

IN THE MATTER OF ARBITRATION )  
VILLAGE OF MARYVILLE, )  
 )  
Employer, )  
 )  
 )  
and )  
 )  
ILLINOIS FRATERNAL ORDER OF )  
POLICE LABOR COUNCIL )  
 )  
Union. )  
\_\_\_\_\_ )

**Marvin Hill, Jr.**  
**Arbitrator**

**Case S-MA-10-228**

**Hearing Date: December 14, 2010**  
**Award Date: March 7, 2011**

**Appearances:**

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**Preliminary Statement**

This interest arbitration concerns a bargaining impasse over the terms of a successor collective bargaining agreement between the Illinois Fraternal Order of Police Labor Council (“FOP” or “Union”) and the Village of Maryville, Illinois (“Employer,” “Management” or the “Administration”).

This matter came to hearing before the undersigned Arbitrator on December 14, 2010. The parties appeared through their representatives and entered exhibits and testimony. The parties' representatives filed post-hearing briefs on February 28, 2011, which were exchanged through the offices of the Arbitrator. The record was closed on that date.

## **I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION**

### **A. Stipulations of the Parties**

The parties entered into a pre-hearing stipulation that provided in relevant part:

- 1) The Arbitrator in this matter would be Marvin Hill. The parties stipulated that the procedural prerequisites for convening the arbitration hearing had been met, and that the Arbitrator had jurisdiction and authority to rule on the issues submitted.
- 2) The parties waived any defense, right or claim that the Arbitrator lacked the authority to make his award retroactive.
- 3) 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, was waived by the parties.
- 3) The parties 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.
- 4) The hearing was to be transcribed by a court reporter and that the cost of the reporter and the Arbitrator's copy of the transcript would be shared equally by the parties.
- 5) The parties agreed that all tentative agreements would be incorporated in the Award.
- 6) The parties agreed to and exchanged final offers simultaneously at the beginning of the hearing. Thereafter, such final offers could not be changed except by mutual agreement of the parties. The Parties agreed that the Arbitrator would adopt either the final offer of the FOP or Employer as to the sole economic issue in dispute.
- 7) The Arbitrator was to base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator was to issue his award within sixty (60) days after submission of the post-hearing briefs or any agreed upon extension requested by the Arbitrator.

B. Statutory Criteria

As in all interest arbitration cases involving protective service bargaining units in Illinois, the Arbitrator's findings and decisions must be based upon the requirements set forth in Section 14 of the *Act*, as applicable. See, *Town of Cicero v. Illinois Association of Firefighters Local 717*, 338 Ill. App. 3d 364; 788 N.E.2d 286; 272 Ill. Dec. 982 (1st Dist., 2003) ("*Town of Cicero II*"). The following provisions of Section 14 of the *Act*, 5 ILCS 315/14(g) & (h), are relevant to these proceedings:

- (g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall . . . direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue.
- (h) Where there is no agreement between the parties, . . . the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
  - (1) The lawful authority of the employer;
  - (2) Stipulations of the parties;
  - (3) The 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:
    - In public employment in comparable communities.
    - In private employment in comparable communities.
  - (5) The average consumer prices for goods and services, commonly known as 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.

5 ILCS 315/14(h)

In addition, it is well settled that, where one or the other of the parties seeks to obtain a substantial departure from the parties' *status quo*, an "extra burden" must be met *before* the Arbitrator resorts to the criteria enumerated in Section 14(h). The oft-cited standards regarding this "extra burden" has been articulated numerous arbitrators including Chicago Arbitrator Harvey Nathan. In *Sheriff of Will County and AFSCME Council 31, Local 2961*, Arbitrator Nathan declared:

[I]nterest arbitration is essentially a conservative process. While obviously value judgments are inherent, the neutral cannot impose upon the parties' contractual procedures he or she knows that parties themselves would never agree to. Nor is his function to embark upon new ground and to create some innovative procedural or benefits scheme which is unrelated to the parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining." *Will County Board and Sheriff of Will County* (Nathan, 1988), quoting *Arizona Public Service*, 63 LA 1189, 1196 (Platt, 1974); Accord, *City of Aurora*, S-MA-95-44 at p.18-19 (Kohn, 1995).

. . . The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations is to place the onus on the party seeking the change. . . . In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:

- (1) that the old system or procedure has not worked as anticipated when originally agreed to or
- (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and
- (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

Without first examining these threshold questions, the Arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.

*Sheriff of Will County* at 51-52 (emphasis mine). See, also, *Sheriff of Cook County II*, at 17 n.16,

and 19.

In *Village of Skokie & IAFF*, American Arbitration Association Case No. 51 390 01383 06 (2007)(unpublished), I wrote the following:

In today=s market, for example, it is not unheard of for Unions to take less salary up front, and agree to a very long-term contract, in order to “lockup” their insurance. **Thus, one reason interest arbitrators are reluctant to order changes in the *status quo* is that a party may have paid dearly for such a benefit by forgoing salary or another benefit.** See, e.g., *City of DeKalb* (Goldstein, June 9, 1988) (where the Arbitrator stated: AInterest arbitration . . . is designed to merely maintain the *status quo* and keep the parties in an equitable and fair relationship, according to the statutory criteria.@); *Village of Arlington Heights and IAFF* (Briggs, January 29, 1991)(AInterest arbitration is artificial. It is a substitute for the real thing B a voluntary settlement between the parties themselves through the collective bargaining process. Thus, the primary function of an interest arbitrator is to approximate through the decisions what the parties would have agreed to had they been able to settle the issue themselves. It is therefore appropriate for an interest arbitrator to evaluate the traditional factors which affect the outcome of public sector labor negotiations and to shape the interest arbitration award accordingly. It is important to recognize the nature of such a task. It is simply educated guess work, for two reasons. First, the interest arbitrator must essentially guess what the parties would have agreed to, subject to the traditional influences, market and otherwise. Second, the interest arbitrator must evaluate the influences themselves, most of which are extremely complex and ill-specified. . . . the party wishing to change the *status quo* must present compelling reasons to do so.@ (*Briggs* at 12, emphasis added)); *Will County and MAP, Chapter 123* (McAlpin, October, 1998)(AWhen one side wished to deviate from the *status quo* . . . the proponent of that change must fully justify its position and provide strong reasons and a proven need. This Arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship.@).

The point I am making is this: I don=t see either offer – close by all accounts – as resulting in a big Amake up@ increment for the Union. What the Employer=s offer does is to maintain a comparable place that the parties negotiated over many years. And when considered with the rest of this award (specifically, EMT paramedic stipend, acting-up pay, vacation conversion, *infra*), the package is more than competitive and, more important, arguably reflective of the position the parties would have placed themselves if left to their own devices.

\* \* \* \*

Generally speaking, the rule or principle followed by arbitrators is this: The party seeking to change the agreement must show that old negotiated system has “not worked,” the system is not equitable and the party seeking to maintain the *status quo* has resisted attempts to address the issue. Additionally, it is generally accepted that parties should not make gains at the table that they could not get at the table *via* face-to-face negotiations. Otherwise, as some have

reasoned, the entire collective bargaining process could be undermined to the extent that at the first sign of impasse, parties might immediately resort to interest arbitration.

C. Comparable Bench-Mark Jurisdictions

As noted, Section 14(h)(4)(a) of the Act requires that the Arbitrator, in part, base his findings, decision and order on a comparison of the employees involved in the arbitration with other employees performing similar services in comparable communities. *See*, 5 ILCS 315/14(h)(4)(a).

To this end the parties stipulated that the following communities are the set of external comparables: Bethalto, Caseyville, Glen Carbon, Pontoon Beach and Troy.

As pointed out by the Union, three of the five comparable communities (Glen Carbon, Pontoon Beach and Troy) are within five miles of Maryville. Caseyville is approximately 7 miles to the south and Bethalto is approximately 15 miles north. While Maryville ranks fifth in population, it is first in Median Household, Median Family and Per Capita Income and second in Median Home Value. As for crime, the Village is ranked sixth. The Village of Maryville has the highest income and lowest crime amongst the comparable jurisdictions. Maryville is, as described by Mayor Larry Gullede “one of the fastest-growing communities in Southern Illinois.”

**II. ISSUES FOR RESOLUTION AND FINAL OFFERS**

The parties stipulated to five (5) impasse issues. Three (3) are economic in nature (wages, compensatory time accrual and detective’s uniform allowance). The remaining two issues (discipline and discharge and hiring agreements) are non-economic in nature. While the Employer listed compensatory time accrual language as non-economic in its *Brief*, I conclude that the issue is economic in nature. *See, Brief for the Employer* at 22.

The issues are as follows:

A. Discipline and Discharge

*Background – the Parties’ Side Letter.* There is a so-called “side letter” to the current collective bargaining agreement relating to discipline and discharge. That side letter provides the following:

1. Neither party shall be held to any higher burden of proof,
2. In the event of an interest arbitration arising from the parties failure to agree on matters relating to discipline in the grievance procedure in successor negotiations, neither party will assert that this initial agreement established the status quo for such matters,

3. The negotiations for such successor agreement shall be regarded as the first appropriate opportunity for good faith bargaining over the demand to subject discipline disputes to arbitration.

There is no so-called *status quo*, asserts the Union, as this is the first opportunity the FOP has to negotiate discipline (*Brief for the Union* at 12). The Union proposes amending Section 10.1 of the parties' collective bargaining agreement as follows:

**Section 10.1. Discipline and Discharge**

The parties recognize the principles of progressive and corrective discipline. Disciplinary action or measures shall include only the following: oral reprimand, written reprimand, suspension and discharge. Disciplinary action shall be imposed upon an employee only for just cause. If the Employer has reason to reprimand an employee, it shall be done in a manner that will not embarrass the employee before other employees or the public, subject however, to the provisions of the Illinois Open Meetings Act and Freedom of Information Act. Any hearings of charges, suspensions and discharges will be pursuant to the Rules and Regulations of the Board of Fire and Police Commissioners **unless the employee chooses to appeal the decision through the grievance procedure.**

**Disputes over discipline (including discharge disputes) may be appealed by the employee either through the grievance procedure, or through the Board of Fire and Police Commission, but not through both.**

Dismissal for just cause shall not apply to an officer during his probationary period and the officer may be dismissed for any cause.

The Village proposes eliminating the side letter and keeping the current language of Section 10.1 in the parties' collective bargaining agreement.

**B. Hiring Agreements**

As its final offer on the impasse issue of hiring agreements, the Union proposes adding the following to Article 23 of the current bargaining agreement:

**Section 23.14. Employment Agreements**

**If a police officer voluntarily resigns within twenty-four (24) months from the date of completion of the ILETSB Certified Law Enforcement Basic Training course, he/she shall reimburse the Village for the actual non-reimbursed or non-subsidized costs associated with his training as follows:**

<b><u>0 to 6 months</u></b>	<b><u>100%</u></b>
<b><u>6 to 12 months</u></b>	<b><u>75%</u></b>
<b><u>12 to 18 months</u></b>	<b><u>50%</u></b>

18 to 24 months                      25%

**Such amounts will exclude the officer's and training officer's wages and benefits, uniforms and equipment, (except bullet-proof vests that have been specifically fitted to the employee) and state, federal and other local reimbursed or subsidized costs to the Employer. Any promissory note entered into by the employee under this Section shall be in writing and contain a specific dollar amount.**

The Village proposed the *status quo*.

C. Compensatory Time Accrual

As its final offer on the economic issue of compensatory time accrual, the Union proposed amending the collective bargaining agreement to increase the compensatory time accrual from 80 hours to 120 hours.

The Village has proposed increasing the cap to 100 hours.

D. Detective's Uniform Allowance

As its final offer on the economic issue of the detective's uniform allowance, the Union proposed the addition of the following:

**Section 23.8 Uniform Allowance**

All non-probationary employees shall receive an annual allowance on May 1<sup>st</sup> of each year for the maintenance and purchase of additional clothing and equipment as follows:

May 1, 2006:	\$525
May 1, 2007:	\$550
May 1, 2008:	\$575
May 1, 2009:	\$600

Employees shall submit requests for uniforms and equipment to the Chief with such requests not being unreasonably denied, so long as such request is related to the purchase of clothing and/or equipment necessary to the performance of their duties. In the event the Employer mandates a change in the employee uniforms or equipment, the Employer shall be responsible for the cost of such changes.

**In addition to the above, the Detective shall receive an additional \$100.00 clothing allowance to be administered by the Chief. In order to receive the additional \$100.00, the detective must submit receipts to the Chief for reimbursement.**

In order to facilitate the transition to a May 1<sup>st</sup> allowance, any employee eligible for such allowance based on the current system shall receive a pro-rata amount between their anniversary date and May 1, 2007.

The Village proposed no additional detective’s uniform allowance.

E. Wages

As its final offer on the economic issue of wages, the Union proposes as follows:

- a 2.75% across-the-board increase effective May 1, 2010
- a 3.25% across-the-board increase effective May 1, 2011

In the Union’s view, these increases have the following effect on the pay scale:

Years of Service	May 1, 2010	May 1, 2011
Start	\$21.52	\$22.22
After 1	\$23.12	\$23.87
After 4	\$24.19	\$24.97
After 7	\$25.26	\$26.08
After 10	\$25.79	\$26.63
After 14	\$26.45	\$27.31
After 19	\$27.52	\$28.41

As its final offer on the impasse issue of wages, the Village proposes amending the pay scale as follows:

Years of Service	May 1, 2010	May 1, 2011
Start	\$23.18	\$23.64
After 4	\$24.22	\$24.68
After 7	\$25.26	\$25.72
After 10	\$25.78	\$26.24
After 14	\$26.30	\$26.76
After 19	\$26.82	\$27.28

In the first year, the Employer’s proposal applies a 3.02% increase to “After 1” pay and makes it “Start” Pay. The Employer then eliminates “After 1” pay and applies a \$1.04/hour increase between “Start” and “After 4” pay and between “After 4” pay and “After 7” Pay. The Village then applies a \$0.52/hour between “After 7” pay and “After 10” pay; between “After 10” pay and “After 14” pay; and between “After 14” pay and “After 19” pay. In the second year, the Employer’s proposal applies a \$0.46/hour increase to all steps.

### III. DISCUSSION

#### A. Union's Position: Discipline and Discharge

The Union points out that, typically, a party seeking to change the way discipline was handled would be seen as a change in the *status quo*. That is not the case here, argues the FOP.

##### 1. Background: The Current Side Letter

The current collective bargaining agreement is the initial agreement between the parties. During the “negotiations for an initial agreement, the Village and the Labor Council [had] reached a tentative agreement regarding processing discipline cases through the Board of Fire and Police Commission and due to the previous law in Illinois, did not incorporate processing discipline cases through the grievance procedure.” (*Brief for the Union* at 14; UX 3).

Prior to August 23, 2007, the law made discipline the exclusive domain of the Board of Fire and Police Commission in non-home rule municipalities such as Maryville. On August 23, 2007, Section 5/10-2.1-17 of the Illinois Municipal Code was amended to provide that disciplinary actions could be a subject of an impartial arbitration in the grievance procedure rather than the exclusive domain of the Board of Fire and Police Commission. However, by that time the Village and the Labor Council were in mediation. Both the Village and the Labor Council agreed “that to revisit the issue of discipline at [that] late date due to the change in the state law would not permit meaningful good faith bargaining on the subject.” (UX 3). Therefore, the Village and the Labor Council executed a side letter on October 12, 2007. That side letter reads as follows:

1. Neither party shall be held to any higher burden of proof due to the failure to raise the issue during mediation over the initial agreement,
2. In the event or an interest arbitration arising from the parties failure to agree on matters relating to discipline in the grievance procedure in successor negotiations, neither party will assert that this initial agreement established the status quo for such matters,
3. The negotiations for such successor agreement shall be regarded as the first appropriate opportunity for good faith bargaining over the demand to subject discipline disputes to arbitration.

Based upon the side letter, there is no *status quo*, argues the FOP. Indeed, this is the first opportunity the parties have to negotiate discipline (*Brief* at 12).

##### 2. Burden of Proof

The Union maintains it is well settled that, where the parties could not previously bargain over an issue, the first time they can bargain over the issue, it is not a *status quo* issue. Arbitrator Rocky Perkovich stated that “when the parties faced the issue before it became a mandatory subject of bargaining and, ultimately, arbitrable, the issue was not shaped by the bilateral efforts and expectations of the parties. Thus they did not create a base from which to consider

subsequent bargaining.” *City of Lincoln & FOP*, S-MA-09-140 (2000) at 3. Arbitrator Perkovich also stated that “when a matter is first before the parties after a history of tacit approval, rather than bilateral agreement, there is no *status quo* such that the issue can be characterized as a breakthrough.” *City of Blue Island & FOP*, S-MA-00-138 (2001) at 4. Similarly, in *Village of Shorewood & FOP*, S-MA-07-199 (2008) at 13, Arbitrator Aaron Wolff could rightfully not “perceive how a subject for bargaining that did not become mandatory for all non-home rule municipalities until 2007 [could] be treated as a *status quo* issue since the give and take of bargaining could not previously be exercised.” *Id.* at 13, citing *City of Lincoln, supra*.

Clearly, argues the FOP, because this is the parties’ first opportunity to bargain over *this* issue, it is not a *status quo* or breakthrough-type issue. Indeed, the Village has agreed to this fact. They agreed not to assert that the initial collective bargaining agreement established the *status quo*. This should be honored by the Arbitrator.

Based on the basic principles of interest arbitration cited and the parties’ own agreement, the issue of disciplinary arbitration and the Board of Fire and Police Commission cannot be treated as *status quo* (*Brief* at 13).

### 3. Public Policy

Section 8 of the Illinois Public Labor Relations Act, 5 ILCS 315/8, requires that:

The collective bargaining agreement negotiated between the employer and the exclusive representative **shall contain a grievance resolution procedure** which shall apply to all employees in the bargaining unit and **shall provide for final and binding arbitration** of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise.” [*Brief* at 14; emphasis added].

This provision has been read to require discipline to be subject to the grievance arbitration procedure by several arbitrators (*Brief* at 14). See, *Will County*, S-MA-88-9 (Nathan, 1988)(“Unless there is some exclusion mandated by law, or the parties otherwise mutually agree, the Agreement must contain a grievance and arbitration procedure covering all disputes concerning its administration or interpretation. Section 8 provides no exceptions.”); *City of Springfield & PBPA*, S-MA-89-74 (Benn, 1990)(holding that Section 8 required submission of discipline to the grievance procedure unless the parties agree otherwise); *Village of Lansing & IBT 714*, S-MA-98-219 (Benn, 1998)(holding that Union’s proposal to arbitrate discipline was not a breakthrough issue and was in fact required by Section 9 of the Act).

According to the Union, the strong public policy in favor of arbitration of discipline was reaffirmed by Arbitrator Aaron S. Wolff in 2008. In *Village of Shorewood & FOP*, S-MA-07-199 (2008), Arbitrator Wolff noted that “a number of interest arbitration awards have held that where, as here, the subject of bargaining is mandatory and ‘just cause’ is included in the collective bargaining agreement [citation to agreement omitted], then §8 of the IPLRA requires that disciplinary issues be included in a grievance/arbitration provision in the collective bargaining agreement as an alternative [citations omitted].” *Id.* at 14. Arbitrator Wolff found this interpretation to be “sound and reasonable” and he concurred that it “reflects the ‘plain meaning’

of § 8. As a result of this interpretation, Arbitrator Wolff ruled that “since the parties here have bargained to impasse on this issue and not reached mutual agreement on it, the Union’s proposed language must be adopted.” *Id.* at 15.

This case, says the Union, is completely analogous to *Village of Shorewood*. Article 10, Section 10.1 of the parties' collective bargaining agreement contain the “just cause” standard. Employee discipline is a mandatory subject of bargaining. Therefore, the mandate of Section 8 of the Labor Relations Act requires the Arbitrator to award discipline to be subject to arbitration (*Brief* at 18).

While the FOP could have proposed that all discipline go to arbitration, the FOP did not. The FOP’s proposal does not eliminate the Board of Fire and Police Commission. The FOP proposes giving the employees of the bargaining unit the choice of where to appeal their disciplinary suspensions; either to the Board of Fire and Police Commission or through the Grievance/Arbitration procedure of the collective bargaining agreement. The Board of Fire and Police Commission will remain as currently constituted and will retain all of its historic duties and responsibilities in the area of discipline should the employee bring this review to them. Only the Commission’s exclusivity will be affected (*Brief* at 18-19).

Based on the requirements of Section 8 of the Act, it is clear that the Arbitrator must award the FOP’s final offer.

#### 4. Comparables

As stated above, in the Union’s view comparables are not relevant to the issue of disciplinary arbitration and just cause in light of the strong public policy as defined by Section 8 of the Act (*Brief* at 19).

However, even if the Arbitrator decides to look at the comparables, support for the FOP’s proposal is apparent. In Caseyville, the employees can choice between the grievance procedure and the Board of Fire and Police Commission. In Pontoon Beach, suspensions of 5 days or less may be grieved. In Troy, the Union and the Employer entered into an agreement similar to the side letter entered into by the FOP and Maryville. Only two of the comparables go exclusively before a Board of Fire and Police Commission: Bethalto and Glen Carbon (*Brief* at 19).

While not necessary, based upon prior arbitral authority, there is comparable support the FOP’s proposal.

#### 5. Language

The language proposed by the FOP makes only two (2) changes to the parties' collective bargaining agreement. Disciplinary hearings would still be held pursuant to the rules of the Board of Fire and Police Commission “unless the employee chooses to appeal the decision through the grievance procedure.” The Board of Fire and Police Commissioners would retain their authority over all discipline except the discipline employees choose to grieve. Second, the employee cannot appeal discipline through both forums. There will only be one bite at the apple.

The FOP’s proposal is simple and modest. All that will occur when the Arbitrator awards the FOP’s proposal is this: the employees will have a choice. It is important is that employees have the right to elect arbitration, as required by Section 8.

6. Effect of the Village’s Final Offer

Currently, there is a side letter that put off bargaining discipline until these negotiations. The Village proposes eliminating the side letter without providing any access to the grievance procedure for discipline. The Village proposes that all discipline goes to the Board of Fire and Police Commission. The FOP would have not agreed to give up bargaining discipline (*Brief* at 20).

In *Village of Deerfield & FOP*, S-MA-07-148 (2008), Arbitrator Steven Briggs found for the Village on the issue of discipline and maintained the *status quo*. In *Deerfield*, Mr. Briggs found that the Union had prior opportunities to bargain discipline. This is not the case here. As the side letter states, this is the “first appropriate opportunity for good faith bargaining over the demand to subject discipline disputes to arbitration.” Yet no “bargaining” really occurred in the case. The Village rejected any discipline proposals (*Brief* at 21).

Regardless of which offer the Arbitrator awards, the Arbitrator will be setting the *status quo*. If the Arbitrator were to award the FOP’s final offer, the *status quo* would be employee choice. If the Arbitrator awards the Village’s final offer, discipline would never be subjected to the grievance procedure as required by Section 8 of the Act (*Brief* at 21-22).

**B. Employer’s Position: Discipline and Discharge**

The Union seeks to add new language to the contract to provide for an employee’s choice concerning appeals of discipline and discharge while the Village seeks to maintain *status quo*:

<b>Section 10.1 Discipline and Discharge</b>	
<b>Union Offer</b>	<b>County Offer</b>

<p>“The parties recognize the principles of progressive and corrective discipline. Disciplinary action or measures shall include only the following: oral reprimand, written reprimand, suspension and discharge. Disciplinary action shall be imposed upon an employee only for just cause. If the Employer has reason to reprimand an employee, it shall be done in a manner that will not embarrass the employee before other employees or the public, subject however, to the provisions of the Illinois Open Meetings Act and Freedom of Information Act. Any hearings of charges, suspensions and discharges will be pursuant to the Rules and Regulations of the Board of Fire and Police Commissioners <b><u>unless the employee chooses to appeal the decision through the grievance procedure.</u></b></p>	<p>Status Quo</p>
<p><b><u>“Disputes over discipline (including discharge disputes) may be appealed by the employee either through the grievance procedure, or through the Board of Fire and Police Commission, but not through both.</u></b></p>	
<p>“Dismissal for just cause shall not apply to an officer during his probationary period and the officer may be dismissed for any cause.”</p>	

In its case, the Village offered the testimony of Mayor Gullede, who has been involved with the Village Board for 30 years. Mayor Gullede testified that in his time on the Board, there has only been one discharge of an officer, which occurred “12 or 15 years ago” and before the Board of Fire and Police Commissioners was established. Since the Board of Fire and Police Commissioners was established, there has not been a single issue of discipline or discharge before the Board. Further, the Mayor testified that there has never been any concern expressed to him about the Board of Fire and Police Commissioners being fair or impartial (*Brief for the Employer* at 16).

Further, and unlike the decision in *Village of Shorewood and the Illinois Fraternal Order of Police Labor Council*, S-MA-07-199 (2008, Wolff), the Mayor expounded upon the process by which the Board of Fire and Police Commissioners were appointed. First, Mayor Gullede advertised the open position on the Board once the Village surpassed the population of 5,000. Mayor Gullede, together with the chiefs of Fire and Police, interviewed candidates to find those individuals that would serve “in the best interest of the community and [the] employees.” The Mayor selected a sergeant on the Village of Glen Carbon Police Department, a retired police officer from St. Louis City and current head of security at Nestle Purina, and the head of human resources for Illinois American Water Works (*Brief* at 17).

The process by which the Mayor selected these members set the precedent for the future as an open and transparent process. More than the process itself, two of the individuals that the Mayor selected come from a background of labor, not management.

This issue of discipline and discharge has been manufactured by the Union and constitutes a major breakthrough sought on the part of the Union, in management’s view (*Brief* at 17).

Looking to the external comparables, the Village of Glen Carbon and the City of Troy have only Board of Fire and Police Commission discipline. Bethalto's agreement is silent on the issue. Pontoon Beach's procedures depend on the severity of the discipline. Appeals of suspension of five days or less proceed to grievance procedures. Appeals of suspensions of more than five days proceed to Board of Fire and Police Commission procedures. Caseyville allows appeals through either the grievance procedure or the Board of Fire and Police Commissioners.

Overwhelmingly, Boards of Fire and Police Commission procedures and not grievance procedures, govern appeals in the external comparable municipalities. Caseyville is the only comparable that has "employee's choice," making it the minority view. *Internally*, the fire fighters do not have an option to appeal through the grievance procedure. This change would create a substantial internal inconsistency (*Brief* at 18; EX 18).

Perhaps the most troubling concern of the Union's proposal, argues the Administration, is its lack of procedural safeguards, which stands in stark contrast to the system that is currently in place under the Board of Fire and Police Commissioners. The Union calls its proposal "employee's choice;" however, the proposed language is silent on when the employee has to choose. The proposal is silent on the timeframe of discipline arbitration and procedures. The result of the Union's proposal would frustrate the Village's legitimate interest in expeditious finality in discipline and discharge matters. Further, the Union's proposal exposes the Village to significant financial implications should the discipline and discharge process be as lengthy as the Union proposes (*Brief* at 18-19).

The grievance process is, by agreement, a process that can take five months, without tacking on an undetermined amount of time it may take to schedule and hold the arbitration. The Union's proposal seeks to add this appeals process on top of the current discipline process. In the event that the Village seeks to discipline an officer for longer than five days, the Board of Fire and Police Commissioners may take as long as 30 days to hear the charges, meanwhile placing the officer on unpaid leave.

There remain significant questions unanswered by the Union as to how their proposal seeks to change discipline and discharge procedures. As previously mentioned, when must an officer elect to proceed under either process? When must the arbitration take place? Can an officer appeal the Board of Fire and Police Commissioners' decision to place an officer on unpaid leave pending a hearing of charges? Absent an action by the Village, can an officer grieve an action by a party outside the scope of the Collective Bargaining Agreement? Would the arbitrator be required to follow the rules and regulations of the Board of Fire and Police Commissioners? Would the arbitrator have the authority to issue increased discipline if the employee grieves a suspension of five days or less as the Board of Fire and Police Commissioners do? If necessary, would the arbitrator have the authority to suspend an officer pending a hearing? (*Brief* at 19-20).

Under the current procedures, argues management, there is a guarantee of finality, as a hearing is required by the Board within 30 days from the Board's receipt of an appeal or charges. Disciplinary action under the Union's proposal stands to add layers of procedure to the action, extending a process that, at most, now takes 30 days, to a process that could take as long as six months. This burdensome change will result in constricting the Village's ability to take action to protect the community and the members of the bargaining unit from an unsafe or unfit officer

and frustrate the Village's legitimate financial interest in seeking an expeditious final resolution of disciplinary action. The Union has failed to demonstrate why the requested change is necessary. The Union has not offered a single instance of impropriety or even an accusation of impropriety. The uncontroverted testimony is that there has never been an issue of discipline or discharge before the Board of Fire and Police Commissioners.

The Union proposal, if anything at all, amounts to a "good idea" from the Union's perspective. As Arbitrator Benn observed in Cook County Sheriff, "good ideas" are insufficient to serve as a catalyst for action in interest arbitration. If the Union considers their sought-after change to current discipline procedures of great import, it should seek to achieve the change at the bargaining table through quid pro quo negotiations. Furthermore, the Union's proposal for employee choice is not workable and provides no procedures or guidelines for expeditiously addressing issues of employee discipline and discharge (*Brief* at 21-22).

### C. Analysis and Award

Currently, the chief of police can issue a suspension of an officer not to exceed five (5) days. The Chief must also provide notice to the Board of Fire and Police Commissioners within five days. Any suspended police officer has five days from the issuance of the suspension to appeal to the Board of Fire and Police Commissioners. A hearing must take place within 30 days of an appeal. Should the Village seek to issue a more severe penalty than a five day suspension, charges must be filed with the Board of Fire and Police Commissioners and a hearing must be held within 30 days. The Board of Fire and Police Commissioners have the authority to suspend an officer, pending a hearing on the charges, but not to exceed 30 days without pay.

Through the grievance procedure, an officer may submit a grievance within 10 days from the date of the occurrence of the matter giving rise to the grievance. The Chief then has 10 days to respond. If the grievance is not resolved in Step One, the grievant then has 10 days to advance the grievance to the Mayor. The Mayor then has 10 days to respond. If the grievance is not resolved in Step Two or through a mutually agreed to mediation, the grievant can submit the matter to arbitration within 15 days of the Mayor's decision in Step Two or the completion of mediation. The grievance procedure is silent on when the arbitration is to take place. The arbitrator has 45 days to issue his decision.

With respect to the *status quo* argument, I agree with the Union. As this is the first time the Employer has had to bargain over the issue of discipline, the employer cannot "now assert this is a *status quo* situation and a breakthrough with a heavier burden on the Union to prove the need for a change." Therefore, the FOP bears no greater burden than it normally would and this is not a co-called "breakthrough issue."<sup>1</sup>

Having said this, the FOP advances the better case regarding an election of forums by the affected employee. An employee has no choice over the composition of a police and fire commission, all of which are appointed by the Administration. They are, as characterized by the

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<sup>1</sup> Stewart: "The Union's position was, is that there was no *status quo*, which we don't have that issue here because the employer agreed, this is not the *status quo*. The Union took the position that pursuant to Section 8 of the Labor Relations Act, because the parties had not mutually agreed otherwise, the collective bargaining agreement is required to have grievance arbitration for disciplinary matters. He [Arbitrator Aaron Wolff in *Village of Sherwood*] goes on to state why" The Union's final offer in that case was employee choice (R. 29). "And all this provision here is choice." (R. 31).

Union and numerous arbitrators, “political appointments.” See, e.g., *City of Rock Island & FOP*, S-MA-03-211 (Nathan, 2004) at 20-21. Additionally, these political appointees can terminate an employee who is appealing a five-day suspension (R. 92), a result that would be highly unlikely in labor arbitration. In addition, there is a competency factor. As a general matter full-time labor arbitrators, many of whom are attorneys, and even some former law professors, are trained in rules of evidence and other due-process type considerations. Most are published. The competency of a police and fire commission cannot fairly be compared to many labor arbitrators, especially those who are National Academy members who (with few exceptions) have established overall acceptability as labor arbitrators. The matter is not so much politics but competency to conduct a due process hearing where knowledge of evidentiary rules and procedures is imperative.<sup>2</sup>

I also note that numerous arbitrators have concluded as I have regarding grievance procedures and allowing an employee to elect which forum he will litigate his claim (see the numerous citations of the FOP in its Brief at 14-19, many of which are reprinted supra). In all respects the FOP makes the better argument with respect to Section 8 leaving “little to the imagination” regarding the statute and what it mandates. See, *Brief for the Union* at 15-16, citing *Village of Lansing & FOP*, S-MA-04-240 (Benn, 2007) at 21.

For the above reasons, I award the FOP’s final offer on discipline and discharge, with this addition: Any arbitration hearing conducted pursuant to this provision will be conducted under the Rules of the American Arbitration Association. See, Hill & Sinicropi, *Evidence in Arbitration* (BNA Books, 1987)(2d edition) Appendix A (where the rules can be found). This inclusion should satisfy many of the concerns raised by the Administration in its post-hearing *Brief* regarding the workability of the Union’s proposal (*Brief* at 22). Again, what the Union requests is an alternative procedure, not the elimination of the Police and Fire Commission. Its final offer is more reasonable than the Administration’s position of no choice.

A. Union’s Position: Hiring Agreements

1. Background: The September 4, 2008 Grievance

On September 4, 2008, the FOP filed a contract grievance alleging a violation of Article 1, Section 1.1, Article 3, and Sections 4 and 5 of Article 23 for requiring employees to sign an “EMPLOYEE TRAINING, UNIFORM CLOTHING AND EQUIPMENT COSTS REIMBURSEMENT AGREEMENT”. The Union sought the nullification of these Employee

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<sup>2</sup> The Administration makes much of the fact that there have been no discharges for 12 to 15 years. Mayor Gulledge: “It was probably 12 or 15 years ago we had a lady police officer that was discharged. And that’s the only one, to my knowledge, and I’ve been on the board for 30 years. There may be others, but the one I recall is her. But we didn’t have a fire and police board at that time.” (R. 90). While this fact is not insignificant, the absence of cases is not predictive of the future. Also noteworthy but not dispositive of the issue is the fact that no person ever complained :

Q. Has anyone ever expressed any concern to you about the board not being fair or impartial?

A. Never. (R. 91).

The response is technically hearsay evidence.

Training, Uniform Clothing and Equipment Costs Reimbursement Agreements (hereinafter referred to as “Reimbursement Agreements.” (*Brief* at 23).

The grievance was processed through the grievance procedure to mediation. The Village suggested that “the issue[s] be raised by the officers in the next scheduled negotiations at contract end.” The Union filed a demand to bargain (*Brief* at 24). The record indicates there was never any negotiated solution. Although there was an initial request for arbitration, it was filed and then withdrawn by the Union (R. 41).

## 2. The Reimbursement Agreements

The Reimbursement Agreements require that an employee return any equipment upon his last day of employment regardless of the reason for the separation of employment. If the employee voluntarily terminates his employment or is terminated for cause, the employee:

Shall reimburse the Village for all costs the Village incurred in training, uniform clothing, and equipping the Employee including the costs associated with the Employee’s attendance at a recognized academy for the Minimum Standards Basic Law Enforcement Officers Training Course (and related travel, hotel and per diem costs) and the costs associated with any custom fitted or custom ordered items such as the bullet proof vest (UX 26, Par. 5).

This obligation lasts two (2) years. *Id.* The FOP submits that even if the employer chooses to end the employment relationship, the employee has to pay the employer all these costs (*Brief* at 24). Additionally, if the employee fails to pay, that employee is responsible for all expenses the Village incurs in enforcing the Reimbursement Agreements, including attorney’s fees. *Id.*

The Union asserts these Reimbursement Agreements “are not theoretical.” They have been used. To this end the Village sought up to \$4,943.20 from one employee. Thus, this is the reason the FOP has sought to bargain this issue (*Brief* at 25). The Union further points out that since it withdrew the grievance and a request for arbitration, it has always been the Administration’s position that it does not have to bargain with the FOP (R. 43).

## 3. Authority of the Arbitrator

The Village takes the position that the Arbitrator lacks the authority to rule on this issue. In the Union’s view, that position is at best ill-conceived and at worst disingenuous (*Brief* at 25). First, Reimbursement Agreements were discussed in the initial negotiations of the current collective bargaining agreement. In fact, a portion of the Reimbursement Agreements ended up in the collective bargaining agreement. Employees are required to “reimburse the Employer for the [fitted ballistic] vest if they leave the employ of the Village within two (2) years of their fire date.” While able to negotiate reimbursement for ballistic vests into the Collective Bargaining Agreement, the Village was not able to negotiate reimbursement for training costs and equipment costs in the collective bargaining agreement. If the Village has “always taken the position that it

was pre-employment, why did it bargain reimbursement of ballistic vests, argues the FOP? (*Brief* at 25).

Secondly, the Collective Bargaining Agreement provides that the Labor Council is “the ***sole and exclusive*** collective bargaining ***representative*** for the purpose of collective bargaining on ***any and all matters relating to*** wages, hours of work, and other ***terms and conditions of employment*** in the bargaining unit.” (*Brief* at 26; emphasis original). The Village cannot argue that the items contained in the Reimbursement Agreements are not terms and conditions of employment. These Reimbursement Agreements are crafted by the Village. They state that as a term and condition of employment, the employee agrees to be bound by the Reimbursement Agreement. Clearly, the Village views it as a term and condition of employment.

Section 1.1 of the Collective Bargaining Agreement and Section 7 of the Illinois Public Labor Relations Act require the Village to bargain terms and conditions of employment with the Labor Council. If the Village wishes to have employees reimburse them for training, clothing and equipment costs, it must bargain those reimbursements with the Labor Council.

#### 4. Final Offers

Under the FOP’s final offer, employees would be required to reimburse the Village for training costs that the Village could not obtain reimbursement from elsewhere. However, this reimbursement would be pro-rated depending upon the length of the employee’s service with the Village. Finally, the employee would only be subject to these reimbursements if the employee voluntarily resigned.

The Village proposes the continued use of the Reimbursement Agreements. Agreements over which the Labor Council has filed a demand to bargain: a demand the Village has ignored.

The Village offered no comparable support for these Reimbursement Agreements. The Chief of Police referenced Fairview Heights and St. Clair County. However, they are not comparables of Maryville.

What the FOP has offered is reimbursement of certain costs. What the Village has “offered” ignores its duty to bargain. Clearly, the Arbitrator cannot let the Administration get away with that. Therefore, the FOP’s final offer must be awarded.

#### **B. Employer’s Position: Hiring Agreement Language**

Management asserts that the Union is proposing a radical change in the Agreement as it pertains to pre-employment hiring agreements (*Brief* at 23):

<b>ARTICLE 23 GENERAL PROVISIONS</b>									
Section 14 Pre-Employment Agreements (new section)									
<b>Union Offer</b>	<b>County Offer</b>								
<p><b><u>“If a police officer voluntarily resigns within twenty-four (24) months from the date of completion of the ILETSB Certified Law Enforcement Basic Training course, he/she shall reimburse the Village for the actual non-reimbursed or non-subsidized costs associated with his training as follows:</u></b></p> <table border="1"> <tr> <td><b>0 to 6 months</b></td> <td><b>100%</b></td> </tr> <tr> <td><b>6 to 12 months</b></td> <td><b>75%</b></td> </tr> <tr> <td><b>12 to 18 months</b></td> <td><b>50%</b></td> </tr> <tr> <td><b>18 to 24 months</b></td> <td><b>25%</b></td> </tr> </table> <p><b><u>“Such amounts will exclude the officer’s and training officer’s wages and benefits, uniforms and equipment, (except bullet-proof vests that have been specifically fitted to the employee) and state, federal and other local reimbursed or subsidized costs to the Employer. Any promissory note entered into by the employee under this Section shall be in writing and contain a specific dollar amount.”</u></b></p>	<b>0 to 6 months</b>	<b>100%</b>	<b>6 to 12 months</b>	<b>75%</b>	<b>12 to 18 months</b>	<b>50%</b>	<b>18 to 24 months</b>	<b>25%</b>	Status Quo
<b>0 to 6 months</b>	<b>100%</b>								
<b>6 to 12 months</b>	<b>75%</b>								
<b>12 to 18 months</b>	<b>50%</b>								
<b>18 to 24 months</b>	<b>25%</b>								

The Village takes the position that *status quo* has been established on this issue, evidenced by the Union’s failure to pursue the issue during the initial negotiation. Since *status quo* has been established, the Union has a heavier burden to satisfy on this issue. The evidence presented revealed that the hiring agreements have been effective in deterring a quick departure from the department, thus ensuring that the Village receives some service for its up-front investment in its police officers. No evidence was offered by the Union that the hiring agreement process even needs to be fixed, much less that the current system is broken. Therefore, the Union has failed to carry its heavy burden and its proposal should be rejected.

C. Analysis and Award

As pointed out by the Administration, there is no dispute whether this issue was brought to the table during the initial bargaining agreement. It was not. There is no dispute whether there was a negotiated solution to the grievance filed during the initial negotiations. There was not. Mark Russillo, the field representative for the FOP during the initial negotiation, admitted that the Village never waived any argument, agreed that this was a topic subject to bargaining, or even ever changed their initial position. The Union presented the issue of hiring agreements as part of its initial proposal but did not pursue it thereafter.

Aside from the authority issue, i.e., that the matter is “permissive” under the Act (which I resolve in the Union’s favor), I credit the Employer’s argument that, at most, the money at issue was around \$2,200 (*Brief* at 24). Additionally, I see no infirmity in the Administration’s position that the catalyst for the hiring agreement was a series of officers that stayed for only a short period of time after the Village had put forth significant investment in their training and development (*Brief* at 24; R. 82). While the FOP advances a valid point regarding a *pro rata* system of recovery (it does have “curb appeal” where every six months the amount of reimbursement decreases by 25% of the cost),<sup>3</sup> overall it has fallen short of advancing the necessary evidence to warrant a change by an outside arbitrator. Chief Richard Schardan pointed to a number of districts with the same problem (R. 80-83), i.e., one district devotes significant resources to train an officer, only to have him leave to work for another city. While these districts (St. Clair County & Fairview) may not be in the bench-mark comparable groups, the Administration has made its case regarding the utility of addressing the problem. This item is simply better left to the parties to reach an accord on what is a fair recovery would be from an officer that leaves the district.

For the above reasons, I hold for the Administration.

A. **Union’s Position: Detective Uniform Allowance**

The Union submits that detectives in each of the comparable jurisdictions receive some form of additional compensation. In Bethalto, detectives receive an additional \$0.30 per hour. In Caseyville and Glen Carbon, detectives have additional costs reimbursed as needed in addition to the \$650 and \$750 that officers receive in those respective jurisdictions. These reimbursements are unlimited. In Pontoon Beach, the detectives receive an additional \$1.00 per hour and a \$1,000 clothing allowance. In Troy, detectives receive an additional \$300 in clothing allowance (*Brief* at 29).

In Maryville the lone detective receives no additional compensation or clothing allowance. The FOP proposes an additional \$100 in clothing allowance for the detective. The Village proposes continuing to provide the detective with no additional compensation. *Id.*

The FOP seeks modest compensation for the detective. This compensation was at one time proposed by the Village as part of a package. The FOP’s proposal is in line with the comparables. Clearly, it should be awarded.

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<sup>3</sup> One aspect that is disturbing regarding the *status quo* is this: Apparently the so-called hiring provision originated when the Village entered into an agreement with an applicant for employment. According to Union Counsel: “So the employee, to get hired here, had to sign something saying, I’m going to agree to abide by stuff above and beyond the collective bargaining agreement. And really, he didn’t draft this, this was drafted by the Village. And he was told , you don’t sign this, you don’t get hired. It’s not really much of a choice.” (R. 34).

I agree with the Union that what is before me is really a hiring agreement, not a pre-employment agreement. Arguably, the terms and conditions were in addition to what the parties have in their collective bargaining agreement, which would concern a labor organization *Id.*

**B. Employer’s Position: Detective Uniform Allowance**

The Employer submits that without testimony or evidence suggesting the need for the change, the Union is seeking an additional \$100.00 in detective uniform allowance (*Brief* at 14). The Village is seeking to maintain the *status quo*. A side-by-side summary of the positions reads as follows:

<b>Section 23.8 Uniform Allowance</b>	
<b>Union Offer</b>	<b>Village Offer</b>
<p>“Employees shall submit requests for uniforms and equipment to the Chief with such requests not being unreasonably denied, so long as such request is related to the purchase of clothing and/or equipment necessary to the performance of their duties. In the event the Employer mandates a change in the employee uniforms and equipment, the Employer shall be responsible for the cost of such changes.</p> <p><b><u>“In addition to the above, the Detective shall receive an additional \$100.00 clothing allowance to be administered by the Chief. In order to receive the additional \$100.00, the detective must submit receipts to the Chief for reimbursement.</u></b></p> <p>“In order to facilitate the transition to a May 1<sup>st</sup> allowance, any employee eligible for such allowance based on the current system shall receive a pro-rata amount between their anniversary date and May 1, 2007.”</p>	<p>Status Quo</p>

Given the current state of the economy and the financial circumstances of the Village, the more reasonable proposal is to maintain the *status quo*. The Union, seeking to change the *status quo*, has a heavy burden to prove that the requested change is necessary. *Village of Midlothian and Teamsters Local 700, S-MA-10-148* (Benn, 10/20/2010)(*Brief* at 14). In granting the Employer’s Motion for Summary Judgment, Arbitrator Benn discussed the heavy burden placed on the party who seeks to change the *status quo*:

Interest arbitration is a very conservative process which does not impose terms and conditions on parties which may amount to “good ideas” from a party’s (or even an arbitrator’s) perspective. See my recent award in *Cook County Sheriff/County of Cook and AFSCME Council 31* (September 29, 2010) at 7-8 and cases cited therein:

For a party in this case to achieve a changed or new provision in the Agreements — particularly for non-economic items — the burden is a heavy one ...“The burden for changing an existing benefit rests with the party seeking the change ... [and] ... in order for me to impose a change, the burden is on the party seeking the change to demonstrate that the existing system is broken.”

As shown by the burdens placed on the parties to obtain changes to existing collective bargaining agreements, interest arbitration is a very conservative process. It would be

presumptuous of me to believe that I could come up with a resolution satisfactory to the parties on these issues when the parties with their sophisticated negotiators could not do so, particularly after years of bargaining. For these issues, at best, the parties' proposed changes were good ideas from their perspectives. However, it is not the function of an interest arbitrator to make changes to terms of existing collective bargaining agreements based only on good ideas. That is why the party seeking the change must show that the existing condition is broken and therefore in need of change (*Brief* at 15).

The Union has offered no *quid pro quo* for this economic benefit. The Union offered no evidence concerning the need for an additional \$100. The Union offered no testimony from a detective, stating that the current allowance is insufficient, the *status quo* is broken or that there is a need for additional allowance. Instead, the Union resorts to requesting more money because other municipalities receive more money. At this time, a request for an additional uniform allowance with nothing offered in return should be rejected. The Union failed to carry its heavy burden in this regard (*Brief* at 15).

### C. Analysis and Award

The Union makes the better argument regarding a uniform allowance for its one detective at Maryville. Its proposal is supported by the comparables where detectives receive some additional benefit for being a detective, whether an unlimited reimbursement or additional money per hour or additional clothing allowance. In Maryville there is nothing, no clothing allowance above and beyond what the regular officers get, and there is no cents/hour (R. 33). Moreover, apparently it was at one time proposed by the Employer as part of a package (UX 14 at 2).<sup>4</sup> Finally, from a cost perspective it is very modest proposal. Application of the statutory criteria mandates an award for the Administration.

### A. Union's Position: Compensatory Time Accrual

The FOP seeks to increase the accrual cap from 80 hours to 120 hours. The Village proposes increasing the accrual cap to 100 hours, a mid-level compromise (*Brief* at 28).

Of the five comparables, two (Caseyville and Troy) have a cap set at 120 hours. Pontoon Beach has a cap of 480 hours. Glen Carbon's Collective Bargaining Agreement contains no cap. The cap under the Fair Labor Standards Act is 480 hours. Therefore, Glen Carbon officers can accumulate up to 480 hours of compensatory time. Bethalto police officers have agreed to be bound by Village Practice. Village practice could be the FLSA limit (*Brief* at 28).

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<sup>4</sup> According to Mr. Stewart:

And ultimately the Union offered the idea of, what if there was an extra clothing allowance for the detective, and that offer was taken back. That offer was made over the telephone to Mr. Manion by myself, and they came back with this. Again, all part of a package. We're not saying that the Village is bound by it, and they came back with 100. (R. 20).

**B. Employer’s Position: Compensatory Time Accrual Language**

The Village is proposing what it claims is a reasonable increase in the compensatory time accrual language. Side by side the offers look like this:

<b>Section 20.4 Overtime Payment</b>	
b. Compensatory Time in Lieu of Pay	
<b>Union Offer</b>	<b>Village Offer</b>
“...Employees shall be allowed to accumulate up to <del>eighty (80)</del> <b>one hundred twenty (120)</b> hours of compensatory time.”	“...Employees shall be allowed to accumulate up to <del>eighty (80)</del> <b>one hundred (100)</b> hours of compensatory time.”

Given the current state of the economy and the financial circumstances of the Village, the more reasonable proposal is the Village’s final offer. The Union offered no evidence that 80 hours has proven to be insufficient or that officers are accumulating hours at or near 80 hours. Instead, the Union simply relies on the hollow argument that the officers in Maryville should get what others get (*Brief* at 22).

Like the burden discussed regarding detective uniform allowance, the Union has failed to demonstrate how the current system is broken or why the requested change is necessary. This could have, perhaps, been shown by the amount of officers that have reached the 80-limit. However, the FOP submitted no evidence that any officer has reached the limit, let alone numerous officers. As such, the Union’s proposal should be rejected for failing to meet its heavy burden of proof in this regard (*Brief* at 22).

**C. Analysis and Award**

The Union’s final offer is awarded.

*All* of the relevant bench-mark comparables have a cap of *at least* 120 hours. All the FOP seeks is the minimum that the comparable have, and I agree. The Union’s offer falls right within the comparables, “basically mirrors them.” To its credit the Union has not gone for the high end, but the low end. The FOP advances the better case.

**A. Union’s Position: Wages**

**1. Comparability**

In 2009, the Police Officers ranked fourth out of sixth at steps Start Pay, After 1 Pay and After 4 Pay. The Police Officers were ranked third of sixth at After 7 Pay and second at After 10 Pay, After 19 Pay and Top Pay. They are first only at “After 14 pay.” The Police Officers compared to the comparable average as follows:

Years of Service	\$ Difference in Hourly Rate	% Difference in Hourly Rate
Start Pay	<b>-\$1.16</b>	<b>-5.54%</b>
After 1 Pay	<b>-\$0.71</b>	<b>-3.15%</b>
After 4 Pay	<b>-\$0.18</b>	<b>-0.78%</b>
After 7 Pay	\$0.48	1.97%
After 10 Pay	\$0.56	2.22%
After 14 Pay	\$0.80	3.09%
After 19 Pay	\$1.33	4.98%
Top Pay	\$1.03	3.85%

(Brief at 31). The Village proposes completely amending the pay scale. In 2010, the Village’s proposal applies a 3.02% increase to “After 1” pay and makes it “Start” Pay. The Employer then eliminates “After 1” pay and applies a \$1.04/hour increase between “Start” and “After 4” pay and between “After 4” pay and “After 7” Pay. The Village then applies a \$0.52/hour between “After 7” pay and “After 10” pay; between “After 10” pay and “After 14” pay and between “After 14” pay and “After 19” pay. In 2011, the Employer’s proposal applies a \$0.46/hour increase to all steps. The Village’s Proposal has the following effect on the Maryville Police Officers:

Years of Service	\$ Difference in Hourly Rate (2009)	\$ Difference in Hourly Rate (2011 ER Offer)	% Difference in Hourly Rate (2009)	% Difference in Hourly Rate (2011 ER Offer)
Start Pay	<b>-\$1.16</b>	\$0.22	<b>-5.54%</b>	0.93%
After 1 Pay	<b>-\$0.71</b>	<b>-\$0.92</b>	<b>-3.15%</b>	<b>-3.89%</b>
After 4 Pay	<b>-\$0.18</b>	<b>-\$0.41</b>	<b>-0.78%</b>	<b>-1.66%</b>
After 7 Pay	\$0.48	\$0.25	1.97%	0.99%
After 10 Pay	\$0.56	\$0.31	2.22%	1.20%
After 14 Pay	\$0.80	\$0.43	3.09%	1.59%
After 19 Pay	\$1.33	\$0.44	4.98%	1.60%
Top Pay	\$1.03	\$0.12	3.85%	0.45%

The FOP’s Proposal has the following effect on the Maryville Police Officers:

Years of Service	\$ Difference in Hourly Rate (2009)	\$ Difference in Hourly Rate (2011 FOP Offer)	% Difference in Hourly Rate (2009)	% Difference in Hourly Rate (2011 FOP Offer)
Start Pay	<b>-\$1.16</b>	<b>-\$1.21</b>	<b>-5.54%</b>	<b>-5.43%</b>
After 1 Pay	<b>-\$0.71</b>	<b>-\$0.69</b>	<b>-3.15%</b>	<b>-2.89%</b>

After 4 Pay	<b>-\$0.18</b>	<b>-\$0.12</b>	<b>-0.78%</b>	<b>-0.46%</b>
After 7 Pay	\$0.48	\$0.61	1.97%	2.34%
After 10 Pay	\$0.56	\$0.70	2.22%	2.64%
After 14 Pay	\$0.80	\$0.97	3.09%	3.57%
After 19 Pay	\$1.33	\$1.57	4.98%	5.52%
Top Pay	\$1.03	\$1.25	3.85%	4.41%

Based on the external comparables, the Police Officers will **lose** 0.74% to 3.40% to the comparable average under the Village’s Offer. Under the FOP’s Offer, the Police Officers will gain **only** 0.11% to 0.56% to the comparable average. That is only between \$0.02 and \$0.22 per hour (*Brief* at 33-34).

For the above reasons, the FOP maintains its wage offer is more reasonable and should be awarded.

## 2. Cost of Living

The FOP submits the appropriate measuring period for the impact of the cost of living is from the date of the last pay increase the bargaining unit enjoyed to the present (the current month). Additionally, an analysis of the CPI-U requires that the salaries from different years be converted into “constant” dollars. This means converting dollars to the same value – the same buying power. Dollars must be adjusted this way to determine the impact of inflation; only then can the underlying “real” gain be determined (*Brief* at 34).

FOP Exhibit 33 converts the employees’ salaries from May 1, 2009 (i.e. the date of the last salary increase) and from October 1, 2010 (the latest data available at the time of hearing) to those “constant” dollars. From May 2009 to October 2010, bargaining-unit employees lost 2.22% to the cost of living. Therefore, without regard to comparability, the bargaining unit employees need a total of 2.22 % in pay increases to restore the purchasing power they had on May 1, 2009. The FOP’s final offer over that time period (May 1, 2009 through April 30, 2011) is 2.75%. As of October 2010, that was only 0.53% above the cost of living (*Brief* at 35).

However, that raise includes November 2010 thru April 2011. Since October 2010 the cost of living has increased. From October 2010 thru January 2011, the cost of living as increased an additionally 0.69%. Overall the cost of living has now increased 2.89% from May 2009 through January 2011. The FOP’s offer for the first year is already 0.14% behind the cost of living.

According to the Union, the Village’s final offer is affected by the cost of living as follows:

Pay Scale	Effect of ER’s 5/1/10 Pay Raise	Cost of Living through January 2011	% Difference
Start	10.70%	2.89%	7.81%

After 1	3.02%	2.89%	0.13%
After 4	2.89%	2.89%	0.00%
After 7	2.77%	2.89%	<b>-0.12%</b>
After 10	2.71%	2.89%	<b>-0.18%</b>
After 14	2.18%	2.89%	<b>-0.71%</b>
After 19	0.15%	2.89%	<b>-2.74%</b>

Under the Village’s proposal some officers will experience significant losses relative to the cost of living. The effect of the Village’s offer does not provide the same raises to everyone after the cost of living. Senior officers will be far worse off that they were two years ago. Clearly, that is not appropriate, the Union argues.

### 3. Conclusion

The Village also proposes changing the longevity system. The effects of that change are significant loses to the comparable average and the cost of living. The FOP’s final offer continues the across-the-board raises negotiated in the last year of the current Collective Bargaining Agreement. It produces slight gains to the comparable average and is closer to the cost of living than the Village’s Final Offer.

Clearly, based upon comparability and the cost-of living, the FOP’s wage offer is more appropriate and should be awarded.

### B. Employer’s Position: Wage Increases

As outlined by the Administration (*Brief* at 6), the final offers of the parties side-by-side are as follows:

	<b>Base</b>	<b>After 1</b>	<b>After 4</b>	<b>After 7</b>	<b>After 10</b>	<b>After 14</b>	<b>After 19</b>
<b>5/1/2010</b>							
Union Offer	\$21.52	\$23.12	\$24.19	\$25.26	\$25.79	\$26.45	\$27.52
Village Offer	\$23.18	\$23.18	\$24.22	\$25.26	\$25.78	\$26.30	\$26.82
<b>5/1/2011</b>							
Union Offer	\$22.22	\$23.87	\$24.97	\$26.08	\$26.63	\$27.31	\$28.41
Village Offer	\$23.64	\$23.64	\$24.68	\$25.72	\$26.24	\$26.76	\$27.28

The Village asserts it arrived at its proposed 2010 base wage through a two-step process: (1) eliminating the current “base wage,” making the current “after 1” step the new base and (2) applying a three percent raise on that “after 1” figure (\$23.18). Thereafter, the Village maintains the current step increases of \$1.04 for the “after 4” and “after 7” steps. For the final three steps, the Village proposes increases of \$0.52, or half of the \$1.04 increases. For 2011, a 2% increase was applied to the base wage and the Village maintains the same step increases as 2010. This proposal balances the Village’s wage matrix, making the wages consistent and competitive throughout 20 years of service (*Brief* at 6).

There was extensive discussion during the hearing about the *status quo* of the bargaining unit’s longevity step increases (R. 60-67). The parties acknowledged that in previous discussions there was agreement as to a lack of a consistent system regarding wage increases that carried over from year to year. The Village and the Union have previously bargained only one agreement, in which the wage matrix was ambiguous as it pertains to defining a *status quo* governing subsequent agreements (*Brief* at 6).

None of the officers in the bargaining unit will reach the last two steps until 2014, well after the term of this agreement. Since the arbitration, the Village sergeants have been decertified from the Union, leaving Officers Kanzler and Spallar as the bargaining-unit officers with the most seniority (ten years of service)(*Brief* at 6; EX 15). The majority of the bargaining unit has less than four years of seniority.

Officer	Date of Hire	Years of Service	
		as of 5/1/2010	as of 5/1/2011
Kanzler	7/15/1999	10 years	11 years
Spallar	11/17/1999	10 years	11 years
Radosevich	12/3/2001	8 years	9 years
Turner	11/7/2003	6 years	7 years
Ponce	8/24/2006	3 years	4 years
Luna	3/8/2007	3 years	4 years
Hopke	7/30/2008	1 year	2 years
Missey	9/17/2008	1 year	2 years
Gessi	8/13/2009	8 months	1 year

1. External Comparables

A review of the external comparables supports the Village’s wage offer. The 2009 Comptroller Annual Financial Reports reveals that Maryville ranks fifth in amount of general revenue, \$2,452,225 less than the *average* of the comparables.

GENERAL REVENUE: 2009 ANNUAL FINANCIAL REPORTS		
Rank	Municipality	Total Revenues
1	Glen Carbon	\$14,866,341.00
2	Bethalto	\$8,760,111.00

3	Troy	\$8,181,037.00
4	Caseyville	\$6,588,346.00
<b>5</b>	<b>Maryville</b>	<b>\$6,463,573.00</b>
6	Pontoon Beach	\$6,183,157.00
	<i>Average</i>	<i>\$8,915,798.40</i>

Additionally, Maryville ranks below Glen Carbon, Bethalto, and Troy in total payroll, \$227,517.40 less than the *average* of the comparables.

<b>TOTAL PAYROLL: 2009 ANNUAL FINANCIAL REPORTS</b>		
<b>Rank</b>	<b>Municipality</b>	<b>Total Payroll</b>
1	Glen Carbon	\$3,603,476.00
2	Bethalto	\$3,248,555.00
3	Troy	\$2,713,769.00
<b>4</b>	<b>Maryville</b>	<b>\$2,366,170.00</b>
5	Caseyville	\$1,947,536.00
6	Pontoon Beach	\$1,455,101.00
	<i>Average</i>	<i>\$2,593,687.40</i>

It should further be noted that the Village has the lowest crime rate of all of the external comparables, meaning that Village police officers respond to fewer calls and process less paperwork (*Brief* at 8).

The Village’s wage proposal is consistently in line with the comparables over the course of an officer’s career. More importantly, the Village’s offer increases the base wage significantly more than the Union’s offer, reflecting the community’s strong interest in attracting new and well qualified officers in the future. Concerning the step increases, the Village set forth evidence that the external comparables do not, as a rule, follow a step-increase wage system (*Brief* at 8).

2. Internal Comparables

Management asserts that its offer of a 3% wage increase for 2010 is higher than the wage increases received by any other union or non-union Village employees. The public works employees received a 2% increase in 2010. The firefighters received 2.5% in 2010. It should be noted that neither of these unions are governed by a wage matrix. In both instances, the wage matrix was phased out prior to negotiating the initial agreements. Other Village employees are not subject to step increases. In addition to the two internal union comparables, the nonunion administrative employees also received a 2% increase in 2010. Wage increases for 2011 had not been determined for Village employees at the time of the hearing (*Brief* at 9).

3. Consumer Price Index and Unemployment Rate

The CPI-U supports a finding that the Village’s wage offer is the more reasonable proposal. The CPI standard is used to see how the “particular bargaining unit employees fare in terms of their specific buying power.” *City of Belleville & FOP, S-MA-08-157* (Goldstein, 2010) at 43.

#### 4. Ability to Pay and Other Financial Factors

General interest and welfare of the public is a factor which must be considered. Arbitrator Goldstein noted that this factor supports consideration of “the import of overall economic considerations” and further reasoned, “The City has an interest in obtaining the most benefit to the public it can out of each and every taxpayer dollar it spends.” *City of Belleville, supra* at 45.

As discussed, the Village is facing decreasing revenues and increasing costs. As a result, the Village has enacted a series of efficiencies—consolidating job functions and cutting administrative costs. In addition to the positions eliminated and/or left unfilled, the Village was forced in October, 2010, to eliminate four full-time dispatchers and contracted with the Village of Glen Carbon to provide those services. A significant portion of the Union’s argument that the Village can afford its wage proposal is premised upon a mistake (“The general fund is fully liquid. There are no current liabilities...and there haven’t been for five years”)(R. 55). The Union cites to an increase in the general fund revenue over the last five years; however, much of this increase in the general fund is attributed to the receipt of grants restricted for a particular purpose, including a \$1.3 million Governor’s Initiative grant through the Department of Commerce and Economic Opportunity (DCEO)(R. 107).

Contrary to the Union’s argument that the general fund has increased, when restricted funds – funds that cannot be used to pay police salaries – are excluded, Village revenues have actually gone down from 2009 to 2010. The replacement tax is down. The Village is receiving less money from the State and receiving it much later. In 2009, the Village received \$576,682 in state income tax, but in 2010, that figure was down to \$470,408. Further, not only are anticipated State receipts lower, the State is running five to six months behind in its payments (*Brief* at 11).

The Village’s wage offer of a 3% increase for 2010 and a 2% increase for 2011 is more reasonable than the Union’s final offer given the current state of the economy and the Village’s financial affairs (*Brief* at 13). A burdensome increase in police officer wages will come at the expense of continued Village development. The Village’s wage offer is a reasonable increase that reflects the stagnant growth in the economy. Arbitrator Peter Myers reflected on the weight that should be given to the current financial difficulties as follows:

The economic situation that now faces all employers, public and private, is one factor that “normally or traditionally” should be taken into account when considering wages, hours, and conditions of employment, pursuant to Section 14(h)(8) of the Act. The financial difficulties facing the Village as a result of the ongoing economic downturn therefore must be given appropriate weight and consideration here. *Village of Western Springs and Metropolitan Alliance of Police, Western Springs Police Chapter #456, S-MA-09-019* (Myers, 7/30/2010)(*Brief* at 13).

Arbitrator Benn devoted much of his opinion in *State of Illinois and International Brotherhood of Teamsters, Local 726, S-MA-08-262* (1/27/2009, Benn) to an analysis of the “economic free-fall” which occurred in 2007, mentioning, in part, the sharp drop in the stock market, the freezing of credit markets and the worst unemployment rates in Illinois since June,

1993. Reflecting on the State's sluggish tax revenue, the Union in this case recognized the continued stagnation of the economy, stating 1 "That's going to happen where you have an economy that has, basically, fallen flat and **is not regaining.**" (*Brief* at 13; R. 52)(emphasis added).

Recently, many other arbitrators have entered awards which are far less favorable than the Village's wage offer. See *City of Belleville and Illinois FOP Labor Council*, S-MA-08-157 (8/26/2010, Goldstein)(wage freeze awarded for 2009); *City of Rockford and Policemen's Benevolent Labor Committee, #6*, S-MA-09-125 (5/13/2010, Yaffe)(wage freeze for 2009, 2% in 2010, 2% in 2011); *Village of South Elgin and Metropolitan Alliance of Police, Chapter 204*, S-MA-09-204 (11/1/2010, McAplin)(1.75% in 2009, 1.75% in 2010)(*Brief* at 13-14).

#### 5. Economic Considerations and Impact of Recession

The Village presented extensive evidence regarding the impact of the recession on the finances of the Village. Village revenues have dropped from 2009 to 2010. The problems associated with decreasing revenue are further exacerbated by the State of Illinois's implementation of "slow pay" policies whereby the State withholds funds, such as state income tax, for longer periods of time. The Village notes that Jolene Henry, treasurer and assistant to the mayor, testified that the State has been consistently five (5) to six (6) months behind on payments. The last State payment was received by the Village in September for May payments.

To worsen the circumstances, the Village has experienced increased costs over the same period. Ms. Henry testified that for the past few years, the Village has been on the Illinois Municipality League Risk Management Association's watch list for the high number of claims it has processed. As a result, the Village's annual contribution has increased substantially in the last few years, increasing 32.3% in the past year, from \$220,919 in 2010 to \$279,092 in 2011. The Village's health insurance costs have also increased. In 2008, the Village incurred a total cost for health insurance of \$186,237 (EX 6). In 2009, Village health insurance increased to \$245,976. In 2010, the costs ballooned to \$309,128.87.

Over the last two years, in response to the financial exigencies, the Village enacted a series of efficiencies to keep pace, the Administration points out. Mayor Larry Gullidge testified to the Village's efforts, including consolidating positions and cutting costs. The Mayor cited specific examples of efficiency measures taken by the Village, including the consolidation of the Village clerk and treasurer duties. The Village eliminated the public service officer position and reassigned the employee filling that position to another vacant position. A police officer position has been left vacant since 2009, after Officer Turner was hurt on the job. Two public works laborer positions have been left vacant since building and construction slowed down in the Village. Additionally, the Village has cut costs by consolidating dispatching and telecommunication functions with the Village of Glen Carbon, which resulted in the elimination of four full time dispatcher positions.

#### C. Analysis and Award

Section 14(g) requires that, "as to each economic issue, the [Arbitrator] shall adopt the last offer of settlement which, in the opinion of the [Arbitrator], more nearly complies with the applicable factors prescribed in subsection (h)." Traditionally, argues the Union, comparability,

the fourth factor, is the most important factor to arbitrators. The employer’s “ability to pay” the wages and benefits requested, the third factor, and the “cost of living,” the fifth factor are the other factors of primary significance, in the FOP’s view. This contention has face validity and some “curb appeal.”

As noted, the Union has advanced an across-the-board increase while the Administration’s offer is a “mix and match,” with a step being eliminated (EX 16; R. 23-24). Of some import, but certainly not dispositive in this case, the across-the-board method is currently the *status quo* method of payment (R. 47).

Currently, the Village’s wages rank low on the first steps and high on the last steps. The Village’s current base wage, “after 1” wage, and “after 4” wage ranks fourth. The Village’s current “after 7” wage ranks third. The Village’s current “after 10” wage ranks second. The Village’s current “after 14” wage is first. The Village’s current “after 19” wage ranks second. The Village’s current top pay ranks second.

What vectors the decision in favor of the FOP is the following data indicating the relative losses the FOP will experience under the Employer’s offer:

Years of Service	\$ Loss to the Average	% Loss to the Average
Start Pay	\$1.38	6.47%
After 1 Pay	<b>-\$0.21</b>	<b>-0.74%</b>
After 4 Pay	<b>-\$0.23</b>	<b>-0.88%</b>
After 7 Pay	<b>-\$0.23</b>	<b>-0.98%</b>
After 10 Pay	<b>-\$0.25</b>	<b>-1.02%</b>
After 14 Pay	<b>-\$0.37</b>	<b>-1.50%</b>
After 19 Pay	<b>-\$0.89</b>	<b>-3.38%</b>
Top Pay	<b>-\$0.91</b>	<b>-3.40%</b>

Additionally, the Police Officers will drop one position relative to the comparables in their ranking at the After 7, After 10 and Top Pay step. The unit will lose two positions at the After 14 Pay Step. Thus, under the Administration’s final offer the employee gains in the rank of Start Pay, but loses in the rank at top pay and loses in the comparable average significantly.

Under the FOP’s final wage offer, the Police Officers experience slight gains, specifically:

Years of Service	\$ Loss to the Average	% Loss to the Average
Start Pay	<b>-\$0.05</b>	0.11%
After 1 Pay	\$0.02	0.26%
After 4 Pay	\$0.06	0.32%

After 7 Pay	\$0.13	0.37%
After 10 Pay	\$0.14	0.42%
After 14 Pay	\$0.17	0.48%
After 19 Pay	\$0.14	0.54%
Top Pay	\$0.22	0.56%

The Police Officers will not lose any position relative to the bench-mark jurisdictions in their rankings and would only gain one position at After 7 Pay (where the unit will go from third to second). I see nothing in this record that would otherwise justify an overall loss relative to the bench-mark comparables, which will happen under the Administration's final wage offer.<sup>5</sup>

I also find that cost-of-living data (as submitted by the Union) favors the FOP's offer. As noted by the Union, the FOP's offer is currently only slightly behind the cost of living. At the time of hearing it was only slightly ahead (2.2%, adjusted for constant dollars). Based upon the cost-of-living criterion the FOP's final offer is more reasonable than the Employer's wage offer (*Brief* at 36).

What of the Employer's economic argument? Initially, it should be pointed out that there is only a one percent difference in wage offers over two contract years, with the Village offering 3% and 2% (with a change to the existing matrix by eliminating an early step), and the FOP countering with an across-the-board increase of 2.75% and 3.25%. This FOP's allocation is certainly within the range of reasonableness and, more important, the bench-mark comparables. Indeed, an award of either proposal could be rationalized. The Village has already enacted a series of measures designed to make it more efficient including the elimination of positions in public works and leaving vacant a police officer position. Also, costs have been cut by consolidating telecommunications with another jurisdiction, resulting in the elimination of four full-time dispatcher positions. I do not conclude that the wage increase awarded, six percent over two years – or an additional one percent over two years relative to the Administration's five percent wage offer – is a "burdensome increase given the state of the economy and the Village's financial affairs." (*Brief* at 13).

Further, and for the record, I note that the Village's ending fund balance, as of April 30, 2010, was over 2.5 million, an increase of approximately 1.8 million from May 1, 2005 (*Brief for the Union* at 38; UX 39, 44, 45). As pointed out by the FOP, in 2010 revenues exceeded expenditures by \$431, 236 (UX 44). To its credit, the Administration has almost always taken in more than it has spent. Moreover, the equalized assessed valuation of the Village has increased almost 200% since 2000, while the tax rate increase is at a modest 0.85% (*Brief* at 38; UX 46). As of April 30, 2010, the Village's General Fund had about 2.5 millions in cash and investments, with no current liabilities. *Id.* The Police fund is in the black, with revenue for that fund increasing 43%. (*Brief* at 39). The Village of Maryville is not the City of Danville (where I awarded a wage increase less than the comparables would otherwise warrant due, in part, to the economic situation at Danville). Union counsel summed up the situation as follows: "But the

<sup>5</sup> One aspect of the award that actually favors the FOP's offer is the absence of any police officers that will hit the after 14 or after 19 steps during the life of the collective bargaining agreement. "So these are, essentially, numbers on the paper, but no will hit these pay levels any time soon." (R. 71).

point of all this is that the general fund is not hurting. The police department fund is not hurting. There is no inability to pay our Union the comparable wages that the Union is offering can be paid.” (R. 57).

Having said this, no Arbitrator should award a wage increase simply because the employer can afford it. Indeed, the statute mandates consideration of numerous factors, including the employer’s ability to pay. I do not view the Village of Maryville as being in some kind of “economic free-fall,” to borrow a term from Arbitrator Benn in *State of Illinois & IBT 726*, S-MA-08-262 (2009)(referring to the economic situation in 2007 regarding the stock market, freezing of credit markets and high unemployment rates)(see, *Brief for the Employer* at 13). Rather, the focus at Maryville has, as outlined by the Mayor, has been this: “So rather than layoffs, we’ve tried to – with the exception of the consolidation, we’ve tried to do it through attrition and just good planning.” (R. 77).

How significant is internal comparability as a criterion in interest proceedings? In *Elk Grove Village & Metropolitan Alliance of Police (MAP)*(Goldstein, 1996), Chicago Arbitrator Elliott Goldstein noted that “the factor of internal comparability alone required selection of the Village’s insurance proposal.” Arbitrator Goldstein stressed that arbitrators have “uniformly recognized the need for uniformity in the administration of health insurance benefits.” Similarly, in *Will County, Will County Sheriff & AFSCME Council 31* (Fleischli, 1996)(unpublished), Wisconsin Arbitrator George Fleischli observed that when an employer has established and maintained a consistent practice with regard to certain fringe benefits, such as health insurance, it “takes very compelling evidence” in the form of external comparisons to justify a deviation from that past practice.

While recognizing that comparisons are sometimes fraught with problems, and that one should not use comparisons as the single determinant in a dispute (the statute precludes this result), the late Arbitrator Carlton Snow nevertheless noted the value of relevant comparisons in *City of Harvey v. Firefighters, Local 601*, 76 LA (BNA) 789 (1979), when he stated:

Comparisons with both other employees and other cities provide a dominant method for resolving wage disputes throughout the nation. As one writer observed, “the most powerful influence linking together separate wage bargains into an interdependent system is the force of equitable comparison.” As Velben stated, “The aim of the individual is to obtain parity with those with whom he is accustomed to class himself.” **Arbitrators have long used comparisons as a way of giving wage determinations some sense of rationality. Comparisons can provide a precision and objectivity that highlight the reasonableness or lack of it in a party’s wage proposal.** *Id.* at 791 (citations omitted; emphasis mine).

With respect to the Administration’s internal comparability argument (*Brief* at 9), I concede that the FOP final offer is higher than the internal offers. The firefighters received 2.5% in 2010, while public works employees received a 2% increase in 2010. *Id.* Both of these contracts, which apparently do not have a wage matrix, will expire in 2010 (R. 87). Non-union administrative employees received a 2.0% increase in 2010. At the time of the hearing wage increases for 2011 had not been determined.

The Employer had not advanced a strict internal comparability argument, which is understandable. Its five percent wage offer over two years exceeds the internal comparables.

More importantly, it is difficult if not impossible to get a handle on the true comparable matrix without knowing the situation regarding other benefits. Firefighters, for example, may have less in salary and more in Kelly days and other benefits. A salary-only comparison would give an inaccurate picture.

\* \* \* \*

For the above reasons the following award is entered for the items at impasse in this proceeding:

VI. AWARD

- A. Discipline and Discharge: Arbitrator's Language Awarded
- B. Hiring Agreements: Employer's Final Offer Awarded
- C. Detective's Uniform Allowance: Union's Final Offer Awarded
- D. Compensatory Time Accrual: Union's Final Offer Awarded
- E. Wages: Union's Final Offer Awarded

Dated this 7<sup>th</sup> day of March, 2011  
at DeKalb, Illinois 60115

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Marvin Hill, Jr.  
Arbitrator