

Daniel Nielsen, Arbitrator

In the Matter of the Arbitration of an Interest Dispute Between

THE VILLAGE OF DOWNERS GROVE

and

**THE ILLINOIS FRATERNAL ORDER OF
POLICE LABOR COUNCIL**

Wages, Performance Stipend, Holiday Pay and Discipline
May 1, 2015 through April 30, 2018 – ILRB Case No. S-MA-15-070

Appearances:

The Illinois Fraternal Order of Police Labor Council, by **Gary Bailey**, Attorney at Law, 5600 South Wolf Road, Suite 120, Western Springs, IL 60558, appearing on behalf of the Union.

Clark Baird Smith, LLP by **R. Theodore Clark**, Attorney at Law, 6133 North River Road, Suite 1120, Rosemont, IL 60018, appearing on behalf of the Village.

ARBITRATION AWARD

The Village of Downers Grove (hereinafter referred to as the Village or the Employer) and the Illinois Fraternal Order of Police Labor Council (hereinafter referred to as the FOP or the Union), selected the undersigned to serve as the arbitrator of a dispute over the terms of the collective bargaining agreement for the Village's Police Officers. A mediation was conducted on November 8th. Subsequently an evidentiary hearing was held on December 5, 2016, at which time the parties presented such testimony, exhibits, other evidence and arguments as were relevant. Post-hearing briefs were submitted, which were exchanged through the undersigned on January 14, 2017. The parties granted an extension to March 31st for the issuance of the Award.

Statutory Criteria

Section 14(h) of the Illinois Public Labor Relations Act, 5 ILCS 315 provides the specific factors for an arbitrator to use when analyzing the issues in an interest arbitration dispute:

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:
 - (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 following 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.

All of the criteria have been considered in arriving at this Award, although given the nature of the dispute, not every criterion is discussed.

Issues

The Village provides municipal services to the roughly 48,000 citizens of Downers Grove in northeastern Illinois. The Union represents a unit of 52 sworn officers employed by the Village's Police Department. The parties have had a long series of collective bargaining agreements, the most recent of which expired on April 30, 2015. This arbitration concerns the successor agreement, with a term from May 1, 2015 through April 30, 2018. In this proceeding, the parties are in disagreement about the identity of their external comparables, and have substantive disputes about three economic issues - Wages, Performance Stipend, and Holiday Pay - and one non-economic issue - Discipline.

As to external comparables, the parties agree that the appropriate comparable communities all lie within DuPage County. The Village identifies Addison, Bartlett, Carol Stream, Elmhurst, Hanover Park, Lombard and Wheaton as comparable communities, based on their proximity within 15 miles of Downers Grove, similarly sized police departments (at least 50 officers) and similar populations (between 35,000 and 75,000). The Union identified Wheaton, Elmhurst, Lombard, Woodridge, Glen Ellyn, Westmont, Lisle and Darien as being comparable, based on reasonable geographic proximity within 4 miles of Downers Grove, similar population, crime statistics and demographic factors.

The wage dispute is fairly narrow, in that both parties propose identical across the board increases in the first two years of the contract - 3% on May 1, 2015 and 2% on May 1, 2016. The dispute lies in the third year, with the Village proposing 1% on May 1, 2017, and the Union seeking 2%.

The performance stipend is an amount paid annually to employees with seven years or more of experience, who receive ratings of "Meets Expectations" on their evaluations. It is a bonus and is not added to the base. Employees with seven to fourteen years receive \$750, while employees with fifteen or more years receive \$1,000. The Union proposes to maintain the status quo on this issue, while the Village proposes to increase the bonus at both steps, to \$1,000 and \$1,250.

The holiday issue concerns the payment of overtime for working some holidays and when holidays hours are credited. Currently, the Village advances holiday hours for all ten holidays in

the calendar year on January 1st of the year, and it does not pay overtime for scheduled work on holidays. The Village proposes to pay overtime for scheduled work by Patrol Division Officers on four specified holidays - New Year's Day, July 4, Thanksgiving Day, and Christmas Day. It also proposes to pay time and a half for non-Patrol Division Officers who are assigned to perform work on those holidays. In conjunction with that, the Village proposes to stop giving advance credit for holiday hours, and instead credit them as they occur.

Finally, the parties have minor disagreements on the issue of how discipline should be administered and reviewed. The current contract calls for the imposition of discipline only for just cause. Discipline resulting in less than five days of suspension may be grieved and arbitrated. Discipline of five or more days is within the exclusive jurisdiction of the Police and Fire Commission. Both parties propose to make changes, including the availability of arbitration for suspensions and discharges. The Union would add an express commitment to progressive and corrective discipline, and would limit discipline to oral reprimands, written reprimands, suspensions, and discharge. The Union would allow for grieving reprimands, but would not allow for appeals beyond the third step. For suspensions and discharges, the accused officer would have the option of appealing to the Police and Fire Commission or to arbitration, but not both. The Employer would also allow an option to either arbitrate discipline above a reprimand, or take it to the Police and Fire Commission, but not both. The Village would not specifically refer to progressive and corrective discipline, and would continue to list demotion as a possible disciplinary action.

As the wage, holiday and performance stipend disputes concerns economic issues, the arbitrator is confined to selecting one or the other of the final offers on each, without modification. The dispute over the discipline process is a non-economic dispute, and the arbitrator may modify the proposals if such modification is reasonably necessary.

Final Offers

WAGES

The Village's Final Offer on Wages

May 1, 2015 through April 30, 2016 – 3% atb

May 1, 2016 through April 30, 2017 – 2% atb

May 1, 2017 through April 30, 2018 – 1% atb:

May 1, 2017 through April 30, 2018

<u>Step</u>		<u>Annual Salary</u>
Start		\$65,069
Step 1	After 1 Year	\$68,776
Step 2	After 2 Years	\$73,148
Step 3	After 3 Years	\$77,599
Step 4	After 4 Years	\$82,164
Step 5	After 5 Years	\$86,896
Step 6	After 6 Years	\$91,814
Step 7	After 7 Years	\$97,488

The Union Final Offer on Wages

May 1, 2015 through April 30, 2016 – 3% atb

May 1, 2016 through April 30, 2017 – 2% atb

May 1, 2017 through April 30, 2018 – 2% atb:

May 1, 2017 through April 30, 2018

<u>Step</u>		<u>Annual Salary</u>
Start		\$65,713
Step 1	After 1 Year	\$69,457
Step 2	After 2 Years	\$73,873
Step 3	After 3 Years	\$78,367
Step 4	After 4 Years	\$82,977
Step 5	After 5 Years	\$87,756
Step 6	After 6 Years	\$92,723
Step 7	After 7 Years	\$98,453

PERFORMANCE STIPEND

The Village's Final Offer on Performance Stipend

ARTICLE 26 WAGES

B Performance Bonus

Employees who have reached seven (7) years of service in the previous calendar year are eligible for a performance bonus of \$750 if they have less than fifteen (15) years of continuous full-time employment with the Village and \$1,000 if they have fifteen (15) or more years of continuous full-time employment with the Village. The bonus will not be added to the employee's base salary.

Effective January 1, 2017, employees who have reached seven (7) years of service in the previous calendar year are eligible for a performance bonus of \$1,000 if they have less than fifteen (15) years of continuous full-time employment with the Village and \$1,250 if they have fifteen (15) or more years of continuous full-time employment with the Village. The bonus will not be added to the employee's base salary.

An employee is not eligible for a performance bonus unless he/she receives an overall rating of "Meets Expectations" on the Employee Appraisal Form attached hereto as Appendix C. Appraisals will occur on an annual basis for the purpose of advising of their performance during the fiscal year and for the purpose of determining whether their performance "Meets Expectations" and whether an employee shall receive his/her performance bonus.

The Union's Final Offer on Performance Stipend

The Union proposes the Status Quo on the Performance Stipend.

HOLIDAY PAY

The Village's Final Offer on Holiday Pay

ARTICLE 21 HOLIDAY PAY

A. The following are paid holidays for eligible employees:

New Year's Day
Memorial Day
Fourth of July
Labor Day
Columbus Day
Thanksgiving
Day after Thanksgiving
Christmas Day
A Christmas floating holiday
Floating Holiday

For the Floating Holiday the employee shall receive one earned day of eight (8) hours to be put into the employee's earned time bank as of the first pay period of the fiscal year; for the Christmas floating holiday the employee shall receive one earned day of eight (8) hours to be put into the employee's earned time bank for the payroll period in which December 24 falls.

Except as provided in Section B. below, the rate of pay for regular holidays worked will be the regular rate, plus one (1) earned day of eight (8) hours. If the employee does not work the holiday, the employee will receive one earned day of eight (8) hours to be put into the employee's earned bank. If eligible, holiday time will be put in the employee's earned time bank in the payroll period in which the holiday falls.

B. If an officer assigned to the Patrol Division is scheduled to work on the following special holidays: New Year's Day, July 4, Thanksgiving Day, or Christmas Day, the employee shall be paid one and one-half times his regular straight-time hourly rate for all hours worked on said holiday. In addition, the employee shall receive one earned day of eight (8) hours to be put into the employee's earned time bank.

If a non-Patrol Division officer is ordered to work on a holiday, such officer shall be paid one and one-half times his regular straight-time hourly rate for all hours worked on said holiday. In addition, the employee shall receive one earned day of eight (8) hours to be put into the employee's earned time bank.

F. Officers will be permitted to carry over earned time from year to year to a maximum of 120 hours. Earned time in excess of one hundred twenty (120) hours not used during any given calendar year shall be paid into the employee's Downers Grove Fraternal Order of Police Lodge 73 Retiree Health Care Plan & Trust account at the end of that year by the end of January of the next calendar year. ~~Officers~~

~~shall be advanced the full amount of earned time for each respective year as of January 1st of that year and they may take the same consistent with the current practice.~~ Upon separation from the Village, all monies owed through accrued earned time shall be paid into the employee's Downers Grove Fraternal Order of Police Lodge 73 Retiree Health Care Plan & Trust account.

G. The provisions contained in paragraphs A and B shall become effective January 1, 2017.

The Union's Final Offer on Holiday Pay

The Union proposes the Status Quo on Holiday Pay.

DISCIPLINE

The Village's Final Offer on Discipline

ARTICLE 8 **DISCIPLINE**

The Village may discipline only for just cause. Copies of all disciplinary rules shall be provided to the Lodge. The parties agree that oral or written warnings shall be expunged from an officer's personnel and/or disciplinary file(s) one year after the warning is received by the officer so long as there has been no other repetition of the same offense, or an offense for which a suspension is received within that one-year period. Such expungement shall take place upon request by the employee given in writing to the Chief of Police. Expunged documents shall be removed from the employee's personnel file and disciplinary file, but shall be maintained in a separate file.

~~All disciplinary action of less than five (5) days shall be subject to the grievance procedure contained in Article IX of this Agreement. All disciplinary action of five (5) or more days shall be subject to the Police and Fire Commission.~~

Officers shall be provided a copy of, and be required to initial, all disciplinary records prior to their inclusion in the officer's personnel and/or disciplinary file(s). If the officer refuses to initial the record, the disciplining officer shall so indicate. Any disciplinary record that is not so initialed or which does not show a refusal of the employee to initial will be expunged.

The Police Chief or his designee(s) shall have the exclusive right to issue all discipline (verbal warnings and written warnings, suspensions, demotions, and discharge), without resort to the Village's Board of Fire and Police Commissioners. Discipline issued by the Police Chief or his designee, if appealed, shall be appealed either to the Board of Fire and Police Commissioners or through the parties' grievance mechanism set forth in Article 9 of the Agreement in accordance with

and to the extent authorized by Article 9, provided, however, an oral or written reprimand is not subject to arbitration but may be grieved up to Step 3 of the grievance procedure.

Except as otherwise provided in Article 9, disciplinary action or termination may be appealed to and be subject to the jurisdiction of the Board of Fire and Police Commissioners per applicable State law or the grievance procedure set forth in Article 9 of the Agreement. The parties agree that the grievance procedure set forth in Article 9 and the hearing process by the Board of Fire and Police Commissioners are mutually exclusive and no relief shall be available under the grievance procedure for any action heard before the Board of Fire and Police Commissioners. Furthermore, the parties agree that the pursuit of a grievance under this Agreement shall act as a specific waiver by the Union and the involved employee of the right to challenge the same matter before the Board of Fire and Police Commissioners and a form containing such specific waiver shall be executed by the Union and the involved employee before arbitration may be invoked under the grievance procedure of this Agreement. An employee initially seeking review by the Board of Fire and Police Commissioners who subsequently elects to file a grievance with the appropriate time limits may only do so prior to any hearing before the Board. An employee so filing a grievance shall immediately withdraw his/her request and waive any and all rights to additional hearing(s) before the Board.

ARTICLE 11 POLICE AND FIRE COMMISSION

The parties recognize that the Police and Fire Commission of the Village has certain statutory authority over employees covered by this Agreement, including, but not limited to, the right to make, alter and enforce rules and regulations. Except as provided in Article 8 (Discipline), nothing ~~Nothing~~ in this Agreement is intended in any way to replace or diminish the authority of the Police and Fire Commission.

The Union's Final Offer on Discipline

ARTICLE 8 DISCIPLINE

The Village may discipline only for just cause. Copies of all disciplinary rules shall be provided to the Lodge. The parties agree that oral or written warnings shall be expunged from an officer's personnel and/or disciplinary file(s) one year after the warning is received by the officer so long as there has been no other repetition of the same offense, or an offense for which a suspension is received within that one-year period. Such expungement shall take place upon request by the employee given in writing to the Chief of Police. Expunged documents shall be removed from the employee's personnel and disciplinary file, but shall be maintained in a separate file.

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Officers shall be provided a copy of, and be required to initial, all disciplinary records prior to their inclusion in the officer's personnel and/or disciplinary file(s). If the officer refuses to initial the record, the disciplining officer shall so indicate. Any disciplinary record that is not so initialed or which does not show a refusal of the employee to initial will be expunged.

The parties recognize the principles of progressive and corrective discipline. Disciplinary action shall include only the following:

- Oral reprimand
- Written reprimand
- Suspension
- Discharge

Disciplinary action may be imposed only for just cause. Any appeal of an oral reprimand or written reprimand imposed may be processed as a grievance through the Grievance Procedure provided for in this Agreement, but only up to Step 3.

Any appeal of other disciplinary action imposed will be processed at the election of the officer through Article 9 - Grievance Procedure or the Board of Police and Fire Commissioners, but not both. The parties agree that the Grievance Procedure and the hearing process conducted by the Board of Police and Fire Commissioners is mutually exclusive: no relief shall be available under the Grievance Procedure for any action heard by the Board of Police and Fire Commissioners and no relief shall be available before the Board of Police and Fire Commissioners for any grievance filed under the Grievance Procedure.

The parties agree that only the Police Chief shall have the right to suspend or dismiss a non-probationary officer for only just cause. The Chief, however, will not file charges with the Board of Police and Fire Commissioners. After the Chief serves the officer with suspension/ discharge charges, the officer shall have ten (10) business days to select in writing which appeal process he/she wishes to utilize. Once the choice of appeal process is selected, the other option is no longer available to the officer. If the officer fails to choose a forum after ten (10) business days of service, the suspension/discharge shall be final.

If the covered member elects to file a grievance to his/her suspension or dismissal, the grievance shall be processed in accordance with Article 9 of this Agreement except that it shall be filed directly at Step 2 either on the Grievance form (Appendix E) or the Election Form (Appendix H).

Pursuant to Section 15 of the IPLRA and 65 ILCS § 10-2.1-17, the parties have negotiated an alternative procedure based upon the grievance and arbitration provisions of this Agreement and where the Village's Board of Police and Fire Commissioners only role in any discipline is to act as an appeal process, if timely chosen by the officer.

ARTICLE 11 **POLICE AND FIRE COMMISSION**

The parties recognize that the Police and Fire Commission of the Village has certain statutory authority over employees covered by this Agreement, including, but not limited to, the right to make, alter and enforce rules and regulations. Except as provided in Article 8 (Discipline), nothing ~~Nothing~~ in this Agreement is intended in any way to replace or diminish the authority of the Police and Fire Commission.

The Arguments of the Village

The Village argues that its offer is preferable by every measure traditionally used by interest arbitrators. At the outset, the Village argues that its set of comparable should be selected, both because they are objectively more appropriate and because the Union failed to provide any comparables prior to the hearing. The Village proposes to compare itself to municipalities with populations of roughly similar size, and departments of roughly similar size, within fifteen miles of the Village boundaries. This is a far more reliable set of comparisons than the Union's arbitrary grouping of municipalities within four miles but of disparate size. Four miles is a limit seemingly chosen to exclude larger municipalities that are more favorable to the Village's position. Two of the Union's proposed comparables do not even meet the usual 50% rule for population. The selection of comparables is not an exact science, but there are established principles and the Village's proposal satisfies those principles while the Union's do not.

Turning to the substantive issues, the Village argues that its economic offer should be considered as a single, coherent piece. Granting that the statute calls for consideration of offers on an issue by issue basis, the Village argues that the economic positions of both parties are intended to reflect the real-world effect of the sunseting of the minimum staffing provision, which had built a certain amount of overtime into the schedule. The Village proposes to improve the performance stipend and provide a breakthrough on the payment of overtime for holidays as an acknowledgement of this change, notwithstanding the fact that minimum staffing was a permissive topic of bargaining. The Union, for its part, seeks to break the wage pattern with an additional percent in the final year of the agreement as its version of a quid pro quo. Given that the economics of this deal are premised on the value of the minimum staffing, the entire offers of

both parties should be compared, rather than considering them on a piecemeal basis. Selecting one party's offer on wages, and the other party's offer on either of the other two economic issues would result in the party prevailing on wages getting a better deal than it has proposed in its overall final offer. That would be inequitable, to say the least.

The Village argues that its offer should be deemed the most reasonable in this proceeding for a number of compelling reasons. First, it tracks, word for word, the settlement proposal offered by the arbitrator following settlement negotiations a month before the hearing, but which was rejected by the Union's membership. The Village notes that other arbitrators have adopted the terms of rejected tentative agreements, because they reflect the result of the back and forth of negotiations and are a reliable indicator of what voluntary collective bargaining would have produced. Indeed, many aspect of the arbitrator's proposal have been incorporated into the tentative agreements in this proceeding. The arbitrator's proposal was, in its entirety, the result of what the parties proposed to one another, and must be given significant weight in determining the outcome of this case.

As noted, the Village believes that the wage issue should, as a matter of equity, drive the decision on all of the economics, and the Village's wage proposal is identical to the settlements achieved in negotiations over the most recent three year contracts with the FOP representing the Police Sergeants, the IAFF representing the Firefighters, and the Operating Engineers representing the DPW employees. While the Union claims that the Sergeant received a quid pro quo, in the form of eliminating language about the impact of decreases to Local Government Distributed Funds, there is nothing, aside from the mere assertion, to establish that fact. The LGDF language in the Sergeants' contract sunsetted by its own terms. Nor is there evidence that any similar language was included or excluded in the Operating Engineers and IAFF deals, which had identical 3%/2%/1% wage settlements. The internal comparables uniformly support the Village, and there is no basis in the record or the law for discounting any of them.

External comparables also dictate acceptance of the Village's offer. The top step, which is the most reliable basis for comparison, and the step on which 80% of the bargaining unit is placed as of the start of the contract, is first among the comparables going into this contract, and will remain first under the Village's offer. Moreover, the Village has front-loaded its offer, which is a benefit to the officers. The average officer at the top step receive nearly \$2,000 more under the front-loaded proposal than he or she would receive from increases of 2%/2%/2%.

The cost of living, too, supports the Village's proposal. The Chicago-Kenosha-Gary CPI-U has been recognized as the most appropriate index for arbitrations within the Chicago metro area. That index rose only 1.23% between the beginning of this contract and the hearing in this matter, a period covering half of the contract term. The compounded increase over the three year contract terms under the Village offer is 6.11%, making it virtually inconceivable that the CPI could approach, much less exceed, the raise officers may expect.

Overall compensation would also favor the Village's position. The 80% of officers on the top step will receive 6.11% increases, but the 20% who are moving through the steps will see increases totaling more than 26%. In addition, most employees participated in the Village's \$2500 deductible family health insurance plan, and pay only \$1763 per year for that coverage. The average for officers in comparable communities is \$4454. Single officers pay \$183 per year, while single officers in comparable communities pay \$1023. Dental insurance is likewise cheaper for officers in Downers Grove than it is for officers in any comparable community.

The Village observes that it has almost no voluntary turnover in its ranks, and has no difficulty whatsoever in attracting well qualified applicants when there is an opening. This stands as strong evidence that the compensation of Village officers is very competitive in the labor market. Sixteen of the officers in the Village left other agencies to come to work for the Village. This competitive strength is powerful evidence that there is no need for a catchup or other extraordinary wage increase, and no plausible basis for awarding such an increase.

The Village also points to national data (the Employment Cost Index) showing that public sector wage increases have averaged less than 2% in 2014, 2015 and 2016, the most recent three years for which information is available. This mirrors the results of CPI analysis and shows that the Village offer is more than reasonable.

Finally, the Village asserts that the interests and welfare of the public are best served by a fiscally prudent approach to public finances. The Village exists to provide services to its residents, and not simply for the benefit of its employees. The fact that it has the ability to pay the Union's request does not mean that it should pay that much. The Village's offer balances the employees' desires for a reasonable increase with the increasing costs of insurance and pension benefits. The Village contributes an average of \$37,000 per year for each active participant in its Police Pension

Fund, and every increase in salary means an increase in pension liability. The public interest demands some moderation in salary.

Turning to the Union's argument that a quid pro quo must be provided for the elimination of the minimum staffing language, the Village expresses skepticism that an offset is required for eliminating permissive language. By its nature, the Village never had to agree to the language in the first place, and in effect gave a gift of overtime to officers when it did agree. The Village is no longer willing to make that gift, and it should not have to pay for the privilege. Nonetheless, the Village has offered three significant benefits to the Union. The Village has offered to increase the performance stipend by \$250 per year, to \$1000 for officers between seven and fourteen years, and \$1250 for officer with fifteen or more years. This is worth just over 0.25% for officers. The Village has also offered, for the first time, to pay overtime for scheduled and assigned work on four specified holidays. One can reasonably project that this would result in an increase in pay of over 0.50% for patrol officers. In conjunction with this change, the Village proposes to credit officers for holiday hours as the holidays occur, rather than advancing all of the hours at the beginning of the year. However, the Village points out that officers can carryover up to 120 hours in their holiday bank, so there would be little practical impact on officers. The Village is also offering the option of arbitration for officers facing suspension or discharge. The Village acknowledges that it will save roughly \$112,000 per year through the change in minimum staffing language. Again, though, that language was always permissive, and this package of enhancements should be judged more than adequate compensation for the loss of permissive language.

On the issue of the Discipline language, the Village's formulations should be favored. It matches the Union's initial demand on the issue. It also exactly matches the language in the IAFF agreement, another bargaining unit for which the option language is relevant. The fact that this language has proved workable in the other unit demonstrates that it is a reasonable response to the officers' desire for access to arbitration.

The Arguments of the FOP

The Union takes the position that its final offer provides equity to the officers at a reasonable, even modest, cost. As a preliminary matter, the Union argues that its set of proposed comparables offer the more reliable indicator of labor market conditions and should be adopted.

The Union has employed a traditional approach, identifying communities within a short distance of Downers Grove, and discarding those with populations that are obviously too small. The remaining communities were analyzed using the common economic measures, such as median home value, revenues, expenditures and fund balance, and were winnowed to a manageable number of truly comparable communities. By contrast, the Village simply cast a net over communities within an arbitrary fifteen mile radius, and then applied equally arbitrary criteria to choose among them. The Village deemed comparable any community with a population between 35,000 and 75,000, and a department size of at least 50 officers. There is no explanation for these parameters. Specifying 75,000 as an upper limit means nothing, since only one area community – Naperville – exceeds that, and both parties agree it is not comparable. A lower limit of 35,000 is equally mysterious. It excludes adjoining municipalities such as Westmont, Woodridge, Darien and Lisle, for no apparent reason. The Village does not explain how or why it chose its comparable pool, and the “criteria” it cites are merely designed to justify its choices. The Union’s set of comparables is plainly within the same labor market as Downers Grove, as most of them are adjoining communities. Since the Union has explained and justified its choice of comparators and the Village had not, the arbitrator should accept the Union’s proposed comparables.

On the issue of wages, the Union asserts that its offer is preferable when considered in light of the interests and welfare of the public. There is little difference between the Union’s offer and that of the Village. The Union asks for a 2% increase in the third year of the contract, while the Village demands a settlement at only 1%. The difference amounts to less than \$1000 per officer over the life of the contract, at a cost equivalent to roughly 0.25% of the Village’s “Unassigned General Fund Balance”. The record evidence shows that the Village finances are robust, and that that is not affected by selection of the Union’s offer. The interests of the public in fiscal prudence are served no matter which offer is chosen, but the Union offer serves the equally vital public interest in attracting and retaining good officers, thereby enhancing the safety of the community.

While the statute requires consideration of internal comparability, the Union points out that there is no evidence that these parties have ever relied on internal comparators in their bargaining. Unlike in some other communities, there is no history of any conscious parity between the police officers and the firefighters. Each group bargains according to its own interests and concerns, and is guided by its own set of external comparables. For this reason, a settlement that is acceptable to the firefighters, based on their comparisons and their interests, may not be

acceptable to the police officers, given their comparisons, and it should not be presumed to be acceptable. At a minimum, if the Village wishes to rely on a supposed internal settlement pattern, it must prove that the other bargaining units are similarly situated to the officers, and it has simply failed to do so.

The Union recognizes that the Police Sergeants are a group whose settlement would reasonably be considered significant, and that the Sergeants did agree to the Village's wage proposal. However, the Sergeants received a significant quid pro quo for accepting a below market settlement. Specifically, the Village agreed to remove language from their contract that allowed for a wage freeze if shared revenues (the Village's share of income and sales taxes) dropped by 10% or more. Given the State's precarious finances and the realistic prospect of the State withholding shared revenues, elimination of this language had genuine value to the Sergeants, and they paid a price – acceptance of the Village's wage offer – to remove it. The Officers' contract has never contained such language, and no such tradeoff was necessary. There is no evidence of a parity relationship in bargaining with any other unit, and there is no incentive – as there was with the Sergeants – for the Officers to accept a lower than normal wage settlement. Thus consideration of internal comparisons is, at best, inconclusive, and should be given no weight.

Changes in the cost of living are similarly inconclusive. The CPI, by whatever measure, is a questionable basis for determining wage increases in interest arbitration. That is particularly the case here, where the difference lies in the third year of the contract, and the CPI cannot be known. Given the recent history of pundits and prognosticators at predicting events, a fortune teller would have as good a chance as an economist of projecting the CPI for the last year of this agreement. Nor, really, can the Village claim that cost of living factored into its formulation of a final offer. Wage increases of 3%/2%/1% do not reflect anything connected to the cost of living. Clearly other factors have driven the Village in its bargaining, as they have driven the Union. Giving any weight to the CPI would be an artificial act, trying to match the parties' bargaining strategies into the statute, rather than reflecting what real-world considerations shaped the proposals. This factor is not relevant to the instant dispute.

The two factors that should determine the wage dispute in the Union's favor are external comparability, and consideration of traditional factors. Among the external comparables, none have settled for less than 2% in 2017-2018. Looking at settlements in the three years preceding

the disputed third year, no comparable has received less than the Downers Grove officers. Yet the Village proposes to have these officers accept the lowest settlement in the comparable grouping. There is no reasoned basis for this. The Union's offer maintains the bargaining unit's ranking among the comparables, comfortably in the middle third when top rates are compared, below Woodridge, Darien and Westmont, and just above Elmhurst and Lombard, with Glen Ellyn, Wheaton and Lisle comprising the lower third. The gap between Downers Grove and Elmhurst is narrow enough that acceptance of the Village offer might well cause these officers to lose rank once the next round of bargaining is concluded, while the Union's offer would probably maintain the ranking. Since the Village is offering the lowest wage proposal in any comparable community, while the Union is offering an increase that is mildly more competitive, the arbitrator must conclude that considerations of external comparability favor the Union's offer.

The most powerful argument compelling acceptance of the Union's offer should be the arbitrator's consideration of "other factors" ... "which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment..." Simply put, even if the Union wins the wage argument here, officers will be making less money than they were under the old contract. This is because, after more than 25 years of having some agreement on minimum manning, and fifteen years with the current language, the Village in this round of bargaining took advantage of recent changes in case law and insisted on removing that provision from the contract. Given the recent rulings that minimum manning is a permissive subject for police officers, the Union had no recourse, and was forced to allow the change. The result of this was the loss of what had been regular and frequent opportunities for officers to earn overtime and compensatory time when they were called back to work to maintain the minimum manning levels.

The elimination of minimum manning will reduce overtime payments by approximately \$360,000 across the entire bargaining unit, based on 8 hour shifts.¹ Even if the Union's offer is accepted, the net loss will be on the order of \$200,000. The Village acts in this proceeding as if it is simply exercising an inherent right in the normal course of business, rather than eliminating a long bargained-for economic benefit. But that ignores the reality of what is happening, and to whom it is happening. The officers are seeing their compensation significantly reduced, and while the Village may have the right to do this, the officers should reasonably expect some form of quid pro quo for this change. The principle of quid pro quo for changes is a bedrock in negotiations

¹ The officers had worked 12 hour shifts for two years on an experimental basis. That period was excluded from the analysis.

and in interest arbitration.

The Village, of course, argues that the loss of overtime will be far less than the Union expects, because it will not run short staffed. Yet the current contract allows them to run short staffed if the shortfall is due to the use of compensatory time, and every time this situation has come up, they have run short staffed. Without the protection of minimum manning language, it is fairly unlikely that the Department will pay more attention to manpower levels than it has in the past. This is one instance in which past performance probably is a reliable predictor of future results. The Department will maximize its savings, and that mean maximizing the loss to officers.

None of this is a surprise to the Village or to the Union. Both parties knew that an eight hour schedule and a minimum manning provision would generate overtime. Both parties factored that in in their prior bargains. The Village cannot credibly take the position that eliminating this overtime is a non-event, or something separate from negotiations. The Village is changing working conditions in order to reduce the earnings of its employees. While it may have the right to do that, the Union has the right to seek some form of offset, and the arbitrator is obliged to recognize what is happening here, and provide that offset. An extra 1% in the third year will not in any way compensate officers for their loss of overtime, but the Union recognizes that the calculation of a quid pro quo is an imprecise exercise. The Union seeks at least a recognition of how this bargain will sort out for the employees, and the additional 1% is the recognition it seeks.

Turning to the issue of Performance Stipend, the Union rejects the Village's proposed increase of \$250 simply because it does not wish to be seen as agreeing that this is an adequate quid pro quo for the loss of overtime discussed above, and it does not wish to be seen as endorsing a bonus system that should be reformulated as a true longevity system. If the arbitrator chooses to award the Village's offer, the Union is ambivalent. It will accept the money, but not the underlying premises.

On the issue of Holiday Pay, the Union seeks the status quo, while the Village seeks to radically change the benefit that has been in place for over twenty years, by ending the front-loading of Holiday time and replacing it with an earn as you go system. This change ignores the fact that three holidays fall within six weeks of the end of the year, and that there is both a practical limit on how many people can take time off in that period and a cap on how many holiday hours can be carried over. The Village never brought the issue of Holidays to the table for negotiations.

It confined itself to responding to the Union's effort to secure time and a half for some holidays. However, the price the Village sought was too high and the Union dropped the issue. Now the Village continues to pursue the matter, offering patrol officers a very limited opportunity for holiday overtime in exchange for eliminating the credit for holiday hours at the beginning of the year. This is not a tradeoff that was ever proposed before interest arbitration was invoked, and the parties never discussed eliminating the front-loaded credit for holiday hours during their negotiations. It is hardly an issue that is ripe for arbitration, even if there was some arguable need to change the current system, which there is not. This is just the Village's own conception of what a tradeoff might look like, but it is not the Union's conception. There is no problem being addressed by this proposal, and interest arbitration is not the venue for trying out things that might be good ideas, but have no reason otherwise to be in arbitration. The change put forward by the Village should therefore be rejected.

The final issue is that of Discipline, where both parties seek to offer officers an option of grievance arbitration for at least some discipline, in lieu of an appeal to the Police and Fire Commission. The PFC is a creature of the Employer, and employees are entitled to be skeptical of its impartiality. It has the ability to increase penalties beyond what the Department believes is appropriate, placing officers at increased risk if they appeal to the PFC. The PFC does not have the same predictable evidentiary, procedural and remedial principles governing its action that would be found in arbitration. Moreover, it is an expensive structure, since the PFC employs its own legal counsel, in addition to the Village's legal counsel. Finally, recourse to arbitration is something that is legally mandated in Illinois. Given all of this, it is unsurprising that both parties would propose to offer binding arbitration. Despite that general agreement, though, there are differences in the proposals. The Union seeks to make explicit the principles of progressive discipline inherent in just cause (and referenced in the Village's Personnel Manual), and to specify what penalties are and are not available to the Department. The Union expresses concern that some arbitrators, in the absence of language about progressive discipline, may feel that they lack the authority to review penalties. The Union further proposes only the standard penalties of reprimand, suspension and discharge. The Village offer also refers to "demotion" as an available penalty. That makes no sense in the context of this bargaining unit, since there is no lower rank to which a police officer can be demoted.

The Village proposal does not take proper account of how the language must be structured to avoid a conflict between the statutory powers of a PFC, and the officer's option to proceed to

arbitration. The Village, for example, proposes that the Chief be given the “exclusive right” to issue discipline, without resort to the PFC. That is not an accurate statement of the law, since the PFC remains an option, and if the PFC is involved the Chief may only suspend for five days, and any further penalty must be imposed by the PFC. The Union notes that if an employee elects the PFC as a forum, the Chief may not discharge the employee – he may only recommend that penalty and the PFC has the right to impose or not to impose discharge. Moreover, the Village proposal does not make it clear that the Chief cannot file charges with the PFC unless and until the officer has exercised the option to proceed before the PFC. This is important, since once charges are filed the PFC has its own independent jurisdiction, and need not necessarily honor the officer’s election of arbitration as a forum. The Village’s language creates a series of needless conflicts and potential conflicts between the contract and the law, and thus the Union’s offer should be preferred.

Discussion

The parties have four areas of substantive disagreement – wages, performance stipends, holiday pay and discipline. As a preliminary matter, though, the arbitrator must determine the appropriate set of external comparables.

Comparables

The Village proposes to look at relatively larger communities with Departments of 50 or more sworn officers within a 15 mile radius of Downers Grove.² The Union proposes that the arbitrator look to a four mile radius, and include communities that are roughly within the traditional 50% plus or minus criterion for determining comparability. This yields three communities that both agree should be comparable: Elmhurst, Lombard and Wheaton:

<u>Village Set</u>	<u>Union Set</u>
Elmhurst	Elmhurst
Lombard	Lombard
Wheaton	Wheaton
Addison	Darien
Bartlett	Glen Ellyn
Carol Stream	Lisle
Hanover Park	Westmont

² The Village refers to its radius as 10 miles in its brief, but that appears to be a typographical error. At the hearing, counsel made it clear that 15 miles was the cutoff. A 10 mile cutoff would exclude both Bartlett and Hanover Park.

Woodridge

The proposed comparables compare statistically as follows:

Community	Pop.	Distance	Full-Time Sworn	Median Home Value	Median Income	EAV ³ / ⁴	Fund Bal. ⁵
Elmhurst	44,121	7 miles	64	\$366,900	\$95,240	1,840	31.4
Lombard	43,165	Adjacent	65	\$235,300	\$70,415	1,268	18.8
Wheaton	52,894	5 miles	63	\$336,500	\$84,833	1,840	27.4
Addison	36,942	8 miles	67	\$228,700	\$53,469	952	
Bartlett	41,201	15 miles	55	\$260,400	\$94,919	949	
Carol Stream	39,711	8 miles	60	\$229,100	\$74,026	1,023	
Darien	22,088	Adjacent	34	\$297,400	\$77,188	784	4.1
Glen Ellyn	27,450	1 mile	38	\$366,400	\$91,051	3,575	11.1
Hanover Park	37,973	13 miles	58	\$179,400	\$66,359	533	
Lisle	22,390	Adjacent	n/a	\$315,100	\$74,041	916	16.5
Westmont	24,685	Adjacent	38	\$273,600	\$57,547	755	13.1
Woodridge	32,971	Adjacent	n/a	\$252,300	\$77,164	1,013	28.9
DOWNERS GROVE	47,833		70	\$332,500	\$85,020	2,046	24.9

I would agree with the Union that the bases for Village's choice of selection criteria are not fully explained, and not completely self-evident. The use of a 15 mile radius in this heavily populated area goes beyond what is necessary to find a reasonable number of comparables to use. All but two of the proposed comparables from both parties are within half that distance from Downers Grove. The parameters for population and department size also seem somewhat random. While it is common to look to communities and departments within 50% one way or the other of the size of the community in dispute, the Village proposes a cutoff of roughly 70% for both population and department size, and does not explain its rationale. By the same token, the Union's use of a four mile cutoff is not explained, and given that two of the three stipulated comparables are more than four miles from Downers Grove, it seems somewhat arbitrary.

There is no reason to include Bartlett and Hanover Park among the comparable grouping, as both are twice the distance from Downers Grove as all of the other comparables and there is no lack of possible communities to compare to. Eight of the remaining communities fall within the 50% parameter for population, and none are statistically so different from Downers Grove as to

³ In millions of dollars.

⁴ The Village provided per capita EAV figures, and the Union provided total EAV. For the purposes of this chart, I have calculated total EAV based on population and the Village's per capita figures to arrive at a rough basis for comparison.

⁵ In millions of dollars.

suggest they would be invalid comparators. Lisle and Darien are just below the margin, at roughly 46% of Downers Grove’s population, but both are adjacent communities, and likely to be in the minds of the negotiators for both sides. They are not entitled to the same weight as communities like Wheaton, Lombard and Elmhurst, but could be given some weight as tertiary comparables if the primary comparables did not provide clear guidance on a given issue.

I conclude that the following communities may properly be considered as primary comparables for Downers Grove for the purposes of this proceeding:

	Pop.	% DG	Dept. Size	% DG
Wheaton	52,894	110	63	90
Elmhurst	44,121	92	64	91
Lombard	43,165	90	65	93
Carol Stream	39,711	83	60	86
Addison	36,942	77	67	90
Woodridge	32,971	69		
Glen Ellyn	27,450	57	38	54
Westmont	24,685	52	38	54

Additionally, the communities of Lisle and Darien may be considered tertiary comparables, based on proximity.

Mode of Analysis

At the outset, the Employer makes two arguments that go to what mode of analysis and presumptions should be used in this case. The first is that its offer should be preferred because it exactly tracks the content of an “Arbitrator’s Proposal to Resolve All Issues” that this arbitrator issued at the end of the session on November 8th. The Village asserts that this is tantamount to a tentative agreement, and that a rejected tentative agreement has been recognized as closely approximating what the outcome of voluntary collective bargaining might have been. In support of this, the Village notes that there was a great deal of back and forth between the parties on that day, and that the process was more closely akin to direct bargaining than true mediation. The Union objected to this line of reasoning at hearing, citing the inadmissibility of offers of settlement and statements in mediation.

As I indicated at the hearing, I agree with the Union that the Arbitrator’s Proposal is not entitled to any weight in the selection of final offers, since it was in essence a mediator’s proposal. At pages 94 and 95 of the transcript, I explained my view of the Arbitrator’s Proposal:

5 THE ARBITRATOR: I take the references by
6 counsel to my letter to be a reflection of brilliance
7 of the drafting of my letter. However, I would say
8 that my letter was my proposal to the parties. It
9 did not represent a tentative agreement. And it was
10 understood by me -- at least by me that it was some-
11 thing that had to be taken back and voted on. I
12 mean I will receive it in the record because I wrote
13 it and I already -- I have a copy of it on my
14 computer.

15 MR. CLARK: I suspect you do.

16 THE ARBITRATOR: But I am not going to give
17 particular weight to it as a statement of what the
18 parties should have done. All right? That was not
19 the point. That was a mediation and the proposals
20 in the mediation aren't entitled to any particular
21 weight once you get to arbitration. It happened.
22 I understand it happened.

23 MR. CLARK: But we will reserve the right to
24 argue that. Normally I would agree with you. But

1 I think we have something a little different here in
2 the sense that the parties were engaged in negotia-
3 tions and basically saw eye to eye on these items
4 subject to taking it back to our respective bodies.

5 MR. BAILEY: That's not actually true at all,
6 Mr. Clark.

7 MR. CLARK: Well, okay. You were there. You
8 understand what occurred and what didn't occur. So
9 I will leave it to your good judgment.

10 THE ARBITRATOR: I viewed it as a mediation.
11 All right? And I viewed this as an arbitrator's

12 proposal. I could have said mediator's proposal, I
13 could have said an avocado's proposal, but it was a
14 proposal. Okay? It's received into the record
15 but I -- And obviously you can argue whatever you
16 wish to me in terms of how I should treat the
17 document. But, you know, I just don't want you
18 to be surprised that I view it as in essence a
19 mediation proposal. Okay?

20 MR. CLARK: I will make my argument in the
21 brief.

22 THE ARBITRATOR: I understand. I would be
23 disappointed if you didn't.

It is commonly understood that representations and proposals made in the course of mediation are not to be considered in an arbitration. Otherwise mediation could not function. With all respect to the Village's counsel, trying to distinguish between settlement discussions facilitated by the arbitrator and a mediation would invite disastrous consequences for the process. The fact that both parties were actively involved in formulating proposals and compromises is hardly a basis for saying this was a negotiation and not a mediation. A mediation in which the parties are not active participants is likely to be an unsuccessful mediation. Moreover, to say that the Arbitrator's Proposal is tantamount to a tentative agreement ignores the fact that that is not how it was styled. The body of the letter makes it clear that this is a proposal from the neutral, including an effort to have the bargainers present it in a positive light to their principals:

Thank you for the opportunity to meet with you and your bargaining teams on Tuesday in an effort to resolve the current contract impasse. As I indicated to you at the close of the session, I believe the parties would be well served by a settlement that reflects their core concerns, and takes account of the statutory criteria for resolving bargaining disputes and the practical limits of what can be accomplished in any one round of bargaining. Based on our discussions over the course of the day, I would suggest a settlement on the following terms:

This proposed settlement does not meet every desire of the parties, but no settlement ever does. The proposal does, however, address those items that the parties identified as their core concerns, and it does so without the expense, delay and uncertainty of an interest arbitration proceeding. I would ask that you present it to your principals for their favorable consideration.

These are sophisticated parties. They know how to enter into a tentative agreement if that is what they wish to do. They did not do so on November 8, 2016. They engaged in a mediation, and received a mediator's proposal at the end. That proposal was ultimately not accepted, and the fact that it was made is of no consequence in this proceeding.

The Village also argues that, notwithstanding the statutory scheme for separate consideration of economic proposals rather than consideration of the total offer, the arbitrator should treat its economic proposals as a package. This is because the Village included items to improve the Performance Stipend and introduce Holiday overtime as a reflection of the fact that the elimination of minimum manning would have a negative impact on the earnings of unit members. The Union rejected these offers, but included an additional 1% in its salary offer for the third year. The Village makes the point that any mixed outcome on economics will result in one of the parties receiving more than it proposed or less than it was offered. While I have previously considered and rejected the whole package approach to economics under the Illinois statute, the Village's argument has a good deal of persuasive force, as far as it goes. As more fully explained below, the sole rationale for the increase in the Performance Stipend is as a quid pro quo of sorts for the reduction in overtime across the unit. That is not the case for the Holiday Pay proposal, which includes both an improvement and a diminution in the benefit. It is not purely a quid pro quo. Thus, whether analyzed as a package or simply on the individual merits, the outcome on the Performance Stipend will be linked to the outcome on wages. The outcome on Holiday Pay will not, because it is not simply a quid pro quo and requires a separate weighing of its merits.

Wages

The sole dispute on wages concerns the third year of the contract, from May 1, 2017 through April 30, 2018. Both parties agree that the first year of the contract will feature a 3% increase, and that the second year will include a 2% increase. The Village proposes a 1% increase in the third year, while the Union seeks 2%. The Union illustrates the difference at each step at page 11 of its brief:

May 1, 2017 through April 30, 2018

<u>Step</u>	<u>FOP (2.0%)</u>	<u>Village (1.0%)</u>	<u>Difference</u>
Start	\$65,713	\$65,069	\$644
After 1 Year	\$69,457	\$68,776	\$681
After 2 Years	\$73,873	\$73,148	\$725
After 3 Years	\$78,367	\$77,599	\$769
After 4 Years	\$82,977	\$82,164	\$813
After 5 Years	\$87,756	\$86,896	\$860
After 6 Years	\$92,723	\$91,814	\$909
After 7 Years	\$98,453	\$97,488	\$965

While the parties make arguments concerning the cost of living and the interests of the public, the relatively small difference between the offers – 1% in the final year – makes it difficult to draw any meaningful distinctions under those criteria. The three most significant factors in choosing between these wage offers are external comparability, internal comparability, and the impact of the sharp reduction in overtime due to the elimination of the minimum manning provision.

EXTERNAL COMPARABILITY

The Union argues that the rate of increase received by officers in Downers Grove, under either offer, does not compare favorably to the rates of increase in other area police departments. Under the Village offer the average increase across the contract would be 2.00%, while the Union offer is 2.33% on average. If the year prior to this contract term is factored in, the averages are 1.75% for the Village offer and 2.00% for the Union’s offer. By either measure, three or four years, the Village proposal would represent the lowest settlement average for the comparable grouping (tied with Woodridge over this contract term):

	RATES OF INCREASE				Ave.
	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	
Wheaton	2.00	2.50	2.50	N/S	2.33
Elmhurst	3.25	3.33	2.75	N/S	3.11
Lombard	2.00	2.50	2.25	2.25	2.25
Carol Stream		3.00	3.00	3.25	3.08
Addison		7.00	0.00	3.70	3.57

Woodridge	2.00	2.00	2.00	2.00	2.00
Glen Ellyn	2.50	2.75	3.00	2.50	2.67
Westmont	2.00	2.25	2.25	2.50	2.25
<u>Average</u>	<u>2.35</u>	<u>3.17</u>	<u>2.22</u>	<u>2.70</u>	
VILLAGE FINAL	1.00	3.00	2.00	1.00	1.75
UNION FINAL	1.00	3.00	2.00	2.00	2.00

The Union offer over three over the three years of the contract is just over 1% below the average settlements, while the Village offer is just over 2% below the average. This comes off a year (2014-15) in which the increase was also more than 1% below average.

All of this is somewhat ameliorated by the fact that the Village's officers are well paid relative to their comparable grouping. Over the four years beginning with the 2014-15 contract year, the Village's officers have ranked third among the comparable pool, and they will retain that ranking no matter which offer is accepted.

TOP STEP 2017-18

Woodridge	\$101,073
Westmont	\$100,702
VILLAGE FINAL	\$97,488 – 3 rd
UNION FINAL	\$98,453 – 3 rd
Elmhurst	\$95,048
Lombard	\$94,328
Addison	\$94,341
Carol Stream	\$94,188
Glen Ellyn	\$93,705
Wheaton	\$93,447

While the Downers Grove officers retain their third place rank under both offers, there is no question that consideration of the settlement pattern among external comparable groups solidly favors the Union offer.

INTERNAL COMPARABILITY

By contrast, consideration of internal comparability strongly favors the Village's offer. The

Village has reached settlements with the Operating Engineers in the DPW, the IAFF in the Fire Department, and the FOP Sergeants unit in the Police Department. All of these units settled their most recent contracts for three years at 3%, 2% and 1%, albeit for different terms. The Operating Engineers settled for the same term as this contract will cover. The IAFF was a year earlier, so their most recent settlement commenced in 2014 and expires in 2017. The Sergeants are a year ahead, so their most recent settlement began in 2016 and will expire in 2019.

The Union argues that internal settlements with non-police units cannot form a valid comparison for law enforcement personnel, unless there is evidence that the parties have consciously pursued a course of pattern bargaining or maintaining parity. I would agree that proof of bargaining for parity between units considerably strengthens the persuasive value of internal settlements. However, I would not agree that internal settlement patterns are, otherwise, irrelevant. For one thing, the statute and many years of arbitral caselaw stand for the proposition that settlements between the same employer and other units in the municipality are entitled to weight in interest arbitration proceedings involving law enforcement personnel. For another, the other three units in Downers Grove have sophisticated representation, and two of the three settled units here are comprised of protective service employees, with access to interest arbitration. This is not a case of an employer trying to base a settlement pattern on how it treats non-represented employees or an outlier settlement with a small independent local. The pattern of settlements is not perfect, in that the contracts are staggered, but there is a striking consistency to the 3%, 2%, 1% settlements on wages, and that is not likely the result of unique factors for each unit, or its comparables.⁶

The Union argues that the Sergeants contract, which it concedes would be comparable, cannot be given any weight because the Sergeants received relief from an unusual piece of language in their initial contract, which allowed for a wage freeze if shared revenues decreased. I agree that removing that language is a valuable thing for the Sergeants, given the state of the State's finances, but there remains the fact that the Sergeants wage settlement exactly tracks the

⁶ I do not necessarily disagree with Arbitrator Meyers observation in *Round Lake Beach, S-MA-11-115 (2012)* that assigning proper weight to an internal comparable may be difficult without knowing where it stands relative to its own external comparables and what other factors may have driven the settlement. There, however, he was presented with a single internal settlement by a non-protective services unit. It is understandable that he would require additional data before deciding it constituted a pattern of any type, or had the weight to overcome reliable evidence of external settlement patterns.

wage settlements in the other two units.⁷ That is not likely a coincidence. I believe the weight of the record evidence is that internal comparables strongly support the reasonableness of the Village's offer.

TRADITIONAL FACTORS / OVERALL COMPENSATION

A consideration that sets this case apart from the standard wage dispute is the fact that the Village exercised its right to demand removal of long standing language from the contract which had set minimum manning standards. Under the removed language, the Village was required to replace any absent officers, and this generated a considerable amount of overtime on a consistent basis for unit members. The Union predicts, based upon the removal of the language, that unit employees will lose \$359,000 in pay in 2017, from lost overtime opportunities. This assumes that the Village will run short whenever vacancies occur, which the Village asserts that this is not true. At the hearing, it produced a staffing plan to demonstrate that the lost overtime will in fact be quite a bit less. Even under the Village's projections, however, a minimum of \$112,000 less will be paid out in 2017 for overtime than was paid in 2016. In a bargaining unit of 52 officers, this amounts to roughly \$2150 per person,⁸ or just over 2% of annual base wages at the top rate.

The Village acknowledges that the officers will suffer a loss, but it argues that this is not a situation calling for a quid pro quo. In general, I would agree with that. The Union did not voluntarily remove the minimum manning language, and there is no question of offering them something to induce such agreement. The law was interpreted to find that minimum manning was not a mandatory topic of bargaining for employees other than firefighters. The Village, as was its right, unilaterally decided not to continue the provision. It was not required to bargain that decision, and it follows that the Union was not in a position to demand a quid pro quo.

To say that there is no quid pro quo required for the decision to remove minimum

⁷ The Village points out that the language had a sunset built in, but the fact that the Village did not seek to renew the language has some value to the Sergeants.

⁸ The impact, of course, is not spread out evenly. Some officers will lose nothing at all because they worked little overtime, and others will lose a great deal. However, the wage proposal before me is calculated in across the board terms, and it is therefore appropriate to measure the impact of the loss of overtime in those terms.

manning is not the same as saying that the elimination of this overtime has no bearing on the outcome of this arbitration. By statute, the arbitrator is required to consider, among other things, “overall compensation” for employees and “other traditional factors” in arriving at his award. This was an exercise of a management right, and there is no question of in any way penalizing the Village for exercising that right. However, it was also the elimination of a vast amount of compensation from unit employees, compensation that was regular, predictable, and intentional over a period of many years. To say that the employees’ overall compensation has not been reduced simply because the Village had the right to unilaterally make this decision is to completely ignore the reality of what occurred. This change was made for sole the purpose of reducing the amount of money earned by unit employees as overtime. There is nothing wrong with that, but whether it is characterized as overall compensation, traditional factors or simply impact bargaining, the readily foreseeable response to a loss of this magnitude would be an effort to in some measure recoup the earnings in collective bargaining.⁹

The proposal of the Union is to receive an additional 1% across the board in 2017. Even assuming the best case scenario put forward by the Village, this is less than half of the impact the elimination of minimum manning will have across the bargaining unit.¹⁰ It is also an amount that is supported by consideration of the settlement patterns among police units in comparable communities. Absent the significant loss of overtime earnings, I would be inclined to defer to the strong pattern of internal settlements favoring the Village’s position. When the factor of changes in overall compensation received by employees is added to the balance, however, I find that the Union’s’ final offer is the more reasonable.

Performance Stipend

The Village proposes to increase the annual performance stipend by \$250, while the Union proposes the status quo. The increase is proposed purely as an acknowledgement that the change in minimum manning will reduce compensation, and the Village urges that it only be awarded if

⁹ There is, of course, the consideration that while employees will earn less, they will also work less, and any attempt at a one-for-one recovery of the loss would plainly be unreasonable.

¹⁰ Without in any way questioning the good faith of the Department managers, I would say that the Union has a reasonable concern that the Village may be tempted to go below their proposed manning levels, given the Department’s history of running short staffed when it has been able to do so under the former contract language. This would, of course, mean a larger loss of overtime opportunities than the \$112,000 projection..

the Village's position on wages is also awarded. The Union does not really disagree. It professes to be agnostic about this increase. The members will readily accept more money, but they do not concede that this is an appropriate quid pro quo for the loss of overtime, and do not believe that the performance stipend system is an appropriate means of rewarding longevity. Given that both parties view this as an offer of a quid pro quo for the loss of minimum manning, and that the Union has identified the more appropriate quid pro quo as acceptance of its wage offer, I agree that the Village's stipend proposal has no independent merits or demerits, and that it rises and falls with the Village's wage proposal. As I have determined that the Union's final offer on wages is more reasonable, it follows that the Performance Stipend should remain status quo.

Holiday Pay

The Village proposes to pay time and one half for scheduled patrol hours and assigned non-patrol hours on four holidays: New Year's Day, July 4, Thanksgiving Day, and Christmas Day. It characterizes this as an improvement for which it should receive credit as a quid pro quo for the reduction of overtime hours for minimum manning. However, this somewhat misstates the effect of its proposal. The Village does offer increased holiday compensation for patrol officers, and potentially some detectives, but it puts a price on that improvement, in that it seeks to change the current system of crediting all holiday hours at the commencement of the year, which makes the time available for use throughout the year. Instead, the Village wants to have officers credited with holiday time as the holidays occur. The Union opposes this tradeoff, arguing that it is not balanced, and creates potential problems for officers in using time earned late in the year. In any event, the Union points out that that the change in crediting holiday hours is not something that was ever raised as an issue before mediation.

Without going on at unnecessary length, I generally agree with the Union's position on this issue. An issue that was not raised until after arbitration was invoked and the process was commenced is not a good candidate for compulsion by an interest arbitrator.¹¹ More importantly, the Village does not identify any problem with the current system of crediting holiday time to officers in advance. A party seeking to change the status quo bears the burden of persuasion, and where it proposes a material change in a benefit or working condition, it has the burden of establishing that there is a problem to be fixed and that efforts to fix it on a voluntary basis have

¹¹ See *Palos Heights Fire Protection District and IAFF, Case S-MA-12-389 (Nielsen, 2013)*.

proved unsuccessful. The degree of proof required varies depending on the nature of the benefit or condition, but in every case there must be something more than just that the change seems like a good idea to one of the parties. Interest arbitration is designed to be a very conservative process, a last resort for resolving disputes that have resisted the parties' best efforts at the table. That does not describe either portion of the holiday pay proposal. The improvement in overtime was something the Union sought in bargaining but dropped in its final offer. The change in crediting holiday pay was not raised prior to mediation, and is proposed in part as a quid pro quo for the benefit improvement the Union no longer seeks. There is nothing to explain why this change is necessary or desirable. Perhaps the Village is correct that the trade is a reasonable one, but that is not the same thing as saying that not making the trade and continuing to advance holiday hours is a problem.

I conclude that the Village has not carried its burden of proving that a change in the Holiday Pay provision of the contract should be imposed in this proceeding. Without respect to the outcome on wages, I find that the Union's status quo position is preferable, and should be adopted.

Discipline

Both parties propose to give officers the option of grieving discipline and accessing arbitration for suspensions and discharges. The only material areas of difference are:

The Union proposes that the contract require the use of progressive and corrective discipline, while the Village simply relies on just cause;

The Union proposes to limit discipline to oral reprimands, written reprimands, suspensions and discharge, while the Village's language also refers to demotions;

The Union specifies that no charges are to be filed with the PFC until the officer has an opportunity to elect arbitration or the PFC as the venue for appeal;

The Village specifies that the Chief has the exclusive right to impose discipline, while the Union believes this to be an incorrect statement of law so long as the PFC remains an option for disciplinary appeals.

The Village makes the point that this language is identical to the language in its Fire contract, and that having common language makes administrative sense. I agree with this general proposition, and in an area such as the specification of progressive discipline, I think it is entitled to a great deal of weight. The standard of just cause is commonly understood to incorporate the notions of progressive and corrective discipline, and arbitrators routinely hold that the employer

has the burden of proving both just cause for the imposition of discipline and just cause for the level of discipline.¹² I find that the Union's concerns about arbitrators feeling constrained by the lack of a specific reference to progressive discipline is overstated.

The other areas identified by the Union are of somewhat greater substance. I agree that the Village's language about demotions is potentially misleading since there is no lower rank for a police officer to be demoted to. This is different from a fire department, where there commonly are mixed ranks in the bargaining unit. I also agree that various portions of the Village offer seem to assume that the option of arbitration puts an end to the PFC's potential role in discipline. The Union is correct that if an officer elects to proceed to the PFC rather than arbitration, it is not strictly speaking true that the Chief has the sole right to impose discipline, since the PFC has independent jurisdiction to increase or modify discipline if charges are filed. This may be a too fine parsing of words, since the PFC would not become involved if the Chief did not initiate discipline against an officer and then file charges before the PFC. The PFC cannot, on its own motion, impose discipline. It can only do so in response to an action by the Chief and a decision by the officer to take the matter to the PFC. If the term "impose" is understood to mean initiate discipline, which is a plausible reading, the problem identified by the Union is answered.¹³ The best way to avoid any confusion is through the suggestion of the Union that the Chief be foreclosed from filing any charges with the PFC until the officer has made his or her election of forum. In that way, the PFC's jurisdiction cannot be triggered unintentionally. An officer who elects arbitration will not be exposed to the PFC's possible discretion to increase or modify the discipline, and an officer who elects the PFC will do so knowing the risks of that forum.

The Final Offer of the Village on Discipline is accepted, with two modifications. The reference to demotions is stricken, and the Chief will be barred from filing any charges with the PFC until the officer has had an opportunity to elect a forum, and then only if the officer elects the PFC.

¹² It is worth noting that this provision is being negotiated in the context of a Village Personnel Manual that expressly recognizes the requirement of progressive discipline, and the reference to just cause, and what it entails, should be understood in that light.

¹³ I would observe that the same problem exists in the Union's offer, which provide that "The parties agree that only the Police Chief shall have the right to suspend or dismiss a non-probationary officer for only just cause."

AWARD

On consideration of all of the statutory criteria, and the record as a whole, the 2015-2018 collective bargaining agreement shall incorporate the provisions of the predecessor agreement, as modified by the tentative agreements attached hereto as Appendix "A", the wage provision proposed by the Fraternal Order of Police, and the Discipline offer of the Village as modified to remove reference to demotions and prevent the filing of charges with the PFC prior to the officer's election of a forum:

ARTICLE 26
WAGES

A. **Wages**

Employees covered by this agreement shall receive salary compensation, based upon years of service, pursuant to the following step structure, for the applicable time periods set forth below. Salary increases will be implemented the first full pay period in May; however, officers hired after May 1, 2004, in addition to receiving wage increases on May 1st of each year with all other officers, shall also receive their step increases on the anniversary date of their hire.

May 1, 2015 through April 30, 2016 (3.0%)

<u>Step</u>		<u>Annual Salary</u>
Start		\$63,162
Step 1	After 1 Year	\$66,759
Step 2	After 2 Years	\$71,004
Step 3	After 3 Years	\$75,324
Step 4	After 4 Years	\$79,755
Step 5	After 5 Years	\$84,349
Step 6	After 6 Years	\$89,123
Step 7	After 7 Years	\$94,630

May 1, 2016 through April 30, 2017 (2.0%)

<u>Step</u>		<u>Annual Salary</u>
Start		\$64,425
Step 1	After 1 Year	\$68,095
Step 2	After 2 Years	\$72,424
Step 3	After 3 Years	\$76,830
Step 4	After 4 Years	\$81,350
Step 5	After 5 Years	\$86,036
Step 6	After 6 Years	\$90,905
Step 7	After 7 Years	\$96,523

May 1, 2017 through April 30, 2018 (2.0%)

<u>Step</u>		<u>Annual Salary</u>
Start		\$65,713
Step 1	After 1 Year	\$69,457
Step 2	After 2 Years	\$73,873
Step 3	After 3 Years	\$78,367
Step 4	After 4 Years	\$82,977
Step 5	After 5 Years	\$87,756
Step 6	After 6 Years	\$92,723
Step 7	After 7 Years	\$98,453

ARTICLE 8
DISCIPLINE

The Village may discipline only for just cause. Copies of all disciplinary rules shall be provided to the Lodge. The parties agree that oral or written warnings shall be expunged from an officer's personnel and/or disciplinary file(s) one year after the warning is received by the officer so long as there has been no other repetition of the same offense, or an offense for which a suspension is received within that one-year period. Such expungement shall take place upon request by the employee given in writing to the Chief of Police. Expunged documents shall be removed from the employee's personnel file and disciplinary file, but shall be maintained in a separate file.

~~All disciplinary action of less than five (5) days shall be subject to the grievance procedure contained in Article IX of this Agreement. All disciplinary action of five (5) or more days shall be subject to the Police and Fire Commission.~~

Officers shall be provided a copy of, and be required to initial, all disciplinary records prior to their inclusion in the officer's personnel and/or disciplinary file(s). If the officer refuses to initial the record, the disciplining officer shall so indicate. Any disciplinary record that is not so initialed or which does not show a refusal of the employee to initial will be expunged.

The Police Chief or his designee(s) shall have the exclusive right to issue all discipline (verbal warnings and written warnings, suspensions, and discharge), without resort to the Village's Board of Fire and Police Commissioners. The Chief, however, will not file charges with the Board of Police and Fire Commissioners, until the officer has been served with suspension/discharge charges, and has selected in writing which appeal process he/she wishes to utilize, or has waived his/her rights by failing to make an election within ten business of receiving the charges. Discipline issued by the Police Chief or his designee, if appealed, shall be appealed either to the Board of Fire and Police Commissioners or through the parties' grievance mechanism set forth in Article 9 of the Agreement in accordance with and to the extent authorized by Article 9, provided, however, an oral or written reprimand is not subject to arbitration but may be grieved up to Step 3 of the grievance procedure.

Except as otherwise provided in Article 9, disciplinary action or termination may be appealed to and be subject to the jurisdiction of the Board of Fire and Police Commissioners per applicable State law or the grievance procedure set forth in Article 9 of the Agreement. The parties agree that the grievance procedure set forth in Article 9 and the hearing process by the Board of Fire and Police Commissioners are mutually exclusive and no relief shall be available under the grievance procedure for any action heard before the Board of Fire and Police Commissioners. Furthermore, the parties agree that the pursuit of a grievance under this Agreement shall act as a specific waiver by the Union and the involved employee of the right to challenge the same matter before the Board of Fire and Police Commissioners and a form containing such specific waiver shall be executed by the Union and the involved employee before arbitration may be invoked under the grievance procedure of this Agreement. An employee initially seeking review by the Board of Fire and Police Commissioners who subsequently elects to file a grievance with the appropriate time limits may only do so prior to any hearing before the Board. An employee so filing a grievance shall immediately withdraw his/her request and waive any and all rights to additional hearing(s) before the Board.

ARTICLE 11

POLICE AND FIRE COMMISSION

The parties recognize that the Police and Fire Commission of the Village has certain statutory authority over employees covered by this Agreement, including, but not limited to, the right to make, alter and enforce rules and regulations. Except as provided in Article 8 (Discipline), nothing ~~Nothing~~ in this Agreement is intended in any way to replace or diminish the authority of the Police and Fire Commission.

The Arbitrator will retain the official record and jurisdiction over the dispute until the parties notify him that any issues related to the implementation of the interest arbitration award have been resolved.

Signed this 31st day of March, 2017.

Daniel Nielsen, Arbitrator

**APPENDIX A
TENTATIVE AGREEMENTS:**

**ARTICLE 2
NON-DISCRIMINATION**

Section B. Union Non Participation Access to Relief

~~The Lodge shall not advise or represent employees before any federal or state anti-discrimination administrative agency where the employee's claim has been arbitrated under the grievance procedure of this Agreement.~~

Any allegation of discrimination by an employee covered by this Agreement should be brought to the attention of the Village, pursuant to applicable policies in effect.

Any dispute concerning the interpretation or application of this Article shall be processed through the appropriate federal or state agency or court rather than through the grievance and arbitration procedure set forth in this Agreement.

**ARTICLE 20
HOURS OF WORK AND OVERTIME**

B. Normal Work Periods and Overtime Pay

The normal work day shall be eight (8) hours per day. Any hours exceeding eight (8) in a day or forty (40) in a week will be paid at the rate of one-and-one-half (1-1/2) times their regular rate of pay; provided that overtime for hours over eight (8) are not payable when the regular weekly forty (40) hour schedule includes daily shifts over eight (8) hours; and further provided that the Village shall not implement any daily schedule of over ten hours without first (a) providing adequate notice to the Union, and (b) negotiating with it in good faith regarding said proposed change. For the purpose of calculating hours worked for purposes of overtime, all hours paid shall be counted as time worked.

Overtime pay will be in fifteen (15) minute increments, except that 0-7 minutes past the end of the shift = 0 minutes.

Each officer will be allowed to take a paid thirty (30) minute lunch break each day subject to emergency work duties. Lunch may be rescheduled if duties permit and with supervisor's approval.

~~===== The minimum staffing levels on the three patrol shifts are as follows:~~

~~===== Days: Seven (7) Officers;~~

~~===== Afternoons: Nine (9) Officers on Friday and Saturday, Eight (8) Sunday through Thursday;~~

~~===== Midnights: Six (6) Officers Sunday through Thursday, Seven (7) on Friday and~~

~~———— Saturday.~~

~~These minimums are subject to change upon mutual Agreement of the parties and by posting the changes in the master schedule.~~

D. Bidding of Shifts

1. Effective November 1, each year an annual schedule for the following year will be posted. The posted schedule will contain eight (8) permanent day shift positions, ten (10) permanent afternoon shift positions, eight (8) permanent midnight shift positions, and remainder will be rotating positions. One day/afternoon rotating position will be reserved for the K-9 officer, if one exists. The number of permanent positions is subject to change upon the mutual agreement of both parties.

Commencing November 1, 2017, each year an annual schedule for the following year will be posted. The posted schedule will contain nine (9) permanent day shift positions, nine (9) permanent afternoon shift positions, nine (9) permanent midnight shift positions, and remainder will be rotating positions. The number of permanent positions is subject to change upon the mutual agreement of both parties.

E Compensatory Time

5. ~~Compensatory time off may be granted during any period and such requests shall follow the rules as "earned Time", except that week blocks of compensatory time shall follow the rules for "Vacation Time" subject to approval upon forty-eight (48) hours' written notice. Week blocks once commenced cannot be canceled.~~

As per practice, compensatory time off not in week blocks may be granted provided the employee gives no more than thirty (30) days written notice. The Village may not cancel this time off less than forty-eight (48) hours prior to the day off. Week blocks once commenced cannot be cancelled.

ARTICLE 22
LEAVES OF ABSENCES

~~B. Emergency Leave~~

~~Employees shall be granted emergency leave in the event of death or serious illness of an immediate family member upon the written approval of the Chief of Police. Serious illness shall generally be considered to be an illness or injury causing the individual to be hospitalized. For purposes of this section an emergency shall be defined as an urgent situation that requires immediate action that could not have been planned in advance.~~

~~The employee shall receive up to a maximum of three (3) consecutive days' pay for loss of normal time during regularly scheduled work days, unless otherwise approved by the Chief of~~

Police:

~~For the purposes of this Section, the term "immediate family shall mean mother, father, wife, husband, daughter, son, sister or brother, father in law, mother in law, grandparent, grandchildren, step child, sister in law, brother in law and step parent.~~

~~Paid leave for this purpose will not be applicable in cases such as death or serious illness occurring during vacation, on a paid holiday, or in any other case which would result in paying twice for the same time off. No additional payment will be made if the employee is on leave of absence or is absent due to illness or injury. Any amount of emergency leave granted for serious illness of employee or immediate family member will be deducted from the employee's accumulated sick leave time.~~

B. Emergency Leave

In the event of the death of a member of an employee's "immediate family" or "family" as further defined herein, an employee shall be granted and compensated for three (3) consecutive working days as bereavement leave. For purposes of this Article, the term "immediate family" or "family" shall mean spouse, child, mother, father, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, daughter in-law, son-in-law, stepchild, stepparent, grandparent, grandparent-in-law, aunt, uncle, niece, nephew and grandchild. The parties intend that "consecutive working days" not include regular days off, but that such regular days off may interrupt the consecutive working days for bereavement leave (for example, an employee may take bereavement leave on a Monday, Thursday and Friday with Tuesday and Wednesday being the employee's regular days off). Nothing prevents the Village from inquiring if the employee intends to take all three days off or whether the employee will return to work sooner,

In the event of the death of an employee's spouse, child, stepchild or parent, the employee shall be granted two (2) additional consecutive working days off with the approval of the Chief or his designee.

An employee shall have the option of supplementing any bereavement leave with accumulated vacation time, compensatory time or earned time for a reasonable period with the approval of the Chief or his designee.

If the funeral or memorial service of the deceased immediate family will not occur within the bereavement leave period and the employee plans to attend the services, the employee and the Chief or his designee shall meet and discuss how the employee may use bereavement leave and/or accumulated vacation time, compensatory time or earned time in a reasonable fashion to attend the services.

Paid leave for this purpose will not be applicable in cases where the funeral or services occur on a paid holiday, or any other case which would result in paying twice for the same time off. No additional payment will be made if the employee is on a leave of absence or is absent due to illness or injury.

C. Sick Leave

2. Use of Sick Leave

In addition to personal illness or injury, sick leave may be granted, at the discretion of the

Chief or his designee, for the following reasons:

- a. medical appointments which cannot be scheduled outside of working hours;
- b. illness or injury of a member of the employee's immediate family which necessitates the employee's absence from work.
- c. medical appointments required by the Village.
- d. serious illness of an employee's immediate family member. Serious illness shall generally be considered. to be an illness or injury causing the individual to be hospitalized.

ARTICLE 24
VACATIONS

A. Vacation Time

All regular employees shall be entitled to vacation time with pay under the following schedule:

Service Vacation

Start	80 Hours
After four years	120 hours
After ten years	144 hours
After eleven years	152 hours
After twelve years	160 hours
After twenty years	180 hours
<u>(Not effective until January 1, 2017)</u>	

Employees shall earn vacation allowances for any month in which they receive compensation for more than one hundred twenty (120) hours of work

ARTICLE 26
WAGES

C. Specialty Pay

Field Training Officers, in addition to their annual salary, shall receive an additional ~~one dollar (\$1.00)~~ **two dollars (\$2.00)** per hour while performing the duties of a Field Training Officer.

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ARTICLE 33
DURATION

A. Term of Agreement

This Agreement shall be effective upon ratification by both parties and shall remain in full force and effect until April 30, ~~2015~~ **2018**. It shall continue in effect from year to year thereafter unless notice of termination is given in writing by certified mail by either party at least ~~one hundred eighty (180)~~ **two hundred forty (240)** days preceding expiration.

The notices referred to shall be considered to have been given as of the date shown on the postmark. Written notice may be tendered in person, in which case the date of notice shall be the written date of receipt.

NOT TO BE INCLUDED IN THE CONTRACT:

Regarding Retroactivity:

Employees covered by this Agreement who are still on the active payroll as of the beginning of the payroll period immediately following the execution of this Agreement shall receive a retroactive payment which shall be based on the difference between the salary they received between May 1, 2015 and the beginning of said payroll period and the salary they would have received during the same period of time based upon the foregoing salary schedule for all hours paid (including overtime but excluding uniform allowance) during this time period provided any employee who retired after May 1, 2015, but before the execution of this Agreement shall also be eligible for retroactive pay based on hours paid after May 1, 2015. Also eligible for retroactive pay would be employees off the payroll on workers compensation or pension disability who worked hours after May 1, 2015 unless such employees have signed a settlement agreement with the Village waiving any right to additional compensation.

Note: While this retroactivity provision will be used for purposes of determining retroactive pay for- the 2015-2018 collective bargaining agreement it will not be incorporated as part of the 2015-2018 collective bargaining agreement.