

01-17-97  
# 231

INTEREST ARBITRATION  
OPINION AND AWARD

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ILLINOIS LABOR  
RELATIONS BOARD

In the Matter of Interest Arbitration  
between  
VILLAGE OF BENSENVILLE  
and  
METROPOLITAN ALLIANCE OF  
POLICE, CHAPTER #165  
  
(Case No. S-MA-97-182)

Hearings Held

December 4, 1997  
January 16, 1998  
March 30, 1998

Bensenville Village Hall  
700 West Irving Park Road  
Bensenville, Illinois

Appearances

For the Union:

Thomas P. Polacek, Esq.  
Schenk, Duffy, et al.  
58 North Chicago Street  
Joliet, IL 60432-4439

Arbitrator

Steven Briggs

For the Village:

Robert C. Long, Esq.  
Seyfarth, Shaw, et al.  
55 East Monroe Street, Suite 4200  
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## BACKGROUND

The Village of Bensenville (the Village), located in the Illinois counties of DuPage and Cook, had a 1997 population of approximately 17,767. The City has 1,151 full-time employees, with those unionized being spread across five bargaining units (police, police sergeants, firefighters, fire lieutenants, and public works). The present dispute concerns the second collective bargaining agreement for the police bargaining unit, which consists of 33 sworn patrol officers represented by the Metropolitan Alliance of Police, Chapter #165 (the Union).

The parties' first collective bargaining agreement (1994-1997) expired on April 30, 1997. They had met in negotiations for a successor three-year (May 1, 1997 through April 30, 2000) agreement approximately four times by that date. The parties used the services of a mediator two or three times that summer. Unfortunately, the parties were not able to settle all of the issues voluntarily. Pursuant to the procedures set forth in Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1 et seq. (the Act), the remaining unresolved issues were brought before the undersigned Arbitrator for resolution.

Interest arbitration hearings were held on December 4, 1997, January 16, 1998 and March 30, 1998. At the hearings the parties were afforded full opportunity to present evidence and argument in support of their respective positions on the issues.<sup>1</sup> The hearings were transcribed. Since two of the issues (Telecommunicator Duties and No-Solicitation) were the subject of unfair labor practice charges pending before the Illinois State Labor Relations Board (the Board), the Arbitrator advised the parties to withhold their arguments on them until their status as mandatory or permissive subjects of bargaining was resolved in that forum. The parties agreed to do so, and to file supplemental briefs on one or both of those issues, should the Board find one or both to be mandatory. The parties' timely posthearing briefs on the remaining issues were exchanged through the Arbitrator on June 13, 1998.

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<sup>1</sup> The deposition of Ms. Cathy Toomey was taken on January 12, 1998.

## RELEVANT STATUTORY CRITERIA

Section 14 of the Act directs the Arbitrator to consider the following factors, as applicable:

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

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<sup>2</sup> 5 ILCS 315/14(h).

## THE ISSUES

The parties have jointly advanced the following issues to interest arbitration:

### Economic

- (1) Wages
- (2) Health Insurance (basis of employee premium contribution)
- (3) Health Insurance (percentage of employee premium contribution)
- (4) Annual Sick Leave Buyback
- (5) Sick Leave Buyback Upon Separation After Five Years Or Upon Retirement

### Non-Economic

- (6) Fair Share
- (7) No Solicitation<sup>3</sup>
- (8) Telecommunicator Duties<sup>4</sup>

## THE COMPARABLE JURISDICTIONS

### Village Position

The Village selected its comparables using the following criteria in serial order: (1) within ten miles of Bensenville; (2) population  $\pm$  50% of Bensenville's; (3) EAV or sales tax revenue  $\pm$  50% of Bensenville's; and (4) average family income or average home value  $\pm$  50% of Bensenville's. Using those criteria successively, the Village assembled the comparability pool displayed on the following page:

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<sup>3</sup> As discussed earlier in this report, this issue is pending before the Board.

<sup>4</sup> *Ibid.*

Bloomingtondale  
Brookfield  
Elmwood Park  
Franklin Park  
Glen Ellyn  
Melrose Park  
Norridge  
Northlake  
Rolling Meadows  
Roselle  
Schiller Park  
Villa Park  
Westchester  
Wood Dale

The Village notes that its suggested comparables are fairly evenly scattered in all directions from Bensenville, and are located in either DuPage or Cook County (with one, like Bensenville, located in both). The Village also characterizes the above list as being the result of a logical, consistent and reliable selection process.

In contrast, the Village asserts, the Union's approach to selecting its proposed comparable jurisdictions was not based upon well-accepted screening criteria. It argues that the Union most likely used wages as a screening criterion, thereby eliminating as a proposed comparable any jurisdiction which pays its police officers less than the negotiated police officer wage rate in Bensenville.

#### Union Position

The Union believes that its proposed comparable jurisdictions were selected reasonably. As explained by Patrol Officer Kevin Babor, it initially sent a survey to approximately 60-70 communities seeking comparability data. Babor followed up with telephone calls to the respondents. He used the DuPage County Police Chiefs Survey as well, and he amassed collective bargaining agreements for the municipalities reviewed. Babor also used a standard map to measure their respective distances from Bensenville. He eliminated some jurisdictions when he was unable to gather sufficient data about them.

In selecting from among the initial large grouping the Union considered population (generally,  $\pm$  50% of Bensenville), distance from Bensenville, total employees, sales tax revenue, number of patrol officers, and equalized assessed

valuation. It did not use specific cut-off values, and made no directed effort to select communities in a certain county or in any particular direction from Bensenville.

The Union's proposed comparable municipalities are listed below:

Addison  
Bloomingdale  
Carol Stream  
Darien  
Elk Grove Village  
Elmhurst  
Glendale Heights  
Rolling Meadows  
St. Charles  
Villa Park  
Westmont  
Wood Dale  
Woodridge

### Discussion

The Village followed a conventional path toward selection of its proposed comparable communities. It first confined the scope of inquiry to those jurisdictions within a reasonable radius of Bensenville.<sup>5</sup> Next it excluded cities whose populations are at least  $\pm 50\%$  of Bensenville's. That selection criterion is also reasonable. The Village then looked at both EAV and sales tax revenue simultaneously. Using a  $\pm 50\%$  cutoff once again, it eliminated jurisdictions wherein both the EAV and sales tax revenue fell outside that range. Lastly, the Village considered average home value and average family income. If a jurisdiction did not fall within  $\pm 50\%$  of the Bensenville's figures on those dimensions, it was eliminated. The result of the Village's ordered selection of comparables is a scatter of jurisdictions emanating from Bensenville toward all four points of the compass. They fall within Cook and/or DuPage counties. The Arbitrator has concluded that the serial, multiple hurdles approach followed by the

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<sup>5</sup> While the Village used a 10-mile radius, there are many others which fall within the bounds of reasonableness. The assumption made by the undersigned is that there is a reasonable distance beyond which people will not commute to a job. The radius chosen for identifying comparable communities should not go beyond that distance, which may vary depending upon population density, traffic intensity, the availability of public transportation, etc. It should also not be restrictively short either, as doing so would artificially exclude many jurisdictions which would otherwise be comparable. In other words, a comparability grouping should fall within the local labor market in which the focal jurisdiction competes for the attraction and retention of employees.

Village in selecting its comparables was both reasonable and sufficiently described.

In contrast, the Union's explanation of the way in which it selected proposed comparable jurisdictions was ill-specified. According to Officer Kevin Babor, the Union sent questionnaires to about 60-70 municipalities surrounding Bensenville and then, based upon the responses received, structured its proposed comparability pool. Babor followed up with telephone calls, and he consulted the DuPage County Police Chiefs Survey as well. According to Babor, several communities were eliminated simply because the Union was unable to collect sufficient data about them. That group included communities which did not return the Union's survey. Babor also confirmed that he used no specific cutoff for the various criteria he employed (population, distance from Bensenville, sales tax revenue, number of patrol officers, and EAV), and that he included or excluded various jurisdictions based upon an overall evaluation of the data. As Babor explained it, a variety of information led the Union to include or exclude certain jurisdictions, and it varied by jurisdiction. The validity of the Union's proposed comparability grouping is also weakened by Babor's inability to explain why numerous jurisdictions were excluded.<sup>6</sup> On balance, it seems to the Arbitrator that the Union's approach to building a comparables pool was hampered by missing data, inconsistency, and what appears overall to have been a rather undisciplined methodology.

Another factor which calls into question the Union's method for identifying comparable jurisdictions is reflected in the characteristics of those jurisdictions themselves. Six of the thirteen have populations more than 50% greater than Bensenville's. None of them are east of Bensenville, and only one is wholly within Cook County. Babor's explanation that he did not receive completed surveys from Cook County jurisdictions (which lie generally east of Bensenville) was not persuasive. And finally, all of the Union's proposed comparable jurisdictions pay their patrol officers top step rates higher than that proposed by the Union in these proceedings. While that statistic may be pure coincidence, the Union's somewhat ill-specified method of identifying its comparables calls such a coincidence into question.

On the basis of the foregoing analysis, the Arbitrator rejects the Union's proposed comparability grouping. The Village's proposed comparables pool stems from a far more acceptable methodology, and seems to capture more accurately the essence of the local labor market in which Bensenville competes for the attraction and retention of qualified patrol officers. For those reasons, and in view of the fact that the parties do not seem to have relied upon any particular jurisdictions for comparison historically, the Village's proposed comparability grouping is hereby adopted.

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<sup>6</sup> Arlington Heights, Buffalo Grove, Des Plaines, Hoffman Estates, Lombard, Mount Prospect, Palatine, Roselle, West Chicago, and Wheeling.

## WAGES

### Village Position

The Village proposes a wage increase of 3% for each of the three years covered by the collective bargaining agreement. It proposes no change to the existing step schedule. The Village notes that Bensenville police sergeants recently agreed to identical increases, as have the Bensenville firefighters. And, the Village points out, the last two years of its contract with AFSCME on behalf of public works employees includes across-the-board salary increases of 3% effective May 1, 1997 and 3% effective May 1, 1998. The Village cites its unrepresented employees also, underscoring the fact that for the last three years their May 1 salary increases have been 3%. Thus, the Village argues, the internal comparables strongly support acceptance of its final offer on this issue.

The Village also believes that CPI data support acceptance of its final salary offer. It notes that CPI figures have been unusually low in the recent past, and that all of them, regardless of which Index is used, are below both parties' offers. And, the Village asserts, Bensenville patrol officers' salaries have risen 62% over the last eleven years, while the CPI has risen only between 45% and 48%, depending on the specific CPI Index consulted.

With regard to external comparables, Bensenville police officers are currently 5th out of the fifteen-member (including Bensenville) external comparables pool in terms of top base salary. While under the Village's final offer they would slip to 7th for the salary year effective May 1, 1997, the Village notes that the dollar differences across the mid-range jurisdictions are quite small.

The Village also points out that Bensenville firefighters rank 12th across the comparables on the basis of top salary, and that its public works employees rank 7th. Thus, the Village asserts, Bensenville patrol officers have a relatively weak claim for breaking the uniform pattern of negotiated wage increases (i.e., 3%) across the internal comparables.

In addition, the Village argues that its demonstrated ease in attracting and retaining qualified applicants strongly supports adoption of its final offer. It notes that since 1990 no Bensenville police officer has voluntarily left the Village's employ for another police officer position.

### Union Position

The Union has proposed a salary increase of 4% for each of the three years to be covered by the successor agreement. Its final offer does not contemplate a change in the step structure. The Union believes its final offer is justified by the external comparables, and argues that considerable "make up" is appropriate if Bensenville police officers are to be paid at appropriately competitive levels. For example, the Union notes, the average increase across the four communities included in both parties' proposed comparables (Bloomingdale, Rolling Meadows, Villa Park and Wood Dale) was 4.25% for the relevant period. The Union highlights as well the Village's own Exhibit 38, which indicates that the average wage across the Village's comparables effective May 1, 1997, May 1, 1998 and May 1, 1999 was 3.93%, 3.79%, and 3.69, respectively.

With regard to the internal comparables, the Union cites a larger-than-normal wage gap between Bensenville police officers and sergeants. That gap is not justified, the Union argues, because many senior patrol officers in Bensenville have been responsible for performing shift supervisor, Field Training Officer, and other high-level duties. They have not received additional compensation for doing so.

The Union also asserts that adoption of its final wage offer will be more likely to preserve the historical parity between Bensenville police officers and firefighters than will adoption of the Village's offer. While the firefighters agreed to accept a 3% annual increase for the same three years as those to be covered by the police contract at issue here, the Union believes that the Village offered them extra economic incentives to do so. It notes, for example, that they received an increase in Kelly Days from 4.35 to 6.78, and that the Village acknowledged the firefighters would not have agreed to 3% wage increases had they not received the additional Kelly days.

The Union argues as well that the applicant/retention data presented by the Village are incomplete, because it did not provide like information for any other communities. With regard to the Consumer Price Index, the Union notes that police officers in Bensenville and surrounding communities have consistently received wage increases significantly above it. Thus, the Union asserts, the CPI has had no real impact on the parties' positions at the bargaining table.

### Discussion

As shown in Table 1 on the following page, both parties' offers seem generally reasonable when viewed against the backdrop of comparable jurisdictions:

Table 1

TOP BASE SALARY AND PERCENT INCREASES (x) FOR  
 PATROL OFFICERS IN COMPARABLE JURISDICTIONS\*

<u>Jurisdiction</u>	<u>5/1/96</u>	<u>5/1/97</u>	<u>5/1/98</u>	<u>5/1/99</u>
Bensenville	45787			
Village Offer	n/a	47161 (3)	48576 (3)	50033 (3)
Union Offer	n/a	47618 (4)	49523 (4)	51504 (4)
Bloomingtondale	45697	47068 (3)	n/a	n/a
Brookfield	43443	47101 (8.4)	n/a	n/a
Elmwood Park	42714	44209 (3.5)	45867 (3.7)	47702 (4)
Franklin Park	44990	46565 (3.5)	n/a	n/a
Glen Ellyn	45455	47118 (3.6)	n/a	n/a
Melrose Park**	45008	46808 (4)	48680 (4)	50627 (4)
Norridge	46104	47488 (3)	n/a	n/a
Northlake	45512	46877 (3)	n/a	n/a
Rolling Meadows	47069	48918 (3.9)	51398 (5)	53469 (4)
Roselle	46198	47584 (3)	49012 (3)	n/a
Schiller Park	43490	45243 (4)	47066 (4)	n/a
Villa Park	48212	49899 (3.5)	51895 (4)	53971 (4)
Westchester	45739	47340 (3.5)	n/a	n/a
Wood Dale	45344	47800 (5.4)	n/a	n/a
<b>Average (excl. Bensenville)</b>	<b>45355</b>	<b>47144 (3.9)</b>	<b>48986 (3.9)</b>	<b>51442 (4)</b>

\* Top step used for analysis because the majority of Bensenville police officers are currently at that level.

\*\* = excludes longevity steps built into pay system

Source = collective bargaining agreements

While both parties' positions seem generally reasonable at a glance, closer inspection of the data strongly favors adoption of the Union's final offer on wages. First, the Village's final offer would provide a percentage pay increase significantly lower than the average attained across the comparables for May 1, 1997, May 1, 1998, and May 1, 1999. It is true that only a small amount of information was available for the latter two years, but the 1997 data clearly and robustly support the Union's position. Moreover, the Village's final offer would move Bensenville top step police officers from a ranking of fifth in 1996 to 7th in 1997. The Arbitrator assumes that had the parties not resorted to interest arbitration they would have negotiated wage increases which maintained Bensenville police officers at their historical level vis-a-vis comparable jurisdictions. The Village's final offer in these proceedings falls short of that objective.

The internal comparables present a mixed picture. On the surface, they tend to support the Village's position on the wage issue. For example, the firefighters' unit agreed voluntarily to a 3% increase for each of the three years at issue here. The police sergeants' unit agreed to an identical increase for those years. Comparable data for the fire lieutenants' unit are not available. And both the AFSCME unit and non-represented employee group received 3% increases effective May 1, 1997 and May 1, 1998. Generally speaking, the most heavily relied upon internal comparable for a rank-and-file police unit is the firefighter unit. In the present case, while that employee group agreed voluntarily to the same increase proposed by the Village for its patrol officers, it is important to recognize that the firefighter unit received in addition a valuable increase in the number of Kelly Days (from 4.35 to 6.78). With regard to that issue, the parties to these proceedings stipulated that if a Bensenville firefighter had been called to testify, he or she would have confirmed that (1) the firefighters' unit would not have agreed to a 3% wage increase without the Kelly Day addition; and (2) firefighters regard each Kelly Day as the functional equivalent of a one percent salary increase. The parties also stipulated that (1) the Village did not value Kelly Days in the same fashion; and (2) the Village would not have reached the tentative agreements without a significant breakthrough in the physical fitness issue. Those stipulations are wrought with ambiguity, making it extremely difficult to weigh the many variables incorporated into them. Moreover, one cannot determine with any precision the respective values placed by the firefighters and the Village on their negotiated salary increase vs. the Kelly Days vs. the physical fitness program. Accordingly, the Arbitrator places less weight on the internal comparability factor than he would were there no conflicting claims by the parties about the significance of the trade-offs made during the firefighter negotiations.

The cost-of-living factor is not very significant in this case, as the parties have historically negotiated wage increase far in excess of any relevant CPI increases. Indeed, it is abundantly clear from the average negotiated increases across the

external comparables that those parties did not link their wage agreements to the CPI either. In view of those local labor market characteristics, the Arbitrator finds no reason to make the cost-of-living factor controlling in these proceedings.

Finally, the Arbitrator recognizes that the Village of Bensenville has had no trouble attracting qualified patrol officer applicants and retaining them once hired. Were that not the case, the evidence for adoption of the Union's final salary offer would be even stronger. But the converse is not necessarily true. That is, Bensenville's success in attracting and retaining police officers has not convinced the Arbitrator that the Union's final offer should be rejected. Rather, that success suggests that the Village has historically offered an externally competitive employment package. Adoption of the Union's final offer here will continue that practice.

#### HEALTH INSURANCE

The parties agreed to treat the two elements of their dispute regarding health insurance as separate issues. Given that agreement, the Arbitrator will rule separately on each, but will discuss them together since they are related.

##### Basis of Employee Contributions

Union Position. The Union's final offer on this issue would maintain the status quo of allowing employees to contribute to health insurance premium costs based upon the cost of the least expensive insurance plan. Currently, police officers contribute 15% of the lowest premium plan available at their coverage level (i.e., single or family). Prior to their agreement to that contribution arrangement, the Union notes, Bensenville police officers paid nothing toward the cost of their health insurance. They only agreed to begin making contributions because the Village specified such contributions would be based on the lowest cost plan. Union witness Spizzirri testified that without such a specification the Union would not have agreed to contribute toward the cost of health insurance.

The Union also points out that non-represented Village employees enjoy the same benefit the Village proposes to remove in these proceedings. It argues that the Village has shown no compelling need to make such a drastic change in the negotiated police officer agreement.

Village Position. The Village's final offer would alter the status quo by requiring that police officers' contribution to health insurance premiums be based upon the plan they actually select. The Village argues that since all of its other bargaining unit employees contribute on that basis, police officers should as well. The Village notes in addition that its final offer would not become effective for police officers until February, 1999. Thus, the Village states, police officers would have ample time to decide upon potential HMO providers or PPO's under the newly-implemented premium base. And the Village maintains that it is important to tie police officers' interests with the Village's interests -- an objective that would be accomplished by linking their health insurance costs to the Village's health insurance costs.

The Village also points to the external comparables in support of its final offer. It underscores the fact that all but two of them (Norridge and Northlake) base employee health insurance contributions on the plan they choose to use.

Discussion. The current basis for employee health insurance premium contributions was negotiated voluntarily by the parties themselves. The basis for that agreement is not absolutely clear from the record before me, but it is reasonable to assume that it was the result of some sort of compromise. According to Union witness Spizzirri, in 1991 the then non-represented patrol officers agreed to the current arrangement, which was the first requiring them to make any contribution at all toward health insurance premiums. The Village and MAP carried the arrangement over into their initial (1994-1997) collective bargaining agreement. Thus, Bensenville patrol officers have had the benefit of that negotiated arrangement for approximately seven years. The Arbitrator is reluctant to alter that status quo in these proceedings, particularly since the Village and MAP as late as 1994 saw fit to maintain it.

The external comparables contain mixed evidence on this issue. On the one hand, none of them use the least cost plan as the basis for employee premium contributions. On the other, however, police officers in about half of them pay nothing at all toward the cost of single health insurance coverage. And for family coverage, police officers in eight of them either pay nothing or pay less than Bensenville Patrol Officers would pay under the Union's final offer. The Arbitrator therefore finds no compelling reason from review of the external comparables to change the status quo.

The internal comparables lend mild support to adoption of the Village's offer. But significantly, non-represented employees in the Village use as the basis of their health insurance premiums the lowest cost plan --- not the plan they happen to select. If there is such compelling need to change the status quo for police officers, one could logically conclude that the Village would already have done so for its

non-represented employees. The fact that it has not detracts from the persuasiveness of the Village's final offer.

On balance, the Arbitrator finds that the record does not support adoption of the Village's final offer on this issue. The status quo was maintained by the parties in free collective bargaining as late as 1994. Given the data across the external and internal comparables, the Arbitrator is not convinced there is a compelling need to change that status quo through the interest arbitration process.

#### Percentage of Employee Contributions

Union Position. The Union's final offer seeks to maintain the status quo on this issue as well. Police officers currently pay 15% of the health insurance premium cost, as do all other Village employees, and the Union does not believe it is appropriate to change that contribution rate. The Union notes also that the Village's stated reason to increase that percentage should not be persuasive. Essentially, the Union argues, the Village wants Bensenville Police Officers to be the first to experience such an increase so that other employee groups can be coerced into accepting it also.

Village Position. The Village's final offer on this issue is quoted below:

The Village will pay eighty-five (85%) percent of the cost of the premiums for full-time employees' individual health and hospitalization insurance. Effective 1/1/99, the Village will pay eighty (80%) percent of the cost of the premiums for full-time employees' individual health and hospitalization insurance provided one other employee group (either the unit currently represented by AFSCME, Council 31; the police sergeants; fire-fighters; fire-lieutenants; or unrepresented employees) is at that level of contribution by 1/1/99. For dependent group health and hospitalization insurance, the Village will pay eighty-five (85%) percent of the cost of premiums. Effective 1/1/99, the Village will pay eighty (80%) percent of the cost of premiums for full-time employees' dependent group health and hospitalization insurance provided one other employee group (either the unit currently represented by AFSCME, Council 31; the police sergeants; fire-fighters; fire-lieutenants; or unrepresented employees) is at that level of contribution by 1/1/99. The aforementioned contribution is based on the lowest cost health option offered by the Village.

The Village relies on the "economic reality of spiraling health insurance costs" to support adoption of its final offer. It notes that its own health insurance costs have risen approximately 22.7% since 1994, a trend which shows no sign of abating. Moreover, the Village asserts, it will be seeking the same increased contributions from its other employee groups that it proposes in these proceedings. The Village also cites the fact that its final offer protects police officers from being the only group paying the 20% contribution. That is, it prohibits such a contribution increase unless another employee group is contributing at that level by January 1, 1999.

Discussion. The Village has the burden of identifying compelling need for increasing police officers' contributions toward the cost of their health insurance. Despite the fact that its health insurance costs are on the rise, the Arbitrator finds little else in the record to justify adoption of the Village's final offer on this issue. First, only two of the external comparables (Franklin Park and Roselle) require their police officers to contribute at a 20% rate.<sup>7</sup> Second, Bensenville police officers already pay more in absolute dollars for single health insurance coverage than do their counterparts in at least nine of the fourteen comparable jurisdictions. They pay more for dependent coverage than police officers in at least eight of them. Thus, consideration of the external comparable jurisdictions favors adoption of the Union's final offer to retain the status quo for Bensenville police officers.

The internal comparables strongly support the Union's offer. Not one employee group currently contributes at a 20% rate. Rather, all of them are contributing 15% toward the cost of health insurance. In effect, the Village is trying to break its own negotiated internal comparability pattern through the interest arbitration process. It asks its police officers to be the very first union-represented group to do so. Were its final offer adopted in these proceedings, the Village could simply and unilaterally dictate to its non-represented employees that their contribution rate will be increased to 20%. Under its offer it could then increase the police officers' contribution rate as well. Such a lockstep arrangement would have little if anything to do with competitive influences across the local labor market. In addition, it is highly unlikely that the Union ever be willing to break the internal pattern at the bargaining table voluntarily. For the foregoing reasons, the Arbitrator is not willing to change the negotiated status quo by selecting the Village's final offer.

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<sup>7</sup> Police officers in Roselle pay nothing toward the cost of single coverage.

## SICK LEAVE BUYBACK

Like their approach to the health insurance question, the parties have both separated their dispute over sick leave buyback into two issues for the purposes of these proceedings. The Arbitrator will honor that arrangement and decide them separately. Given the closely related nature of the two issues, however, they will be discussed together.

The current negotiated sick leave buy back provisions are quoted here:

### **Section 4.8 Sick Leave Buyback**

An employee cannot accumulate more than sixty (60) sick leave days. An employee who has accumulated more than thirty-six (36) sick leave days may be paid, upon written request, for any sick leave days in excess of thirty-six (36), at a rate equal to one-half of the employee's regular daily wage rate at the time the request is made. Requested payment for accumulated sick leave days shall be made in the first pay period in the December following the request.

### **Section 4.9 Sick Leave and Retirement**

Upon retirement or resignation after five (5) years of employment, an employee shall receive full pay for the first thirty-six (36) days of accumulated sick leave, and one-half pay for any additional accumulated sick leave days, up to a maximum of sixty (60) sick leave days.

Union Position. The Union proposes to maintain the status quo on the sick leave buyback issues. It argues that since the Village is attempting to change that status quo, the Village must provide compelling reasons to do so.

The Union points primarily to the internal comparables in support of its final offer. It notes that all other Village employees are entitled to annual sick leave buyback at the rate of 50%, and that adoption of the Village's final offer would decrease that rate to 25% for police officers. The Union sees no justification for doing so, and argues that its final offer on annual sick leave buyback should be adopted.

Village Position. The Village's final offer on these issues is quoted on the following page:

#### **Section 4.8 Sick Leave Buy Back**

An employee cannot accumulate more than sixty (60) sick leave days. For employees hired before January 1, 1998, an employee who has accumulated more than thirty-six (36) leave days may be paid, upon written request, for any sick leave days in excess of thirty-six (36), at a rate equal to one-half of the employee's regular daily wage rate at the time the request is made. Effective December 1998 (sic)<sup>8</sup> for employees hired after January 1, 1998 and effective January 1, 2003 for all employees, the rate of payment shall equal twenty-five (25%) percent of the employee's regular daily wage rate at the time the request is made. Requested payment for accumulated sick leave days shall be made in the first pay period in the December following receipt.

#### **Section 4.9 Sick Leave and Retirement**

Upon retirement or resignation after five (5) years of employment, an employee shall receive one-half pay for the first thirty-six (36) days of accumulated sick leave, and full pay for any additional accumulated sick leave days, up to a maximum of sixty (60) sick leave days.

The Village notes that only four of the comparable jurisdictions (Franklin Park, Rolling Meadows, Roselle, and Wood Dale) offer both of the forms of sick leave buyback currently enjoyed by its police officers. It also cites the fact that three of those four communities do not offer sick leave buyback benefits upon retirement unless the retiring officer has completed twenty years of service. A Bensenville police officer, the Village observes, can receive them upon separation after having completed only five years' service. Thus, the Village argues, Bensenville police officers receive sick leave buy back benefits that are overly rich, and they should be scaled back.

The Village believes as well that the current buyback at retirement or separation formula is backwards, since it encourages its most experienced police officers to use accumulated sick leave as they near resignation or retirement. Under the current plan, the Village observes, police officers are paid 100% for the first 36 days of accumulated sick leave and 50% for days 37 through 60. Thus, an officer approaching retirement with 60 accumulated days would "lose" twelve days' pay if he or she failed to use days 37 through 60 before leaving the Village's employ. Under its final offer, the Village argues, police officers approaching retirement or separation will be motivated to bank sick leave days to the maximum level. In

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<sup>8</sup> No exact date was specified in the Arbitrator's copy of the Village's final offer.

other words, it eliminates the current penalty to an officer who does not cash in accumulated sick leave as they near the sunset of their careers.

The Village also points to the fact that only seven of the fourteen external comparables have annual sick leave buyback provisions in their police collective bargaining agreements.<sup>9</sup> It argues that even under its offer, Bensenville police officers would continue to enjoy one of the best, if not the best, annual buyback benefits. And in acknowledgement of the slight decrease in benefits its final offer includes, the Village underscores the fact that its delayed effective date (January 1, 2003) for incumbent employees will allow them to cash in qualified accumulated sick leave at the current 50% rate until that time.

The Village notes that it has accrued a massive sick leave buyback liability totaling nearly 10% of its entire annual budget. While its final offer places downward pressure on that liability, the Village believes it does so at little cost to retiring employees. It cites the example of an officer retiring under the current system with 60 days accumulated leave, noting he or she would receive the equivalent of 48 days' pay. Under its final offer, the Village notes, that officer would receive the equivalent of 42 days' pay -- only 12.5% less.

Discussion. The Village is correct in its assertion that Bensenville police officers enjoy fairly liberal sick leave buy back benefits as compared to their external counterparts. It is also important to recognize, however, that they got to that point through free collective bargaining. The current sick leave buy back provisions were adopted by the parties voluntarily at the bargaining table. Presumably, when they mutually endorsed those arrangements they had full knowledge of the terms and conditions of employment experienced by other police officers in the local labor market. Armed with that knowledge, and in the give-and-take of the collective bargaining process, the Village and the Union set the status quo in Bensenville. The Arbitrator is not willing to change that status quo in these proceedings unless the party wishing to do so (i.e., the Village) presents compelling justification for it. The cost to the Village of the current sick leave buy back system falls short of providing such justification.

Police officers in Bensenville enjoy robust sick leave buyback benefits for a reason. They bargained for them. One can reasonably infer from a knowledge of the collective bargaining process that they gave up something to get them. If the Village wishes to move away from the economic obligation it negotiated, and absent a demonstrated compelling need to do so immediately, it should do so at the bargaining table. The primary function of interest arbitration is to generate an outcome the parties would likely have reached on their own during the

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<sup>9</sup> The Village argued in its posthearing brief at p. 55 that there were six; actually, there are seven (Brookfield, Franklin Park, Rolling Meadows, Roselle, Schiller Park, Westchester, and Wood Dale).

negotiations process. Without some quid pro quo from the Village, it is highly unlikely that the Union would agree to the significant reductions embodied in the Village's final offer on these two issues.

Moreover, the internal comparables provide overwhelming support for adoption of the Union's final offer on the sick leave buyback questions. All Bensenville employees are currently paid at the 50% rate for annual sick leave buyback. All of them can receive it for the 37th through 60th days of accumulation.<sup>10</sup> Granting the Village's final offer on the annual sick leave buyback issue would force its police officers to be the first to break that pattern --- one that generally resulted from free collective bargaining between the Village and its unions.<sup>11</sup> If the Village wants to alter that pattern, the proper place to do so is at the bargaining table. The Arbitrator does not believe it is appropriate, absent compelling circumstances, to break a uniform internal benefit pattern by shattering it for just one employee group through the interest arbitration process.

For all of the foregoing reasons, the Arbitrator favors adoption of the Union's final offers on the annual sick leave buyback and sick leave buyback upon separation issues.

## FAIR SHARE

### Union Position

The Union proposes the inclusion of the following new provision into the collective bargaining agreement:

#### **Section 16.1 Dues Checkoff**

The Employer hereby agrees to deduct monthly from the pay of each Police Officer covered by this Agreement an amount of money in payment of dues to the Union. Said deduction shall be made from the compensation of each and every Police Officer covered under this Agreement, the Employer further agrees to transmit said deductions to the Union on a monthly basis. The Union agrees to submit to the Employer, an itemization of a dollar amount to be deducted from the pay of each Police Officer and the address to which the names are to be forwarded, said information shall be up-dated as necessary.

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<sup>10</sup> Firefighters and fire lieutenants are eligible for annual sick leave buyback for the 19th through 30th days, but their work days are defined as 24 hours.

<sup>11</sup> The one possible exception is the non-represented employee group.

## Section 16.2 Fair Share

During the term of this Agreement, Employees who are not members of the Metropolitan Alliance of Police shall, commencing sixty (60) days after their employment or sixty (60) days after the effective date of this Agreement, whichever is later, pay a fair share fee to the Metropolitan Alliance of Police for collective bargaining and contract administration services rendered by the Metropolitan Alliance of Police as the exclusive representative of the employees covered by said Agreement, provided fair share fee shall not exceed the dues attributable to being a member of the Metropolitan Alliance of Police. Such fair share fees shall be deducted by the City from the earnings of non-members and remitted to the Metropolitan Alliance of Police. The Metropolitan Alliance of Police shall periodically submit to the City a list of the members covered by this Agreement who are not members of the Metropolitan Alliance of Police and an affidavit which specifies the amount of the fair share fee. The amount of the fair share fee shall not include any contributions related to the election or support of any candidate for political office or for any member-only benefit. The foregoing provision shall not apply to any employee employed prior to the execution of this Agreement who is not a member of the Metropolitan Alliance of Police, provided any such employee must pay, pursuant to the deduction provisions of this Section, either the fair share fee or any amount equal to such Fair Share fee to a charitable organization selected in accordance with the last paragraph of this Section. The fair share fee shall apply to employees who are members on the effective date of this Agreement and who thereafter become non-members.

The Metropolitan Alliance of Police agrees to assume full responsibility to insure full compliance with the requirements laid down by the United States Supreme Court in Chicago Teachers Union v. Hudson, 106 U.S. 1066 (1986), with respect to the constitutional rights of fair share fee payors. Accordingly, the Metropolitan Alliance of Police agrees to do the following:

1. Give timely notice to fair share fee payors of the amount of the fee and an explanation of the basis for the fee, including the major categories of expenses, as well as verification of same by an independent auditor.
2. Advise fair share payors of an expeditious and impartial decision-making process whereby fair share fee payors can

object to the amount of the fair share fee.

3. Place the amount reasonably in dispute into an escrow account pending resolution of any objections raised by fair share fee payors to the amount of the fair share fee.

It is specifically agreed that any dispute concerning the amount of the fair share fee and/or the responsibilities of the Metropolitan Alliance of Police with respect to fair share fee payors as set forth above shall not be subject to the grievance and arbitration procedure set forth in this Agreement.

Non-members who object to this fair share fee based upon bona fide religious tenets or teachings shall pay an amount equal to such fair share fee to a non-religious charitable organization mutually agreed upon by the employee and the Metropolitan Alliance of Police. If the affected non-member and the Metropolitan Alliance of Police are unable to reach agreement on the organization, the organization shall be selected by the affected non-member from an approved list of charitable organizations established by the Illinois State Labor Relations Board, and the payment shall be made to said organization.

### **Section 16.3 Indemnification**

The Union shall indemnify and save harmless the City and its officers, agents and employees against any and all claims, demands, suits or other forms of liability, monetary or otherwise and for all reasonable legal cost that may arise out of or by reason of any action taken or not taken by the City, its officers, agents and employees in the course of for the purpose of (sic) complying with the provisions of this Article. If an improper deduction is made and transmitted to the Union, the Union shall refund any such amount directly to the involved Police Officer with notification to the City.

The Union acknowledges that during negotiations for their first contract, which was the immediate predecessor to the one at issue here, it did not discuss the fair share issue with the Village. According to Union witness Spizzirri, there was no indication from any of the bargaining unit members at that time that they would not join the Union. It was only after the initial contract was settled that the Union became aware certain officers did not intend to become dues-paying members. Thus, the Union argues, there has been a substantial change in circumstances since the first contract was negotiated.

The Union also notes that the majority of police contracts include fair share provisions, and that adoption of its final offer on this issue would not cost the Village anything. Besides, the Union observes, an overwhelming majority of Bensenville the police officers signed a petition (Union Exhibit 3) indicating their wish to obtain a fair share provision in these proceedings.

### Village Position

The Village's final offer on this issue is to retain the status quo. It argues that the Union has shown no compelling need for a fair share provision. As acknowledged by many interest arbitrators, if a union does not need the income produced through fair share fees to be economically viable, a fair share provision should not be granted. In the present case the Union does not rely on dues revenue as a significant form of income, so the Village asserts that inclusion of fair share fees would also be insignificant.

The Village notes as well that only two of the 33 patrol officers in Bensenville have elected not to join the Union. That fact, the Village argues, does not constitute a compelling need for a fair share provision. And the Village observes that nothing in the arbitration record indicates that the Union ever attempted to persuade the two non-members to become dues-paying members. That circumstance, plus the Union's failure during negotiations for its first contract with the Village to raise the fair share issue, should persuade the Arbitrator to reject the Union's final offer on this issue.

Finally, the Village relies heavily on the internal comparability factor to support its final offer. It points to the fact that no other represented group in its employ has a fair share provision. Moreover, the Village asserts, it has consistently opposed the inclusion of such provisions at the bargaining table, often rejecting substantial economic proposals in doing so.

### Discussion

The Village's arguments against the inclusion of a fair share provision in this, the parties' second collective bargaining agreement, are very strong. First, the Union already enjoys strong membership support from the bargaining unit. Thirty-one of the 33 bargaining unit police officers are dues-paying Union members. The Union's secure financial status also supports the Village's argument that there is no compelling reason to embrace the Union's bid for a fair share clause.

Second, the Arbitrator is particularly influenced by the Village's historical opposition to fair share clauses in any of its contracts. As noted earlier, a fundamental purpose of interest arbitration is to approximate what the parties themselves would have adopted had they continued to engage in free collective bargaining. The Village has vehemently opposed the fair share concept for approximately twelve years. It even rejected a 1990 AFSCME proposal to obtain fair share in exchange for a one-year wage freeze. Given those historical circumstances, plus the fact that none of the Village's five union contracts contain a fair share clause, the Arbitrator concludes that the parties to this proceeding would most likely not have agreed to one themselves.

Third, it does not appear from the record that the Union has engaged in much dialogue with the Village over the inclusion of a fair share provision in the patrol officer contract. During the negotiations leading to their initial contract the subject was not even discussed. The Arbitrator recognizes that the Union did not know then that it would have a need for such a clause. But the fact remains that the parties did not discuss it. The Union did demand a fair share clause in the negotiations leading to these proceedings, but that first-time demand was not successful. It does not seem appropriate through the interest arbitration process to adopt a fair share clause when the Union's perceived need for it is relatively new. Moreover, given the Village's historical opposition to such a clause, the Union here should not obtain one without offering an appropriate quid pro quo at the bargaining table.

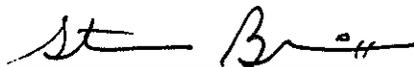
## AWARD

Based upon full consideration of the interest arbitration record, and having applied all of the statutory criteria to the issues as appropriate, whether discussed in this Opinion and Award or not, the Arbitrator has decided the following with respect to the parties' 1997-2000 collective bargaining agreement:

- (1) Wages - the Union's final offer is adopted.
- (2) Health Insurance (basis of employee premium contribution) - the Union's final offer is adopted.
- (3) Health Insurance (percentage of employee premium contribution) - the Union's final offer is adopted.
- (4) Annual Sick Leave Buyback - the Union's final offer is adopted.
- (5) Sick Leave Buyback Upon Separation After Five Years Or Upon Retirement - the Union's final offer is adopted.
- (6) Fair Share - the Village's final offer is adopted.

The tentative agreements reached by the parties themselves on any and all remaining issues shall be incorporated into their 1997-2000 collective bargaining agreement as well.

Signed by me at Chicago, Illinois this 8th day of October, 1998.



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Steven Briggs