INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD

ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL

and

THE VILLAGE OF POSEN

ILRB No. S-MA-09-182
S-MA-10-030
Police Officers, Corporals, & Sergeants

OPINION AND AWARD

of

John C. Fletcher, Arbitrator

September 29, 2011

I. Procedural Background:

This matter comes as an interest arbitration between the Village of Posen ("the Employer" or "the Village") and the Illinois Fraternal Order of Police Labor Council ("the Union") pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). The record in this case establishes that the Village employs 10 sworn police officers, 2 Police Corporals and 2 Police Sergeants, all of whom are represented by this Union for purposes of collective bargaining.

The issues herein disputed arise from the parties' impasse in the negotiation of a Collective Bargaining Agreement ("CBA") to take effect on May 1, 2009, which was intended to succeed the incumbent contract that expired on April 30, 2009.[1] One of the impasse issues concerns the parties' disagreement as to what the term of the successor contract should be. Depending upon the outcome of this proceeding, the new Collective Bargaining Agreement will either be a two-year contract expiring on April 30, 2011 (a

[1] Union Exhibit 7.

date that has obviously already come and gone), or a three-year contract expiring on April 30, 2012.

It is further stipulated that, "Because the parties have not agreed to the duration of the new contract, the parties recognize and acknowledge that they may submit both two-year and three-year wage offers that are conditioned upon the Arbitrator first determining the duration of the contract. The formulation of two wage offers is not a waiver of the party's primary argument as to the duration of the agreement."[2] In either case, increases awarded herein below in accordance with the prevailing "last best offer" on the economic issue of wages, shall be paid retroactive to May 1, 2009.

A hearing before the undersigned Arbitrator was held on May 26, 2011. The parties were afforded full opportunity to present their cases relative to the impasse issues set forth herein below, which included written and oral evidence in the narrative, and also examination and cross-examination of witnesses. At the hearing, the Union was represented by:

Gary L. Bailey, Esq.
Aaron Janik, Esq.
5600 South Wolf Road – Suite 120
Western Springs, Illinois 60558-2268

Counsel for the Employer was:

Peter M. Murphy, Esq.
Law Offices of Peter M. Murphy
11800 South 75th Avenue – Suite 101
Palos Heights, Illinois 60463

Post-hearing briefs were filed with the Arbitrator and exchanged On August 13, 2011. The record was declared closed on that date.

[2] Union Exhibit 1; Joint Stipulations.

II. Factual Background

The Village of Posen is a Chicago suburban community of approximately 5,000 residents and is located in Cook County, Illinois. Median home values in Posen are in the $160,000 range, and while general fund expenditures have slightly overrun revenues in recent years, the record establishes that, in the opinion of independent auditors Crowe Horwath, the Village ended fiscal year 2009 "in conformity with accounting principles generally accepted in the United States of America."[3] The estimated median household income in 2009 was $54,429, and the median per capita income for that year was $17,440.[4] The EAV of the Village was approximately $78,140,268 in 2009 and there were no recorded families or individuals below defined poverty levels in that year. [5]

III. The Parties' Bargaining History

The record establishes that the FOP and the Village have had a bargaining relationship since the early 1990s. The first contract, which was 3 years in its term, took effect on May 1, 1994 and expired on April 30, 1997.[6] A successor 3-year contract was negotiated in its entirety, which subsequently expired on April 30, 2000. In February, 2001, Interest Arbitration was invoked under the Act upon impasse in negotiations for the 2000-2003 collective bargaining agreement, and on September 20, 2002, Arbitrator Steven Briggs published his findings with respect to the specific issues of Wages, Overtime Allocation, Uniform Allowance, Vacation Accrual, Detective Stipend, and

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3 Union Exhibit 71 at page 1. See also; Union brief at page 9.
4 Union Exhibit 73.
5 Id., Union Exhibit 14.
6 Union Exhibit 6.

Residency.[7] The full contract, resolved upon issuance of Arbitrator Briggs' award, expired on April 20, 2003, and the parties thereafter successfully negotiated two successor three-year contracts, the first in effect from May 1, 2003 through April 30, 2006, and the second in effect from May 1, 2006 through April 30, 2009.[8] The economic impact of all prior contracts, as will the instant one, corresponded with the Village's fiscal year structure.[9]

On January 12, 2009, the Union served notice of a Demand to Bargain concerning the 2009-2012 contract, though the record establishes that negotiations were deferred pending a concurrent petition by another labor organization to represent Posen police officers. The election resulting from that petition, according to evidence not in dispute, ended in a tie, and as a consequence, the subsequent runoff election further delayed bargaining. Ultimately, the Illinois Fraternal Order of Police Labor Council was certified (re-certified) to represent Posen police officers on August 31, 2009.[10]

According to the Village, "The parties commenced collective bargaining prior to February, 2010, and [were] unable to reach an agreement on all issues" for a 2009-2012 agreement.[11] However, according to unchallenged testimony at arbitration, the "bargaining" referenced by the Employer never meaningfully occurred. Union counsel explained in relevant part that, "The negotiations for this contract took place by us giving the Village an opening proposal … and we never received a written proposal from the Village in the entire negotiations on record." (Tr. 45.)

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7 Union Exhibit 13.
8 Union Exhibit 6.
9 Tr. 28.
10 Union Exhibit 9.
11 Village brief at page 1.

The record shows that mediation was jointly requested on May 20, 2010, and, according to the Union, the Village offered one counter-proposal upon which it requested a vote by the membership in its entirety. The Union duly offered the Village's proposed contract to the membership for a vote, and it was rejected. Arbitration was thus invoked, and all issues hereinafter presented are now before the Arbitrator, free of procedural defect, for his final and binding determination as to their merit.

The parties are in agreement that all open issues identified as "economic" in nature, will be decided by the Arbitrator in accordance with the prevailing party's Final Proposals as they have been presented in this record.

IV. Statutory Authority and the Nature of Interest Arbitration

The statutory provisions governing the issues in this case are found in Section 14 of the Illinois Public Labor Relations Act. In relevant part, they state:

> 5 ILCS 315/14(g)
>
> On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute… the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive… As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).
>
> 5 ILCS 315/14(h) – [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]
>
> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
>
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the

wages, hours and conditions of employment of other employees performing similar services and with other employees generally.

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

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

Though citing the above statutory foundation and authority for interest arbitrations under the Act is standard in most, if not all, recent awards, the Arbitrator has done so here, as in other cases, for the specific purpose of establishing context for his subsequent findings in this case.

Certainly, the Arbitrator's basic beliefs on the subject of interest arbitration will hardly come as a surprise to the parties here, because he has already declared his general philosophies in numerous prior Awards under the Act.[12] However, it now appears that his fundamental ideas on the subject, which in their proper context have received support from other interest arbitrators over the years, have been mechanically turned upside down

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[12] See; e.g., County of Cook, Illinois/Sheriff of Cook County and Metropolitan Alliance of Police, Chapter 222, ILRB Case No. L-MA-04-006 (2006); City of Alton and International Association of Firefighters, Local 1255, ILRB Case No. S-MA-06-006 (2007).

to mean something barely resembling their original intent. In substance, the Arbitrator perceives that there is a strong assumption on the part of the Village in this case, that any petition by the Union to depart from *status quo* will be denied if it is demonstrated that there has been no meaningful bargaining on the subject. Presumably, this is because the Arbitrator has cautioned unions in this forum not to treat interest arbitration like grievance arbitration, or in the alternative, to approach it like a visit to Santa Claus. The Arbitrator has further instructed parties in prior interest arbitrations that a firm answer of "no" at the bargaining table is not, in and of itself, *prima facia* evidence of bad faith.

While in the past the Arbitrator's admonishments to that end have been directed at unions primarily, simply because contentious issues such as wage increases, benefits enhancements, and residency are usually brought by unions rather than employers, there was never any purpose on his part to suggest that if "no" was going to be the ultimate answer anyway, there was no need on the part of the employer to bargain. It is evident that that is precisely what happened here. In fact, the record establishes that the Village steadfastly declined to entertain the Union's proposals with regard to correcting even typographical errors and outdated references that had absolutely no measurable impact on the contract at all.

In arguing the general issue of "fairness," the Union presented evidence that its final offers with respect to Section 1.2 (Part-Time Employees) and Section 24.2 (Injury Leave) specifically, were submitted to bargaining for no other reason than to correct errors in citation and still the Village rejected them until the very day of arbitration. This is likely because the Village misinterpreted modern instruction in this forum to mean that interest arbitrators in general, and this Arbitrator in particular, would not award changes

in existing language if the parties had not spent sufficient time at the bargaining table endeavoring to achieve a "meeting of the minds" on open issues. In other words, it appears that the Village wrongly, albeit creatively, thought that "stonewalling" meaningful discussions on all issues brought by the Union, would have the same effect as simply extending (with a few conceded modifications) the incumbent contract for another three years.

Certainly, the Arbitrator does not conceptually depart from anything he has already said before on the subject of interest arbitration. Without a statutory right to strike, public service employees do need a vehicle by which their concerns may ultimately be resolved when contract negotiations reach impasse. Obviously, that is what this and other interest arbitrations are all about. Unfortunately, given the creativity of individuals and bargaining teams intent upon sacrificing basic principles in exchange for a desired outcome, there have been many attempts to end-run the Act and win the day by abusing well-intentioned and cogent interpretation of its provisions. Perhaps now, in these litigation-oriented days of loopholes and fancy footwork, a new philosophy is in order; the less said the better.

The statute, as it is written, endeavors to solve an unsolvable problem; that is to bring closure to parties at impasse on critically important issues by calling upon an entirely uninvolved party to decide who should ultimately prevail. We are all familiar with the "crystal ball" conundrum on that score. Furthermore, serious and well-defended analysis has been published with the goal of helping parties subject to this unique process succeed and not fail. If thoughtful treatment of the issues and deep respect for the process are to be received and interpreted by any party invoking impasse arbitration

under the Act as permission to pervert reason and subvert the obvious goal of mutual future accord, then so be it. There is no need to, yet again, exhaustively recite prior logic. However, it will not contradict what interest arbitrators have said many times over, for this Arbitrator to also find that departure from the *status quo* may be awarded when the moving party has substantiated, pursuant to statutory criteria, its reasons for so requesting. In other words, when one or the other party patently refuses to negotiate, as the Village has evidently done here, it is not a foregone conclusion that the *status quo* will be preserved for lack of meaningful bargaining. Indeed, as the Arbitrator has already noted, sometimes "no" is "no," and that truth is neither sinister nor surprising. However, "Because I said so," does not constitute meaningful bargaining, and that is the difference.

Thus, for purposes of the Arbitrator's following analysis, where the Union has established verifiable support from statutory criteria for departing from *status quo*, and the Employer's existing rights under other contract provisions are not harmed by the change, change will be awarded. Certainly, if these parties do not find a way to meet and deal with one another constructively in the future, there is a good chance that they will wind up right back in this forum for a subsequent contract. If that happens, as the Arbitrator has said in the past, after a few rounds, their contract will more closely resemble a compilation of unilateral opinion than an instrument of mutual benefit that possesses context and overarching purpose. Either way, the interest arbitrator's function under the Act is the same. Only the parties will suffer by forcing risky reliance on a third party, who cannot not help but be the "least informed" person in the room as to the real nuts and bolts of what concerns them.

In sum, the Arbitrator's approach to the issues of impasse presented in this

record will be, as always, in concert with his firm opinion that this process is not, nor will it ever be, a substitute for grievance arbitration or meaningful bilateral collective bargaining. However, as Arbitrator Harvey Nathan's rightly concluded early in the game, the party seeking change may succeed given substantive proof that, "The party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address [operational hardships or] problems [in the old system]."[13]

V. THE PARTIES' GROUND RULES AND STIPULATIONS

1. The Arbitrator in ILRB Case No. S-MA-09-182 shall be Arbitrator John C. Fletcher. The parties stipulate that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, including but not limited to the express authority and jurisdiction to make adjustments to wages and benefits. Each party expressly waives and agrees not to assert any defense, right or claim that the Arbitrator lacks jurisdiction and authority to make such adjustments; however, the parties do not intend by this Agreement to predetermine whether any adjustments to wages or other forms of compensation in fact should be retroactive to May 1, 2009.
2. The hearing in said case will be convened on May 26, 2011 at 9:30 a.m. The requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act, requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment, has been waived by the parties. The hearings will be held in the Village Council Chambers, Village Hall, Posen, Illinois.
3. The parties have agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the employer and exclusive representative and agree that Arbitrator Fletcher shall serve as the sole arbitrator in this dispute.
4. The hearing will be transcribed by a court reporter or reporters whose attendance is to be secured by the Employer for the duration of the hearing by agreement of the parties. The cost of the reporter and the Arbitrator's copy of the transcript shall be shared equally by the parties.
5. The parties agree that the following issues remain in dispute, that the issues,

[13] Will county Board and Sheriff of Will County and AFSME, Local 2961; S-MA-88-9 (Nathan, 1988)

which are mandatory subjects of bargaining, are submitted for resolution by the Arbitrator, and that the Arbitrator must choose either the Employer's offer or the Union's offer on each issue presented inasmuch as the following issues are economic within the meaning of Section 14(g) of the Illinois Public Labor Relations Act:

. . .

6. The parties agree that the remaining issues in dispute are mandatory subjects of bargaining submitted for resolution by the Arbitrator, and that the Arbitrator may choose either the Employer's offer, the Union's offer, or he may write his own provision inasmuch as the following issue is non-economic within the meaning of Section 14(g) of the Illinois Public Labor Relations Act:

. . .

7. While the Employer and the Union hereby stipulate that they are in disagreement over whether the following non-economic disputes are properly before the Interest Arbitrator. The Employer asserts that they are NOT mandatory subjects of bargaining and thus improperly before the Arbitrator for resolution. The Union asserts that they are mandatory subjects of bargaining and thus the Arbitrator has jurisdiction over them. The parties agree that whether the Arbitrator has jurisdiction to determine these issues must be determined under the Illinois Labor Relations Board, through a Declatory Ruling Petition, pursuant to Section 1200.143(b) of the Rules and Regulations of the Illinois Labor Board. Thus, the parties agree to temporarily submit the issues to the Arbitrator, thus making a full evidentiary record. However, the parties shall mutually instruct the Arbitrator that he is obligated to await a lawfully-issued Declatory Ruling as to whether he may issue awards on any or all of these three non-economic issues, herein referred to as "Jurisdiction-Disputed Issues."

. . .

8. Because the parties have not agreed to the duration of the new contract, the parties recognize and acknowledge that they may submit both two-year and three-year wage offers that are conditioned upon the Arbitrator first determining the duration of the contract. The formulation of two wage offers is not a waiver of the party's primary argument as to the duration of the agreement.

9. The parties agree that the Arbitrator shall incorporate into the collective bargaining agreement any tentative agreements reached during negotiations between the parties.

10. Final offers shall be exchanged at the commencement of the hearing. Such final offers may not be changed except by mutual agreement of the parties. Each party shall be free to present its evidence in either the narrative or witness format, or a combination thereof. The Labor Council shall proceed first with the presentation of its case-in-chief. The Employer shall then proceed with its case-in-chief. Each party shall have the right to present rebuttal evidence. Neither party waives the right to object to the admissibility of evidence.

11. Post-hearing briefs shall be submitted to the Arbitrator, with the copy for the opposing party sent through the Arbitrator, no later than July 11, 2011[14] or such further extension as may be mutually agreed to by the parties or as granted by the Arbitrator. The post-marked date of mailing shall be considered to be the date of submission of a brief.

12. The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator shall issue his award within sixty (60) days after submission of the post-hearing briefs or any agreed upon extension requested by the Arbitrator.
13. Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior to, during, or subsequent to the arbitration hearing.

14. Except as specifically modified herein, the provisions of the Illinois Public Labor Relations Act and the rules and regulations of the Illinois Labor Relations Boards shall govern these arbitration proceedings.
15. The parties represent and warrant to each other that the undersigned representatives are authorized to execute on behalf of and bind the respective parties they represent.
16. The Arbitrator shall retain the official record of the arbitration proceedings until such time as the parties confirm that the award has been fully implemented.

17. The parties agree that the arbitration proceedings are not subject to the public meeting requirements of the Illinois Open meetings Act, 5 ILCS 120/1, *et seq.* All sessions of the hearing(s) will be closed to all persons other than the arbitrator, court reporter, representatives of the parties, including negotiating team members, witnesses to be called at the hearing, resource persons of the parties, members of the bargaining unit, and elected officials and management staff of the village.[15]

VI. OUTSTANDING ISSUES

Jurisdictional Issues

Section 1.2 – Part-Time Employees (Resolved)

Section 11.10 – Consequences of a Confirmed Positive Test Result

[14] At the Employer's request this date was extended to August 8, 2011.
[15] Union Exhibit 1.

Section 21.3 – Hours of Work (Resolved)

Economic Issues

Section 21.6 – Overtime Compensation

Section 22.1 – Paid Sick Time

Section 23.2 – Holiday Compensation

Section 23.3 – Personal Days

Section 23.4 – Premium Holidays

Section 24.3 – Vacations

Section 24.9 – Professional Growth and Training

Section 25.1 – Uniform Compensation

Section 26.1 – Health/Dental Insurance

Section 26.4 – Retiree Health/Dental Insurance

Section 27.1 – Wages

Non-Economic Issues

Section 2.1 – Dues Deduction (Resolved)

Section 5.1 – Definition of a Grievance

Section 8.2 – Non-Discrimination

Section 13.4 – Destruction of Material

Section 13.5 – Uniformed Peace Officers' Disciplinary Act (Resolved)

Section 20.1 – Residency

Section 21.8 – Overtime Compensation

Section 24.2 – Injury Leave (Resolved)

Section 29.1 – Term of Agreement

VII – EXTERNAL COMPARABLES

As noted in prior interest arbitrations under the Act, Section 14(h) of the IPLRA establishes eight factors for consideration by arbitrators when examining the suitability of last best offers in interest arbitration. As stated by Arbitrator Benn in City of Chicago and Fraternal Order of Police Chicago Lodge 7 (Benn, 2010), none of the eight factors receives more attention under statutory language than the others. However, before 2009, greater weight was generally afforded the factor of comparability (both internal and external), and indeed many cases were tried and decided on comparability alone. In relevant part, Arbitrator Benn commented as follows:

> "Wisdom too often never comes, and so one ought not to reject it merely because it comes late."[16] It is fair to conclude that prior to 2009, few in this area of practice – public administrators, union officials, advocates and neutrals – could have foreseen the drastic economic downturn we are now going through and then try to reconcile those conditions with the way parties present interest arbitrations and how neutrals decide those cases based wholly or partially on the comparability factor. That became readily apparent to me when I was asked to use comparable communities as a driving factor in cases decided after the economy crashed, but where the contracts in the comparable communities had been negotiated prior to the crash. I found that I just could not give

[16] Arbitrator Benn quotes a maxim from Henslee v. Union Planters National Bank & Trust Co., 334 U.S. 595, 600 (1949) (Frankfurter dissenting) long held as one of this Arbitrator's most favored citations.

> the same weight to comparables as I had in the past. Given the drastic change in the economy, looking at those comparable comparisons became "apples to oranges" comparisons…

Thus, as noted by Arbitrator Benn, it is not necessarily reasonable to conclude that contracts negotiated in more favorable economic times are truly comparable in the present statutory sense, because the context of those contracts, i.e. the timing and tenure of them, renders them intrinsically disparate. Thus, while two communities may themselves be legitimately "comparable" in the statutory sense, making an "apples to apples" comparison is inappropriate when the essential framework in which their contracts are being (or were) negotiated is completely different.

This problem is particularly troublesome when interest arbitrators are asked to resolve truly contentious economic issues such as wages and health insurance. In attempting to fulfill their statutory duty under the Act to do so in these present days, arbitrators are now finding that communities which under other circumstances would be considered "comparable," are no longer so because substantive wage increases (for example) negotiated before the economy's crash made little sense afterward. That being said, Arbitrator Benn also reasoned that this was not necessarily a permanent divergence from what was once the "norm" in interest arbitrations under the Act. In relevant part, he noted:

> But before leaving comparability, one final finding must be made. My conclusion in this case – i.e., that comparisons to comparable communities are not appropriate for the reasons set forth above – is without prejudice to either party's ability to advance comparability arguments in future negotiations and interest arbitration proceedings. For example, during the next round of negotiations or any interest arbitration, [the union] retains the right to argue that its members are entitled to above average or "catch up" wage increases to restore whatever differentials or rankings it believes have been compromised by this award or that the then

> current wage rates should be not considered the *status quo* given the unique circumstances of this case. Likewise, the City retains the right to argue that above average or "catch up" wage increases are not appropriate based on comparability or other relevant factors. For me, and for the time being, this economic downturn has merely caused a hiatus in the use of the comparability factor. That is how I believe comparability should be approached for the present and that is how I have ruled in other awards decided in this recession.[17]

This Arbitrator was in agreement with Arbitrator Benn's balanced analysis of his often-cited "that was then, this is now" reasoning. However, it is also true, that at some point, the flip side of the same coin would come into play. As the economy has, at least to some degree, stabilized and more recent collective bargaining agreements have recognized that fact in terms of wage increases, the criterion of comparability is again compelling for purposes of considering relative markets and the competition among them to hire qualified public servants.

The parties have submitted lists of proposed comparables which have nothing in common with one another. The Union has proposed the following as comparable communities:

Crete
East Hazel Crest
Thornton
University Park

The Village, on the other hand, proposes that the Arbitrator consider the following communities comparable:

Beecher
Monee
South Chicago Heights

At the outset, the Village argues that, "Although the Act requires the arbitrator to

[17] *City of Chicago*; supra.

take into account a comparison of wages and benefits in 'comparable communities,' there is no definition of 'comparable communities' in the Act. There is no legislative history as to the meaning of that phrase, nor is there any judicial guidance… Therefore, the search for comparability involves a comparison of many items to determine what municipalities are similar such that a general picture of the labor market can be obtained…"[18] The Village recognizes geographic proximity as the "predominant factor" in establishing comparability, and further notes that general economic standing, population, EAV, median family income and department size have historically been considered by arbitrators in their endeavors to apply this statutory criterion. Thus, the Village submits, its list of comparables passes the "smell" test, whereas the Union's list does not.

Mainly, the Village argues, its list of comparable communities is more similar to Posen in terms of population and median family income. University Park and Crete, proposed by the Union, are nearly double the size of Posen in terms of population, the Village argues, and Thornton is half the size of Posen in terms of population. Likewise, the Village argues, East Hazel Crest is much smaller than Posen. In contrast, the Village notes, Beecher, Monee and South Chicago Heights are municipalities with populations nearly identical to that of Posen.

The Union, on the other hand, analyzed and proposed comparables in light of Arbitrator Steven Briggs' decision in 2002. In relevant part, Briggs explained:

> "The purpose of external comparison in interest arbitration is to evaluate the competitive employment environment in which the focal

[18] Village brief at page 7.

employer operates. It is to identify the jurisdictions with which that employer must compete in order to attract and retain persons competent to perform the work in question. In the present case, then, the external comparables pool should be composed of those cities, towns and villages which provide reasonable police employment alternatives for current and potential full-time Posen police officers. It necessarily excludes jurisdictions so far removed from Posen geographically that the one-way commute would be undesirable. Moreover, since a full-time Posen police officer would most likely not abandon that employment and its accompanying benefit package for a part-time police officer position elsewhere, it makes sense to exclude from the comparables pool those jurisdictions whose police departments are composed primarily of part-time officers…'

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"Based upon the foregoing analysis, the Arbitrator has selected the following communities as external comparables for these interest arbitration proceedings:

South Chicago Heights (proposed by the Village)
Thornton (proposed by the Union)
University Park (proposed by the Union)

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"As illustrated by the preceding discussion, the selection of comparable communities in the external labor market is not a precise science. Rather, it is an exercise based on generalization and, frankly, on educated speculation. Under such circumstances the Arbitrator would prefer a comparables pool with more than three components. A larger grouping would reduce the influence of any particular external jurisdiction on the outcome of an interest arbitration proceeding. Here, however, using traditional selection criteria embraced by both parties, the external comparability group ultimately identified is rather small. It will therefore be used as a guideline, but not given as much weight as it would have had it been larger.'

"It is important to recognize that in selecting comparable jurisdictions interest arbitrators must rely on the research done by the parties themselves. Our decisions are based exclusively on the evidence the parties present. For all intents and purposes, then, the parties define the universe of jurisdictions from which the interest arbitrators ultimately select external comparable municipalities. If potentially comparable jurisdictions are not included by either party, they will not be adopted in interest arbitration proceedings because data about their population, locations, etc. was not part of the evidence in the record. Given that limitation, the parties should not assume that the external comparables adopted in a given interest arbitration case are the only ones they should

use in the future."[19]

Obviously, Arbitrator Briggs recognized that, at some point in the future, the parties might suggest additional communities for purposes of comparison at interest arbitration, and that is what has occurred here. Interestingly, however, the Village now suggests only one of the communities it offered for purposes of comparison in *Briggs*, and that is South Chicago Heights.

In *Briggs*, the Village proposed Hometown, South Chicago Heights and Stone Park as external comparables. The Union, by contrast, proposed Calumet Park, Glenwood, Lynwood, Orland Hills, Sauk Village, Thornton and University Park. Ultimately, as noted above, Arbitrator Briggs selected South Chicago Heights from the Village's list and Thornton and University Park from the Union's list for purposes of comparison with the Village of Posen. Furthermore, according to the record, the Union only objected to the Village's proposed inclusion of South Chicago Heights because police officers in that community were not unionized at the time.

Here, then, the Village proposes two communities adopted by Arbitrator Briggs as comparables; Thornton and University Park. The Union further agrees to the inclusion of South Chicago Heights from the Village's list of comparables (also adopted by Arbitrator Briggs) based on evidence that South Chicago Heights police officers are now represented by Teamsters Local Union #700, and proposes the addition of Crete and East Hazel Crest to the list. In terms of size and financial state, the Union argues, the two additional communities fit into the existing group that Arbitrator Briggs found comparable, and together they add balance to the picture of the applicable labor market.

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[19] Village of Posen and Illinois FOP Labor Council, S-MA-00-168 (Briggs, 2002) at page 7.

Crete is larger than Posen in terms of population, and East Hazel Crest is smaller, the Union notes. Crete, though it is 16 miles away from Posen, the Union submits, is no further away than University Park, which Arbitrator Briggs still found comparable. East Hazel Crest, the Union argues, is very near Posen in terms of geography. The Village's additional proposed communities of Monee and Beecher are 17 miles and 22 miles away from Posen respectively, the Union notes, and should thus be rejected by the Arbitrator for lack of geographical proximity.

The following tables represent data provided by the Union concerning applicable criteria for purposes of external comparability, with the addition of minimal data provided by the Village for the community of South Chicago Heights. Again, the Union does not object to the inclusion of South Chicago Heights now, because police officers in that community are unionized, whereas they were not at the time of *Briggs*.

Jurisdiction	**Population**	**MHV**[20]	**GFB**[21]	**GFR**[22]	**GFE**[23]
E. Hazel Crest	1,561	$153,600	$313,952	$1,525,023	$1,818,182
Thornton	2,284	$138,500	$696,522	$2,938,656	$2,937,726
S. Chi. Hts.	4,139	$127,766	------	-------	---------[24]
POSEN	4,906	$159,400	$364,594	$2,934,576	$3,516,314
Univ. Park	8,511	$139,700	$912,130	$6,940,559	$7,255,902
Crete	8,906	$195,700	$311,343	$2,731,260	$1,569,941

Jurisdiction	**Crime Index**	**Crime Index/100,000**	**FT Sworn**	**PT Sworn**
E. Hazel Crest	119	7,747.4	9	9
Thornton	51	2,137.5	12	5
S.Chi. Hts	------	-----	5	----[25]
POSEN	212	4,320.2	15	7
Univ. Park	38	4,651.1	14	4
Crete	250	2.765.2	19	5

20 Median Home Value
21 General Fund Balance
22 General Fund Revenues
23 General Fund Expenditures
24 Data not provided by the Village
25 Data not provided by the Village

Thornton and University Park are still comparable, in the Arbitrator's opinion, because, while they differ from Posen in terms of population, they are well within the range of variability for purposes of consideration. Median home values are very comparable, and while revenues are much higher in University Park than they are in Posen, the difference is almost entirely accounted for by the difference in population. University Park's expenditures slightly exceed revenues, as they do currently in Posen. Thornton is in an overall better financial position, with higher revenues and a balanced budget, but median home values and geographical proximity favor it as a comparable. As for the addition of Crete and Hazel Crest, I do agree that they add overall balance to the picture of comparables here, and neither were proposed to Arbitrator Briggs in 2002. While Crete is significantly larger in terms of population, median home values are well within acceptable variance, and General Fund Balances and General Fund Revenues are for all intents and purposes identical. Crete has a larger police force than Posen, but only slightly. East Hazel Crest has, perhaps the fewest "touchstones" with Posen overall, but because it is so close in terms of geographical proximity, there is no doubt that the two communities are in direct competition with one another for available qualified employees.

Beecher and Monee, however, must be excluded for lack of reasonable geographical proximity. As the Union notes, Arbitrator Briggs and other interest arbitrators have stressed the importance of geographical proximity in establishing lists of comparable communities:

> "It is axiomatic that communities used for comparable purposes in an interest arbitration proceeding should be located within the same local labor market as the community where the interest dispute exists. That

> principle has been upheld again and again by interest arbitrations and there is no need to discuss it at length in these pages. Suffice it to say that in attracting and retaining qualified police officers, Mt. Vernon competes with communities lying within a reasonable commuting distance…"[26]

The parties agree that South Chicago Heights is common to both lists as long as the Union is satisfied that police officers are now represented in that community.

Thus, the Arbitrator adopts the following list of communities for purposes of examining the impasse issues relative to the statutory criterion of external comparability:

East Hazel Crest
Thornton
South Chicago Heights
University Park
Crete

VIII – INTERNAL COMPARABLES

In this record, neither party relies on the statutory criterion of internal comparability to any great degree, though on the economic issue of sick leave, the Village argues in favor of the *status quo* in view of comparable allowances among other Posen employees. Neither did the parties rely on internal comparability in the *Briggs* arbitration. Thus, for purposes of this case alone, as he has been guided by the parties on the general subject of comparability, the Arbitrator will not, with the particular exception noted, rely heavily on the statutory criterion of internal comparability.

IX. CONSUMER PRICE INDEX AND OTHER FACTORS

It is well-settled that CPI data is of some value in interest arbitrations concerning the economic issue of wages, though, hardly surprisingly, that data has been subjected to

[26] City of Mt. Vernon and Illinois FOP Labor Council, S-MA-94-215 (Briggs, 1995). See also; City of Dekalb and IAFF, Local No. 1236, S-MA-87-76 (Goldstein, 1998); Village of Arlington Heights and IAFF, S-MA-88-89 (Briggs, 1991).

a variety of permutations (and thus interpretations) for purposes of determining relative changes in cost of living. However flawed, though, it is as useful a tool as we have available for determining inflation, and, as the Union points out, a trip to the gas station or grocery store in recent months is proof positive that everyday life is simply more expensive now than it was two or three years ago.

In particular support of its higher wage proposal, the Union provides a compilation of six different local CPI indices, which it has summarized for the two known years of this contract, 2009 and 2010. The data provided establishes the following:

	May 1, 2009	**May 1, 2010**	**Total**
CPI-U (Midwest Urban)	2.25%	3.15%	5.40%
CPI-U (US City Avg.)	2.08%	3.08%	5.16%
CPI-U (Chicago)	1.49%	2.71%	4.20%
CPI-W (Midwest Urban)	2.76%	3.59%	6.35%
CPI-W (US City Average)	2.48%	3.56%	6.04%
CPI-W (Chicago)	1.98%	3.32%	5.30%[27]

The above data is relevant to the Arbitrator's following analysis of the parties' respective wage offers, of which, because it is an economic issue, one must be adopted over the other in its entirety. The Village proposes across the board wage increases of 2.0% in each year of this contract, whether its term is ultimately two or three years. The Union proposes across the board wage increases of 3.5% in each year of the contract. No step increases are proposed by either party.

In sum, due weight and consideration will be given to the statutory criteria of external comparability (using the approved list of comparables as set forth herein above), internal comparability where applicable, cost of living indices, and "such other factors,

[27] Union Exhibit 45.

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."[28]

X. THE ISSUES

JURISDICTIONAL ISSUES

Section 1.2 – Part Time Employees

At arbitration, the Village accepted the Union's final offer with respect to Section 1.2 (Part Time Employees). The Union's final offer is thus adopted, and it is incorporated into this Award by reference.

Section 11.10 – Consequence of Confirmed Test Result

Pursuant to the findings of the Illinois Labor Relations Board, the above issue was deemed to be a mandatory subject of bargaining. The issue, by stipulation of the parties, is non-economic in nature.

The Union's Final Proposal

> If an employee's positive test result has been confirmed, the employee is subject to disciplinary action ~~before the Board of Fire and Police Commissioners~~. Factors to be considered in determining the appropriate disciplinary response include the employee's work history, length of employment, current job performance, and the existence of past disciplinary actions.

The Village's Final Proposal

[28] 5 ILCS 315/14(h)

The Village proposes to maintain the *status quo*.

The Position of the Union:

The Union proposes to eliminate reference in this provision to the Board of Fire and Police Commissioners. The Village of Posen Board of Fire and Police Commissioners, even if one presently existed, would have no authority to review any discipline involving a member of this bargaining unit, the Union argues, because all discipline (other than reprimands) is grieved under the contract and progressed to arbitration in the event settlement cannot be reached. The proposed language modification is merely a "housekeeping" matter, the Union argues, as reference to the Board is "outdated and does not reflect the parties' agreement as to how disciplinary disputes are to be litigated." Thus, the Union urges the Arbitrator to adopt its final proposal on this non-economic issue.

The Position of the Village:

The Village proposes to maintain the *status quo*, which would retain reference to the Board of Fire and Police Commissioners in Section 11.10 of the new contract. The Village argues that the language alteration urged by the Union constitutes a "breakthrough" proposal, in that it would eliminate the Board as arbiters of drug policy violations. Importantly, the Village argues, inclusion of the reference to the Board does not remove from the Union any present right to grieve discipline under the Collective Bargaining Agreement. Furthermore, the Village argues, maintaining a local Board of Commissioners is contemplated by ILCS and is a meritorious system. Therefore, the Village argues, it should not be eliminated based upon the Union's unsubstantiated request.

Discussion:

The Union, in proposing to remove reference to the Board of Fire and Police Commissioners in Section 11.10 of the contract, neither seeks to eliminate, nor succeeds in eliminating ,the Board itself, as the Village apparently argues. Instead, the specific provision under consideration concerns consequences for a positive drug test result which could, or likely would, result in the discipline of a member of this bargaining unit. The Union has established to the satisfaction of the Arbitrator that discipline (other than minor reprimands) is already subject to the grievance procedure set forth in the contract. Moreover, the Union's testimony at arbitration that the Village no longer maintains a Board of Fire and Police Commissioners is unchallenged by Posen's counsel. (Tr. 40.) Thus, the Arbitrator is persuaded by the Union that reference to the [non-existent] Board of Fire and Police Commissioners in Section 11.10 serves no practical purpose at best. At worst, maintaining it could prove confusing should an officer be compelled to suffer the consequence of a confirmed positive drug test under this contract. Thus, the Union's final offer is reasonable, and should be adopted. The following Order so reflects.

Order

For all the foregoing reasons, the Arbitrator concludes that the Union's proposal with respect to Section 11.10 language should be adopted. It is so ordered.

Section 21.3 – Hours of Work

At arbitration, the Village accepted the Union's final offer with respect to Section 21.3 (Hours of Work). Thus, the Union's final offer is adopted, and it is

incorporated into this Award by reference.

ECONOMIC ISSUES

Section 21.6 – Overtime Compensation (Economic)

The Union's Final Proposal

~~Commencing on September 11, 2007 (Village ratification of this Agreement),all~~ **All** hours worked in excess of eighty (80) hours per 14 day work period shall be compensated at the overtime rate of time and one half (1½ times) the employee's regular hourly rate of pay. For purposes of calculating overtime, vacation, and comp. time hours shall be considered hours worked; **however, effective upon issuance of the Interest Arbitration Award, for purposes of calculating overtime, all hours paid shall be considered hours worked.** *Employees can elect to take not more than fifty percent (50%) of overtime compensation in pay.*

NOTE

Bold type indicates proposed changes in the economic impact of the present overtime rule. ~~Strike through~~ and *Italics* indicate proposed changes in non-economic aspects of the present overtime rule. Only the economic issue is addressed in this section.

The Village's Final Proposal

The Village proposes to maintain the *status quo*.

The Position of the Union:

Here, the Union argues that all paid hours should count toward the "overtime threshold" under Section 21.6 of the Agreement. At present, only compensatory time and vacation time are credited for purposes of calculating overtime pay, but all other paid hours, such as sick leave and personal time, are not. The criterion of external comparability favors its proposal, the Union argues, given the fact that, at present, Posen police officers are credited with fewer hours toward commencement of overtime than the majority of their counterparts in other communities. In support, the Union cites the

following evidence:

Crete	"Hours worked" is all paid hours
East Hazel Crest	"Hours worked" is all paid hours except sick time
University Park	"Hours worked" is all paid hours except sick time
S. Chicago Hts.	"Hours worked" is all paid hours except sick time
Thornton	No definition is offered for "hours worked"

The Union's final offer in this case, as it is willing to acknowledge, would also include personal time and all other paid time under this Agreement, where that is not the case with the majority of the comparables. Nevertheless, the Union argues, its proposal "allows the officers to take their benefit time without being punished when they accept overtime work," which is conceptually supported by the cited external comparables because among them, sick time is generally credited. Accordingly, the Union urges the Arbitrator to adopt its final offer with respect to noted changes in the economic impact of Section 21.6.

The Position of the Village:

The Village argues that the Union seeks to "completely change the method of calculating overtime compensation pay, a method which has been in place ever since the first collective bargaining agreement," without offering any evidence as to why members of this bargaining unit are now entitled to the additional benefit. Without any support, the Village argues, the Union seeks a breakthrough which would cause economic hardship to the Village. Everyone wants more money, the Village submits, but here, the Union simply asks for it without providing evidentiary or statutory support for the monetary increase. Thus, the Village argues, the Union's petition as to any change in the calculation of overtime should be rejected by the Arbitrator.

Discussion:

Here, the Village is correct in stating that the Union's petition as to the proposed economic changes in calculating overtime would result in a monetary benefit not currently enjoyed by members of this bargaining unit. The Village is also correct in noting that the Union's final offer, in its entirety, is not supported by the statutory criterion of external comparability. Of all the cited comparables, only police officers in Crete receive credit for "all paid hours" toward commencement of overtime. In every other instance, with the possible exception of police officers in Thornton (we do not know how overtime is calculated there), only sick time is credited over and above what Posen officers are already receiving. Thus, there is very little support from the comparables for the Union's present petition that all paid hours be credited.

While the Arbitrator does not intend to reward the Village for its lack of willingness to bargain in good faith in evident hopes that the Union would repeatedly be impaled on the "breakthrough" sword, neither will the Arbitrator penalize the Village by awarding what is clearly a new and extra benefit to the bargaining unit without valid support from applicable statutory factors. Here, the Union obviously asked for more than most of the comparable communities currently afford. Certainly asking was the Union's right, but absent any evidence of need, or in the alternative a stated *quid pro quo*, the Arbitrator cannot justify the proposed departure from what the parties bargained to include in the previous collective bargaining agreement. In other words, the Union failed to establish that the present system is now somehow broken or is causing undue hardship to the bargaining unit. Nothing, at least as far as this record indicates, has changed. Neither has the Union successfully defended its position on the basis that members of this

bargaining unit are significantly less fortunate then their counterparts in comparable circumstances.

Thus, and for all the foregoing reasons, the Union's final offer is rejected. The Village's petition to maintain *status quo* on this issue is adopted, and the following Order so reflects.

Order

The Village's final proposal to maintain *status quo* is adopted. It is so ordered.

Section 22.1 – Paid Sick Time

The Union's Final Proposal

> Once each year, on the employee's hiring anniversary date, an employee shall receive ten paid sick time days (8 hours of regular time). Employees shall be allowed to accumulate paid sick time days to a total maximum capacity of thirty (30) days.
>
> **However, upon issuance of the Interest Arbitration Award, commencing once each year, on the employee's hiring anniversary date, an employee shall receive twelve (12) paid sick time days (12 hours for employees assigned to patrol; 8 hours for employees assigned to 8-hour days). Employees shall be allowed to accumulate paid sick time days to a total maximum capacity of one thousand four hundred forty (1440) hours.**
>
> Upon separation the employee shall be allowed to cash out at the rate of fifty percent (50%) of that employee's accrued, but unused sick time.
>
> *NOTE*
>
> **Bold** indicates new text.

The Village's Final Proposal

The Village proposes to maintain *status quo*.

The Position of the Union:

The Union proposes that officers assigned to 12-hour shifts should earn 12-hour rather than 8-hour sick days. Sick days are used for non-duty related injuries and

illnesses, the Union explains, and the FOP is concerned for officers who may need more than the present 240-hour maximum allowed under the prior Agreement. In other words, the Union argues, the increase is sought "so officers can avoid the problems of running out of sick time should they have to undergo surgery or any other sustained off-duty illness."

The external comparables are diverse on this issue, the Union admits. However, the Union states, "The Union's proposal is not based upon what other communities provide their officers, but rather on a common sense application of paid sick leave to avoid financial disaster when an off-duty illness occurs." [29] Having increased the hours in the standard workday, the Union also argues, the Village must accept its obligation to allow officers to accumulate additional sick leave.

For that and all the foregoing reasons, the Union urges the Arbitrator to adopt the proposed alteration of the *status quo*.

The Position of the Village:

Again, the Village argues, the Union has presented a breakthrough issue, as it has proposed a 20% increase in the number of sick days allowed under this Agreement. Importantly, the Village argues, the Union has not presented any evidence establishing that the present number of authorized sick days is inadequate. Furthermore, the Village argues, all other employees of the Village, whether covered by a collective bargaining agreement or not, are allowed 10 sick days per year. Here, the Village argues, the Union failed to satisfy its burden to prove that a 20% increase over and above what the parties

[29] Union brief at page 60.

negotiated in the last agreement is supported by statutory factors.

The Union's proposal would also increase the payment for unused sick days from 30 days to 180 days upon resignation, retirement, or buy back of sick days, the Village notes. None of the comparables proposed by the Union have such generous buy-back arrangements, the Village points out, and that fact alone is sufficient to deny altering the present contract language.

Accordingly, the Village urges the Arbitrator to deny the Union's proposal and maintain *status quo*.

Discussion:

Here again, the Union has failed to persuade the Arbitrator that departure from the present negotiated *status quo* is supported by the evidence. As the Arbitrator has already stated, he would not hesitate to adopt the change had the Union established statutory support for doing so. There appears to be absolutely none, though, and therefore, the Union presents little more than a "Christmas list" proposal here. It is hardly surprising that a straight 20% increase in paid sick time would be a desirable gain. However, even the Union acknowledges that its offer on this economic issue "is not based upon what other communities provide their officers but rather on a common sense application of paid sick leave to avoid financial disaster when an off-duty illness or injury occurs." Ah, if it were only that easy.

Obviously, no one wants to face the "financial disaster" mentioned by the Union. However, the parties duly negotiated reasonable sick time benefits which are accrued on a "time elapsed" basis rather than a more restrictive "hours worked" basis. Furthermore,

the Union admits that, other than "common sense," it has no real basis for seeking such a profound increase in this benefit. There is no support from external comparables, and the Village's argument that all other employees of the community of Posen are allowed no more than 10 sick days per year is persuasive.

There is also the inequitable matter of paying "12-hour" employees "12-hour" sick days. First, patrol officers under the present shift arrangement only work 4 more hours per 14-day period than their 8-hour counterparts. Furthermore, sick time is used on a real time basis. Thus, while a 12-hour "sick day" might consume accrued sick time faster, there are fewer actual "days" upon which a patrol officer is subject to work. Police officers <u>not</u> assigned to patrol work ten 8-hour shifts per 14 day period, whereas police officers assigned to patrol only work 7. Furthermore, sick time is a straight monetary benefit, like holiday pay, and is accrued whether an employee actually works or not. Thus, alteration of sick pay language referencing "12-hour" days as the Union suggests here, would functionally give patrol officers 4 more hours of pay per sick day than their non-patrol counterparts. Because accrual of sick time is on a time-elapsed basis under this agreement rather than on an "hours worked" basis, then, patrol officers would automatically be entitled to 40 more hours of sick pay per anniversary year than their non-patrol counterparts. There is no statutory support for awarding such internal disparity.

There is also the matter of internal comparability. The Village states, with no factual rebuttal from the Union, that every other Village employee, whether covered by a collective bargaining agreement or not, receives 10 paid sick days per anniversary year. Thus, to significantly enhance that benefit for police officers without evidence that other

employee groups in the Village are already enjoying the same benefit (or in the alternative are about to gain it in bargaining), would violate precepts already long established under the Act.

Finally, the Union's request for a significant increase in sick time accrual translates to a very real cost to the Village. Again, while the Arbitrator does not stand on ceremony where increased costs to the Village are the only concern, he does require evidentiary support for imposing something on the Village that it would very likely have rejected at the bargaining table absent some accompanying concession on the part of the Union. Furthermore, the Arbitrator is barred from crediting "common sense" (it is not a statutory criterion) as a legitimate reason for significantly enhancing a benefit the Union agreed was sufficient a mere 3 years ago, particularly when there is no evidence that the former system is no longer functioning as the parties mutually intended.

Thus, for all the foregoing reasons, the Arbitrator is convinced that the *status quo* should be maintained. His Order to that effect follows.

Order

The *status quo* shall be maintained, and it is so ordered.

Section 23.2 – Holiday Compensation

The Union's Final Proposal

All bargaining unit employees shall receive eight (8) extra hours of pay on the next paycheck following a scheduled Holiday. ~~Commencing on September 11, 2007 (Village ratification of this Agreement), if~~

If an employee is scheduled to work Thanksgiving Day and/or the Day After Thanksgiving Day, the employee shall be compensated at the rate of one and one-half times (1 & ½) his normal rate of pay, plus the aforementioned eight (8) hours holiday pay, equaling double time and one

half (2 & ½ times).

However, upon issuance of the Interest Arbitration Award, all ~~All~~ bargaining unit employees shall receive eight (8) extra hours of pay on the next paycheck following a scheduled Holiday. (**12 hours extra pay if the employee is assigned to patrol**).

If an employee is scheduled to work on a Premium Holiday, as defined in Section 23.4, the employee shall be compensated at the rate of one and one-half times (1 and ½) his normal rate of pay, plus the aforementioned eight (8) hours/twelve (12) hours holiday pay, equaling double time and one half (2 and ½ times).

NOTE

Bold indicates new text.

The Village's Final Proposal

The Village proposes to maintain *status quo*.

The Position of the Union:

There are, the Union explains, three differences between the parties' respective final offers on this issue. First, the Union proposes to give officers assigned to patrol 12 hours of holiday pay rather than 8 hours of holiday pay on each identified holiday. Second, the Union argues, officers assigned to patrol should earn time and one-half for all hours worked on a holiday. Finally, the Union proposes to eliminate the outdated reference to "September 11, 2007." Strangely, the Union notes, the Village refused the simple correction of that outdated reference, so it is sought here.

Substantively, the Union explains, the proposed changes have everything to do with the fact that patrol officers are now working 12-hour shifts rather than 8-hour shifts. The current language regarding holiday pay was negotiated when the officers assigned to patrol were working 8-hour shifts, and thus, the Union argues, for them it is now obsolete. Under the prior "shift system," the Union argues, the parties agreed in the first

paragraph of Section 23.2 that all officers would get a day's pay for each holiday. In addition, the Union notes, the parties agreed that officers working on a "premium holiday" would receive time and one-half for all hours worked in addition to the day's [holiday] pay.

Now that officers assigned to patrol are working 12-hour shifts, the Union asserts, the current level of compensation should continue for those working 8-hour shifts but for those working patrol, the compensation should reflect the fact that they are working 12-hour shifts.

The majority of externally comparable contracts indicate that police officers normally earn time and one half for working on a holiday, the Union argues. Relevant proofs indicate as follows:

Crete	Paid time and one-half for working holiday
East Hazel Crest	Paid straight time for working holiday
Thornton	Paid time and (4 hours) for working holiday
University Park	Paid time and one-half for working holiday
S. Chicago Hts.	Paid time and one-half for working holiday

Based upon the statutory criterion of external comparability, the Union argues that its final proposal is the more reasonable of the two offers, and should thus be adopted by the Arbitrator.

The Position of the Village:

The Village has proposed the same number of designated holidays and compensation rates as in prior agreements. Police officers, the Village argues, unlike most employees, are scheduled to work specific days, whether that day falls on a holiday

or not. Police officers who work on scheduled holidays currently receive 8 hours holiday pay plus their normal work pay, the Village explains. However, at present, two holidays are designated "premium holidays" for which officers are compensated at a higher rate of pay if they work. Specifically, the Village notes, police officers who work on the "premium holidays" of Thanksgiving and the Day After Thanksgiving, are paid 8 hours of holiday pay for each holiday they work, and also time and one-half for all hours worked.

The Union has proposed in this, and the following issue concerning the number of "premium holidays" allowed, what amounts to a 300% increase in holiday pay, the Village argues. There is no evidence in the record that Posen officers are significantly worse off than their counterparts in comparable communities, the Village insists, and thus the Employer urges the Arbitrator to maintain *status quo* on the instant Section 23.2 (Holiday Compensation) and subsequent Section 23.4 (Premium Holidays).

Discussion

At the outset, the Arbitrator stresses his intent to examine the parties' respective proposals relative to Sections 23.2 and 23.4 separately. Indeed, as the Village argues, they are related, but the Arbitrator finds that they are not intrinsically linked such that a finding for the Village (or the Union) on one militates a similar finding for the Village (or the Union) on the other. Indeed, that will prove not to be the case.

With specific and discrete regard to Section 23.2 language and the proposed changes thereto proposed by the Union, the Arbitrator finds that the *status quo* should be maintained for several reasons. First, because this is an economic issue, the Arbitrator is

not free to separate any one part of the proposal from the whole and award it while denying the balance. Accordingly, however unfortunately, the Arbitrator cannot order that the reference to an outdated agreement be eliminated in the final instrument that will be the parties' new Collective Bargaining Agreement. However, certainly, the parties are free to repair that particular defect on their own, and they are urged to do so. The Arbitrator agrees with the Union that this particular change amounts to nothing more than "housekeeping," and the Village should have no objection to the correction.

Second, the Arbitrator cannot award patrol officers the additional benefit sought in the subsequent proposed language addition. It is true that patrol officers normally worked eight-hour shifts when the original language of Section 23.2 was authored. However, the Union is incorrect in stating that the parties agreed that, "Under this shift system, all officers would get a day's pay for each holiday that passed." A more careful reading of the original language establishes that holiday pay was (and is) specifically couched in terms of "hours" and not of "days." Thus, to award what the Union asks for here would be tantamount to giving patrol officers four more hours of holiday pay for each and every recognized holiday under this Agreement.

As in the previous issue, the Arbitrator stresses that "holiday pay" (like "sick pay") is a pure benefit, and is not impacted one way or another if an employee actually works. In other words, pay for working on a holiday is absolutely not the same thing as holiday pay *per se*. The Union has offered no proof in this record that police officers in externally comparable communities receive 12 hours of holiday pay (if they normally work 12-hour shifts) as opposed to the customary 8-hour allowance. Moreover, and this is critical, holiday pay has nothing whatever to do with shift scheduling. Scheduled to

work or not, 8 hour shifts or 12 hour shifts, work day or rest day, holiday pay is constant. Thus, the Arbitrator finds no reason to significantly enhance the holiday pay benefit (by 50% no less) for patrol officers alone. It is actually surprising that the Union seeks to achieve so inequitable an arrangement in its own bargaining unit. Be that as it may, there is no statutory support for inclusion of any "12-hour" language in the holiday pay provisions with specific respect to holiday pay.

As to the matter of pay for working on a holiday, there is some merit in the Union's argument. In general, employers in the comparable communities recognize that a premium for actually working on a holiday is appropriate. They do so by paying time and one-half for all hours worked, or by allowing an extra four hours premium pay at the straight time rate. Under present contract language, members of this bargaining unit are only paid a premium (as opposed to their "regular pay") for working on two particular holidays; Thanksgiving Day and the day after. According to the parties, these are called "premium holidays" for which working officers are paid at the time and one-half rate for all hours worked.

Here, the Arbitrator finds that there is, indeed, disparity between Posen police officers and similarly situated officers in comparable communities. However, because this is an economic issue, the Arbitrator is not free to "cherrypick" from the Union's final proposal an obligation on the part of the Village to pay officers who work on designated holidays at the time and one-half rate.

That being said, some of the deficiency in this area can (and will) be made up in the Arbitrator's subsequent findings as to the matter of "Premium Holidays." There is

absolutely no question that a majority of comparable communities recognizes more than two holidays per year for purposes of paying officers who actually work a premium rate. Thus, the Union is urged to defer its certain [unhappy] response to maintaining the *status quo* here until the Arbitrator's Order concerning additional Premium Holidays is on the books below.

In the meantime, the Arbitrator declines to order the Union's final proposal on Section 23.2 specifically, as "holiday pay" is a benefit defined in present language in terms of hours and not in terms of days. In principle, the parties have not really re-defined a "day" to mean 12-hours anyway, because patrol officers so assigned are actually working 3 fewer shifts in the same 14-day period. As to the specific matter of outdated language, the parties are urged to agree on the correction before the final contract goes to print.

For all the foregoing reasons, then, the Arbitrator rejects Union's final offer with respect to amending Section 23.2 "Holiday Compensation" language to include reference to 12-hour work days. Thus the proposal must be rejected in its entirety. To the extent possible, substantiated inequities in pay for working on holidays will be corrected in the Arbitrator's Order concerning new Section 23.4. Nevertheless, the Section 23.2 *status quo* is maintained. The following Order so reflects.

Order

The *status quo* is maintained.

Section 23.3 – Personal Days

<u>The Union's Final Proposal</u>

~~Each employee shall be granted one (1) personal day to be taken with twenty four (24) hour notice, if possible~~

Effective upon issuance of the Interest Arbitration Award, each employee shall be granted three (3) personal days to be taken with twenty four (24) hour notice, if possible.

The Village's Final Proposal

The Village proposes to maintain *status quo*.

The Position of the Union:

The Union proposes that officers in Posen now earn three personal days per year, and in support, cites the fact that officers in East Hazel Crest are currently awarded five personal days and University Park officers receive one personal day for each holiday worked. While officers in Crete have no personal days in their contract, the Union admits, both Thornton and South Chicago Heights favor three personal days. The Union insists it is not seeking an advantage here, but only asks to make the new personal day allowance commensurate with that of the external comparables.

The Position of the Village:

Here, the Village argues, the Union seeks a 200% increase in personal days, which, of course, is substantial. No other employee of the Village, whether covered by a collective bargaining agreement or not, the Employer argues, is awarded more than one personal day per year. The Village further argues that in order to accurately compare the benefit of personal days in Posen with that of other police agreements, the benefit of sick pay must also be considered. Furthermore, the Village submits, the Union has not demonstrated that the present benefit is patently insufficient, or that the existing system is not working. Thus, the Village urges the Arbitrator to maintain *status quo* on this issue.

Discussion:

After reviewing the record on this issue, the Arbitrator is convinced that the negotiated *status quo* should be maintained. Typically, personal days, sick days, and other miscellaneous benefit allowances such as bereavement leave are negotiated together. The record here also establishes that, at least in University Park, personal days are tied to holidays worked. Thus, the Arbitrator agrees with the Village that any meaningful analysis of the present personal time benefit in terms of comparison with externally comparable police agreements must include deliberation on other "miscellaneous" benefits. The Union has provided no help on that score.

The statutory factor of internal comparability also favors the *status quo* here, because the Village has argued, with no rebuttal from the Union, that every other Village employee, whether covered by a collective bargaining agreement or not, only receives one personal day per year. Again, absent meaningful negotiations on this issue, it is difficult at best to determine whether the Union's initial proposal was part of a package offer. In any event, the Arbitrator is not persuaded that there is need, based upon the statutory criteria of internal and external comparability, that the negotiated *status quo* should be altered.

Thus, for the foregoing reasons, the Village's final offer is adopted. The following Order so reflects.

Order

The *status quo* is maintained and it is so ordered.

[NEW] Section 23.4 – Premium Holidays

The Union's Final Proposal

The following holidays shall be recognized and observed as Premium Holidays:

Thanksgiving Day

Day After Thanksgiving

Independence Day

Christmas Eve Day

Christmas Day

New Years Day

The Village's Final Proposal

The Village proposes that the *status quo* be maintained and new Section 23.4 language be omitted from the final Agreement.

The Position of the Union:

With specific respect to the matter of pay for working on a holiday, the Union argues that Posen police officers lag far behind their counterparts in comparable communities in terms of earning compensation at a premium rate. At present, the Union argues, Posen officers only receive premium pay if they work on Thanksgiving and/or the Day after Thanksgiving. As previously noted, the Union argues, police officers in Crete, Thornton, University Park and S. Chicago Heights are all paid at a premium rate for working on holidays, and furthermore, all holidays are recognized.

By contrast, the Union argues, Posen police officers earn a premium for working on none but two of the holidays recognized by the Village. Thus, the Union argues, the statutory criterion of external comparability firmly supports incorporation of four additional "premium holidays"; Independence Day, Christmas Eve Day, Christmas Day,

and New Years Day. Accordingly, the Union urges the Arbitrator to adopt new language so ordering.

The Position of the Village;

The Village proposes not to depart from holiday provisions in the present contract. The Union, the Village argues, has not presented any evidence that its employees should receive any more holiday pay than they currently do. Moreover, the Village argues, the Union has offered no *quid pro quo* for a proposal that would prompt a significant benefit increase for the Union and additional cost to the Village.

The Village also argues that overall, Posen police officers are well-compensated compared to their counterparts in comparable communities, and thus, this proposed increase in holiday benefits lacks statutory support. There is no requirement, the Village argues, that Posen must rank the highest in all categories of wages and benefits.

The Village also reminds the Arbitrator that he should not award a result on this issue he knows that management would never have agreed to during bargaining. There is no doubt, the Village submits, that the some 300% increase in benefit levels proposed in the Union's Section 23.2 and 23.4 language modifications would never have passed muster during negotiations. The Village's offer is "within the zone of reasonableness," the Employer argues argues, and thus should result in protection of the *status quo*.

Discussion:

The Village's views on the issue of Holiday Compensation and Premium Holidays, which were expressed in tandem in argument, were particularly interesting to the Arbitrator. Specifically, the Village reminded the Arbitrator of his responsibility not

to award something the moving party was not likely to have gained during bargaining (the ever-popular "crystal ball" dilemma). Furthermore, the Village accused the Union of failing to offer *quid pro quo* for the benefit increases it seeks here. However, the Village's argument is disingenuous because bargaining, never mind good faith bargaining, never took place. How is it possible for an arbitrator, under already trying circumstances, to divine what one or the other party would have agreed to during bargaining when there is absolutely no bargaining history? Moreover, how was the Union supposed to offer substantive *quid pro quo* if the Village declined to meet for purposes of discussing give and take? The answers to these questions are obviously self-evident, but fortunately, this Arbitrator is not totally empty-handed, because in this record there is the evidence of comparability.

On that score, the facts don't lie. Posen police officers are, just as the Union argues, significantly behind the times with respect to the discrete issue of pay for working on holidays. In fact, Posen officers currently receive premium pay for working on only two recognized holidays, while most of their counterparts in comparable communities receive premium pay for working on all recognized holidays. Here, the Union is only petitioning to add four more holidays to the list of premium holidays. The Arbitrator does not find this unreasonable, in light of retained Section 23.2 language affording only "regular pay" to officers working all other recognized holidays.

Once again, it is clear that the Village deliberately stonewalled negotiations concerning all proposed increases in compensation and benefits in this contract, erroneously reasoning based upon twisted logic, that an absence in the record of promulgated *quid pro quo* and/or evidence that the Village would never have agreed to

the changes in the first place would be sufficient to dictate preservation of the *status quo*. The Village cannot be allowed to prevail on that purely technical ground, for doing so would be tantamount to negating the spirit and intent of the Act. Indeed, such conduct constitutes an outright subversion of the process, and strips public service employees, already barred from exercising traditional self-help options, of any meaningful way to institute change. Furthermore it endeavors to hoist well-meaning arbitrators, truly devoted to the integrity of that very process, on their own petards. This Arbitrator cannot, and will not, allow that to happen in circumstances where there is sufficient external support for departing from even the negotiated *status quo*. Such is precisely the case here.

Thus, for all the foregoing reasons, as supported by externally comparable collective bargaining agreements, the Union's proposal relative to Section 23.4 of the Agreement is adopted. The following Order so reflects.

Order

The Union's Final Proposal is adopted. It is so ordered.

Section 24.3 – Vacations

The Union's Final Proposal

Effective in the calendar year following issuance of the Interest Arbitration Award, the following paid vacation leave schedule is in effect. Employees will make their vacation selections on the basis of departmental seniority within their assigned unit of work. (i.e. patrol, investigations, supervisors)

Service Years	Vacation Days
More than 1 year, less than 2 years	10 days
More than ~~5~~ **2** years, less than ~~15~~ **10** years	15 days

More than ~~15~~ **10** years, **less than 15 years** 20 days

For employees who have completed more than 15 years of service they shall accumulate an additional day of vacation for each additional year of service.

NOTE

Bold type indicates new text or proposed changes in the existing vacation schedule.

The Village's Final Proposal

The Village proposes to maintain *status quo*.

The Position of the Union:

The Union, in effect, proposes to accelerate the existing vacation schedule so that police officers under the new contract would accrue more vacation time with fewer years of service. The Union also proposes additional language providing that, since under this offer, officers with only 10 years of service would reach the maximum existing allowance of 20 days vacation, employees with more than 15 years of service would accrue an additional day of vacation for each additional year of service.

The Union argues in support, that the criterion of external comparability favors this final proposal over that of the Village. In two of the externally comparable communities, University Park and Thornton, the Union argues, police officers can earn up to a maximum of five weeks vacation per year, whereas under the existing contract in Posen, the maximum allowance is four weeks. There is no particular consistency among the schedules in externally comparable police agreements, the Union allows, but in Posen, it takes 15 years of service (the most among the comparables) to reach the maximum vacation accrual. Comparison among external comparables shows the following:

Crete	4 weeks at 10 years	
East Hazel Crest	4 weeks at 13 years	
Thornton	4 weeks at 15 years	5 weeks at 20 years
University Park	4 weeks at 10 years	5 weeks at 15 years
S. Chicago Heights	4 weeks at 10 years	
POSEN	4 weeks at 15 years	

Here, the Union thus proposes to reduce the time it takes to get 4 weeks of vacation to 10 years (like South Chicago Heights, University Park and Crete), and add a fifth week of vacation at 19 years much like Thornton. The Union argues in defense of its proposal that the enhancement in vacation privileges "could draw candidates" to Posen "despite the depressed salary and extremely high costs for health insurance." Furthermore, the Union argues, "The stress inherent in the law enforcement profession merits a favorable time-off benefit so officers can come to work refreshed and rested."[30]

Based upon the interests and welfare of the public, the Union argues, the instant final proposal should be adopted by the Arbitrator.

The Position of the Village:

In essence, the Village argues, the Union proposes to increase the number of vacation days for police officers by reducing the time in service for vacation day accrual. The additional 5 days vacation in the second year of service rather than the fifth year of service would result in members of this bargaining unit receiving a vacation benefit greater than average among their counterparts in externally comparable communities, the Village argues. Likewise, the Village argues, the additional 5 days of vacation in the tenth year rather than the fifteenth year would also exceed the comparable average.

The Village further argues that the Union's proposal is not favorable from the

[30] Union brief at page 58.

standpoint of internal comparability. For non-union employees of the Village, vacation time is accrued on the schedule in the existing police contract, the Employer argues. Thus, the Village argues, based upon the criteria of internal and external comparability, the *status quo* should be maintained.

Discussion

Because this is an economic issue, the Arbitrator is constrained to select one proposal in its entirety over the other, and after reviewing relevant data from externally comparable police agreements, the Arbitrator is convinced that the negotiated *status quo* should be maintained.

While the Arbitrator understands the Union's argument that Posen police officers accrue the maximum of 4 weeks of vacation after serving the longest tenure as compared with officers from comparable jurisdictions, the alterations proposed would put Posen officers in a significantly better position than the majority of their counterparts with the addition of final language providing that, "Employees who have completed more than 15 years of service shall accumulate an additional day of vacation for each additional year of service." No other comparable police contract has such a benefit. In all but two of the comparable communities, the maximum vacation accrual is 4 weeks, though the Union is correct in stating that those actual schedules are more favorable than that in the current Posen contract. Thornton and University Park contracts do provide for a maximum fifth week of vacation, but only University Park provides for that additional week at 15 years. The Thornton contract provides for a fifth week at 20 years, which, while having an end effect similar to the Union's proposal, in reality it is less favorable

than the Union's final offer here because it is finite.

In this case, the Union proposes that police officers with more than fifteen years of service be awarded an additional day of vacation for each additional year of service. This is an open-ended arrangement, obviously, and is thus distinctly unlike that of either Thornton or University Park. In other words, under the Union's proposal here, police officers with more than twenty years of service would continue to accrue vacation at a rate of one additional day per year of service beyond the maximum of 5 weeks provided for in the two more favorable contracts. Moreover, the Union proposes that this accrual should begin in the 15th year, which would have a cumulative effect more beneficial than the schedule in Thornton and equal to the arrangement in University Park up to the twentieth year of service, at which point Posen officers would continue accrue additional vacation indefinitely.

The Village's argument with respect to internal comparability is not persuasive, as it was merely argued that "non-union" employees of Posen have a vacation accrual schedule identical to that in the existing contract. An adverse inference is drawn from a lack of evidence as to the vacation schedules of other represented employees in Posen, but the Union provided no evidence on that score either. Thus, the Arbitrator is restricted to proofs relative to vacation provisions in externally comparable collective bargaining agreements.

That being said, with the inclusion of the last paragraph in its Section 24.3 proposal, the Union succeeded in pricing itself out of the game. The Arbitrator agrees that the existing vacation accrual schedule is less favorable, overall, than those in

externally comparable collective bargaining agreements. However, by proposing the additional new language, the Union offered a vacation accrual schedule significantly more favorable than any of the comparable contracts. Because the Arbitrator is not free to award an accelerated accrual schedule without also incorporating into the Agreement the final paragraph in the Union's final offer, the Union's proposal must fail for overall lack of evidentiary support.

For all the foregoing reasons, then, the *status quo* is maintained on this issue. The following Order so reflects.

Order

The *status quo* is maintained. It is so ordered.

[NEW] Section 24.9 – Professional Growth and Training

The Union's Final Proposal

> **All job related training taken at the request of the Employer will be paid for at the Employer's expense. Such training activities may be scheduled during normal duty or off-duty hours as the circumstances dictate, and at the discretion of the Chief of Police. When an employee is required to attend training, instead of his normal duties, the employee shall suffer no reduction in hours paid.**

The Village's Final Proposal

> The Village proposes *status quo*; that is the exclusion of proposed Section 24.9 in its entirety.

The Position of the Union:

In support of proposing this new language, the Union argues that, "There must be a determination made regarding officers who are scheduled to work 12 hours when police training sessions last 8 hours or less." In such cases, the Union asks, "Are they ordered back to work for the remainder of their shift? Can they go home and use

accumulated time? Can they go home and still get paid without using time?"

The Union further states, "The Union is not proposing that one rule govern all situations, but rather that the parties operate with one overall understanding; officers suffer no reduction in pay because they have to attend training… The Union is comfortable with the idea that the Chief of Police and the officers can work out each situation as it arises."[31]

In sum, the Union asserts its purpose to protect the interests and welfare of the public and "ensure its members do not lose money because they are ordered to attend training."[32]

The Position of the Village:

In effect, the Village argues, the Union proposes as a breakthrough issue to implement a new police training program. The Village's sole protest is that, "[It] would never agree to implement a new training program and therefore, the arbitrator cannot embark upon new ground by implementing the Union's proposal."

Discussion

After examining this issue and thinking carefully about proposed new language, the Arbitrator is persuaded that the proposal of the Union should be adopted. Essentially, the Union's proposal makes sense and there is no foreseeable downside to the Employer.[33]

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[31] Union brief at page 61.

[32] Id.

[33] County of Sangamon/Sheriff of Sangamon County and Illinois Fraternal Order of Police Labor Council; S-MA-97-54 (Meyers 1999)

As a jurisdictional matter, the parties are reminded that the Arbitrator has the authority under the Act to do whatever he sees fit to do in this forum, and that is the inherent risk of interest arbitration to both parties. When there is statutory support for a "breakthrough," even in the absence of meaningful negotiations, it is entirely within the Arbitrator's statutory license to grant it. The Arbitrator is not persuaded by the Village's assertion that the Union is effectively attempting to author a new training program. The privilege to direct officer training is obviously a contractual right retained by management, and that right is not disturbed by the Union's proposal here. Clearly, as argued, the Union is merely seeking clarification as to how patrol officers should be directed and/or paid on training days that do not utilize an entire scheduled 12-hour day.

The Village's mistaken views of the real issue and also that of the Arbitrator's authority (or more accurately the lack of it) notwithstanding, the Arbitrator will grant the inclusion of this new language for a variety of reasons, mainly though the Union has demonstrated to the satisfaction of the Arbitrator that the present system of pay for training is incomplete if not actually flawed because of the switch to a 12-hour day. The Arbitrator completely understands the genesis of the Union's desire for "clarification" on the matter of training pay for patrol officers otherwise assigned to 12-hour shifts. That is precisely what its proposal accomplishes, nothing more.

Thus, the Union's final offer is reasonable, and should be adopted. The following order so reflects.

Order

For all of the foregoing reasons, the Arbitrator concludes that the Union's

proposal with respect to Section 24.9 should be adopted. It is so ordered.

Section 25.1 – Uniform Compensation

The Union's Final Proposal

> The Village agrees to provide all newly hired employees with new uniforms and equipment to perform their job. ~~Thereafter, commencing on September 11, 2007 (Village ratification of this Agreement) the~~ **The** Village shall reimburse annually the amount of ~~six hundred dollars ($600.00)~~ **seven hundred fifty dollars ($750.00) for** uniform expenses or establish a line of credit in the same amount at a police supply store of the Village's choice. Also ~~commencing on September 11, 2007 (Village ratification of this Agreement)~~ Employees assigned to Detective shall also receive the same for clothing, but must submit receipts in order to receive reimbursement. Further, the parties acknowledge and agree that the Village shall be authorized to enforce reasonable dress codes for Employees and those dress codes shall include, without limitation that detectives shall wear presentable shirts, ties and dress slacks unless assigned to a duty that calls for other dress.

The Village's Final Proposal

> The Village proposes to maintain *status quo*.

The Position of the Union:

Here, the Union proposes to increase the uniform allowance from $600.00 to $750.00, and also to eliminate outdated references to ratification of the prior agreement. Prior to arbitration, the Union notes, the Village refused to even discuss the matter of striking language concerning the previous contract. The reference, the Union argues, no longer has purpose, and should thus be eliminated.

The Union further argues that Posen police officers are presently receiving the lowest level of uniform allowance as compared with that of their counterparts in comparable communities. In support, the Union submits the following evidence:

Crete	$850.00; new hires get quartermaster
East Hazel Crest	$600.00
Thornton	$600.00
University Park	$800.00 Uniform
	$850.00 Sergeants
	$850.00 K-9
	$900.00 Non-uniform
S. Chicago Heights	Quartermaster

Based upon the analysis provided above, the Union argues that there is "no explanation why Posen officers should be at the bottom of the comparables when it comes to uniform compensation other than you would think they would be used to being at low end of all compensations systems…"[34]

The Position of the Village:

The Village argues that the Union has again asked for more money for bargaining unit members without sufficient evidence that uniform expenditures have increased substantially in the past few years. Moreover, the Village notes, the current uniform allowance is the same as that in half of the comparable police agreements. Accordingly, the Village urges that the *status quo* be maintained.

Discussion

After reviewing the evidence and the arguments of the parties, the Arbitrator concludes that the *status quo* should be maintained. The Arbitrator is confused by the Union's assertion that Posen police officers are "at the bottom of the comparables when it comes to uniform compensation…" Actually, that is not true. The uniform allowance in the present agreement is equal to that of East Hazel Crest and Thornton. Police officers in South Chicago Heights do not even *have* a uniform allowance, as police uniforms in

[34] Union brief at page 55.

that community are issued through the quartermaster. Only Crete and University Park uniform allowances exceed that of Posen, and as the Village has argued on other issues, there is no statutory requirement that members of this Union be awarded an additional benefit with no evidence that the existing one is either out of the range of comparison, or is insufficient.

Here, the Union has made no showing that the present uniform allowance is not sufficient to meet the needs of the present police force. Furthermore, Posen officers, upon their hiring, are provided with uniforms at no cost to them. Of the comparables only Crete and South Chicago Heights officers receive that benefit. Thus, overall, the Arbitrator is convinced that the present uniform allowance is in line with that of comparable police departments, and should not be altered without sufficient cause.

For that and all the foregoing reasons, the Union's final proposal is thus denied. The *status quo* on this issue is maintained, and the following Order so reflects.

Order

The *status quo* is maintained. It is so ordered.

Section 26.1 – Health/Dental Insurance

The Union's Final Proposal

> The Village agrees to maintain the benefit levels of the group hospital and dental insurance policy currently in effect during the term of this Agreement. The village agrees to provide such health and hospital insurance to all employees covered by this Agreement**[.]** ~~and to~~ **Effective upon issuance of the interest arbitration award, the Village agrees to pay 80% of all the premium costs (HMO and PPO) and the Employee agrees to pay the remaining 20%, which may be deducted** ~~deduct~~ from the employee's bi-weekly earnings**[.]** ~~for the employee's coverage the same percentage as currently in effect.~~
>
> The Village further agrees that it will provide the same group hospital and dental insurance policy for active employees, to the surviving spouse and

children of an employee who is killed in the line of duty. The Village shall bear the full and complete cost. The spouse shall remain covered until he or she remarries or becomes eligible for Medicare, the children shall remain covered until age 18 or age 25 as a full time college student.

The Village's Final Proposal

The Village proposes to maintain *status quo*.

The Position of the Union:

At the outset, the Union argues that while HMO contribution percentages have remained constant over the life of the prior contract, PPO employee contributions have increased dramatically, and thus the Village is already violating its promise to "deduct from the employees' bi-weekly earnings for the employees' coverage the same percentage as currently in effect." The instant proposal, the Union argues, will put PPO contributions back in line with HMO contributions, and will thus "ensure that officers are no longer overcharged."

There is also support from the external comparables, the Union argues. In support, the Union notes that while HMO contributions are relatively comparable, PPO contributions are not. The Union provides the following table of data in support of its position:

	HMO	PPO
Crete	\$0.00 if hired prior to 1/1/95; otherwise consistent with other employees	
East Hazel Crest	10% single	10% single
	Family: 25% diff. between family and single	
Thornton	20% single	20% single
	20% family	20% family
University Park	\$0 single	\$100/mo. single
	\$280/mo. family	\$400/mo. family
S. Chicago Heights	5% single	5% single
	5% family	5% family
POSEN	20% single	42% single
	20% family	42% family

The above data, argues the Union, supports a change in current agreement language mandating a consistent 20% employee contribution to either HMO or PPO insurance plans. It is obvious, the Union argues, that Posen officers and their families are paying much more for PPO coverage than are their counterparts in comparable communities. The Union further argues that, due to the "depressed salaries earned by Posen officers," its offer on health and dental insurance is "extremely generous."

Accordingly, the Union urges the Arbitrator to depart from *status quo* and adopt its final offer.

The Position of the Village:

Here, the Village argues, the Union seeks for the Village to pay 80% of all insurance premiums, whether HMO or PPO, for members of this bargaining unit. It should be noted first, the Village argues, that the Union's proposal would essentially eliminate the HMO option for bargaining unit employees, as most members would opt for the higher benefits of a PPO should the Village guarantee to pay 80% of this coverage.

Furthermore, the Village argues, the Union's own comparables are inconsistent with respect to health insurance coverage, due to the volatile nature of overall health care costs. Clearly, the Village argues, a substantive increase in the amount the Village would be required to pay would be detrimental to the economics of the municipal government, and the Union has provided no proof that members are experiencing hardship or are otherwise unable to meet out of pocket and premium demands currently in effect.

Finally, the Village argues, it is significant that contractual increases have not been pursued by the Village already, "given the massive increase in health insurance costs over the past several years." Thus, the Village urges the Arbitrator to reject the Union's final offer and maintain *status quo*.

Discussion

In proposing to bring PPO contributions into line with HMO contributions, i.e. that the 80%/20% ratio be maintained under both plans, the Union asserts that present agreement language is being violated and thus there is an attendant need to implement the stated revisions. Specifically, the Union argues that, while HMO contributions have remained constant in recent years, PPO costs have increased dramatically in terms of employee contribution percentage.

In the former contract, the parties agreed that; 1) the Village would maintain the benefit levels of the group hospital and dental insurance policy currently in effect during the term of the Agreement, 2) the Village would provide health and hospital insurance to all employees covered by the agreement, and 3) the Village would deduct from the employee's bi-weekly earnings for the employees' coverage the same percentage as currently in effect.

A careful reading of the language establishes that, while the Village agreed to provide the same level of health care for the tenure of the agreement, there was no promise in the contract that actual costs for that level of coverage would likewise remain constant. Indeed, such a promise would have been impossible to keep, because the insurance companies, and not the Village, control what established levels of health care will ultimately cost.

Furthermore, while the Village agreed to provide health care to all covered employees, and also to keep employee deductions constant in terms of percentage, there was no promise in the contract that overall employee contributions for PPO coverage

would be the same as those for HMO coverage. In other words, the Village was (and is) only contractually required to provide an established level of health care in exchange for an established percentage of employee contribution; 20% at present. However, the Village is not contractually required to guarantee that PPO coverage will be available for the same cost (employee contribution) as HMO coverage. We all wish that were the case, of course, but there was neither then, nor is there now, any obligation on the part of the Village to maintain PPO coverage at the same cost to the employee as HMO coverage. In effect, that is exactly what the Union is asking for here, and there is simply no statutory support for what would amount to a heroic breakthrough.

It is well-established in the municipal setting that uniformity in health care contracts among various employee groups is distinctly advantageous to employee and employer alike, in that, by virtue of their size and resources, municipalities have more buying power (and thus influence with insurance companies) than individual groups. Thus, the concept of city or village-wide health care is not merely convenience-driven. While the Village makes no such assertion here, the Arbitrator takes special note of this truth, for to award the Union its final offer on this issue would be tantamount to setting this group far above where it was, and further would likely instigate "me-too" petitions from other employee groups down the road. Were that to happen, the Village's hands would effectively be tied in negotiating the best possible coverage for the least amount of money, and further, the Village would be under the gun in future interest arbitrations pursuant to the statutory criterion of internal comparability.

It is simply common sense that employees will, in general, fair better in matters involving our present the health care system, when municipalities are free to pursue

insurance *en masse*. Moreover, the skyrocketing cost of health care in general is well known, indeed it is beyond disputing. Certainly, the Arbitrator recognizes that no employee, public or private, wants to pay more for health care in general, never mind for coverage identical to that which he or she previously enjoyed for a lesser amount.

In promoting the *status quo* here, the Village is actually promising to maintain HMO coverage at the present 20% employee contribution level. In this day and age, that is commendable. The Arbitrator certainly recognizes that, even with a constant percentage of contribution, actual out of pocket expenses to bargaining unit members are still likely to go up. Likewise, though, will the 80% out of pocket expenditures of the Village increase. On this point, then, the Village's arguments are persuasive. It is indeed significant that the Village has not pursued higher employee contribution percentages and/or lower levels of benefits in several years, given the fact that health insurance costs overall have increased so significantly in the last decade.

Comparison of external comparables is also of little use here, because there are countless permutations at work in the scenario. Some plan contributions are expressed in terms of percentage, while others are quantified in dollars. Furthermore, contract language differs from one collective bargaining agreement to another concerning what has been promised in terms of benefit levels over the life of the agreement. Thus, an "apples to apples" comparison is really quite impossible, and justification from departure from *status quo* must therefore be established by other means. Unfortunately, municipalities are, as are individuals, held hostage by the general insurance market, and modern collective bargaining agreements must reflect that fact.

Thus, and for all the foregoing reasons, the *status quo* is maintained. The following Order so reflects.

Order

The *status quo* is maintained. It is so ordered.

[NEW] Section 26.4 – Retiree Health and Dental Insurance

The Union's Final Proposal

> Retiring employees shall have coverage for a fifteen (15) year period immediately following date of retirement. Upon retirement, the retired employee shall pay twenty percent (20%) of the monthly premium cost for the fifteen (15) year period. Thereafter, the retired employee shall be responsible for one hundred percent (100%) of the full premium cost in order to remain covered/eligible. Eligibility for benefit coverage, under this section shall cease upon the former employee reaching Medicare eligibility. However, the retired employee may elect to maintain said health insurance coverage as a secondary supplemental health insurance to their Medicare coverage, at their full cost with no additional cost to the Employer.

The Village's Final Proposal

> The Village proposes to maintain *status quo*; that is to exclude all language relative to retiree health and dental insurance.

The Position of the Union:

At present, the Union explains, police officers who retire from the Posen police force have the right to remain under the Village's health care plan at 100% cost to them. The Union now proposes that the cost to retired employees be reduced to 20%, though it openly acknowledges that externally comparable bargaining agreements do not support the proposition.

The Union argues that the Posen police department as a whole is relatively young, and thus there would be no significant cost to the Village over the next ten to

fifteen contract years. Accordingly, the Union argues, the proposal represents an "enhanced benefit" that could draw qualified candidates to Posen, despite the "depressed salary and extremely high costs for health insurance." Obviously, the Union notes, limits have been placed concerning when coverage begins and when it may be terminated. Clearly then, the Union reasons, this is not an open-ended benefit for retirees.

Based on the interests and welfare of the public, the Union argues, the Arbitrator should adopt its final offer on this issue.

The Position of the Village:

This is a breakthrough issue in every sense, the Village argues. Because the Union seeks to implement an entirely new benefit, the Village argues, it has the burden of proving why the instant change should be made. In short, the Village submits, the Union offered no evidence whatsoever to that end.

The Village argues that the cost of employer paid retiree health insurance would be astronomical, and would thus put significant strain on the Village's finances. Assuming, the Village offers, that a police officer retired at age 50, and assuming further that the insurance premium for PPO family coverage remained at about $1,200 per month, the Village would be required to pay well over $200,000.00 over the next fifteen years for the benefit proposed by the Union. Obviously, the Village notes, the gain requested by the Union represents several times a year's salary, and would thus amount to millions just to cover existing employees.

The Union has offered no justification to support this change, the Village argues, and further has offered no *quid pro quo* for the extravagant additional expense to the

Village. Moreover, the Village argues, non-union employees of the Village do not have retiree health insurance. Given the economic crises faced by all Illinois municipalities, in addition to the rising costs of health care, the Union's proposal would place a significant hardship on the Employer and should thus be rejected, the Village argues.

For all the foregoing reasons, then, the Village urges the Arbitrator to maintain *status quo* and deny incorporation of new retiree health care benefits into the Collective Bargaining Agreement.

Discussion:

As the Village has argued, justifiably this time, the Union's proposal for employer-paid retiree health care benefits is a true breakthrough idea for which it has offered neither justification nor *quid pro quo*. The Arbitrator of course remembers his prior comments about *quid pro quo* in the sense that none could be offered if bargaining was denied. However, for the Union to straight-up ask for something of such significant monetary value without offering statutory support from comparable collective bargaining agreements, there should have been some indication in this record that it was prepared to give up something of more or less equal value. There is absolutely no such demonstration in this record.

Thus, and for all the foregoing reasons, the Arbitrator rejects the Union's final offer on this issue. The *status quo* is maintained and the following Order so reflects.

Order

The *status quo* is maintained and it is so ordered.

Section 27.1 – Wages

The Union's Final Proposal

The Union proposes 3.5% across the board wage increases in each year of this contract.

The Village's Final Proposal

The Village proposes 2.0% across the board wage increases in each year of this contract.

NOTE

By mutual stipulation, the parties agreed that "alternate" wage proposals would be submitted to the Arbitrator in accordance with opposing offers on the term of this contract. In the Union's case, the alternate wage proposal consists of extending a 3.5% increase into the third year of the contract should the Village prevail on the non-economic issue of agreement term. The Village offers 2.0% wage increases in each of the three years covered by its proposal on agreement term. In the alternative, the Village offers 2.0% wage increases in each of two years pursuant to the Union's proposal for a two-year contract.

The Position of the Union:

At the outset, the Union argues that the statutory criterion of external comparability, the factor considered most relevant to the issue of wages, strongly favors its proposal over that of the Village. In support, the Union provides the following "snapshot" analysis of step pay among all comparable police departments in May, 2009 except South Chicago Heights, whose police wages appear only in percentages in their contract:

	2009	**$ Start**	**After 1**	**After 3**	**After 5**	**After 10**	**After 15**	**After20**	
Crete	1-May	41,956	49,571	54,504	57,357	57,357	57,357	57,357	
E. Hazel Crest	1-May	34,637	38,398	44,574	48,627	51,058	51,058	53,611	
Thornton		1-May	38,867	43,883	48,897	53,912	59,115	59,115	59,115
University Park		1-May	46,205	50,785	57,435	62,897	63,629	63,879	63,897
AVERAGE		40,416	45,659	51,353	55,694	57,790	57,852	58,490	
Posen									
Union Offer (3.5%)		1-May	38,018	43,311	46,114	47,917	48,017	48,117	48,417
$ Above Av.		(2,399)	(2,349)	(5,238)	(7,777)	(9,773)	(9,735)	(10,073)	
% Above Av.		-5.93%	-5.14%	-10.20%	-13.96%	-16.91%	-16.83%	-17.22%	
Village Offer (2%)		1-May	37,467	42,683	45,446	47,224	47,324	47,424	47,724
$ Above Av.		(2,950)	(2,976)	(5,906)	(8,470)	(10,466)	(10,428)	(10,766)	
% Above Av.		-7.30%	-6.52%	-11.50%	-15.21%	-18.11%	-18.03%	-18.41%	

It is clear from the above analysis, the Union argues, that Posen police officers lag far behind their counterparts in salary. The Union's offer of 3.5% seeks to bring the officers to 17.2% behind the average of external comparables at top pay, while in contrast, the Union argues, the Village's offer of 2.0% will only serve to put Posen officers further behind.

In terms of percentage increase in coming years among external comparables, the Union provides the following:

	2009	**2010**	**2011**
Crete	3.0%	3.0%	n/a
East Hazel Crest	2.5%	3.0%	3.0%
Thornton	4.0%	0.0%	2.0%
University Park	4.0%	4.25%	n/a
S. Chicago Heights	4.0%	4.0%	n/a
AVERAGE	3.50%	2.85%	-----
Posen			
Union Offer	3.5%	3.5%	[3.5%]*
Village Offer	2.0%	2.0%	[2.0%]*
* Alternate wage proposals for a third contract year			
Union Offer vs. Av.	+0.0%	+.65%	
Village Offer vs. Av.	-1.5%	-.85%	

According to the above, then, the Union's final wage offer in terms of percentage is only .65% over average wage increases of the external comparables. Moreover, the Union points out, the Union's total wage proposal for 2009 and 2010, the only two years for which there is data in terms of percentage increase in all comparable communities, more closely aligns with average than the Village's proposal for the same two years. In support, the Union offers the following summary:

	2009	**2010**	**Total**
Crete	3.0%	3.0%	6.0%
East Hazel Crest	2.5%	3.0%	5.5%
Thornton	4.0%	0.0%	4.0%
University Park	4.0%	4.25%	8.25%
S. Chicago Heights	4.0%	4.0%	8.0%
Union's Offer	3.5%	3.5%	7.0%
Village's Offer	2.0%	2.0%	4.0%

Thus, the Union argues, the evidence demonstrates that its wage proposal in terms of total percentage increase also lines up, overall, with what has already been negotiated in comparable communities for contract years 2009 and 2010. This is important, the Union argues, because Posen police officers already earn significantly less than their counterparts in externally comparable communities. The following summary, the Union submits, clearly demonstrates that this bargaining unit will need significant wage increases in the future if they are ever to catch up:

	Start	After 1	After 3	After 5	After 10	After 15	After 20	
2009 AVERAGE		**40,416**	**45,659**	**51,353**	**55,694**	**57,790**	**57,852**	**58,490**
Union Offer (3.5%)		38,018	43,311	46,114	47,917	48,017	48,117	48,417
$ Above Av.		(2,399)	(2,349)	(5,238)	(7,777)	(9,773)	(9,735)	(10,073)
% Above Av.		-5.93%	-5.14%	-10.20%	-13.96%	-16.91%	-16.83%	-17.22%
Village Offer (2%)		37,467	42,683	45,446	47,224	47,324	47,424	47,724
$ Above Av.		(2,950)	(2,976)	(5,906)	(8,470)	(10,466)	(10,428)	(10,766)
% Above Av.		-7.30%	-6.52%	-11.50%	-15.21%	-18.11%	-18.03%	-18.41%

Other statutory criteria also favor its wage proposal, the Union argues. In particular, CPI data indicates that inflation is on the rise across the board, and while the Union's final offer is greater than cost of living increases in the first year of the contract, it is less than two of the cited indices in the second year. In support, the Union offers the following CPI-U and CPI-W data:

	May 1, 2009	May 1, 2010	Total
CPI-U (Midwest Urban)	2.25%	3.15%	5.40%
CPI-U (US City Avg.)	2.08%	3.08%	5.16%
CPI-U (Chicago)	1.49%	2.71%	4.20%
CPI-W (Midwest Urban)	2.76%	3.59%	6.35%
CPI-W (US City Average)	2.48%	3.56%	6.04%
CPI-W (Chicago)	1.98%	3.32%	5.30%[35]

Average of all six indicators over years 2009 and 2010: 5.41%

Overall, the Union admits, its wage offer exceeds average CPI indicators by 1.59% over the life of a two year contract. By comparison, however, the Union argues, the Village's offer is below cost of living indicators by 1.41% overall. To the extent that Consumer Price Index can be relied upon to measure the cost of living, the figures published by BLS and cited above favor the reasonableness of the Union's offer, it is argued.

The Union rejects the Village's defense that higher wage increases than those proposed would "put a strain on the budget." (Tr. 99.) It is important to note, the Union argues, that at no time has the Village ever asserted, much less defended, an assertion of inability to pay. In fact, the Union notes, at no time did the Village ever produce an analysis showing the difference between the overall costs of the final offers, and thus it failed to substantiate its claim that the Union's proposal was fiscally impossible for the Village to sustain. Rather, the Union argues, the Village promulgated the standard "negative economy" argument in hopes that the Arbitrator would equate "financial stress" with "inability to pay."

It is hardly surprising, the Union submits, that the Village and its residents have a vested interest in the financial health of the municipality. However, interest arbitrators have recognized that "fiscal prudence" is not a factor under applicable statutes governing

[35] Union Exhibit 45.

this particular process. In support, the Union cites County of Tazewell and Sheriff of Tazewell County and Illinois FOP Labor Council, S-MA-09-054 (Meyers, 2009), wherein the arbitrator reasoned in relevant part as follows:

> This Arbitrator certainly cannot question or criticize the Employer's desire to maintain a "prudent" approach to matters of wages and other economic issues. If it were ever acceptable for a government entity to depart from prudent handling of taxpayer dollars, it certainly is not acceptable under the current economic conditions. Every dollar counts and must be spent wisely… Important as the desire to be prudent in handling finances may be, moreover, this is not one of the factors expressly listed in Section 14(h) of the Act. The Employer's arguments in favor of continued prudence simply do not, and cannot carry the same weight as arguments derived from the factors expressly set forth in Section 14(h). A need for prudence is not the same as a claimed inability to pay, and the employer's arguments in favor of continued prudence cannot be accepted as tipping the scales in favor of its proposals on this issue or the rest of the issues addressed in this proceeding, although the need for continued prudence nevertheless may be considered as part of the Employer's larger arguments in favor or its proposals here.

As Arbitrator Meyers reasoned, the Union thus submits, while fiscal responsibility is expected in government, its importance is not among the factors established under 14(h) of the Act. A review of General Fund balances for the Village establishes that, while there has been a trend toward "dipping into savings" in recent years, there is no indication that Posen is in any real financial trouble. Under Section 14(h) of the Act, the Union argues, "ability to pay" is balanced by the interests and welfare of the public. A public employer with a competitively-compensated workforce can attract and keep employees, which reduces turnover and thus costs associated with training new employees, the Union argues. Furthermore, the Union argues, interest arbitrators in recent years have begun to negatively respond to the threats of "doom and gloom" made by municipalities who continue to exploit the general state of the economy for purposes

of avoiding fair wage increases. In support, the Union cites Village of Morton Grove and Illinois FOP Labor Council, S-MA-09-015 (McAllister, 2011), wherein the arbitrator reasoned in relevant part that:

> The Village repetitively refers to the economy as having gone over a cliff, which suggests a free fall. There can be no doubt the economy was in a severe recession that impacted the Village as well as surrounding communities. There is no evidence the Village's finances are in a free fall and it is not claiming it is unable to pay a wage increase to its police officers. The record indicates the Village has taken steps to conservatively budget from 2009 and continuing. The Village has actively explored the means by which it has and may increase revenues.

In the above case, the Union notes, Arbitrator McAllister adopted the Union's final offer for a 2.5% wage increase and rejected the Village's "doom and gloom" 0.0% offer because the wage increase sought could be paid without endangering the employer's financial status overall. In this instance, the Union argues, the Village of Posen has offered no evidence that the Union's wage proposal would "break the bank." That truth, in concert with obvious support from external comparables, the Union argues, strongly favors the Union's wage proposal over that of the Village.

Thus, for all the foregoing reasons, the Union urges the Arbitrator to adopt its proposal for across the board wage increases of 3.5% in each year of the new contract, regardless of its ultimate term.

The Position of the Village:

At the outset, the Village argues that the Union has not successfully defended its petition for such a large wage increase. Overall, the Village submits, the interest and welfare of the public are best served by the Village's final offer. It is reasonable, the

Village argues, that a body of government has a responsibility to treat it public service employees commensurate with what their constituents are, themselves, experiencing. In other words, the Village argues, citizens whose own wages are barely keeping up with the cost of living (or worse, citizens who are being laid off because of the downturn in the economy) should not be required to fund through their tax dollars police wage increases in excess of their own.

The Village further argues that its proposed wage increases keep pace with published CPI data already on the books, which is more accurate a consideration than attempting to project relative costs of living into the future. Obviously, the Village notes, the weight of cost of living evidence varies in relative importance from case to case. In light of the relatively low increase in the CPI in most recent years, the Village argues, it is apparent that the final offers of both parties exceed current (and presently anticipated) increases in the cost of living. Its proposal, the Village however insists, although in excess of the cost of living increases, is closer to the actual increase in the CPI than that of the Union.

The Village further argues that the Union has not substantiated any claim of altered circumstances which might support wage increases higher than those offered by the Village. In order to justify the larger expenditure to the public, the Village insists, there must be some significant additional value to the Village. There is no independent justification for an annual 3.5% increase when an annual 2% increase would fulfill the goals.[36] Like any unit of government which receives its income from the public, the

[36] Here, the Arbitrator assumes the Village refers to keeping up with cost of living increases as the "goal."

Village argues, the Employer is entitled to get the most "bang" for its "taxpayer buck." In other words, the Village argues, the Employer has an interest in obtaining the most benefit to the public it can out of each and every tax dollar it spends. In this economy, the Village argues, 3.5% wage increases "are simply unheard of," and thus, the interest and welfare of the public would be best served by adopting the Village's competitive wage proposal.

As to the factor of external comparability, the Village argues that the wage increase proposed by the Village would maintain the relative rank of Posen police officers in the externally comparable group in terms of pay. There is no requirement in the Act, the Village argues, that wage proposals significantly improving relative standing in a group of comparables be adopted, and thus, its proposed 2% increases are reasonable.

For that and all the foregoing reasons, then, the Village urges the Arbitrator to adopt its final offer for 2% across the board wage increases in each year of this new contract.

Discussion:

After carefully examining the evidence in this record and considering the arguments of the parties, the Arbitrator is convinced that the Union's wage proposal should be adopted. Importantly, the Union examined the impact of both wage proposals on the bargaining unit as a whole, which provides a much better overall picture of Posen's relative rank among externally comparable communities in terms of what it pays police officers over the course of their careers. Indeed, the Village urges the Arbitrator to

examine Union Exhibit 33 and appreciate the fact that only University Park pays higher wages. The Arbitrator has scrutinized Exhibit 33, and has come to a significantly different conclusion.

According to record evidence, as of May, 2008 Posen ranked last among Crete, East Hazel Crest, Thornton and University Park in terms of police officer starting pay.[37] The impact of both parties' offers (2% Village; 3.5% Union) would place Posen behind every community except East Hazel Crest at Step 1 in the pay scale in the subsequent contract year of 2009. At Step 2 (after 1 year), both proposals would again place Posen in fourth position in the comparable group, with only East Hazel Crest below it on the list. At Step 3 (after 3 years) Posen would remain in the same relative position with inclusion of both proposals. However, at Step 4 (after 5 years), both proposals would place Posen at the bottom of the list, and there it would remain through the final scheduled step (20 years of service or more).

According to the Union's evidence, the accuracy of which has not been challenged by the Village, after 20 years of service, Posen police officers under the Village's offer would be earning $47,724 per year for the contract year of 2009, and under the Union's offer $48,417. Obviously, the difference in terms of dollars is negligible, but that is not the most important observation. Posen officers lag far behind their counterparts at 20 years of service, with senior officers in University Park earning $63,879, Crete earning $57,357, Thornton earning $59,115, and East Hazel Crest earning $53,611.

[37] Union Exhibit 33 at page 6.

The Arbitrator recognizes that the wage increases proposed here are across the board increases. However, in discussing the relative rank of this bargaining unit among externally comparable police departments, overall step structure is, for obvious reasons, relevant. While both parties' wage proposals maintain Posen's rank to the extent that the Union's is not great enough to cause a jump in relative standing (second to last up through step 3, and last thereafter), it is important to note that over the course of a police officer's career in Posen, he or she will earn significantly less in terms of wages than a police officer in any of the comparable communities.

With the Union's proposed increase for 2010, Posen would jump to the middle of the pack ahead of East Hazel Crest and Thornton, and behind Crete and University Park in terms of starting wage. At Step 1 (after 1 year), that relative rank would remain the same, but at Step 2 (after 2 years), Posen would again drop to fourth behind East Hazel Crest and remain in that position through Step 3 (after 3 years). Thereafter, Posen officers would again drop to last place in terms of wages in the comparable group, and remain there through 20 or more years of service. The Arbitrator used the Union's final offer in this illustration to demonstrate the fact that even with the higher wage proposal, Posen police officers drop to last place in terms of wages after only 4 years of service. For the Village to justify an even lower increase than that (even if relative rank is maintained; and you can't get lower than last), there would have to be strong evidence of authentic financial hardship in the Village. No such hardship has even been alleged by the Village, much less demonstrated. It is hardly surprising that the Village would prefer to spend less on employee wages – indeed, what employer would not? However, as Arbitrator Meyers correctly noted, "financial prudence" is not among the factors set forth

in Section 14(h) of the Act for purposes of evaluating one economic proposal against another in interest arbitration.

With respect to average wages payable for 2009 in the comparable group, the evidence establishes that Posen officers, even with the Union's 3.5% wage proposal, would still be well below the norm in terms of earnings. The Union's previous analysis, again incorporated below for ready reference, establishes that fact.

	Start	After 1	After 3	After 5	After 10	After 15	After 20	
2009 AVERAGE		**40,416**	**45,659**	**51,353**	**55,694**	**57,790**	**57,852**	**58,490**
Union Offer (3.5%)		38,018	43,311	46,114	47,917	48,017	48,117	48,417
$ Above Av.		(2,399)	(2,349)	(5,238)	(7,777)	(9,773)	(9,735)	(10,073)
% Above Av.		-5.93%	-5.14%	-10.20%	-13.96%	-16.91%	-16.83%	-17.22%
Village Offer (2%)		37,467	42,683	45,446	47,224	47,324	47,424	47,724
$ Above Av.		(2,950)	(2,976)	(5,906)	(8,470)	(10,466)	(10,428)	(10,766)
% Above Av.		-7.30%	-6.52%	-11.50%	-15.21%	-18.11%	-18.03%	-18.41%

In terms of relevant data for 2010, the evidence shows that, while Thornton officers received no wage increase in 2010, Crete and East Hazel Crest officers received 3.0% increases, University Park officers received a 4.25% increase (and they were the highest paid to start with), and South Chicago Heights officers received a 4.0% increase.[38] Thus, it is obvious that not only is the Village's 2.0% offer for 2010 lower than that of any other comparable community with the exception of Thornton in terms of percentage, it is the lowest of them all (except Thornton, of course).

Obviously, the Village will argue that the statute does not require interest arbitrators to advance the rank of any bargaining unit in the external comparable group, and on that point, the Village would be correct. Here, however, Posen's relative rank would be the same under either proposal, and that rank would be at or very close to the bottom. Given that fact, it is clear that the Village's humble offer of 2% would only

[38] Union brief at page 38.

serve to put Posen officers even farther behind comparably employed police officers in other communities in terms of wages than they already are.

With respect to CPI data and its applicability here, the Arbitrator is well aware that in general, living just costs more than it did before. Whether or not increases keep pace with the CPI in terms of percentage, is not always convincing of a need to select a certain wage proposal, because focusing on pure percentages ignores the obvious question; what was the starting point? As previously noted, Posen officers already earn less than their counterparts in comparable communities. Does this mean that their present wages are insufficient in terms of dollars to meet normal expenses of living? That, of course is hard to say. What matters here is what the general labor market in the area establishes as "normal" pay. Once the comparable group has been determined, the answer to the question of what is "normal" may best be expressed by the comparable group average. Since Posen officers earn significantly less than "average" now, it is doubtful that the Village's modest 2.0% increases over the life of this contract (which, with a three-year term is less than one year away from expiring already), would keep pace with an observable trend toward inflation in recent months and years.

As to the matter of internal comparability, the Arbitrator does not find the fact that Posen police department command personnel have not received a raise in 5 years to be persuasive. Importantly, they are not represented by a Union. Furthermore, the Village made no attempt to demonstrate that command personnel salaries are in any way comparable to wages paid to police officers.

Internal parity with other represented labor groups and non-unionized personnel

(in terms of percentage increase) has also been asserted by the Village in defense of its more modest wage proposal, but the Village did not cite any bargaining history from those groups supporting its 2.0% offer from the standpoint of legitimate internal comparability. Thus, for lack of proof, the Arbitrator is not persuaded by the Village's arguments with respect to what is going on elsewhere in the Employer's operation in terms of wages and salaries.

On the whole of the record, then, the Arbitrator is fully persuaded that the Union's final wage offer is more reasonable than the Village's. Thus, and for all the foregoing reasons, it is adopted. 3.5% across the board wage increases are awarded, retroactive to the effective date of this Agreement, for each year of the contract's term. The following Order so reflects.

Order

The Union's final wage proposal is adopted, and 3.5% across the board wage increases are awarded retroactive to the effective date of this Agreement for each year of the contract's term. It is so ordered.

NON-ECONOMIC ISSUES

Section 2.1 – Dues Deduction

At arbitration, the Village accepted the Union's final offer with respect to Section 2.1 (Dues Deduction). Thus, the Union's final offer is adopted, and it is incorporated into this Award by reference.

Section 5.1 – Definition of Grievance

The Union's Final Proposal

> A Grievance is defined as a dispute between the Village and an employee or the Council regarding the application, meaning or interpretation of this Agreement**, or any discipline that is imposed upon the employee**.

The Village's Final Proposal

> The Village proposes to maintain *status quo*.

The Position of the Union:

There is only one difference between the final offers on this issue, the Union explains. "The Union merely wishes to clarify that the bargaining unit members have the right to file grievances regarding any discipline imposed by the Village, including reprimands."[39] The Union insists that its offer does not diminish any right currently enjoyed by management, and neither does it augment any entitlement of the Union "except that it will now be able to grieve the reprimands that the Village wants to keep for up to five years in their files."[40]

Really, the Union submits, the addition of proposed language does nothing more than "educate members" concerning a truth front-line supervisors and lawyers already know: that officers have the right to file grievances contesting reprimands, suspensions or terminations, whether or not there is an active Board of Fire and Police Commissioners. Externally comparable police agreements confirm the fact that reference to discipline in grievance rules has become the norm, the Union further submits, and as such, the proposed language revisions should be adopted.

The Position of the Village:

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[39] Union brief at page 23.
[40] Union brief at page 24.

The Village views this additional definition of a "grievance" as a means of "opening up the floodgates" for arbitration. Minimal discipline, the Village argues, even oral discipline, would be subject to the costs and delays of arbitration if the Union's proposal on this issue was adopted. Indeed, the Village submits, the Union could use the broader definition of "grievance" to paralyze the Village in endless arbitral litigation.

For that and all the foregoing reasons, the Village urges the Arbitrator to preserve the *status quo*.

Discussion

While the Union urged the Arbitrator to view proposed changes in Section 5.1 language as nothing more than "clarification" what everyone already knows, closer inspection of both parties' respective arguments on the subject demonstrate something quite different. First, it is very important to establish that the accepted definition of a "grievance" has appeared in every collective bargaining agreement since the original one in 1994. Why it now needs to be "clarified," or bargaining unit members suddenly need to be "educated," was not explained by the Union. Careful reading of the arguments explains.

Clearly, these parties have never recognized minor discipline in the form of reprimands as grievable under their collective bargaining agreements. In point of fact, the Union actually stated that, "The Union's offer does not augment any right, powers of authority of the employees or the Union, except that it will **now** be able to grieve the reprimands that the Village wants to keep up for five (5) years in their files." (Emphasis added.) Furthermore, the Village expressly rejected the Union's proposal because

accepting it would mean "minimal discipline, even oral [reprimands] would be subject to the costs and delays of arbitration." Thus, it appears, the Union attempts, by citing existing Section 13.1 language with specific respect to discipline, to sneak an expansion under the radar under the guise of "clarification."

Pursuant to the Arbitrator's obligation to entertain the parties' respective offers pursuant to established statutory criteria, the party proposing to alter a very long standing and negotiated status quo as to what constitutes a grievable dispute under this contract has a heavy burden indeed. Here, the Union on one hand insists that its proposed modification of Section 5.1 merely codifies what everyone already knows, and on the other hand admits that the proposed change would substantively expand what the term "grievance" has mutually meant to these parties for many, many years.

Furthermore, the Union's "reliance" on external comparables is flawed. After carefully reading the cited collective bargaining agreements, the Arbitrator found that only the Hazel Crest contract incorporated specific reference to discipline in the grievance procedure in the same context urged by the Union here. In the end, what emerged in this record is clear; while on its face Section 13.1 of the present contract could be interpreted to mean that reprimands are grievable (considering the fact that they are a form of discipline and discipline shall be for "just cause"), it is crystal clear that these parties have never considered them as such, and thus, the Union's proposal constitutes a significant contractual departure from the mutually accepted *status quo*.

The Union has offered no proof that the Village has suddenly begun abusing the tool of reprimand such that the collective bargaining agreement must now be altered,

after more than15 years, to correct an unforeseen hardship or new injustice. Neither has the Union established that its proposed change serves to codify a mutually acknowledged understanding. In point of fact, the opposite is true. Thus, the Union's proposal must be, and is rejected, and the *status quo* is maintained. The following Order so reflects.

Order

The *status quo* is maintained. It is so ordered.

Section 8.2 – Non-Discrimination

The Union's Final Proposal

> The Village shall not discriminate against employees and will make employment related decisions based on qualifications and predicted performance in a given position without regard to race, color, sex, religion, disability or national origin of the employee. Further, the Village shall not discriminate against employees as a result of membership to the Council.
>
> **Complaints of discrimination under this Article shall not be subject to the grievance and arbitration article of this Labor Agreement but shall be processed through appropriate State or Federal agencies and courts.**

The Village's Final Proposal

The Village proposes to maintain *status quo*.

The Position of the Union:

The Union urges the above addition to Section 8.2 of the Agreement in light of the United States Supreme Court decision in 14 Penn Plaza v. Pyette, U.S. 129 S.Ct. 1456, 173 L.Ed.398 (2009), which has prompted questions as to whether the Court acted to reverse long-standing Alexander v. Gardner-Denver, 415 U.S.36 (1974) expressly preserving plaintiff rights to advance statutory claims concerning discrimination to the courts even though recourse under collective bargaining agreements was also available.

In *Pyette*, the Court criticized *Gardner-Denver*, and appeared to reverse a Second Circuit Court of Appeals decision holding that collectively bargained provisions for sole redress in matters of alleged discrimination were unenforceable. Interestingly, the Court nevertheless also found that a substantive waiver of federally-protected civil rights [in a collective bargaining agreement] would not be upheld. Obviously, the substantive reversal of *Denver-Gardner* in concert with the Court's accompanying logic has prompted some confusion as to what, in the end, *Pyette* was intended to accomplish.

Since then, the Union notes, the courts have wrestled with the problem. Recently, in U.S. v. Brennan, 2011 WL 1679850 (5/5/2011), the Second Circuit Court of Appeals referred to *Pyette* as the Court's criticism of the "broad dicta" in *Gardner-Denver* but stopped short of actually reversing *Gardner-Denver*. In Mathews v. Denver Newspaper Agency LLP, 2011 WL 1901341 (5/17/2011), the Tenth Circuit Court of Appeals rejected the notion that *Pyette* had the effect of nullifying *Denver-Gardner*, and so rejected a lower court's reading of *Pyette* which prompted dismissal of a federal discrimination case.

With the courts giving different meaning to *Pyette*, then, the Union explains that "it is up to local unions to take matters into their own hands and ensure that they do not foreclose the rights of their members to file and pursue their statutory and constitutional rights in the forums that were intended to handle them."[41] The Union's final offer, it is stated, "makes it clear that if its members wish to pursue statutory claims of discrimination, they must do so outside of the collective bargaining agreement… the issues raised in *Gardner-Denver* and *Pyette* will never surface and litigants can proceed

[41] Union brief at page 27.

to the forums of their choosing."[42]

The Union further argues that federal anti-discrimination laws were not created to be resolved through a union's grievance and arbitration provision, but rather through federal agencies and/or federal courts. On this point, the Union accuses the Village of urging the *status quo* for purposes of preserving a potential loophole created by the existing contract language. The factor of external comparability also favors its position, the Union argues, in that since *Pyette*, both University Park and Crete have incorporated provisions in their agreements preventing arbitration of discrimination claims. The Thornton contract, the Union notes, does not contain any provision concerning discrimination, and the East Hazel Crest and South Chicago Heights contracts have not expired since *Pyette* came down. Thus, the Union acknowledges, their existing language still provides for arbitration of claims of discrimination.

Incorporation of proposed language presents no hardship for the Village, the Union argues, and, in light of all the foregoing arguments, it should be adopted by the Arbitrator.

The Position of the Village:

Here, the Village argues, the Union's "mandatory" language, which would make arbitration unavailable to employees who feel discriminated against, would again subject the Employer to additional litigation for no good reason. It is undisputed, the Village argues, that employees can, and do, bring charges of discrimination against municipalities in State and Federal venues. To forbid them from bringing grievances and arbitral

[42] Id.

requests on this issue, the Village argues, would limit a useful and important tool in resolving these issues promptly and efficiently. Moreover, the Village argues, this is yet another "breakthrough" item for which the Union has provided no justification.

For all the foregoing reasons, then, the Village urges the Arbitrator to maintain *status quo*.

Discussion:

In view of *Pyette* and the subsequent confusion caused by it, the Arbitrator is not particularly surprised by the Union's desire to "take matters into its own hands" and remove all doubt, at least in this bargaining unit, as to where recourse exists concerning statutory claims of discrimination. It is, however, that very confusion that bars the Arbitrator from implementing the unilateral mandate urged by the Union.

There is no clear evidence, obviously, that *Pyette* was intended to foreclose recourse through the courts in each and every complaint also progressed through the grievance process in a given collective bargaining agreement. Furthermore, a careful reading of the collectively bargained provisions before the Supreme Court in that case establishes an important difference between that language and the present language in this contract. Specifically, the collective bargaining agreement before the Court in *Pyette* stated in relevant part as follows:

> … All such claims shall be subject to the grievance and arbitration procedures as the sole and exclusive remedy for violations.[43]

The dilemma before the Supreme Court was therefore obvious. Did the parties to the collective bargaining agreement in *Pyette* have power and authority under the

[43] Union Exhibit 29.

constitution to bargain away legal recourse for violations of federally protected civil rights? Certainly, the Arbitrator will not, himself, endeavor to answer that crucial question. The important point here is this; these parties negotiated no such language in their Agreement. There is absolutely no declaration in the existing contract establishing the grievance and arbitration procedure as the "sole and exclusive remedy" for allegations of discrimination brought by members of this bargaining unit. Therefore, there is no apparent forfeiture in this Collective Bargaining Agreement of any covered employee's right to advance a law suit concerning alleged discrimination through the courts.

Furthermore, to adopt the Union's language in this case would effectively nullify Section 8.2 in its entirety. In other words, there would be no reason to expressly prohibit discrimination if the offending party could not be held accountable under the contract, given the fact that discrimination is already illegal. For obvious reasons, interest arbitrators are loath to adopt new language into a collective bargaining agreement which would have the effect of nullifying another preserved provision. As already noted in the previous issue, Section 5.1 of the Agreement provides that, "A grievance is defined as a dispute between the Village and an employee or the Council regarding the application, meaning or interpretation of this Agreement." Presently, bargaining unit members are privileged to utilize the grievance process as a means of progressing disputes under Section 8.2 of the Agreement. Absent any real proof that *Pyette* effectively <u>adds</u> a restriction that the parties did not negotiate; that the Agreement "is the sole and exclusive remedy for violations", the Arbitrator finds no good reason to incorporate the Union's proposed alteration.

In sum, the Arbitrator is not persuaded, given the still-evolving impact of *Pyette*,

that the Agreement should be unilaterally changed in accordance with what the Union proposes. Certainly, the parties are free to bargain language expressly reserving discrimination complaints for the courts. However, there is no evidence in this record that, 1) discrimination is a problem, 2) discrimination complaints have not been resolved under this historical language to the satisfaction of the Union, 3) that court decisions have clearly rendered the historical language obsolete since it was last negotiated, and/or 4) that the existing language is no longer being applied as it was intended, and thus there is a new hardship on the bargaining unit which must be dealt with.

For all the foregoing reasons, then, the Arbitrator concludes that the Union's proposal on this issue should be rejected. The *status quo* is maintained, and the following Order so reflects.

Order

The *status quo* is maintained. It is so ordered.

Section 13.4 – Destruction of Material

The Union's Final Proposal

> Disciplinary investigations files will not be utilized by the Village ~~five years~~ **one year** from the date from which the incident occurred or the date upon which the discipline was meted out, whichever is longer, unless the investigation relates to **a substantiated claim of** ~~the~~ excessive use of force or a matter which has been subject to either civil or criminal court litigation prior to the expiration of the ~~five (5)~~ **one (1)** year period or involves an at fault vehicular accident **involving serious personal injury**. In such instances, the case file normally will not be utilized ~~five years~~ **18 months** after the date of the final court adjudication unless a pattern of sustained infractions exists.
>
> Any information of an adverse employment nature, which may be contained in any unfounded, or exonerated **files** shall not be used against the employee in any future proceedings.

Any record of summary punishment (i.e. oral or written reprimand, suspension ~~of five (5) days or less~~, which was issued by the Chief of Police) may be used for a period of time not to exceed ~~five years~~ **the below time limits** and shall thereafter not be used to support or as evidence of adverse employment action**:**

Oral reprimand ……. 30 days

Written reprimand …… 90 days

Suspensions …… 1 year

The Village's Final Proposal

The Village proposes to maintain *status quo*.

The Position of the Union:

The Union argues that having discipline remain in employee files for five years before it is expunged is well beyond the norm established by the external comparables. The Union accordingly proposes the above reductions, arguing that with regard to minor disciplinary matters, officers are more likely to accept summary punishments (reprimands) rather than grieve them when they know the documentation will not remain in their files for an extended period of time. In the case of minor discipline, the Union argues, a comparison with external comparables establishes the following:

Crete	2 years Oral Reprimands
East Hazel Crest	1 year all Reprimands
S. Chicago Heights	2 years all Reprimands
Thornton	-------
University Park	3 years all Reprimands
	3 years Suspension of 5 days or less
	5 years Suspension over 5 days

The Union acknowledges that its proposal is generous compared with external comparables. Importantly, though, the Union argues, the Village has expressed no serious argument as to why discipline retention must remain as it is. In point of fact, the Union argues, the Chief of Police admitted on the witness stand that, as to minor infractions involving reprimands, the five-year record retention was "probably"

unnecessary. (Tr. 105.)

This is a non-economic issue, the Union notes, and thus the Arbitrator is free to alter its final proposal and award a compromise if he deems the Union's petition excessively generous in terms of retention of discipline. As to corrections in language concerning "use of force," the Union urges inclusion of the word "substantiated." The Union also petitions for a reduction in retention time for criminal and civil litigation, and finally requests that only "at fault motor vehicle accidents involving serious injury" be retained.

The Position of the Village:

The changes proposed by the Union are substantial, the Village argues, and, importantly, the Union has failed to sufficiently explain why these changes are thought necessary by its membership.

Overall, the Village argues, the effect of the Union's proposed amendments would provide that little of a police officer's background or past conduct could be considered for purposes of determining appropriate discipline. Under the Union's "scheme," the Village submits, employees "would be free to monthly subject themselves to oral reprimand, receive written reprimand 4 times per year, and a yearly supervision without further consequence for their ongoing actions."[44]

Existing safeguards in the Agreement, particularly in the grievance procedures, the Village argues, prevent abuse of the discipline system by management. Indeed, the Village points out, there has been no accusation by the Union that a problem with the

[44] Village brief at page 20.

current system even exists. Finally, the Village argues, limiting discipline retention "significantly exposes Posen to risk of litigation by third parties without a means of defense."[45]

For that and all the foregoing reason, then, the Village urges the Arbitrator to reject the Union's proposal and maintain *status quo*.

Discussion:

After examining the record and the respective arguments of the parties, the Arbitrator is convinced that current retention of officer discipline in Posen exceeds that of externally comparable police departments. That being said, the Arbitrator finds the Union's proposal unduly lenient. In accordance with his authority under the Act to amend final proposals concerning non-economic issues, the Arbitrator therefore adopts the following new language in Section 13.4:

> Disciplinary investigations files will not be utilized by the Village **three (3) years** after the date from which the incident occurred or the date upon which the discipline is meted out, whichever is longer, unless the investigation relates to **a substantiated claim of** excessive use of force**[,]** or a matter which has been subject to either civil or criminal court litigation prior to the expiration of the **three (3) year** period**[,]** or involves an at fault vehicular accident. In such instances, the case file normally will not be utilized **three (3) years** after the date of the final court adjudication unless a pattern of sustained infractions exists.
>
> Any information of an adverse employment nature, which may be contained in any unfounded or exonerated **files,** shall not be used against the employee in any future proceedings.
>
> Any record of summary punishment (i.e. oral or written reprimand, suspension of five (5) days or less, which was issued by the Chief of Police) may be used for a period of time not to exceed **three (3) years** and shall thereafter not be used to support or as evidence of adverse employment action.

[45] Id.

The above language shall be adopted in its entirety in substitution for present Section 13.4 provisions proposed for alteration by the Union. The following order so reflects.

Order

The above language shall be adopted in its entirety in substitution for present Section 13.4 provisions proposed for alteration by the Union. It is so ordered.

Section 13.5 – Uniformed Peace Officers' Disciplinary Act

At arbitration, the Village accepted the Union's final offer with respect to Section 13.5 (Uniformed Peace Officers' Disciplinary Act). Thus, the Union's final offer is adopted, and it is incorporated into this Award by reference.

Section 20.1 – Residency

The Union's Final Proposal

> Employees will be restricted to residing within ~~twenty (20) miles~~ **thirty-five (35) miles** of the corporate limits of the Village of Posen and within the State of Illinois. The parties agree that those officers who were not bound by residency at the time of ratification of this agreement shall not have any residency requirements greater than those they currently enjoy.

The Village's Final Proposal

The Village proposes to maintain *status quo*.

The Position of the Union:

Here, the Union proposes to expand the residency "radius" from the present 20 miles to 35 miles. In this issue, the Union argues, external comparability is very important, because residency requirements in many cases determine the work force. While a candidate seeking police employment may wish to review the wages and benefits each department has for its employees, the Union submits, the residency requirement is

an immediate issue impacting families and the potential need for relocation. In this case, the Union argues, the factor of external comparability establishes the following relevant residency requirements:

East Hazel Crest	No residency requirement
South Chicago Heights	No residency requirement
University Park	30 mile radius
Crete	25 mile radius
Thornton	(refers to ordinance)
POSEN	20 miles from corporate limits

It is also important to note, the Union argues, that the current residency "radius" of 20 miles is not everything it could be. The record shows, the Union notes, that there are portions of the State of Indiana and Lake Michigan within the radius, and to that extent, the relaxation of residency requirements from prior agreements is of limited value. There is arbitral support for taking such "natural" limitations into consideration, the Union argues, and cites City of Rock Island and the Illinois FOP Labor Council, S-MA-04-136 (Perkovich, 2005) in support. In that case, the Union argues, the arbitrator reasoned in relevant part as follows:

> I cannot ignore however that the residency restriction in a community where there is a natural and immutable boundary such as a river or state line, employees are necessarily restricted more than they would otherwise be.

In that case, the Union argues, Arbitrator Perkovich extended the residency radius for the officers in Rock Island, despite lack of support from the standpoint of internal comparability, noting in particular that by increasing the residency radius, the officers increased the quality and quantity of school choices for their children. Here, the Union argues, the record demonstrates that expanding the residency radius for Posen police officers would likewise afford them an opportunity to pursue high quality education for

their families.

The Union argues also that, "The continuation of this artificial and outdated requirement, left over from days of patronage hiring and political cronyism, is nearing the end."[46] Cities now seek to employ professionally-trained individuals in highly skilled positions within their police departments, the Union argues. Furthermore, the Union argues, positions in police and fire departments are subject to significant competition, and municipalities accordingly vie for the best recruits graduating from State-certified training academies. The Village has not offered any reasonable argument as to why the present residency radius should not be expanded, the Union argues. Thus, for all the foregoing reasons, the Union urges the Arbitrator to adopt the proposed changes in Section 20.1.

The Position of the Village:

The Union's comparables indicate that Posen's residency requirement is currently the most restrictive among comparable communities, the Village allows. However, the Village argues, if the proposed change is adopted, Posen residency requirements will become the most relaxed among comparable communities. The Village further argues that the Police Chief, in his testimony at arbitration, stated that extending the residency limits beyond 20 miles would strain the Department. Currently, the Village notes, police officers, on average, have a 35 to 45 minute commute to work. In an emergency, living 35 miles outside of the municipality would take over an hour to report, the Village argues.

[46] Union brief at page 33.

The Union has not presented sufficient evidence to demonstrate a need to expand the residency boundaries, the Village argues, while the Employer has clearly established a need to keep them where they currently are. It is unlikely at best that the Village would ever have agreed to these new residency provisions at the bargaining table, the Village argues, and thus the Union's final proposal on the issue should be rejected.

For all the foregoing reasons, the Village urges the Arbitrator to maintain the present *status quo* with regard to residency.

Discussion:

The record establishes that prior to 2003, Posen police officers were required to reside within the corporate limits of Posen for at least four years after being hired. The issue of residency was put before Arbitrator Steven Briggs in the only prior interest arbitration between these parties, and in his 2002 award (resolving the 2000-2003 collective bargaining agreement), he recorded the parties' respective positions (before ultimately awarding the Village's *status quo* proposal) in relevant part as follows:

> The Union asserts that the residency issue in Posen "presents novel problems not found in any previous residency disputes and an overriding wrinkle that renders any decision somewhat peculiar." The Union notes that the residency clause has become contentious, because the Village applies it to require new hires to live in Posen for the first four years of their careers as police officers. At the same time, the Union argues, the Village has offered no meaning to the phrase "… or when an actual resident whichever is later."
>
> ***
>
> The Village argues that the current residency language clearly and plainly requires Posen police officers to reside in town for four years. It reflects the parties' own 1998 modification of the prior permanent residency requirement. The Village asserts that the Union should not be permitted to dismantle that provision now, so soon after the parties crafted it.

> ***
>
> The Arbitrator is very mindful of the fact that in the negotiations which led to their most recent Agreement, the parties retained a limited residency requirement. In negotiations for a successor Agreement the Village made overtures to modify or even eliminate the residency requirement, but those efforts did not prove fruitful. Thus, the Arbitrator is persuaded that the Village has not been stone-walling the Union on the residency issue…
>
> ***
>
> … As the Union so strenuously argued, the parties' current residency language needs clarification. But the clarification of existing labor agreement language is more properly a grievance procedure function than it is one of interest arbitration…
>
> Interest arbitration should be a last resort, used to change the status quo only when there is an immediate and compelling need to do so. It should not be used to modify a bargain the parties have only recently adopted, and one they have not yet exhaustively attempted to modify through the give and take of free collective bargaining. For those reasons and others discussed in the foregoing paragraphs, the Village's final offer on the residency issue [status quo] is adopted.

The *Briggs* decision establishes a number of relevant points for purposes of this discussion. First, during negotiations for the 2000-2003 contract, the parties engaged in at least some bargaining on the issue of residency, and ultimately the Union presented Arbitrator Briggs with a proposal to alter the *status quo* by expanding residency requirements to include a radius of 20 miles around the Village of Posen. (This is now the *status quo*.) Arbitrator Briggs ultimately rejected the Union's proposal in favor of maintaining the existing *status quo* on grounds that the Union had evidently resisted the Village's efforts to reach agreement on the issue of residency during bargaining, and further that the Union sought clarification of existing language as much as relaxation of the rule itself. Thus, it can be reasoned that the Union was insistent on the matter of a 20-mile residency rule prior to the *Briggs* arbitration, and the Village wanted something else, and that truth is evidenced in their final proposals in that case.

In the subsequent contract, the 2003-2007 collective bargaining agreement which was negotiated in its entirety, the present *status quo* language establishing a 20-mile residency rule first appeared. Thus, obviously, at some point during bargaining for first contract after *Briggs*, the Union finally prevailed and new and more relaxed residency requirements were implemented. These events, then, render the Union's present assertion concerning the inappropriate continuation of "artificial and outdated leftovers from days of patronage hiring and political cronyism," misleading if not outright false. It is absolutely clear that the Village has never approached the issue of residency in that way, having been willing to negotiate on the matter during bargaining for the 1997-2000 contract (when absolute residency was first relaxed), during bargaining for the 2000-2003 contract embraced in *Briggs*, and finally during bargaining for the 2003-2006 contract when the 20-mile radius was gained by the Union and subsequently retained in the incumbent 2006-2009 contract.

Now for this new agreement, the 20-mile radius so arduously fought for by the Union is apparently not good enough. The Union can hardly argue successfully that Lake Michigan and the State of Indiana were not there in 2000, when the 20-mile residency rule was first proposed. Furthermore, the Union has not demonstrated how it is that the 20-mile radius is no longer appropriate. Of course, there is the matter of external comparability, and the Arbitrator does not completely ignore it. However, in this case bargaining history has just as much, if not more, power to persuade than the comparables. Indeed, if other communities were able to negotiate more favorable residency rules after 2003, there is still no statutory requirement that the Village of Posen give in to a "me too" petition without any indication that the present negotiated system is broken.

On this point, Arbitrator Briggs noted his manifest reluctance to depart from *status quo* without an immediate and compelling need to do so. Interest arbitration should not, Arbitrator Briggs stated, be used to modify a bargain the parties only recently adopted, and one they had not yet exhaustively attempted to modify though the "give and take" of negotiations. The Arbitrator believes that is the case here. There is no evidence in this record of an "immediate and compelling" need to depart from the *status quo* on this issue. Furthermore, the Arbitrator is not willing to give additional ground to the Union (no pun intended) which would act to modify a bargain the parties mutually agreed to just a few years ago. There are no factors, geographical or otherwise, cited in this record that would serve to indicate that the present *status quo* is no longer applicable, appropriate, or relevant.

Perhaps there are recent arbitration awards out there containing "useful language," such as the *Perkovich* decision cited by the Union. However, every arbitration has its own unique context, and it would be inappropriate to deem *Perkovich* language binding without evidence that the arbitrator in that case was presented with the same exact facts we have here. The "natural boundary" argument the Union has promulgated in light of *Perkovich* is not persuasive here, because those same "natural boundaries" existed when the Union first asked for a 20-mile radius in the residency issue before Arbitrator Briggs.

Certainly, the Arbitrator is not instructing that the present Section 20.1 residency requirements are cast in stone. Instead, the Arbitrator is convinced, as was Arbitrator Briggs, that the issue is one the parties have not yet exhaustively attempted to modify though the "give and take" of negotiations.

Accordingly, and for all the foregoing reasons, the Arbitrator concludes that the *status quo* should be maintained. The following Order so reflects.

Order

The *status quo* is maintained. It is so ordered.

Section 21.8 – Overtime Compensation (Non-Economic)

The Union's Final Proposal

~~Commencing on September 11, 2007 (Village ratification of this Agreement),all~~ **All** hours worked in excess of eighty (80) hours per 14 day work period shall be compensated at the overtime rate of time and one half (1 ½) times the employee's regular hourly rate of pay. For purposes of calculating overtime, vacation, and comp. time hours shall be considered hours worked; **however, effective upon issuance of the Interest Arbitration Award, for purposes of calculating overtime, all hours paid shall be considered hours worked.** *Employees can elect to take not more than fifty percent (50%) of overtime compensation in pay.*

NOTE

Bold type indicates proposed changes in the economic impact of the present overtime rule. ~~Strike through~~ and *Italics* indicate proposed changes in non-economic aspects of the present overtime rule. Only the non-economic issue is addressed in this section.

The Village's Final Proposal

The Village agrees to eliminate references to September 11, 2007 and the Village's ratification of the Agreement that are ~~struck through~~ in the opening sentence of Section 21.8. (Village brief at page 21.) In all other respects, the Village proposes to maintain *status quo*.

The Position of the Union:

The Union notes that the only two changes proposed in the non-economic aspects of the Overtime Compensation provisions concern elimination of outdated references and codification of an existing practice.

First, the Union notes that any reference to September 11, 2007 and ratification of

the prior agreement is outdated and should not appear in the new contract. The Arbitrator duly notes the Village's acquiescence on this matter, and agreement on this point will be reflected in the following Order.

Second, the Union argues that the provision, "Employees can elect to take not more than fifty percent (50%) of overtime compensation in pay" is obsolete in terms of current and mutually accepted practices. Posen police officers can, and do, presently choose how their overtime compensation is taken, the Union argues. If an officer requests pay, the Union submits, they are paid. If an officer requests compensatory time in lieu of pay, the Union further argues, it is so awarded. Moreover, the Union notes, the Village places no limit as to the allowable percentage of one or the other.

In support, the Union cites Deputy Police Chief Vickie Paggi's unchallenged statement at arbitration concerning the "50%" rule at issue that, "If the officer wants pay, we given them pay. If he wants the comp time, he gets comp time." Thus, the Union submits, its final offer "merely tries to rectify an errant description of existing practice in the Posen police department." The Village has offered no substantive reason why the language should not be changed to reflect reality, the Union argues, and thus, the Arbitrator should adopt its final proposal.

The Position of the Village:

The Village offers no explanation as to why it has not agreed to the non-economic changes in Section 21.8. As already noted, the Village has expressly agreed to abolish existing language referencing September 11, 2007 and ratification of the prior agreement. However, the Village offers no further argument as to the Union's proposal to also

eliminate reference to the "50%" provision. Because there is no express indication in this record that the Village has conceded on that point also, the Arbitrator logically assumes *status quo* is the desired outcome.

Discussion:

With specific respect to the non-economic changes proposed by the Union in Section 21.8, the Arbitrator agrees that the language should be changed to eliminate outdated references, and further to reflect existing and mutually acknowledged practices with regard to the manner in which Posen officers are compensated for overtime. The Union is correct that Deputy Chief Paggi's testimony supporting the Union's proposal was unchallenged by the Village. Clearly, it is understood that bargaining unit members may elect to take overtime compensation in pay or compensatory time, or a combination thereof in any percentage requested. Therefore, any contractual reference to the contrary would be both confusing and inaccurate.

Thus, the Union's final proposal with respect to the non-economic changes in Section 21.8 (Overtime Compensation) is adopted. The following Order so reflects.

Order

The Union's Final Proposal is adopted. It is so ordered.

Section 24.2 – Injury Leave

At arbitration, the Village accepted the Union's final offer with respect to Section 24.2 (Injury Leave). (Tr. 16.) Thus, the Union's final offer is adopted, and it is incorporated into this Award by reference.

Section 29.1 – Term of Agreement

The Union's Final Proposal

> This Agreement shall be effective from **May 1, 2009 and** ~~May 1, 2006~~ shall remain in full force and effect until **April 30, 2011** ~~April 30, 2009~~. It shall continue in effect from year to year thereafter unless notice of demand to bargain is given in writing by Certified Mail **by** ~~be~~ either party no earlier than one hundred twenty (120) days preceding expiration **except that should this Agreement be resolved through Interest Arbitration, the notice of demand must be given within sixty (60) days of the issuance of the award**. The notice referred to shall be considered to have been given as of the date shown on the postmark. Written notice may be tendered in person, in which case that date of notice shall be the written date of receipt.

The Village's Final Proposal

> This Agreement shall be effective from **May 1, 2009** ~~May 1, 2006~~ shall remain in full force and effect until **April 30, 2012** ~~April 30, 2009~~. It shall continue in effect from year to year thereafter unless notice of demand to bargain is given in writing by Certified Mail be either party no earlier than one hundred twenty (120) days preceding expiration. The notice referred to shall be considered to have been given as of the date shown on the postmark. Written notice may be tendered in person, in which case that date of notice shall be the written date of receipt.

The Position of the Union:

First, and of course most critically, the Union proposes to depart from the *status quo* of a three-year contract. Normally, the Union concedes, it would not suggest a contract termination date that has already expired, but in this instance, it makes the most sense. The Union explains that by adopting its final offer, "the Arbitrator will be sending the parties BACK to the bargaining table. By adopting the Village's final offer, the Arbitrator will be giving the Village a long respite from the bargaining it never engaged in during the past two years." (Emphasis original.)

In many interest arbitration cases, the Union notes, the issue of "duration" is of a concern where parties have been involved in lengthy negotiations and the arbitrator must decide if an extended period of time away from the bargaining table would be

beneficial.[47] In such cases, most interest arbitrators have opted to extend the length of a contract to create a "cooling off" period in the hope of avoiding future bargaining fatigue. That is most certainly not the case here, the Union argues. The parties do not need to be "cooled off" and the Village's finances are not unstable.

The Union also argues that the Arbitrator should award a two-year contract under these particular circumstances because it will result in the parties having to engage in negotiations immediately. Under its final offer, the Union further argues, "the Village gets no benefit from being indifferent and must return to the bargaining table and accept its duty to bargain."[48]

A two-year contract is in the best interests of the public and the parties, the Union argues. Thus, for all the foregoing reasons, the Union urges the Arbitrator to adopt its Final Proposal on this issue.

The Position of the Village:

The Village argues that a two-year contract, which has been proposed by the Union, would leave the parties without a current contract at this point in time. This, the Village argues, would be both inefficient and unnecessary, and would further be a waste of the arbitration process.

The Village points out that these parties have, since their bargaining relationship began, entered into three-year contracts. Thus, the Village submits, a two-year contract would essentially represent a breakthrough for the Union. Furthermore, the Village

[47] See; e.g.; City of Danville and PBLC, S-MA-07-220 (Meyers, 2010); County of Wabash and Sheriff of Wabash County and Illinois FOP Labor Council, S-MA-09-020 (Feuille, 2010).
[48] Union brief at page 19.

argues, despite its efforts at arbitration, the Union has not demonstrated that the Employer acted in bad faith during the preceding negotiation and mediation process. Moreover, the Village argues, the Union cited no compelling reason for a shorter contract period.

In sum, the Village urges the Arbitrator to extend this Agreement through 2012, if only to allow the parties to again negotiate an Agreement within the next 8 months.

Discussion:

In many respects, the Arbitrator is grateful that the instant issue "Term of Agreement" came (in numerical order by Section) at the end of this arduous process, for it has given him a fresh appreciation the benefits of collective bargaining. As the Arbitrator has expressed on many other occasions, which fortunately cannot be taken out of context, interest arbitration is inherently risky in the sense that its final outcome is likely to be only a shadow of what the parties could have engineered had they pressed through to the end on their own. Indeed, the Village of Posen and this Union have managed to successfully negotiate the vast majority of their contracts without any statutory intervention whatsoever. Only once before has interest arbitration involving these parties been invoked, and even then, two contracts ago, Arbitrator Briggs was called upon to resolve only six issues. This indicates to the Arbitrator that what when on here was unusual for these parties, and perhaps a "cooling off" period is indeed warranted. Granted, this record does not establish that the parties need relief from a season of difficult and grueling bargaining such that immediately returning to the bargaining table would be too demanding for anything good to come of it. However, the

manifest lack of good faith negotiating in this case, when there is strong proof that these parties have had much success in that arena the past, is a profound indicator of strain in this bargaining relationship. What has caused it, the Arbitrator cannot imagine, save perhaps for management's bright idea that it would be easier (or even *profitable* given prior dicta) to give up on the process entirely and hope for *status quo*.

When all is said and done, then, there is only one reasonable conclusion; this contract must remain in effect until 2012. It makes no sense whatsoever to force these parties back to the table immediately upon closure of this contentious interest arbitration with nothing in hand but hard feelings and another expired contract. This record clearly establishes that three-year collective bargaining agreements are the norm in Posen, and a renegade two-year contract would therefore likely put the parties off schedule for the foreseeable future. That, for obvious reasons, would be disadvantageous to both the Village and the bargaining unit.

The Arbitrator appreciates the Union's desire to return to the bargaining table at the earliest opportunity, and in awarding a three-year contract he neither states nor implies any purpose to diminish ambition on either side to engage in productive bargaining the next time around. Hopefully, for the good of everyone involved, that will happen. However, by the end of this interest arbitration process, there will only be some 7 months remaining on the new contract before it expires, so there will not likely be a long break anyway.

Thus, for that and all the foregoing reasons, the Arbitrator adopts the Village's final proposal for a three-year contract term. In so doing, because this is a non-economic

issue, the Arbitrator also orders that the two typographical errors in retained language noted by the Union be corrected in the final rendering of the Agreement. The following Order so reflects.

Order

The Village's final proposal is adopted except that the two typographical errors in the retained language noted by the Union will be corrected in the final rendering of the Agreement. It is so ordered.

XI CONCLUSION AND AWARD

The foregoing Orders represent the final and binding determination of the Neutral Arbitrator in this matter, and it is therefore directed that the parties' Collective Bargaining Agreement be amended to incorporate previously agreed upon modifications along with the specific determinations made above.

_____

John C. Fletcher, Arbitrator

Poplar Grove, Illinois, September 29, 2011