 4 years	5 - 24 hour shifts
After 5 years through 9 years	8 - 24 hour shifts
After 10 years through 14 years	9 - 24 hour shifts
After 15 years through 19 years	10 - 24 hour shifts
After 20 years through 24 years	12 - 24 hour shifts
After 25 years	13 - 24 hour shifts

**Lieutenants:**

<u>Completed Years of Service</u>	<u>Annual Vacation</u>
After one year through 4 years	6 - 24 hour shifts
After 5 years through 9 years	9 - 24 hour shifts
After 10 years through 14 years	10 - 24 hour shifts
After 15 years through 19 years	11 - 24 hour shifts
After 20 years through 24 years	13 - 24 hour shifts
After 25 years	14 - 24 hour shifts

The Village's final offer is to retain Section 16.3 without change.

The Union has calculated that, based on the contract terms effective in May 1995, the yearly vacation for a firefighter in each of the comparable jurisdictions, averaged over an assumed 25-year career, would be 8.93 24-hour days, and that the average yearly vacation for a firefighter serving 25 years with the Village would be 8.90 24-hour days, only slightly below average.<sup>36</sup>

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<sup>36</sup>Park Ridge is omitted from this calculation because it does not designate "vacation days" separate from other time off.

Village of Elk Grove Village and IAFF Local 3398  
ISLRB No. S-MA-96-86

Yearly average in 24-hour days	
Lombard	10.8
Skokie	10.6
Elmhurst	9.8
Hoffman Estates	9.4
<u>Elk Grove Village</u>	<u>8.9</u>
Buffalo Grove	8.88
Arlington Hts.	8.6
Wheeling	8.58
Northbrook	8.48
Rolling Meadows	8.4
Des Plaines	8.12
Mount Prospect	8.12
Bensenville	8.08
Elgin	8.0
<u>Average</u>	<u>8.93</u>

Under the Union's offer, the career-average yearly vacation would increase to 9.12 24-hour days, and would not change the Village's rank among the comparable community. Similarly, the Union calculated total days off, including vacation, Kelly Days, personal days and holidays, using the career-average figure for vacation days:

Village of Elk Grove Village and IAFF Local 3398  
ISLRB No. S-MA-96-86

Mount Prospect	23.12
Buffalo Grove	21.88
Arlington Heights	21.60
Northbrook	21.48
Rolling Meadows	21.40
Hoffman Estates	21.40
Skokie	20.64
<u>Elk Grove Village</u>	<u>19.90</u>
Des Plaines	19.88
Elgin	18.95
Elmhurst	18.80
Park Ridge	18.68
Wheeling	18.58
Lombard	17.60
Bensenville	10.11
<u>Average</u>	<u>19.65</u>

Under the Union's offer on vacation time, and with the additional Martin Luther King Day holiday added by this award, the total time off for Village firefighters would increase to 21.12 24-hour days, moving the Village's ranking up one place to seventh, ahead of Skokie.

The Union's proposal to "round up" the half-day vacation entitlements does not significantly alter the Village's standing among the comparable communities on total days off, and will impact only those employees with service within the affected ranges. In addition, it must be noted that the Union's calculations, on which the Village also relies, reflect only 1995 benefits. It can be expected that over the course of the next three years, firefighters in some of the comparable jurisdictions will achieve similar increases in their total time off, in which case, the position of Village firefighters can be expected to deteriorate somewhat over the contract term. Considering that the Village's standing near the middle of the comparables in terms of salaries, longevity and paramedic stipend, the Union's proposal is more reasonable than the Village's.

## 12. Issue No. 12 -- Vacation Scheduling

During the parties' negotiations, and at the hearing, the Union proposed to modify Section 16.3, while the Village sought to retain Section 16.3 without change. In its final offer, however, the Union has withdrawn its proposal on vacation scheduling. Therefore, both parties' final offers result in maintaining the status quo with respect to Section 16.3.

## 13. Issue No. 13 -- Holidays

The Union's final offer is to add one additional holiday to Section 18.1 -- Martin Luther King Day. The Village's final offer is to add the following new second paragraph to Section 18.1:

Effective May 1, 1997, Veteran's Day shall be considered a holiday for the purposes of this Article.

Both parties therefore acknowledge that an additional holiday is appropriate for this unit. The critical difference between the offers is not so much the day specified but the fact that the Union's offer would add the additional holiday in the first year of the contract, while the Village's offer would not add the holiday until the second year of the contract.

A particular effective date (other than the beginning of the contract term) may a feature of a proposal with significant economic or operational consequences. The effective date itself becomes a benefit or concession to be offered or withheld. Employers frequently use their opposition to retroactivity as a bargaining chip to pressure negotiations before impasse, for example, threatening to oppose any retroactive benefits if the parties fail to achieve a new contract before a particular deadline, such as the current contract expiration date. Often, the parties agree, for example, to limit retroactivity so as to achieve a benefit for the long-term while limiting its cost in the short-term.

In the case of this particular proposal, however, the Village offers no compelling

economic or reason for limiting the new holiday to the last two years of the contract. The Village urges that its offer be accepted rather than the Union's, because its offer specifies an effective date, while the Union's offer does not. The Village suggests that acceptance of the Union's offer would lead to ambiguity and confusion.

However, the Union's offer is neither ambiguous or confusing. Section 18.1 begins:

The following days shall be considered holidays during the term of this Agreement: . . .

Adding "Martin Luther King Day" to the subsequent list, without any further qualification, necessarily makes it a holiday "during the term of this Agreement." The natural reading of Section 18.1 and the Union's offer is that the change is effective for the entire term, that is, retroactive to May 1, 1996. The Arbitrator sees no ambiguity in the offer itself, nor in its implementation. The Union's proposal is therefore adopted.

#### **14. Issue No. 14 -- Duration of the Contract**

The Union's final offer is:

Article XXII of the collective bargaining agreement shall be amended by deleting the reference as to 1996 and substituting 1999. The union requests a collective bargaining contract of a three (3) year term commencing on the date of execution and ending on April 30, 1999.

The Village's final offer is for a three-year term, i.e., May 1, 1996 through April 30, 1999.

In its post-hearing brief, the Village stated that it had no objection to the Arbitration's acceptance of the Union's offer, which is more specific in providing proposed contract language. However, the effect of the two proposals is not

identical, because the Union's proposal would make the contract effective "as of the day after the contract is executed by both parties," which would mean that most changes in the contract could not become effective until sometime in September 1997, rather than on May 1, 1996. Even the Village has not proposed this delay, and it is apparent from the Union's brief on Issue No. 13 (Holidays) that this was not the intent of the Union either. The increased cost of the benefits affected by the difference in the two offers, such as the 1996 Martin Luther King holiday, and the additional vacation pay to some employees for 1996-1997, appears to be slight. The parties could not have anticipated such a lengthy delay in reaching the tentative agreements that they were able to achieve on other issues. Accordingly, the Arbitrator's accepts the Village's final offer on this issue. Based on the absence of any suggestion by the Village to the contrary, the Arbitrator finds that this offer modifies only the first sentence of Article XXII, and leaves the remainder of the Article unchanged.<sup>37</sup>

#### **15. Issue No. 15 -- Subcontracting**

The Union's final offer on subcontracting is to delete Section 19.8(c) and substitute:

Any proposal to subcontract non-fire suppression work performed by employees covered by this agreement shall be presented to the union, and the Village and the union shall engage in immediate collective bargaining negotiations over the decision and the impact of any decision to subcontract such work. In the event the parties are unable to reach agreement concerning either a decision to subcontract or the impact of such a decision, the dispute shall be resolved by interest arbitration pursuant to the provisions of Section 14 of the Illinois Public Labor Relations Act.

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<sup>37</sup>At the executive session held September 10, 1997, the parties highlighted the inconsistency between the two offers. The Arbitrator's intent to adopt a three-year term is explicit in her original (and unchanged) discussion of the parties' proposals on Holidays (Issue No. 13, pp. 48 - 49 above), and the Arbitrator has corrected the Award accordingly.

The Village's final offer is to retain Section 19.8 unchanged:

Section 19.8. Subcontracting. (a) No employee shall be laid off as a result of any decision by the Village to subcontract any work performed by employees covered by this Agreement.

(b) Notwithstanding the foregoing, basic fire suppression work shall not be subcontracted, provided that this provision shall not be applicable to any mutual aid agreements that the Village has or may have with other fire departments or if there is a violation of section 10.1 (No Strike).

(c) If the Village subcontracts non-fire suppression work performed by employees covered by this Agreement, no bargaining unit employee shall be directly supervised by non-sworn personnel as a result thereof.

The Union asserts that it is likely that the Village will staff the newest ambulance with a subcontractor's employees, rather than bargaining unit members. Although the Chief is on record preferring not to use a subcontractor, the Union notes that he can be overruled by the Village's trustees. As a result, the Union seeks to require that the Village bargain over the decision and the impact of a decision to subcontract such work, and that the parties proceed to impasse arbitration if they are unable to reach agreement on their own. The Union notes that it does not seek an absolute bar of non-fire suppression work.

The Union cites the "interests and welfare of the public" as the basis for this proposal, in light of the testimony of very high turnover of contract paramedics used by the Bensenville Fire Department. Even the Chief has expressed his concern that privatization of Fire Department functions leads to excessive turnover of contract personnel and a resulting "lack of continuity of operations and intimate knowledge of the workings of the village." U. Ex. 46. The Union urges that its proposal to require that the parties bargain over a decision to subcontract is a conservative step necessary to protect the interests of the public.

The Village, on the other hand, asserts that Section 19.8 must be viewed as a

whole. The provision was negotiated by the parties, rather than being imposed by the impasse arbitrator, and represents a carefully-constructed trade between the parties: The Village agreed that no employee would be laid off as a result of any subcontracting decision (Section 19.8(a)), and that basic fire suppression work would not be subcontracted (Section 19.8(b)). In return, the Village gained the right to subcontract non-fire suppression work performed by bargaining unit employees, subject to the proviso that "no bargaining unit employee shall be directly supervised by non-sworn personnel as a result thereof" (Section 19.8(c)). The Union now seeks to alter that freely-negotiated balance without offering any concession of its own.

In fact, the Union has offered no evidence why the language of Section 19.8(c) that it adopted voluntarily in 1993 should be altered by the arbitrator now. There is no evidence of changed circumstances. Although Firefighter Quinn testified that the Assistant Chief told him staffing of the new ambulance would be subcontracted, the Chief's own written statements, his prompt correction to Firefighter Quinn and the Assistant Chief, and his testimony at the hearing indicate his opposition to subcontracting the ambulance service, and there is simply no evidence that the Village trustees would override the Chief's position. Further, the very general anecdotal evidence of one community's experience of contract employee turnover does not raise sufficient alarms about public safety to require the arbitrator to step in and override the parties' original bargain.

The Union cites the decision of Arbitrator Nathan in Bloomington Fire Protection District No. 1, ISLRB No. S-MA-92-231 (1994). However, that case is distinguishable for two reasons. First, the parties had reached impasse in negotiating their first contract, so the arbitrator was being asked to determine a provision for an initial contract, not to amend a previously-negotiated provision. Second, the arbitrator's choice was between the Village's offer which would give it the right to subcontract basic fire suppression and all other bargaining unit work, and the Union's offer to protect all fire suppression and paramedic work from subcontracting. Here, the Village seeks only to protect the status quo, while the Union seeks to alter a clause that resulted from free and fair negotiations.

The Union has failed to show sufficient need, changed circumstances, or a counter-

balancing concession on its part to justify a change in this clause embodying the parties' own bargain. The Village's offer to retain Section 19 without change is accepted.

**16. Issue No. 16 -- Pay Rate for Inspectional Services Division Work**

The Union's final offer on Inspectional Services Division work is to add a new Section 14.7 to read as follows:

**Firefighters:**

Effective May 1, 1996, bargaining unit employees who are firefighters and who work in the Inspectional Services Division pursuant to a Fair Labor Standards Act, Section 7(g) Agreement between firefighters and the Village shall be paid at the hourly rate of \$ 11.00. All assigned hours worked in this position shall be paid at one and one-half times the straight time hourly rate specified in this article, but if bargaining unit firefighters are called out to perform rescue or fire suppression duties they will be paid at one and one-half times their normal hourly rate as firefighters to perform such rescue or fire suppression work.

A Section 7(g) Agreement is attached to this final offer.

**Fire lieutenants:**

Effective May 1, 1996, bargaining unit employees who are lieutenants and who work in the Inspectional Services Division pursuant to a Fair Labor Standards Act, Section 7(g) Agreement between all lieutenants and the Village shall be paid at the hourly rate of \$ 16.50. If bargaining unit lieutenants are called out to perform rescue or fire suppression duties they will be paid at one and one-half times their normal hourly rate as lieutenants to perform such rescue or fire suppression work.

A Section 7(g) Agreement is attached to this final offer.<sup>38</sup>

The Village's final offer is to add a new Section 14.7 as follows:

Section 14.7. Pay Rate for Firefighters Assigned Inspectional Services Division Work. Provided employees have signed a Section 7(g) agreement prepared by the Village in accordance with the provisions of this section, if the Village, in its discretion, hires back employees to work in the Inspectional Services Division outside their regularly scheduled hours of work, such work shall be compensated at \$ 16.00 per hour.

The parties have agreed that work for the Inspectional Service Division (ISD) shall be considered a secondary job under the Fair Labor Standards Act, and will be assigned only to firefighters or fire lieutenants who have signed a Section 7(g) agreement.<sup>39</sup> However, the final offers differ as to the hourly rate to be paid for

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<sup>38</sup>The Section 7(g) agreement attached to the Union's final offer states:

I, \_\_\_\_\_, agree and understand that for all straight time hours in my regular job as a firefighter/lieutenant at the Elk Grove Village Fire Department, I will be paid \_\_\_\_\_ per hour, and I will be paid 1-1/2 times that rate or \_\_\_\_\_ per hour for all overtime hours worked in that regular job. I also agree and understand that for all straight time hours in my secondary job as a fire inspector/preplan reviewer, I will be paid \_\_\_\_\_ per hour, and I will be paid 1-1/2 times that rate or \_\_\_\_\_ per hour for all overtime hours worked in that regular job. Lastly, I understand and agree that all my hours worked in my job as a fire inspector/preplan reviewer will be paid at the overtime rate of that job.

RATE EFFECTIVE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

<sup>39</sup>Section 7(g) of the FLSA, 29 U.S.C. §207(g), states in relevant part:

(continued...)

the work, the Union proposing that firefighters be paid at time and one-half of a regular rate of \$11.00, and lieutenants be paid at a straight time rate of \$16.50, and the Village proposing that all employees be paid a uniform hourly rate of \$16.00.<sup>40</sup>

The Union's offer at first glance appears to set separate rates for firefighters and lieutenants doing ISD work. Instead, both classifications effectively would be paid \$16.50 per hour for the work: Lieutenants would be paid \$16.50 per hour at the straight time rate, and firefighters would be paid the same \$16.50 per hour at a time-and-one-half rate, for all work performed for the ISD.

On the other hand, the Village's offer is somewhat ambiguous about what the effective hourly compensation would be for the ISD work. The Village's offer says, "[S]uch work shall be compensated at \$16.00 per hour." The Village's 7(g) agreements for each classification, which the Village has represented to be part of its final offer, include the statement that "all hours that I am assigned to work in the Inspectional Services Division as my secondary job will be paid at the overtime rate of that job." The Village itself states in its brief that under these agreements, "[A]ny bargaining unit employee who is assigned to ISD work as a secondary job will be paid at time and one-half times the applicable rate for that secondary job."

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<sup>39</sup>(...continued)

No employer shall be deemed to have violated subsection (a) of this section [setting overtime pay requirements] by employing any employee for a workweek in excess of the maximum workweek applicable to such employee under sub subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in such workweek in excess of the maximum workweek applicable to such employee under such subsection--

...  
(2) in the case of an employee performing two or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half times such bona fide rates applicable to the same work when performed during non-overtime hours; . . . .

Thus, the Village offers an effective rate of \$24.00 per hour for both lieutenants and firefighters, resulting in the unusual circumstance of the Village offering a higher rate than the Union for both firefighters and lieutenants. There is no suggestion in the record that paying the higher rate will be a hardship for the Village, in light of the parties' agreement that there is no issue of the Village's ability to pay either party's offers.

There is another reason to adopt the Village's offer. The Union's offer provides, ". . . [I]f bargaining unit firefighters are called out to perform rescue or fire suppression duties they will be paid at one and one-half times their normal hourly rate as firefighters to perform such rescue or fire suppression work," with an identical provision for lieutenants. The Union claims that the Village's offer is deficient in not addressing this point. However, such callbacks are part of the employees' primary job, not part of their secondary job, and hours worked on a callback to the primary job would be compensated at the overtime rates applicable pursuant to Article XIII, particularly Sections 13.4 (firefighters) and 13.5 (lieutenants). To address compensation for work in the primary job in this section on compensation for a secondary job is unnecessary and confusing, and may create negotiation and interpretation problems in the future. In fact, the over-inclusiveness of the Union's offer favors adoption of the Village's formulation.

For these reasons, the Village's offer is adopted.

#### **17. Issue No. 17 -- Fire Prevention Bureau Inspection Work**

The Union's final offer is to add a new Section 19.7 as follows:

When new or existing positions become available and/or additional work has to be performed in the Inspectional Services Division, the fire chief shall select individuals for this work by posting a notice of vacancy in each fire station for a period of fourteen (14) calendar days during which time any bargaining unit employee may apply. No employee will be involuntarily assigned to any position stated in this section pursuant to the terms of a section 7(g) agreement.

The Village opposes the addition of Section 19.7. The ISLRB General Counsel ruled in her March 28, 1987 Declaratory Ruling that this issue is a non-mandatory issue of bargaining, because it either involves appointments to non-bargaining unit ISD positions or determining the bargaining unit status of ISD positions. As a result of the General Counsel's ruling, there is no impasse issue properly before the Arbitrator on this point.

### **18. Issue No. 18 -- Termination Effect**

In its final offer, the Union has withdrawn its earlier proposal to delete Section 19.3. The Village's final offer is to retain Section 19.3. Therefore both parties' final offers have the effect of retaining Section 19.3 without change.

### **19. Issue No. 19 -- Hirebacks**

The Village's final offer is to revise the first paragraph of Section 13.6 to read:

Section 13.6.     Hirebacks. Effective the first pay period following issuance of Arbitrator Kohn's award, where there is a need for a hireback, employees will be hired back from an integrated seniority list of all employees by shift (i.e., lieutenants will be interspersed as evenly as possible among firefighters), subject to the following:

(a) If there are less than four lieutenants on duty (excluding an acting Captain), a lieutenant will be hired back to fill the fourth lieutenant position bypassing, if necessary, firefighters on the list. This fourth position will be a voluntary hireback and may be filled by a firefighter if no lieutenant voluntarily accepts the hireback.

(b) If there are five or more lieutenants on duty (excluding an acting Captain), a firefighter or firefighter/paramedic will be hired back bypassing, if necessary, lieutenants on the list.

(c) If there are less than the required number of paramedics to fill the necessary paramedic positions on the engines or ambulances, a firefighter/paramedic will be hired back bypassing, if necessary lieutenant/paramedics and firefighters on the list.

(d) Any such employee who is passed over will remain on the eligible list for the next hireback opportunity.

The Union's final offer is that no change be made to Section 13.6.

At present, if a hireback is needed, the Village must hireback a lieutenant, bypassing if necessary firefighters on the integrated seniority list, if there are otherwise fewer than four officers on duty, but must hireback a firefighter, bypassing if necessary lieutenants on the list, if there are six officers on duty. Paramedics are hired back from the integrated seniority list in all circumstances. The Village's offer would require the hireback of a lieutenant if there are fewer than four lieutenants on duty, thereby eliminating the acting lieutenant position (except when all lieutenants decline the hireback). If there are five or more lieutenants on duty (rather than six officers), a firefighter would be hired back, bypassing lieutenants if necessary. Finally, under the Village's offer there would be a new provision on the hireback of paramedics: If a paramedic is needed the Village would be required to hire back a firefighter/paramedic, bypassing lieutenant/paramedics and firefighters on the list.

As the Union did with respect to the subcontracting issue (Issue No. 15 above), the Village here seeks to alter a contract provision that was the result of negotiation and agreement by the parties. The Village therefore bears the considerable burden of demonstrating a significant need for the change and some counterbalance that would justify the arbitrator depriving the other party of a benefit previously achieved through the give-and-take collective bargaining.

The Village asserts that the change is necessary to ensure effective staffing of officer slots. According to the Village, Section 13.6(a) has resulted in far too many occasions when a firefighter was serving as an acting lieutenant at the largest fire station, Station 7, 102 days during calendar year 1995. The Village cites two

recent occasions when bargaining unit members expressed to Fire Department management their discomfort with a junior firefighter serving as acting lieutenants. In one case, the acting lieutenant had only 19 months experience on the job; in the other, an acting lieutenant sought advice during an emergency from an actual lieutenant serving as paramedic at the scene. The Department's top officers strongly believe that there should be enough real fire lieutenants on duty (four, plus perhaps an acting captain) to staff each station with a real lieutenant, and that the Village should not have to wait until a disaster occurs before taking steps to prevent it. The Village contends that the firefighters' loss of acting lieutenant overtime opportunities is offset by the fact that any firefighter who is bypassed remains on the eligible list for the next hireback opportunity, and opines that the overall number of hirebacks should not be significantly affected.

According to the Union, the new provision would deprive firefighters of significant overtime opportunities as acting lieutenants, opportunities that it sought to equalize when it agreed to the existing provision. This was a significant point of negotiation in the first collective bargaining. The Union asserts that there is no need to alter the bargained-for clause in order to protect the public appropriately. There is no evidence that there has been any actual danger to the public or to department employees under the existing provision. Instead of depriving firefighters of hireback opportunities, the shift captain could address speculative concerns about the impact of inexperienced firefighters as acting lieutenants, by exercising the Department's discretion to reassign the available personnel to insure that the acting lieutenant be a firefighter capable of safely and competently performing the duties of position. It is not clear that shift captains attempted to use this authority to avoid appointment of inexperienced firefighters as acting lieutenants.

Thus, the Village has not demonstrated sufficient need for the proposed change.<sup>41</sup> The Union, whose members themselves share an interest in being directed at the scene of an emergency by qualified personnel, suggests the existence of alternatives

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<sup>41</sup>There is no evidence of any need to add the provision giving firefighter/paramedics priority over lieutenant/paramedics for paramedic hirebacks, although the Union did not offer strong objection to this aspect of the Village's offer.

to modifying the contract language. In the absence of imminent danger to the public or to Department employees, this issue is ideally suited for further exploration and collective bargaining. The Union's proposal to retain Section 13.6 without change is adopted.

**C. Non-Economic Issues**

**1. Issue No. 20 -- Promotions**

The Union's final offer on promotions is to add a new Section 19.8 as follows:

Promotions to the rank of lieutenant shall be in accordance with the provisions of the Illinois Municipal Code, 65 ILCS 5/10-2.1-10-15, and the Village of Elk Grove Village Board of Fire and Police Commissioners shall during the term of this collective bargaining contract have jurisdiction to test, evaluate and rank candidates for promotion to the rank of lieutenant.

The Village's final offer on promotions is that no contract language be added on this topic.

The Union's proposal stems from the recent decision of the Village to eliminate the authority of the Board of Fire and Police Commissioners to test, evaluate and rank candidates for promotion to the rank of fire captain. Until that decision was made, the Board had exercised jurisdiction over such promotions. The Village's action was within its home rule authority. See, e.g., Hoffman v. Board of Fire and Police Commissioners, 86 Ill. App. 3d 505, 408 N.E. 2d 98 (1980). The Union expresses concern that the employer could similarly exercise its home rule authority and remove promotions to fire lieutenant from the Board's jurisdiction, and abolish the Board's right to "test, evaluate and rank candidates for promotion to the rank of lieutenant." According to the Union, the rules of the Board of Fire and Police Commissioners are intended to provide fair and competitive testing and ranking of candidates, and to avoid direct appointment without examination.

Comparable communities vary on this point. Most have no contract provision whatsoever. Lombard's contract refers to the Board's jurisdiction over disciplinary and termination matters, but does not address its jurisdiction over promotions. The contract for Arlington Heights' firefighters provides for competitive examination, graded by the Board, but specifies that the Board's exercise of its "sole right to determine the components and the weight to be given to each component . . . shall not be subject to the grievance and arbitration procedure set forth in this Agreement." The Northbrook contract, which does not cover lieutenants, contains the provision that the Village's Board "shall retain jurisdiction to determine the promotion eligibility of fire fighters," but provides that disputes over promotions (other than temporary promotions lasting less than 60 days) are not subject to the grievance procedures. The Wheeling contract includes a provision acknowledging the Board's "certain exclusive statutory jurisdiction over employees covered by this Agreement, to hire and discipline employees and to make, alter and enforce reasonable rules and regulations," but excludes from its grievance procedure "any matter or issue of hiring and discipline under the jurisdiction of the Board of Fire and Police Commissioners." Thus, even the three communities with contractual provisions acknowledging the Board's authority over promotions, exempt the Board's exercise of its authority from the contract's grievance procedure.

The Village objects strongly to the absence of any such exemption in the Union's offer. Under the Union's proposal, any dispute over whether a promotion was "in accordance with the provisions of the Illinois Municipal Code, 65 ILCS 5/10-2.1-10-15" and any dispute over the Board's exercise of its "jurisdiction to test, evaluate and rank candidates for promotion" would be subject to the grievance and arbitration procedure. The Village opposes "contractualizing" this issue, when unsuccessful applicants already have the right to seek redress under the Illinois Administrative Review Act. The fact that even those jurisdictions that have "contractualized" the issue have protected the process from the grievance procedure suggests that the Union's proposal, lacking that protection, goes too far.

The Union proposes a substantial alteration of the balance of the parties' rights in this area, one that should not be imposed on the parties in the absence of voluntary agreement. On the other hand, the Village's final offer to leave the topic out of the contract entirely fails to address the Union's reasonable concern. The Union takes

and the Village are agreed that the Village's exercise of its home rule authority to remove the promotions to lieutenant from the jurisdiction of the Board would be a mandatory subject of bargaining. However, counsel for the Village would not agree when asked on the record that the Village would be required to proceed to interest arbitration on the issue if an impasse were reached during the contract term. Instead, the Village's attorney characterized this (whether the statute mandates interest arbitration of impasses reached in the middle of a contract term) as "one of the major unresolved issues" under the Act. Based on this record, the Union has no assurance that the Village would submit to arbitration a mid-term impasse on the issue. Merely to adopt the Village's final offer leaves open the possibility that the Village would refuse to proceed to arbitration in the event of an impasse, raising the specter of costly litigation over the issue.

Clearly, a middle ground can be found. In its brief, the Village has proposed language confirming that the parties will have the opportunity to negotiate over a Village proposal to exempt the promotion of fire lieutenants from the Board's jurisdiction, and will proceed to impasse arbitration in the event of impasse. That language at least insures that the Village will submit the issue to an impartial arbitrator if the parties are unable to resolve the matter themselves, providing the Union with an assurance that it does not have if the contract remains silent. On the other hand, this solution would not radically alter the balance between the parties, and permits the Union to renew its efforts to obtain a contractual assertion of the Board's jurisdiction at a later date. The Arbitrator therefore adopts the following language as a new Section 19.17:<sup>42</sup>

Notwithstanding any other provision of this Agreement, if the Village during the term of this collective bargaining agreement desires to exempt the rank of fire lieutenant from the promotional process administered by the Elk Grove Village Board of Fire and Police Commissioners, it shall give the Union advance notice of its desire

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<sup>42</sup>The Union proposed that this new provision be number "19.18," assuming that its proposed Section 19.17 (Issue No. 17 above) also would be added to the Agreement. Because the Union's offer on Issue No. 17 has not been accepted, the new provision on Promotions to Lieutenant is more appropriately numbered 19.17.

and, if requested, shall negotiate over such decision and the effects of such decision on bargaining unit employees. If the parties are unable to resolve the issues in negotiations, either party may invoke the provisions of Section 14 of the IPLRA.

## 2. Issue No. 21 -- Decertification of Paramedics

The Union's final offer with respect to decertification of paramedics is to amend Section 19.16 by deleting the second sentence and adding three new sentences to the first paragraph, so that the amended section would read as follows (new language underlined):<sup>43</sup>

If an employee after a minimum of five (5) years' participation in the Elk Grove Village Fire Department's paramedic program desires to decertify, the employee may submit a written request to the Fire Chief through the chain of command. Voluntary decertification will be facilitated within a reasonable period of time by training candidates for the program. Decertification requests will be due for the following twelve (12) months on or before September 1 of each year. Decertification will be implemented on a seniority basis measured by the time an employee has served in the department.

The Village shall continue to pay all costs to obtain or maintain EMT-A or EMT-P certification, provided that this shall not be applicable if an employee has to repeat a certification course because he/she failed it the first time around.

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<sup>43</sup>From the Union's final offer, it would appear that the proposed language retains, as the last sentence of the first paragraph: "In the absence of a sufficient number of volunteers for the program, the least senior nonprobationary employee will be required to enter the program." However, the Union's description in its Brief is somewhat ambiguous, and does not mention this sentence. Because this is a non-economic issue, this ambiguity is not a serious flaw in the final, because the arbitrator is not restricted simply to picking one final offer or the other, and can insert the sentence in question if it is deemed appropriate.

The Village's final offer is to retain Section 19.16 without change. The first paragraph of Section 19.16 currently states:

If an employee after a minimum of five (5) years' participation in the Elk Grove Village Fire Department's paramedic program desires to decertify, the employee may submit a written request to the Fire Chief through the chain of command. Such requests shall not be arbitrarily or discriminatorily denied. Voluntary decertification will be facilitated by training candidates for the program. In the absence of a sufficient number of volunteers for the program, the least senior nonprobationary employee will be required to enter the program.

As has been stated already, the party seeking to change a clause that was freely bargained by the parties bears the burden of showing a compelling need for the change, and perhaps some quid pro quo for that part of the original bargain being taken from the other party. Cf. Village of Arlington Heights (Briggs, Arb.) (January 29, 1991); Will County Board (Nathan, Arb.) (August 17, 1988).

According to the Union, the purpose of this proposal is to assure that paramedics' requests for decertification will be granted more quickly than is currently the case. As of the last hearing date (February 5, 1997), Firefighter Quinn's request to decertify, filed in May 1995, had been pending almost 21 months. Another employee's request, filed in December 1995, had been pending for 14 months, and the only other request filed since 1993 was filed in May 1996 and was still pending nine months later. The Fire Department took between 8½ months and twenty-three months to grant previous requests, filed between January 1990 and April 1991.

The Union finds this delay unacceptable. Its offer is modest, it contends, because it would merely require decertification "within a reasonable period of time." The Union acknowledges that factors such as the length of training (18 months), the availability of paramedics and the number of employee being trained may affect the Village's ability to maintain minimum paramedic staffing requirements (currently 42 paramedics) and still grant decertification requests. If there are multiple pending decertification requests, and an employee must wait until sufficient numbers of replacements are trained, it might take years for the decertification

request to be granted. Although there is no evidence that the decertification process is being mishandled at present, the Union requests the right to file a grievance if it appears that the decertification of a paramedic has taken too long.

This appears to be a remedy before there is a problem, and indeed, the record suggests that this provision would have done little if anything to shorten the wait for any employees now seeking decertification. The Union does not assert that the recent delays would be "unreasonable" under its proposed language; in fact, Firefighter Quinn expects to be decertified when the employee now in training finishes his course, and the unavailability of trained replacements to meet minimum staffing requirements is, the Union agrees, a reasonable basis for delay. To date, the Village has apparently trained new paramedics and decertified paramedics as promptly as operational concerns would allow, and has exercised its managerial discretion to evaluate and respond to those operational concerns within the bounds of reasonableness. The Union certainly has not shown otherwise. Thus, the language would not alter the current pace of decertifications, nor grant employees a right to quicker decertifications.

Firefighter Quinn's concern that the Department might drag its heels in training a new paramedic, and could thereby delay decertification for as much as five years is mere speculation. Based on the Village's past and current administration of the paramedic program, the change proposed by the Union is not necessary at this time. The Village's offer is accepted.

### **3. Issue No. 22 -- Grievances over Merit Pay for Fire Lieutenants**

The Union's final offer with respect to grievances over merit pay for fire lieutenants is to delete Section 14.3 if the Arbitrator selects the Union's final offer on wage increases for lieutenants, which would eliminate lieutenants' merit pay. The Village's final offer is to retain Section 14.13 without change.

Because the Union's final offer on wage increases for lieutenants has been rejected, the Village's final offer is more reasonable. Section 14.13 will be retained without change.

#### 4. Issue No. 23 -- Application of Rules

The Union's final offer with respect to the Application of Rules issue is to add a new Section 19.19 as follows:

The employer agrees that the uniform rules and regulations of the fire department are to be fairly and equitably administered and enforced. Any employee shall have the right to appeal a violation of this clause through the grievance procedure.

The Village opposes the addition of the proposed Section 19.19 and further asserts that because this issue was previously resolved in the negotiations that preceded the interest arbitration, the Arbitrator has no jurisdiction to rule on this issue.

In order to determine whether this issue is properly a part of the interest arbitration, it is necessary to review the parties' pre-impasse negotiations. The Union proposed the addition of a new Section 19.18, "New Rules," and a new Section 19.19, "Application of Rules." The language proposed by the Union was:

Section 19.18. New Rules. New or revised rules and orders having the effect of changing a rule or regulation may be established from time to time by the employer. Any such new or revised rule(s) or order(s) shall be posted for ten (10) days before they become effective or enforceable. Where possible, the employer shall discuss proposals for new rules, regulations, and orders with the Labor-Management Committee prior to posting.

Section 19.19 Application of Rules. The Employer agrees that the uniform rules and regulations of the Fire Department are to be fairly and equitably administered and enforced. Any employee shall have the right to appeal thru the grievance procedure fo[r] violation of theis [sic] clause.

It is undisputed that on May 31, 1996, the parties reached tentative agreement and signed off on the following :

Section \_\_\_\_ Rules and Regulations. Consistent with the provisions of Article VI of this agreement, as new rules and regulations are established, the Village will provide the Union with as much advance notice as possible prior to issuance. Such rules and regulations will be enforced equitably throughout the Department.

According to Quinn, this unnumbered "Rules and Regulations" section was a result of discussions of the Union's proposed Section 19.18, which was limited to "new rules." (Tr. 1038) Quinn testified that the proposed Section 19.19 continued to be discussed by the parties between May and October 1996, there was never any agreement that the Union would withdraw the proposed Section 19.19, which applied to existing rules, nor that the two proposals would be combined into the language that was TA'd. (Tr. 1039-41, 1056) Olson, on the other hand, testified that there was no further discussion of proposed Section 19.19 after May 31, 1996, when the "Rules and Regulations" provision was TA'd. Although the record contains references to interim lists of TA'd issues prepared by each party, those lists are not in the record, apparently because the lists were exchanged in a session regarded as "off the record" by one or both of the parties. (See, e.g., Tr. 1171-73)

The Village also observes that the language of the TA'd provision is not simply a "rewriting" of the proposed Section 19.18, but an amalgam of parts of both Section 19.18 and 19.19, suggesting that the TA'd provision was intended by the parties to encompass their agreement as to both proposals. Section 19.18 stated the Village's right to establish new and revised rules and regulations and an advance notice and discussion provision. The TA'd provision has no statement of the Village's right to establish new rules or its duty to discuss proposals for new rules, but does include a modified requirement that the Village give "as much advance notice as possible" to the Union. Section 19.19 contains the requirement that rules be "fairly and equitably administered and enforced," and a provision for grieving violations of the Section. The TA'd language includes a requirement that "Such rules and regulations will be enforced equitably throughout the department," but no discussion of grievances. Thus, the TA'd section includes some concepts from

each proposal. Indeed, the title of the new provision is "Rules and Regulations," suggesting that the parties have agreed that the new provision applies to more than "New Rules," the title of proposed Section 19.18.

Although in seeking to reopen the issue of proposed Section 19.19, Local President Quinn testified that the TA'd provision was limited to the scope of proposed Section 19.18, I find to the contrary. The TA'd provision resolved both proposals. It includes the Section 19.18 theme of advance notice of new and revised rules, but omits the requirement of discussion before adoption. It also includes the Section 19.19 concept of equitable enforcement, though it omits that proposal's reference to the grievance procedure. The inclusion of the equitable enforcement language would have been unnecessary, were the parties still at odds over the Section 19.19 proposal. Moreover, it does not make sense that the Village would agree to enforce equitably only new rules, but not existing ones. Finally, by adopting a title ("Rules and Regulations") broader than Section 19.18's "New Rules," the parties demonstrated their understanding as of May 31, 1996 that the equitable enforcement required by the TA'd section answered at least one of the Union's concerns in proposing Section 19.19, and that "such rules and regulations" to be equitably enforced would not be limited to "New Rules." The Union cannot fine-tune the agreed-upon language after the fact by reviving an issue already put to bed.

Accordingly, I find that there was no impasse on the issue of proposed Section 19.19, which was resolved by the parties by incorporating some of its purpose into the title and second sentence of the TA'd provision. The Union's final offer in this regard is therefore denied.

## **5. Issue No. 24 -- Shift Starting Time**

The Union's final offer on shift starting time is to amend Section 13.2(a) to read as follows (new language underlined):

The normal workday in a normal workweek shall be 24 consecutive hours of work (1 shift) followed by 48 consecutive hours off (2 shifts).  
The normal work day for 24-hour employees shall begin and end at

8:00 a.m.; nine hours after the commencement of the shift the assigned hours for the duty day shall end.

The Village's final offer is that if the Arbitrator accepts the Union's proposal on Issue No. 8, then the second sentence of Section 13.2(a) should be deleted and the following substituted:

Effective the first FLSA work cycle following issuance of Arbitrator Kohn's award, the normal workday for 24-hour employees shall begin no earlier than 7 a.m. or no later than 8:00 a.m. If the Village decides to change the current shift starting time it shall give all affected employees at least one month's notice of the effective date of the change.

The parties' existing agreement provides in Section 13.2(a) that, "The normal workday for 24 hour employees shall begin and end at 8:00 a.m." The Village seeks to amend Section 13.2(a) to obtain the flexibility to schedule the workday to begin as earlier as 7:00 a.m. or as late as 8:00 a.m. The Union counters that the starting time should remain fixed by contract at 8:00 a.m., and would add to Section 13.2(a) the provision that "nine hours after the commencement of the shift the assigned hours for the duty day shall end."

Each party bears the burden of justifying its own proposal. The Village presented witnesses and statistics intended to show that a 7:00 a.m. starting time would enable the Fire Department to respond more effectively and with less overtime to the increased number of calls for service during the hour beginning at 8:00 a.m. The Village's data demonstrated that in 1995 there was an increase of calls from 137 calls during the hour beginning at 6:00 a.m. to 225 calls during the hour beginning at 7:00 a.m. to 269 calls for service during the hour beginning at 8:00 a.m. Chief MacArthur testified that it would be easier to staff the 8:00 a.m. hour service calls more efficiently if the firefighters were in place prior to 8:00 a.m., e.g., if the shift began at 7:00 a.m. In addition, he testified, a 7:00 a.m. starting time would reduce the number of firefighters out on call (and therefore beginning to accrue overtime) at the end of their shift. The Village also cited concerns that traffic for employees and for Fire Department vehicles is heavier at 8:00 a.m. than

at 7:00 a.m.

The Village contends that the provisions in contracts of the comparable communities support this change. However, the evidence is equivocal. Five of the contracts (for Arlington Heights, Hoffman Estates, Lombard, Park Ridge, and Rolling Meadows) do support the Union's offer to retain the status quo, in that they specify starting times at or within 15 minutes of 8:00 a.m. The Village asserts that nine of the comparable contracts specify a 7:00 a.m. shift starting time or give the community the right to set the starting time at 7:00 a.m.; however, a careful review of the contracts in question reveals that only seven communities are so empowered.<sup>44</sup> On the other hand, the practice in those communities is cited by the Union in support of the status quo: Only Elgin, Northbrook and Wheeling have 7:00 a.m. starting times. The remaining eleven comparables all have shift starting times at 8:00 a.m. or, in the case of Park Ridge and Rolling Meadows, within 15 minutes of 8:00 a.m.

The Union objects to any change in the status quo. It is undisputed that the shift starting time has been 8:00 a.m. for at least 23 years. Employees have scheduled child care arrangements and other family obligations, based on that schedule. More important, there has long been an informal but common practice for firefighters on the oncoming shift to move their gear into place when they arrive, even if it is before the shift start time, and "jump on the rig" if a call comes in between 7:45 a.m. or earlier and 8:00 a.m., so that personnel on the outgoing shift will not have to be out on the call and incur overtime after 8:00 a.m. Lieutenant Goss testified that employees on the oncoming shift do not generally claim overtime for those

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<sup>44</sup>The Buffalo Grove, Mt. Prospect, and Skokie contracts do not set a specific shift starting time, but contain management rights or similar clauses that leave the specification of work schedules to the employer. The Elgin and Northbrook contracts specify a 7:00 a.m. starting time, and the Elmhurst and Wheeling contracts explicitly permit the community to set a starting time within a range that includes 7:00 a.m. The Bensenville contract does not specify a shift start time, and only grants the Village the right to establishing schedules "departing from the normal work day, shift or work period. . . ." The Village omitted Des Plaines from its tabulation (cf. Village Ex. 77), perhaps because the Des Plaines contract neither specifies a shift starting time for 24-hour employees, nor explicitly includes the scheduling of work in its management rights clause.

few minutes before the shift starts. Thus, the equipment is fully staffed around the 8:00 a.m. with some mitigation of overtime expense to the Village.

The traffic problems for fire emergency vehicles cited by the Village would be the same whether the shift starts at 8:00 a.m. or earlier. In any case, the traffic problems are being addressed by the Village's installation and implementation of a fire emergency preemption system, which allows drivers of fire emergency vehicles to take control of traffic signals. There is no evidence that the shift starting time affects traffic conditions for Fire Department vehicles.

Although the Village's other collective bargaining agreements grant the Village some of the flexibility it seeks in this contract, the internal comparisons are not very compelling here. The firefighters are the only unit with 24-hour shifts. Although the contract with the police officers' union gives the Village great discretion to adjust starting times and to assign different starting times to different employees, there is no evidence that the police officers have ever enjoyed the expectation of a single fixed shift starting time. Similarly, the Village's agreement with International Union of Operating Engineers Local 150 permits it to schedule the start of the eight-hour shift between 6:00 a.m. and 7:00 a.m., but there is no evidence that the Engineers had any contrary expectation when that provision was negotiated.

As Arbitrator Nathan noted in addressing the Village's request for analogous flexibility at the last interest arbitration, Nathan Award at pp. 154-5:

[T]he problem is that a fire department is not like most employers. The work knows no time distinctions. . . . The employees live together and their work cycles are part of their lives. An employer's basic right to set hours must be muted when it comes to a fire department. Thus, the burden is on the employer not merely to suggest that it needs flexibility to change a normal shift from 8:00 to some other hour, but to demonstrate that this change is necessary and the necessity overcomes the disruption it would cause in the employee's lives.

In light of this mixed picture, and mindful of the disruption a change in shift starting time may work on the lives of employees and their families, the Village has failed to satisfy its burden to justify this significant alteration in the status quo.<sup>45</sup>

On the other hand, the Union has failed to satisfy its burden to justify the addition of a limitation on hours of assigned work. The existing contract is silent on the matter of hours of assigned work. The normal practice is that assigned work is performed between 8:00 a.m. to 5:00 p.m. However, Chief MacArthur testified that he expected that the hours of assigned work would continue to end at 5:00 p.m. even if the Village's proposal were adopted and the Village set a new shift starting time earlier than 8:00 a.m. The Union's proposal is a response to that position.

The comparable communities' contracts offer little support to the Union for the addition of the assigned work hours provision. Only four of the fourteen comparable communities include such a provision in their contracts (Arlington Heights, Hoffman Estates, Northbrook, Park Ridge). One contract merely restricts the Village's right to change practices with respect to "nonassigned time" (Skokie). None of the remaining nine communities have contracting addressing the issue, although seven of those have 9 or 9¼ hours of assigned work per workday, according to Firefighter Hall's survey of the communities. (Union Ex. 72)

There is no evidence that the Village would expand the hours of assigned work in the absence of a change in shift starting time, a change which this Arbitrator has rejected. On the other hand, there is testimony that even now, the Fire Department conducts required night drills after 5:00 p.m., which the Union's final offer would prohibit. There is thus insufficient necessity at this time to adopt the Union's proposal to include a nine-hour limitation in the contract. Such a change is more appropriately made at the bargaining table. Neither offer is accepted, and Section

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<sup>45</sup>It is not enough to say that the Village is asking merely for flexibility in setting a starting time, not specifically for a 7:00 a.m. The reasonableness and propriety of the offer depends upon the impact of the Village's exercised the requested flexibility.

13.2(a) shall be retained without change.<sup>46</sup>

### **III. AWARD**

Based on careful consideration of the entire record, including all of the applicable statutory criteria and the evidence and argument submitted by the parties, for the reasons set forth above, the Arbitrator awards the following:

The parties' May 1, 1996 - April 30, 1999 collective bargaining agreement shall consist of the provisions as to which the parties have reached tentative agreement between themselves, as indicated in Village Exhibit 1, and the following:

#### Economic Issues:

Issue No. 1 -- Salaries for Firefighters: The Village's offer is adopted.

Issue No. 2 -- Salaries for Lieutenants: The Village's offer is adopted.

Issue No. 3 -- Paramedic Stipend: The Union's offer is adopted.

Issue No. 4 -- EMT-B Stipend: The Village's offer is adopted.

Issue No. 5 -- Retroactivity: The Union's offer is adopted.

Issue No. 6 -- Cost of Medical and Dental Insurance: The Village's offer is adopted.

Issue No. 7 -- Longevity Pay: The Village's offer is adopted.

Issue No. 8 -- Hours of Work: Based on the Declaratory Ruling of the General Counsel of the ISLRB, there is no issue properly before the Arbitrator.

Issue No. 9 -- Overtime Pay for Firefighters: The Village's offer is adopted.

Issue No. 10 -- Overtime Pay for Lieutenants: The Village's offer is adopted.

Issue No. 11 -- Vacation Time: The Union's offer is adopted.

Issue No. 12 -- Vacation Scheduling: The Union makes no proposal in its final offer to change Section 16.3, and the Village's offer to retain the Section without change is adopted.

Issue No. 13 -- Holidays: The Union's offer is adopted.

Issue No. 14 -- Duration of the Contract: The Village's offer is adopted.

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<sup>46</sup>Because of this ruling, the Arbitrator need not address the propriety of the Village presenting two different final offers of language for Section 13.2(a), in the alternative, in Issue No. 8 and in Issue No. 24.

- Issue No. 15 -- Subcontracting: The Village's offer is adopted.  
Issue No. 16 -- Pay Rate for Inspectional Services Division Work: The Village's offer is adopted.  
Issue No. 17 -- Fire Prevention Bureau Inspection Work: Based on the Declaratory Ruling of the General Counsel of the ISLRB, there is no issue properly before the Arbitrator.  
Issue No. 18 -- Termination Effect: The Union makes no proposal in its final offer to change Section 19.3, and the Village's offer to retain the Section without change is adopted.  
Issue No. 19 -- Hirebacks: The Union's offer is adopted.

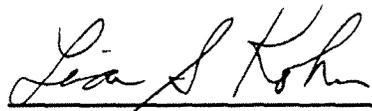
Non-Economic Issues:

- Issue No. 20 -- Promotions: The following shall be added as Section 19.17:

Notwithstanding any other provision of this Agreement, if the Village during the term of this collective bargaining agreement desires to exempt the rank of fire lieutenant from the promotional process administered by the Elk Grove Village Board of Fire and Police Commissioners, it shall give the Union advance notice of its desire and, if requested, shall negotiate over such decision and the effects of such decision on bargaining unit employees. If the parties are unable to resolve the issues in negotiations, either party may invoke the provisions of Section 14 of the IPLRA.

- Issue No. 21 -- Decertification of Paramedics: The Village's offer is adopted.  
Issue No. 22 -- Grievances over Merit Pay for Fire Lieutenants: The Village's offer is adopted.  
Issue No. 23 -- Application of Rules: The Village's offer is adopted.  
Issue No. 24 -- Shift Starting Time: Neither offer is adopted and Section 13.2(a) shall be retained without change.

Respectfully submitted,

  
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Lisa Salkovitz Kohn

Dated: 9/12/97