

In The Matter of the Arbitration Between)
)
 Illinois Fraternal Order of Police Labor Council)
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 and))
)
 Village of Fox Lake)
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 Interest Arbitration)
)
 ISLRB No. S-MA-98-122)

OPINION AND AWARD

The hearing in the above captioned matter was held on December 23, 1998, in Fox Lake, Illinois, before Martin H. Malin, serving as the sole impartial arbitrator by selection of the parties. The Union was represented by Mr. Thomas Sonneborn, its attorney, and Ms. Becky Drago, its legal assistant. The Employer was represented by Mr. Joshua Holeb, its attorney. The hearing was held pursuant to Section 14 of the Illinois Public Labor Relations Act. However, the parties agreed to waive their delegates to the arbitration panel and stipulated that they would be bound by my award as sole arbitrator. The parties also waived the IPLRA's requirement that the hearing commence within fifteen days following the arbitrator's appointment.

At the hearing, both parties were afforded full opportunity to call, examine and cross-examine witnesses, introduce documentary evidence and present arguments. A verbatim record of the hearing was maintained and a transcript was produced. Both parties filed post-hearing briefs.

The Issues

The parties stipulated that the following issues are before me for resolution:

1. What increases in wages will be received by bargaining unit members:
 Effective May 1, 1998
 Effective May 1, 1999
 Effective May 1, 2000;
2. The language of the agreement concerning maintenance of economic benefits and impasse resolution;
3. The language of the agreement concerning the entire agreement.

The parties stipulated that Issue 1 is an economic issue, and that Issues 2 and 3 are non-economic issues.

The Statutory Factors

Section 14(h) of the IPLRA provides for the arbitrator to base his findings on the following factors:

- (1) The lawful authority of the parties.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services with other employers 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.

Background

The bargaining unit consists of fifteen police officers in the Village of Fox Lake. Fox Lake (the Employer or Village) encompasses an area of eight square miles, situated in the Chain-of-Lakes region in Lake County, Illinois, 53 miles northwest of the Chicago Loop and 25 miles west of Waukegan. The 1990 census placed its population at 7,478. The most junior officers in the bargaining unit were hired on June 1, 1998. The most senior officer was hired on July 1, 1977.

At the hearing, the Union offered the following communities as comparable to Fox Lake: Antioch, Cary, Grayslake, Lake In The Hills, McHenry, Round Lake Beach, and Wauconda. The Village did not offer any alternative communities as comparable. At the hearing, the Employer stated that it did not dispute the comparability of these seven communities to Fox Lake. Rather, it disputed the relevance of comparisons of the wage rates paid in those jurisdictions to Fox Lake (Tr. 86). In its brief, the Employer noted (Er. Brief at 6, n.2):

The Village does not concede that the communities cited by the Union are in fact "comparable" communities. Assuming *arguendo* that some or all of the cited comparables are relevant, the Village disputes the relevance and weight to be given to the data from these purported comparable jurisdictions.

In its brief, the Village again offered no alternative comparable communities. The Union explained that it selected the seven communities based on their geographic proximity to Fox Lake, their population within plus or minus 50 percent of Fox Lake's, their median home values, per capita incomes, and median household incomes, the size of their police departments, and whether their police officers were represented in collective bargaining and had negotiated pay plans. The Employer offered no specific quarrel with the Union's methodology nor suggested that any particular community offered

by the Union differed from Fox Lake in such a material way as to warrant disregarding it. Indeed, throughout its brief and arguments, the Employer has cited data from these same seven communities. Accordingly, I accept these seven communities as the relevant comparable communities for this proceeding. With this background, I turn to the specific issues in dispute.

The Economic Issue: What increases in wages will be received by bargaining unit members, effective May 1, 1998, effective May 1, 1999, and effective May 1, 2000?

The Union's Final Offer: The Union's final offer provides for a pay plan with the following steps: Start, 1st year, 2nd year, 3rd year, 4th year, 5th year, 6th year, 10th year, 15th year, and 20th year. Under the Union's proposal, officers advance to the next step on their anniversary dates. The salaries at each step are adjusted on May 1, the start of the Village's fiscal year. The Union offers the following salaries:

	May 1, 1998	May 1, 1999	May 1, 2000
Start	31,000	31,930	32,888
1 st Year	33,042	34,033	35,054
2 nd Year	35,083	36,136	37,220
3 rd Year	37,125	38,239	39,386
4 th Year	39,167	40,342	41,552
5 th Year	41,208	42,445	43,718
6 th Year	43,250	44,548	45,884
10 th Year	44,331	45,661	47,031
15 th Year	45,413	46,775	48,178
20 th Year	46,494	47,889	49,325

The Union proposes that the difference between each officer's current salary and the salary effective May 1, 2001, be calculated and that one-third of that amount be added to the officer's salary effective May 1, 1998, another one-third be added effective May 1, 1999, and the remaining one-third be added effective May 1, 2000. The Union proposes that all increases be retroactive on all hours paid and that retroactive amounts be paid on or before forty-five days following issuance of the award.

The Employer's Final Offer: The Employer's final offer provides for a pay plan with the following steps: Start, 1st year, 2nd year, 3rd year, 4th year, 5th year, 6th year, 7th year, 8th year, 9th year, 14th year, and 18th year. Under the Employer's offer, officers' salaries are adjusted on May 1 of each year. The Employer offers the following salaries, with all increases retroactive to May 1, 1998:

	May 1, 1998	May 1, 1999	May 1, 2000
Start	30,458	31,345	32,232
1 st Year	31,073	32,285	33,578
2 nd Year	31,688	33,439	35,191
3 rd Year	35,617	35,617	36,427

4 th Year	36,685	37,397	38,223
5 th Year	37,785	38,558	40,342
6 th Year	38,419	39,719	41,050
7 th Year	40,040	40,880	42,081
8 th Year	41,054	42,043	43,112
9 th Year	42,070	44,174	46,383
14 th Year	43,614	45,358	47,173
18 th Year	46,290	47, 889	49,325

Additional Background: The Village of Fox Lake has not had a salary plan for its police officers. Officers were hired at the starting salary in effect on their date of hire. In each collective bargaining agreement, the parties negotiated percentage pay increases which were applied across the board. The collective bargaining agreements simply listed each officer by name and his or her salary on the effective date of each negotiated across the board increase.

The parties recognized that their historical approach to wages produced significant disparities among officers. Consequently, in their May 1, 1996 - April 30, 1998 collective bargaining agreement, the parties provided:

During the term of this Agreement, officers shall be paid the annual salaries set forth below. Starting salary for all new hires shall be \$29,861. The parties further agree that commencing July 15, 1997, or as soon thereafter as may be agreed, to study the development of a comprehensive salary schedule for bargaining unit employees. If an agreement on such a schedule is reached prior to the scheduled expiration date of this Agreement, the parties agree to modify the terms of this Appendix B to reflect that agreement. Until such time as otherwise agreed, employees shall continue to receive step increases according to the current practice.

The parties were unable to reach agreement on a salary schedule. Under the 1996-98 contract, the employees in the bargaining unit are paid as follows:

Employee	Date of Hire	Yrs of Service as of 5/1/98	Salary
Luerssen	July 1, 1977	20	44,815
Good	April 11, 1980	18	44,510
Bartoszewski	Nov. 7, 1983	14	41,937
Gliniewicz	April 22, 1985	13	41,063
Mason	June 9, 1986	11	41,063
Norris	May 19, 1998	9	40,067
Welch	May 20, 1998	9	40,067
Olson	Jan. 17, 1989	9	40,067
Bostic	March 18, 1991	7	38,134
Hoyne	Aug. 29, 1994	3	33,921
Schindler	Jan. 10, 1995	3	33,921

Munsen	Oct. 9, 1995	2	30,144
Dubner	March 30, 1998	0	29,861
Baldowsky	June 1, 1998	0	29,861
Koch	June 1, 1998	0	29,861

The Employer's final offer produces an average wage increase of 4 percent in the first year of the contract, 6 percent in the second year, and 6 percent in the third year. The Union's final offer produces an average wage increase of 6 percent in the first year, 7 percent in the second year, and 6 percent in the third year.

The Antioch collective bargaining agreement provides for a 4 percent raise in 1998. Average increases for 1999 and 2000 are not available. The Lake-In-The-Hills contract lists a current hourly wage and an hourly wage for 1997-1999. The percentage increases range from 10 percent to 18.7 percent, depending on length of service, with the rate locked in for a two year period. No increase is listed for officers with more than eight years of service. The McHenry contract provides for a 3 percent increase for 1998, with increases for 1999 and 2000 not available. Round Lake Beach provides for 3 percent in 1998 and 1999, with 2000 not available. Wauconda provides for 4 percent in 1998 and 1999, and 3 percent in 2000.¹ Cary provides for 3 percent raises in 1998 and 1999, with 2000 not available. Grayslake provides for a 3 percent raise in 1998, with raises for 1999 and 2000 not available.

The evidence shows that the annual increase in the CPI-U and CPI-W for the Chicago area from 1997 to 1998 was 2.80 percent (Village Ex. 4). The Village has one other collective bargaining agreement, covering employees represented by AFSCME. That contract provides for a 2.5 percent wage increase in 1998 and a 4 percent increase in 1999. Village employees who are not unionized received 2.5 percent raises in 1998.

In comparison to the comparable communities, the officers in Fox Lake tend to rank near the bottom in wages. Fox Lake's starting salary of \$29,861 effective May 1, 1997, the last raise received by the employees in the bargaining unit, and the salary of \$30, 144 paid to the one employee in the bargaining unit who had one year of service as of May 1, 1997, ranked below every comparable community except for Cary and McHenry..² The two employees who had two years of service as of May 1, 1997, received \$33,921, ranking below all comparable communities except Antioch, Cary and McHenry. The one employee with six years seniority as of May 1, 1997, received \$38,134, less than employees with the same seniority in every comparable community except Cary. The three employees with eight years seniority as of May 1, 1997, received \$40,067, which ranked below employees with the same seniority in every comparable

¹Village Exhibit 4 shows Wauconda's 2000 wage increase as not available; however, the Wauconda collective bargaining agreement placed in evidence by the Union shows a 3 percent increase in 2000.

²An exhibit presented by the Union, and not contested by the Village, compares the Fox Lake salaries effective May 1, 1997, to the 1998 salaries in the comparable communities. However, a more accurate perspective is obtained by comparing 1997 Fox Lake salaries to 1997 salaries of comparable communities. I have obtained these from the collective bargaining agreements submitted by the Union.

community except Cary. As of May 1, 1997, one employee had ten years of service and one employee had twelve years. Each received \$41,063, which ranked below every comparable community for the employee with twelve years and ranked below every comparable community except Cary for the employee with ten years seniority. The \$41,937 paid the one employee with thirteen years seniority as of May 1, 1997, ranked below all comparable communities except Antioch. The \$44,510 paid the employee with seventeen years seniority ranked below all comparables except Antioch, Cary and Wauconda; while the \$44,815 paid the one employee with nineteen years seniority as of May 1, 1997, placed him above Antioch, Cary, Round Lake Beach and Wauconda., and below Grayslake, Lake-in-the-Hills, and McHenry.

Union's Position: The Union argues that its final offer should be selected. The Union contends that this case does not present one side seeking a breakthrough in arbitration that it was unable to obtain at the bargaining table. Rather, the Union urges, both parties agreed that it was necessary to radically restructure the existing salary scheme. Consequently, in the Union's view, neither side bears a heavier burden in making its case.

The Union contends that the Employer's offer has a critical flaw in that it provides that officers advance on the pay plan only on May 1 of each year. The Union maintains that in every comparable jurisdiction, officers advance a step on the pay plan on their anniversary date of hire. The Union characterizes such advancement as the "standard for law enforcement throughout Illinois," and urges that this is so to avoid inequities within the bargaining unit. The Union argues that, under the Employer's final offer, two officers hired on April 26 and May 5, less than two weeks apart, will be paid at different steps because of the fortuity of their hire dates. The Union contends that over the course of their careers, under the Employer's final offer, the employee hired May 5 will receive \$17,093 less in total salary than the employee hired April 26 of the same year.

The Union contends that the Employer's final offer presents steps that bear no relationship to length of service. The Union contends that a step plan should have a methodology that accounts for the differences between steps. The methodology may vary, with some plans providing for equal steps while others provide increases from step to step that correspond to the employee's expected worth to the Employer. For example, there may be a large step increase after the first year of service, signifying that the employee has reached a milestone on the learning curve, followed by more gradual increases thereafter.

The Union contends that the Employer's final offer has no method to explain the differences in the step increases. The Union maintains that the widely disparate sizes of the steps in the Village's offer bear no relation to the officers' progression in learning, training, experience or worth to the Employer. In contrast, the Union urges, its proposal provides for equal steps through six years of service, followed by longevity pay of 2.5 percent of the top pay added at ten, fifteen and twenty years of service.

The Union further argues that its final offer is more in line with comparable communities in terms of how long it takes officers to reach top pay. The Union observes that officers in

Grayslake, Round Lake Beach and Wauconda make it to top pay after five years, while officers in Antioch take six years and officers in Lake-in-the-Hills and McHenry make it in seven. The Union's proposal fits in the middle, providing that officers achieve top pay after six years, whereas the Village's offer requires them to wait nine years. The Village's offer, in the Union's view, is comparable only to Cary, which requires officers to wait twelve years before they reach top pay. The Union suggests that the length of time to top pay is "no doubt a bargaining issue for the Cary officers' successor agreement." Union Brief at 24, n.18.

The Union contends that the need for a pay plan arises from the inequities that exist among employees with the least seniority under the current pay system. The Union maintains that the Village's final offer does not correct these inequities. The Union urges that its offer does and therefore should be adopted by the arbitrator.

Finally, the Union maintains that a comparison of wage rates to the comparable communities reveals that "the Village has been getting by on the cheap in the past and wants to continue to do so." Union Brief at 26. The Union argues that for 1998, the only year for which salary data is available from all comparable communities, the Employer's offer is \$1,384 below that average starting pay for comparable communities, \$3,065 below the average after one year of service, \$4,529 below the average after two years of service, \$2,333 below the average after three years of service, \$2,889 below the average after four years of service, \$4162 below average after five years, \$4,561 below average after six years, \$3,599 below average after seven years, \$3,294 below average after ten years, \$1,893 below average after fifteen years, and \$583 above average after twenty years. The Union contends that it is not trying to catch up in one gigantic jump. It observes that its final offer is below the average pay in comparable communities at all levels of seniority except at six and twenty years.

Employer's Position: The Employer contends that its proposal is reasonable and fair. The Employer argues that its offer produces average increases of 4 percent, 6 percent and 6 percent in 1998, 1999 and 2000. Thus, its final offer provides for wage increases exceeding the percentage increases in all comparable communities. Furthermore, the Employer argues, its final offer exceeds the increases provided to non-unionized Fox Lake employees and negotiated with the AFSCME bargaining unit. Moreover, the Employer points out, the average wage increase nationally in collectively bargained state and local government contracts was 2.3 percent, considerably below the Employer's final offer.

The Employer contends that its final offer places bargaining unit employees in the mid-range of comparable community salaries. It observes that, under its offer, starting pay effective May 1, 1998 exceeds starting pay in Cary and McHenry and is only \$326 below Lake-in-the-Hills, an amount the Employer characterizes as "de minimis." Under the Village's final offer, top pay exceeds Antioch, Cary, Lake-in-the-Hills and Wauconda, and is only \$376 below Grayslake. The Village urges that "the parties have successfully bargained prior contracts and have, it must be presumed, decided that the wage levels were appropriate under the circumstances." Village Brief at 9. The Employer maintains that there is no evidence that prior negotiated wage levels have been inadequate or that circumstances have changed to justify selecting the Union's offer, particularly

since the Employer's offer provides for larger increases than the comparable communities.

The Employer argues that its proposed pay plan is reasonable. The Employer contends that the equal steps advocated by the Union does not comport with the reality of having to fit it a variety of officers with a wide range of wage rates and service times. The Employer also contends that the comparable communities do not have uniform steps in terms of dollar amounts or percentage increases from step to step.

The Employer also maintains that its final offer is preferable over the Union's because it provides for step movement on May 1 of each year. The Employer contends that historically police contracts in Fox Lake have provided for salary adjustments on May 1. The Employer maintains that the Union bears a heavy burden of justifying a departure from this practice which it has not carried.

The Village argues that all other Village employees receive wage adjustments on May 1 instead of their anniversary dates and that the Village's fiscal year begins May 1. According to the Employer, the May 1 date "simplifies the budget process," and that the Union's offer "would place an undue burden on the Village's payroll administration." Village Brief at 12.

Finally, the Employer argues that it has many other demands on its budget. These include costs to the water and sewage systems; road, bridge and sidewalk repairs; equipment replacement; and an installment loan obligation that is coming due in 1999.

Discussion: The arbitrator has considered his notes and the transcript of the hearing, the exhibits, the parties' briefs and arguments and all authority relied on therein. As I have stated elsewhere,³ interest arbitration represents the breakdown of the parties' collective bargaining process. The arbitrator's function is to determine what contract terms the parties most likely would have agreed to if the collective bargaining process had not broken down. The weight to be given each factor listed in Section 14(h) is to be assessed in light of its value in making such a determination.

Section 14(h) requires me to select either the Union's final offer or the Employer's final offer. The theory behind such final offer interest arbitration is that the "winner take all" nature of the proceeding will motivate the parties to moderate their positions and will push them toward agreement. Even if they do not reach agreement, their positions will be sufficiently moderated that what will remain is for the arbitrator to select the more reasonable of the competing offers. Most of the time the process works. However, sometimes the final offers presented are far from ideal and the arbitrator is faced with weighing factors to determine which of the competing offers is less problematic. As will become apparent from the discussion below, the instant case presents such a scenario.

Some of the statutory factors do not require much discussion. There is no contention that

³Malin, *Public Employees' Right to Strike: Law and Reality*, 26 U. MICH. J. L. REF. 313, 333 (1993).

either final offer is beyond the lawful authority of the employer. The difference in cost between the two final offers is minimal and the Employer concedes that it has the ability to pay either offer. The increase in the CPI indicates that under either offer the employees will experience an increase in real wages.

The parties' positions do not meet head on as much as they slide past each other. Although it contends that its pay plan is reasonable, the Village's argument in support of its final offer emphasizes that its average pay raise exceeds the comparables, the cost of living, and the raises given to other Village employees. On the other hand, although the Union contends that the pay levels in its offer are in line with the comparable communities, its argument emphasizes that the structure of its pay plan is much more equitable than the Employer's.

This dichotomy in the parties' arguments is not surprising. It reflects the strengths and weaknesses of the parties' positions. If permitted to do so, I would award a pay plan whose structure approximates the plan proposed by the Union, but with average pay increases that approximate those proposed by the Employer. However, the IPLRA does not provide me that luxury. Accordingly, I proceed with what must necessarily be an imperfect choice of one of the two competing final offers.

If the parties had merely negotiated for across the board wage increases, I would select the Village's final offer. The Village's offer provides average increases that exceed those provided in comparable communities, that provide for significant increases in real wages, and that exceed significantly the raises provided to other Village employees. The Union argues that the Village's salaries are low compared to the comparable communities. However, as noted above, the Union's exhibit from which it argues that the Village has been getting by on the cheap, compares the bargaining unit wages that were effective on May 1, 1997, to the 1998 wage rates for comparable communities. Thus, it distorts the differences between the bargaining unit and the comparable communities, making the disparities appear to be greater than they are. Although, as reflected in the Additional Background section above, the Village's salaries tend to be at the low end of the range among the comparable communities, the Village's proposal of 4 percent, 6 percent and 6 percent would outpace the increases in those communities. Under current economic conditions, if the parties were merely bargaining an across the board wage increase, I could not justify awarding the Union's final offer of 6 percent, 7 percent and 6 percent raises. The statutory factors, the general level of wage settlements in comparable communities, and common sense would compel selection of the Village's offer.

However, the one thing on which the parties did agree was that the old approach of bargaining across the board percentage increases was flawed and had to be changed. Thus, both parties abandoned that approach and proposed specific pay plans. The need for a pay plan was most evident among the most junior employees. The record reflects that three new employees, one hired on March 30, 1998 and two hired on June 1, 1998, each received \$29,861. The next employee moving up the seniority list, hired October 9, 1995, received only \$283 or 0.9 percent more. The next employee, although having only an additional ten months seniority received \$3,777 or 12.5 percent more. The next officer moving up the seniority list had an additional three

years eight months seniority and received 12.4 percent more in pay. In other words, the pay scale that resulted from the former practice essentially equated 44 months experience to ten months experience in percentage salary terms. The parties recognized that this made no sense. Indeed, in their 1996-98 contract expressed the hope that they could agree on and implement a pay plan before that contract was scheduled to expire.

The Union's pay plan eliminates any arbitrary inequities, in fact or in appearance. Under the Union's final offer, officers receive equal dollar increases as they move from starting pay to the after six years step. Thereafter, they receive an increase of 2.5 percent of the after six years step at ten years, another increase of 2.5 percent of the after six years step at fifteen years, and another 2.5 percent of the after six years step at twenty years.

The Employer's proposal, on the other hand, has some glaring and unexplained inequities. Indeed, the Village's offer is inconsistent in how it treats the steps from year to year. In the pay plan proposed to take effect on May 1, 1998, the differences between steps range from \$615 to \$3,929, and in percentage terms range from 1.68 percent to 12.40 percent. The pay plan proposed to take effect on May 1, 1999, contains steps whose differences range from \$940 to \$2,531 and from 2.68 percent to 5.58 percent. The pay plan proposed to take effect May 1, 2000, contains steps whose differences range from \$708 to \$3,271 and from 1.70 percent to 7.59 percent.

The Employer's offer provides that, effective May 1, 1998, the start and after one year, and after one year and after two years steps are separated by only \$615, representing 2.02 percent and 1.98 percent respectively. However, the difference between the after two years and after three years steps is \$3,929 or 12.40 percent. In the Employer's offer effective May 1, 1999, the difference is moderated but still quite large. The increase from start to after one year is \$940 or 3.00 percent and from after one year to after two years is \$1,154 or 3.57 percent. However, the difference between the after two years and after three years steps is \$2,178 or 6.51 percent, more than double the difference between start and after one year and just under double the difference between after one year and after two years.

The disparities in the way the Village's offer treats employees in their first three years of service might be explained as reflecting a determination that it is after three years on the force that an officer reaches a milestone on the learning curve and experiences a significant increase in efficiency and value to the department. Such an explanation, however, is belied by the Employer's offer effective May 1, 2000, which gives a smaller increase from after two years to after three years than it gives from start to after one year and from after one year to after two years.

The most significant part of the Village's pay plan consists of the steps proposed to take effect on May 1, 2000. It is this pay plan that will form the basis for negotiation of the next contract. It is expected that by 2000 the parties will have a pay plan in place that will require, at most, minor tinkering with its structure. As the parties have learned from the current bargaining, negotiating a new pay plan structure is quite complicated. Thus, it is in everyone's interest that the parties end up with a pay plan at the end of the term of this contract that will simplify bargaining for future contracts.

Under the Employer's proposal for May 1, 2000, an officer moving to the after five years step receives \$2,119 or 5.54 percent more than an officer at the after four years step. However, an officer at the after six years step receives only an additional \$708 or 1.75 percent more, or only one-third the differential of the two prior steps. This disparity is particularly puzzling in light of the Employer's offer for May 1, 1999, which contains identical differentials of \$1,161 between the after four and after five, and after five and after six steps.⁴ Similarly, the difference between the after seven and after eight steps in the Village's May 1, 2000, proposed pay plan is \$1,031 or 2.45 percent, while the difference between the after eight and after nine steps triples to \$3,271 or 7.59 percent. This is in contrast to how these steps are handled in the Village's May 1, 1998 proposal. The difference between the after seven and after eight steps is \$1,014, while the difference in the after eight and after nine steps is only two dollars more, \$1,016. Moreover, under the May 1, 2000, Village proposal an officer with fourteen years seniority gets only \$790 or 1.70 percent more than an officer with nine years seniority.

These disparities cry out for an explanation. However, the record is devoid of any rationale for the Employer's pay plan. In its brief, the Employer asserts that its plan results from having to fit in officers with a variety of hire dates and existing salary levels. However, the Employer has made no specific showing that the existing pay structure mandates a pay plan with the types of apparently arbitrary and irrational differentials as those discussed above.

The parties' proposed pay plans also differ with respect to the date on which an employee advances a step. The Union proposes that an employee advance on his or her anniversary date, with the wage rates at each step adjusted on May 1 of each year. The Employer proposes that an employee advance on May 1 of each year.

The Employer's proposal creates serious inequities within the bargaining unit. The Union's example of two hypothetical employees, hired less than two weeks apart but being paid on different steps is not far from reality. The record reflects that Officer Dubner was hired March 30, 1998. Under the Employer's proposal, Officer Dubner will advance to the after one year step on May 1, 1999. However, Officers Baldowsky and Koch, who were both hired two months later on June 1, 1998, will not advance to the after one year step until May 1, 2000. More generally, under the Village's offer, three employees wait one month beyond their anniversary dates to advance a step and a fourth employee waits one month and a half. However, another three employees wait eleven months and another two employees wait eleven and a half months.

A proposal that provides for such inequities within the bargaining unit requires a justification. The Village has offered three justifications. First, the Village argues that police officer salaries historically have been adjusted on May 1 of each year. However, the May 1 adjustment was a direct consequence of the approach to wages of hiring new officers at the

⁴On page 19 of its brief, the Union presents an analysis of the Employer's proposed plan effective May 1, 2000, that shows even greater disparities. This analysis conflicts with the analysis contained in a Union exhibit. I have checked the figures and found that the Union exhibit is accurate while the Union's brief is not. Therefore, I have relied on the analysis in the Union exhibit.

starting salary and then providing across the board percentage increases on May 1 of each year. The inequities produced by that system led the parties to agree to scrap it. There is no reason to retain some of those inequities by adjusting salaries only on May 1.

The Village also argues that adjusting salaries only on May 1 will simplify the budget process and will avoid placing an undue burden on the payroll system. However, the Employer offered no evidence to support its position. There is no reason to believe that the budget process will become unduly complicated by the need to make a few more calculations when computing the Police Department's payroll costs. Similarly, there is no reason to assume that anniversary date step movements will create any burden on the payroll system beyond a few additional keystrokes or, at most, a minor modification to the payroll computer program.

The practice in comparable communities provides icing on the Union's cake. The Union contends that all seven comparable communities advance employees a step on their anniversary dates. The Employer contends that McHenry and Wauconda advance employees only on May 1 of each year and that Round Lake Beach advances employees only on January 1 of each year. I have reviewed the contracts from these three communities. On their face they are silent as to when an employee advances a step. There is no evidence in the record of what the actual practices are in these communities. Therefore, I have discounted them with respect to this issue. However, it is undisputed that in the remaining four comparable communities, employees advance a step on their anniversary dates.

Thus, the final offers present me with an Employer offer that better reflects the statutory factors with respect to the average wage increases but a Union offer that better reflects the statutory factors with respect to the structure of the pay plan. The ideal award would maintain the Union's proposed structure but produce average wages approaching those in the Employer's offer. Unfortunately, the statute does not afford me the discretion to develop the ideal award. Hence, the question becomes which aspect of the final offer, pay plan structure or average wage increase, should receive greater weight.

A primary thrust of the parties' negotiations has been to rationalize the pay structure. The parties were so dissatisfied with the existing pay structure that they began discussing the development of a step plan long before the prior contract expired. Furthermore, they agreed that if they could devise a step plan, they would implement it immediately, rather than wait for the old contract to expire. Thus, the parties themselves placed great weight on the need to rationalize the pay structure and I do so as well.

Furthermore, as indicated above, the parties have demonstrated that negotiating a new pay plan structure is very complicated. Therefore, I place considerable weight on the need to award a pay plan that will not need further restructuring. The unexplained disparities in the Employer's pay plan and its continuance of the inequities resulting from not adjusting salaries on employee anniversary dates strongly suggest that if I award the Employer's offer, the parties will be bargaining pay plan structure again in 2000. On the other hand, the Union's offer will likely lead to simplified bargaining in 2000 focused on across the board raises rather than pay plan structure.

These factors lead me to place increased weight on the pay plan structure side of the scale. Several factors also lead me to place decreased weight on the average wage increase side of the scale.

First, the two sides' offers are not very far apart. Each party offers a three year contract with 6 percent average increases in two of those years. The Union has one year with a 7 percent average raise while the Employer has one year with a 4 percent average raise. Measured another way, the Villages computations show that the Union's offer costs only an additional \$11,490 in the first year of the contract, \$15,409 in the second year, and \$16,213 in the third year.

Second, the major increase in the Union's final offer comes from the establishment of the step plan itself. This occurs in the first year of the contract. In years two and three, under the Union's offer, the salaries paid at each step increase only 3 percent per year.

Third, although the average increase under the Union's proposal is greater than under the Village's offer, the range of increases under the Union's proposal varies considerably. The average increase is driven up by double digit percentage increases given to the most junior employees in the bargaining unit. However, it is precisely these employees who experienced the greatest inequities under the old pay system. Thus, much of the generous average increases under the Union proposal results from the elimination of the inequities that led the parties to conclude that the old system had to be scrapped.

Finally, the Union's proposal moves the Village from the low end of the comparable communities to about average. Although such movement would not justify the particularly generous average increases that the Union has proposed, the fact that the generous average increases will not propel the Village to lofty heights out of line with the comparables mitigates against the weight to be placed on the average increase side of the scale.

Accordingly, the choice comes down to saddling the parties with the Employer's proposed pay plan structure in order to award the more reasonable average wage increase, or awarding the more generous pay increase to get the more reasonable pay plan structure. Because I have concluded that it would be worse to saddle the parties with the Employer's proposed structure, I award the Union's final offer.

The Non-economic Issues: Entire Agreement and Maintenance of Benefits

The Final Offers: The Employer proposes to maintain the language of the 1996-98 agreement. Specifically, that agreement provides:

Entire Agreement

This agreement constitutes the complete and entire Agreement between the parties and concludes collective bargaining between the parties for its term except as specifically stated

in Article 14.2. This Agreement supercedes and cancels all prior practices and agreements, whether written or oral, which conflict with the express terms of this Agreement. If a past practice is not addressed in this Agreement it may be changed by the employer as provided in the management rights clause, Article IV. The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law or ordinance from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. The Union specifically waives any right it may have to impact or effects bargaining for the life of this Agreement.

The Union proposes to delete the words, “and concludes collective bargaining between the parties for its term except as specifically stated in Article 14.2.” It also proposes to replace, “ as provided in the management rights clause, Article IV,” with “subject to the Union’s right to impact or effects bargain.” Finally, it proposes to delete the words, “for the life of,” and replace them with “as to those subjects or matters which are expressly set forth in.”

With respect to Maintenance of Economic Benefits, the Employer proposes to retain existing language:

All economic benefits which are not set forth in this Agreement and are currently in effect shall continue and remain in effect until such time as the Village shall notify the Union of its intention to change them. Upon such notification, and if requested by the Union, the Village shall meet and discuss such changes before it is finally implemented by the Village. Any change made without such notice shall be considered temporary pending the completion of such meeting and confer discussions. If the Union becomes aware of such a change and has not received notification, the Union must notify the Village as soon as possible and request discussions if such discussions are desired. The failure of the Union to request discussions shall act as a waiver of right to such discussions by the Union.

The Union proposes to add the following language:

Any agreements reached as a result of such discussions shall be added to the parties’ collective bargaining agreement.

Any impasses in such discussions and negotiations as contemplated by Article XVII, Section 1 above, or elsewhere among the articles of this Agreement shall be resolved by the impasse procedures set forth in 5 ILCS 315/14.

Discussion: The Employer maintains that the Union has the burden of justifying departing from provisions that the parties voluntarily agreed to in the past. The Union counters that its proposals merely seek to restore rights it has under the IPLRA, rights that the Employer may not force it to waive.

Generally speaking, with respect to issues of this type, the best indication of what the parties would have agreed to if their negotiations had not broken down is what they have agreed to in the past. Consequently, interest arbitrators are fond of saying that the party who seeks to change the status quo bears a heavy burden of justification.

The sole justification provided by the Union is that these are statutory rights that it no longer wants to waive. However, the Union waived them in the prior contract and merely saying it no longer wants to do so does not justify changing what the parties had agreed to in the past. Accordingly, I conclude that it is more likely than not that if the parties' negotiations had resulted in agreement, the agreement would have continued the entire agreement and maintenance of economic benefits language contained in the 1996-98 agreement. Therefore, I will award the Village's final offer on these issues.⁵

⁵In so doing, I recognize that there are non-economic issues and that I am not confined to the final offers submitted by the parties.

A W A R D

Based on all of the factors provided in Section 14(h) of the Illinois Public Employees Labor Relations Act, and for the reasons set forth in the opinion above, I award as follows:

1. The Union's final offer with respect to wages;
2. The Employer's final offer with respect to Entire Agreement; and
3. The Employer's final offer with respect to Maintenance of Economic Benefits.

Chicago, Illinois

April 28, 1999

Martin H. Malin, Arbitrator

In the Matter of the Arbitration Between)
))
Illinois Fraternal Order of Police Labor Council)
))
and))
))
Village of Fox Lake))
))
Interest Arbitration))
))
ISLRB No. S-MA-98-122))

SUPPLEMENTAL OPINION AND AWARD

On April 28, 1999, I issued an award in the above captioned matter. The award selected the Union's final offer with respect to wages and the Employer's final offers with respect to Entire Agreement and Maintenance of Economic Benefits provisions. On May 3, 1999, the Village Board of Trustees voted unanimously to reject the award with respect to wages. The Village Board acted pursuant to Section 14(n) of the Illinois Public Labor Relations Act, 5 ILCS 315/14(n). The Village provided the following reason for its rejection of the award, "The Arbitrator concluded that 'the statutory factors, the general level of wage settlements in comparable communities and common sense would compel selection of the Village's offer.'"

A supplemental hearing was held on July 1, 1999, in Fox Lake, Illinois. Prior to the hearing, both parties submitted written position statements. At the hearing, both parties were afforded the opportunity to further call, examine and cross-examine witnesses, introduce additional documentary evidence and present arguments. The Employer filed a post-hearing brief. The Union rested on its position statement and argument presented at the hearing, but filed additional authority for my consideration.

The Employer sought to amend its final offer with respect to wages. The Union objected, but agreed that I need not rule on its objection at the hearing but could take the objection under advisement and rule on it in this award, reaching the merits of the Employer's revised final offer only if I overrule the Union's objection.

Employer's Position

The Employer seeks to amend its final offer and urges that I consider the amended final offer and select it over the Union's

final offer. The Employer observes that there are no court or labor board decisions or regulations which detail how to proceed when a governing body rejects an award. The Village recognizes that the only authority considering the issue, three prior arbitration awards, interpret Section 14(n) against the Village, but urges that those decisions are erroneous and are not binding on me.

The Village emphasizes that Section 14(n) expressly provides that the employer's governing body shall "review each term decided," and may, after review, reject all or part of the arbitrator's decision. The Employer maintains that prior awards requiring a showing of manifest error or extreme hardship to justify rejection of an award read language into the statute that is not there. In the Employer's view, if the Legislature wanted to impose such conditions of the employer's governing body's rejection of an award, it would have stated so expressly. The Employer observes that in Section 14(k) the Legislature provided an express standard for judicial review of arbitration awards rendered pursuant to Section 14. Furthermore, the Employer cites numerous other statutes where the Legislature has specified standards that govern the finality and review of arbitration awards. The Employer argues that the Legislature knew how to limit the Employer's authority to reject the award and consciously chose not to do so.

According to the Employer, Section 14(n) requires that I consider its revised final offer.

The Employer argues that recognizing the Legislature's grant of authority in the Employer to reject the award for whatever good faith reason it may offer does not leave the Employer with unchecked power. The Employer observes that the requirement of a super-majority vote for rejection is itself a check on Employer power. Furthermore, the Village reasons, the political process itself is a check on Employer exercise of its authority to reject the award. Additionally, rejection of the award does not ensure that the arbitrator will select the Employer's revised final offer because the Employer still must convince the arbitrator of the merits of its position. Finally, financial disincentives check the Employer's exercise of its authority to reject the award, because the statute requires the Employer to pay the costs of the supplemental proceeding, including the Union's attorney fees.

The Employer recognizes that, prior to the initial hearing in this matter, the parties stipulated, inter alia, that final offers would be exchanged on December 16, 1998, and that thereafter, final offers could be amended only by mutual agreement. The Employer maintains that the pre-hearing stipulation applied only to the initial hearing and does not apply to these supplemental proceedings.

On the merits, the Employer contends that its revised final offer should be selected. The Employer observes that my initial award opined that its average wage increase was more in keeping with the factors enumerated in Section 14(h) of the IPLRA. The Employer further observes that my initial award opined that the Union's pay plan was more in keeping with those statutory factors and that I indicated that if the statute had allowed me the discretion to do so, I would have awarded a pay plan with the structure of the Union's final offer but with average raises approximating those of the Employer's final offer. The Employer maintains that its revised final offer meets the criteria that I was seeking in my initial award. It maintains the average wage increases from its initial final offer and adopts the structure of the pay plan contained in the Union's final offer. The Village urges that by adopting its final offer, I will be able to award what the statute did not allow me to award in the initial award.

Union's Position

The Union contends that the final offers presented at the hearing remain the final offers and that the Employer may not revise its final offer without the Union's consent. The Union urges that in Section 2 of the IPLRA, the Legislature expressed its intent that interest arbitration be "expeditious, equitable, and effective." The Union maintains that the statute makes clear that an Employer must have a bona fide reason for rejecting the award. It may not reject the award merely because it was disappointed with the outcome.

The Union maintains that if the supplemental proceeding were a do novo evaluation of revised final offers, there would be no reason for the statute's requirement that the Employer state its reasons for rejecting the initial award. The Union relies on prior arbitration awards interpreting Section 14(n) and argues that the Village must show that there was a manifest error in the initial award or that the award will work a substantial hardship.

The Union maintains that the Employer cannot meet its burden in the instant proceeding. The Union argues that the Employer's sole reason for rejecting the award was that it was disappointed with the outcome. The Union contends that if the Employer is allowed to introduce a revised final offer, constructed with the benefit of my reasoning in the initial award, the process will deteriorate into a negotiation between the Employer and the arbitrator. In the Union's view, the Legislature did not intend any such process. The Union finds support for its position in the awards issued by the few arbitrators who have had occasion to

consider the scope of supplemental interest arbitration proceedings under the IPLRA.

The Union also contends that the Employer stipulated in the agreed-on ground rules for this proceeding that final offers could be amended only by mutual consent. The Union urges that the reason for such a stipulation was to preclude exactly what has occurred herein.

The Union maintains that the Employer may not revise its final offer and that the Employer has the burden to demonstrate that the original award was the result of manifest error or will work a substantial hardship. If the Employer is able to carry this burden, the arbitrator, in the Union's view, is not to consider a revised Employer final offer but instead is obligated to vacate the selection of the Union's final offer and award the Employer's original final offer.

Even if I allow the Employer to revise its final offer, the Union submits that I should reaffirm my selection of the Union's final offer with respect to wages. The Union argues that the Employer's revised final offer contains the same inequities that led me to reject the Employer's original final offer. Furthermore, in the Union's view, the Employer's final offer ignores the relative standing of the Employer's wage rates in comparison with the comparable communities.

Discussion

The arbitrator has considered the entire record of this proceeding, including the parties' written and oral arguments and all authority cited therein. Based on this review, I have concluded that the Union's objection to the Employer's submission of a revised final offer must be sustained and that my original selection of the Union's final offer with respect to wages must be reaffirmed.

Resolution of the instant dispute requires that I interpret Sections 14(n) and (o) of the IPLRA. This dispute arises under the statute, not under the parties' collective bargaining agreement.

This is not a situation where a provision of a collective bargaining agreement contains language which parallels a statute such that interpretation of the statute may aid in interpreting the contract. This dispute requires interpretation of the statute in its own right.

As I have indicated elsewhere,⁶ an arbitrator must approach such a task with a great deal of humility. As an arbitrator, I am appointed privately by the mutual selection of the parties. I am not a publicly appointed official, such as a member of the State Labor Relations Board or a judge. However, I have been called upon to interpret public law, in this case the IPLRA.

As a privately-appointed, privately-accountable arbitrator, I should interpret public law by looking to the interpretations of publicly selected authorities. Regardless of whether I might agree with those interpretations, I am bound by them. Unfortunately, in the instant case, there are no interpretations of the relevant provisions by publicly selected authorities. The Illinois State Labor Relations Board's regulations do not address the situation presented and there are no Board or court decisions on point either. Left with only the statute to work with, I should, if possible, abide by the core meaning of the statutory language. Unfortunately, in the present case, there is no statutory language expressly directing whether final offers may be revised in supplemental proceedings or specifying the standards to govern the arbitrator in a supplemental proceeding. In such circumstances, a privately appointed arbitrator should be guided by a philosophy of judicial caution, interpreting the statute conservatively and in an unstartling manner.

This is not the first time the issue has arisen. In *Peoria County and AFSCME Council 31* (Sinicropi, July 2, 1986), Arbitrator Anthony Sinicropi concluded that supplemental proceedings under Sections 14(n) and (o) are limited to a determination of whether the original award rejected by the employer's governing body was the result of manifest error or will cause extreme hardship. In *Village of Westchester and Illinois Fraternal Order of Police Labor Council Lodge No. 21*, ISLRB No. S-MA-90-167 (Briggs, December 4, 1991), Arbitrator Steven Briggs interpreted Sections 14(n) and (o) in a similar manner.⁷

⁶See Malin & Ladenson, *Privatizing Justice: A Jurisprudential Perspective on Labor and Employment Arbitration from the Steelworkers Trilogy to Gilmer*, 44 HASTINGS L.J. 1187, 1229-35 (1993).

⁷Two other supplemental proceedings awards do not require much attention. In *Alexander County and Illinois Fraternal Order of Police Labor Council* (Cox, December 13, 1993), Arbitrator James Cox followed Arbitrator Sinicropi's interpretation of the statute but did not engage in his own independent analysis of Sections 14(n) and (o). In *Village of Westchester and Illinois Firefighters Alliance, Council 1*, FMCS No. 90-23906 (Kossoff,

Sept. 17, 1991), the parties agreed to the submission of revised final offers after the employer's governing body rejected the original award.

I agree with the Employer that neither award's interpretation of the statute is binding on me in the same way that an interpretation from the labor board or court would be. Nevertheless, Arbitrators Sinicropi and Briggs are very highly regarded and well-respected arbitrators and their interpretations and reasoning should not be dismissed lightly.

The Illinois Appellate Court recently summarized the general principles of statutory construction:

The primary object of statutory construction is to give effect to the true intent of the legislature. This inquiry necessarily begins with the language employed in the statute. Where a statute defines its own terms, those terms will be construed according to statutory definitions, but in the absence of such definitions, the words of a statute will be given their plain and ordinary meanings. Of course, it is essential to read the statute as a whole, with all of its relevant provisions considered together. Statutes are to be construed to give full effect to each word, clause and sentence, so that no word, clause or sentence is surplusage or void.

Houlihan v. City of Chicago, 714 N.E.2d 569, 572 (Ill. App. 1999)(citations omitted).

Section 14(n) provides, in relevant part:

The governing body shall review each term decided by the arbitration panel. If the governing body fails to reject one or more terms of the arbitration panel's decision by a 3/5 vote of those duly elected and qualified members of the governing body, within 20 days of issuance, . . . such term or terms shall become a part of the collective bargaining agreement of the parties. If the governing body affirmatively rejects one or more terms of the arbitration panel's decision, it must provide reasons for such rejection with respect to each term so rejected, within 20 days of such rejection and the parties shall return to the arbitration panel for further proceedings and the issuance of a supplemental decision with respect to the rejected terms. Any supplemental decision by an arbitration panel or other decision maker agreed to by the parties shall be submitted to the governing body for ratification and adoption in accordance with the procedures and voting requirements set forth in this Section. . . .

Section 14(o) provides:

If the governing body of the employer votes to reject the panel's decision, the parties shall return to the panel within 30 days from the issuance of the reasons for rejection for further proceedings and issuance of a supplemental decision.

All reasonable costs of such supplemental proceeding including the exclusive representative's reasonable attorney's fees, as established by the Board, shall be paid by the employer.

The Illinois State and Local Labor Relations Boards' regulations add the following, 80 Ill. Adm. Code § 1230.110(c):

The governing body may reject any terms of the award by a three-fifths vote . . . Such rejection vote must occur within 20 days after service of the award. The governing body shall provide written reasons for its rejection and shall serve those reasons on the parties and the neutral chairman no later than 20 days after the rejection vote. The governing body shall file a copy of its reasons and a certificate of service with the Board. The reasons for rejection shall be considered issued on the date that they are served on the neutral chairman.

The Employer is correct when it observes that other statutes expressly provide that arbitration is final and binding and that arbitration under Section 14 of the IPLRA is neither final nor binding. That observation, however, merely begs the question: Once the employer rejects all or part of an award, what standards govern the supplemental proceeding. Neither the statute nor the regulations expressly address this question.

The statute actually provides two ways in which the award is not final. Section 14(k) provides that either the employer or the union may petition the circuit court of the county in which the dispute arose or in which a majority of the affected employees reside to review the award. Section 14(k) expressly limits the grounds for such review to "reasons that the arbitration panel was without or exceeded its statutory authority; the order is arbitrary or capricious; or the order was procured by fraud, collusion or other similar and unlawful means."

Section 14(k) review is available to either the Union or the Employer. In contrast, Section 14(n) review is available only to the Employer. It is apparent that the Legislature intended Section 14(n) to be available for use by an Employer even though the arbitrator did not exceed his authority under the statute, the award was not arbitrary or capricious and the award was not procured by unlawful means. Recognizing this, however, again begs

the question: what standards did the Legislature intend to govern the supplemental proceeding following Employer rejection of the award?

The Village's position is that Section 14(n) grants it an absolute right to reject all or part of an arbitration award, subject to the rejection coming by a three-fifths vote and the issuance of reasons for the rejection. Once it exercises that right, it may present a revised final offer and in the supplemental proceeding the arbitrator evaluates the revised final offer against the Union's final offer, or revised final offer if the Union decides to submit one, in accordance with the factors set forth in Section 14(h) (Supp. Tr. 60-61).

The Village's position essentially is that, by three-fifths majority vote, it may reject the award and begin a new proceeding with revised final offers at will, as long as it gives some reason for doing so. However, the Village's position would render the requirement that it give its reasons for rejection mere surplusage. There would be no reason to require the Employer to state its reasons for rejection if the reasons did not play a role in the supplemental proceeding.

Indeed, the statute and the regulations make it clear that the reasons are intended to play a major role in the supplemental proceedings. The statute provides that the parties are to return to the panel for supplemental proceedings within thirty days from the issuance of the reasons for rejection. In other words, the supplemental proceedings do not begin until after the employer issues its reasons for rejection. The statute ensures that the employer cannot delay the supplemental proceedings by delaying issuance of the reasons for rejection because it requires that the Employer provide its reasons within twenty days of the vote to reject.⁸ There would be no reason to make the parties wait to begin the supplemental proceeding until after the employer issues its reasons for rejecting the award if the reasons were not to play an important role in the supplemental proceeding.

The central role the reasons for rejection play in the supplemental proceeding is reinforced by the Board's regulations which require that the reasons be served on the arbitrator. Again, there would be no reason to require such service if the arbitrator's role was not to consider the reasons for rejection in

⁸ The statute ensures that the employer cannot delay the supplemental proceedings by delaying issuance of the reasons for rejection because it requires that the Employer provide its reasons within twenty days of the vote to reject.

the supplemental proceeding. As Arbitrator Briggs observed:

It stands to reason that the purpose of a supplemental hearing, then, is to review the governing body's reasons for rejection. If the supplemental hearing were to be conducted as a *de novo* evaluation of revised final offers and new evidence supporting them, there would be no sensible purpose for the legislature to have called for the governing body's reasons for rejecting the original award.

Westchester, supra at 12.

Accordingly, I turn to the Village's reason for rejection of the original award with respect to wages. My review of that reason is guided by the overall statutory scheme. As I have already observed, the reason need not be that the award exceeded my statutory authority or was arbitrary or capricious or was procured by illegal means. If the Village considered the award to have met any of those criteria, its remedy would have been to petition the appropriate circuit court for review, rather than to reject the award.⁹

The Village found its reason for rejection in the original award itself. In the April 28, 1999, award, I observed that the strength of the Village's final offer lay in its average pay raise while the strength of the Union's final offer lay in the structure of its proposed pay plan. I further stated, "If permitted to do so, I would award a pay plan whose structure approximates the plan proposed by the Union, but with average pay increases that approximate those proposed by the Employer." Award at 9. I then observed that the IPLRA did not afford me such an option and proceeded to consider "an imperfect choice of one of the two competing offers." Award at 10.

Ultimately, although I found average pay increase in the Village's final offer more in keeping with the Section 14(h)

⁹ The Legislature apparently expected that challenges to awards on the grounds set forth in Section 14(k) would proceed in circuit court. If the employer rejects the award pursuant to Section 14(n), it is liable for all costs of the supplemental proceeding, including the union's attorney fees. If it petitions for circuit court review, it is only liable for the union's attorney fees if the court determines that the petition is frivolous. Thus, in most cases, a petition for circuit court review will be cheaper than a rejection by vote of the governing body.

factors, I found that the pay plan contained in the Union's final offer eliminated any inequities among the employees while the Employer's proposed pay plan had a number of glaring and unexplained inequities. Forced to choose between an offer that better reflected the statutory factors with respect to average increases and an offer that better reflected the statutory factors with respect to the structure of the pay plan, I selected the latter for several reasons. I reasoned that the primary thrust of the parties' negotiations was to rationalize the pay plan, the complexities of negotiating a pay plan strongly supported selecting a pay plan that would not need further restructuring in future negotiations, the higher average raises in the Union's offer resulted from the rationalization of the pay plan itself producing double digit increases for employees with the least seniority, and because even with the higher average increases under the Union's offer, the employees moved only to the middle of the comparable communities in wages.

The Employer rejected the award so that it could provide me a revised final offer that it contends meets the criteria I indicated I would have awarded had not the statute forbidden it -- a pay plan structured in accordance with the Union's final offer but with average wage increases approximating those originally offered by the Employer. I conclude that to allow the Employer to do so would be inconsistent with the overall statutory scheme. Therefore, I reject the Employer's reasons for rejecting the award and reaffirm the original award.

Section 2 of the IPLRA declares the Legislature's policy with respect to law enforcement interest disputes. It provides, in relevant part:

To prevent labor strife and to protect the public health and safety of the citizens of Illinois, all collective bargaining disputes involving persons designated by the Board as performing essential services and those persons defined herein as security employees shall be submitted to impartial arbitrators, who shall be authorized to issue awards in order to resolve such disputes. It is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by the Act. To that end, the provisions for such awards shall be liberally construed.

When the Legislature enacted Section 14, it had available to it different models of interest arbitration that already had been developed in other states. In traditional interest arbitration,

the arbitrator is authorized to issue an award that selects the final offer of either party or that reaches a result between the two competing offers. A key advantage of traditional interest arbitration is the flexibility it gives the arbitrator to craft the best possible award under the circumstances. A key disadvantage is the tendency of traditional interest arbitration to chill the bargaining process. Each party anticipates that the arbitrator will tend to issue an award between the competing final offers and, therefore, each party tends to hold something back in bargaining.

Final offer interest arbitration, on the other hand, denies the arbitrator the flexibility to craft a result that may be superior to the final offer of either party. On the other hand, final offer arbitration is thought to have a much lesser risk of chilling the bargaining process. As Arbitrator Sinicropi explained:

Final offer arbitration is designed to force the parties to modify their original positions. In effect, it is supposed to impose a great deal of pressure on the parties to force them to settle or at least modify their respective positions considerably so that their modified position will be more attractive and be deemed more reasonable by the Arbitrator.

Peoria County, supra, at 8.

It is apparent that the Legislature was aware of the different models of interest arbitration and of the advantages and disadvantages of each. In Section 14(g) of the IPLRA, the Legislature selected the model of traditional arbitration for non-economic issues and final offer arbitration for economic issues. In other words, in crafting an "expeditious, equitable and effective procedure," the Legislature determined that for economic issues, it was important to avoid chilling the bargaining process by giving the arbitrator discretion to craft an award between the parties' final offers. It determined that for economic issues, the risk of an arbitrator facing final offers such as I faced in this proceeding was outweighed by the increased incentive that final offer arbitration would provide for settlement.¹⁰

¹⁰ One need not infer a legislative preference for

stimulating settlement. The Legislature clearly expressed its preference for settlement in Section 14(f) where it gave the arbitrator authority to remand the dispute to the parties for additional bargaining, "if he is of the opinion that it would be useful or beneficial to do so . . ."

In the instant proceeding, for reasons known only to the parties, the parties were unable to reach agreement on their new contract. It is apparent that this was not for lack of trying. As discussed in the original award, the parties agreed on the need to develop a pay plan and began negotiating for one during the term of their prior contract. After the hearing concluded, the parties agreed to a lengthier than usual briefing schedule to afford themselves additional time for further negotiations. They even agreed to extend the original date for filing briefs to allow still more time for negotiations. Certainly, each party was motivated to make continuing efforts to settle, in part, by the prospect that I would select the opposing party's final offer.

Unfortunately, the parties were unable to settle. Under the statutory procedure, they each risked having me select the opposing party's final offer. I selected the Union's final offer with respect to wages for the reasons set forth in my original award.

The Village, now aware of my reasoning, essentially is asking for the opportunity to provide a new final offer that it now considers to have a better chance of being deemed superior to the Union's final offer. To allow the Village that second opportunity would chill the bargaining process in a manner that would be completely inconsistent with the statutory scheme.

As Arbitrator Sinicropi observed, "If a final offer is not final . . . then the theory upon which the Final Offer Arbitration concept is founded is not operative." *Peoria County, supra*, at 8. Arbitrator Briggs made a similar observation:

Section 14(o)(2) requires the parties to submit "final" offers of settlement. It does not say "almost final," "nearly final," or "pre-final." The term "final" means just that. FINAL. Sure, that introduces some risk for the parties. It means that right or wrong, they are wed to their respective final offers. The risk to any particular party, be it union or employer, is that the interest arbitrator (or interest arbitration panel) may not adopt its offer on certain issues.

If a party does not wish to assume that risk, the proper option is to avoid interest arbitration altogether by reaching agreement at the bargaining table. Rejecting an interest arbitration award and submitting a "revised final offer" presumably more consistent with the decision maker's reasoning is not "final" in any sense of the word.

Westchester, supra, at 12.

Accordingly, I conclude that the Village's reasons for rejecting the award and submitting a revised final offer are

inconsistent with the statutory scheme. I agree with the Village that the requirement of a super-majority vote and the requirement that the rejecting employer pay all costs of the supplemental proceeding provide a check on an employer's abuse of the power to reject an award. However, it is also apparent that the express requirement that the employer present its reasons for rejection and the implicit requirement that the arbitrator review those reasons also were intended by the Legislature to check the employer's exercise of its authority to reject.

Therefore, I sustain the Union's objection to the Employer's submission of a revised final offer. Because the Village's sole purpose in rejecting the original award with respect to wages was to place the revised final offer before me, I reaffirm the original award with respect to wages.

This proceeding does not require me to decide whether an employer may ever submit a revised final offer in a supplemental proceeding. It does not require me to speculate on the circumstances under which such a revised final offer might be appropriate. It also does not require me to devise a general standard for reviewing the original award, either in light of revised final offer(s) or without revised final offer(s). As a privately appointed arbitrator whose decision is binding only in the dispute before me, I consider it inappropriate to address substantive issues of public law that are not necessary to resolve the immediate dispute.

AWARD

1. The Union's objection to consideration of the Village's revised final offer is sustained.
2. The original award with respect to wages is reaffirmed.

Chicago, Illinois
October 18, 1999

Martin H. Malin, Arbitrator