

IN THE MATTER OF THE ARBITRATION

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VILLAGE OF BOLINGBROOK

and

FMCS 16-52507  
Interest Arbitration

INTERNATIONAL ASSOCIATION OF  
FIREFIGHTERS, LOCAL 3005

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Appearances:

For the Village

Joseph J. Perkoski, Esq.  
Robbins Schwartz et. al

For the Union

Jerry J. Marzullo, Esq.  
Puchalski, Goodloe & Marzullo

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Federal Mediation and Conciliation Service. The Parties at first attempted to resolve the matter in mediation, but the Tentative Agreement was subsequently rejected. The Parties then held a hearing on October 27, 2016 in Bolingbrook, Illinois. The Parties then submitted briefs. The Arbitrator has considered the transcript, exhibits and briefs in reaching his decision.

ISSUES

There were several outstanding issues. The Arbitrator will set forth each party's proposal on each issue as that issue is addressed here.

## **STATUTORY CRITERIA**

(5 ILCS 315/14); Sec. 14. Security employee, peace officer and fire fighter disputes.

(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

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

As is true in most interest arbitrations, not all factors are relevant or applicable when weighing a proposal. The Arbitrator will only address those factors that are applicable to each proposal. For monetary issues, the Arbitrator must select the

proposal of one of the parties. The Arbitrator is not bound by the language in the parties' proposals on non-monetary issues, but can fashion different language than proposed by either side. The Arbitrator will address the monetary issues at the outset.

### EXTERNAL COMPARABLES

It is necessary before discussing the economic issues to determine which jurisdictions are comparable to this one. There is agreement between the parties as to some of them. They both agree Hoffman Estates, Crystal Lake, Des Plaines, Schaumburg, Waukegan, Palatine, and Berwyn are comparable. The Union seeks to add Gurnee and Niles. The Village maintains that during negotiations only the ones it proposed were discussed as being comparable. The Union disputes that claim. Regardless of whether it was discussed or not, the Arbitrator will review the information regarding these two municipalities to determine if they should be included.

Niles is 26 miles from the Village. It is closer than some of the jurisdictions the parties agreed should be included. Conversely, its population is less than one-half of that of the Village and would be the smallest entity on the list, as would its total revenue. While the median home value and average salary is in range with the others, the Arbitrator finds the factors favoring exclusion from the list outweigh the positive factors. It shall not be used as a comparable. It is too much smaller than the others to be considered comparable.

Gurnee is approximately the same distance from the Village as Waukegan, which the parties included on the list. Its population is less than the Village, but would be roughly in the middle of the comparables. Interestingly, its total revenue would put it at the bottom of the list as would its total expenses, while its median per capita income and median home valuation would put it at the top of the list. On balance, the Arbitrator finds Gurnee is similar enough to be included as a comparable Jurisdiction. The external comparables are then: Gurnee, Hoffman Estates, Crystal Lake, Des Plaines, Schaumburg, Waukegan, Palatine, and Berwyn.

### Wages

The Union and the Village each proposed a 2.5% wage increase for each of the four years of the Agreement retroactive to May 1, 2015. That provision shall be incorporated into this Award.<sup>1</sup> However, the cost to the Village for this increase must be considered when weighing other economic issues. According to Village Exhibit 4, wage costs will increase by just under \$175,000 over that period. In looking at the external comparable wage increases, this increase is as high as the increase in any of the other jurisdictions that have agreements covering some or all the years in question here. Some increases are equal to the increase granted here, but other jurisdictions show increases of 2% and others

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<sup>1</sup> . Similarly, the Union agreed to the Village proposal regarding vacation picks. That shall also be incorporated into this Award. That proposal requires employees to make their pick between October 15 and December 15 instead of November 1 to December 31, which are the dates in the current agreement.

have the same increase, but do it in two steps during the year. Therefore, this increase compares most favorably to the external comparables.

The increase granted is also higher than the CPI. While the increase in the CPI for the last year of the Agreement is only an estimate, the total increase in the CPI for the four years should be approximately 1.5 % less than the 10% increase over the same four years. Given that fact, the Arbitrator must be mindful of any additional costs that would be incurred by adopting other economic items proposed by the Union. That does not mean they must all be rejected. It just means it is yet another factor to evaluate when comparing proposals. Finally, since negotiations are still underway in some of the other bargaining units in the Village, internal comparables cannot be used for comparison.

## **RETIREMENT EMPLOYEE HEALTH INSURANCE**

Article XVI Insurance and Other Benefits

Section 6 Retirement Health Insurance

The Union Offer

Beginning May 1, 1999 Effective the ratification and/or implementation of the new successor collective bargaining agreement, the Fund shall be funded as follows:

- a. Each Employee shall have 1/12 of ~~1%~~ 2.5% of the Employee's annual salary automatically deducted monthly from the Employee's paycheck and deposited into the Fund as the employee's contribution. The Employee shall execute any necessary wage deduction documentation and shall submit said documentation to the Village. The Village, in its discretion, may deduct a proportionate amount of the 1/12 of ~~1%~~ 2.5% contribution from a single monthly paycheck; and

- b. Any one-time contributions, as provided in subsections 6A, 6B, or 6C above; and
- c. The Village shall, at its expense, deposit an amount equal to 1/12 of ~~1%~~ 2.5% of all Employee annual salaries on a monthly basis into the Fund.
- d. A Retired Employee, who has retired after May 1, 1998, shall begin to pay fifteen (15) percent of the monthly health insurance premium (without any retro payment back) for the Retired Employee and the Retired Employee's spouse, if any, for insurance under the Village's group health plan for its employees.

#### The Village Offer

The Village filed a Motion arguing this matter is not arbitrable. If that

Motion is denied, it proposes the following language:

The Parties Agree to address the funding of the Retired Employees Health Insurance Premium Fund as it pertains to this Unit through a joint committee process representative of all employee groups in the Village. The Parties agree that if a solution is not reached within one year from the date of this Award the retirement health insurance funding question as it pertains to this Unit will be submitted to Arbitrator Fredric R. Dichter for binding interest arbitration.

Employees and the Village contribute to a separate fund that is used to provide health insurance for retirees. The fund covers all represented and non-represented employees. It is included in the collective bargaining agreement of each of the Union's that represent Village employees.

The fund in recent years has experienced a shortfall. The Village made a one-time payment into the fund to help alleviate that shortfall. In addition, all the Unions and the Village signed a Memorandum of Understanding dated May 12, 2013 regarding the fund and the shortfall it was facing. It stated:

The Parties agree on a temporary non-precedential basis, all current active employees covered by the Unions aforementioned will increase their contribution One and One-Half Percent (1.5%) to a TOTAL of Two and One-Half Percent (2.5%) of their current annual salary...

Non-Union employees similarly increased their contribution.

The Plan is currently managed by the Village, but an Oversight Committee was also established with the goal of it becoming the manager of the plan. The MOU also provided:

In the event that an agreement is not reached on who will manage the fund the Village agrees that the current Oversight Committee will be authorized and recognized by the Village as the sole negotiator on behalf of the Unions represented herein as regards the maintenance and funding of the fund.

This Memorandum of Understanding... shall remain in effect until the appropriate expiration date of each of the CBA's of the above listed unions or the execution of a new Memorandum of Understanding between these parties.

The Village maintains this issue is not arbitrable for several reasons. The Village argues the matter is not arbitrable based on the terms of the Memorandum of Understanding signed by all Unions. It contends any change like that proposed by the Union here must be done Village-wide and negotiated by the Oversight Committee and not any individual Union. The Union disagrees. It maintains it never gave up its right to negotiate on behalf of the employees it represents in any successor agreement.

The Arbitrator has reviewed the terms of the MOU. During the term of the collective bargaining agreement for each Union, the Oversight Committee has been given sole responsibility for negotiating over the "maintenance and funding

of the fund.” The increase sought by the Union here impacts funding. If it had made this proposal mid-term of its agreement with the Village, the MOU language would have controlled and the Union would have been barred from making this proposal independent of the Committee. However, the MOU has a sunset provision. As a CBA expires, the Union signatory to that CBA no longer is covered by the MOU. That is what the last paragraph of the MOU states.<sup>2</sup> The MOU remains in effect “until the appropriate expiration date” of the Union. That date has passed. Thus, the MOU does not bar the Union from proceeding on this issue.

The Village also contends that Article XVI 6 (H) precluded arbitrating this issue. It points to the language in that Section which states “any dispute as to the continuance of such benefit as part of a successor agreement...” can be submitted to interest arbitration. This dispute is over funding not the continuation of the plan. Thus, it contends, this issue is not arbitrable. It infers that from the failure to mention funding as arbitrable in that language. The Arbitrator must again disagree. To take a subject that would ordinarily be negotiable and make it non-negotiable requires more than inference. Instead, the Arbitrator finds the parties intended to add to those items that could be arbitrated the issue of the continued existence of the plan. If the Village wanted

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<sup>2</sup> The Village has argued the MOU does not expire until the last contract expires. That was April of 2017. Even if it is correct, which the Arbitrator finds it is not, that date has already past.

to end it, that issue could be sent to arbitration. They were not limiting the ability of the Union to arbitrate contribution rates.

The Parties in the past have negotiated over the issue and the Village never took the position the matter was excluded from arbitration. That is also true in the current negotiations. Further, a review of the Agreements between the Village and the other units would support the Union claim that the matter is arbitrable. The language in the other agreements is far more restrictive than the language in this Agreement. They specifically preclude an arbitrator from addressing funding.<sup>3</sup> This one does not. Thus, the Arbitrator finds this issue is arbitrable. The question now is whether the Union's proposed changes should be adopted.

Though the Union is not obligated under the MOU to defer to the Oversight Committee, that does not mean it is not the committee that is best able to address the issue. The Oversight Committee is identified in the current agreement as well as in the MOU, although its role is different in each document. More importantly, the fund is not unique to this Union, which it was when it was first incorporated into their agreement. The Village is paying the same percentage on behalf of the employees covered by the other Union agreements and is also doing so on behalf of the non-represented employees. Under the Union proposal its bargaining unit would be the only one to have that percentage increased. Certainly, changes often come about by a single union leading the way and others following suit. This Union appears to have regularly been in the forefront.

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<sup>3</sup> The MAP contracts have this exclusion.

However, the Oversight Committee continues per the current agreement and this Union is part of that committee. At some point, the committee will be responsible for the funding of this fund. It is best it be left with that role.<sup>4</sup>

Furthermore, an Interest Arbitrator is an extension of the parties' negotiations and is to do what the parties would have done had they reached agreement. Here, the Parties have previously indicated how they would resolve the issue and that is through a joint approach by all concerned. While the MOU says it is not precedential, the method established by the MOU best addresses the needs of the fund. A single Union changing the percentage may help to some degree, but will not provide the needed funds to keep the plan solvent. The Arbitrator in adopting the same method as set forth in the MOU finds this approach best addresses that need. The fact that the Committee will soon be responsible for the funding of the plan further supports this finding.<sup>5</sup>

That is not to say that an immediate fix is not needed to keep the fund solvent. The Village recognized that need when it added \$350,000 to the fund. The Unions recognized the need when they agreed to increase the employee share of contributions and the portion of premium to be paid by the retiree. An actuarial study compelled the parties to make these changes. More may be needed, but

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<sup>4</sup> In fact, the Village has offered to go to arbitration over the funding issue with all the Unions. The respective Unions have thus far rejected that request.

<sup>5</sup> The Union argued that when the language was first adopted there was an agreement that the Village and the Union pay at the same ratio. The Village disputed this contention. Regardless of whether that was the original intent, the situation has changed since any such understanding was reached. There have been several negotiations since the inception of this language, including the MOU that impacted what may have originally been intended.

that should best be addressed by all concerned through the Oversight Committee and not by a single Union. Hopefully, that will occur. For these reasons, the Union proposal is rejected.<sup>6</sup>

The Village proposal conversely allows the Committee to try to resolve the financial questions surrounding the plan. Both the Village and this Arbitrator recognize that there are other Unions and the non-represented employees involved who also have a say. They too are part of the equation, and need to agree to continue to allow the Committee to act as its representative over the funding of the Plan. No one can predict what they will do. The Village proposal addresses that possibility. They can all agree to try to resolve the issue voluntarily or they can jointly arbitrate the question as a single entity. Either way, the issue gets resolved. If they decline going that route jointly or the Committee cannot resolve the financial situation than there is a fallback position in the Village's offer. This Unit can then proceed to negotiate or arbitrate the issue on its own. Thus, there are several ways under the Village offer for this Unit to reach resolution, and all these ways get to a final outcome. It is on that basis that the Arbitrator adopts the Village offer.

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<sup>6</sup> The Arbitrator in reaching this conclusion is also mindful of the cost to the Village this proposal would entail. It puts that added cost is around \$280,000 over four years. The Arbitrator noted earlier he was cognizant of the cost to the Village of the wage increase. The increase in cost proposed here would be added on top of that. That factor must be considered.

## **HEALTH INSURANCE**

### The Union Offer

#### Article XVI, Section 1. Group Hospital and Medical Plan

Fire Fighters and their eligible dependents shall be offered coverage under the group health insurance program covering the majority of all other full-time Village employees. Employees shall pay premiums for said coverage as set forth in Appendix D. Said employees payments for premiums shall not be increased further during the term of this Agreement without the consent of the Union.

- 1) Effective May 1, 2015 the Employee, Employee + 1 Dependent, and the Employee + Family premium amounts shall be increased by ten (10) percent over the May 1, 2014 premium amount contained within Appendix D.
- 2) Effective May 1, 2016 the Employee, Employee + 1 Dependent, and the Employee + Family premium amounts shall be increased by ten percent over the May 1, 2015 premium amount.
- 3) Effective May 1, 2017 the Employee, Employee + 1 Dependent, and the Employee + Family premium amounts shall be increased by ten (10) percent over the May 1, 2016 premium amount.
- 4) Effective May 1, 2018 the Employee, Employee + 1 Dependent, and the Employee + Family premium amounts shall be increased by twelve and ½ (12.5) percent over the May 1, 2017 premium amount.

### The Village Offer

Increase employee contribution by the monetary equivalent of 15% in 2015, 2016, 2017 and 2018.

There are nine different plans from which an employee can choose. Within each plan, the employee can select coverage just for the employee, the employee plus one person or employee plus family. The deductibles vary depending on the plan chosen. Some of the plans have higher deductibles or co-pays than others. There are 29 employees in Plan 9 who chose employee plus family coverage. That is the largest group in any of the plans. While the Arbitrator could go through a

cost analysis of each of the plans, he will instead focus on this largest group when looking at costs to the Village and the employee. He recognizes that in doing so the results found would not be identical to the results if each plan were examined separately. However, given that this group represents the largest cost to the Village it is reasonable to use the group for the analysis.

Prior to the 2002 Agreement between the parties, employees paid a flat amount towards the premium cost. It was \$45 per month. In 2002, they changed to what is currently in the Agreement. Each year employees contributes 10% more than they did the prior year. It is an automatic increase regardless of whether the total premium cost increased by more or by less than 10%. That formula has remained in each succeeding agreement. The Union seeks to keep it at that rate until the last year of the Agreement when it would go up to 12.5%. The Village would increase it to 15% over each year of the Agreement. To evaluate the proposals, the Arbitrator will first review the past premium increases and estimated increase for 2018.<sup>7</sup>

The exhibits from the parties start with the year 2010 so that is where the Arbitrator will begin. Between 2010 and 2014 the total increase for that period was .5%. The premium decreased in two of the four years since 2010. During that same time span the cost to the employee rose from \$37.45 to \$54.94 or

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<sup>7</sup> The Village estimated the increase it would experience for 2017. Shortly after the hearing, the actual increase was set. It was considerably less than the estimate. The Union sought to introduce as an exhibit the documents showing the actual increase and filed a motion to that effect. This Arbitrator sustained the motion and accepted the new figure. It is that figure that is used here. 2018 remains as an estimate.

46.7%. The employee's share of the premium rose from 2.02% to 2.94% of the total premium.

The premium in 2015 rose from \$1864 to \$1890 or 1.3%. Under the Village's proposal the share of premium paid by the employee would increase 15% or to \$63.07 and their share of the premium would increase to 3.33%. Under the Union proposal the premium cost to the employee would increase to \$60.32. Its percentage of the total premium cost would be 3.19%. That would be an increase from 2.94%

In 2016, things changed. The premium rose by 12.096%. The total premium increased from \$1890 to \$2150. The employee would now be paying \$72.53 under the Village proposal and the employee share would be 3.37% The employee would be paying \$66.32 or 3.1% of the premium. That is a slight decrease in percentage from 2015.

The premium increased by 3.5% in 2017 or to \$2225. The employee under the Village proposal would now be paying \$83.40 and would be paying \$72.95 under the Union proposal. The percentage of the premium they would be paying would be 3.74% under the Village proposal and 3.28% under the Union proposal. It was 2.94% prior to the commencement of this Agreement.

The Arbitrator cannot ignore the bargaining history between these parties over the years. The parties in all agreements since 2002 have maintained the status quo as to the increases paid by employees for health insurance. The Village is seeking to change that relationship. It must justify that change. The

Union has agreed in the final year of this Agreement to raise the percentage. It is not to the level sought by the Village, but it is an increase. The parties have speculated what the premium increase might be in 2018 but that is merely speculation. The estimate of the Village for 2017 was much higher than the reality. Whether that is true in 2018 is unknown. Since that will be the last year of the Agreement if the cost is significantly higher, they can address it in the next round of negotiations, but the starting point for those negotiations will be 12.5%. The Arbitrator finds this history would tilt the scales in favor of the Union.

The internal comparables also favor the Union. They all have similar provisions in their contracts to the provision in the current contract. This would be the first agreement to dramatically change that equity if the Village proposal were adopted.

The Arbitrator believes when looking at health insurance, internal comparables are far more persuasive than external comparables. Given that each locality has its own set of plans available to employees and each has different deductibles and out of pocket costs, it is difficult to compare apples to oranges. One can look at the percentage paid by employees towards the total premium, but in doing so it necessary to consider whether that has changed since these parties last negotiated an agreement. They presumably knew what was being done by others when reaching the current agreement. There must be a basis for diverging from that external relationship in this contract. The Arbitrator can find

no such basis. He finds external comparables do not change the result. Consequently, the Union proposal is adopted.

### **Additional Kelly Day**

#### Article X Hours of Work and Overtime

##### 1. The Union Offer

For the purpose of definition platoon employees are those employees working a 24 hour shift. Shift employees are ~~these~~ those employees working an 8 hour shift.

Except as provided in Article X Section 2, employees covered by the terms of this Agreement shall be assigned to regular platoon duty shifts. The hours of duty shall be twenty-four (24) consecutive hours on duty, and the workday shall begin at 7:00 AM and ending the following 7:00 AM. The on-duty tour of duty shall be followed by forty-eight (48) consecutive hours off duty. The annual average weekly hours shall normally not exceed 50.9 hours per week; this shall be accomplished by scheduling every 11<sup>th</sup> duty shift as a Kelly Day. Kelly Days may be traded between employees on the same shift subject to Article XII, Vacations, Section 6, Vacation-Furlough Selection paragraph six.

Effective January 1, 2018, the annual average weekly hours shall normally not exceed 50.43 hours per week; this shall be accomplished by scheduling every 10<sup>th</sup> duty shift as a Kelly Day. Kelly Days may be traded between employees on the same shift subject to Article XII, Vacations, Section 6, Vacation-Furlough Selection paragraph six.

##### 2. The Village Offer

The Village proposes the status quo.

The Bargaining Unit members currently accrue a Kelly Day once every eleven shifts. The Union seeks to change that to once every ten shifts. The Parties totally disagree as to the cost of this proposal. The Union contends the increase in cost to the Village for the two years covered by its proposal would be just over \$4000. The increase would be the result of an increase in overtime costs.

The Village says the increase would be considerably higher and result in a 1.16% wage increase for each employee. The Village is first concerned about overtime costs, which are already exceeding budget. Further, it treats this as a wage increase as the employee would be working less for the same wage. It should be noted at the outset that the Village based its calculations on a four-year period, but the Union proposal only would begin on January 1, 2018.

There is a minimum staffing level of 18 per shift under the Agreement. Union Exhibit 12 examines the total number of available shifts in each of the three shifts in a year. It then calculated the number of shifts employee's do not work due to vacations, injuries, holidays, and Kelly Days. The charts show when these absences are subtracted from the total number of shifts available that for all three shifts 170 shifts remain.<sup>8</sup> The Union maintains a buffer is automatically built into the staffing to keep levels over the minimum manning of 18 personnel. This is done to minimize the need for overtime. It points out that six employees could be off before the minimum is reached.

The Arbitrator agrees with the Union that its calculations are more appropriate. While it is true, employees are working a little less for the same wage, that does not increase the cost to the Village unless it causes an increase in other costs such as overtime or the need for additional personnel. Neither

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<sup>8</sup> The figures assume none of the current personnel will retire or leave. If any employee does leave the remaining shifts available would increase as the new employee would not have accrued benefits at the same level as the employee who has left. The calculations also included the wage increase of 2.5%.

party has argued that the change would necessitate hiring new employees so the only real cost is the overtime cost.

The Arbitrator has also reviewed the number of Kelly Days given by the jurisdictions he has found to be comparable to the Village. The average for the eight jurisdictions is 11.2 Kelly Days. The number of Kelly Days currently accrued by employees in the Village is equal to the average of these communities. Only Gurnee would be better which may be why the Union wanted them included as a comparable. They have been included, but that does not change the overall conclusion when compared to others. The Village is in line with them.

While the cost to the Village for this proposal is minimal and far less than it claims, the fact remains that employees here compare favorably with their counterparts in these other localities. While for insurance internals were more important than externals, that is not true when examining this issue. It is unique to firefighters and they can only be compared with firefighters in other jurisdictions. Based on that fact, the Arbitrator must reject the Union proposal. It would put the Village far ahead of its counterparts and there is no justification for doing so.

### **Kelly Day Trade**

#### The Union Offer

The Union proposes the status quo.

#### The Village Offer

Article X, Hours of Work and Overtime

## Section 1. Platoon Duty

For the purpose of definition, Platoon employees are those employees working a 24 hour shift. Shift employees are these employees working an 8 hour shift.

Except as provided in Article X, Section 2, employees covered by the terms of this Agreement shall be assigned to regular Platoon duty shifts. The hours of duty shall be twenty-four (24) consecutive hours on duty and the workday shall begin at 7:00 am and ending the following 7:00 am. The on-duty tour of duty shall be followed by forty-eight (48) consecutive hours off duty. The annual average weekly hours shall normally not exceed 50.9 hours per week; this shall be accomplished by scheduling every 11<sup>th</sup> duty shift as a Kelly Day. ~~Kelly Days may be traded between employees on the same shift subject to Article XII, Vacations, Section 6, Vacation Furlough Selection paragraph six.~~ Employees must use Kelly Days as they are earned monthly throughout the year.

The current language has been in the Agreement since 1991. The Village contends a change is needed for several reasons. It cites the FLSA overtime provisions as a basis. For a firefighter, overtime is only paid if the employee works over 53 hours in a seven-day period. The Village maintains using a Kelly Day when earned will help reduce the hours worked and save overtime costs and that its proposal is in keeping with the intent of the Law.

The Village also argue that employees have saved up their Kelly Days, which has resulted in employees being off work for extended periods of time and that this problem “has gotten out of control.” It goes on to state: “Operationally its just created a problem for us.” It notes this is not a reduction of benefit and has no impact on employees.

The Union disagrees. Given the longstanding practice and consistency of the language it maintains there is no justification for this change. It notes there are

built in safeguards to protect the Village from any abuse. There are only six slots available on a shift for people to be off. A saved Kelly Day cannot be used if there are already six people off that shift. Further, as noted by the Chief, the Village has created “an operation procedure to limit the number of days they could be gone...”<sup>9</sup> Thus, it says there is no reason for making this change.

The Village is seeking to change the status quo. It has the burden of showing there is a problem with the current language that necessitates a change. The Union is correct, when it argues there are built in safeguards. An employee cannot simply say I am taking a stored Kelly Day. A slot must be available. The Policy alluded to by the Chief is a further safeguard. While this is a non-monetary item and the Arbitrator could fashion his own language, it is unclear why there is a need for that to occur here. There is only anecdotal evidence of employees’ front loading their days to get more extended time off. There is no empirical evidence to support the claim. Therefore, the Arbitrator rejects the Village Proposal and maintains the status quo.

### **Paramedic Decertification**

Article XV Wages and other Pay Provisions

Section 7 Paramedic Decertification

Union Offer

The Union Final Offer on this issue is status quo.

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<sup>9</sup> Tr: 212-213

## Village Offer

Employees hired after the ratification date of the 2015-2019 collective bargaining agreement shall maintain their paramedic license as a condition of employment. Employees hired before the ratification date of the 2015-2019 collective bargaining agreement who have their paramedic license will continue to maintain their paramedic license, except that such employees hired before the ratification date may decertify if the staffing level of paramedics is sufficient in their respective platoons and there is an opening in an engineer or an inspector position.

~~An employee may apply to decertify as a paramedic. If such decertification of this employee will cause a shortage in the manpower required to staff the ambulance(s), the employee shall be required to maintain his certification until a replacement paramedic can be obtained.~~

~~If there are no paramedics available for such replacement but there are employees who have signed a letter of intent to become certified paramedics, then the department shall secure the needed paramedics from these employees as soon as practicable or by the next paramedic class offered by the approved system.~~

~~When new paramedics are secured and trained, then the senior paramedic, by seniority, will be asked if they wish to decertify as a paramedic if an opening exists.~~

For the purposes of decertification, the maximum platoon employees will be as follows:

- ~~6 Fire Fighters;~~
- 3 Inspectors;
- 3 Engineers.

~~When there is an opening in the Fire Fighter position, then an employee may at their request decertify as per the above conditions. In the event no eligible employees take the option to decertify, then that position will remain vacant until an employee elects to decertify. When there is an opening in the Inspector or Engineer positions, then the Village will notify all employees within five (5) calendar days of the position(s) being vacated via the Village electronic mail and text message systems. Once notified, employees will have five (5) calendar days to submit a letter of intent to the Fire Chief or his designee to fill the vacated position(s). The Fire Chief, or his designee, will have fifteen (15) calendar days to interview all prospective candidates for the vacated position(s). The candidates will be required to meet the requirements of the position as described in Article XV, Section 6a.~~

When there is an opening in the Fire Fighter, Inspector, or Engineer positions, the Village shall fill the open position, within thirty (30) calendar days of the position becoming vacated by a current sworn employee.

The Village maintains this change is needed as the number of calls requiring paramedic assistance has continually increased in the last few years. The number of calls requiring a paramedic has grown by 400-500 per year. 68% of the calls received by the Village require a paramedic. The Village believes this increase requires a change in the current language.

The Union notes this same language has been in the Agreement for years. Paramedics can burn out over time and this language gives the employee an opportunity to transfer elsewhere when that occurs. The Village proposal it argues would effectively diminish the opportunity for current employees to decertify. This would have a devastating effect on the workforce it argues. It further argues the Village is making a fundamental change in the language without demonstrating a need for the change. The Village never considered the impact of this proposal on its employees. It urges the Arbitrator to factor that into his Decision.

The Union contention that there is no evidence that a change in language is required is not correct. The need for a paramedic has increased from the time the language was first drafted. The world is changing and the demands on the Department and its firefighters has changed with it. One would expect the need for a paramedic will only continue to increase. Thus, the Arbitrator finds the Village has met the threshold needed for a change.

In reaching this conclusion, the Arbitrator does agree with the Union that the proposed Village language would have an adverse effect on current employees, due to the diminishment of slots available for transfer. Further, the proposed language could impact future employees after they have worked for many years. There can be burnout for current employees and that can happen to new employees after they have worked for many years. While the Arbitrator can only look at this Agreement, the language fashioned may continue beyond this contract just as the current language has. Therefore, this Arbitrator will fashion language that he believes meets both the needs of the Village for a change and the needs of the employees, both present and future. The following language shall be incorporated into the Agreement:

**Employees hired after the ratification date of the 2015-2019 collective bargaining agreement shall maintain their paramedic license as a condition of employment, except as noted below.**

**Employee hired before the ratification of the new Agreement and employees hired after the signing of the new Agreement who will have worked as a paramedic for 25 years or more may apply to decertify as a paramedic.** If such decertification of this employee will cause a shortage in the manpower required to staff the ambulance(s), the employee shall be required to maintain his certification until a replacement paramedic can be obtained.

If there are no paramedics available for such replacement but there are employees who have signed a letter of intent to become certified paramedics, then the department shall secure the needed paramedics from these employees as soon as practicable or by the next paramedic class offered by the approved system.

When new paramedics are secured and trained, then the senior paramedic, by seniority, will be asked if they wish to decertify as a paramedic if an opening exists.

For the purposes of decertification, the maximum platoon employees will be as follows:

**6 Fire Fighters;**  
3 Inspectors;  
3 Engineers.

When there is an opening in the Fire Fighter position, then an employee may at their request decertify as per the above conditions. In the event no eligible employees take the option to decertify, then that position will remain vacant until an employee elects to decertify. When there is an opening in the Inspector or Engineer positions, then the Village will notify all employees within five (5) calendar days of the position(s) being vacated via the Village electronic mail and text message systems. Once notified, employees will have five (5) calendar days to submit a letter of intent to the Fire Chief or his designee to fill the vacated position(s). The Fire Chief, or his designee, will have fifteen (15) calendar days to interview all prospective candidates for the vacated position(s). The candidates will be required to meet the requirements of the position as described in Article XV, Section 6a.

When there is an opening in the Fire Fighter, Inspector, or Engineer positions, the Village shall fill the open position, within thirty (30) calendar days of the position becoming vacated by a current sworn employee.

### **Article XX, Section 3, Residency**

#### Union Offer

Irrespective of the fire fighter-employee's date of hire, the fire fighter-employee shall establish and maintain his/her actual residence and domicile within a community which falls within 13 25 miles of the center of the Village, as defined in Section 8-910 of the Village Code (Village Ordinance 94-024, February 22, 1994). A list of these communities shall be listed and attached hereto as Appendix "M" and the parties shall meet upon implementation of this successor collective bargaining agreement to determine which communities are applicable and are to be placed in Appendix "M."

#### Village Offer

The Village offer on this issue is status quo.

This is a non-economic item so the Arbitrator can adopt one of the party's offers or fashion his own language. The 13-mile radius has been in place for many years. Is this limit still required? The Village maintains the current 13-mile requirement is in place for safety reasons and is needed in the event it must call-in an employee because the number of personnel available is below the minimum. The Village acknowledges this rarely occurs.

The Union maintains there is no safety issue and that the current limit is unreasonable. The Arbitrator agrees there is no real showing that safety would be impacted by adopting the Union proposal or some variation on it. Call-ins are rare and even if employees are a few miles further away they could still respond if needed relatively quickly depending where they live. The Village points out that expanding the radius could mean employees could live in the Chicago downtown area and commuting from there could certainly be problematic given the traffic in that area. That it argues is possible as employees can currently live more than 13 miles from the Village as employees can live anywhere within a County if any town in the County falls within 13 miles of the Village.<sup>10</sup> Thus, including a locality that is within Cook County could open the door to the problem expressed by the Village.

Half of the comparable communities have no restriction. Palatine limits employees to living in the State of Illinois. Berwyn and Crystal Lake limit

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<sup>10</sup> That is a practice that has been adopted by the parties according to the Union.

residency to certain Counties. Conversely, the same limit is imposed on all the other Units in this Village and this Union is seeking to change that consistency. That does not mean there can be no change, but it must be considered when weighing the proposals. On the other hand, someone must be the first one out of the gate and, as noted earlier, this Union usually falls into that category.

Based on a review of the external comparables and the fact that there is no real basis for setting the limit at 13-miles, the Arbitrator finds there is a need for some modification, but not the change proposed by the Union. The concern over allowing employees to live near the congested downtown Chicago area is a real concern. It should be noted, however, that Downtown Chicago is over 30 miles from the Village. That is even outside what the Union proposed. On the other hand, there are some places in Cook County that are outside the main heavily traveled corridor that could be included if the limit were slightly extended. Countryside Illinois is in Cook County, but is only 15 miles from the Village. Living in Countryside would not make it that much more difficult for an employee to get to the Department if needed. Similarly, there are towns just outside of 13 miles of the Village that are in the opposite direction from Cook County that do not pose the same traffic problems. For example, Oswego and Boulder Hills in Kendall County are approximately 15 miles from the Village. Joliet in Will County is approximately that same distance from the Village. Expanding the limit by a few miles might give employees a greater choice while still protecting the concerns of the Village over the ability of a firefighter to get to the Village quickly

if needed. The Arbitrator does not agree with the Union that expanding by 10 miles is warranted. That might put employees too close to the congested downtown Chicago area.

The Union also questions the current language requirement which leaves the definition of the center of the Village to an ordinance which can be changed by the Village at any time. The Arbitrator can understand that concern and agrees that leaving the definition to the Village alone is unfair.

The Arbitrator finds the following language addresses the issues raised by the Union and the concern raised by the Village and it shall be included in the parties' agreement.

**Irrespective of the fire fighter-employee's date of hire, the fire fighter employee shall establish and maintain his/her actual residence and domicile within a community which falls within **17 miles of Village Hall. Under no circumstances can an employee who wishes to live in Cook County live any further than 17 miles from the Village. A list of communities that fall within the limits set here shall be attached as Appendix "M." The parties shall meet upon implementation of this successor collective bargaining agreement to determine which communities fall within this limit and are to be placed in Appendix M.****

Award

1. Bargaining Unit members shall receive a 2.5% increase on May 1 in each of the four years covered by this Agreement, retroactive to May 1, 2015.
2. The Village language in Article XII, Section 6, Vacation Picks is adopted.
3. The Village proposal in Article XVI, Section 6, Retirement Health Insurance is adopted.
4. The Union proposal in Article XVI, Section 1 and Appendix D Health Insurance is adopted.
5. The Village proposal regarding Article X, Section 1 Kelly Days is adopted as to the request for an additional Kelly Day.
6. The Union proposal on Article X, Section 6, Kelly Day Trades is adopted.
7. The Arbitrator's language on Article XV, Section 7, Paramedic Decertification as set forth in this Decision and Award is adopted.
8. The Arbitrator's language on Article XX, Section 3, Residency as set forth in this Decision and Award is adopted.
9. All Tentative Agreements reached by the Parties are incorporated in this Award.

Dated: June 15, 2017



Fredric R. Dichter, Arbitrator