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IN THE MATTER OF INTEREST)
ARBITRATION)
)
Between) Marvin F. Hill, Jr.
) Arbitrator
VILLAGE OF LANSING)
)
and) S-MA-97-156
) Interest Arbitration on
LANSING PROFESSIONAL FIRE) 16-Hour Shift Proposal
FIGHTERS ASSOCIATION, IAFF)
LOCAL 3709)

Appearances

For the Union: J. Dale Berry, Esq., CORNFELD AND
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60604-3805.

For the Administration: James Baird & Michael Gotzler,
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I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

A. Introduction

The parties to this proceeding are the Lansing Professional Fire Fighters Association, Local No. 3709 IAFF, AFL-CIO-CLC (hereinafter referred to as the "Union") and the Village of Lansing (hereinafter referred to as the "Employer"). The Arbitrator's jurisdiction arises under the terms of the Illinois Public Labor Relations Act (IPLRA), 5 ILCS 315/1 et seq. and

certain stipulations of the parties included in the Ground Rules entered into between the parties (Jt. Ex. 3) and further stipulations entered into between the parties with respect to certain unresolved issues (Jt. Ex. 6; Tr. Vol. 1, at 70-71). Hearings and pre-trial conferences related to the dispute were conducted in Lansing, Illinois on June 24, July 30 (pre-trial conference), August 10, and September 4, 1998. The hearing held on June 24, 1998, was a preliminary hearing at which the parties entered into stipulations concerning the comparable cities, grounds rules for conducting the evidentiary hearing. The parties also agreed to a schedule of meetings prior to the August 10th hearing at which to meet and pursue further negotiations as to the many items that remained in dispute at that point.

The August 10th hearing was an evidentiary hearing at which evidence was adduced by the parties in relation to the Union's proposal to modify the work shifts of Firefighter/Paramedic members of the bargaining unit. At the conclusion of the hearing, the parties were granted leave to file post-hearing briefs in support of their respective positions. It was agreed that such briefs would be filed postmarked by December 1, 1998, and exchanged through the offices of the Arbitrator.

B. STATUS OF THE DISPUTE

Interest arbitration was invoked by the Union to resolve an impasse between the parties as to the terms of a contract between Local 3709 and the Employer. The full time Firefighter/Paramedic members of the department had previously entered into contracts with the Village. (Jt. Ex. 4, Tr. at 27). In 1996 the full time firefighters affiliated with the IAFF as Local 3709. A representation election was held by the State Labor Relations Board in December 1996. Bargaining for a new contract between Local 3709 and the Village commenced in January 1997. (Village Ex. 101). Negotiations between the parties as to the terms of the new contract were protracted and difficult. The parties selected the undersigned Arbitrator to preside at interest arbitration hearings in April 1998. The preliminary hearing was held between the parties on June 24, 1998. At that

time in excess of 30 economic and non-economic items remained in dispute between the parties. In addition to agreeing to ground rules at the June 24th preliminary hearing, the parties agreed to an expedited negotiation schedule and accepted the Arbitrator's "mandate to bargain to impasse . . ." the remaining items that were then outstanding. (Tr. Vol. 1, at 3, 4). The parties were also directed to report to the Arbitrator on July 30, 1998, for a further pretrial conference. In accordance with the Arbitrator's directive, the parties did meet following the pretrial conference and were able to resolve many of the outstanding items. (Jt. Ex. 1, 1A; Tr. at 72). Negotiation meetings were held in the afternoon of June 24, July 8, July 21 and July 23. As of August 10th, 17 issues remained in dispute between the parties. On August 10th, prior to the evidentiary hearing, the parties engaged in further meetings and negotiations which produced a stipulation that resolved all open items with the exception of Firefighter/Paramedic work shifts and insurance. (Tr. at 74-75). The parties' dispute as to these substantive items are discussed within the body of the Union's argument.

C. STATUTORY CRITERIA

The dispute involves one economic item -- insurance and one non-economic item -- work shifts. Under the predecessor agreement and existing working conditions, the Employer paid 100 percent of the cost of providing single and dependent coverage for employees. The Employer is thus the moving party with respect to this issue. (Jt. Ex. 3, ¶10). Ordinarily as to an economic issue such as insurance contributions, the Arbitrator would be limited to accepting the final offer of one of the parties (§14(g)). According to the Union, the parties have stipulated that the Arbitrator will have the discretion to issue an award that varies from the parties' final offers. (Tr. at 70-71). What is clear is the parties have agreed that the Medical and Dental Insurance provision in the successor agreement now at issue will be the same terms as agreed to or imposed by an outside neutral in the interest dispute between the Village and the FOP. As of January 25, 1999, the date of this award, the matter was unresolved under the evidence record before me.

The Union's work shift proposal is to modify the current practice whereby firefighters are scheduled to work either an 8-hour shift from 6:00 a.m. - 2:00 p.m. or 2:00 p.m. - 10:00 p.m. Monday through Friday. The Union proposes to consolidate these two shifts into a single 16-hour shift. All firefighters will still work the same number of hours per year as they currently work, 2,080. Accordingly, the Union's proposal should be treated as a non-economic item under §14(g).

Under the statute, the decision is required to be based upon the applicable subsection (h) factors. The eight criteria are as follows:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment

- and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
 - (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

D. Resolution of All Outstanding Items and Issues

Pursuant to negotiations by the parties with assistance of the Arbitrator, the following represents the resolution of all outstanding items and issues to be included in the parties' collective bargaining agreement:

1. Term: four (4) years; contract to expire 4/30/01.
2. General Wage Increase: 3.5 percent per year for the term of the agreement.
3. Retroactivity: Union Proposal (contract fully retroactive for four-year term).
4. Rank Differential: Union Proposal.
5. Medical and Dental Insurance: Parties agree to include the same terms as agreed to by the Village and the police unit (FOP). (See, infra at 38).
6. Normal Work Day and Work Week:
 - a. 16-hour day (subject to this arbitration);
 - b. Section 5.1(b): Union language if successful

on proposal of 16-hour shift.

7. Change in Normal Work Day - Language attached as Ex. 1, which reads:

Section 5.2. Changes in Normal Work Cycle, Period or Work Day. The shifts, work days and hours (established consistent with Section 5.1) to which employees are assigned shall be posted on the department work shift schedule. Changes in normal work shifts may be made only for temporary periods to deal with temporary operating needs or due to extraordinary emergency circumstances. The Village will give as much advance notice as practicable of such change to the individual affected by such change, and will restore the normal work schedule once the temporary circumstances requiring the changes have past.

8. Overtime Compensation: Union Proposal which reads as follows:

Section 5.3. Overtime Compensation. Employees working any hours on duty in addition to the regular hours as defines in this Article, shall be considered overtime hours subject to the overtime rates as provided in this agreement. The overtime rate shall be paid for all overtime worked at the rate of one and one-half (1 & 1/2) times the employee's basic hourly rate. The regular straight time hourly rate of pay shall be computed by dividing the employee's annual salary (in accord with existing practice) by the scheduled annual hours of duty to which the employee is regularly assigned (2080).

9. Overtime Recall Rate: Village Proposal (status quo).

10. Supplemental Shifts: Withdrawn by Union.

11. Sick Leave: Village Proposal (as follows):

6.2. Sick Leave. Employees who are unable to work due to their personal illness shall be compensated for their sick leave absence for up to one year. Requests for paid sick leave shall not be unreasonably denied by the Chief. Sick leave for illness involving a member of the employee's immediate family residing in the employee's immediate household may be granted on a case-by-case basis as solely determined appropriate by the Chief or his designee.

12. Subcontracting/Preservation of bargaining Unit: Union agrees to withdraw item.

13. Employee Alcohol and Drug testing: Village language.

14. Rank Structure: Union to withdraw issue.

15. Ethical Standards: Union to withdraw issue.

16. Residency: Union to withdraw.

17. Fair Share: Union proposal with qualification that language will be consistent with statutory mandates.

E. The Comparables

The parties stipulated that the following municipalities represent comparable communities based on the population, proximity, and revenues of those communities: Alsip; Blue Island; Calumet City; Chicago Heights; Dolton; Harvey; Homewood; Matteson; Midlothian; Oak Forest; Park Forest; and South Holland.

II. POSITION OF THE UNION: ITEM #6 -- HOURS OF WORK, §5.1

The Union proposes to modify the existing schedule for work

shifts by consolidating the two work shifts into a single work shift extending from 6:00 a.m. to 10:00 p.m. These shifts would be scheduled as is the current practice from Monday through Friday. The employees would continue to work 2,080 hours per year. Under the proposed schedule, the existing practice of having two groups of employees alternately work morning or afternoon shifts would be modified by scheduling the two groups of employees to alternately work 16 hour shifts Monday through Friday.

In addition, the Union proposes language defining the work schedule for employees whose principal work is as Fire Inspectors. This language would be implemented if the Arbitrator rules in favor of the Union on its proposed 16 hour shifts.

The Union's arguments for its proposal, as outlined in its post-hearing brief, are summarized as follows:

A. THE UNION'S PROPOSAL IS A MODEST CHANGE THAT WOULD MAKE EMPLOYEES' WORK SCHEDULES MORE SIMILAR TO THOSE OF ALL OF THE FIREFIGHTERS EMPLOYED IN ALL OF THE COMPARABLE COMMUNITIES.

The Union's proposal does not change the annual hours of work or the hourly rate. No other department among the comparable communities' schedules requires firefighters to work a consecutive day work schedule. Every department but one -- South Holland -- schedules firefighters on the traditional 24-on/48-off schedule. South Holland also follows this pattern but the on duty shift is 16 hours rather than 24 hours.

The impact of the alternating schedule on firefighters is demonstrated in Union Exhibit 2, which analyzes the number of days in which firefighters are actually scheduled to be at work over a year. The net figure represents the number of work shifts scheduled annually less the scheduled time off. The average for all of the comparable communities is slightly more than 102 shifts per year. South Holland, which also works annual hours of 2,080, works 114.67. Under the Union's proposal

the number of shifts scheduled on alternate days Monday through Friday will be 115.5. Continuing the eight hour shift rotation as proposed by the Village causes employees to be at work 231 days per year. As to this measure, this ranks Lansing Firefighter/Paramedics last with a value that is 126% below the average. (Tr. at 79-83).

The Village will undoubtedly emphasize that Lansing firefighters' annual hours of work at 2,080 places them in the first rank among comparable communities as to this measure. The amount of hours worked is not in dispute between the parties. The sole issue between the parties is whether the annual hours are to be worked in alternating 16-hour shifts or consecutive 8-hour shifts Monday through Friday.

External comparability overwhelmingly favors the Union's proposal.

B. FIREFIGHTERS HAVE BEEN SCHEDULED TO WORK 16-HOUR SHIFTS WITHOUT DIFFICULTY IN THE PAST.

The bargaining unit consists of 14 full-time firefighters. There are 3 Lieutenants, 6 Engineers, and 5 firefighters. The work force is divided into two platoons. One platoon works the morning shift extending from 6:00 a.m. - 2:00 p.m. Monday through Friday. The second group works the afternoon shift which extends from 2:00 p.m. - 10:00 p.m. The groups are rotated every week with the group assigned to the morning shift in one week working the afternoon shift in the succeeding week.

Mr. Winters testified without contradiction that it was not unusual for full time personnel to work 8 hour shifts back to back. (Tr. 92-93). This is accomplished by trades between two employees or as overtime. Fire Chief Schauer conceded that while 16-hour shifts were not necessarily "unlimitedly available" within the department they were "workable." (Tr. at 173-174). Winters testified that trades have been routinely used to allow two employees to secure three day weekends. This practice is less frequent currently because employees are not scheduled with regular partners. Winters testified that when he had a regularly scheduled partner, he routinely traded shifts so

that both parties obtained three consecutive days off. (Tr. at 94-95).

Winters also described the scheduling practices for non-bargaining unit employees, such as paid-on-call (POC's) firefighters and supplemental paramedics. The department currently employs 44 POC's and 17 supplemental paramedics. These employees are assigned to cover the hours from 10:00 p.m. - 6:00 a.m. Monday through Friday and 24 hours on Saturday and Sunday. The scheduling practice is to schedule two supplemental paramedics and one POC on duty during these hours. Both POC's and supplemental paramedics work 16 hour shifts. Winters described Union Exhibit 5, which is the most recent supplemental paramedic schedule for August 1998. Inspection of this schedule demonstrates that several paramedics are regularly scheduled to work 16-hour shifts.

The Union's proposal represents a difference in degree not in kind. The Union's proposal does not create an entirely new benefit. It simply increases the frequency with which employees will enjoy the benefit of 16-hour shifts and non-consecutive scheduling of work shifts. It is consistent with previous practices allowed for full time personnel. It brings their scheduling into closer alignment with scheduling practices granted to other members of the department. It is the only schedule consistent with maintaining the Monday-Friday coverage in place within the department, that allows Lansing firefighters to work a schedule that is consistent with the closest and most similar comparable community, South Holland. Adoption of the Union's 16-hour shift proposal would be a long step towards ameliorating the serious conflicts and morale problems which currently afflict the department.

C. THE VILLAGE'S OBJECTIONS TO THE UNION'S PROPOSAL ARE IN THE MAIN CLAIMS THAT CAN BE TREATED AS MAKEWEIGHTS OR EXAGGERATIONS.

Village Exhibit 60 purports to set forth no less than 17 reasons which "occur" to management to not implement the Union's 16-hour shift proposal. According to the Union, these "reasons"

are rooted more in attitudes generated by conflicts between the parties associated with their contract negotiations than with pressing operational considerations. In the few instances where the reasons identify a valid operational consideration, the impact is insufficient to overcome the weight of the external, internal and equity considerations discussed above favoring adoption of the Union's shift proposal. The Union asserts the following as supporting its proposal:

1. The Union's Shift Proposal Addresses A Primary Concern of Bargaining-Unit Members;
2. The Significance Of The Operational Concerns Listed In Village Exhibit 60 Is Belied By The Chief's Indifference To Seriously Investigating The Operation Of Sixteen Hour Shifts In Neighboring South Holland;
3. Many Of The Adverse Operational Effects Listed Reflect A Double Standard That Has Given Rise To The Current Employee Disaffection;
4. The Union's Sixteen Hour Shift Proposal Represents A Logical And Concessionary Modification Of The Union's Original Proposal To Establish A 24/48 Work Schedule.

ITEM 5 -- HEALTH INSURANCE, §18.1

The Final Offers

The Union proposes to maintain the existing health insurance benefits with the Village continuing to pay 100% of the premium costs for single and family coverage. (Jt. Ex. 2B). The Village initially proposed to require employees to contribute towards the premium costs for dependent coverage. the Village proposes that the employees pay 10% of the cost of dependent premiums effective November 1, 1997. It further proposed to increase the amount of employee contribution to 20% effective May 1, 1998. The Village also proposes language that would allow it to change terms of the benefit plans and coverages unilaterally so long as the change applies equally to

all Village employees. The Village also proposes to adopt the \$125 plan.

The Stipulation

As previously indicated, the Arbitrator's jurisdiction with respect to this issue is subject to the parties' stipulation described in Joint Exhibit 6 which permits the Arbitrator to adopt an award that varies from the parties' respective final offers. According to the Union, the parties' stipulation also makes relevant any settlement reached between the Village and FOP police bargaining unit.

The stipulation contemplates that the substance of such final settlement will impact upon the Union's 16-hour shift proposal. The Union points out that within the framework of the stipulation, it reserved the right to make arguments arising out of the determination of the health insurance issue as a quid pro quo in support of adoption of its 16 hour shift proposal. In accordance with such reservation, the Union would offer the following additional points for consideration by the Arbitrator on this item:

1. The Village Is Seeking A Major "Breakthrough" On Employee Health Insurance Contributions.

Bargaining-unit members currently enjoy a health insurance benefit under which the Village assumes 100% of the premium cost for the plan. In a recent award, City of Urbana and Urbana Firefighters Local 1147, ISLRB Case No. S-MA-97-245, the undersigned Arbitrator discussed the implications of breakthrough proposals. This Arbitrator cited with approval Arbitrator Harvey Nathan's analysis of the characteristics of a breakthrough proposal articulated in Will County Board and Sheriff of Will County and AFSCME Local 2961, August 17, 1988:

The well accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations, is to place the onus on the party

seeking the change. Id., at 17.

The Village's proposal clearly involves the implementation of an entirely new obligation on the part of employees to make payments toward the cost of premiums for health insurance. This proposal must be distinguished between the situation where employees are already contributing towards the cost and the employer is seeking to increase the amount of contribution. Where the obligation is to contribute to the cost of health insurance already exists, a proposal to change the amount may be fairly characterized as not a breakthrough but a proposal to "merely [increase] or [decrease] an existing benefit". In a circumstance where one party seeks a major change from the status quo, this Arbitrator cited with approval awards that required the moving party to provide "compelling reasons" to change the status quo as well as offer a "quid pro quo" in support of the change. City of Urbana, at 17-18. As this Arbitrator also observed in his analysis in City of Batavia and Batavia Firefighters Assn., IAFF Local 3436, S-MA-95-36 (1995), strong external comparability data do not necessarily compel adoption of a proposal that is deemed to be a breakthrough.

2. The Employer Can Cite No Precedent Where An Employer Who Previously Had Assumed 100% Of The Cost For Providing Employee Health Insurance Was Able To Impose 20% Of The Cost On Employees In The Next Year.

There are two components of the Employer's proposal which are noteworthy. First, management is seeking to achieve a breakthrough by requiring employees to contribute for the first time toward the cost of family health insurance. Second, but of no less significance, is the magnitude of the cost increase that the Employer is seeking to place on employees.

In the first instance many arbitrators have rejected employer proposals to impose much smaller increases for the first time. See, City of Elgin and Local No. 439 IAFF (Fleischli, 1992) (rejecting an employer proposal to require employees for the first time, to contribute towards the cost of dependent health insurance); City of E. Moline and Illinois FOP

Lodge 96, S-MA-93-114 (Larney, 1995) (rejecting employee contributions in three steps over three years: \$15/mo., \$20/mo., \$25/mo); Village of Arlington Heights and Arlington Heights Firefighters Association Local 3105 (Briggs, January 1991); Village of Oakbrook and Teamsters Local 714, S-MA-96-73 (Benn, 1996); City of Evanston and Evanston Firefighters Local 742 (Mueller, February 1992); Village of Westchester and Illinois Firefighters Alliance Council (Kossoff, 1991) (discussed in the Union's Brief at 35-42).

Looking at the 10-year firefighter salaries of the Employer's proposal produced in Village Exhibit 33A, the impact on the percentage wage increase in 1997 and 1998 respectively is to reduce the increase by 1.1% or to 2.36% in 1997 and 2.4% in 1998. In addition to the impact on the net wage increase, arbitrators also look at the impact of a particular proposal on the employees' relative standing in relation to comparable employees. This is true even for health insurance where there is a tendency to give greater emphasis to internal comparability factors. See, e.g., City of Elmhurst and Elmhurst Professional Firefighters Association Local 3541 (April 20, 1997). These awards are by experienced and well recognized arbitrators, some of whom were cited by this Arbitrator in his Urbana award. Together they underscore the difficulty the Employer would have ordinarily in achieving a breakthrough of the magnitude which is presented by its final offer.

When the Village's final offer is evaluated in the context of the benefits received by comparable firefighters, the adverse impact is extreme. Village Exhibit 56 sets forth data with respect to premium costs and the employee/employer contributions respectively towards the premium costs. The Union is willing to accept the data set forth in Village Exhibit 56 with one major exception. The Exhibit indicates that for Oak Forest firefighters the contribution percentage is 54.7% and \$221.72. However, analysis of Article 14-Insurance of the Oak Forest contract (Jt. Ex. 4, Tab 10) does not support this calculation. According to the contract effective May 1, 1998, the employer is obligated to contribute \$300 and \$115 per month respectively for family and single coverage. Section 14.1 also provides that the Village is to pay \$150 per year for both dental expenses and

also optical expenses. Section 14.2 provides that increases in medical insurance premiums above the allocations established in Section 14.1(a) are to be split 85/15 prior to May 1, 1998 and effective May 1, 1998 80/20. Applying this formula to the \$563.44 premium listed in Village Exhibit 56 produces a monthly employee contribution of \$52.68, or \$37.92 when the tax benefits of \$125 are applied. If the Employer's exhibit is restructured with this corrected data, it produces the following table:

ANALYSIS OF PERCENTAGE AND MONTHLY AMOUNT PAID
FOR FAMILY HEALTH COVERAGE

<u>Municipality</u>	<u>Monthly Premium Cost</u>	<u>Employee Percentage</u>	<u>Employee Contribution</u>	<u>Employer Contribution</u>
Blue Island	425.21	0	00.00	425.21
Chicago Hts.	478.48	5	23.92	578.47
Oak Forest	563.44	6.7	37.92	514.90
Dolton	430.60	8.1	35.00	395.60
Calumet City	685.00	10	68.50	616.50
Matteson	602.52	17.5	75.92	497.08
South Holland	610.44	15	91.57	518.87
Harvey	454.28	21.5	97.67	356.61
Park Forest	497.95	20	99.60	398.35
Alsip	742.00	15	111.30	630.70
Homewood	759.58	20	151.92	607.66
Midlothian	582.95	30	174.89	408.06

Lansing (Union Prop.)	578.47	0	00.00	578.47
Lansing (Village Prop.)	578.47	20	83.29	462.78

The existing health insurance benefit enjoyed by Lansing firefighters puts them in a position of #1, tied with Blue Island. Implementation of the Village proposal would drop Lansing's ranking from 1st to at least 7th. The Union would submit that Lansing's ranking should more properly be placed below South Holland when all aspects of the health insurance benefit are considered.

The Union maintains that another factor to be considered in evaluating the value of the benefit offered under the Village's final proposal is the actual contract language describing the benefit. The Village's final offer for Section 18.1 (Jt. Ex. 2A) specifies language that is very favorable to the Village in that it allows modifications of the plans and coverage with very limited restriction. The only restriction is that "the change or modification applies equally to all Village employees". The language is very favorable since it could be construed to allow the Village to make substantial reductions in benefits or coverage so long as it applies the same reductions to all employees. There are serious flaws in this language. It conflicts with TA'd language in §18.3 which allows "cost containment measures relative to insurance coverage so long as the basic level of insurance benefits remains substantially the same" (Jt. Ex. 1, at 34; emphasis added). Also, it conflicts with the language of the police contract on this subject. (Village Ex. 23, §21.1, at 40-41). In contrast, the Union's proposed language tracks the language of the police contract. (Jt. Ex. 2B, Ex. 1).

The Union's proposed language is also in line with the more protective language found in the overwhelming weight of comparable jurisdictions. The contracts in the comparable jurisdictions generally permit midterm changes but require such changes to meet an independent contract standard that makes unilateral changes in existing benefits and coverage the subject of a grievance. The applicable language among the comparable communities is as follows:

Municipality

Contract Language

Alsip	Keep in effect same coverage or "closest coverage", Art. 19, p. 59, Tab 1
Blue Island	Maintain same benefits, Sec. 5.2, p. 7
Calumet City	Maintain coverage "not less than coverage in effect", Art. 7, p. 30, Tab 3
Chicago Heights	Maintain coverage "on the whole no less than those which existed prior to the signing of the agreement", Art. 16, p. 28, tab 4
Dolton	Unknown -- p. 45 missing from tab 5, Sec. 14.1 and 14.2
Harvey	Coverage "at a level no less than coverage in effect during 86-87 contract year", Art. 22, p. 19, tab 6
Homewood	Maintain "substantially similar existing health insurance benefits", Sec. 26.1, p. 39, tab 7
Matteson	Change in coverage permitted "so long as such change is equally applicable to management and non-contract employees alike and such coverage includes some form of medical, dental, prescription and disability income insurance", Sec. 15.1, p. 34, tab 8
Midlothian	Maintain "substantially the same manner and level" of benefits, Sec. 20.1, p. 43, tab 9
Oak Forest	Maintain "substantially similar" benefits, Sec. 14.1, p. 20, tab 10
Park Forest	Change is subject to review by joint insurance committee plus benefit levels and coverages of

existing plan must "remain substantially the same", Art. 11.1.3, p. 21, tab 11

South Holland

Not applicable -- no contract

When all of these factors are considered, the Union asserts that as a stand alone proposal the Village's health insurance offer is a massive overreach.

3. Awarding Even A More Reasonably Scaled Down Version of The Employer's Final Offer On Health Insurance Cannot Be Justified Without Granting Employees Some Additional "Quid Pro Quo".

As this Arbitrator observed in City of Urbana, a party that ". . . seeks a major change in the status quo at minimum . . . is required to offer 'an equitable buyout or quid pro quo.'" (Id., at 18). There can be no question here that the Village's health insurance proposals are of a magnitude that would radically alter the benefit balance that preexisted the current contract between firefighters and the Village. See, City of Evanston and Evanston Firefighters Local 742 (Malamud, March 30, 1994) (reasoning that "Where an employer seeks to reduce a benefit or a union seeks a new benefit or new language protection in the agreement, the concept of quid pro quo comes into play. In a mature bargaining relationship, a party seeking a substantial change in the agreement should offer something to obtain that change.").

In the instant case, the Union has sought a change in the length of work shifts which improves working conditions for employees, but will cost the Village nothing financially. Conversely, the Village has sought a major reallocation of costs for health insurance benefits. While the Village has sought to justify this increase based on its own increase in premiums, Village Exhibit 53, it has introduced no evidence that its increases in premium costs are of a greater magnitude than those experienced by comparable municipalities. Further, on a direct cost basis its monthly premium of \$578.47 ranks 7th among the comparable jurisdictions. The Village under the terms of the stipulation has received a substantial reduction in the existing

sick leave benefit. (Jt. Ex. 6, item 11). The remaining economic items in dispute covered by the stipulation involve essentially maintaining Lansing firefighters' existing benefits based on increases granted to firefighters employed in comparable communities. As to the work shift issue, the Union from the outset has offered a substantial quid pro quo to the Village for acceptance of its proposal. The Union has offered to establish a \$20.00 per month contribution for health insurance as a quid pro quo for adopting its non-economic work shift proposal. Further, it even proposed to accept the Village's proposed 80/20 split on health insurance premiums if it accepted the Union's supplemental shift proposal. (Jt. Ex. 2B, items 6, 10). The Village has rejected each of these proposals.

Consistent with the evidentiary analysis above, the Union submits that it is highly unlikely that the police bargaining representatives would agree to accept without any further quid pro quo the Village's health insurance proposal that is represented in its final offer here. Such a presumption is warranted given the magnitude of the breakthrough that is being sought by the Village. It is also evident that if the Village were to offer additional quid pro quo to the police for acceptance of its health insurance proposal, it would not necessarily want the quid pro quo to be self-evident. Accordingly, in the event of a definitive settlement with the police on the health insurance issue during the pendency of these proceedings that is anywhere close to the Village's final offer proposed here, it is submitted that additional quid pro quo must be presumed in the absence of an explicit exchange defined in writing.

According to the Union, the Arbitrator should note well that the Village rejected proposals put forward by the Union that would have granted the Village a reasonable breakthrough at a time when its position was not supported by any internal comparability. The fact that the Village would reject an economic quid pro quo offered by the Union for a concession by the Village on the length of work shifts, a non-economic item, is further evidence of the unreasonableness of the Village's position on this issue. See, City of Urbana and Urbana Firefighters Local 1147, at 19. An award that grants a reasonably scaled down modification of the Village's health insurance proposal can probably be squared with prevailing

arbitral authority. However, this cannot be done without also considering such a change as a quid pro quo towards the Union's work shift proposal. Under the terms of the stipulation the Arbitrator has the authority to award a change in the health insurance benefit different than the parties' final offers. As this Arbitrator has noted, it is usually "preferable to leave it to the parties to negotiate a new relationship, with a proper balance, and some agreement on costs, than for them to be imposed by an outside arbitrator." City of Urbana, at 19. However, here the parties have granted to the Arbitrator the authority to fashion the proper balance and distribution of costs with respect to both the health insurance item and the work shift item. The two items have been connected in the parties' bargaining and they are also the only remaining open issues for determination by the Arbitrator. An award that balances concessions sought by the Village on health insurance against the concession sought by the Union on work shifts will produce a result which most nearly reflects what the parties would have reasonably negotiated themselves.

* * *

For the above reasons, the Union requests that its proposal be awarded.

III. POSITION OF THE ADMINISTRATION

The position of the Administration, as outlined in its post-hearing brief, is summarized as follows:

A. Brief History of the Fire Department's Staffing

The Administration points out that the Lansing Fire Department was created in 1922 and has historically relied primarily on non full-time personnel. The Department's first full-time personnel were hired in 1971 and worked 8 hour shifts, just as the current full-time personnel. Prior to that time, the Department had relied exclusively on paid-on-call personnel. Following a tragic accident in 1992, the Department also assumed full responsibility for paramedic transport. In order to provide these additional services, the Department created its supplemental paramedic

program, which provides general EMS (emergency medical services) and patient transport services.

B. Current Lansing Fire Department Operations

Unlike most of the comparable departments, the Lansing's largest employee group is its paid-on-call firefighters (44 total), followed by its supplemental paramedics (17 total), followed by its full-time firefighters (14 total). Thus, the Union-represented full-time firefighters account for only 18% of the Fire Department's total personnel. Only Homewood has a similar ratio of full-time firefighters to paid-on-call firefighters. In addition, Lansing is the only municipality among the comparable communities that utilizes supplemental paramedics. Figuring in all three employee groups, the Lansing Fire Department is one of the largest fire departments and services one of the larger populations among the comparable communities.

Although the Lansing Fire Department services one of the largest populations among the comparable departments, the Department operates on a budget that ranks near the very bottom in size among the comparable communities. Despite this relatively small budget, Lansing citizens enjoy the fastest response rates among the comparables and one of the fastest response rates in the entire Chicago metropolitan area. Consequently, the Village of Lansing also enjoys one of the best insurance industry ratings among the comparable communities. Chief Schauer also explained that Lansing's citizens are very satisfied with the Fire Department's level of service: "the community is constantly giving us pats on the back relative to programs, the way we are in the nation. We are either second or third response minute-wise for our EMS response. It works well." (Tr. at 158-159).

C. Alleged Advantages of the Union's 16-Hour Shift Proposal

Management notes that the Union's sole witness, Union President Mike Winters, offered the following reasons in support of the Union's 16-hour shift proposal: (1) bargaining unit morale/convenience; (2) overtime savings; and (3) some Department employees have worked the equivalent of 16 hour shifts in the past. Despite these claims of low employee morale, only two full-time

personnel have left Lansing's Fire Department for another fire department in the last 21 years. Moreover, no employee of the Fire Department suggested or proposed a 16-hour shift until June 24, 1998.

As to overtime liability, Winters testified that the Village could save money under the Union's 16-hour shift proposal because there would be fewer shift holdovers as a result of the fewer shift changes. The Fire Department, however, has already addressed this potential additional overtime payout liability. The department uses its Fire Inspector to cover fire calls during the brief transition between the morning and afternoon shifts. In addition, Winters did not explain that, under the Union's proposal, the Village would be required to pay an employee 16 hours of overtime pay rather than 8 hours of overtime pay to cover an open shift.

While the Department may allow a supplemental paramedic to work consecutive 8 hour shifts, it will not schedule two supplemental paramedics to work consecutive shifts together to ensure that one of the two paramedics on duty is not working on a second consecutive shift. It is far less common for a full-time firefighter to work consecutive 8-hour shifts.

While a supplemental paramedic may occasionally work a 16-hour shift, those employees perform much less physical job duties than those performed by the full-time firefighters. The difference between a firefighter's job duties and a supplemental paramedic's job duties is significant. Most importantly, unlike firefighters, supplemental paramedics do not extinguish fires. Full-time firefighters are responsible for gathering, cleaning, repairing and storing any firefighting equipment that was used, whereas the supplemental paramedics' duties are finished once the firefighters have extinguished the fire and any injuries have been addressed.

D. Problems and Disadvantages of Union's 16 Hour Shift Proposal

1. Efficiency & Productivity. In the fire protection industry, "unassigned time" is time during which an employee is not assigned to perform specific tasks. During that time employees "basically are there to answer emergency calls. And their time is

pretty much their own, given that they are required to remain within the station and available for response." As employees are not performing work duties during unassigned periods (unless they are responding to a fire call), unassigned time is not productive work time.

Although the Union did not present a proposed daily assignment schedule along with its 16-hour shift proposal, the Arbitrator and the parties have the benefit of consulting South Holland's daily work assignment schedule for an indication of how work time is allocated on a 16-hour shift. In the Village of South Holland, the only comparable community that operates on 16 hour shifts, five (5) hours of unassigned time are built into the firefighters' 16-hour work schedule. By definition, these five hours of unassigned time are not productive work time unless the firefighters are responding to a call. In contrast, Captain Baird explained that there is no unassigned time under the Village's long-standing 8-hour work schedule. When Chief Schauer asked other fire departments whether they operated under a 16-hour shift as proposed by the Union in this matter, Chief Schauer testified that those conversations "ended up with having many of them say, 'Schauer, you have got the best of the whole world because you have got your people working 8 hours. It's the greatest thing going because you can get productivity out of your people' " (Tr. at 151-152).

2. Fatigue and Safety. Under the Village's long-standing schedule, two shifts cover the 6 a.m. - 10 p.m. time period. Rather than have two separate shifts cover that time period, the Union proposes to have one shift cover that period. One primary reason that the Fire Department management team opposes a 16-hour shift schedule for its full-time personnel is the increased fatigue and decreased awareness that firefighters will have to battle each workday. Under the Union's proposal, full-time personnel who begin their workday at 6 a.m. would have to respond to fire calls well past 9 p.m. As Chief Schauer explained the inevitable fatigue associated with longer work hours: "it's human nature, I think, to just kind of, kind of drag it after awhile. Who wouldn't?" (Tr. 154). In light of the safety concerns associated with doubling the length of the firefighters regular work shift, not to mention the obvious productivity concerns, the Village seeks "fresh, aggressive people every 8 hours." (Tr. at 154).

3. No Other Comparable Fire Department Operates Under the Union's Untested 16-Hour Shift Proposal. It is undisputed that no other fire department among the comparable communities operates on the work schedule proposed by the Union in this matter. The parties agree that the Village of South Holland's 16-hour shift schedule is not comparable to the Union's proposed schedule. With no other fire department employing this work schedule, Lansing has no means of knowing how well such a schedule would function.

In contrast, the Village has operated under its current 8-hour shift schedule since 1971 -- the date the Department began employing full-time personnel. The Village's current schedule is the product of continual fine-tuning over that 27 year period. In describing the program's development, Chief Schauer explained that the Department's current staffing and scheduling has slowly evolved over the years in direct response to both the community's needs and the Department's capabilities. Consequently, the Fire Department's management team is very familiar with and confident in its long-standing 8-hour work schedule.

4. Public Perception & Taxpayer Morale. Under the Fire Department's long-standing schedule, full-time personnel are regularly scheduled to work every weekday. Under the Union's 16-hour shift proposal, full-time personnel would be scheduled to work 2 weekdays in the first week of every two-week period and 3 weekdays in the second week of every two-week period. Based upon over 30 years of experience as the chief officer of the Lansing Fire Department, Chief Schauer testified that there would be little, if any, public support for the Department's implementation of the 2 day on, 5 day off/3 day on, 4 day off schedule proposed by the Union. Indeed, the Chief testified that "absolutely" no one in the Village's administration had indicated to him that there would be any public support for such a dramatic change in the Fire Department's work schedule.

5. Increased Overtime Costs. By moving from 8-hour shifts to 16-hour shifts, the cost of filling open shifts will double. That is, rather than only having to pay an employee for 8 hours of overtime to cover an open shift, the Fire Department will have to pay an employee for 16 hours of overtime to cover an open shift. With an average overtime wage rate of \$35.69, the cost of filling

an open shift under the Union's proposed 16-hour schedule increases from \$285.48 to \$570.96.

6. Continuity of Service from Specially-Trained Employees. Several of the Fire Department's full-time personnel are specially-trained firefighters. These employees hold additional certifications, licenses and training beyond that required to be a Lansing firefighter. Full-time personnel with these credentials include: CPR instructors, fire service instructors, fire investigators and SCBA-trained firefighters. Under the Village's current work schedule, the skills of these specially-trained employees are available to the Fire Department on a regular basis. As Chief Schauer explained, however, these employees would only be available every other weekday under the Union's proposed 16 hour shift schedule. Chief Schauer also explained that some of the Department's programs -- most notably the Department's Fire Prevention Program -- would also be adversely affected by a 16 hour shift schedule. The Fire Department's management team views this potential lack of continuity as one of many reasons why the 16 hour shift should not be implemented.

7. Decreased Availability for Emergency Response Calls. Under the Union's proposed 16-hour shift schedule, full-time personnel will have three day weekends each week, rather than the two day weekends they currently receive. Both Chief Schauer and Captain Baird expressed concern that these three day weekends would increase the likelihood that full-time personnel would not be in the area or working second jobs during non-scheduled work periods. With more employees likely to be out of the area or working second jobs during non-scheduled periods, both Schauer and Baird testified that response rates to off-duty fire calls would decrease.

8. Present Schedule Less Disruptive of "Family Life". Under the Village's current work schedule, full-time personnel are regularly scheduled to work 8 hours each weekday. Consequently, these employees are away from their families from either 6 a.m. - 2 p.m. or from 2 p.m. - 10 p.m. In contrast, the Union's 16-hour proposal would require full-time personnel to be away from home for a minimum of 16 hours on work days, from 6 a.m. - 10 p.m., substantially increasing the likelihood that they would not see their family members on work days. In light of this likely

decrease in "family time" under the Union's proposed schedule, the Fire Department's management team believes the current 8 hour work schedule is less disruptive of family life.

The Village, however, submits that with respect to the single issue before this Arbitrator -- the length of the employees' workday -- none of these communities' fire departments are comparable to the unique scheduling and staffing of the Lansing Fire Department.

E. THE UNION MUST DEMONSTRATE A SUBSTANTIAL AND COMPELLING JUSTIFICATION BEFORE THE ARBITRATOR CAN AWARD ITS 16 HOUR SHIFT PROPOSAL.

At the outset, the Village believes that in order to protect the bargaining process, the Arbitrator should not award any "breakthroughs" that would substantially change the long-standing status quo in the absence of a substantial and compelling justification. Awarding the Union's 16-hour shift proposal would undoubtedly constitute a breakthrough in the parties' collective bargaining negotiation process. The Union cannot seriously argue otherwise. It is undisputed that the Village of Lansing's Fire Department has never, in its 78 year history, operated on a 16-hour schedule. Instead, the Fire Department has operated exclusively on an 8-hour schedule since the Department's first use of full-time personnel in 1971.

F. THE UNION HAS NOT AND CANNOT PROVIDE A SUBSTANTIAL AND COMPELLING JUSTIFICATION FOR ITS 16-HOUR SHIFT PROPOSAL.

1. The Fundamental Weaknesses and Disadvantages of the 16-Hour Proposal Substantially Outweigh Any Alleged Advantages.

Balancing the alleged advantages against the proposal's problems and weaknesses is not a difficult task because the Union's alleged advantages carry little weight or are simply unfounded. First, while Union witness Mike Winters testified that "employee efficiency" and employee morale would increase because employees

would only have to work 1/2 as many days as they currently do, Winters did not explain how the Fire Department's operational efficiency would benefit. In addition, it is undisputed that, despite Winters' implication that employee morale is low, only two full-time personnel have left the Fire Department for another fire department in the last 21 years. Significantly, this un rebutted evidence conclusively demonstrates that the Lansing Fire Department has not experienced any difficulty in retaining full-time personnel.

Second, the Union's claim that the Fire Department will realize overtime savings under the Union's proposal is simply unfounded.

With respect to the Union's argument that its 16 hour shift proposal will not result in a significant operational change because some Fire Department employees occasionally work consecutive 8 hour shifts, management notes that while the Department may allow supplemental paramedics to occasionally work consecutive 8 hour shifts, it does not schedule two supplemental paramedics to work consecutive shifts together to ensure that one of the two paramedics on duty is not working on a second consecutive shift. The Department's occasional use of consecutive 8-hour shifts for supplemental paramedics is simply not relevant as to the Department's full-time fire-fighting personnel. In addition, the Department's rare allowance of consecutive shifts by full-time personnel is not in any way comparable to the Union's proposed 16 hour schedule in which every full-time personnel would be required to work consecutive 8 hour shifts every single workday.

Even assuming, arguendo, that each of the Union's alleged advantages to its 16-hour shift proposal are well supported and taken as true, those alleged advantages are unquestionably outweighed by the proposal's fundamental problems and weaknesses exposed during the course of the hearing. Each of the following weaknesses, standing alone, outweigh any and all of the Union's alleged advantages to its 16 hour shift proposal. In this respect management asserts the following arguments:

a. Decreased Efficiency & Productivity. While the Union attempted to explain how the 16 hour shift proposal might be more

efficient for employees on a personal level, it never offered a single explanation as to how the proposal would be more efficient for the Department. In contrast, the Village's current work schedule has absolutely no built-in unassigned time. This stark contrast in unassigned time undoubtedly renders the proposed 16-hour shift less efficient than the Village's long-standing 8-hour work schedule. There can be little doubt that the Village's 8-hour work schedule explains how the Village is within dollars of having the smallest budget among comparable communities yet manages to provide faster responses than any of the comparables and receives public approval of its service levels.

b. No Known Community, Including any of the Comparable Communities, Operates Under the Schedule Proposed By the Union. It is undisputed that no other fire department among the comparable communities operates on the shift schedule proposed by the Union in this matter. With no other fire department employing this work schedule, the Village of Lansing Fire Department has no means of knowing how an untested schedule would function.

c. Increased Fatigue & Risk of Injury or Mistake. Rather than have two separate shifts cover the 6 a.m. - 10 p.m. time period, the Union proposes to have one shift cover that period. By doubling the length of the regular workday, the risk of fatigue-related injury and mistake will undoubtedly rise -- regardless of how well the double-shifting employees may feel. Rather than operating its Fire Department with full-time personnel who will have to respond to fire calls during their 15th hour of consecutive work (i.e., at 9 p.m. following a shift start of 6 a.m.), the Village understandably prefers "fresh, aggressive people every 8 hours" to serve the fire protection needs of the Village's residents.

d. Lack of Public Support & Taxpayer Morale. The Union presented no evidence of public support for its proposed work schedule.

e. Increased Overtime Costs. It is undisputed that it would cost twice as much to the fill open shifts under the Union's 16 hour shift proposal. Rather than pay an employee 8 hours of overtime to fill an open shift, the Village would have to pay 16

hours of overtime. With an average overtime wage rate of \$35.69, the cost of filling an open shift under the Union's proposal increases from \$285.48 to \$570.96.

f. Break in Continuity of Service. Several full-time personnel hold additional certifications and licenses or have received additional training beyond that required to become a Lansing firefighter. Currently, the skills of these specially-trained employees are available to the Fire Department every weekday.

g. Decreased Availability for Emergency Response Calls. With more employees likely to be out of the area or working second jobs during non-scheduled periods, both Chief Schauer and Captain Baird testified that response rates to off-duty fire calls would decrease.

Even assuming, arguendo, that none of the fundamental weaknesses or problems with the Union's proposed 16-hour shift schedule outlined above existed, the Union has still completely failed to provide the "substantial justification" necessary for a breakthrough award of this proposal's magnitude. Accordingly, the Arbitrator should award the Village's final offer -- the status quo.

G. Under the Status Quo, the Lansing Fire Department is Considerably More Efficient than any of the Comparable Fire Departments.

Through a combination of unique historical facts and the Village's continual analysis of fire protection demands and fire protection capabilities, Lansing has created an incredibly efficient, yet responsive Fire Department. As a consequence of this continual analysis between fire protection needs and capabilities, the Fire Department has operated exclusively on an 8-hour work schedule since it began employing full-time personnel in 1971. The superior efficiency and performance of the Fire Department is obvious from the record.

Compared to similarly sized comparable communities, the Fire

Department's budget is by far the smallest. Despite this relatively small budget, the Fire Department has the fastest response time among all the comparable communities and among the fastest in the entire Chicago metropolitan area. In addition, the Village also enjoys one of the most favorable ratings from the insurance industry. Finally, the Village of Lansing Fire Department has managed to produce these superior results while offering its full-time firefighters the best hourly rates and sick leave benefits among all the comparables. In light of these superior results, the Village asks one simple question -- why change?

H. Internal Comparability Strongly Favors the Status Quo.

Arbitrators have long recognized the significance of internal parity within a municipality's employee groups. See, Elk Grove Village and MAP (Goldstein, February 28, 1996). In view of the parity between the Village's two bargaining units, internal comparability should be given considerable weight in determining the reasonableness of the parties' final offers.

The Village's final offer obviously reflects the Village's uniform treatment of its bargaining units, while the Union's final offer does not. Instead, the Union is requesting that the long-standing parity between the two employee groups be broken. Yet, the Union has offered no explanation whatsoever for such an illogical break with the internal pattern. Accordingly, the Village's final offer should be selected.

I. **EVEN ASSUMING, ARGUENDO, THAT THE UNION COULD DEMONSTRATE A SUBSTANTIAL AND COMPELLING JUSTIFICATION FOR 16 HOUR SHIFTS, THE UNION HAS FAILED TO OFFER A QUID PRO QUO FOR ITS 16 HOUR SHIFT PROPOSAL.**

1. **Awarding the 16 Hour Shift Would Disturb The Balance of the Parties' Settlement Package.**

The parties settled a significant number of issues prior to submitting the 16-hour shift proposal for consideration. This settlement encompassed several key issues. The following graphic indicates whether the parties agreed to the Village's proposal or

the Union's proposal for each of these issues:

Union's Proposal Agreed To

Village's Proposal Agreed To

- | | |
|---|-----------------------------------|
| - Wage Increases (3.5% each year) | - Term of the Agreement (4 years) |
| - Retroactivity (full retroactivity) | - Overtime Recall Rate |
| - Rank Differential (10% and 10%) | - Drug Testing (.02 BAC level) |
| - Overtime Eligibility (any non-scheduled time) | |
| - Fair Share | |
| - Sick Leave/Number of Paid Days (365 days) | |

Compromise Issues:

- Sick Leave/Basis for Taking (Employees gained 2 paid sick days to tend to sick family members)

Finally, as to health insurance, the parties agreed to be bound by the terms of the contract settlement between the Village and police officers' union.

2. The Village has Already Bought, and Paid for, the full-time Personnel's Potential Health Insurance Increases.

In successfully negotiating what may result in the Department's first-ever employee contribution to health insurance costs, the Village conceded a wide range of costly issues that more than pay for the potential increase in employee insurance costs. In return for this potential increase in employee health care contributions, the Union and the full-time firefighters it represents:

- retained the highest hourly wage rates of any comparable;
- retained the highest overall compensation package among the comparables;
- retained its unmatched sick leave benefits;
- obtained fair share benefits;
- obtained full retroactivity;
- retained a very competitive rank differential;
- retained very competitive overtime eligibility terms;

and

- retained the highest paramedic stipend of any comparable.

3. Even Assuming, Arguendo, that the Fire Department's Full-time Personnel End Up Contributing 15% of the Difference Between the Cost of Single Coverage and the Cost of Dependent Coverage, That Contribution Amount Will Nonetheless Result in a Competitive External Ranking.

Finally, even assuming that the full-time personnel end up paying increased health insurance contributions, a contribution rate of 15% of the difference between the cost of single coverage and dependent coverage would place them under the average employee contribution among the comparables.

J. THE TIMING OF THE UNION'S 16 HOUR PROPOSAL IS INSTRUCTIVE.

Despite a prolonged negotiations period which included a minimum of fifteen bargaining sessions for over 18 months, the Union did not propose or even intimate an interest in 16-hour shifts until at or near (depending upon which witnesses' testimony is believed) the very first day of interest arbitration. In light of the Union's failure to propose 16-hour shifts until the proverbial "11th hour," one must seriously question the Union's claim of employee dissatisfaction with the Department's long-standing work schedule. In fact, during its 75 plus years in existence, the Fire Department had never received a request that the Department change to 16-hour shifts until the Union made such a proposal on June 24, 1998.

* * *

In summary, based on the foregoing facts, authorities, and arguments, the Village respectfully submits that the Arbitrator accept the Village's final offer on the issue in dispute.

IV. DISCUSSION

There is no dispute that the long-standing, well-established practice at Lansing is to operate with firefighters working 8-hour shifts. Indeed, the evidence record indicates that in its 78-year history Lansing has never operated on a 16-hour schedule, although some personnel may occasionally work consecutive 8-hour shifts. Accordingly, the Union, as the moving party, has the burden to plead and prove that sufficient justification exists for an interest arbitrator to award a "breakthrough" item such as the Union's proposal in this case. See, City of DeKalb (Goldstein, June 9, 1988) (where the Arbitrator stated: "[i]nterest arbitration ... is designed to merely maintain the status quo and keep the parties in an equitable and fair relationship, according to the statutory criteria."); Village of Arlington Heights and IAFF (Briggs, January 29, 1991) ("Interest arbitration is artificial. It is a substitute for the real thing - a voluntary settlement between the parties themselves through the collective bargaining process. Thus, the primary function of an interest arbitrator is to approximate through the decisions what the parties would have agreed to had they been able to settle the issue themselves. It is therefore appropriate for an interest arbitrator to evaluate the traditional factors which affect the outcome of public sector labor negotiations and to shape the interest arbitration award accordingly. . . . It is important to recognize the nature of such a task. It is simply educated guess work, for two reasons. First, the interest arbitrator must essentially guess what the parties would have agreed to, subject to the traditional influences, market and otherwise. Second, the interest arbitrator must evaluate the influences themselves, most of which are extremely complex and ill-specified. . . . the party wishing to change the status quo must present compelling reasons to do so." (Emphasis added)); Will County and MAP, Chapter 123 (McAlpin, October, 1998) ("When one side wished to deviate from the status quo . . . the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship.").

Arbitrator Elliot Goldstein explained what the proponent of a

breakthrough change must show as follows:

In order to obtain a change in interest arbitration, the party seeking the change must at minimum prove:

- (1) that the old system or procedure has not worked as anticipated when originally agreed to;
- (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union); and
- (3) that the party seeking the change must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process.

The Union has advanced numerous arguments supporting its position for the 16-hour shift proposal, many of which are in fact supported by the evidence record. Employee morale, external comparability, employee efficiency and fatigue (as opposed to operational efficiency), and the fact that some employees occasionally work consecutive shifts are noteworthy considerations supporting the Union's case. I am also convinced that many of the concerns cited by Chief Schauer (lack of public support & taxpayer morale, decreased availability for emergency response calls) are indeed exaggerated (as argued by the Union). Moreover, his apparent indifference to the situation at South Holland ("I am not interested in what's going on in South Holland") is puzzling. It is not the preferred position of one who is concerned with interest-based bargaining.

There are, however, considerable factors that warrant maintaining the status quo at Lansing (i.e., maintaining two separate shifts covering the 6:00 a.m. to 10:00 p.m. time period, rather than one shift covering that period), at least at this time. My reasoning is as follows:

1. Efficiency of the Lansing Fire Department. I credit the Administration's argument that despite its relatively small budget, Lansing has managed to produce superior operational results while offering its full-time firefighters the best hourly rates and sick-leave benefits among all the comparables (more on this later).

2. Internal Comparability. Less compelling, but nevertheless of some note, is the fact that the police unit has the same 8-hour shift schedule as the firefighters, although admittedly internal comparability criteria are more important for economic comparisons than scheduling of employees, as reflected by the many arbitrators the Administration cites (Goldstein in Elk Grove Village; Nathan in Elk Grove Village) in its Brief at 28-29. Still, it is of note especially where the parties have a long-standing past practice (see infra at page 37).

3. Quid-Pro Quo Considerations. The Administration, in pressing its position for the status quo, has advanced the argument that "the Village conceded a wide range of costly issues that more than pay for the potential increase in employee insurance costs." (Brief for the Employer at 32). Overall, I agree. Lansing firefighters retain the highest wage rate (\$22.66) in the relevant bench-mark comparables. (See, Brief for the Employer at 33). Regardless of rank (firefighter, engineer or lieutenant), Lansing is second to none. Furthermore, as argued by the Administration, when paramedic stipends and the cost of health insurance are factored into the matrix, the hourly wage rate for Lansing's full-time personnel improves relative to the bench-mark comparables. (Id. at 35-36). I also note that when percentages are examined, Lansing's increase of 3.5% per year for the life of the collective bargaining agreement (in this case, four years) is more than competitive relative to the bench-mark comparables. (Id. at 39).

Also supporting the Employer's proposal is this: Lansing's full-time personnel retain sick-leave benefits that are tops in the field. Specifically, Lansing's full-time personnel are eligible to receive 365 paid sick leave. Lansing is what the statisticians term "an outlier," meaning that Lansing is well "off the curve." Under the parties' settlement, the full-time personnel will retain

this benefit. (Id. at 42).

One can also cite the rank differential (10%) which places Lansing near or at the top of the bench-mark group (Id. at 44-45), full retroactivity with respect to pay increases, and overtime eligibility language that makes firefighters eligible for overtime pay for any non-scheduled hours, regardless of whether they were sick, on vacation, on paid leave during that period. The costs to the Administration is significant.

What favors the Union is the relevant portions of the Village's recent agreement with the FOP-represented police officers. In light of the agreed-to health insurance provision (Section 20.2, Cost) the Union, consistent with external bench-mark criteria, will now contribute a portion of costs. Specifically, effective 1/1/99, employees would pay 15% of the monthly premium for the dependent portion of family coverage, up to a maximum of \$50.31 prior to calculating the tax savings impact of the 125 plan. Effective, 1/1/00, employees would pay 20% of the monthly premium for the dependent portion of family coverage, up to a maximum of \$71.78 prior to calculating the tax savings impact of the 125 plan. The projected total cost (\$578.47) will result in an employer contribution of 528.16, and an employee contribution of approximately \$36.00 (See, Comparable Jurisdictions-Health Insurance: Percentage & Monthly Amounts {aid by Employer Coverage}). This, indeed, represents a breakthrough and should accordingly be considered in any award. However, what tips the balance in favor of the Administration are the following two factors:

4. Overtime Cost Considerations. The Administration asserts that by moving from 8-hour shifts to 16-hour shifts, the cost of filling open shifts will double. It argued that rather than only having to pay an employee for 8 hours of overtime to cover an open shift, the Fire Department will have to pay an employee for 16 hours of overtime to cover an open shift. Accordingly, with an average overtime wage rate of \$35.69, the cost of filling an open shift under the Union's proposed 16-hour schedule increases from \$285.48 to \$570.96.

While the exact impact of the Union's 16-hour shift proposal

is unknown, the overtime consideration cited by management is valid and overall supports the Administration's case for maintaining the status quo.

5. Historical Considerations at Lansing. Finally, and in this case most important, is this: Apparently for over three-quarters of a century the shift schedule at Lansing has never been other than the status quo 8-hour shifts. By any definition, a "past practice" and "longevity" criterion favors the Administration. Despite the long history of the 8-hour shift, I am not convinced that the parties ever sat down and considered all the variables that affect a change to a 16-hour shift schedule (two days one week, three the next week) as proposed by the Union. What apparently took place was that the Union, convinced that the Administration would never agree to a 24/48 proposal (the industry standard), substituted a 16-hour shift request. Just when and how this took place is subject to debate. There is little indication that parties ever considered the Union's proposal in depth and on its own merits (perhaps because of the Employer's view that any change from the status quo would negatively impact the supplemental programs at Lansing). As the parties know, labor arbitrators are not like circuit riders dispensing their own brand of industrial justice when the need suits them. Similar to the weight of opinion on awarding "breakthrough" items, under this specific evidence record I believe the absence of any meaningful discussion at the early stages of bargaining preclude an award contrary to a 75-year plus practice. The better course is to step back and allow the parties to bargain the matter during the next round of negotiations with due consideration for the interests of either side.

For the above reasons, applying the statutory criteria warrants the following award:

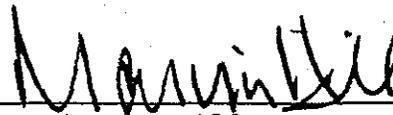
V. AWARD

The position of the Administration (status quo) on the Union's proposed 16-hour shift schedule is awarded for the term of the agreement.

In addition to the settlements already agreed to by the parties (as outlined in Section D, at pages 5-7 of this award), and as stipulated to by the parties, the Firefighters and Village will incorporate the settlement reached by the police unit (FOP) and the Village regarding health insurance (Article XX, Agreement between Village of Lansing and Fraternal Order of Police Lodge 218, IFLC). The relevant portions of that settlement are outlined in Sections 20.1 (Coverage), 20.2 (Cost), 20.3 (Cost Containment) (discussed supra page 36), 20.4 (Terms of Policies to Govern), 20.5 (Right to Maintain Coverage While on Unpaid Leave on Layoff), 20.6 (Dental Insurance), 20.7 (Life Insurance), 20.8 (Killed in Line of Duty), and 20.9 (Section 125 Plan).

Jurisdiction is retained for 90 days in the event that there are any disagreements with respect to the terms of settlement outlined at pages 5-7 of this award or my replication of the Village - FOP health insurance settlement.

Dated this 8th day of February,
1999, DeKalb, Illinois.



Marvin F. Hill, Jr.,
Arbitrator