

AWARD OF INTEREST ARBITRATOR

In the Matter of Interest
Arbitration

Between

Village of North Aurora

and the

Metropolitan Alliance of Police
Chapter 633

Opinion and Analysis,
Findings of Fact,
and Award
by
Arbitrator
Peter Feuille
in
ILRB No. S-MA-11-389,
FMCS No. 11-51201-A

Date of Award: November 16, 2011

APPEARANCES

For the Village:

Mr. John H. Kelly, Ottosen Britz Kelly Cooper
Gilbert & DiNolfo, Ltd., Attorney
Mr. Wes Korowske, Village Administrator
Mr. Bill Hannah, Village Finance Director
Mr. Dave Summer, Village Police Chief
Mr. Joe Sheahan, Law Clerk

For the Union:

Mr. Ronald N. Cicinelli, Law Office of Ronald N. Cicinelli,
Attorney
Ms. Angela J. Stevenson, Legal Assistant
P.O. Mark Shillair, Union President
P.O. Doug Kitner, Patrol Officer
P.O. Mark Swoboda, Patrol Officer

INTRODUCTION AND BACKGROUND

The Village of North Aurora, IL ("Village") and the Metropolitan Alliance of Police Chapter 633 ("Union," "MAP") negotiated to generate a successor collective bargaining agreement ("CBA") to succeed the 2006-2009 CBA that expired on May 31, 2009 (Union Exhibit 7 ("UX 7")). The Illinois Council of Police ("ICOPS") represented the instant bargaining unit during those

2006-2009 contract years and was the labor organization that negotiated this first collective bargaining agreement ("CBA") with the Village to cover this unit (UX 7). During 2010 it became apparent that unit members wanted to be represented by a different labor organization (Tr. 21), and the Union was certified as the exclusive bargaining representative for this unit in June 2010 (UX 1).

During the subsequent Village-MAP negotiations, which included mediation, the parties reached agreement on most issues but were not able to reach agreement on all issues. Accordingly, the Union invoked the interest arbitration procedure specified in Section 14 of the Illinois Public Labor Relations Act ("Section 14," "Act"). The parties selected the undersigned as Arbitrator, waived the tripartite arbitration panel format and agreed that I would serve as the sole Arbitrator, and in June 2011 the Illinois Labor Relations Board ("Board") appointed me as the interest arbitrator in this matter.

Additionally, the parties waived the Act's requirement in Section 14(d) that the hearing in this matter must commence within 15 days of the Arbitrator's appointment, and the parties agreed to waive/extend Section 14(d)'s hearing and other timelines to accommodate the scheduling needs of the participants in this matter. I am most grateful for the parties' willingness to waive/modify the timelines contained in Section 14.

By mutual agreement, prior to the hearing the parties agreed on the three impasse issues (listed below). Also by mutual agreement, the parties held an arbitration hearing on June 28, 2011

in North Aurora, IL. This June 28 hearing was stenographically recorded and a transcript produced. The parties waived oral closing arguments at the hearing and instead submitted post-hearing briefs. With the Arbitrator's final receipt of these briefs and other post-hearing materials on September 9, 2011 the record in this matter was closed.¹

The record shows that the parties are at impasse over, and have submitted last offers of settlement on, three issues. They are:

1. Overtime Compensation and Compensatory Time (Section 9.5)
2. Sick Leave (Section 10.3)
3. Wages (Section 13.1)

The parties agree that all three of these issues are "economic issues" within the meaning of Section 14(g) of the Act, which means that I must adopt "the last offer of settlement" on each issue that more nearly complies with arbitral decision criteria to be discussed below. For expository convenience, "last offer of settlement" also will be referred to as "final offer." The parties additionally agree that any wage increases provided via this Award

1. The record was briefly reopened on November 8, 2011 for the limited purpose of entering into the record the current CBAs covering the other two bargaining units of represented Village employees: (a) the Village - Illinois Fraternal Order of Police Labor Council CBA covering the police sergeants bargaining unit (Village Exhibit H ("VX H")), and (b) the Village - International Union of Operating Engineers, Local 150 CBA covering public works employees (VX I), with both contracts in effect during the June 1, 2009 through May 31, 2012 period. With the Arbitrator's receipt of these two CBAs, the record in this matter was closed. Entering these two contracts in the record does not change the "conclusion of the hearing" date, which continues to be September 9, 2011.

will be fully retroactive to the pertinent dates specified in their wage proposals.

STATUTORY DECISION CRITERIA

Section 14(g) of the Act mandates that interest arbitrators "shall adopt the last offer of settlement [on each economic issue] which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." As this "last offer of settlement" terminology suggests, on each of these three issues I must select one or the other party's final offer without alteration.

Section 14(h) of the Act requires that an interest arbitrator base his or her decision upon the following Section 14(h) criteria or "factors," as applicable. These factors, in their entirety, are:

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

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

The Act does not require that all of these factors or criteria be applied to each unresolved item; instead, only those that are "applicable." In addition, the Act does not attach weights to these decision factors, and therefore it is the Arbitrator's responsibility to decide how each of these criteria should be weighed. We will use the applicable criteria to make decisions on the issues presented in this proceeding.

As will be seen below, neither party presented any evidence under factors (1), (2), (6), (7), and (8). As a result, those factors will not be considered further.

ANALYSIS, OPINION, AND FINDINGS OF FACT

The Parties

Village. The Village of North Aurora is a general purpose municipal government that provides, among other services, law enforcement and public safety services via its Police Department ("Department"). Its 2010 population was 16,760 (VX A), and it is a far western suburb of Chicago located in the Fox River valley in Kane County.

Union. As of the date of the hearing in this matter, the bargaining unit included 21 full-time sworn police officers who are

exclusively represented by the Metropolitan Alliance of Police Chapter 633 for collective bargaining.

Other represented Village employees. There are five police sergeants in the Department, and they are in a separate bargaining unit represented by the Illinois Fraternal Order of Police Labor Council (the "FOP Labor Council"). The Village and the Labor Council recently negotiated their first CBA, and it covers the same 2009-2012 period at issue in this proceeding (VX H).

The City's public works employees are represented for collective bargaining purposes by Local 150 of the International Union of Operating Engineers ("Local 150"). These unit members are covered by a 2009-2012 CBA between the Village and Local 150, and this contract also covers the same period at issue in this proceeding (VX I).

Comparables. The Village and the Union agree on five comparable communities: Lemont, Montgomery, Shorewood, South Elgin, and Yorkville (VX A; UXs 19, 14C-19C, 20-26). In addition, the Village has used Sugar Grove as a comparable, which the Union has rejected. Similarly, the Union has used Lockport as a comparable, which the Village has rejected. As noted above, the Village's 2010 population is 16,760. I note that the five shared comparables have populations ranging from 15,615 in Shorewood to 21,895 in South Elgin (VX A). I also note that Sugar Grove, with an 8,997 headcount (VX A), and Lockport, with a 24,059 population (UX 26), are the municipalities most dissimilar in size to the Village and the shared comparables.

Nevertheless, the evidence indicates that all seven of these other municipalities are “comparable communities” within the meaning of Section 14(h) of the Act (UXs 14C, 15C, 16C, 17C, 18C, 19C; VX A). As a result, I will use information from all of these communities, as applicable, in the analysis below.

The Issues

As noted above, the parties mutually agreed upon most of the issues at the negotiation table (UX 6), leaving only three issues to be arbitrated. Also as noted above, the parties have mutually agreed upon the June 1, 2009 through May 31, 2012 duration of their next contract, and their agreement on contract duration is most welcome.

1. Overtime Compensation and Compensatory Time (Section 9.5)

Current. Article IX is titled “Employment Practices & Procedures” (UX 7). Section 9.5 in Article IX currently addresses several specific topics under “overtime compensation and compensatory time.” In the interest of brevity, we will examine only the parts of Section 9.5 that one or both parties propose to change. Moreover, we should note that in the parties’ next contract Section 9.5 will become Section 9.6 because the parties tentatively agreed on adding a new section in Article IX prior to Section 9.5, which requires that the Article IX sections following this new section be renumbered (Tr. 24-27). This will be done in the parties’ next contract, and in this proceeding and Award we

will refer to the instant section by the number it had in the expired contract - Section 9.5 (UX 7).

Union Proposal. The Union proposes two changes in Section 9.5. In this section's second paragraph, which begins with "Overtime is defined as . . . ," the Union proposes to delete the phrase "but excluding sick time and workers compensation time" from the lengthy first sentence in that section.

In addition, the Union also proposes that a new fourth paragraph will be added to this section that reads as follows: "For purposes of calculating paid leave and overtime, all compensated hours shall be considered hours worked. No officer shall be denied overtime in the event that he utilizes his paid leave time (i.e. sick time)" (UX 26, p. 5).

The Union supports its proposal primarily with evidence from the police contracts in its comparable communities. In particular, the Union notes that in Lemont, Lockport, Montgomery, Shorewood, and Yorkville the police CBAs include provisions that say, in one way or another, that all "hours worked" include hours actually worked plus paid time off (UXs 20, 21, 22, 23, 25, 26), and the Union notes that South Elgin's contract is silent on the issue (UX 24).

In addition, the Union says there is strong internal comparability evidence in support of its proposal. The Union notes that the police sergeants have language in their new CBA that provides, in that contract's Section 9.5, that "Hours actually worked" includes "paid compensatory time off, paid vacation leave, paid assigned holidays, paid jury service and paid time for serving

as a witness and sick leave" when calculating the amount of overtime (VX H). Further, the Union points out that Section 4, subsection E of the Village's Personnel and Policy Manual provides that "Compensation for certain Police Department employees shall be paid as follows:" and then includes the following sentence: "Sick leave, jury duty, holidays and vacation leave shall be considered as hours worked" (UX 16). The Union says this is exactly what the unit of sworn police officers seek in their contract.

The Union says this body of external and internal comparability evidence provides strong support for the selection of its offer on this issue.

Village proposal. The Village proposes status quo - that Section 9.5 continue unchanged into the new contract.

The Village characterizes this Union proposal as a "breakthrough" proposal in that it seeks to depart from existing language (Village Brief, page 3 ("V.Br. 3")). In turn, this means that the Union bears the burden of showing that this change is necessary. The Village emphasizes that all the Union has done is show that police contracts in some of the comparable communities recognize sick leave as time worked for overtime purposes.

The Village notes that two of its comparable communities - South Elgin and Sugar Grove - do not specify that sick leave will be considered as time worked for overtime calculation purposes.

More important, the Village argues that the adoption of the Union's proposal will result in additional financial cost to the Village. If the Union's proposed change is adopted, the use of sick leave will be included in the calculation of overtime during

those 40-hour periods in which sick leave is used. The Village and ICOPS adopted the existing language in UX 7 in order to control the abuse of sick leave.

The Village argues that its status quo proposal is the most reasonable and should be adopted.

Analysis. The record does not support the "breakthrough" label that the Village has hung on this Union proposal. The Union does not seek a new benefit here. Instead, its proposal addresses a provision already in the contract - how overtime is calculated - and seeks an incremental change in that provision. The overtime calculation language in the expired contract provides that several types of paid time off shall be included as "hours worked" in this calculation - compensatory time, vacation leave, holidays, jury service, and so on. The Union's proposal seeks to add sick time to this already existing list of paid time that is not actually worked. As a result, I find that the Union's proposal is not in the "breakthrough" category.

The evidence submitted by the parties on this impasse item means that the final offer selection decision will be determined with the external and internal comparability evidence in the record pursuant to Section 14(h)(4). When we analyze all of the comparable communities in the record, both shared and contested, we see that five of seven communities provide for the overtime calculation method proposed by the Union - Lemont, Lockport, Montgomery, Shorewood, and Yorkville (UXs 20-23, 25, 26).

Turning to the internal comparability evidence, the Village agreed with the FOP Labor Council in the police sergeants' contract

to language providing that "Overtime is defined as 'all hours actually worked' . . ." in excess of eight hours in one day or 40 hours in one week, and then specifies that "'Hours actually worked' shall include paid compensatory time off, paid vacation leave, paid assigned holidays, paid jury service and paid time for serving as a witness and sick leave" (VX H, emphasis added).

In other words, the combined comparability evidence provides very strong support for the Union's proposal and very little support for the Village's offer.

The Village argues that the Union's proposal will cost the Village more money when overtime is calculated. When overtime is calculated during weeks when sick leave is used, the Village is correct. However, the Village provided no information of any kind about how much of a cost increase the Union's proposal will generate. Without a specific or even approximate cost increase amount, it is extremely difficult to give any significant weight to this Village assertion.

The Village also argued that the status quo language was adopted in the Village-ICOPS contract to help prevent the abuse of sick leave (UX 7; V.Br. 3-4). However, the Village presented no evidence about any abuse of sick leave. As a result, this argument provides no support for the Village's offer.

Finding. For the reasons expressed in this section, I find that the Union's final offer "more nearly complies with the applicable factors prescribed in subsection (h)." Accordingly, I select the Union's final offer to resolve this issue.

2. Sick Leave (Section 10.3)

Current. Article X is titled "Holidays and Leaves" (UX 7). Section 10.3 is devoted to "Sick Leave." As with the overtime issue, we will focus only on the provisions in Section 10.3 that one or both parties proposes to change.

Union Proposal. The Union proposes several specific changes in Section 10.3, as follows:

- In the first paragraph in this section, the expired contract provided police officers with one sick leave day per month, or 12 per year, which could be accumulated to a maximum of 60 sick days. The Union proposes to increase the maximum accumulation to 120 sick days.
- Also in the first paragraph, the expired contract provided a limit of three days of sick leave per calendar year that could be used for scheduling medical or dental appointments "and for the injury or illness of an immediate family member that requires the presence of the employee." The Union proposes to delete the immediate family member language from that sentence and replace it with the following: "A minimum of three (3) days of sick leave (FMEL) per calendar year may be granted to care for an immediate family member who is sick, injured, or otherwise incapacitated, that requires the presence of the employee. Additional sick leave (FMEL) may be granted to care for an immediate family member upon approval from the Chief of Police."
- The fifth paragraph is a two-sentence paragraph. The first sentence specifies that an officer using three or more consecutive sick leave days may be required to present verification of illness from a medical doctor or medical facility. The second sentence reads "The Chief of Police may require a physician's statement as a condition of sick leave pay for any absence of any duration." The Union proposes to delete this second sentence in its entirety.

The Union supports its proposal to increase the sick days accumulation limit with external and internal comparability evidence. Looking first at the external evidence, the Union says that police contracts in several comparison cities provide for higher or much higher sick days accumulation limits: Lemont (can

accumulate up to 2,080 hours, which is 260 days; UX 20), Lockport (up to 180 days; UX 21), Montgomery (320 hours, or 40 days; UX 22), Shorewood (960 hours, or 120 days; UX 23), South Elgin (60 days; UX 24), and Yorkville (960 hours, or 120 days; UX 25). In other words, four of the Union's six comparables provide higher or much higher sick leave accumulations than does the Village.

In addition to this highly supportive external comparability evidence, the Union points to the internal example of unit member Officer Mark Swoboda. Swoboda testified that, a few years ago, he experienced an off-duty broken finger injury that necessitated surgery (Tr. 52-53). He missed a total of 50 work days, and he did not have enough accumulated sick leave days to cover this lengthy period of time off (Tr. 52). Officer Swoboda testified that other officers donated some of their sick leave for his use, and with their generosity he was able to receive paid sick leave for his entire absence (Tr. 52). The Union says this particular experience of a unit member falling short of having accumulated enough sick leave to cover a long-term medical absence is another reason to raise the sick leave maximum accumulation to 120 days.

Moving on, the Union relies upon external comparability evidence to support its proposal to remove the three-day cap on the use of sick leave for immediate family members. Specifically, the Union says that the Lemont contract has no limit on the amount of sick time that can be used for the care of the officer's immediate family (UX 20); the Lockport contract says that accrued sick leave "may also be used for not more than thirty (30) days in one (1) calendar year in the event of serious illness, disability, or

injury of a member of the employee's immediate family" (UX 21); the Montgomery contract places no limit on the amount of sick leave that can be used to care for members of the officer's immediate family (UX 22); the Shorewood contract provides that sick leave "shall be available for the illness of the employee or the illness of the employee's spouse or minor child residing with the employee" (UX 23); South Elgin's contract specifies that sick leave may be used for "serious illness of injury of the employee's spouse, children, and/or step-children residing with the employee" (UX 24); and the Yorkville police contract says nothing about sick leave being used for family members (UX 25). The Union emphasizes that the vast majority of the comparables either (a) place no limit on the amount of sick leave per year that can be used to care for ill or injured members of the officer's immediate family, or (b) else place a much higher limit (e.g., 30 days) than the three-day limit imposed by the Village.

The Union seeks to replace the existing three-day cap on the use of sick leave for family members with the following provision: "A minimum of three (3) days of sick leave (FMEL) per calendar year may be granted to care for an immediate family member who is sick, injured, or otherwise incapacitated, that requires the presence of the employee. Additional sick leave (FMEL) may be granted to care for an immediate family member upon approval from the Chief of Police" (UX 26, pp. 5-6). The Union says that its proposed language is the actual current practice in this unit, and the Union seeks to have this existing practice delineated in the contract (UX

26, p. 6). The Union also points out that its proposed new language "is identical to the Village policy manual" (Tr. 34).

Turning to verification of the need for sick leave, the Union relies on comparability evidence to support its proposal to delete the sentence granting the Chief of Police the right to require a physician's statement as a condition of obtaining sick leave pay for an absence of any duration. The Union points out that in the sick leave sections in the police CBAs in most of its comparable communities, including the contracts in Lemont (UX 20), Montgomery (UX 22), Shorewood (UX 23), South Elgin (UX 24), and Yorkville (UX 25), specify that a doctor's verification "may" or "will" be required for absences of three or more consecutive sick days. Only the Lockport police contract specifies that the "Chief of Police may require evidence to substantiate" the use of sick leave (UX 21). The Union says this evidence shows that "five of the six communities used by the Union for its comparables demonstrate that a physician's note is not needed until at least three consecutive days have been used for sick leave" (UX 26, p. 12).

The Union also argues that requiring a doctor's verification for any absence can result in officers being required to visit the doctor's office and obtain verification for even a one-day absence. The Union argues that this can be an overly burdensome and costly requirement when an officer has a minor, short-term illness (e.g., the flu).

For these reasons, the Union says that its sick leave proposal should be selected.

Village Proposal. The Village proposes status quo - that Section 10.3 continue unchanged into the new contract.

The Village emphasizes that the main reason the Union seeks to change Section 10.3 is the Officer Swoboda situation. This officer suffered an off-duty injury which required him to miss 50 work days, he did not have 50 sick leave days accumulated, and he needed donations of sick leave from other officers in order to avoid having to go without pay (Tr. 52). Officer Swoboda, on cross examination, testified that he had been a Village police officer for five years, and that if he had not used any sick leave prior to his injury he would have had 60 days of accumulated sick leave (Tr. 54). In addition, there are statutory disability benefits that Officer Swoboda could have used if he used up all of his paid sick time, but he did not pursue such benefits (Tr. 54). The Swoboda injury is the only incident that the Union cited to support the alleged need to increase the maximum sick leave accrual.

Turning to the external comparables, the Village says an examination of its six comparable communities indicates that three of them - Montgomery, South Elgin, and Sugar Grove - maximize sick leave accrual at 60 or fewer days (UX 26; VX G). As a result, half of the Village's comparable communities have the same or a lower sick leave accrual maximum that the Village has.

The Village also points out that internal comparability is highly relevant here. The Village notes that the non-represented employees have a 30-day sick leave accumulation limit as specified in the Village Personnel Policy Manual (UX 16, Section 2). In addition, the public works employees covered by the Village-Local

150 CBA also have a 30-day sick leave accumulation limit (VX I). Further, the police sergeants covered by the Village-FOP Labor Council CBA have the same 60-day accumulation limit that the police officers have (VX H; UX 7). The Village emphasizes that the Union has advanced no reason why the unit members it represents need to have a sick leave accumulation limit that is two to four times higher than the limits applying to other Village employees.

The Union also proposes to remove the three-day cap on the use of sick leave to take care of ill or injured immediate family members that require the presence of the employee. The Village notes that the only evidence the Union presented to support the need for this proposed change was testimony by the Union President, Officer Mark Shillair, that in a prior year he used all three days of sick leave allowed for the illness or injury of immediate family members (Tr. 37).

Turning to the provision that allows the Chief of Police, at his discretion, to request a physician's statement to document the use of sick leave, the Union proposes to eliminate that provision in its entirety. President Shillair testified that the Village's prior Chief of Police had requested doctor's statements in situations when sick leave was used in connection with days off or vacations (Tr. 38). However, the Village notes that Shillair made no claim that the prior Chief in any way abused this discretion (Tr. 38).

Accordingly, the Village argues that the Union has not met its burden of proving any need to change the existing language in

Section 9.3. In turn, the Village argues that the Section 14(h) decision factors support its status quo offer.

Analysis. An initial view of the evidence on the sick leave issue indicates that it favors the Union. This conclusion is based primarily on the external comparability evidence submitted pursuant to decision factor Section 14(h)(4).

However, closer scrutiny of the sick leave evidence considerably erodes the support for the Union's offer and instead provides substantially more support for the Village's offer. Starting with the first element in Section 10.3 that the Union seeks to change - the maximum sick leave days accumulation dimension, the external comparability evidence from the police contracts in all seven of these communities (UXs 20-25; VX G; including Lockport and Sugar Grove) shows the following number of sick leave days that can be accumulated in each of the seven comparable communities:

- Lemont - 2,080 hours, which is 260 days (not 365 days as reported in UX 26, p. 13);
- Lockport - 180 days
- Shorewood - 960 hours, which is 120 days
- Yorkville - 960 hours, which is 120 days
- South Elgin - 60 days
- Sugar Grove - 480 hours, which is 60 days
- Montgomery - 320 hours, which is 40 days

These data show that a slim majority - four of seven - of the comparable communities provide for a larger sick leave maximum accumulation than does the Village. As a result, I find that (1) the Village is below average on this dimension, and (2) the Village is well within the range of maximum accumulations reported by these comparison municipalities.

Turning to the second element in Section 10.3 that the Union seeks to change - increase the number of sick leave days that can be used to care for immediate family members - the external comparability evidence provides strong support for this portion of the Union's offer. An inspection of the sick leave language in the police contracts in the seven comparison municipalities indicates that six of the seven provide for a larger amount of sick leave that can be used to care for ill or injured members of the officer's immediately family than does the Village (Lemont, Lockport, Montgomery, Shorewood, South Elgin, and Sugar Grove). Indeed, the contracts in Lemont, Montgomery, Shorewood, South Elgin, and Sugar Grove (UXs 20, 22, 23, 24; VX G) specify no limit on the amount of sick leave that can be used to care for ill or injured members of the employee's immediate family, and the Lockport police contract specifies a 30-day per year limit on using sick leave to care for family members (UX 21). Only the Yorkville police contract does not specify that sick leave may be used on behalf of ill or injured family members (UX 25).

As noted above, on this second element of the Union sick leave proposal, the external comparability evidence provides strong support for the Union's proposal.

Turning to the third element of the Union's Section 10.3 proposal - sick leave verification for any absence of any duration - the external evidence is mixed. In the UX 26 table on pp. 13-14, the Union characterizes this element as "after three consecutive days of absence [the employee] may be required to furnish a doctor's note," or similar terminology to that effect, in five of

its six comparable communities (Lemont, Montgomery, Shorewood, South Elgin, and Yorkville; UX 26, pp. 13-14).

Closer scrutiny of this element yields the following in the police contracts across all seven comparable communities:

- Lemont: "An employee may be required after three (3) consecutive days absence to furnish a certificate from a licensed physician to support their sick leave claim. The employee may be required to be examined by a physician designated by the Village at the expense of the Village" (UX 20, p. 38).
- Lockport: *"The Chief of Police may require evidence to substantiate that such [sick] leave days were used for the purpose described herein.*
 . . .
"Sick leave with pay resulting in (3) consecutive days shall be allowed only after the employee has presented a written statement by a physician certifying that the employee's condition prevented him or her from appearing for work and returning to work during the defined period" (UX 21, p. 14, emphasis added).
- Montgomery: "As a condition to eligibility for paid sick leave under this Section, the Village may require, at its discretion, any employee to submit a physician's certification of illness (for the employee or the employee's immediate family member, as applicable) whenever the employee has been on sick leave for three (3) or more consecutive work days; has had repeated illness for shorter periods; calls in sick on the day of, before or after a holiday, or in such other circumstances as may be deemed appropriate by the Chief of Police or the Chief's designee. The Village also reserves the right, at its discretion, to require an employee utilizing sick leave to submit at any time during such leave to an examination by a doctor designated by the Village, at the Village's expense, for the purpose of determining the employee's fitness for duty" (UX 22, p. 14, emphasis added).
- Shorewood: "An employee shall be required after three (3) consecutive days absence to furnish a certificate from a licensed physician to support their sick leave claim. For any absence where sick leave is claimed, the employee may be required to present a proof of illness. The proof of illness may require a physician's certificate. If the employer requires an examination by a physician designated by the Village, it shall be at the expense of the Village" (UX 23, p. 18, emphasis added).

- South Elgin: *"If the illness lasts three (3) or more days or if there is a repeated occurrence of the illness, the Police Chief may require a medical certificate from the employee's attending physician"* (UX 24, p. 13, emphasis added).
- Yorkville: *"The City may, at its discretion, require an employee to submit a physician's verification of illness or other conclusive evidence of illness, and such verification normally will be required for illnesses requiring the use of more than twenty-four (24) hours of sick leave"* (UX 25, p. 8, emphasis added).
- Sugar Grove: *"As a condition to eligibility for paid sick leave under this Article, the Village may require, at its discretion, any employee to submit a physician's certification of illness (for the employee or the employee's immediate family member, as applicable) whenever the employee has been on sick leave for three (3) or more consecutive work days; has had repeated illnesses of shorter periods; calls in sick on the day of, before or after a holiday; or in such other circumstances as may be deemed appropriate by the Chief of Police or the Chief's designee. The Village also reserves the right, at its discretion, to require an employee utilizing sick leave to submit at any time during such sick leave to an examination by a doctor designated by the Village, at the Village's expense, for the purpose of determining the employee's fitness for duty"* (VX G, p. 14, emphasis added).

The Union says that "five of the six communities used by the Union for its comparables demonstrate that a physician's note is not needed until at least three consecutive days have been used for sick leave" (UX 26, p. 12). This Union claim is accurate - as far as it goes.

However, the Union's claim does not go nearly far enough, for it omits highly pertinent sick leave verification contractual information in comparison communities. As the listing above demonstrates, police contracts in six of the seven comparable communities contain additional language that clearly gives these municipal employers the right to require more medical evidence of

the need for sick leave than limiting such right to situations where employees are absent for three or more consecutive days.² All of these contracts provide that the employer may require a physician's verification of illness for sick leave absences of three or more consecutive days. In addition, six of the seven communities - all but Lemont - also reserve to management the right to require verification of illness in other circumstances. Moreover, in the police contracts in five of these seven communities (Lockport, Montgomery, Shorewood, Yorkville, Sugar Grove), the employer has reserved to itself the right to require medical verification of illness anytime the employer believes it is appropriate. As a result, police labor organizations in these five other communities have agreed to language that is very similar in purpose to the "Chief of Police may require a physician's statement as a condition of sick leave pay for any absence of any duration" provision that the Union proposes to delete from the expired contract (UX 7).

As a result, this examination of the external comparability evidence on this third element of the Union proposal provides

2. Nothing in this analysis is meant to indicate, suggest, hint, or imply that the Union intentionally omitted relevant information from its table on pp. 13-14 in UX 26. It is readily apparent that in this table the Union was trying to summarize comparable community contract language in each of the boxes in the sick leave column in that table, it was trying to squeeze a lot of information into a small space for each comparison municipality, and it is not surprising that there was not enough room in each box for all of the relevant language on this third element of the Union's sick leave proposal.

essentially no support for the Union's proposal and strong support for the Village's status quo proposal.

Taken as a whole, the external comparability evidence is mixed. On the sick leave days accumulation dimension, this evidence provides more support for the Union's offer than for the Village's offer. On the use of sick leave for family members dimension, this evidence provides considerably more support for the Union's offer than for the Village's offer. On the sick leave verification dimension, the evidence provides considerably more support for the Village's offer than for the Union's offer.

Turning to relevant internal evidence, the Union presented the situation involving Officer Mark Swoboda's injury and his subsequent need for 50 sick leave days to avoid going without his regular pay during his absence. As he testified, he did not have 50 accumulated sick leave days, and he needed to use sick leave donated by fellow officers to cover his entire absence (Tr. 52-54).

I find that Officer Swoboda's sick leave situation provides no support of any kind for the Union's proposal to increase the sick leave maximum accumulation to 120 days. Officer Swoboda testified that, at the time of his injury-based leave, he had been a Village police officer for five years, he agreed that during that period he had received 60 sick leave days, and he agreed that during that period he had used some of his sick days before his injury occurred (Tr. 53-54). Section 10.3 mandates that he would have received one sick day per month, or 12 per year (UX 7), so over his five years of service the maximum accumulation he could have reached is 60 days, not 120 days. And the sick leave days he used prior to his

injury would have not been available to him when his injury occurred. So, even if a 120-day sick leave accumulation had been in place while he was on his injured-finger sick leave, he could not have accumulated sick leave days that came remotely close to 120 days, and thus he still would have needed to receive sick leave from other officers in order to avoid being on unpaid sick leave for part of his time away from work. In sum, if the Union's 120-day sick leave maximum accumulation had been in place when Officer Swoboda needed 50 sick leave days, he would not have been helped one iota by this larger accumulation.

Turning to the use of sick leave for care of family members, I note that the Union's proposed new language on this family care dimension reads as follows: "A minimum of three (3) days of sick leave (FMEL) per calendar year may be granted to care for an immediate family member who is sick, injured, or otherwise incapacitated, that requires the presence of the employee. Additional sick leave (FMEL) may be granted to care for an immediate family member upon approval from the Chief of Police." The Union says proposal this is the current practice in the police officers bargaining unit (UX 26, p.6; Tr. 34-35); it is taken directly from Section 3, p. 2 in the Village Personnel and Policy Manual (UX 26, p. 6; Tr. 34-35), and the Union seeks to memorialize this language/practice in the contract.

The evidence indicates there are two problems with the Union's proposed language on using sick leave for family care. First, the Union says that this language represents the already existing sick leave practice in this unit, this practice is not specified in the

contract, and the Union's proposal is designed to codify this practice in the contract (UX 26, p. 6; Tr. 34-35). However, there is no evidence of any kind in the record to document or confirm the Union's claim that this proposed provision simply codifies an already existing practice. I note that on cross-examination Union President Mark Shillair agreed that "the current contract language does provide for a maximum of three days for officers to use for the injury or illness of immediate family members," and he also agreed the Union is "seeking to expand that" (Tr. 37).

Second, the Union says its proposed use-of-sick-leave-for-family-members language "is identical to the Village policy manual . . . again, you'll see the section there, Section 3, Page 2 of the Village personnel policy manual" (Tr. 34-35). However, in item B.1 on Section 3, page 2 of the Village Personnel Policy Manual, I find the following language in that paragraph of the Personnel Policy Manual:

"An aggregate limit of three (3) days of sick leave per calendar year may be granted for medical or dental appointments which cannot reasonably be scheduled during working hours and for the injury or illness of an immediate family member that requires the presence of the employee. Immediate family defined for this section as Mother, Father, Spouse, Child or Stepchild. In computing this aggregate limit of three (3) days, an absence of more than four (4) hours in a day shall count of a full [sic] day, while an absence of up to four (4) hours shall count as four hours" (UX 16, p. 2).

This quoted language from page 2 of Section 3 of the Personnel Policy Manual (UX 16) is identical to the same use-of-sick-leave-to-care-for-family-members language in the first paragraph of Section 10.3 in the expired contract (UX 7), as follows:

"An aggregate limit of three (3) days of sick leave per calendar year may be granted for medical or dental appointments which cannot reasonably be scheduled during working hours and for the injury or illness of an immediate family member that requires the presence of

the employee. Immediate family defined for this section as Mother, Father, Spouse, Child or Stepchild. In computing this aggregate limit of three (3) days, an absence of more than four (4) hours in a day shall count as a full day, while an absence of up to four (4) hours shall count as four (4) hours" (UX 7, p. 16).

There is no other language that addresses the use of sick leave for family members in the three-page excerpt from the Village Personnel Policy Manual that was submitted into the record as UX 16, nor is there any other language that addresses the use of sick leave for family members in the expired contract (UX 7).

In short, the applicable language regarding use of sick leave to care for family members in the Village Personnel Policy Manual is already in the parties' contract (UXs 7, 16), so it is not the least bit clear why the Union has claimed that this element of its sick leave proposal is taken from the Personnel Policy Manual. More important, there is no language in the Village Personnel Policy Manual that says "A minimum of three (3) days of sick leave (FMEL per calendar year may be granted to care for an immediate family member . . ." as proposed by the Union.

In turn, the evidence in the record does not adequately explain the identical-to-the-Village-policy-manual rationale for the Union's proposal on this dimension, nor does it document the Union's claim that its proposal seeks only to codify in the contract the existing sick leave practice.

Regarding the need for officers to submit a doctor's note to verify an illness or injury, Officer Shillair testified that the new Chief of Police has not requested "sick leave notes" from officers (Tr. 38). He also testified that the previous Chief of Police did request such notes (Tr. 38). However, the Union

presented no examples of how often, and why, any Village Chief of Police actually required physician's statements during any period of time. Nevertheless, the Union testified on rebuttal that "the contention [by the Village] is there was no proof that there's been abuse by the employer, and that's simply not true. I'm not going to say - the officer did not testify that the former chief abused it, but he did testify that he required some of those notes" (Tr. 103). Here the Union appears to define, or comes very close to defining, the phrase "he [the former chief] required some of those notes" as the functional equivalent of "abuse" of the ability to require physicians' notes. There is absolutely no evidence in the record showing that the Village has abused, in any manner, its ability to require such notes. The complete absence of any such evidence provides no support for the Union's proposal to eliminate this sentence from Section 10.3.

On the internal comparability dimension pursuant to Section 14(h)(4), the Village points to the Village-FOP Labor Council contract covering police sergeants, and the Village points out that the sick leave section, Section 10.3, in the sergeants contract is essentially identical to Section 10.3 in the police officers contract (VX H; UX 7). Police sergeants can accumulate sick leave to a 60-day maximum, can use three sick leave days per year for the illness or injury of an immediate family member, and are subject to being required by the Chief of Police to present a physician's statement as a condition of sick leave pay for any absence of any duration (VX H). As a result, the police sergeants contract

supports the Village's status quo offer and provides no support for the Union's offer.

When the internal evidence on the elements of the sick leave issue is pulled together, it provides more support for the Village's status quo offer than for the Union's proposed changes.

Pulling together all of the evidence submitted by the parties on the sick leave issue, this evidence is decidedly mixed. First, the external comparability evidence shows that a majority of the comparable communities provide for a larger maximum accumulation of sick days than in the instant unit. On this dimension, the evidence provides more support for the Union's proposal than the Village's proposal.

Second, the external comparability evidence shows that a majority of the comparable communities allow for more sick leave days to be used for the care of ill or injured immediate family members, but the internal comparability evidence does not show this. In addition, the Union's explanation for the part of its offer regarding the use of sick leave for family care is very difficult to understand for the reasons explained above. On this dimension, the evidence is a draw.

Third, the evidence regarding the Village's ability to require a doctor's verification for the use of sick leave for an absence of any duration provides strong support to the Village's proposal and essentially no support to the Union's proposal.

In sum, the Union is the party proposing all the changes to Section 10.3. As a result, and in keeping with standard practice in interest arbitration, the Union needs to demonstrate that its

proposed changes are needed because Section 10.3 has not functioned properly, or has caused problem(s) that cannot be remedied at the bargaining table. I find that the Union has not met this burden. Instead, I find that the totality of the evidence and argument on the sick leave issue provides more support for the Village's offer than for the Union's offer.

Finding. For the reasons expressed in this section, I find that the Village's final offer "more nearly complies with the applicable factors prescribed in subsection (h)." Accordingly, I select the Village's final offer to resolve this sick leave issue.

3. Wages (Section 13.1)

Current. Unit members currently are being paid their Article XIII salaries in effect on May 31, 2009 (i.e., their 2008-2009 salaries; UXs 7, 26; VX C). During the pendency of the parties' negotiations and subsequent impasse, the unit members have not received any wage increases. The parties have agreed that their next CBA will be in effect for the three-year period of June 1, 2009 through May 31, 2012. Each party has submitted a three-year wage offer that proposes wage increases to take effect on June 1, 2009, June 1, 2010, and June 1, 2011. The parties agree that their proposed wage increases will be retroactive to those dates, as applicable.

Union Proposal. The Union proposes that (1) effective June 1, 2009, contract wages will be increased by 2.5 percent above their current Article XIII 2008-2009 amount; (2) effective June 1, 2010, contract wages will be increased by 2.5 percent above their

adjusted Article XIII amount (“adjusted” by the June 1, 2009 increase); and (3) effective June 1, 2011, contract wages will be increased by 2.5 percent above their adjusted Article XIII amount (“adjusted” by the June 1, 2009 and June 1, 2010 increases; UXs 10, 26). If we set aside the effect of compounding, the Union has proposed a total wage increase of 7.50 percent during the three-year life of the parties’ next contract (if we include compounding, the Union’s final offer calls for a 7.69 percent wage increase over these three years).

The Union supports its wage offer with a variety of evidence. Looking first at the *external comparability* evidence under Section 14(h)(4), the Union says the salary comparability evidence provides strong support for the selection of its wage offer and no support for the selection of the Village’s wage offer. In Table A in UX 26, the Union presents evidence that shows that current Village annual police officer salaries trail police salaries in comparable communities by thousands of dollars at the starting pay level and at especially at the maximum pay level (see also UXs 20-25).

Similarly, the Union says that the percentage wage increases implemented during the years encompassed in the 2009-2012 contract period in the comparable communities also support the Union’s proposed package of three 2.5 percent annual wage increases and provide very little support for the Village’s wage increase proposal, particularly the zero increase the Village proposes for the 2009-2010 year.

Turning to the *internal comparability* evidence, the Union focuses on the salaries the Village pays to police sergeants

represented by the FOP Labor Council. The Union notes that the sergeants' salaries range from \$74,009.89 at the bottom step to \$105,236.46 at the top step (UX 26, p. 15; VX H, p. 27). The Union notes that the Village's police sergeants are the highest paid sergeants in the Union's comparable communities (UX 26, p. 15). The Union also notes that the sergeants are paid two hours of overtime each and every week of the year for carrying telephones for the purpose of being on call while off duty (UX 26, p. 17). The Union notes that these on-call hours of overtime paid to each sergeant generate from \$5,551 to \$7,893 of additional income for each sergeant each year, depending on each sergeant's salary schedule step, and this on-call money constitutes a significant pay benefit that police officers do not have (UX 26, p. 17).

Turning to the Village's *ability to pay* under Section 14(h)(3), the Union argues that the evidence about the Village's finances show that the Village can afford to fund the Union's final offer. The Union points to the Village's net assets as of May 31, 2010. On that date the Union says the Village's total net assets were \$82,004,401, and the unrestricted net assets were \$7,561,851 (UX 26, p. 10). The Union notes that the significant feature about "unrestricted" net assets is that they are not restricted in their use and can be spent for any purpose the Village decides. The Union argues that Village's large unrestricted net assets indicate that the Village can afford to fund the Union's wage offer.

Additionally, the Union notes that the Village spent about \$9 million constructing its new police station, and the Village is currently evaluating the reuse of the space formerly occupied by

the Police Department (UX 26, p. 10). The Union insists that if the Village can afford to undertake such large capital expenditures, the Village can afford to fund the Union's wage offer.

The Union says that the Village's emphasis on implementing a zero increase for FY2009 is misplaced. The Union does not dispute that the Village's finances may have been more constrained at that time than they are now. However, the Union emphasizes that 2009 is well in the past, the parties are not living in the past, and instead are moving forward (Tr. 104). The Union also points out that the Village admits that it has monies in reserve, and that economic times - and Village revenues - have improved. As a result, the Union says the Village can afford to make the wage changes the Union has proposed (Tr. 105).

Looking at the *cost of living* evidence under decision factor 14(h)(5), the Union notes that the national and regional Consumer Price Index-U (All Urban Consumers) and Consumer Price Index-W (Urban Wage Earners and Clerical Workers) the federal government uses to measure changes in the cost of living ("inflation") showed an average increase of 1.27 percent between June 2009 and May 2010, and also showed a 3.44 percent increase between June 2010 and May 2011 (UXs 14, 15, 18). This cost of living information means that unit members already have lost 4.7 percent purchasing power to inflation through May of this year, and that figure would be larger if the period since June 2011 were added to the calculation. Using an estimated CPI increase of 3.6 percent for June 2011-May 2012, the Union calculates that unit members will lose purchasing power

to inflation even if the Union's wage offer is selected, and will lose much more purchasing power if the Village's wage offer is selected (UX 17).

In sum, the Union notes that it is asking for a total wage increase of only 7.5 percent during the three years at issue in this proceeding. The Union insists that its proposed 7.5 percent increase is reasonable in light of the evidence that strongly supports it, and therefore the Union asks that its wage offer be selected.

Village Proposal. The Village proposes that (1) effective June 1, 2009, contract wages will not be increased above, and instead will continue at, their current Article XIII 2008-2009 amount; (2) effective June 1, 2010, contract wages will be increased by 2.5 percent above their Article XIII amount; and (3) effective June 1, 2011, contract wages will be increased by 3.0 percent above their adjusted Article XIII amount ("adjusted" by the June 1, 2010 increase; "Employer Exhibit Book," p. 6). If we set aside the effect of compounding, the Village has proposed a total wage increase of 5.50 percent during the three-year life of the parties' next contract (if we include compounding, the Village's final offer calls for a 5.57 percent wage increase over the three years at issue).

The Village supports its wage offer with a variety of evidence. The Village has not presented any sort of absolute *inability to pay* argument under Section 14(h)(3), but it does emphasize that during the 2008-2010 period it experienced a very sharp and significant decline in revenue that negatively affected

the Village's financial ability to meet its costs. The Police Department budget is funded by the Village's General Fund (UX 12, p. 41), and VX D shows how General Fund revenues changed during the 2007-2008 through the 2010-2011 fiscal years. From 2007-2008 to 2008-2009, General Fund revenue declined by 6.37 percent; from 2008-2009 to 2009-2010, General Fund revenue declined by another 7.06 percent; and the result was that General Fund revenue declined by 13 percent during this two year period (VX D). In addition, the Village projected (at the instant hearing in late June 2011) that its General Fund revenues increased by 1.77 percent during the 2010-2011 fiscal year, which still left the Village General Fund revenue stream about 11 percent below its peak during 2007-2008 (VX D). Further, the Village has budgeted for a 3.78 percent increase in General Fund revenue for 2011-2012, which the Village says will leave its General Fund revenues for 2011-2012 about eight percent below their 2007-2008 level (VX D).

The Village also has tracked year-to-year changes in its sales tax revenues and income tax revenues during this five-year period. The Village's sales tax revenues declined almost 19 percent during 2009-2010, the Village projects a rebound of about seven percent during 2010-2011 and 2011-2012, which still leaves this substantial income source almost 13 percent below its 2007-2008 level. Income tax revenues also declined during this period and continue to be below their 2007-2008 level (VX D).

As this indicates, the Village insists that its proposed zero increase for the 2009-2010 year can be understood only when it is

“viewed in the economic times for which it applies, not looking back to today” (Tr. 92)

The Village says it has not gotten itself into serious financial trouble during the past several years because it reacted quickly to revenue reductions when they occurred. One of the Village’s cost-trimming efforts was reducing Village employee headcount (VX F).

Another method of keeping costs in line was freezing wages during the 2009-2010 fiscal year for all Village employees. Looking at the Section 14(h)(4) *internal comparability* decision factor, the Village emphasizes that the 2009-2010 zero increase it has proposed is not some sort of outlier wage proposal. Instead, it is the same wage proposal that was actually adopted in the police sergeants’ contract, in the public works contract, and with all non-represented employees. In particular, the Village negotiated 2009-2012 contracts with the FOP Labor Council covering the police sergeants (VX H) and with Local 150 covering the public works employees (VX I). In both of those contracts, the parties negotiated and agreed upon a zero wage increase for the 2009-2010 year. The Village must treat all of its employees fairly, represented and non-represented alike. After bargaining for zero increases with the two other labor organizations who represent Village employees, and imposing a zero increase on the non-represented employees, it would be highly inequitable to all other Village employees for the Village to grant a wage increase only to police officers for the 2009-2010 year.

The Village also notes that in its 2009-2012 public works contract with Local 150, the parties agreed to wage increases of 1.5 percent for 2010-2011 and 2.0 percent for 2011-2012 (VX I). Similarly, in its 2009-2012 police sergeants contract with the FOP Labor Council, the parties agreed on a pair of two percent increases for those same two years (VX H). In other words, these other two groups of represented Village employees did not receive anything that could be called a "make-up" or "catch-up" increase during the more recent two years of these three-year contracts. In contrast, the Village is proposing wage increases of 2.5 percent for 2010-2011 and 3.0 percent for 2011-2012 in the police unit. These increases are designed, in part, to help officers catch up with wage levels in their labor market (Tr. 91).

Turning to the Section 14(h)(5) *cost of living* factor, the Village does not dispute that the nationwide CPI-U increased by 3.6 percent during the period May 2010 to May 2011 (UX 15). However, the Village vigorously disputes that taking a one-year snapshot of consumer price increases is the appropriate way to evaluate the role of, and the weight given to, cost of living changes when resolving this wage dispute. Instead, the Village argues that using a multi-year period is a much more accurate way of comparing changes in the cost of living ("COL") with changes in wage rates for unit members.

In VX B, the Village has compared percentage wage increases and percentage CPI-U changes during the period 2006-2007 through 2010-2011. During the first three years of this period (2006-2007 through 2008-2009), members of this unit, when it was represented

by ICOPS, received three annual wage increase of 3.5 percent each. Using the Village's proposed wage increases of zero percent for 2009-2010 and 2.5 percent for 2010-2011, the Village points out that unit members will have received a cumulative wage increase of 13.0 percent during this five-year period. This cumulative 13.0 percent wage increase compares very favorably with the cumulative 9.02 percent increase in the nationwide CPI-U over that same five-year period. If the CPI-U for the Chicago area is substituted for the national CPI-U, the picture is essentially the same, as that cost of living figure increased by a cumulative 9.56 percent during those same five years (VX B). The Village says its five-year analysis comparing COL increases with unit member wage increases is a much more accurate and much more informative method for determining how well or poorly unit members are doing on the cost of living dimension. And the Village's five-year analysis shows that wages of Village police officers have more than kept up with CPI-U increases.

The Village additionally notes that unit members are paid via an Article XIII contractual salary schedule that provides a 4.75 percent step increase on each officer's employment anniversary date during their first eight years of employment (UX 7). Eligible unit members receive these step increases each year in addition to any general increase in the schedule's salaries. Eligible unit members have received all of their step increases during the years encompassed by the pendency of the parties' negotiation-mediation-arbitration process (V.Br. 7; Tr. 98). The Village says that about half of the officers have topped out on this schedule (Tr. 98),

which means about half of the officers are still receiving step increases. These step increases enable eligible unit members to remain even farther ahead of CPI increases than is accounted for by looking only at overall increases in the salary schedule.

For these reasons, the Village asks that its wage offer be selected.

Analysis. Looking first at the *external comparability* evidence under factor Section 14(h)(4), three conclusions are apparent. First, the Village has not been a middle-of-the-road paying employer, in the sense that it pays its police officers more than some comparable employers and less than others. During the 2008-2009 year (the most recent year that unit members received a general wage increase), the Village's starting salary ranked third in the eight-municipality group that includes the five shared comparables, Lockport, Sugar Grove, and the Village, and the Village's maximum salary that year ranked fifth (VX C; UX 21).

Second, salary comparisons between the Village and its comparable municipalities have become more and more skewed over time, for all of the comparable communities have adopted one, two, or even three additional years of wage increases since the 2008-2009 year (see UX 26, pp. 13-14; VX C).

Third, and following from the preceding paragraph, the Union's emphasis on the "huge disparity" between Village maximum police officer pay and maximum pay in the Union's six comparable communities is a direct result of the "hold" placed on police wage increases in the Village during the pendency of negotiations, mediation, and arbitration for the parties' new contract. This

huge disparity exists in large part because the Union compares the Village's top pay in 2008-2009 with the top pay in the 2009-2010, 2010-2011, or 2011-2012 years, as applicable, in its six comparison cities (UX 26, pp. 13-14). This kind of comparison is distorted and is not justified, for the most appropriate pay comparisons across communities are the examination of pay rates in effect at the same point in time. When that is done here, this wage disparity will not disappear, but it will be significantly smaller after we have selected a wage offer and updated unit member wage rates through 2011-2012.

We can better see the external wage comparisons via a table. Table 1 shows the maximum or top step police officer salary in the seven comparison cities plus salaries generated by the two proposed salary final offers, for the FY2008-2009 through FY2011-2012 period. The 2008-2009 year is the final year under the Village-ICOPS contract, and the remaining three years are the years to be included in the new contract.

Table 1 shows that the selection of the Union's wage offer will produce Village maximum annual salaries in each of the new contract's three years that are moderately above the seven-municipality average (as computed according to the Table 1 notes). Similarly, the selection of the Village's wage offer will produce Village maximum annual salaries during these years that are moderately below the seven-municipality average. In addition, the selection of either offer will produce a Village maximum salary that ranks sixth in this comparison group during the 2010-2011 year. I am reluctant to do a similar ranking for the 2011-2012

year in light of the fact that five of the seven comparison salary figures for that year are estimated.

TABLE 1
SALARY LEVELS IN ALL COMPARISON MUNICIPALITIES
(MAXIMUM SALARY ONLY)

Municipality	FY2008-2009	FY2009-2010	FY2010-2011	FY2011-2012
Lemont	\$68,407	\$69,775	\$72,566	\$76,194
Lockport*	68,383	70,434	72,195	74,000**
Montgomery	68,613	70,671	72,791**	74,247**
Shorewood	67,798	70,340	72,099**	73,901**
South Elgin	69,098	70,307	71,531	73,319**
Sugar Grove	64,823	66,930	69,105	70,833**
Yorkville	62,797	66,000	66,000	66,000
Average \$/% (w/o No.A.)	67,131	69,208/3.1%	70,812/2.3%	72,649/2.6%
No. Aurora	67,805			
Union FO	NA	69,500/2.5%	71,238/2.5%	73,019/2.5%
Village FO	NA	67,805/0%	69,500/2.5%	71,585/3.0%

Sources: VX C; UX 21.

*Lockport's maximum salaries are reported in Table 1 in a different manner than for the other municipalities. Lockport's police contract was the only contract which added new top step pay steps to its salary schedule during some of the years encompassed in Table 1 (in 2009-2010 and 2010-2011). These new steps increased Lockport's maximum salary by a much larger percentage than occurred in any other municipality. In turn, these new Lockport pay steps made extremely difficult the task of determining annual salary amounts and percentage increases that were apples-to-apples comparable to other municipalities. As a result, the Lockport maximum salaries reported above are those from the eighth step ("after 7 years"), which was the top step in the Lockport salary schedule during 2008-2009 (UX 21, p. 32).

**The double asterisks mean that no actual salary has yet been adopted (as of the June 28, 2011 hearing) in the noted municipalities during the years that are marked. Accordingly, I have used the same wage increase assumptions for those municipalities in those years as used by the Village in the top half of VX C.

Table 1 also shows that during the 2009-2012 years the average maximum salary in the seven comparison cities increased a total of

8.0 percent without compounding according to the calculation methods and assumptions used in the table. During this same period the selection of the Village's offer will generate a 5.5 percent total increase, and the selection of the Union's offer will produce a 7.5 percent total increase.

Table 1 shows that the external comparability evidence provides considerable support for the selection of the Union's wage offer and little support for the Village's wage offer. I find that this external comparability evidence deserves considerable weight when selecting a wage offer.

Turning to the *cost of living* evidence under the Section 14(h)(5), the Union's evidence indicates that during the period June 1, 2009 through May 31, 2011, the cost of living (as measured by the all-cities CPI-U) increased by 4.71 percent (UXs 14, 17). In one of its exhibits the Union also predicts that the CPI will increase by 3.6 percent during the June 2011 through May 2012 period (UX 17). It is not at all clear how the Union arrived at this prediction in light of the fact that we have no CPI data of any kind in the record covering the months during June 2011-May 2012.

The CPI data can be used to support either party's wage offer. If we take a short-term look at the two-year period June 2009-May 2011, the Union is correct that increases in the cost of living already have consumed most of the Union's proposed 5.0 percent increase during this two-year period. During this same period, the Village's two-year offer of a 2.5 percent increase is far

outstripped by the 4.71 percent increase in the cost of living (UXs 14, 17).

However, if we take a long-term look at the six years during the 2006-2012 period, which encompasses both of the three-year CBAs in this unit, officers covered by the new contract and the expired Village-ICOPS contract will have received wage increases totaling at least 16.0 percent, and perhaps as much as 18.0 percent (depending on whose wage offer is selected) during this period (VX B). These six years of general wage increases compare very favorably with the estimated 12.0-13.0 percent CPI increase during that same period.

In the alternative, if we separate unit members into two mutually exclusive groups, those who are topped out on the salary schedule and those who are still receiving 4.75 percent step increases each year, the members of these two groups are very differently situated on the COL dimension. By itself, a 4.75 percent step increase each year will enable each step-eligible officer to stay ahead of CPI increases. However, these step increases no longer are provided to unit members who are topped out on the schedule, so they are in a very different COL posture than their step-eligible peers. As this indicates, it is extremely difficult to reach a unit-wide conclusion about the impact of the COL evidence on the wage offer selection decision.

For these reasons, I find that the COL evidence is not particularly helpful in generating a wage offer selection decision. As a result, the COL evidence will be given little weight when choosing a wage offer.

Turning to the *ability to pay* evidence under Section 14(h)(3), the Union says the Village clearly can afford to pay for its 7.5 percent proposal. Interestingly, the Village admits as much using different language: "The Village is not here making a claimed inability to pay. . . . This Village is in good financial shape, much better than many of its neighbors, and the reason for that is sound fiscal management" (Tr. 86). Much more important, the Village argues, "it is crucial to understanding the Village proposal that the zero percent be viewed in the economic times for which it applies, not looking back to today" (Tr. 92).

In short, on the ability to pay dimension, the Union argues that the Union's 7.5 percent wage offer should be adopted because the Village has the money now to afford it. In contrast, the Village cogently argues that during the 2009-2010 year in which the Village's zero increase would apply, the Village was coping with significantly reduced revenues and the concomitant need to significantly cut its costs (VX D). As a result, the Village clearly had to take strong cost-saving steps to cope with this large revenue reduction, and one such step the Village adopted was to freeze Village employee wages for that year, represented and non-represented alike.

I find that the ability to pay evidence supports both wage proposals. The Union is correct that the Village can now afford to fund the Village's 7.5 percent offer, a contention that the Village does not dispute. At the same time, the Village is equally correct in its emphasis on viewing its proposed 2009-2010 wage increase in the tenor of the economic times that prevailed during 2009-2010,

not the economic times that prevail today. As part of its evidence and argument on this dimension, the Village also emphasizes the need to examine the wage change situation that applied to other Village employees during 2009-2010, a topic to which we now turn.

Looking next at *internal comparability* under the Section 14(h)(4) factor, the evidence shows that all Village employees received no general wage increase for FY2009-2010. In its post-hearing brief, the Villages notes that "arbitrators have historically lightly valued internal comparisons with non-represented employees" (V.Br. 7). The Village is correct in its observation. I note that it is comparatively easy for a public employer to unilaterally impose a general wage freeze on non-represented employees. By definition, these employees have no collective bargaining representative that can collectively resist an employer attempt to impose a wage freeze. Because of this key distinction between represented and non-represented employees, our focus in this internal comparability analysis on the wages issue will be on 2009-2012 wage increases for the two other bargaining units of Village employees - the public works employees represented by Local 150 (VX I), and particularly the police sergeants represented by the FOP Labor Council (VX H).

We saw above that Local 150 agreed to wage increases for public works employees of 0 percent for 2009-2010, 1.5 percent for 2010-2011, and 2.0 percent for 2011-2012 during the three fiscal and contract years of the 2009-2012 contract (VX I). We also saw that the FOP Labor Council agreed to wage increases for police sergeants of 0 percent for 2009-2010, 2.0 percent for 2010-2011,

and 2.0 percent for 2011-2012 (VX H; I note that the Union is not correct when it refers to the sergeants new contract as a two-year contract; see UX 26, p. 17; Tr. 58). I find that the 2009-2010 zero year agreed to by Local 150 and by the Illinois FOP Labor Council is fully consistent with the Village argument that we must rely upon the Village's financial position in 2009-2010 to properly evaluate its zero wage offer for that year. In turn, I note the Village has presented a very cogent rationale for adopting a zero year in the police officers unit.

As indicated in the preceding paragraphs, in this proceeding the ability to pay decision factor is intertwined with the internal comparability decision factor. Both of these factors are important, and both will be given substantial weight in the wage offer selection process.

As this analysis of the wage evidence indicates, both wage offers are reasonable, and both parties have presented relevant and persuasive evidence in support of their wage offers. As a result, the selection of one of these offers is a difficult decision.

I find that the totality of the applicable evidence provides somewhat more support for the Union's wage offer than for the Village's offer. The most important reason for this conclusion is the body of external comparability evidence in the record. Among other things, the external comparability evidence shows that:

- ❖ The comparable employers increased maximum police officer wages by an average of 3.1 percent during 2009-2010 (see Table 1);

- ❖ Only one of the comparable employers in Table 1 - Yorkville - adopted a zero year with the maximum pay for police officers at any time during the 2009-2011 period (the 2011-2012 year is excluded given that maximum police officer salaries in five of the seven municipalities are not yet known);
- ❖ For the 2009-2011 period, the Union's offer is closer to the average annual salaries adopted in the comparison municipalities, and to the average annual percentage salary increases, than the Village's offer (again, the 2011-2012 year is excluded because of the unknown nature of most of the actual salaries for that year); and
- ❖ I take notice that the actual practice in Illinois interest arbitration proceedings, regardless of the precise wording in Section 14(h)(4) of the Act, gives primary emphasis to external comparisons of arbitrating employees with their occupational peers working for comparable employers ("other employees performing similar services"), and less emphasis to "other employees generally." For instance, interest arbitration proceedings involving municipal police officers regularly contain a plethora of comparisons of the arbitrating unit with other municipal police officers, and far fewer comparisons with members of other occupations. Consistent with this widespread practice, I have given more weight to the external comparability evidence on wages than to the internal comparability evidence.

Finding. I find, for the reasons explained above, that the Union's wage final offer more nearly complies with the applicable

Section 14(h) decision factors than does the Village's wage offer. This decision flows from the fact that I believe the external comparability evidence deserves the most weight in our analysis of the wage increase issue. Accordingly, I select the Union's last offer of settlement to resolve the wage issue.

TAs, Status Quo, and Other Provisions

As noted above, the parties resolved several issues during their negotiations and during the instant arbitration proceeding. Consistent with widespread terminology, they referred to these items as tentatively agreed (or "TA'd") issues. The parties provided me with a list of their TA'd issues (UX 6), and all of these TA'd items are incorporated by reference in this Award. In addition, the parties agreed that all the provisions in the expiring CBA that were not changed during their negotiations and are not encompassed in this arbitration will carry forward unchanged into the successor CBA as "status quo" items. I hereby incorporate into this Award all of these other resolved issues and status quo provisions by reference.

AWARD

Under the authority granted to me by Section 14(g) of the Illinois Public Labor Relations Act, I find that the following outcomes more nearly comply with the applicable decision factors prescribed in Section 14(h) of the Act. Accordingly, I select and award these outcomes on the issues on the arbitral agenda:

1. Overtime Compensation and Compensatory Time (Section 9.5)

The Union's offer is selected.

2. Sick Leave (Section 10.3)

The Village's offer is selected.

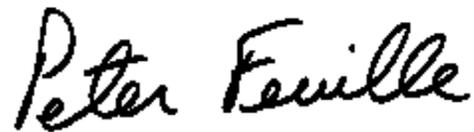
3. Wages (Section 13.1)

The Union's offer is selected.

In addition, the TA'd and status quo items are incorporated into this Award by reference.

It is so ordered.

Respectfully submitted,



Champaign, IL
November 16, 2011

Peter Feuille
Arbitrator