

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of Interest Arbitration Between :
Village of Schaumburg :
and :
Metropolitan Alliance of Police Chapter # 219, :
Schaumburg Command Officers :

Appearances: Clark, Baird & Smith by Mr. R. Theodore Clark, Jr. for the Village

Richard J. Reimer & Associates by Mr. Richard J. Reimer and Mr. Alfred J. Molinaro Labor Relations Legal Assistant, for the Union

The above-captioned parties were unable to resolve a dispute over several provisions of their new collective bargaining Agreement which will replace the one which expired on April 30, 2010. They selected Edward B. Krinsky as arbitrator to make a final and binding determination of the dispute.

A hearing was held on December 15, 2010 at Schaumburg, Illinois. A transcript of the proceedings was made. At the hearing the parties had the opportunity to present evidence, testimony and arguments. The record was completed on April 4, 2011 with the receipt by the arbitrator of the parties' briefs.

The six items which are in dispute are: (1) Term of Agreement; (2) Salaries; (3) Furloughs; (4) Court Time; (5) Sick Time Reimbursement Plan; (6) Sick Leave Incentive Plan.

The final offers submitted to the arbitrator on each issue in dispute are as follows:

Issue #1: Term of Agreement (Section 31.1)

Village Offer: Effective from May 1, 2010 until April 30, 2013

Union Offer: Effective from May 1, 2010 until April 30, 2012

Issue #2: Salaries (Section 24.1)

Village Offer: May 1, 2010 to April 30, 2011 "freeze the existing salary schedule (but not step increases for eligible employees)."

Effective May 1, 2011, increase salaries by 2.0%

Effective May 1, 2012, increase salaries by 2.0%

"If Arbitrator Krinsky's interest arbitration award is received on or after May 1, 2011, employees covered by this Agreement who are still on the active payroll as of the beginning of the next payroll period immediately following the issuance of said award shall receive a retroactive payment which shall be based on the difference between the salary they received between May 1, 2011, and the beginning of said payroll period and the salary they would have received during the same period of time based on the salary schedule set forth in Appendix A [not shown here] for the 2011-12 fiscal year, provided that any employee who retired on or after May 1, 2011, but before issuance of Arbitrator Krinsky's interest arbitration award shall also be eligible to receive retroactive pay based on the hours worked between May 1, 2011, and the date of retirement.

Union Offer: "The Union proposes that all of the steps of the Salary Schedule be increased by 3% retroactively to May 1, 2010 and that all of the steps of the Salary Schedule increased by 3% on May 1, 2011. The Union makes this proposal without prejudice to its historically recognized and bargained for lock step parity with other public safety union employees."

Issue #3: Furloughs (Section 10.3--new)

Village Offer: The Village adds the following new Section 10.3 (Furloughs). "This final offer is without prejudice to the Village's position that it has the contractual right under the existing collective bargaining agreement to reduce the hours of work for one or more bargaining unit employees."

"Effective May 1, 2011, upon seven (7) days advance notice to the Union, the Village shall have the unrestricted right to temporarily furlough any employee or all employees for a definite length of time, which shall not exceed twelve (12) days per employee in any fiscal year. Time spent on furlough shall be unpaid and shall be treated as time spent on temporary layoff. Such time spent on furlough shall not affect any command officer's seniority. The Village shall not be required to follow any contractual lay off procedure with regards to such furloughs. The employee's health insurance coverage shall continue without change during the furlough period. In the event that not all employees in a job title are required to serve the same number of furlough days in accordance with the schedule generated by the Village, the more senior employees shall serve the smallest number

of furlough days required by the schedule.”

Union Offer: “Article 10 - Layoff”

“The Union proposes status quo as its proposal for the successor agreement.”

Issue #4: Court Time (Section 14.7)

Village Offer: “change minimum guarantee from 3 hours to 2 hours.”

Union Offer: “The Union proposes status quo and proposes no new proviso for furloughs [sic].”

Issue #5: Sick Time Reimbursement Plan (Section 20.2)

Village Offer: “change the title to “Sick Time Reimbursement Plan” and revise as follows:

Section 20.2. Sick Time Reimbursement Plan.

Accrued, unused sick leave shall be forfeited at the time of separation or termination of employment, unless a command officer hired prior to May 1, 2010, has accumulated a minimum of 720 hours of unused sick leave, has or will have as of the effective date of retirement at least 20 years of service, has given the Village irrevocable written notice to retire at least ninety (90) days prior to the effective date of the effective date of retirement, and has an approved pension from the Village of Schaumburg Police Pension Fund, the employee shall upon retirement be paid for thirty-three and one-third percent (33 1/3%) of all accrued hours sick leave hours at their regular salary. In the event of the death of an active employee who has accumulated at least 720 hours of unused sick leave and who has at least 20 years of service as of the date of death, a lump sum payout will be paid to the employee's estate.

Accrued, unused sick leave shall be forfeited at the time of separation or termination of employment, unless a command officer has accumulated 800 ~~the prescribed minimum number of~~ hours of unused sick leave ~~as set forth below~~, has or will have as of the effective date of retirement at least 25 years of service, has given the Village irrevocable written notice to retire at least ninety (90) days prior ~~to the effective date of~~ ~~the effective date of~~ retirement, and has an approved pension from the Village of Schaumburg Police Pension Fund. An employee who meets all these eligibility requirements shall upon retirement be paid at their regular salary for 50% of all accrued hours, according to the following schedule:

~~**Effective Date Minimum Accrued Hours Sick Leave Income Benefit**~~

January 1, 2008	720	50% of all accrued hours
January 1, 2009	760	50% of all accrued hours
January 1, 2010	800	50% of all accrued hours

In the event of the death of an active employee who has accumulated the required minimum number of hours of unused sick leave and who has at least 25 years of service as of the date of death, a lump sum payout will be paid to the employee's estate.

Notwithstanding the foregoing irrevocable notice provisions, the Village Manager may permit an employee to withdraw an irrevocable notice to retire based on substantially changed circumstances arising after the employee submitted his/her irrevocable notice to retire. Moreover, the Village Manager may reduce the ninety (90) day notice period as specified above if the Village Manager determines it is in the best interest of the Village.

The amount attributable to unused sick leave in accordance with the above provisions shall be deposited on a pre-tax basis at the time of the employee's retirement in the employee's Medical Savings Account for use by the employee for purposes specified in said [sic] in the Village's Medical Savings Account plan documents, including but not necessarily limited to payment for continued coverage under the Village's group hospitalization and medical insurance program and for reimbursed medical expenses approved by the IRS for a Medical Savings Account. The Medical Savings Account plan document shall provide that if there is any amount remaining in an individual's account at time of death, the remaining amount shall be made available for the same uses by the employee's designated beneficiary."

Union Offer: "The Union proposes status quo as its proposal for the successor agreement."

Issue #6: Sick Leave Incentive Plan (Section 20.3)

Village Offer: "The Village's final offer on this issue is to delete Section 20.3 in its entirety."

Union Offer: "The Union proposes status quo as its proposal for the successor agreement."

The parties stipulated also that their tentative agreements reached prior to presenting the disputed issues to the arbitrator are to be incorporated into this arbitration award.

Facts:

There are four public safety bargaining units which negotiate with the Village: a police rank and file unit, a police command unit, a firefighter rank and file unit, and a firefighter command unit. This arbitration involves the police command unit consisting of 22 employees (6 lieutenants and 16 sergeants). As of the date of the arbitration hearing, agreements were in place with the police rank and file unit (2008-2012, which was negotiated in 2008 and signed in January, 2009) and with the firefighter rank and file unit (2008-2011). The firefighter command unit was going to interest arbitration.

In the police rank and file Agreement there were annual percentage wage increases in each of the five years (3.5; 3.5; 4.0; 4.0; 4.0). In the firefighter rank and file Agreement there were annual percentage wage increases of 3.5% in each of the first two years and zero% in the third year.

For many years prior to the current set of negotiations, all four of the protective bargaining units received the identical annual percentage wage increases.

Prior to discussion of the disputed issues, it is important to briefly spell out the context in which the parties view their respective final offers. The Village's final offer is made in the context of what it describes as "the full extent of the devastating impact that the Great Recession was having on Village finances." This occurred after the Village had already concluded a five year agreement with the police rank and file unit. In response to the economic crisis, the Village Manager proposed almost six million dollars in budget cuts, almost all of which were adopted by the Village Board as part of the 2009-10 budget. In the Village Manager's budget message for FY 2010-11 he indicated his expectation that revenues would fall short of expenses for 2009-2010 by 12.3 million dollars, which would be made up by cuts in expenses and the use of surplus. The proposed budget eliminated 25 full time positions which had become vacant.

In early Spring, 2010 the Village approached each of its five bargaining units and asked

them if they would agree to make concessions to help alleviate the Village's unanticipated financial problems. None of them agreed to make concessions. The Village then made budget cuts, which have included reducing the police rank and file bargaining unit by 12 positions through attrition since the start of Fiscal Year 2009-2010.

The Union recognizes the economic uncertainty which the Village is facing and has constructed its final offer accordingly, but in its view the Village's finances are sound and improving, and it continues to have a good bond rating. It notes that the Village has very high sales tax revenues, second only to Chicago in the State of Illinois, and until last year it did not have a property tax, and the one which it levied was the lowest in the area. The Union notes further that despite the Village's claimed hardship it reduced the property tax levy by 4.4% for 2010.

Discussion of Comparables

In its presentation, the Union argues that Schaumburg is not comparable to the communities which the Village cites as comparable, notwithstanding that the Village has cited these communities in its prior interest arbitrations with the rank and file police and fire units. It emphasizes that the Village has never used these comparables in bargaining with this Union, and that in the bargaining leading to this arbitration, the Village did not cite external comparables at all. The Union notes also that of the nine external comparables identified by the Village, in only four of them is there collective bargaining to determine the wages and working conditions of police sergeants [Elk Grove, Hanover Park, Hoffman Estates and Mount Prospect] and in only one other area community [Des Plaines] are the wages and working conditions of sergeants and lieutenants determined through collective bargaining.

After constructing a computer program, and using all municipalities in the State of Illinois, the Union analyzed the relationship between Schaumburg and other communities based on five relevant economic measures (geography, population, Equalized Assessed Valuation; local and state sales tax; and these factors also on a per capita basis). What resulted from

this analysis is the Union's conclusion that Bolingbrook is the only community which is truly comparable to Schaumburg, since it is the only community which, when analyzed on all five economic measures, falls within +/- 50% of Schaumburg on each measure.

It is undisputed that in the negotiations leading up to this arbitration, the Union never cited Bolingbrook as a comparable, and did not discuss external comparables at all with the Village. Commenting on its own analysis, the Union stated at the arbitration hearing, "So we do this not to necessarily say that Bolingbrook is comparable. We do this to illustrate the problem you have in Schaumburg, which is unique..."

The Village objects to the use of Bolingbrook as a comparable, arguing that it was never previously put forward by the Union and that it is insufficient for the parties or the arbitrator to rely on only one external comparable. Moreover, the Village argues, Bolingbrook is not geographically contiguous with Schaumburg and is located 24 miles away, further away than any of the communities which the Village has cited as external comparisons.

As stated above, the Village has been consistent over the years in terms of what it views as external comparables: [Arlington Heights, Des Plaines, Elgin, Elk Grove Village, Hoffman Estates, Hanover Park, Mount Prospect, Palatine and Streamwood]. These are communities which have a population of at least 30,000 and are either contiguous with Schaumburg or are located within a 10 mile radius of Schaumburg, or whose population is within 25,000 of Schaumburg's population.

There have been five prior interest arbitrations involving the Village and its bargaining units, although none have involved the command units. It is undisputed that in four of the five arbitrations, the arbitrators did not make a specific determination of which communities were comparable. In the fifth (decided by Arbitrator Briggs in the firefighter case in 1997) Briggs found that all of the Village's suggested comparables were appropriate except for Hanover Park and Streamwood. Both of those communities are contiguous with the Village, and their demographics are within the range of the Village's other comparables, but Briggs' main

reason for excluding them was that they had largely volunteer fire departments, something which is not relevant to the current proceedings. The Village argues in the current proceeding that those municipalities are appropriate comparables.

The Union notes correctly that in bargaining the Village acknowledged that it was not relying on external comparables as the basis for its final offer. It is undisputed that the parties did not discuss which communities should be used as comparables. For these reasons, the arbitrator does not feel compelled to decide which are the most relevant comparables since the decision in this case, as viewed initially by the parties and now by the arbitrator, will not be decided in significant part based on an analysis of external comparables. A further reason for this conclusion is the small number of these municipalities which bargain with sergeants, and only one of them bargains with lieutenants.

There is an additional factor which complicates the use of external comparables in this case. The Village would have the arbitrator give weight only to the comparable settlements which were negotiated after the start of what the Village refers to as "The Great Recession." This is an approach which says let's look at the comparables, but only in part. The Union's position is that if external comparables are to be used, all of the settlements for the years in question should be taken into account regardless of when they were negotiated.

Discussion of Issue #1: Term of the Agreement

The Union proposes that the term of the Agreement be for two years. The Village proposes a three year Agreement.

In arguing in favor of its final offer, the Village emphasizes its economic difficulties during this recessionary period, and stresses the efforts it has made to gain concessions from all of its bargaining units. The Union argues that these circumstances, a time of uncertainty for both parties, support its position that an Agreement of shorter duration is called for, not a longer one. The Village cites the need for stability in these difficult economic times, which in its view supports having a three year Agreement rather than a two year Agreement. This, it

argues, will allow the parties to have “breathing space” which will not occur under the Union’s offer which would have the Agreement expire in April, 2012.

The arbitrator is not persuaded by one of these arguments more than the other. There is logic to having a longer period of stability, and these parties normally have negotiated three year agreements. On the other hand, at a time where both parties recognize the need for reaching a bargain which takes cognizance of depressed economic conditions which they hope to be temporary, it is reasonable that the economic concessions not last longer than the depressed economic conditions, which would argue in favor of a shorter agreement in order to allow the parties to reassess the economic climate. Clearly also the issue of the term of Agreement is linked to the issue of wages. In the arbitrator’s view it is the preferable wage offer which should determine the length of the Agreement, not the other way around. Thus, the arbitrator has decided that he will select the preferable final offer on wages, and that in turn will dictate the preferred term of the Agreement.

Discussion of Issue # 2: Salaries

The Village justifies its wage offer on the occurrence of the “worst recession since the Great Depression.” It argues that there is no disputing the fact that “the Village’s finances were severely impacted...” The Village acknowledges that it is not making “a pure inability to pay argument.” It argues, however that the financial situation and welfare of the public “are unquestionably major issues in this case.” It cites the statutory factor, “the interest and welfare of the public and the financial ability of the unit of government to meet those costs,” and argues that these should be taken into account by the arbitrator. The Village also cites arbitration decisions in other communities in which the arbitrators, in recognition of the recession, have awarded zero % in the first year of multi year agreements.

Addressing internal comparisons, the Village notes that there has been only one Agreement negotiated since the 2009 economic collapse. That was for rank and file firefighters, and the parties agreed to a zero% wage increase for the 2010-2011 fiscal year, the third year of their Agreement. The Village emphasizes that while in past years

the protective units have moved in tandem, this year the firefighters agreed to zero % , notwithstanding that rank and file police received the previously negotiated 4% salary increase for the year in question. "That is essentially the same scenario that is being played out in this case," the Village argues, and in these depressed economic circumstances the arbitrator should award in favor of the zero% offer in the first year as proposed by the Village. It emphasizes also that its proposal does not freeze wages for the police command unit. The zero% increase for the first year will still result in significant pay increases for "fully half" of the employees in the bargaining unit who will advance on the wage schedule, since the Village is not proposing to freeze movement within the wage schedule.

The Village acknowledges that in past negotiations it has emphasized internal comparability, and argues that it may do so again in the future, but the current economic circumstances require a different emphasis. In its view, "... the only relevant internal comparability data relates to the salary actions taken by the Village with respect to its unrepresented employees and the most recent rank and file firefighters contract, the actions on both of which occurred **after** the Village experienced the severe impact of the Great Recession." The Village notes that for FY 2009-10 its non-represented employees had their salaries frozen, including COLA adjustments and merit increases.

The Village argues that the external comparables support its wage offer. It cites the fact that in three of the comparable communities [Elgin, Elk Grove Village and Streamwood] the increase for Fiscal Year 2010-2011 was zero%. It cites Palatine, which the Village acknowledges agreed to a 1% increase in the first year (compared to the Village's zero% offer), but notes that in the second year the increase in Palatine was 1% (compared to the Village's 2% offer). While acknowledging that in three other external comparables [Mt. Prospect, Des Plaines and Hoffman Estates] the settlements reached were higher than the Union's offer in the current dispute, the Village argues that each of those agreements "were negotiated before the onset of the Great Recession in late 2008 and early 2009. For this reason, it argues, they should be excluded from further consideration.

In further support of its wage offer, the Village cites the rising costs of providing pensions to the bargaining unit. It is undisputed that pensions and pension contributions are not among the disputed issues in this case, but it is the Village's view that discussion of pension contributions is relevant where they are a significant cost at a time when the Village is trying to deal with a recessionary economy. It cites what it views as "dramatic" the increase in its contribution to the police pension plan from 2.5 million dollars in 2007-2008 to 4.2 million dollars in 2010-2011. The Village is not claiming that it cannot meet its pension obligations, but it notes that if the arbitrator adopts the Union's higher wage offer, this will increase the final pension benefit paid to employees in the bargaining unit.

In further support of its argument that its lower wage offer is the more reasonable final offer, the Village notes the very low incidence of turnover among employees in the bargaining unit. Since 2008 two employees retired, and one employee was promoted out of the bargaining unit.

The Village also cites several interest arbitrations issued in 2009 and 2010 in other Illinois municipalities in which arbitrators supported the employers' final offers because of the changed economic circumstances attributed to the recession, and the arbitrators attached greater weight to those circumstances than to comparability with other municipalities whose contracts were negotiated before the effects of the recession were felt. It notes also that at least four arbitrators selected employer final offers in multi-year contracts where the employer offered a zero% increase in one of the years.

The Village argues that its wage offer is supported by the change in the cost of living index during the relevant period, which it argues is the period dating from the beginning of the parties' last Agreement, i.e. from May 2007 to 2010. The Chicago CPI-U index cited by the Village increased 3.55% over that period. The Village's current wage offer of 4% over three years, it argues, "more than makes up for the 3.55% increase..." and contrasts with the Union's two year wage offer of 6%.

The Village cites a variety of published sources highlighting the economic problems of the region and the nation which, it argues, support its wage offer. For example, it cites the median reported first year negotiated salary increase for state and local government employees, reported in December, 2010 as 1%, down from 2.1% in the prior year; it cites the fact that the President and Congress have agreed to freeze federal civilian pay for 2011 and 2012. It cites a New York Times article in August, 2010 showing that with increasing frequency state and local government employees are getting pay cuts. The Village also cites a Thomson Reuters/University of Michigan survey of consumers, released in November, 2010, finding that twice as many consumers had their finances worsen than had their finances improve in the preceding year, and a majority of households expected no income increase during the year ahead. The Village cites also the fact that its population is aging, noting that 11% of Schaumburg taxpayers receive Social Security benefits, and "for the second straight [year] there has been no increase in Social Security benefits."

In support of its final offer the Union emphasizes internal comparability. It notes that there have been five arbitrations between the Village and its various public safety bargaining units since 1986, and in each case the arbitrators have "based their decisions on the significant history of identical percentage of salary increases." The Union emphasizes that between May, 2001 and May, 2009 "each of the four (4) public safety bargaining units received identical across the board percentage wage increases for that time period."

These facts notwithstanding, the Union argues, in light of the recession its final offer reflects its willingness to recognize the Village's difficult financial situation, although it does not concede that the situation is dire. The Union notes that in the rank and file police unit there is currently a five year agreement in place which in the last three years (May, 2010; May, 2011 and May, 2012) has increases of 4% each year. The Union argues that "in order to assist the Village through the current economy," this unit will settle for 3% (May, 2010) and 3% (May, 2011). The Union has chosen "to take the high road...which represents an accommodation by the Union to temporarily deviate from... historical parity, without prejudice..."

While the Union acknowledges that the rank and file firefighters unit settled, during mediation conducted by the interest arbitrator, for a zero % increase for the year beginning May 1, 2010, it argues that there are two factors which entered into this settlement which should be taken into account. First is that the Firefighters Local did not file a 14(j) Statement with the Illinois Labor Relations Board, "so the arbitrator did not have the authority to award retroactive wage increases..." Second is that the Village offered the firefighters a quid pro quo whereby "...the Village agreed to a commitment not to lay off bargaining unit employees between March 9, 2010 and April 30, 2011, as well as an agreement not to prejudice the Union's ability to make a 'catch up' argument for wages in future negotiations..." [The Village does not dispute the Union's contention that these were factors which affected the bargaining of the firefighters agreement, and that it did not offer a quid pro quo in the present case.]

The Union argues also with respect to internal comparability that the Village's offer will adversely affect the relationship of the wages paid to rank and file police in contrast to the wages paid to the police command employees represented by the Union. The Village offer, the Union argues, will result in significant salary compression between top patrol officers and starting sergeant's pay and starting lieutenant's pay. The Village will increase the wages of patrol officers 8% during the period of 2010 and 2011, in contrast to the 2% increase which the Village is offering this bargaining unit during that period.

The Union cites the fact that as of May, 2009 police top patrolmen had wages which were \$6537(8.34%) below starting sergeants, and \$16086 (20.53%) below starting lieutenants. Under the Village's offer starting in May, 2010 the differential between top patrolmen and beginning sergeants is reduced to \$ 3043 (4.17%) and for lieutenants it is reduced to \$12952 (15.33%). Under the Village offer for 2011, the differentials are reduced further to \$1842 (2.17%) between patrolmen and sergeants, and \$11528 (13.66%) between patrolmen and lieutenants.

The Union argues that in the past , the Village has recognized and emphasized the

importance of maintaining wage differentials between ranks. In fact, it argues, in the interest arbitration in 2007 involving the rank and file police unit the Village argued against awarding more to patrol officers in percentage terms than was awarded to other public safety units, because it would create difficulties during the next round of negotiations with those units and would "cause compression problems between the rank and file and command staff."

The Union argues that in this case the arbitrator should base his decision on internal comparability and give little weight to external comparability since that is what the parties have done for many years, and which they did in negotiations prior to making arguments in this arbitration.

With respect to external comparability, the Union urges that they not be given weight since, in its view, there are no relevant external comparables with the possible exception of Bolingbrook. While not accepting the relevance of the comparables cited by the Village, the Union emphasizes that if they are to be considered, only five of them [Bolingbrook, Hoffman Estates, Des Plaines, Hanover Park and Mt. Prospect] should be entitled to any weight as they are the only ones which negotiate with their police sergeants and lieutenants. In the others, the employer sets the wages unilaterally.

The Union argues that these comparables support its final wage offer more than the Village's final wage offer. The arbitrator has considered these comparables with the exception of Bolingbrook. For the year beginning in May, 2010 the Union's wage offer for top sergeants would result in Schaumburg having a rank of 3 of 5 among these comparables, and the wage would be \$144 (or one tenth of one percent) below the average. Implementation of the Union's wage offer for the year beginning in May, 2011 would result in Schaumburg again having the rank of 3 of 5, but the wage would be \$ 882 (.88%) below the average.

This same analysis for top sergeants, if the Village's wage offer were implemented, would result in a May, 2010 rank for Schaumburg of 5 of 5, \$ 2954 (3.1%) below the average,

and for May, 2011 the rank would be 4 of 5, \$ 3768 (3.8%) below the average.

The analysis for top lieutenants is more limited, because the only one of the Village's comparables which has unionized lieutenants is Des Plaines. Implementation of the Union's offer effective in May, 2010 would result in Schaumburg being \$ 772 (less than 1%) below Des Plaines, and effective in May, 2011 Schaumburg would be \$ 2448 (2.3%) above Des Plaines. If the Village's wage offer is implemented, Schaumburg would be below Des Plaines in May, 2010 by \$ 3889 (3.6%) and in May, 2011 Schaumburg would be below Des Plaines by \$ 1814 (1.7%).

If the wage increases granted to sergeants in these external comparables are viewed in percentage terms, the Union argues, they again support the Union's wage offer. For 2010 these four comparables had an average increase of 3.5%, compared to the Union's offer of 3% and the Village's offer of zero %. In making this analysis, the Union notes that in Hoffman Estates the increase was put into effect November 1, 2010 instead of 5/1/10 "in exchange for a guarantee from the employer of no reduction in force." On an annual basis the Hoffman Estates increase would then be 2%, and the average of the comparables would be 3%. For 2011 only 2 of the 4 comparables (Hoffman Estates and Mount Prospect) have settled, and both are for 4%. The only settlement for lieutenants is in Des Plaines, which had a 3.75% increase for 2010, and is now in negotiations for 2011.

The Union argues with respect to pension costs cited by the Village that the investment returns to the pension fund are rebounding from losses in 2008, having increased 17% in 2009 and 16% in 2010, and that the levy paid by the Village to the police pension fund was down 4.9% this year.

The Union argues that the cost of its final offer is minimal "when compared to the Village...proposed overall budget for 2010/2011," and it "pales in comparison with the 19% increase the Village negotiated with [the rank and file police unit] for the 2008-2012 contract..." The Union calculates its two year wage offer as costing \$125,000, or only

about 2/10th of a percent of the Village's overall budget.

The Union views the Village's financial position as remaining "relatively strong and healthy..." It notes that while the Village instituted a property tax for the first time, it then paired it back for the following year, "leaving the Village...with the lowest property tax rate among surrounding communities," and the Village continues to have a "stellar" bond rating.

The Union views the Village's argument about cost of living as "disingenuous." The Union notes that the Village negotiated a five year agreement with the police rank and file bargaining unit which increased wages 19% at a time when the change in the CPI-U index was 1.2%.

The arbitrator must select one parties' salary offer in its entirety. In making this decision on this issue (and on the others in dispute as well) the arbitrator has considered the statutory factors. He is most persuaded by the following considerations:

The parties have always emphasized internal comparability and identical percentage wage increases among the protective units. For the years 2008, 2009, 2010 and 2011 the rank and file police unit received 3.5%, 3.5% and 4%. The rank and file fire unit received 3.5%, 3.5% and 0%, with those figures accompanied by a quid pro quo that there would be no layoffs, and the failure to file a form with the ILRB which limited wage retroactivity. The fire command unit received 3.5% in both 2008 and 2009 and is in arbitration for 2010. The only settlement for 2011 is the 4% for the police rank and file. In the arbitrator's opinion, there is no pattern in this round of bargaining, but the Union's final offer of 3% and 3% for 2010 and 2011 maintains the traditional lock-step percentage increases of the protective units more than does the Village's final offer of 0%, 2% and 2% for 2010, 2011 and 2012.

Selection of the Village offer will result in significant wage compression between rank and file and command ranks, something which the Union views as undesirable, and which the Village has argued against in the past.

The external comparisons, while entitled to less weight than the internal ones based on the parties' past and recent bargaining history, favor the Union's final wage offer more than the Village's final wage offer when the comparisons are made with municipalities which bargain with their police command employees.

The arbitrator is not persuaded by the Village's argument that only settlements reached since the start of the recession should be given significant weight, or its emphasis on the fact that in several cases arbitrators have awarded a zero percent first year increase as the Village has offered to this unit, and as was accepted by the firefighter unit. Even giving weight to that argument, however, the arbitrator is not persuaded that there is justification for giving the police command unit increases of 0%, 2% and 2% for 2010, 2011 and 2012, when what was given to the rank and file firefighter unit after the start of the recession was 3.5%, 3.5% and 0% for 2008, 2009 and 2010. (and this, while the previously negotiated police rank and file Agreement for those years has increases of 3.5%, 4% and 4%).

The arbitrator's perspective is the same if the increases are viewed in terms of the percentage lift over the term of the Agreement. If the Village's three year final offer is implemented, the lift for this unit is 4% for 2010, 2011 and 2012, compared to 12% for the rank and file police. If the Union's two year final offer is implemented, the lift for this unit is 6% for 2010 and 2011 compared to 8% for the rank and file police. In the arbitrator's view, the Union's offer deviates less from the traditional parity relationships than does the Village's offer, and adjustments will be easier to make after two years than three.

The most difficult question which the arbitrator has had to consider is whether the local, regional and national economic conditions and the changes in cost of living, which support the Village's wage offer more than the Union's wage offer, should be given greater weight than the internal and external comparisons. The arbitrator is aware of the meaningful belt-tightening measures which the Village has taken by way of significant budget cuts, personnel cuts through attrition, and a wage freeze for its non-represented employees in attempting to deal with declining tax revenues and operating budget deficits which it was

experiencing or anticipating in 2008 and 2009. The fact remains, however, that the Village implemented the lowest property tax in the area, then reduced it further the year after instituting it, and also eliminated its vehicle sticker tax and garbage pick up fees. Moreover, by any measure, as reflected in the numerous reports in the record by auditors, the bond rating services, and the Village's own budget messages, the Village maintains a very strong financial position despite recent operating deficits and reduced revenues. The Village's finances are not at all in jeopardy, the burdens on its taxpayers are not high either absolutely or relatively, and these reports indicate that revenues from sources such as sales taxes and hotel taxes are increasing once again, and beyond expectations, and there is an anticipated budget surplus in 2011-2012.

In conclusion, with respect to Issue # 2, Salaries the arbitrator has selected the Union's final offer. For the reasons stated above, having selected the Union's final offer on Salaries, the arbitrator has selected the Union's final offer with respect to Issue # 1: Term.

Discussion of Issue #3: Furlough

The Village has the contractual right to lay off employees, but there is no contractual language giving it the right to furlough employees. The Village recognizes that it is probably the case that it cannot impose furloughs on employees without having contract language permitting same.

The Village is seeking an alternative to layoff. It does not want to have employees lose their jobs and continued health insurance coverage, and especially in the current adverse economic conditions. In its view there are "strong public policy considerations that support not increasing the ranks of the unemployed.."

The Union wants to maintain the status quo; that is, to continue to have no furlough language in the Agreement. The Village's final offer gives it the right to furlough employees.

It is undisputed that at the present time, none of the Village's other bargaining units have furlough language in their Agreements. The Union views the Village's offer as an attempt "to obtain a breakthrough in an attempt to whipsaw other bargaining units..." The Union argues that the Village has the burden to change the status quo, and that it has not met that burden. It has not shown a compelling need to furlough employees and has offered no quid pro quo for the proposed change.

The Union argues that during the entire period of their relationship since 1986, the Village has produced "no evidence that during the same time period, it somehow needed furlough language to layoff bargaining unit employees," and it also has not furloughed non-represented employees.

While acknowledging that it has not guaranteed this bargaining unit that there will be no layoffs if its final offer is adopted, the Village has gone on record in this arbitration that there will not be layoffs in Fiscal Year 2010-2011. Moreover, it notes, its final offer to allow it to furlough does not take effect until May 1, 2011.

The Union argues that the Village position also is not supported by the Village's external comparables. None of the communities cited as comparables which have contracts negotiated with either police sergeants or lieutenants contain provisions for furloughs.

In the arbitrator's opinion this is an item which should be bargained, not imposed through arbitration, and particularly where there is no support for such a provision among either internal or external comparables. The Village understandably wants to avoid having to lay off employees, but it would appear that the bargaining unit has made a determination that it prefers to see employees laid off if necessary, rather than to allow the Village to unilaterally impose furloughs.

The Village has offered no quid pro quo for its proposed change, and also has made no

calculation of what it would save financially by having the right to furlough. In the arbitrator's opinion the Village's economic circumstances do not compel a decision in its favor on this issue, and the status quo should remain in effect until the parties bargain something else.

With respect to Issue #3 Furloughs, the Union's final offer is selected.

Discussion of Issue #4: Court Time

The Village is seeking to reduce, but not eliminate, the court time benefit as a means of achieving cost savings. A reduction of the minimum guaranteed hours from three to two, the Village estimates, will result in savings of approximately \$ 4500 per year.

The Village acknowledges that the rank and file police Agreement contains a three hour guarantee. The Village acknowledges also that it was not successful in its attempt to reduce that guarantee to two hours in the 2006-07 interest arbitration, but it argues "that was before the economy went over the cliff in late 2008 and early 2009." In its view, the drastically different economic circumstances which existed during the bargaining leading up to the current interest arbitration justifies the reduction in this benefit.

The Village argues further that its proposal is within the range of reasonableness in comparison to the external comparables. There are four external comparables which provide a minimum guarantee of three or more [Hanover, for sergeants but not lieutenants; Hoffman Estates, Mt. Prospect and Streamwood], but three other comparables which provide a minimum of two hours or less [Elgin, Elk Grove Village and Streamwood].

The Union offers to maintain the status quo with respect to the court time benefit. It argues that the three hour guaranteed minimum has been in the parties agreement since 1987. In the current proceeding, it argues, the Village has presented no evidence that the three hour minimum "results in excessive overtime costs for sergeants and lieutenants..." or that the existing three hour guarantee is not working as it was intended, or that it has caused problems for either party. The Union notes also that the Village has not proposed any guid

pro quo in exchange for its proposal to reduce this benefit.

The Union argues further that there is no support in either the internal comparables or the external comparables for the Village's proposed change. The only internal unit which has court time is the rank and file police unit which has a three hour guarantee, and the Village failed in its earlier attempt to change it. The Village's external comparables show a mixed picture but, the Union calculates, the average guaranteed minimum court time among the comparables is 3.75 hours.

In the arbitrator's opinion this is a long-standing benefit which should be changed through bargaining, not imposed through arbitration. Nothing in internal or external comparables persuades the arbitrator that there is a compelling need to change it, and the cost savings which would be achieved are insignificant when viewed in the context of the Village's budget and overall financial condition.

On Issue #4 court time the Union's final offer is selected.

Discussion of Issue # 5: Sick Time Reimbursement

The Village seeks to make several changes in the existing contractual language. Two of them it correctly describes as "non substantive"; namely, changing the title of the provision to conform with the Village Personnel Policies, and deleting language which is no longer needed which referred to the implementation of benefits in the 2007-10 Agreement.

There are two substantive changes in the Village's proposal. First is to grandfather, with respect to reimbursement, retirees with 20 but less than 25 years of service who were hired prior to May 1, 2010. The grandfathered employees would not be eligible for the more generous benefits that those hired subsequently will be eligible to receive. Second is to give the Village Manager the right to reduce the required 90 day notice period if he "determines it is in the best interest of the Village."

With respect to the grandfather language, the Village argues that its proposal won't affect anyone in the unit now, and won't for a long time in the future, since this unit consists of employees who have been promoted from the rank and file unit, and all have been hired prior to May, 2010. It argues further, "Given the substantially enhanced benefit that bargaining unit employees are now able to receive at retirement, it is certainly appropriate to limit the significantly lower benefit for employees who retire with 20 but less than 25 year of service to those bargaining unit members who were hired prior to May 1, 2010." The Village notes also that this change, if adopted, would incorporate into the Agreement the same language which is in the Village personnel manual that is applicable to all Village non-represented employees.

With respect to its proposal to allow the Village Manager to waive the 90 day notice period, the Village argues that this would benefit all concerned in a situation where the Village is not planning to fill the retiree's position, and it would allow the employee to retire sooner. It argues that this change "...does not in any way adversely affect bargaining unit employees."

The Union does not agree that the Village's proposed reimbursement change is insignificant. It notes that the current provision has been in the Agreement since 1987. The Union argues that the Village has presented no evidence that this provision is not working as intended, or that it has created an operational hardship for the Village, or problems for the Union. Moreover, the Union argues, the Village has offered no quid pro quo sufficient to "buy out" this change.

The Union argues that the rank and file police unit's contract has in it the same language which the Village is now proposing to change. That justifies maintenance of the status quo in the current dispute, and should be given more weight than the fact that the Village personnel policies have been unilaterally changed for non-represented employees to include the language which the Village has proposed in its final offer.

The Union argues, "The Village now seeks to obtain a breakthrough by creating a second tier for all command officers 'hired prior to May 1, 2010.' That language change would effect each of the twenty-two (22) sergeants and lieutenants in the current bargaining unit, as each...was hired, not just command officers promoted prior to May 1, 2010. The impact is that it would diminish the benefits currently available for sick time reimbursement for all twenty-two (22) bargaining unit members. In its current form, Section 20.2 provides that effective January 1, 2010, a command officer can accrue eight hundred (800) hours. The effect of the Village's grandfather proposal would be to lower, by eighty (80) hours, the number of unused sick leave hours which can be accrued at a rate of fifty percent (50%) of all accrued hours. This is not an insignificant change."

The present sick time reimbursement benefit is a long-time benefit which is in the Agreements with two of the Village's bargaining units. The only reason put forward by the Village for the proposed change is that it would make the benefits in the police command unit the same as in the Village personnel policies. Unlike some of the other issues in dispute, there is no contention by the Village that the change is required by the depressed economy, and there is no estimate made of what money the change would save.

The Village is correct that with a benefit such as this one, it would be good to have uniformity for all Village employees. However, having bargained this benefit into two contracts, the Village should attempt to achieve this uniformity through bargaining. Under the circumstances the change should not be imposed through arbitration. The Village has not identified problems with the current benefit and it has offered nothing to the Union in the way of incentives to get the Union to go along with the proposed change.

With respect to Issue # 5 Sick Time Reimbursement Plan, the Union's final offer is selected.

Discussion of Issue # 6: Sick Leave Incentive

It is undisputed that in the parties' 2007-10 Agreement, they agreed to double the maximum number of sick leave hours that the City would buy back at the time of retirement

for an employee with 25 years of service from 360 to 720 hours. The Agreement also retained the existing sick leave incentive language. The Village argues that this was an inadvertent oversight on its part, since it intended to eliminate the sick leave incentive language in light of the greatly expanded sick leave buy back benefit. The Village argues that while implementation of its final offer would eliminate a benefit "it is an exceedingly modest benefit, one that pales in cost to the tremendously improved sick leave reimbursement program that bargaining unit employees now enjoy."

As evidence of the Village's intent, it views as significant that in negotiations of the current police rank and file contract, the sick leave incentive plan was eliminated, and it was also eliminated from the personnel policies covering the unrepresented employees. The Village notes also that elimination of the sick leave incentive plan is also a priority issue in the pending negotiations with the fire command unit.

The Village acknowledges that the sick leave incentive plan is in the 2008-11 rank and file firefighters contract, but that contract also includes the sick leave buy back program as it existed in the police command unit prior to its being doubled in negotiations.

The Union's proposal is to maintain the status quo with respect to the sick leave incentive plan. It has been in the Agreement since 1987 and was amended and increased in the 1992-95 Agreement and has continued in its present form since that time. In the Union's view the Village hasn't met its burden of demonstrating a need to change the status quo. Moreover, the Union argues, the Village has produced no evidence that the current benefit has not worked as anticipated originally and as modified, and no evidence that it has created an operational hardship either for the Village or the Union. In addition, the Village has offered no quid pro quo as incentive to agree to the change.

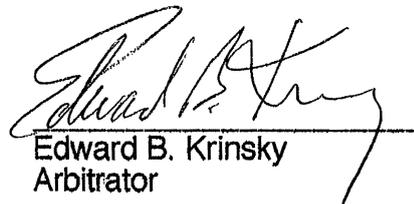
The Union cites the fact that there is not uniformity among the other bargaining units. Although the benefit is not included in the rank and file police unit, it is included in the rank and file firefighters agreement. It argues, as it has with other issues in dispute here, that the

fact that the Village has made unilateral changes to its personnel manual for non-union employees with respect to sick leave incentive plan should not be the determining factor in this case.

Clearly the Village is hoping to achieve uniformity of this benefit, but it still exists in two of its bargaining units. This is a long-standing benefit and in the absence of uniformity it should be bargained, not imposed by arbitration. In the absence of other evidence, the arbitrator cannot give weight to the Village's argument that it meant to eliminate the language in the last bargain. There is no evidence presented to indicate that such elimination was discussed with the Union and/or included in any Village draft proposals. The arbitrator is not persuaded that if the Village was intending in the bargain to replace one provision with another, it would have simply forgotten to eliminate the provision which was supposedly being replaced. The Village also has not given cost figures for this item or shown that implementation of its offer is necessary in the context of its financial difficulties.

With respect to Issue #6 Sick Leave Incentive Plan the Union's final offer is selected.

Dated this 28th day of April, 2011 at Madison, Wisconsin


Edward B. Krinsky
Arbitrator