

ILRB
#192

**INTEREST ARBITRATION
OPINION AND AWARD**

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Illinois State Lab Rel. Bd.
SPRINGFIELD, ILLINOIS

In the Matter of Interest Arbitration
between
VILLAGE OF LOMBARD
and
LOMBARD PROFESSIONAL FIRE-
FIGHTERS ASSOCIATION, LOCAL NO.
3009, IAFF
(ISLRB Case No. S-MA-97-²⁰⁰199)

Hearings Held

September 21, 22 & 23, 1998
October 29, 1998

Appearances

For the Union:

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Arbitration Panel

Steven Briggs, Neutral Chair
J. Thomas Willis, Union Appointee
Ronald J. Kramer, Esq., Village Appointee

For the Village:

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BACKGROUND

The Village of Lombard (the Village) is a non-home rule municipality of 40,870 residents in Du Page County, Illinois. Its Fire Department consists of 58 sworn personnel, 48 of whom are Firefighters represented for collective bargaining purposes by the Lombard Professional Firefighters Association, IAFF Local 3009 (the Union). Thirty-five of the Firefighters are licensed Paramedics as well. Three additional Firefighters still in probationary status have yet to obtain paramedic licensure, though they are working toward it.¹ The remaining Firefighters are certified Emergency Medical Technicians (EMT's). Fire Chief George Seagraves is assisted by a Deputy Chief and 9 Lieutenants. There are no ranks between the latter two.

There are two additional groups of represented employees in the Village. Police Patrol Officers are represented by the Fraternal Order of Police (FOP). Employees in the Public Works Department have the American Federation of State, County and Municipal Employees (AFSCME) as their bargaining agent.

The most recent collective bargaining agreement between the parties became effective June 1, 1994 and expired May 31, 1997. They first met to bargain a successor agreement on May 14, 1997, at which time the Union tendered its initial proposals. The Union invoked mediation on May 16, 1997, and on May 22, 1997 the Village joined in that request. The parties met with Federal Mediation and Conciliation Service Mediator James Shepker on August 15, 1997. On September 8, 1997 the parties met once again for a bargaining session. The Village presented its proposals at that time. They bargained again on October 14, 1997.

Pursuant to Section 14 of the Illinois Public Sector Labor Relations Act (the Act) as amended, 5 ILCS 315/14 (1996), the Union invoked interest arbitration in November, 1997. The parties mutually appointed Steven Briggs to serve as Neutral Chair of an tripartite Interest Arbitration Panel. The Union appointed J. Thomas Willis as its delegate to the Panel; the Village appointed Ronald J. Kramer, Esq. as its delegate.

The parties met with the Neutral Chair on March 5, 1998 for a pre-hearing conference. At the parties' mutual request the Neutral Chair conducted mediation sessions on March 19, April 1 and April 13, 1998. The parties exchanged Final Proposals Prior to Interest Arbitration on July 22, 1998. Interest arbitration hearings were conducted on September 21, 22, 23, and October 29, 1998.²

The parties exchanged Final Offers of Settlement on November 17, 1998. Their posthearing briefs were received by the Neutral Chair on February 5, 1999.

¹ Since 1983, all new hires have been required to become Paramedics as a condition of their employment.

² In a September 18, 1998 Petition For Declaratory Ruling with the General Counsel of the Illinois State Labor Relations Board, the Village asserted that the Union's mandatory overtime and paramedic decertification proposals were not mandatory subjects of bargaining. The General Counsel found in her January 29, 1999 Declaratory Ruling that certain aspects of those proposals are permissive subjects of bargaining.

RELEVANT STATUTORY PROVISIONS

Section 14(g) of the Act provides in pertinent part:

As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

Section 14(h) of the Act sets forth the following interest arbitration criteria:

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

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

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

THE ISSUES

The parties have advanced the following 13 issues to interest arbitration, and have stipulated that each is economic or non-economic as indicated parenthetically:

- (1) Wages (economic)
- (2) Insurance (economic)
- (3) Duration (economic)
- (4) Call Back/Hold Over (economic)
- (5) Public Education Pay (economic)
- (6) Retroactivity (economic)
- (7) Paramedic Service (economic)
- (8) Overtime (economic)
- (9) Entire Agreement (economic)
- (10) Fair Share (non-economic)
- (11) Probationary Period (non-economic)
- (12) Vacation Scheduling (non-economic)
- (13) Starting Times (non-economic)

THE EXTERNAL COMPARABLES

Village Position

The Village proposes that the following jurisdictions be adopted for comparison purposes:

Addison
Bolingbrook
Carol Stream
Downers Grove
Elmhurst
Hoffman Estates
Maywood
Park Ridge
Wheaton

The Village notes that six of its suggested comparables were adopted by Arbitrator Herbert Berman in a 1988 interest arbitration proceeding and were agreed to by both parties at that time (Addison, Bollingbrook, Downers Grove, Elmhurst, Maywood & Wheaton). The Village asserts that the three additional comparables it proposes (Carol Stream, Hoffman Estates and Park Ridge) now meet the geographic and population criteria embraced by Arbitrator Berman and conform to the standard of being $\pm 25\%$ of either the Equalized Assessed Valuation (EAV) or population of Lombard. The Village argues that the Union's approach to selecting comparable jurisdictions gives no weight to the historical significance of those embraced by Arbitrator Berman. The Village also asserts that during negotiations the Union never proposed the construction of a different set of comparables. It argues as well that certain aspects of the Union's selection process were ill-specified.

Union Position

To establish its suggested comparability pool the Union first identified those communities within a 15-mile radius of Lombard which have a population within $\pm 25\%$ that of Lombard. That screening identified the following jurisdictions:

Bolingbrook
Downers Grove
Elk Grove Village
Elmhurst
Hoffman Estates
Palatine
Park Ridge

The Union then selected from the above list those communities within $\pm 25\%$ of Lombard on at least 3 of the following 6 criteria: (1) number of fire department employees; (2) sales tax revenues; (3) total taxes and disbursements; (4) EAV; (5) per capita income; and (6) household income. Doing so produced the same list as that initially produced by the population and geographic proximity criteria. However, due to the non-union status of the Palatine Fire Department, the Union excluded it as a comparable. The Union's proposed comparables grouping is listed below:

Bolingbrook
Downers Grove
Elk Grove Village
Elmhurst
Hoffman Estates
Park Ridge

The Union argues that the Village selectively applied certain criteria in constructing its comparability pool. It asserts as well that Addison and Carol Stream should be excluded due to their status as fire protection districts. The Union also questions the validity of using Maywood as a comparable, arguing that its selection 11 years ago in a 1988 interest arbitration proceeding is insufficient to justify reliance on it now. The Union notes as well that the record in that proceeding was insufficiently conclusive as to why certain municipalities were excluded. And Wheaton should be excluded from the comparability pool in these proceedings, the Union asserts, because it does not meet the $\pm 25\%$ population cutoff employed by both parties. Finally, the Union notes that while Arbitrator Berman did indeed identify a grouping of external comparables in the 1988 interest arbitration proceeding, he did not make much use that grouping to decide the issues. The Union therefore concludes that the jurisdictions selected in that proceeding should be assigned no relevance here simply on account of their inclusion by Arbitrator Berman in an 11-year-old proceeding.

Discussion

Interest arbitration is artificial. It authorizes an outsider to study a voluminous mountain of evidence and estimate what the parties themselves would have agreed to, had they resolved all issues at the bargaining table. In formulating such estimates interest arbitrators attempt to use the same data for comparison purposes that the parties themselves would have used. It is in part for that reason that we attach significant weight to external jurisdictions the parties have embraced as comparables before.

In the present case, though Arbitrator Berman constructed a pool of external comparables for use in the 1988 interest arbitration proceeding between these same parties, there is no conclusive evidence in the record before me that the parties have made much use of it since then. And the fact remains that the pool was merely Berman's estimate of which external jurisdictions are truly comparable to Lombard. Being an experienced interest

arbitrator, Berman undoubtedly made an educated, procedurally valid guess about comparability. But Berman's 1988 comparability estimate, like that of any experienced interest arbitrator, suffers from its very nature. It is a mere guess as to what jurisdictions the parties themselves would employ as comparables, were they to hammer out a contract at the bargaining table. It is also dependent upon the information the parties choose to put into the interest arbitration record.³

In determining which external communities the parties would have adopted in the present matter, had they not felt compelled to resort to interest arbitration, it is clear from its arguments that the Village would have excluded Elk Grove Village. The Union's arguments here suggest that it would not have agreed to Addison, Carol Stream, Maywood and Wheaton. The Neutral Chair recognizes that experienced, sophisticated advocates such as those involved in these proceedings are very skillful at data presentation. They can find seemingly valid reasons to portray almost any jurisdiction as comparable to almost any other or not, within the general limits of population, proximity and certain fiscal criteria at least. Thus, even though both parties claim certain jurisdictions should be excluded from the comparability pool, it is possible that they are indeed valid for comparison purposes. Sorting out that question would again involve an educated guess from an interest arbitrator.

In the present case, however, there is an easier and unquestionably accurate way to identify the appropriate external comparables --- those that the parties themselves would use if they were still at the bargaining table. The Village and the Union agree that five jurisdictions are comparable to Lombard. Those municipalities, which are listed below, have been adopted by the Neutral Chair as the external comparables grouping in these proceedings:

Bolingbrook
Downers Grove
Elmhurst
Hoffman Estates
Park Ridge

DURATION

Union Position

The Union proposes a four-year agreement with an effective date of June 1, 1997, a termination date of May 31, 2001, and a reopener for wages and insurance prior to the fourth contract year. In support of that position, the Union cites the parties' difficulty in negotiating the Agreement at issue here, arguing that a long term contract would enhance the stability of their collective bargaining relationship. It points out as well that such protracted negotiations (i.e., 24 months) have not taken place between the Village and its

³ Arbitrator Berman noted, for example, that in the record before him there were insufficient data for some of the proposed external comparables.

other bargaining units. And the Union notes that the parties are essentially covered by a four-year Agreement now, since the provisions of the 1994 contract have remained in full force and effect during the pendency of these proceedings.

Village Position

The Village proposes a three-year Agreement, covering the period from June 1, 1997 through May 31, 2000. It argues in support of that position that the parties have never negotiated a four-year agreement, and that it has never negotiated a four-year agreement with any of its other bargaining units. The Village notes as well that among its suggested external comparables, only two either have four year contracts or have just completed them, and neither had reopeners.

Discussion

Generally speaking, collective bargaining agreements of longer duration do indeed enhance stability in union/management relationships. That principle is even more important where, as here, the parties have experienced difficulty establishing terms and conditions of employment through negotiations. But adoption of the Union's proposal for a four-year agreement would not take automatic advantage of that principle. It embodies some difficulties which would not contribute anything whatsoever to stabilizing the parties' relationship.

To understand one of the problems with adopting the Union's offer on this issue, one must also consider its final offers on wages and insurance. It proposes a wage reopener for the fourth year of the contract, so that "on or before April 1, 2000" the parties would once again find themselves at the bargaining table discussing money. Adoption of the Village's three-year offer would do the same. Under its May 31, 2000 expiration date the parties at the very latest would most likely begin negotiations around the beginning of April for a successor agreement. And in that scenario it is highly likely that they would be negotiating for another three-year period. Were the Union's offer to be accepted, the parties would be negotiating wages for only the next year (i.e., the fourth year of the contract), and would find themselves back at the bargaining table very soon to begin talks for a successor agreement. The Neutral Chair is therefore not persuaded that adoption of the Union's final offer on this issue would add stability to the parties' bargaining relationship.

The same difficulty occurs under the Union's four-year proposal with regard to the insurance issue. Its final offer on that issue includes a reopener for the fiscal year beginning June 1, 2000. Thus, on two very significant issues the Union's four-year contract is really a three-year contract. Adopting it would put the parties back at the

bargaining table at the same time they would be there under the Village's three-year offer.

Since the inception of their bargaining relationship the parties have negotiated three-year agreements. The Village has negotiated three-year agreements for its other bargaining units as well. And with the exception of Hoffman Estates, all of the externally comparable municipalities have negotiated three-year agreements with their firefighter groups. The Neutral Chair sees no compelling reason to break that general pattern by adopting the Union's final offer for a four-year agreement in Lombard.

The final offer of the Village on the duration issue is hereby adopted.

WAGES

Village Position

The Village's final wage offer provides for increases of 3.5% the first year, and 3.75% in each of the second and third years of the contract. It also includes the following premium pay boosts for paramedic certification "while earned as a Lombard Firefighter:" (1) for initial licensure a payment of \$2,350 instead of the current \$2,000; (2) after two years, \$2,700 rather than the current \$2,250; (3) upon first license renewal, \$3,050 as opposed to the current \$2,500; (4) after six years, \$3,400 instead of the current \$2,750; and (5) after eight years, \$3,850 rather than the current \$3,000. The Village proposes no increase to the \$450 annual premium pay for Certified Advanced Firefighters, Emergency Medical Technicians, and Hazardous Materials Technicians.

The Village believes that the cost-of-living factor strongly supports adoption of its wage offer, noting that the Union's proposed 7% increase in one year is triple the CPI. And over the term of the contract, the Village asserts, the Union's proposed increase is almost twice what the CPI would call for. The Village notes as well that the Union's proposed 7% increase is double that negotiated for Lombard police and public works employees, and that it is double what the Village gave its unrepresented employees. With regard to the external comparables, the Village asserts that the Union's proposed 7% increase is twice their median increase and 3% more than every comparable increase. And the Village believes that its final offer on wages closes the salary gap between Lombard Firefighters and their counterparts in Elmhurst and Downers Grove. Finally, the Village argues, adoption of its salary offer would be in the public interest. In support of that assertion the Village notes that (1) it is subject to tax caps; (2) it has no recruitment or retention problems; (3) it ranks well below the median of the external comparables in terms of average home value, total revenue and family income, yet provides total compensation above the median; and (4) its final offer contains increases greater than the average increase negotiated by public and private sector employees nationally.

Union Position

The Union's final offer provides for the following across-the-board salary increases: 7% effective June 1, 1997 (exception: only 6% for Step 1) and 3.75% effective June 1, 1998 and June 1, 1999. It seeks no modification to the annual premium pay benefits for Certified Advanced Firefighters, Emergency Medical Technicians, Paramedics and Hazardous Material Technicians.⁴

The Union believes the most relevant benchmark for evaluating the parties' final wage proposals is the top step Firefighter/Paramedic cell, since 75% of the bargaining unit members (36 out of 48) are at the top step of the wage scale and 26 of those 36 (72%) are Firefighter/Paramedics. The Union also asserts that adoption of its final offer on the wage issue would rank Lombard top step Firefighter/Paramedics appropriately among the external comparables. With regard to maximum Firefighter salaries, the Union sets forth its offer as being preferable to the Village's for much the same reasons. The Union argues as well that the Village's final offer would increase Paramedic pay to a level more than double that paid in other communities. Turning to the entry level Firefighter classification, the Union notes that its final offer would provide a salary less than the average paid across the external comparables.

With regard to the internal comparables, the Union believes the 3.5% increase in the Village's offer for the first year of the contract is insufficient. It acknowledges that Lombard Police Officers accepted an identical increase, but notes that in absolute dollars under the Village's offer Lombard Firefighters will not earn in fiscal year 1999-2000 what the police officers earned in 1997-1998. The Union points out as well that in fiscal 1998-1999 Lombard's Police Officers were ranked fourth among comparable communities, while the Village's final offer would put its Firefighters at the very bottom of that grouping. And when one considers the high pay the Village pays its Fire Lieutenants, the Union asserts, it is not surprising that its Firefighters feel like its second class citizens.

The Union notes that both parties' final wage offers exceed Consumer Price Index (CPI) increases for the relevant periods, and that the Village has historically agreed to increases in excess of the CPI. Thus, the Union asserts, the CPI should not be a compelling factor in these proceedings.

The Union also argues that the Village has artificially inflated the value of the holidays it provides its Firefighters. In addition, the Union asserts, the Village's apparent ability to attract and retain fire service employees is but one element of the overall employment equation and it does not overcome the inadequacies of the Village's wage proposal.

⁴ The Union's proposal for a wage reopener effective June 1, 2000 is moot, since the duration issue has already been decided in favor of the Village.

Discussion

The Union is correct in its assertion that the top step Firefighter/Paramedic classification is an appropriate benchmark for evaluating the parties' respective salary offers. Table 1 has been constructed for that purpose:

Table 1
Top Step Firefighter/Paramedic Salaries
Dollar Amount (ranking)

| Jurisdiction | 6/1/94 | 6/1/95 | 6/1/96 | 6/1/97 | 6/1/98 | 6/1/99 |
|---------------|------------|------------|--------------|--------------|--------------|--------------|
| Bolingbrook | 45,807 (3) | 48,555 (2) | 50,254 (2) | 52,013 (2) | N/A | N/A |
| Dwnrs. Grv. | 43,000 (5) | 46,032 (4) | 47,873 (4) | 49,549 (5) | 51,531 (4) | 53,335 (3) |
| Elmhurst | * | * | * | * | * | * |
| Hoff. Estates | 47,551 (1) | 49,373 (1) | 51,031 (1) | 52,625 (1) | 54,143 (1) | N/A |
| Park Ridge | 45,262 (2) | 47,022 (3) | 48,668 (3) | 50,609 (3) | 52,254 (2) | 53,952 (1) |
| Lombard | 43,664 (4) | 45,399 (5) | 47,199 (5) | | | |
| | | | Village FO ↓ | 48,746 (5/5) | 50,711 (4/4) | 52,741 (3/3) |
| | | | Union FO ↓ | 50,293 (4/5) | 52,066 (3/4) | 53,906 (2/3) |

* = Paramedic services contracted.

Sources: Village Exhibits 3-25 through 3-31; Union Exhibits 16, 19, 20 & 21.

It is clear from Table 1 that historically, Lombard Firefighter/Paramedics at the top step have received salaries ranked at last or next to last across the comparable jurisdictions. Neither party's final offer in these proceedings would alter that relationship significantly, at least based upon analysis of the data available. Rankings, however, are rather crude measures of complex salary offers. For example, a mere one dollar salary difference would rank one municipality ahead of another, and a \$5,000 dollar difference would generate the same result. It is therefore important to consider absolute dollars as well as rankings. One can see from Table 1 that for the year beginning June 1, 1997 the Union's final offer would put top step Firefighter/Paramedics only \$316 from their counterparts in 3rd ranked Park Ridge. In contrast, the 4th ranked top step Lombard Firefighter/Paramedics in the year beginning June 1, 1994 were \$2,143 away from their 3rd ranked counterparts in Bolingbrook. The Neutral Chair concludes from these data that the Union's final offer for the 1st year of the contract would propel Lombard top step Firefighter/Paramedics a quantum leap ahead of their relative historical standing among the external comparables. In contrast, the Village's final offer for that year would maintain their relative standing.

Table 2 on the following page illustrates the percentage increases applied to top step Firefighter/Paramedic salaries:

Table 2
Top Step Firefighter/Paramedic Salaries
Percentage Increases After 6/1/94

| Jurisdiction | 6/1/94 | 6/1/95 | 6/1/96 | 6/1/97 | 6/1/98 | 6/1/99 |
|---------------|------------|--------|--------------|--------|--------|--------|
| Bolingbrook | 45,807 (3) | 5.9 | 3.5 | 3.5 | N/A | N/A |
| Dwnrs. Grv. | 43,000 (5) | 7.0 | 4.0 | 3.5 | 4.0 | 3.5 |
| Elmhurst | * | * | * | * | * | * |
| Hoff. Estates | 47,551 (1) | 3.8 | 3.4 | 3.1 | 2.9 | N/A |
| Park Ridge | 45,262 (2) | 3.9 | 3.5 | 4.0 | 3.2 | 3.2 |
| Lombard | 43,664 (4) | 3.9 | 4.0 | | | |
| | | | Village FO † | 3.5 | 3.75 | 3.75 |
| | | | Union FO † | 7.0 | 3.75 | 3.75 |

* = Paramedic services contracted.

Sources: Calculated from Village Exhibits 3-25 through 3-31; Union Exhibits 16, 19, 20, 21.

Table 2 reveals much about the relative merit of the parties' final salary offers as applied to the top step Firefighter/Paramedic benchmark. It shows, for example, that in Lombard the parties negotiated 1995 and 1996 increases generally comparable to those applied across comparable jurisdictions. The same thing is true with respect to the Village's offer effective June 1, 1997. At 3.5% it matches the average of the four external comparables for which data are available (3.52%). The Union's salary offer of 7% for that year is two times that percentage. That figure seems extraordinarily high.

Table 2 also indicates that for the 2nd and 3rd years of the contract Lombard top step Firefighter/Paramedics gain ground among the external comparables for which data are available, no matter which of the parties' final offers is selected here.⁵ On balance, evaluation of the parties' respective offers on that important benchmark supports adoption of the salary package advanced by the Village.

The foregoing conclusion is strengthened when one considers the fact that Lombard Firefighter/Paramedics advance to the top salary step more quickly than do half of their counterparts among the external comparables. Along with similarly classified employees in Downers Grove and Bolingbrook, they advance to the top salary in five years. It takes their counterparts six years in Park Ridge, eight years in Hoffman Estates, and ten years in Elmhurst.

The base salary for entry level Firefighters is also an appropriate benchmark for evaluating the parties' final offers on the wage issue, particularly as it relates to Lombard's ability to attract candidates for the fire protection service. Table 3 on the next page has been constructed to facilitate that evaluation:

⁵ An exception is Downers Grove for the 2nd year of the contract. Still, there is only a minuscule ¼ percentage point difference between the Downers Grove increase (4%) and the Lombard increase (3.75%) for that year.

Table 3
Entry Level Firefighter Base Salaries
Dollar Amount (Ranking)

| Jurisdiction | 6/1/94 | 6/1/95 | 6/1/96 | 6/1/97 | 6/1/98 | 6/1/99 |
|---------------|------------|------------|--------------|--------------|--------------|--------------|
| Bolingbrook | 30,539 (3) | 32,371 (2) | 33,504 (2) | 34,677 (2)* | N/A | N/A |
| Dwnrs. Grv. | 30,500 (4) | 31,406 (4) | 32,662 (4) | 33,805 (5) | 35,157 (3) | 36,388 |
| Elmhurst | 30,604 (2) | 31,675 (3) | 32,863 (3) | 34,178 (3) | 35,203 (2) | T/A |
| Hoff. Estates | 28,000 (6) | 28,500 (6) | 29,498 (6) | 30,456 (6) | 31,370 (5) | N/A |
| Park Ridge | 33,614 (1) | 34,920 (1) | 36,142 (1) | 37,658 (1) | 38,881 (1) | 40,145 (1) |
| Lombard | 29,552 (5) | 30,734 (5) | 31,963 (5) | | | |
| | | | Village FO ↓ | 33,082 (5/6) | 34,332 (4/5) | 35,609 (3/3) |
| | | | Union FO ↓ | 33,881 (4/6) | 35,151 (4/5) | 36,469 (2/3) |

Sources: Village Exhibits 3-1 through 3-7; Union Exhibits 8, 10 & 12.

* = In Union Exhibit 8, the figure shown is \$37,112. That figure seems misleading, however, for it relates to Firefighters hired in Bolingbrook prior to January 1, 1995. Effective June 1, 1997, for Firefighters hired then, the entry level salary in Bolingbrook was \$34,677.

For fiscal years 1994-95, 1995-96 and 1996-97 the parties negotiated an entry level base salary in Lombard which ranked it in 5th place among the comparables, \$2465 above Hoffman Estates and \$699 below Downers Grove for the 3rd of those three years. For fiscal year 1997-98 the Village offer would maintain that ranking, while at the same time essentially maintaining the previous year's dollar differences between the Lombard Firefighter base salary and those in Downers Grove and Hoffman Estates. In contrast, the Union's final offer would move the Lombard Firefighter base salary to 4th place among the comparables for fiscal 1997-98, placing it \$3425 ahead of Hoffman Estates and, for the first time in recent history, ahead of Downers Grove.

Adopting the Union's final offer on the wage issue would break an external pattern established by the parties themselves at the bargaining table. Again, given that the purpose of interest arbitration is to approximate the outcome of free collective bargaining, there must be a compelling reason for the Neutral Chair to deviate from that pattern. None was found in the record. The entry level base salary established by the parties for the years beginning June 1, 1994, 1995 and 1996 has been sufficient to attract qualified Firefighter candidates to Lombard.

A similar analysis was done for the top step Firefighter base salary, excluding longevity payments. For the year beginning June 1, 1994 Lombard was ranked 6th among the comparables group. Its ranking did not change for the next two years. For the year beginning June 1, 1997 the Union's final offer would elevate Lombard Firefighters at that step to 4th among the comparables; the final offer of the Village would maintain the negotiated 6th place position. Given the fact that the Lombard Fire Department has not experienced difficulty retaining long-service Firefighters,⁶ the Neutral Chair finds no compelling reason to change its relative ranking among the comparables for the top step

⁶ Deputy Chief Jerome Tonne testified that in the last 10 years no Lombard Firefighter has left for employment in another municipal fire department.

Firefighter base salary. And again, Firefighters in Lombard reach the top salary step more quickly than do those in Park Ridge, Elmhurst and Hoffman Estates.

Turning to the internal comparables, the record contains data which quite persuasively suggest the Village's final offer is the more reasonable on this issue. Table 4 has been constructed to illustrate those data:

Table 4
Percentage Increases for Internal Comparables
(excluding step increases and stipends)

| Fiscal Year | FOP | IAFF | AFSCME | Non-Union |
|-------------|------|------|--------|-----------|
| 99/00 | 3.75 | -- | -- | 0 - 7.25* |
| 98/99 | 3.75 | -- | 3.75 | 3.75 |
| 97/98 | 3.50 | -- | 3.50 | 3.50 |
| 96/97 | 4.00 | 4.00 | 4.00 | 4.00 |
| 95/96 | 4.00 | 4.00 | 4.00 | 4.00 |
| 94/95 | 4.00 | 4.00 | 4.00 | 4.00 |
| 93/94 | 4.00 | 4.00 | 4.00 | 4.00 |
| 92/93 | 4.00 | 4.00 | 4.00 | 4.00 |
| 91/92 | 5.00 | 5.00 | 5.00 | 5.00 |

* = Depending on performance and placement within salary range, non-union employees could receive up to a 7.25% increase. Those at the top of their respective salary ranges are limited to a 3.75% increase, unless their performance is rated as "Exceeds Expectations," in which case they also receive a one-time Performance Incentive payment of up to 1.75%. The Performance Incentive is not added to their base salary.

The historical pattern of internal negotiated salary increases in Lombard is well-established. They have been identical, with the exception of fiscal year 1995-1996, when top step Police Officers received an additional 1% equity adjustment. Selection of the Union's final wage offer, with its 7% increase for 1997-1998, would create a significant disparity between the IAFF and FOP increases for that year. The parties have not chosen to establish such a wage increase disparity voluntarily over the last decade, and the Neutral Chair sees no compelling reason to do so in these proceedings. That conclusion was reached in spite of the fact that (1) Lombard Fire Lieutenants are very well paid compared to those across the external comparables and (2) Lombard Police Officers generally receive more in absolute dollars than do Lombard Firefighters at comparable steps. In the latter case particularly, the parties themselves have negotiated the salaries for those two occupational categories. The dollar differential therefore reflects their own sense of their respective worth, no doubt in recognition of a host of factors. It would not be appropriate to disturb that negotiated relationship through interest arbitration.

The 1999-2000 percentage increase shown in Table 4 for non-union employees deserves some discussion. It indicates the possibility that they could enjoy as much as a 7.25% increase. But that figure can be misleading. The actual percentage increase to be awarded to individual non-union employees will depend upon their performance and position within their respective salary grades. Only when performance is rated "Exceeds Expectations" and there is room for advancement in the salary grade would a non-union

employee receive a 7.25% increase. Those whose performance is rated "Below Expectations" will receive no increase whatsoever. Given those contingencies, it is unrealistic to compare the Union's proposed 7% increase for Firefighters in 1997-1998 with the 7.25% shown in the Table for non-represented employees in 1999-2000.

Evaluation of the parties' final offers with regard to the cost-of-living factor also supports adoption of the Village's position, since both offers contain wage increases well above the CPI increases and projections for the relevant periods. The Union's proposed 7% increase for fiscal 1997-1998 stands in stark contrast to the CPI figures for that period (about 1.7%), no matter which index is chosen and no matter whether one considers CPI increases for the last year of the previous contract (2.3%) or the actual CPI figure.

Given the analyses contained in the preceding paragraphs, the Neutral Chair does not believe it would be in the public interest to adopt the Union's final salary offer. And consideration of total compensation across the external comparables generates support for the Village's final offer as well, especially when one acknowledges the fact that Firefighters in Lombard receive holiday pay well in excess of that received by their counterparts in other municipalities. In addition, the Village's final offer includes premium pay increases for paramedic certification earned as a Lombard Firefighter; the Union's final offer does not.

For all of the foregoing reasons, the final offer of the Village on the wage issue is adopted.

INSURANCE

Village Position

The Village's final offer on this issue contains the following provision:

Within 60 days of the date this Agreement is executed or the interest arbitration award becomes final, whichever comes first, the current hospitalization and major medical insurance plan will be modified to be the same as the plan then in effect for other full-time Village employees; provided, however, the Village retains the right to change insurance carriers, HMO's, or to self-insure as it deems appropriate, so long as the new basic coverage and basic benefits are substantially the same as those in effect as of the date of the insurance plan changeover.

In support of its final offer the Village notes that Lombard Firefighters have historically had the same health insurance terms and conditions as all of its other employees. In order to keep costs down, the Village negotiated with its insurance broker to increase deductibles and out-of-pocket costs. Doing so, it asserts, reduced a projected 9%

premium increase to 3.1%. It implemented the amended plan with its non-represented employees first, then negotiated successfully with AFSCME to apply it to public works employees effective June 1, 1997. The same outcome was eventually obtained with the FOP, effective June 1, 1998. The Village notes that the IAFF "refused to agree to remain on the same health insurance plan as all other Village employees."⁷ It therefore asserts that the internal comparability factor supports adoption of its final offer on the insurance issue.

The Village also believes that the Union's external comparability data are irrelevant without additional information. For example, they include neither the total cost of health insurance plans across the comparables nor the type and level of benefits. The Village also notes that Illinois interest arbitrators have typically given more weight to the internal comparability factor than to external comparables when considering the health insurance issue.

The Village believes that after negotiating with its insurance broker to reduce a projected 15-16% premium increase down to 9%, it still needed to go farther. That is especially compelling, the Village notes, since employees (including Firefighters) pay 35% of any health insurance premium increases. To reduce the 9% figure even more, the Village argues, it was compelled to agree to certain increases in deductibles and other out-of-pocket expenses.

Union Position

The Union's final offer is to maintain the status quo on this issue.⁸ It notes that the Village's offer would change the status quo as follows: (1) increase the individual deductible from \$100 to \$200; (2) increase the family deductible from \$300 to \$600; (3) increase the individual out-of-pocket expense limit from \$1,100 to \$1,500 for participating providers; (4) increase the individual out-of-pocket expense limit from \$2,500 to \$3,000 for non-participating providers; (5) increase the family out-of-pocket expense limit from \$2,200 to \$3,000 for participating providers; (6) increase the family out-of-pocket expense limit from \$5,000 to \$6,000 for non-participating providers; (7) increase the co-payment from zero to \$10 per office visit for the HMO plan; (8) increase the co-payment from \$10 to \$25 per emergency room visit for the HMO plan; and (9) delete in its entirety Appendix C of the Agreement.

The Union asserts that the Village presented no rational basis for changing the status quo regarding the health plan. The decreased monthly premium payments for certain employees under its offer would be more than offset by the higher costs noted above, the Union argues. And for those employees enrolled in the PPO plan (about 70% of the

⁷ Village posthearing brief, p. 57.

⁸ As already noted, the Union proposed a four-year contract with an insurance reopener for the 4th year. Since the Village's three-year proposal was adopted on the duration issue, the Union's reopener proposal is moot.

bargaining unit), the Union believes the increased costs associated with the Village's final offer would completely negate the 3.75% wage increase effective June 1, 1999.

Appendix C details the benefit levels provided by Blue Cross/Blue Shield for the health insurance plan. The Union notes that the Village's final offer sets forth no alternative way to specify health benefits. Moreover, the Union asserts, the Village proposes to delete the language in Section 21.1 providing that health insurance benefits must be substantially the same as those in effect as of the date the Agreement was last executed.

The Union also argues that the external comparables do not support adoption of the Village's final offer on this issue. It points to data which demonstrate that doing so would result in Lombard Firefighters paying the most for the least health benefits. The Union asserts that the internal comparability factor supports its own final offer as well. It notes, for example, that until June, 1997 when the Village chose to implement changes, all Village employees were covered under the same plan. When the Village forced those changes on non-represented employees, it broke the then existing pattern of consistency. And, the Union argues, the Village provided no evidence about what it gave up at the bargaining table in exchange for the other bargaining units' agreement to accept its health plan changes. The Union argues as well that since there is nothing in the AFSCME or FOP contracts which specifies benefit levels, there is no evidence that those two units have the same coverage.

Discussion

Adoption of the Village's final offer would shift some of the burden for meeting rising health care costs to those employees who use the plan the most. Those who do not would actually be dollars and cents ahead because of the lower premium costs and the avoidance of office visit charges, deductibles, and other usage-based expenses. And the Village's final offer increases the influence employees themselves have over the health insurance cost experience that insurance providers use to calculate premium cost increases for group plans. To the extent that the Village's plan minimizes unnecessary trips to the doctor, for example, it puts downward pressure on premium increases in the long run.

The Neutral Chair understands completely the difficulties created when a municipality has to offer different health insurance plans for different groups of employees. Besides the added administrative burden, disparate plans do little to enhance benefit stability across internal employee groups. Those with plans they perceive as inferior exert pressure on the employer for change. And if the resulting changes create perceptions of unfairness or favoritism in other employee groups, a seemingly never-ending cycle of coercive comparison can occur. In Lombard, all employee groups except the Firefighters have exactly the same health insurance package.⁹ Thus, in the interest of internal consistency the Village's final offer on this issue seems to be the more reasonable.

⁹ That element of the record here differentiates this case from the one decided recently by the undersigned in Village of Bensenville & MAP Chapter #165 (Case No. S-MA-97-182). In that case the employer

The Neutral Chair is also influenced by the fact that the FOP and AFSCME units accepted voluntarily the changes embodied in the Village's final offer here. Both of those organizations are experienced and sophisticated with regard to municipal labor negotiations. They are not likely to have accepted an inferior health insurance package. And there is no evidence in the record to suggest that either negotiated a significant "pay off" from the Village in exchange for accepting its proposed health insurance amendments. In view of those facts, the IAFF's reluctance to accept the same package voluntarily seems unjustified, particularly when recalling the fact that the FOP and AFSCME also accepted the same across-the-board wage increase package the Village has offered in these proceedings.

In the present case all Lombard employees but the IAFF unit have exactly the same medical plan. It is the result of changes first imposed by the Village on all of its non-represented employees and subsequently bargained with the AFSCME and FOP units. The changes did indeed increase deductibles, co-payments and maximum out-of-pocket expenses. But it also kept monthly premiums to a minimum.¹⁰ Given the fact that Lombard employees pay 35% of those premiums themselves, one cannot reasonably conclude that the changes initiated by the Village were entirely in its own self-interest.

The external comparability data presented by the Union on the insurance issue provide support for adoption of its final offer. However, under all of the circumstances present in this case the internal comparability factor deserves more weight. That conclusion is consistent with the bulk of arbitral thought on this subject.¹¹

The Neutral Chair is mindful of the Union's argument that adoption of the Village's final offer on this issue would delete Exhibit C from the contract. Such an outcome does not seem inordinately troublesome, however, as the Village's final offer essentially prohibits it from making modifications which would substantially change basic coverage and basic benefits.

For all of the foregoing reasons, the Neutral Chair prefers the final offer of the Village on the insurance issue.

exhibited no such internal consistency, for its non-represented employees still enjoyed a more favorable health insurance package than the one it attempted to impose on police officers through interest arbitration.

¹⁰ The Neutral Chair accepts the testimony of Lombard Director of Finance Leonard Flood for the truth of the matters asserted.

¹¹ See, for example, City of Elgin & MAP (Briggs, 1995); City of Elmhurst & FOP (Feuille, 1993); Kendall Co. Sheriff & FOP (Goldstein, 1994); City of Chicago & FOP (Roumell, 1993).

CALL BACK/HOLD OVER

Village Position

The Village proposes to change the status quo by introducing the following new language to Section 8.5:

- (c) An employee shall be ineligible for a minimum one (1) hour holdover/call back pay or a minimum two (2) hours call in pay if such assignment is contiguous to the employee's scheduled work hours, or commences within thirty (30) minutes before the employee's scheduled working hours. An employee shall, however, be paid at an overtime rate of pay for all holdovers or call backs.

The Village asserts that call back and hold over pay is generally designed to guarantee minimum compensation to employees who are called to perform overtime work either (1) after they have already left work or (2) well before their shift is to begin, only to learn that the overtime would last as little as 15 minutes or was canceled altogether. Adoption of its proposal, the Village argues, would differentiate from such employees those who are asked to stay (i.e., are not called in) and work overtime and those asked to come in early and work overtime for a period of 30 minutes or less which continues into the beginning of their shifts.

The Village notes that of the external comparables, only Park Ridge provides a call back/hold over benefit equal to that currently provided to Lombard Firefighters called in to work overtime contiguous to their shift starts. And only two of them (Elmhurst and Park Ridge) provide such a liberal benefit to Firefighters asked to stay over on an overtime basis.

Union Position

The Union's final offer on this issue is to leave the language of Section 8.5 unchanged. It argues that the Village's offer effectively eliminates the negotiated 1-hour minimum guaranteed overtime pay for hold overs, because by definition, hold overs are contiguous to the scheduled work shift. It would eliminate the same 1-hour minimum for employees called in early as well, in cases where the call in would require employees to report for work within 30 minutes of their shift start times.¹² The Union believes the Village has provided no rationale for making such a change to the status quo.

¹² The 2-hour minimum referenced in the Village's final offer relates to call ins where the employee learns upon reporting for the overtime assignment that it has been canceled.

The Union also argues that the external comparability data do not support adoption of the Village's final offer, in that most of them provide for minimum guaranteed overtime payments under such circumstances.

Discussion

Lombard Firefighters have enjoyed a one-hour minimum for call backs since 1986, when specific language to that effect was first included in their 1986-1989 contract with the Village. The parties have continued to include that provision in their collective bargaining agreements up to and including the one they most recently negotiated (1994-1997). And in their negotiations leading to that Agreement the parties extended to 2 hours the 1-hour minimum in situations where an overtime assignment is canceled upon the employee's arrival for duty. Neither type of provision was modified for situations where the overtime was contiguous to a shift ending or beginning. The Neutral Chair assumes that the Village was represented by competent counsel during all of those negotiations since 1986, and that Section 8.5 was negotiated with full knowledge of the call back/hold over provisions in existence elsewhere. Furthermore, there is no evidence in the record before me to suggest that the circumstances which brought the parties to those negotiated outcomes have changed. For that reason alone, the Union's final offer on this issue seems the more reasonable.

Turning to the external comparables, the evidence is mixed. Three of them (Elmhurst, Hoffman Estates and Park Ridge) provide seemingly more liberal compensation for call backs than that proposed by the Village here. Four of them (Bolingbrook, Elmhurst, Hoffman Estates and Park Ridge) do so for hold overs. The Neutral Chair concludes from these data that there is insufficient support among the external comparables to justify the Village's proposed change to the status quo.

For the above reasons, the Union's final offer on this issue is adopted.

PUBLIC EDUCATION PAY

Village Position

The Village's final offer on this issue sets forth fixed hourly rates for employees who volunteer for and are subsequently assigned by the Fire Chief to perform public education work in the position of Public Educator. The Village proposes the following hourly rates:

Effective June 1, 1997 - \$14 per hour
Effective June 1, 1998 - \$15 per hour
Effective June 1, 1999 - \$15.50 per hour

The Village argues that its final offer providing for fixed hourly rates is consistent with the arrangement first negotiated by the parties for Public Education pay in a 1995 Memorandum of Agreement (MOA). It asserts that the Union's proposal to index Public Education pay to the negotiated wage rate for Firefighters is not justified. In support of that assertion, the Village notes that the parties have not indexed such stipends as paramedic pay, EMT pay, or HAZMAT pay.¹³

The Village further argues that Public Education pay is not Firefighter pay, and is compensation for a position separate and apart from that normally occupied by a Firefighter. It asserts as well that it could always hire civilian employees or off-duty Firefighters from other jurisdictions to perform such work. The Village also underscores its belief that Public Education pay should be based upon the market for public educators. Accordingly, it argues, the pay level for such work should be negotiated by the parties themselves on a periodic basis.

The Village also believes that the pay levels contained in its final offer on this issue are competitive with those in existence across the comparable communities.

Union Position

The Union's final offer on this issue essentially differs from the Village's on the basis of the following sentence:

Effective June 1, 1997 and retroactive thereto, the straight time hourly rate shall increase and continue to increase each June 1, thereafter, by the same percentage as the wage scale pursuant to Article XXIX, Section 29.2.

The Union notes that since the parties first negotiated a \$14 per hour straight time rate for Public Educators, the disparity between that rate and wages under Section 29.2 has increased dramatically. It notes that under the 1995 Memorandum of Agreement a typical Firefighter with Advanced Firefighter and EMT certifications working as a Public Educator is paid only 85.37% of the pay he would receive as a Fire Suppression employee. The comparable figure when the 1995 MOA was negotiated was 88.72%. Thus, the Union argues, Public Educator pay has diluted the relationship the parties originally established between it and Fire Suppression pay.

The Union also believes that external comparability data support adoption of its final offer on this issue. It notes, for example, that the majority of those jurisdictions pay Public Educators at the same hourly rate they would earn for Fire Suppression work.

¹³ Hazardous Materials Technician.

Discussion

When the parties first negotiated an hourly rate for Public Educators (\$14), they essentially agreed that such work was worth about 89% of what Fire Suppression work is worth. The comparable figure for typical Lombard Firefighters is currently about 85%, and there is no evidence in the record to support such a decrease. The Village's final offer does nothing to correct that circumstance. And even the Union's final offer would not raise the pay level for Public Educators to the relative level it was when the MOA was negotiated. In fact, its adoption would merely maintain the pay differential between Public Education work and Fire Suppression work at its current level (i.e., about 85%). That fact makes the Union's final offer appear to be the preferable one.

Support for adoption of the Union's final offer on this issue is also found among the external comparables. Table 5 illustrates that conclusion quite persuasively:

Table 5
Public Education Pay
(as of September, 1997)

| Jurisdiction | Pay Methodology | Hourly Rate (1 ½ X) |
|-----------------|--------------------------|---------------------|
| Bolingbrook | 1 ½ X negotiated FS rate | \$27.23 |
| Downers Grove | 1 ½ X negotiated FS rate | \$26.13 |
| Elmhurst | MOA | \$11.00 |
| Hoffman Estates | 1 ½ X negotiated FS rate | \$26.34 |
| Park Ridge | 1 ½ X negotiated FS rate | \$29.64 |
| Lombard | MOA | \$21.00 |

FS = Fire Suppression

Sources: Village Exhibit 10-1; Union Exhibit 38

It is clear from Table 5 that adoption of the Village's final offer on this issue would cause Lombard Public Educators to lag increasingly behind their counterparts across comparable jurisdictions. That is, the Public Education rate in Bolingbrook, Downers Grove, Hoffman Estates and Park Ridge automatically keeps pace with the negotiated Fire Suppression rates; as already noted, the Village's final offer here would not do so. For fiscal year 1997-1998 under the Village's already adopted final wage offer, the Fire Suppression rates will increase by 3.75%. Under its offer on the issue under discussion, Public Educator pay would remain at the 1995 level. For fiscal year 1998-1999 the Fire Suppression rate increases by 3.5%; under the Village's Public Educator offer that rate would increase by about 7% (i.e., from \$14 to \$15), but since that increase would be the first since 1995, when annualized it is less than 2%. The negotiated Fire Suppression annual salary increases for those years were much higher. And for fiscal 1999-2000 the Lombard Fire Suppression rate increases under the Village's salary offer by another 3.5%. Under its final offer here the Public Education rate would increase by 3.3%. Admittedly, there is not a great deal of difference between the percentage increases to Public Education pay under the parties' respective offers; however, there is no justification in the record to allow Public Educators in Lombard to fall farther and farther

behind their counterparts in other jurisdictions, as they would were the Village's final offer to be adopted.

It must also be acknowledged that the Union's final offer would not disturb the relationship between Fire Suppression pay and Public Education pay the parties originally established in the 1995 MOA. Rather, it merely assures that the Public Education rate originally established by the parties themselves is increased at the same rate as their negotiated Fire Suppression rates. That circumstance ultimately leaves the establishment of Public Education pay in the hands of the parties themselves.

For all of the foregoing reasons the Neutral Chair favors adoption of the Union's final offer on the Public Education Pay issue.

RETROACTIVITY

Village Position

The Village proposes that base salary be "fully retroactive to the date of the interest arbitration award," for all members of the bargaining unit except those discharged "prior to the signing of this Agreement." The Village notes that it has never agreed to retroactive pay for Firefighters when they have proceeded to interest arbitration. In addition, the Village asserts, computing the amount of retroactive pay under the Union's final offer would be inordinately burdensome. And the Village argues quite strenuously that most of the delay in the negotiations leading to these proceedings is attributable solely to the Union. For example, the Village points out, the Union refused without reason to meet and discuss its contract proposals in May 1997, insisted upon mediation before the Village even had an opportunity to understand fully what the Union wanted and why, and needlessly attempted to change past negotiation practices regarding the exchange of proposals and the locus of bargaining.

Union Position

The Union's final offer makes salary payments retroactive to June 1, 1997, the effective date of the contract under dispute here. Such payments would apply to base salary and premium pay, and would be on an hour-for-hour basis, for regular hours worked and for all paid leave, vacation, holiday pay and overtime hours. The Union's final offer also would provide retroactive pay to any employee who retires between June 1, 1997 and the effective date of the Arbitration Panel's Award. It asserts that such a provision merely serves to clarify the ambiguous language in the current Agreement.

The Union argues that arbitral precedent strongly favors adoption of its final offer on this issue. It notes as well that under Article XXIX of the contract base salaries and premium

pay will increase effective June 1, 1997 as a result of the Award in these proceedings. According to the Union, that fact indicates that the work unit members have performed since then is worth more than it was prior to that date. And the Union asserts that since June 1, 1997 unit members have worked hours and earned paid leave, vacation and holiday benefits at rates the parties now agree were too low --- they just do not agree on how much. The Union argues in addition that since both the FOP and AFSCME units received salary increases effective June 1, 1997, the internal comparability factor favors adoption of its final offer.

Discussion

The Union is absolutely correct in its assertion that arbitral authority favors adoption of its final offer on this issue. Indeed, if any Illinois interest arbitrator has ever failed to grant a union's proposal for full retroactivity, the Village did not bring it to the attention of the Arbitration Panel. The unanimous sentiment of Illinois interest arbitrators on this issue has been well illustrated in their awards, which are a matter of public record. Their collective refrain acknowledges in unison that if a particular straight time rate increase is adopted, other forms of pay and benefits which have that rate as their basis should be increased accordingly.

Adopting the Village's offer on retroactivity would be wholly inappropriate for yet another reason. Consider the fact that the Village presented a salary offer of 3.50% effective June 1, 1997; 3.75% effective June 1, 1998, and 3.75% effective June 1, 1999. It has been adopted on the basis of the criteria set forth in the Act. Accepting the Village's retroactivity proposal now would effectively change the impact of its salary offer to a wage freeze for the first two years of the contract. If that had been the Village's salary offer, it would not have been adopted.

The Neutral Chair is not persuaded by the Village's claim that the delay in the negotiations leading to these proceedings was entirely the Union's fault. The public sector collective bargaining process is a complex melange of personalities, economic factors, political considerations and intraorganizational bargaining. Delays are (or at least should be) an accepted element of the equation. Without detailed and extensive testimony from all of the negotiators involved here, the Neutral Chair could not responsibly identify the principal factors which prevented the parties from reaching agreement on the issues under dispute. Absent such evidence it is appropriate to assume that it did, in fact, take "two to tango."

Besides, since June 1, 1997 the Village has been paying salaries and associated benefits which are less than those prevailing across the comparable jurisdictions. Certain financial advantages to the Village have no doubt accompanied that situation. For example, the Village has in principle had at its disposal since June 1, 1997 money which were it not for the negotiations delay it would have paid to Firefighters. In contrast, members of the IAFF unit have suffered financially from that situation. It would be

grossly inappropriate not to redress that balance through an award for the Union on this issue.

Having reached the above conclusions, the Neutral Chair finds no reason to discuss the relatively minor issue of retroactivity for employees who retire between June 1, 1997 and the date this Award is issued. Moreover, the administrative inconvenience the Village would experience in calculating retroactive payments under the Union's final offer is not a sufficient reason to reject it.

For all of the foregoing reasons the Neutral Chair adopts the Union's final offer on the retroactivity issue.

PARAMEDIC SERVICES

Union Position

The Union's final offer on this issue proposes a new article. It is quoted in its entirety below:

Section 1 – Paramedic Classifications

- (a) Volunteer Firefighter/Paramedics – Bargaining unit employees commissioned prior to November 21, 1983 who are classified as Firefighter/Paramedics as of the effective date of Arbitrator Briggs' Award and/or those ranked numbers 1 – 14 on the bargaining unit seniority list shall be classified as Volunteer Firefighter/Paramedics.
- (b) Mandatory Firefighter/Paramedic – Bargaining unit employees commissioned on or after November 21, 1983 and/or those ranked numbers 15 and above on the bargaining unit seniority list shall be classified as Mandatory Firefighter/Paramedics.

Section 2 – Withdrawal from Paramedic Service

Volunteer Firefighter/Paramedics may withdraw from paramedic service at any time. Such withdrawal shall be without prejudice to their right to return to paramedic service at a later date, as a Volunteer Firefighter/Paramedic, subject to the approval of the Fire Chief.

Section 3 – Liability Coverage

The Village shall continue to provide at least the same level of liability coverage as existed as of May 30, 1997 for Firefighters operating within the scope of their employment as Paramedics.

The Union feels that its final offer on this issue merely preserves the status quo. At present, it notes, all Firefighters hired after November, 1983 are required as a condition of employment to obtain paramedic certification during their probationary period and maintain it while employed by the Lombard Fire Department. It notes as well that 34 of the 48 bargaining unit members fall into that category. Thus, the Union argues, its final offer merely memorializes the existing policy of allowing the remaining most senior Firefighters to drop their paramedic certification at any time.

In support of its final offer the Union points to the external comparables, noting that four of the five (Bolingbrook, Downers Grove, Elk Grove Village and Park Ridge) have in place a procedure for allowing Firefighters to withdraw from paramedic service. Moreover, the Union asserts, its final offer would provide a potential relief valve from the burnout and stress unquestionably associated with being a Paramedic.

The Union also points out that its final offer under consideration here is substantially different from the one classified as a non-mandatory subject of bargaining by the General Counsel of the Illinois State and Local Relations Boards on January 29, 1999.¹⁴ Accordingly, the Union argues, that Declaratory Ruling is irrelevant. And even if the Neutral Chair determines that it is relevant, the Union asserts, such Rulings are not final orders subject to judicial review. Rather, they are simply non-binding advisory opinions which neither determine nor resolve the legal rights, obligations and interests of the parties involved.

The Union also believes that adoption of its final offer would not interfere with the Village's determination of minimum manning levels and the nature of the Emergency Medical Service (EMS) it provides to the public. It notes that the Village currently provides Advance Life Support EMS with a 48-member bargaining unit, 14 of whom are entitled to opt out of paramedic service. In all likelihood, the Union asserts, the size of the unit will increase over the life of the Agreement under consideration here, resulting in an even greater number of Firefighter/Paramedics available to meet staffing needs. And the Union adds that nothing in its final offer would prevent the Village from expanding its current EMS operation by putting into service a third ambulance as part of its minimum daily staffing.

The Union steadfastly maintains that the paramedic service issue is of vital importance to the bargaining unit. It urges that the issue be resolved in favor of adopting its final offer.

¹⁴ Village of Lombard, Case No. S-DR-99-01.

Village Position

The Village proposes no language on this issue. It objects to the Union's final offer because it is not a mandatory subject of bargaining. The Village relies on the aforementioned Declaratory Ruling in support of that assertion. It notes that the Union's offer permits the 14 most senior Paramedics to drop their license regardless of how few Paramedics might remain. Thus, the Village argues, the Union's final offer intrudes on its right to manage the Fire Department and determine the scope of its protective services.

The Village also asserts that the Arbitration Panel is prohibited from considering the Paramedic Service issue by the terms of 80 Ill. Admin. Code § 1230.90 (k), quoted in pertinent part here:

Whenever one party has objected in good faith to the presence of an issue before the arbitration panel on the ground that the issue does not involve a subject over which the parties are required to bargain, the arbitration panel's award shall not consider that issue.

Discussion

The Neutral Chair agrees with the Village on this issue, since adoption of the Union's final offer would indeed allow the 14 most senior Paramedics to drop their licensure, no matter how many Paramedics might remain. It is true that the Village could always hire more Firefighters to make up for any shortage that might result, but the fact remains that the Union's offer in that scenario would essentially force the Village to (1) hire an appropriate number of new fire service personnel, (2) amend its minimum staffing levels, or (3) diminish the level of EMS coverage it currently provides. Any one of those options is, in the view of the Neutral Chair, an inappropriate infringement on the Village's right to manage the Fire Department.

It is true that the Union's final offer under in these proceedings is significantly different from the one considered by the ISLRB General Counsel earlier this year. But the Village still objects to the modified offer on the basis that it is not a mandatory subject of bargaining. Since the Union amended its offer relatively recently, there has been insufficient time to process a request for another Declaratory Ruling on the amended version. In any event, the Neutral Chair concludes that the Village's objection to the Union's final offer on this issue constitutes a good faith objection to its presence before the arbitration panel "on the ground that the issue does not involve a subject over which the parties are required to bargain." Therefore, consistent with the terms of 80 Ill. Admin. Code § 1230.90 (k), the Arbitration Panel shall not consider it.

One final aspect of the Union's proposal on this issue deserves discussion. The passage identified as Section 3 would require the Village to provide "at least the same level of liability coverage as existed as of May 30, 1997" for Firefighters operating as

Paramedics. The merits of that proposal aside, it is part of the Union's proposal on what both parties have characterized as an economic issue. Since the Arbitration Panel has already decided not to consider that issue, we do not believe we have the authority now to consider any individual part of it.

OVERTIME

Village Position

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

Section 8.6 – Emergency Overtime Distribution

The fire Chief or his designee shall have the right to require overtime work and employees may not refuse overtime assignments in emergency situations. In nonemergency situations the Fire Chief or his designee shall select volunteers in accordance with the Overtime Call-Out Procedure dated January 31, 1994, a copy of which is attached hereto as Appendix E, as the same may be changed from time to time through the Labor-Management process. However, volunteers will not necessarily be selected for work in progress or where the overtime needed is a result of specific skills, ability and experience possessed by an employee or employees.

Whenever a firefighter is needed for a detail or to fill a vacancy not considered an emergency of more than six (6) hours in a shift, selection of said firefighter, provided he is capable of performing the work required, shall be made from a rotating departmental seniority list. The Village shall endeavor to distribute opportunities for overtime over the course of the fiscal year so far as practicable among the employees covered by this Agreement.

For purposes of this Agreement, any employee who accepted an overtime assignment of more than six (6) hours shall be adjusted accordingly on the rotating seniority/hours list. The rotating seniority/hours list shall be reset and all hours zeroed out each January 1.

The Village notes that pursuant to its request for a Declaratory Ruling on this issue the ISLRB General Counsel determined that "the Union's proposal as it concerns whether and when overtime will be assigned is a permissive subject of bargaining. However, those aspects of the proposal concerning the procedures for assigning overtime, are mandatorily negotiable."¹⁵ The Village therefore asserts that since the content of its own

¹⁵ *Ibid*, Footnote 13, p. 24.

proposal constitutes a mandatory subject of bargaining, and since the proposal was not objected to as being a mandatory subject of bargaining, it must be adopted.

The Village believes that its proposal contains two classifications which will end the disputes the parties have had over this issue. The first changes the name of Section 8.6 from "Overtime Distribution" to "Emergency Overtime Distribution." That new designation, the Village opines, better reflects what Section 8.6 addresses. The other proposed change would eliminate the "emergency situation" language to clarify the fact that the contract does not limit the Village's right to assign overtime to emergency situations only.

The Village's proposal on this issue includes no change to the current Appendix E, which discusses in detail the process by which overtime assignments are made.

Union Position

Following the aforementioned Declaratory Ruling, the Union withdrew its proposal on the overtime issue. It notes that the Village has objected to the Union's proposal from the beginning of these proceedings, and that it only presented its own proposal "to develop a full factual record, so that if it's properly before you, you can proceed to rule on it."¹⁶ Since the ISLRB General Counsel has since that time found that the mandatory overtime assignment issue is not a mandatory subject of bargaining, the Village should now withdraw its proposal as well.

Discussion

At one point in its post hearing brief the Village argues that its proposal ". . . clarifies the parties' respective rights, rights brought into dispute by the Union's current interpretation of Section 8.6." At another, the Village points out that "grievances are currently pending on the interpretation of the current language in Section 8.6 of the contract." It argues as well that any attempt by the Arbitration Panel "to interpret what the current contract intended as to this issue . . . might impact the "pending arbitration." Thus, on the one hand the Village says that its proposal on this issue merely "clarifies" what the parties intended all along in Section 8.6, and on the other it advises that the Arbitration Panel should not attempt to interpret the current Section 8.6. Satisfying both of those admonitions is impossible. Were the Board to consider the Village's proposal, we would have to determine whether, indeed, it merely clarifies Section 8.6 or changes it in some significant way. In order to make that determination, we would be forced to interpret both the current language and the Village's proposal. Since the meaning of the current Section 8.6 is apparently awaiting interpretation by a grievance arbitrator, the Neutral

¹⁶ Comments of Village Advocate Robert Smith, Esq., during the October 29, 1998 interest arbitration hearing.

Chair concludes that the Arbitration Panel should not consider the Village's proposal on this issue. According to the Village's own argument, its proposal reflects a rights dispute between the parties, not an interest dispute.

ENTIRE AGREEMENT

Discussion

The Union's proposal on this issue would merely change Article XXXI (Entire Agreement) of the contract to authorize the parties to operationalize the Union's proposed wage and insurance reopeners for the 4th contract year. Since the Neutral Chair did not accept the Union's final offer on duration, however, the issues addressed in its proposal concerning the Entire Agreement article are moot.

FAIR SHARE

Union Position

The Union proposes the addition of a fair share provision to the contract, which currently provides (1) that Union members must maintain their membership for the duration of the contract; and (2) that their Union dues shall be automatically deducted from their biweekly paychecks. The Union's final offer on this issue is a classic fair share provision, requiring those who choose not to join the Union to pay a "fair share (not to exceed the amount of Union dues) of the cost of the collective bargaining process ..."

The Union acknowledges that neither the Lombard FOP unit nor the AFSCME unit have fair share provisions in their contracts. However, the Union adds, that fact does not warrant rejection of its fair share proposal. It notes that since the arbitration record contains no bargaining history evidence from those units, there is no way of determining whether those unions ever proposed and bargained over the fair share issue. And even if such evidence were present, the Union adds, negotiated outcomes from just two units hardly constitute an internal "pattern."

The Union also points to the external comparables in support of its fair share proposal, noting that all five of them contain fair share provisions in their Firefighter contracts. Moreover, the Union argues, the Village's own projected manpower growth over the term of the successor agreement poses a substantial likelihood of potential "free riders" at some point during the contract term. While all members of the IAFF unit are now Union members, the Union still believes it needs a guarantee that every future unit employee will contribute to the cost of collective bargaining. The Union points out as well that only one of the external comparables (Downers Grove) does not have 100% union membership in its Firefighter unit. Thus, the Union asserts, the prevailing norm in

comparable communities is the inclusion of a fair share provision, regardless of whether the bargaining unit includes any non-union members.

The Union also believes that the inclusion of a fair share provision would be in the public interest, as it would prevent the inevitable resentment a dues-paying Firefighter would have toward a unit member who enjoyed the benefit of Union representation without paying for it. And finally, the Union argues that since the Village has a deeply ingrained philosophical bent against fair share, it is unlikely to be compromised through the collective bargaining process.

Village Position

The Village proposes that the status quo (i.e., no fair share provision) be maintained on this issue. It notes that there is simply no need for such a provision, since 100 % of the IAFF bargaining unit are dues-paying Union members. The Village also argues that adoption of the Union's offer on this issue would be a radical departure from the parties' bargaining history, in that a fair share clause has never been adopted by them over several years of negotiating. It would depart from the negotiated outcomes in the FOP and AFSCME units as well, the Village adds.

Discussion

Virtually every Illinois interest arbitration award which has addressed the fair share issue has noted that there must be a demonstrated need for such a clause. That is, the union must show that its financial stability might be negatively impacted without one. In the present case, the Union has not convinced the Neutral Chair that such a need exists. All 48 members of the IAFF bargaining unit in Lombard are also dues-paying Union members. That significant fact is testimony to the Union's effectiveness in representing Firefighters for collective bargaining purposes. Nothing in the record suggests that the Union's effectiveness will diminish in the future. Therefore, the Neutral Chair does not believe the Union needs to be protected against "free riders" who are not likely to materialize.

The Union is correct about the norm across the comparable communities. All five of them have fair share clauses in their firefighter contracts. But the external comparability factor must be reconciled with three things: (1) there is no demonstrated current need for a fair share clause in the Lombard IAFF contract; (2) the two internal comparables contain no fair share clause; and (3) the Village has historically opposed the notion of fair share. In consideration of all those factors, and bearing in mind that the purpose of interest arbitration is to approximate the outcome of free collective bargaining, the Neutral Chair does not believe it would be appropriate to make the status quo change the Union seeks here.

PROBATIONARY PERIOD

Union Position

The Union's final offer on this issue would reduce the current probationary period for Firefighters from two years to one. It notes that currently a new employee has no access to the grievance procedure for disciplinary purposes until after 24 months, arguing that such an extended period of time is "just too long." The Union believes that a 24-month period constitutes a substantial deprivation of job security for probationary employees, and that it should not continue.

The Union also believes that a one-year probationary period would not be impracticable, as the Village claims. The majority of new Firefighters recently hired by the Village already have paramedic certification, the Union notes, so the claim that the Village needs 24 months to observe an employee function as a Firefighter/Paramedic while still on probation is not persuasive. Besides, the Village acknowledged that with regard to new hires who have no previous EMT training, the 24-month probationary period ends while they are still in Paramedic school. Thus, the current probationary period is utterly ineffectual to meet the Village's purported objective.

Besides, the Union argues, the Village may terminate any employee who fails to meet the qualifications of the job, regardless of the probationary period's length. If an employee fails to obtain required Firefighter or Paramedic certification in the designated period of time, he may be subject to discharge for cause. Likewise, once a Firefighter has completed Paramedic training and begins to work in that capacity, the Village can discipline or discharge him for failing to perform the job in satisfactory fashion. The length of the probationary period does not compromise that disciplinary right.

The Union believes that Illinois public policy favors adoption of its proposal as well, since 65 ILCS 5/10-2.1-4 "expressly prohibits municipalities from requiring newly hired firefighters to serve probationary periods of longer than twelve (12) months." The Union also notes that the provision makes it optional for public employers to impose probationary periods longer than 12 months for Firefighters performing Paramedic duties. Thus, the Union argues, its final offer is not prohibited by public policy.

The Union points out as well that three of the five externally comparable communities (Bolingbrook, Downers Grove and Elmhurst) have 12-month probationary periods for Firefighters. It concludes from those data that the external comparables support adoption of its final offer on this issue.

Village Position

The Village proposes to maintain the status quo. It argues that the Union's proposal constitutes a major breakthrough and should not be adopted. The Village notes that its contract with the FOP provides for a two-year probationary period. And, the Village argues, since all new Firefighter hires are required to obtain Paramedic licensing, it needs the entire 24 months to observe and evaluate them as they perform those duties.

The Village also points to public policy in support of its position, noting that the Illinois legislature specifically exempts Firefighter/Paramedics from the one-year limitation on probationary periods set forth in the Board of Fire and Police Commissions Act (65 ILCS 5/10-2.1-4). The Village believes as well that shortening the probationary period to one year would unjustly deprive new hires of a full and fair evaluation.

In addition, the Village notes that as a non-home rule community it has no authority to limit the hiring of new employees to those already licensed as EMT's or Paramedics. The Village also underscores the fact that Bolingbrook and Downers Grove are home rule communities which require employees to be Paramedics when they are hired. For that reason, the Village asserts, those jurisdictions do not have the compelling need for a two-year probationary period such as that found in Lombard.

Discussion

The Village's expressed need for a 24-month probationary period in which to evaluate the performance of probationary Firefighter/Paramedics is persuasive for several reasons. First, the 24-month period is a result of several rounds of voluntary collective bargaining, and there is no evidence to suggest that it has been historically problematical. It was not included as an issue in the parties' 1988 interest arbitration before Arbitrator Herbert Berman, for example. The Neutral Chair recognizes that the issue is important to the Union now, but given that background, it does not appear to be one of those issues over which the parties have struggled sufficiently at the bargaining table.

Second, the public policy cited by both parties here (65 ILCS 5/10-2.1-4) supports the Village's argument that a longer probationary period for Firefighters who perform Paramedic duties is advisable. Consider the following quote from that provision:

No municipality having a population of less than 1,000,000 shall require that any fireman appointed to the lowest rank serve a probationary employment period of longer than one year. The limitation on periods of probationary employment provided in this amendatory act of 1989 is an exclusive power and function of the State. Pursuant to subsection (h) of Section 6 of Article VII of the Illinois Constitution, a home rule municipality having a population of less than 1,000,000 must comply with this limitation on periods of probationary employment, which is a denial

and limitation of home rule powers. Notwithstanding anything to the contrary in this Section, the probationary employment period limitation shall not apply to a fireman whose position also includes paramedic responsibilities. (emphasis added)

The highlighted sentence above carves out an exception to the legislature's mandate for the one-year probationary period maximum in home rule communities. Though Lombard is a non-home rule community apparently not subject to, the above mandate, the philosophy behind the Firefighter/Paramedic exception is the same. The Illinois legislature recognized that it should not limit to 12 months the probationary period of Firefighters whose positions also include paramedic responsibilities.

Turning to the external comparables, it is true that three of them require only a 12-month probationary period for Firefighters. But two of those, Bolingbrook and Downers Grove, are home rule communities which can and do require new Firefighters to be licensed Paramedics at the time of hire. Thus, those communities do not have the same need for an extended probationary period as does Lombard. And since both Hoffman Estates and Park Ridge retain 24-month probationary periods, the Neutral Chair does not find sufficient support from the external comparables to justify the Union's proposed departure from the status quo. The same conclusion results from consideration of the two internal comparables, since one of them (the FOP unit) has a 24-month probationary period.

The Neutral Chair agrees with the Union that 24 months is a long time to be deprived of the right to grieve disciplinary action. That is especially true given the fact that under the current language the Village may "reprimand, suspend or discharge a probationary firefighter without cause" and such persons have no access to the grievance procedure or to the Board of Fire and Police Commissioners to file any sort of protest. On the other hand, there is no evidence in the arbitration record to suggest that the Village has abused that contractual authority. Absent such evidence, the adage "no harm, no foul" seems to have some application here.

On balance, the Neutral Chair concludes from the record that the Union's proposed change to the status quo is not supported by compelling evidence. The Village's final offer on this issue is therefore adopted.

VACATION SCHEDULING

Village Position

The Village proposes to change the status quo on this issue. The current Section 23.3 requires that vacation "shall be taken at the rate of not less than one-half (1/2) day at a time." The Village seeks to change that language to read as follows:

Vacation shall be taken at the rate of not less than one (1) full shift day at a time, provided that half (1/2) shift vacation days may be scheduled off on weekends, holidays, or the last twelve hours of a shift.

The Village asserts that the current contract on this issue is broken and needs to be fixed. It argues that certain employees have abused their contractual right to take vacation in ½ day (i.e., 12 hour) increments, and that such abuse has had a detrimental impact on employee training. For example, the Village argues, certain employees utilize Section 23.3 by taking off from 8:00 a.m. to 8:00 p.m. (i.e., the first half of the shift), and then reporting to the station at night to sleep. A Firefighter so inclined can take all of his vacation time during the daytime, thus effectively doubling his vacation time off and doubling the number of potential training days missed.

The Village notes as well that it presented evidence of the above-discussed abuse, and of the fact that its training is usually done on weekdays beginning around 9:30 a.m. and finishing around noon. Some of the training, such as live burns, team training, and hands-on training, is difficult if not impossible to make up if missed.

The Village also underscores the fact that its proposal on this issue does not eliminate all half-day vacation scheduling. It still allows the scheduling of half-day vacation time at night, and on weekends and holidays, since training rarely occurs at such times. Thus, the Village argues, its proposal resolves the Section 23.3 problem without unduly restricting employees.

The Village also notes that only two of the external comparables (Hoffman Estates and Park Ridge) permit half-day vacations, and that one of those (Hoffman Estates) restricts such activity to only twice per year. It notes as well that Downers Grove only permits half-day vacation time for the purpose of attending school or training, and that Bolingbrook permits partial day vacation time only in special circumstances at the discretion of the shift commander.

Finally, the Village asserts, its final offer is in the public interest. Its residents expect that when a call for service comes, Lombard Firefighters will be well-trained and will operate smoothly as a team. The Village believes that by limiting missed training opportunities its proposal serves that interest.

Union Position

The Union seeks to retain the status quo on this issue. It notes that over their long bargaining history the parties have placed no restriction on the use of 12-hour time blocks for vacation purposes. The Union also asserts that there is insufficient evidence to prove a problem with Section 23.3 currently exists. It claims that the vast majority of unit members do not miss any training activities as a result of the half-shift vacation policy, noting that for 1996, 1997 and the first 9 months of 1998, 35 of the 48 unit members took no half-day vacation increments. And of the 13 who did so, the Union points out, 6 did so only once and 2 did so only twice. The Union further argues that the Village does not require the great majority of missed training drills (i.e., 84% of them) to be made up, and that certain training is videotaped and can be viewed at any time later if necessary.

The Union notes as well that adoption of the Village's final offer on this issue would not eliminate missed training opportunities. Firefighters could still take vacation time in full-day increments and miss training drills.

The internal comparables also support retention of the status quo, the Union argues. It points out that employees in the FOP unit can take vacation time in 4-hour increments with no limitation, and that those in the AFSCME unit can take it in 1-hour increments, also without limitation.

The Union takes issue with the Village's external comparability data as well. It argues that Firefighters in Bolingbrook, Downers Grove, Hoffman Estates and Park Ridge can use vacation in 12-hour blocks, subject to certain restrictions (except in Park Ridge).

Discussion

The problem of missed training opportunities in a fire department can be troublesome indeed. The Neutral Chair is very familiar with the extensive training provided to Firefighters across Illinois municipalities, and understands the attendant difficulties associated with having all members of certain specialty teams present for training. The problem is exacerbated because certain types of training are not easy to arrange (a controlled burn, for example) and are difficult if not impossible to make up. Still, the Village has not convinced me there is a compelling need to change the status quo.

The parties have had many opportunities over their long collective bargaining relationship (about 13 years) to negotiate restrictions on Firefighters' contractual right to take vacation time in half-day increments. In all that time, they have continually renewed the language of Section 23.3 the Village finds so objectionable now. If that Section had been so problematical, surely the Village would have pressed to impasse in the past on the changes it now claims are necessary. There is no indication in the arbitration record that the Village ever did so. The Neutral Chair is therefore of the opinion that it would be

inappropriate to grant the Village something in these proceedings it has not sufficiently explored with the Union at the bargaining table.

There is also no solid support for the Village's proposal among the comparable communities. Park Ridge allows vacation time to be taken in half-day increments with no restriction whatsoever. The others allow it too, albeit with certain restrictions, none of which appear to be so limiting as those proposed by the Village here. Neither do the two internal comparables in Lombard support adoption of the Village's final offer, since both of them allow for liberal use of partial-day vacation time.

The public interest is certainly an important statutory criterion with regard to this issue. Lombard citizens have a right to expect that its Firefighters and Firefighter/Paramedics are adequately trained. But in spite of the Village's claims with regard to the inadequacy of the current Section 23.3 to protect the public interest, there is just no evidence to demonstrate that the missed training opportunities cited by the Village have had any negative impact whatsoever on the public.

For all of the foregoing reasons, the Neutral Chair has concluded that the Village has not met its burden with regard to this issue. That is, it has not presented compelling evidence of the need to change the current language of Section 23.3 through the interest arbitration process.

STARTING TIMES

Village Position

The Village proposes that the starting time for 24-hour employees be changed from 8:00 a.m. to 7:30 a.m. It asserts that with the current starting time Firefighters are not ready to begin training much before 9:00 a.m. It believes that moving the start time to 7:30 a.m. would allow for a more productive morning because the shift's basic activities (equipment and apparatus checks, etc.) would be completed by 8:30 a.m.

The Village also notes that its proposed change would bring the Fire Department closer in line with the internal comparables, since Police Officers begin work at 7:00 a.m. and Public Works employees start at 7:30 a.m. It relies on the external comparability factor as well, arguing that 5 of its 9 suggested comparables have starting times earlier than 8:00 a.m.

Finally, the Village asserts that its final offer on this issue constitutes a minor change in starting times, that it was advanced for a legitimate organizational purpose, and that the Union has failed to set forth a single reason why it should be rejected.

Union Position

The Union seeks to maintain the status quo on this issue. It argues that the record is "completely devoid of evidence to support the Employer's contention that the current 8:00 a.m. starting time is hampering productivity."¹⁷ The Union further notes that training typically ends by 12:00 p.m., and that there is no evidence the 8:00 starting time has hampered its completion. Moreover, since the work day is 24 hours long no matter when it starts, adoption of the Village's proposal would only shift the cycle, it would not increase the number of hours during which productive work could be performed.

There is also no evidence to support the Village's contention that uniform start times for the three Lombard bargaining units is either desirable or necessary, the Union asserts. And it notes that even if the Village's proposal were adopted, starting times for the three units would still not be uniform.

The Union points out as well that Firefighters in the majority of jurisdictions set forth by the Village as external comparables begin their work days at 8:00 a.m., and only in one of them do they start at 7:30 a.m. Thus, the Union argues, the external comparables do not support a change in the status quo.

The Union also points to the parties' own bargaining history in support of its bid to retain the status quo for Lombard Firefighters. It highlights the fact that an 8:00 a.m. start time is mandated in the 1986-89, 1989-92, 1992-94, and 1994-97 agreements.

Discussion

The Neutral Chair is convinced by the parties' bargaining history that there is currently no compelling need to alter the status quo. For nearly a decade and a half they have operated with an 8:00 a.m. starting time, and there is no evidence that changing it to an earlier time has been the subject of much bargaining table discussion. Changing the status quo through interest arbitration should follow good faith attempts by the parties to work out their differences at the bargaining table. The Neutral Chair is just not convinced that such discussions have taken place in the present matter with regard to shift starting times.

Moreover, there is insufficient support from the internal comparables to justify adoption of the Village's final offer. While it is true that employees in Lombard's FOP and AFSCME units start earlier than 8:00 a.m., there is no evidence to suggest that the factors explaining those start times are relevant considerations for Firefighters. The 24-hour Firefighter work cycle is radically different from the 8-hour shift typically worked by Police Officers and Public Works employees. Without evidence as to why the Village and its two other unions negotiated their early start times, it is not reasonable to conclude that Firefighters should start earlier to make them more like those other employee groups.

¹⁷ Union post hearing brief, p. 167.

If the 8:00 a.m. start time creates productivity and training problems for Firefighters on a 24-hour work cycle, other municipalities comparable to Lombard must have found a way to solve them. Hoffman Estates Firefighters begin their work day at 8:00 a.m. Firefighters in Elmhurst, under rather unique contract language, can begin their work day "no earlier than 7:00 a.m. and no later than 8:00 a.m." On the basis of evidence provided by the Village here, though, it appears that Elmhurst Firefighters actually begin their shifts at 8:00 a.m. Firefighters in the remaining externally comparable communities do indeed begin their shifts before 8:00 a.m., as the Village asserts.¹⁸ On balance, then, it seems that the evidence from the external comparables is mixed. It is therefore insufficient to justify the Village's proposed change to the status quo.

On the basis of the foregoing analysis the Neutral Chair favors adoption of the Union's final offer on this issue.

¹⁸ Bolingbrook and Downers Grove Firefighters begin their 24-hour shifts at 7:00 a.m. And Firefighters in Park Ridge begin at 7:45 a.m. and go off shift the following morning at 8:00 a.m.

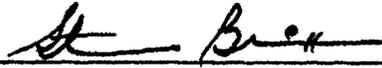
AWARD OF THE ARBITRATION PANEL

After careful study of the record in its entirety, and in full consideration of the applicable statutory criteria, whether discussed herein or not, the Arbitration Panel has reached the following decisions with regard to the successor to the parties' June 1, 1994 to May 31, 1997 collective bargaining agreement:

1. Wages (economic) – the final offer of the Village is adopted.
2. Insurance (economic) – the final offer of the Village is adopted.
3. Duration (economic) – the final offer of the Village is adopted.
4. Call Back/Hold Over (economic) – the final offer of the Union is adopted.
5. Public Education Pay (economic)– the final offer of the Union is adopted.
6. Retroactivity (economic) – the final offer of the Union is adopted.
7. Paramedic Service (economic) – the Arbitration Panel does not assert jurisdiction over this issue.
8. Overtime (economic) – the Arbitration Panel does not assert jurisdiction over this issue.
9. Entire Agreement (economic) – given the outcome of issue no. 3 above, this issue is moot.
10. Fair Share (non-economic) – the final offer of the Village is adopted.
11. Probationary Period (non-economic) – the final offer of the Village is adopted.
12. Vacation Scheduling (non-economic) – the final offer of the Union is adopted.
13. Starting Times (non-economic) – the final offer of the Union is adopted.

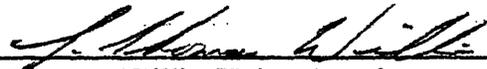
The matters already agreed upon by the parties themselves shall be included in their 1997-2000 Agreement as well, along with the provisions from its predecessor that remain unchanged.

Signed by me at New Orleans, Louisiana, this 2nd day of June, 1999.



Steven Briggs, Neutral Chair

Signed by me at Lombard, Illinois, this 26th day of June, 1999.

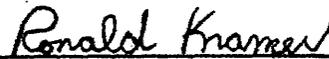


J. Thomas Willis, Union Appointee

Concurring as to Issue Nos. 4, 5, 6, 8, 12, 13

Dissenting as to Issue Nos. 1, 2, 3, 7, 9, 10, 11

Signed by me at Lombard, Illinois, this 22nd day of June, 1999.



Ronald J. Kramer, Esq., Village Appointee

Concurring as to Issue Nos. 1, 2, 3, 7, 9, 10, 11,

Dissenting as to Issue Nos. 4, 5, 6, 12, 13, 8