In The Matter of the Arbitration Between	)
	)
Village of Skokie	)
	)
and	)
	)
Skokie FireFighters Local 3033, IAFF	)
	)
Interest Arbitration	)
	)
ILRB No. S-MA-16-150	)

OPINION AND AWARD

The hearing in the above captioned matter was held on May 16, 2016, before Jules I. Crystal serving as the sole impartial arbitrator by selection of the parties. The Union was represented by Ms. Lisa B. Moss and Ms. Susan M. Matta, its attorneys. The Village was represented by Mr. R. Theodore Clark, its attorney. The hearing was held pursuant to Section 14 of the Illinois Public Labor Relations Act (IPLRA). The parties agreed to waive their delegates to the arbitration panel and that the arbitrator serve as the sole arbitrator in this matter. Additionally, the parties stipulated that the arbitrator has authority to award wages retroactive to May 1, 2014, that the arbitrator shall incorporate the parties' tentative agreements into the award and shall retain jurisdiction until the collective bargaining agreement is complete and executed.

The parties also stipulated that the following communities are comparable to Skokie for purposes of this proceeding: Arlington Heights, Des Plaines, Elk Grove Village, Elmhurst, Evanston, Glenview, Highland Park, Morton Grove, Mt. Prospect, Niles, Northbrook, Oak Park, Park Ridge, Wheeling and Wilmette.

The parties exchanged "final" offers prior to the hearing but could not agree on whether the parties could amend their final offers post-hearing. On May 12, 2016, Arbitrator Crystal ruled that the parties would be allowed to amend their final offers. The parties also disagreed over whether a Village proposal to establish a two-tiered salary schedule was a separate economic issue or was part of the single economic issue of salaries. On May 18, 2016, Arbitrator Crystal ruled that the two-tiered salary proposal was part of a single issue on salaries. He directed the parties to provide their final offers by May 20, 2016. The parties did so.

The parties filed post-hearing briefs on July 1, 2016. Unfortunately, for medical reasons, Arbitrator Crystal was forced to discontinue his service in this matter. By e-mail dated January 27, 2017, counsel advised me that the parties had selected me to succeed Arbitrator Crystal in this matter and requested a telephone conference if I was interested and available. A telephone conference was held on February 1, 2017, at which we confirmed that I would succeed Arbitrator Crystal and discussed logistics for supplying me with the record and handling any questions that might arise. On February 1, 2017, the Illinois Labor Relations Board appointed me to succeed

Arbitrator Crystal as arbitrator in this matter. Despite challenging circumstances, Arbitrator transferred the record to me on February 8, 2017. I created a docket sheet detailing all material that I had received from Arbitrator Crystal and shared the docket sheet with counsel for both parties on February 17, 2017. Following some supplementation of the material, the parties confirmed on February 21 (Village) and February 23 (Union) that I have the entire record.

Due to the peculiar circumstances resulting from the need to appoint a successor to Arbitrator Crystal, a much greater period of time than usual has elapsed between the holding of the hearing and filing of briefs and issuance of this award. Pursuant to Section 14(h)(7) of the Illinois Public Labor Relations Act (IPLRA), the parties have submitted additional information including a new collective bargaining agreement from Wilmette; and updated information on changes in the Consumer Price Index. I have also taken arbitral notice of generally known developments such as the outcome of the November 8, 2016, elections. In other words, to the extent available, this award is based on information current as of the award's issue date.

The Issues

The parties stipulated that the following economic issues are before me for resolution:

- Duration and Term of Agreement (Article XXV, Section 25.1)
- Salaries and Other Compensation (Article VI, Section 6.1)
- Longevity Pay (Article VI, Section 6.3)
- EMT-P Stipend (Article VI, Section 6.4)
- Serving in Acting Capacity (Article XII, Section 12.21)
- Comprehensive Medical Program and Dental Insurance Program (Article XV, Section 15.1)

The parties stipulated that the following non-economic issues are before me for resolution:

- Impasse Resolution (Article XII, Section 12.8 and Appendix A)
- Disciplinary Investigations (Article XII, Section 12.17).[1]

The Statutory Factors

Section 14(h) of the IPLRA provides for the arbitrator to base his findings on the following factors, as applicable:

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[1]Two non-economic issues, Access to Personnel File (Article XII, Section 12.12) and Entire Agreement (Article XXIII) were resolved with tentative agreements prior to the filing of briefs. Pursuant to the parties' stipulation, those tentative agreements will be incorporated into this award. At hearing, the Village proposed a two-tier salary schedule. Arbitrator Crystal ruled that the two-tier salary schedule was part of the single overall issue of wages. The Village withdrew its two-tier salary schedule proposal when it submitted its final offer on salaries.

(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 with other employers generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

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

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

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

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

As I and other arbitrators have observed on numerous occasions, interest arbitration represents the breakdown of the parties' collective bargaining process. The arbitrator's function is to determine what contract terms the parties most likely would have agreed to if the collective bargaining process had not broken down. The weight to be given each factor listed in Section 14(h) is to be assessed in light of its value in making such a determination. In the instant case, there is no dispute that both final offers fall within the lawful authority of the employer. With respect to "the interests and welfare of the public and the financial ability of the unit of government to meet those costs," the Village represented (Tr. 7-8):

> [T]he Village is not making a pure inability to pay argument in this case. The Village is making an argument in terms of the very competitive salary and fringe benefit offers that it has submitted that to require the Village to pay more would raise issues with respect to

the Village's finances, and we will have a presentation on that, but we are not affirmatively saying we don't have the money to pay whatever is awarded in this case.

I will discuss the other factors in connection with each issue in dispute. I have considered all of the statutory factors, although I may not discuss particular factors in detail with respect to every issue presented.

Background

Skokie is a suburb of Chicago, about 16 miles northwest of downtown Chicago. It's population is approximately 65,000, making it the third most populous municipality among the comparable communities. It's median family income as of 2014 of $77,868 ranks it above only Niles and Wheeling among the comparable communities. Its median home value of $280,400 ranks twelfth among the comparables (ahead of Elk Grove Village, Niles, Des Plaines and Wheeling). Its total Equalized Assessed Valuation of $2,121,838,407 is the highest among the comparable communities but its EAV per capita of $32,587.52 ranks it right in the middle at number eight. Skokie is the home to the Old Orchard Shopping Center and its sales tax revenue of $30,230,657.94 is the highest among the comparable communities while its sale tax per capita of $464.29 is exceeded only by Niles and Glenview.

The Village's fiscal year runs from May 1 to April 30. The Illinois Fraternal Order of Police Labor Council represents a bargaining unit of full time peace officers below the rank of sergeant. No other Village employees are represented by an exclusive bargaining representative.

The Skokie Fire Department is accredited by the Commission on Fire Accreditation International. Skokie has an Insurance Service Office rating of 1.

On September 2, 1986, the Illinois State Labor Relations Board certified the Union as exclusive representative of the instant bargaining unit. The unit currently has 45 firefighter/paramedics, 42 firefighters and 18 lieutenants.

The parties have had ten collective bargaining agreements, five of which have been resolved by interest arbitration:

May 1, 1987 - April 30, 1990
Wage reopener in 1989 resolved by interest arbitration award of Arbitrator Elliot Goldstein
May 1, 1990 - April 30, 1992
May 1, 1992 - April 30, 1995, resolved by interest arbitration award of Arbitrator Neal Gundermann
May 1, 1995 - April 30, 1996
May 1, 1996 - April 30, 1999, resolved by interest arbitration award of Arbitrator Steven

Briggs

May 1, 1999 - April 30, 2002

May 1, 2002 - April 30, 2006

May 1, 2006 - April 30, 2009, resolved by interest arbitration award of Arbitrator Marvin Hill

May 1, 2009 - April 30, 2010

May 1, 2010 - April 30, 2014 - resolved by interest arbitration award of Arbitrator Edwin Benn

Additional facts will be discussed below as they relate to the specific issues that are in dispute.

Issues in Dispute

Article XXXV, Section 25.1, Duration and Term of Agreement

Current Contract Language

Section 25.1. Termination in 2014. This Agreement shall be effective as of the day after the contract is executed by both parties and as otherwise specified in specific contract provisions and shall remain in full force and effect until 11:59 p.m. on the 30th day of April, 2014. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least one hundred twenty (120) days prior to the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin no later than ninety (90) days prior to the anniversary date.

Notwithstanding any provision of this Article or Agreement to the contrary, this Agreement shall remain in full force and effect after the expiration date and until a new agreement is reached unless either party gives at least ten (10) days' written notice to the other party of its desire to terminate this Agreement, provided such termination date shall not be before the anniversary date set forth in the preceding paragraph. Even though this Agreement has terminated pursuant to the provisions of this Article, during the pendency of impasse arbitration proceedings, existing wages, hours, and other conditions of employment shall not be changed without the consent of the other but a party may so consent without prejudice to its, rights or position in any such proceedings

Union's Final Offer

Change "2014" the two times it appears in the first paragraph to "2017."

Village's Final Offer

Change "2014" the two times it appears in the first paragraph to "2018."
(Note - the final offers as submitted reproduced the current contract language and showed the

changes but to conserve space, I have simply summarized the changes which go only to the expiration date of the contract.)

Union's Position

The Union offers several reasons why its proposal of a three-year contract is more reasonable than the Village's proposed four-year contract. The Union maintains that in recent times arbitrators have favored shorter terms because of economic uncertainly. The Union cites *Village of Gurnee and Gurnee Firefighters Union Local 3598,* ILRB Case No. S-MA-12-185 (Nathan 2014); *City of Rock Island and Illinois FOP Labor Council,* ILRB No. S-MA-11-183 (Benn 2013); *City of Highland Park and Teamsters Local 700,* Arb. Ref. 11.120 (Benn 2013) in support of its position. The Union urges that in his 2014 award between the parties, Arbitrator Benn selected the Union's proposed four-year term over the Village's proposed five-year term because of the economic uncertainties that the parties faced.

The Union argues that the economic uncertainty that has fueled shorter term agreements continues. In its brief filed July 1, 2016, the Union cited the upcoming elections and the uncertainty over the future of the Affordable Care Act (ACA).

The Union contends that the parties' bargaining history supports the shorter term. Only twice have the parties had a four year term for their contract and one of those was imposed by Arbitrator Benn who selected the Union's proposed four year term over the Village's proposed five year term. The Union urges that in his 2007 award, Arbitrator Hill accepted the Union's proposed three year term based on bargaining history.

The Union maintains that external comparability favors the Union's proposed three year term. Only three of the comparable communities have five year agreements and only four have four year agreements, says the Union. All of the others have contracts with terms of three or fewer years. The Union urges that I reject the Village's comparability analysis which relies on the amount of time between signing of the agreement and agreement termination date because the record lacks any information concerning how long the communities were in bargaining.

The Union contends that the record lacks sufficient information for a reasonable economic award for the Village's proposed fourth year. Again, writing in its July 1, 2016 brief, the Union avers that wage and health insurance information for 2017 was available only for five of the 15 comparable communities. Thus, the Union argues, "adding a fourth year . . . will require this Arbitrator to blindly award wage rates for the final year of the agreement." (Un. Br. at 17).

The Union discounts the Village's contention that the parties need a break from the bargaining process. The Union urges that the parties have a history of signing their agreements on the eve of their expiration. The Union notes that Arbitrator Benn's award was issued on March 31, 2014, one month before the agreement's expiration date and urges that I follow

Arbitrator Benn's lead.

Village's Position

The Village offers several reasons why its proposal of a four year contract is more reasonable than the Union's proposed three year term. The Village maintains that the longer contract term will give the parties a breather from bargaining and litigation and enhance labor relations stability. In its July 1, 2016 brief, the Village projected that its proposal would give the parties an 18-month hiatus compared to a six-month hiatus under the Union's offer, based on the its projection of when Arbitrator Crystal would likely render his award. The Village urges that the parties began bargaining for the current contract July 16, 2014 and continued through April 16, 2016, followed by the interest arbitration proceeding.

The Village contends that the parties have been engaged in virtually non-stop bargaining proceedings for seven years. It observes that the 2009-10 contract was not signed until January 13, 2010 and the bargaining and arbitration proceedings that resulted in the 2010-2014 contract lasted until one month before the contract expired. Adding to the parties' fatigue, says the Village, is an ongoing dispute over promotions in arbitration and unfair labor practice proceedings. In support of its offer for a longer term contract, the Village cites *MAP and Northern Illinois University*, ILRB Case No. S-MA-14-188 (Wojcik 2016); *City of Chicago and Illinois FOP*, Arb. Ref. 09.281 (Benn 2010); *City of Springfield and PBPA*, ILRB Case No. S-MA-89-74 (Benn 1990).

The Village characterizes the external comparables as "mixed," with five communities having contracts of four years' duration or greater. But, the Village urges, I should consider the amount of time between the signing of the contract and its expiration date and when I do so, the experience in the external communities overwhelmingly supports the Village's offer.

The Village argues that unless I award a four-year term, I will be precluded from considering the Village's health insurance offer as its proposed change to the status quo does not take effect until June 1, 2017. Furthermore, says the Village, considerations of internal comparability support a four year term as the latest FOP contract is for four years and runs through April 30, 2019, and the contract awarded by Arbitrator Benn was for four years. The Village maintains that the uncertain economic conditions that led Arbitrator Benn to award a four year rather than a five year term have largely been resolved and, in any event, any risk of economic uncertainty is more likely to fall on the Village than on the Union and the employees. The Village asks that I award its offer.

Discussion

As discussed earlier, although the parties anticipated an award from Arbitrator Crystal in late summer 2016, for reasons that are nobody's fault, they are getting an award from me in late winter 2017. I am deciding this case as of the date of this award, not as of the filing of the

parties' briefs on July 1, 2016. Thus, for example, we have at least one additional contract that was not available in July of last year and we know the outcome of the November 8, 2016 elections.

I have discounted some of the arguments made by the parties. I do not find the evidence from the comparable communities particularly helpful on this issue. The comparables present a mixed picture. I agree with the Union that the probative value of the Village's analysis of the length of time between contract signing and contract expiration is diminished by the absence of information as to how much time the parties in each municipality spent in bargaining and related impasse procedures. I also do not find the Village's internal comparability argument particularly helpful as the Village has not presented a pattern of the Firefighters' contracts generally tracking the FOP's contracts in terms of duration. I also do not find persuasive the Village's argument that I should award a four year term because I would otherwise not be able to consider the Village's health insurance proposal. The Village structured its final offers as it deemed appropriate and must live with the consequences of the structure it selected.

I also do not attach much weight to the Union's argument that I should award a three year term because of a lack of salary information from comparable communities for the fourth year of the contract. The parties wage proposals for salaries for the last year of a four-year contract, are virtually identical (2.5% effective May 1, 2017 for firefighters and lieutenants). The only difference is the Village has offered an additional 0.25% increase for lieutenants effective November 1, 2017. Since the parties filed their briefs, the Wilmette contract has been resolved, providing one more data point, but the absence of any material difference in salary offers for the last year of a four year contract greatly diminishes the significance of any lacking in the data from comparable communities.

In trying to project whether the parties more likely would have agreed to a three year or four year term had their bargaining process not broken down, I find considerations of uncertainty and stability to be entitled to the most weight. I shall discuss them in turn.

Arbitrator Benn has eloquently articulated the reason why economic uncertainty often weighs toward shorter terms for collective bargaining agreements:

> I have previously recognized a need to give parties a "breather" after difficult and lengthy contract negotiations and therefore have imposed longer contracts. However, I have also recognized that in unstable economic times, shorter contracts or reopeners in the out-years of an agreement are preferable so the parties can adapt to future unknown ebbs and flows caused by the Great Recession and a struggling and still unknown recovery to more realistically address current existing economic conditions.

Rock Island, supra at 5, quoting *Highland Park, supra,* at 14.[2]

The primary uncertainty cited by the Union is the future of the ACA, which could have a significant effect on bargaining over health insurance. This argument had considerable force when it was made in the Union's brief on July 1, 2016. At that time, the outcome of the November 8 elections was unknown. An expiration date of April 30, 2017, as the Union proposed, would have taken the parties past the elections and had Hillary Clinton been elected President, as was widely predicted, the parties could have negotiated a successor contract with relative assurance that the ACA would not be changed in any radical fashion. Of course, that did not happen. Republican Donald J. Trump is now President and the Republicans retained their majorities in the House of Representatives and the Senate. If anything, uncertainty over the future of the ACA is even greater now than it was this past summer. But that uncertainty does not support a three year contract. It is not very likely that the uncertainty over the future of the ACA will be resolved in the next two months. Although the Republican leadership in the House of Representatives has introduced the American Health Care Act to replace the ACA, there is no consensus on the Republican side of the aisle and fierce lobbying from affected parties has just begun. Even if a bill is enacted, it will take time for the dust to settle to assess the impact on insurance markets and health care costs. There is a better chance that the parties will have a handle on the future of the ACA and health insurance markets in the spring of 2018 than in the spring of 2017. The timing of the uncertain future of the ACA and health insurance in general suggests that had the parties bargaining process not broken down, they would have agreed on a 2018 expiration date.

Considerations of labor relations stability also counsel for a four-year duration. The Union discounts the stability factor and the need for a breather, arguing that the parties have a history of signing their contracts on the eve of bargaining the successor. I note that Arbitrator Benn awarded a contract that expired one month after his award. The experience with the contract term that Arbitrator Benn awarded is telling. The Union notified the Village of its desire to negotiate a successor contract on December 19, 2013, before the parties knew what the existing contract would provide. On April 2, 2014, the Union invoked mediation to preserve its ability to gain wage increases retroactive to May 1, 2014. But the parties did not hold their first bargaining session until July 16, 2014, i.e. two and a half months after the contract expired and more than three months after mediation technically had been invoked. This is a history that I find unlikely that the parties would have agreed to repeat had their bargaining process not broken down, yet it is very likely to be repeated if I award the Union's offer on contract duration.

Accordingly, relying primarily on concerns of uncertainty and stability, I award the Village's offer on Duration and Term of Agreement.

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[2] *Village of Gurnee, supra,* also cited by the Union is not helpful in this case. Arbitrator Nathan awarded the union's proposed three year term over the village's proposed four year term but the driving force behind his award was the link between contract duration and what Arbitrator Nathan characterized as an "entirely unacceptable" village wage proposal.

Salaries and Other Compensation (Article VI, Section 6.1)

The Parties' Final Offers

To conserve space, I have not reproduced the salary schedules from the 2010-2014 contract nor have I reproduced the salary schedules contained in each party's final offer. Both parties propose across-the-board pay increases. Their final offers can be most efficiently presented in the following side-by-side comparisons:

Firefighters

Effective Date	Union Proposal	Village Proposal
May 1, 2014	3%	2%
Nov 1, 2014		1%
May 1, 2015	3%	2%
May 1, 2016	3%	2.5%
May 1, 2017	2.5%	2.5%

Lieutenants

Effective Date	Union Proposal	Village Proposal
May 1, 2014	3%	2%
Nov 1, 2014	0.5%	1.25%
May 1, 2015	3%	2%
Nov. 1, 2015		0.25%
May 1, 2016	3%	2.5%
Nov. 1, 2016	0.5%	0.25%
May 1, 2017	2.5%	2.5%
Nov 1, 2017		0.25%

Union's Position

The Union maintains that only its offer fulfills what it refers to as the "Rigoni Promise." The Union avers that it failed to timely open negotiations for a successor to the 2006-09 contract but, despite this, the parties reached agreement on a one year contract which provided an across-the-board wage increase of 1 percent. The Union maintains that prior to reaching agreement, then-Union President Robert Gaseor wrote to then-Village Manager Albert Rigoni expressing concern that the Village ranked near the bottom among comparable communities for wages and benefits and advised that he would recommend ratification of the one-year contract provided that the Village committed to correct the depressed rankings. The Union maintains that Village

Manager Rigoni made such a commitment in a letter to Union Vice-president Stanley Goolish and the commitment was memorialized in a side letter attached to the 2009-10 contract.

The Union argues that the parties were clearly referring to the need to improve the salary ranking above the level it was at the end of the 2006-09 contract. According to the Union, salaries ranked ninth among the comparable communities at that time. The 1 percent increase in the 2009-10 contract dropped the Village to 13th among the comparables. The Union avers that Arbitrator Benn's award for 2010-14 brought the Village back to ranking ninth but only the Union's final offer in this proceeding will fulfill the Rigoni promise and bring the Village above a ninth place ranking.

The Union urges that the external comparables compel selection of its final offer. The Union measures comparability based on total career compensation, analysis of compensation with a focus at the six year mark in a career and top base salary. The Union urges consideration of the Village's ranking among the comparables and of the difference between the Village's pay and the average pay among the comparables, which the Union calls difference from average or DFA.

In analyzing total compensation, the Union calculates an hourly wage rate based on actual hours worked. It finds that rate for firefighters ranked 14th among the 15 communities in 2013 with a DFA of -4.3%. Under the Union's offer, in 2014, the DFA improves to -2.9% and the ranking improves to 12th out of 15. For 2015, the Union's offer improves the ranking to 11th out of 15 and the DFA to -2.2% and in 2016, the ranking is 8th out of 12 and the DFA is -1.3%. In contrast, says the Union, under the Village's final offer, in 2014, the DFA is -3.9%; in 2015, the DFA is -3.3% and in 2016 the DFA is -3.1%.

At the six year mark, the Union argues, in 2013 the Village ranks 9th of 15 with a DFA of -0.7%. Under the Union's offer, by 2016, the Village's rank is 5th of 12 and its DFA is +1.9%. At the top salary, says the Union, in 2013, Skokie ranked 9th of 15 with a DFA of -0.7%. Under both offers, the Village retains its 9th place ranking in 2014 and 2015 but the Union's offer improves the DFA to 0.0% and +0.5% for those years whereas under the Village's offer, the DFA is -1.0% and -0.5%. In 2016, the Union avers, each offer ranks the Village 7th of 13 but the Union's offer improves the DFA to +1.6% while the Village's offer places the DFA at +0.2%

With respect to paramedics, the Union argues, in 2013 the Village ranked 15th out of 16 with a DFA of -4.8%. Under the Union's offer, the Village improves to 14th out of 16 with a DFA of -3.7%, in 2015 a ranking of 12th out of 16 with a DFA of -3.1%, in 2016 a ranking of 9th out of 13 with a DFA of -2.4%. In contrast, argues the Union, the Village's offer results in a DFA of -4.9% in 2014, -4.3% in 2015 and -4.2% in 2016.

Paramedic career wage analysis, urges the Union, sees Skokie ranking 9th of 16 with a DFA of -0.4% in 2013 and improving under the Union's offer to 4th of 13 with a DFA of +2.1% in 2016. Top base salary shows a ranking of 10th out of 16 and a DFA of -1.0% in 2013, with the

Union's offer improving to 9th of 16 with a DFA of -0.3% in 2014; 7th of 16 with a DFA of +0.3% in 2015 and 6th of 13 with a DFA of +0.8% in 2016. In contrast, under the Village's offer, the ranking remains 10th of 16 in 2014 with a DFA of -1.4%; 10th of 16 in 2015 with a DFA of -0.8% and 8th of 13 in 2016 with a DFA of -0.9%

For lieutenants, the Union argues, the Village ranked 11th of 15 in 2013 with a DFA of -1.1%. Under the Union's proposal, the rank improves to 10th of 15 in 2014 with a DFA of -0.1% and 9th of 15 in 2015. In contrast, says the Union, the Village's offer leaves Skokie in 10th place with DFAs of -1.0% in 2014 and remaining negative in 2015.

The Union urges that historically police and fire fighters have not received the same wage increases. However, the Union maintains, internal comparability supports the Union's final offer because of a commitment to maintain the top step police officer salary in the middle of the comparable communities. No similar commitment has been made to the fire fighters.

The Union observes that both offers provide for wage increases substantially above the increase in the cost of living as reflected in the CPI-U for the Chicago-Gary-Kenosha area. Consequently, in the Union's view, the cost of living is irrelevant to this proceeding. The Union also observes that the Village can afford the Union's offer and, therefore, the Union's final offer should be awarded.

Village's Position

The Village places primary reliance on the cost of living. It observes that the CPI-U measured from April to April, actually decreased by 0.933% from 2014 to 2015 and increased by only 0.656% from 2015 to 2016. Projections from the Federal Reserve Bank of Philadelphia's Survey of Professional Forecasters reflect modest increases in the CPI for 2016, 2017 and 2018. The Village estimates an increase in the CPI during the period of the contract of 4.123% compared with a compounded increase in salaries under the Village's offer of 10.4% and a compounded increase under the Union's offer of 12.0%. The Village urges that the cost of living strongly supports selection of its final offer.

The Village contends that overall compensation reinforces the conclusion that its offer should be awarded. The Village observes that 23 employees will receive step increase over the life of the contract and when the step increases are combined with the across-the-board increases, employee total pay will increase between a compounded 10.4% and 41.8% under the Village's offer, as compared to a range of 12.0% to 43.23% under the Union's offer. The Village avers that its offer is the more reasonable. The Village urges that I follow Arbitrator Benn's 2014 award and focus on the cost of living and total compensation.

The Village maintains that internal comparability favors its final offer. The Village argues that from 2014 to 2018, police salaries will increase 9.70% whereas the non-compounded

increase under the Village's offer is 10.0%, slightly higher and more in line with the police salaries than the Union's offer which totals 11.5% without compounding.

The Village argues that its final offer is also the more reasonable when measured against the external comparables. The Village urges that the focus should be on percentage increases rather than rankings of absolute salaries. Interest arbitration, says the Village, is not the appropriate forum for the Union to play catch up to comparable communities.

The Village contends that its proposed increases exceed the average percentage increases for the comparable communities in each year except 2015 and overall exceed the average by 1.241%, as compared to the Union's offer which exceeds the average by 2.741%. Even looking at rankings, says the Village, the Village's offer is more reasonable as, at the top step of firefighter pay the Village moves from 8th to 7th among the comparables and with respect to the top step of lieutenant pay, the Village moves from 9th to 8th, both rankings as of the end of 2016.

Further evidence of the superiority of the Village's offer, the Village contends, can be found in the ease with which the Village has been able to recruit and fill vacancies and the relative lack of turnover, particularly the lack of bargaining unit members leaving to take jobs in other municipalities. The Village also maintains that the interests and welfare of the public support the Village's final offer in light of budgetary challenges, increasing pension contributions and uncertainty concerning funding from the State of Illinois. The Village asks that I award its final offer.

Discussion

The Village is not claiming an inability to pay the Union's offer. Rather, it maintains that awarding the Union's offer will aggravate existing financial challenges, particularly increasing pension obligations. The Village's argument is not persuasive. The situation posed is not unlike the one I faced in *Illinois Fraternal Order of Police Labor Council and County of Will and Sheriff of Will County*, ILRB No. S-MA-12-083 (Malin 2013), where I wrote:

> The Employers' concern is understandable but it is not persuasive. Whenever a union's offer calls for increases that are greater than the employer assumed in its financial plan, the union's offer will be disruptive to that plan. That is not a reason to adopt the employer's offer if the union's offer finds greater support in the other statutory factors. To accept the claim of disruption to a financial plan that the Employers set unilaterally, would come close to allowing them to set wage rates unilaterally.

Id. at 15. I will follow my approach from *Will County* and will turn to the other statutory factors.

The Union urges me to give considerable weight to the "Rigoni promise," which it maintains has not been fulfilled and will not be fulfilled unless I award the Union's offer. The Union interprets the promise in light of correspondence exchanged and discussions held prior to

the reaching of agreement on a side letter. The Union proffered these same arguments to Arbitrator Benn who ruled that the side letter, rather than the prior discussions and correspondence, governed. Arbitrator Benn reasoned:

> Because it was reduced to contract language, the Side Letter to the 2009-2010 letter contains the real "Rigoni Promise". And that "promise" was not to "move the ranking up from their current position", but was a commitment to "*make a good faith effort* to move up from their current position" (emphasis added)

Benn Award at 29. Regardless of whether I would have reached the same interpretation were I considering the Rigoni Promise on a clean slate, I find arbitrator Benn's interpretation reasonable and I defer to it.

The parties disagree over how to interpret the police contract in assessing internal comparability. Both parties agree, however, that the salary settlements in the IAFF contract have generally not paralleled the salary settlements in the FOP contract. Therefore, I find that the FOP contract provides little useful guidance for determining what resolution the parties before me likely would have reached had their bargaining process not broken down.

The parties disagree over the relative weight to be accorded the cost of living and external comparability. The Union considers the cost of living irrelevant because both parties' offers are considerably above the increase in the cost of living while the Village places a great deal of emphasis on the cost of living following the approach of most arbitrators in reaction to the Great Recession and continued to be followed by some arbitrators, most notably Arbitrator Benn. I addressed this question in *Will County*, *supra*, at 16:

> In Illinois, most bargaining units have the right to strike. Interest arbitration serves as a substitute for the right to strike for employees governed by section 14 of the IPLRA because of the dangers that strikes by those employees would pose to public health and safety. During the depths of the Great Recession, strikes by Illinois public employees with the right to strike decreased markedly as did notices of intent to strike. In other words, unions with the right to strike were not even threatening to strike during negotiations. *See* Malin, Two Models of Interest Arbitration, 28 *Ohio St. J. Dispute Resolution* 145, 151-52 (2013). A similar phenomenon was observed among bargaining units with the right to strike in Ohio. *Id.* at 153-54. This reflects the prudent judgment that during such very stressed economic times, a strike or even a threat to strike posed a major risk of backfiring politically. In contrast, resort to interest arbitration by Section 14 employees in Illinois increased markedly. *Id.* at 154. In such circumstances, internal comparability data may provide a more accurate gauge to the likely product of successful free collective bargaining than external comparability data.
>
> As the economy and employer tax revenues have rebounded, the probative value of external comparability has also rebounded. . . .

What I said concerning internal comparability applies equally to the cost of living. However, that the probative value of external comparability has rebounded does not mean that the cost of living is irrelevant. Particularly in light of the political constraints that characterize the environment in which public sector collective bargaining takes place, the more significantly an offer exceeds or is below the increase in the cost of living, the greater the burden to justify that offer as indicative of what the parties would have agreed to had their bargaining process not broken down.

On the record developed in this proceeding, I regard 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 with other employers generally in public employment in comparable communities, and the cost of living to be the most significant factors guiding my award. I shall discuss each in turn.

The parties' approach to the external comparables in this case illustrates one of the drawbacks of using external comparability. Both parties have sliced and diced the data to their maximum benefit.[3] Consequently, neither party's complete analysis is particularly persuasive. For example, the Village compares the jurisdictions as of the end of each calendar year. In so doing, it credits itself with offering a 3 percent (3.02% when compounding is considered) increase for 2014, even though 1 percent of that increase does not take effect until November 1, 2014. Although at the end of the fiscal year on April 30, 2015, the firefighters will have seen a 3 percent increase in their base, for the entire 2014-15 fiscal year they will only have received about 2.5% more than they received in the prior fiscal year. The Village's analysis ignores this important detail.

The Union compares the jurisdictions as of July of each year. In so doing, the Union fails to credit for 2014 any of the November 1 increase offered by the Village. It also moves into 2014 increases in Arlington Heights that took effect in November 2013 and moves into 2015 increases in Park Ridge that too effect in November 2014.

The starting point for my analysis of external comparables is a comparison of across-the-board percentage salary increases for firefighters. The Union has also proffered analysis of firefighter-paramedics but the question of treatment of paramedics is best dealt with under the issue of paramedic stipends. Although some of the comparable jurisdictions have a separate salary scale for firefighter-paramedics, Skokie does not. It pays firefighters who have become certified paramedics a paramedic stipend and the amount of that stipend has been stipulated to be a separate economic issue.

Both parties propose higher across-the-board salary increases for lieutenants than for firefighters. In virtually every other comparable jurisdiction in the relevant time frame,

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[3] I intend no criticism of the parties' approaches. On the contrary, I respect their slicing and dicing as skillful advocacy.

lieutenants and firefighters received the same percentage increases.[4] Therefore, in comparing percentage increases, I will focus on firefighers.

My examination of the collective bargaining agreements in the comparable communities shows that increases in Evanston, Glenview, Highland Park, Morton Grove, Oak Park and Wilmette are effective on January 1. In the other communities, increases are effective on May I except for Elmhurst which provided a 0.75% increase effective January 1, 2015 and a 2.5% increase effective May 1, 2015 and thereafter provided increases effective May 1; Mt. Prospect which provided 1% increases effective January 1 and June 1 of 2014 and January 1 and June 1 of 2015 and thereafter provided raises effective January 1 of each year; and Park Ridge which provided increases effective on May 1 and November 1, 2014 and thereafter provided increases effective May 1.

The different approaches to the effective dates of salary increases raises the question as of what point in the year should salary increases be compared. The Union used July 1 but offered no credible justification for selecting that date. None of the relevant communities adjusts salaries on July 1. The Village used the end of the calendar year. Given the differences among the relevant jurisdictions as to when they adjust salaries, I will base my comparison on the calendar year but, as discussed above, I will note where a salary increase is divided between effective dates six months apart and take that into consideration as appropriate.

Both parties offer a 2.5% increase for 2017, effective May 1. The only difference between their offers is the Village's inclusion of an additional 0.25% increase for lieutenants effective November 1. Because the 2017 offers are virtually identical (lieutenants receive two months of slightly increased pay under the Village's offer), I will focus my analysis on 2014-2016. I will not use compounding. For comparison purposes it does not matter whether compounding is used as long as all communities are treated the same way. (Compounding does matter and I will use it when I consider the factor of the cost of living.)

Firefigher Percentage Increases

Municipality	2014	2015	Combined 2014-15	2016	Combined 2014-16
Arlington Hts	2.5	2.5	5.0	2.5	7.5
Des Plaines	2.25	2.5	4.75	2.5	7.25
Elk Grove Village	2.0	3.11	5.11	2.0	7.11

[4]The one exception may be Elk Grove Village which for 2015 and 2017 links the percentage increase for firefighters to police officers and for lieutenants to police sergeants. The record does not enable me to determine whether firefighters and lieutenants received the same percentage increases in these years. They did in the other years.

Elmhurst	2.5	0.75 eff 1/1; 2.5 eff 5/1	5.75	2.7	8.25
Evanston	2.5	2.5	5.0	2.5	7.5
Glenview	2.5	1.5	4.0	1.75	5.75
Highland Park	2.0	2.0	4.0	2.0	6.0
Morton Grove	2.0	2.75	4.75	2.75	7.5
Mt. Prospect	1.0 eff 1/1; 1.0 eff 6/1	1.0 eff 1/1; 1/0 eff 6/.1	4.0	2.0	6.0
Niles	2.0	2.5	4.5	2.5	7.0
Northbrook	2.5	2.25	4.75	2.25	7.0
Oak Park	2.0	2.0	4.0	2.5	6.5
Park Ridge	1.5 eff 5/1; 1.0 eff 11/1	2.0	4.5	1.5	6.0
Wheeling	2.5	2.75	5.25	2.5	7.75
Wilmette	2.5	2.5	5.0	2.25	7.25
Average	2.283	2.407	4.690	2.283	6.973
Village Offer	2.0 eff 5/1; 1.0 eff 11/1	2.0	5.0	2.5	7.5
Union Offer	3.0	3.0	6.0	3.0	9.0

Union counsel suggested that the Village might be credited with a 2.5% increase in comparing its offer for 2014 with other communities because of the split effective dates for its proposed salary increases (Tr. 72). Accepting that suggestion, the Village's offer for 2014 still exceeds the average increase of 2.283% for the comparable communities. The Village's offer for 2015 of 2.0% is below the average for the comparable communities but for the combined years 2014-15, for which the entire 3.0% for 2014 must be counted, the Village's offer of a combined non-compounded 5.0% exceeds the average of 4.690% for the comparables. The Village's offer

for 2016 also exceeds the average and its combined non-compounded offer for 2014-16 exceeds the average of the comparable communities by a little over ½%. Only Wheeling and Elmhurst provided total salary increases for the three-year period that were higher than the Village's offer. In comparison, the Union's offer when measured by non-compounded combined increases for the three year period exceeds every comparable community and exceeds the average by a little over 2 percentage points. When measured by percentage salary increases, the external comparability analysis favors the Village's offer.

In their negotiations, the parties have displayed some sensitivity to where Skokie ranks in compensation vis-a-vis the other comparable communities, as reflected in the Rigoni side letter. An appropriate review of Skokie's rankings is to look at base salary at the highest step, as a majority of bargaining unit members are at the highest step. The Union's analysis looks at highest achievable salary and includes longevity pay, but longevity pay is a separate economic issue in this proceeding and, therefore should be handled separately. The Union's analysis also looks at premiums paid for certain characteristics or actions in other jurisdictions but I do not consider it appropriate to include those in my analysis because the record does not reflect how commonly those premiums are paid. Because the parties' offers are not materially different for 2017 and because of the limited data available for 2017, I will compare base salary at the top step for 2013, i.e. before any increase in the contract before me takes effect, to base salary at the top step in 2016.The Union's use of July 1 as the date for its computations does not appear to affect the salaries for 2013 and 2016, except in one case discussed below. I base my analysis below on Union Exhibit 3, Tabs 2 and 5, and Village Exhibits 37 and 38, supplemented by contracts that were settled between the date of the hearing and the date of this award. Where the parties' exhibits agree on the figures, I have used those figures. Where the parties' exhibits do not agree, I have reconciled the differences based on the relevant collective bargaining agreements and have explained the reconciliation.

Top Step Base Pay 2013 and 2016

Municipality	Firefigher 2013	Firefighter 2016	Lieutenant 2013	Lieutenant 2016
Arlington Hts	85,099[5]	91,642	103,357[6]	111,304

[5]This figure comes from Village Ex. 37. The Union exhibit shows 84,527 because it calculates salaries as of July 1 and therefore excludes an increase that took effect November 1, 2013. I find it more appropriate for purposes of this comparison to use salaries in effect at the end of the year.

[6]This figure comes from Village Ex. 38. The Union exhibit shows102,334 because it calculates salaries as of July 1 and therefore excludes an increase that took effect November 1, 2013. I find it more appropriate for purposes of this comparison to use salaries in effect at the end of the year.

Des Plaines	84,255[7]	90,899[8]	101,090	108,598
Elk Grove Village[9]	86,678	92,987	100,965	108,601
Elmhurst	84,236	91,617	100,179	109,726[10]
Evanston	77,977	83,973	91,543[11]	98,582
Glenview	86,566	91,638	104,161	110,262
Highland Park	82,465	87,512	96,788	102,712
Morton Grove	79,804	85,938	93,175[12]	100,334
Mt. Prospect	81,836[13]	86,365[14]	97,462[15]	103,639[16]

[7]This figure comes from Village Ex. 37. The Union exhibit shows 88,340 but that figure is top pay for firefighter/engineer rather than firefighter.

[8]This figure comes from Village Ex. 37. The Union exhibit shows 94,984 but that figure is top pay for firefighter/engineer rather than firefighter.

[9]Union Exhibit 3, Tabs 2 and 5 do not show the 2016 top base pay for firefighter or lieutenant. The collective bargaining agreement does not expressly show it either but indicates that both groups received a 2.0% increase on May 1. Therefore, I took the figures in the Union Exhibit for 2015 and increased them by 2.0%. These are the same amounts reflected on Village Exs. 37 and 38.

[10]This is the Union's figure which is for the top step, step E. The Village exhibit shows 108,955 which is step D.

[11]In Evanston, the first rank above firefighter is captain and is in the bargaining unit.

[12]The Union exhibit showed a 2013 top step for lieutenant of 97,807, but in rresponse to my request for assistance in reconciling the differences, the Union agreed with the Village's figure.

[13]The Union shows the top step in Mt. Prospect in 2013 as 84,538, but that is the top grade, which requires advanced technician and fire apparatus engineer certifications. I have used the top step as the appropriate basis for comparison.

[14]This is the top step. The Union lists 89,729 but that is the top grade.

[15]This is the top step reflected in the Mt. Prospect CBA for lieutenants. The Union showed 101,446 which is the top grade while the Village exhibit showed 102,642 which is the top step for lieutenant/paramedic.

[16]This is the top step. 107,676 reflected in the Union exhibit is the top grade.

Niles[17]			98,077	107,205
Northbrook[18]			102,432	109,771
Oak Park	82,028	87,476	93,066	99,247
Park Ridge	78,611	83,433	88,516[19]	93,945[20]
Wheeling	83,764	90,424	102,156	110,279
Wilmette	78,658	84,499	98,963	106,313
Skokie	82,507 (7 of 14)		97,627 (10 of 16)	
Village Offer		88,666 (7 of 14)		105,938 (10 of 16)
Union Offer		90,158 (7 of 14)		107,749 (7 of 16)

Both offers maintain the firefighters' ranking at 7th out of 14. The Union's offer improves the lieutenants' ranking by 3 (from 1 of 16 to 7 of 16). The Village's proposal maintains the lieutenants' ranking. Following Arbitrator Benn's interpretation of the Rigoni side letter, I cannot say that the Village's proposal is in breach of the commitment made in the side letter.

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[17]Niles does not have a firefighter rank, only firefighter/paramedic. Information for Niles was taken from its collective bargaining agreement rather than the Union exhibits.

[18]Northbrook contracts do not provide salaries for tier 1 firefighters. They provide salaries for tier 2 firefighters and for tier 1 and tier 2 firefighter paramedics as well as other bargaining unit positions. The Village exhibit used the tier 2 firefighter salaries but that is not appropriate because Skokie does not have a two-tiered salary structure. The Union exhibit projected a tier 1 firefigher salary but the absence of tier 1 firefighter salaries in the Northbrook contract suggests that there may not be any tier 1 firefighters in Northbrook, only tier 2 firefighters and tier 1 and 2 firefighter paramedics. In light of the absence of reliable data, I have excluded Northbrook firefighter salaries from the comparison.

[19]The Village showed the top step as 94,166. The Park Ridge CBA does not contain a salary schedule for lieutenants, only for lieutenant/paramedics. The CBA provides that a lieutenant who loses his paramedic certification suffers a 6% decrease in salary. The Union's figure, which I have used reduces the lieutenant/paramedic top step by 6% to get a pure lieutenant stop step. Upon my inquiry, the Village agreed that the Union's figure was the appropriate one to use.

[20]The Village showed the top step as 99,942. The Park Ridge CBA does not contain a salary schedule for lieutenants, only for lieutenant/paramedics. The CBA provides that a lieutenant who loses his paramedic certification suffers a 6% decrease in salary. The Union's figure, which I have used reduces the lieutenant/paramedic top step by 6% to get a pure lieutenant stop step. Upon my inquiry, the Village agreed that the Union's figure was the appropriate one to use.

I turn now to the cost of living. Given that the analysis of the external comparables was conducted on a calendar year basis, there is good reason to examine the cost of living on a calendar year basis. Moreover, we now have CPI-U data for the Chicago area on a calendar year basis for each of the years I am focusing on in comparing the two offers, i.e., 2014,. 2015 and 2016.

The U.S. Department of Labor, Bureau of Labor Statistics calculation of the CPI-U for Chicago-Gary-Kenosha extracted by the Village on February 17, 2017, and submitted as a supplemental exhibit shows that, with a base period of 1982-84 equal to 100, the CPI-U on an annual basis was:

2013	224.545
2014	228.468
2015	227.792
2016	229.302

Thus for the three years I am focusing on, the CPI-U increased 4.757 or 2.12%..[21] In comparing the offers to the cost of living, it is appropriate to examine the compounded wage increases to get a complete picture of the gain or loss in real wages under each offer. Under the Village's final offer, by the end of 2016, bargaining unit firefighters will have received a compounded increase of 7.71%. Under the Union's final offer, by the end of 2016, bargaining unit firefighters will have received a compounded increase of 9.27%. The Federal Reserve Bank of Philadelphia's Survey of Professional Forecasters projects a 2.1% increase in the CPI for 2017 (Village Ex. 16) and under each party's final offer of a 2.5% increase effective May 1, 2017, there will be another modest increase in real income for bargaining unit members.

Considering the political constraints that shape the environment in which public employee collective bargaining takes place, I consider it unlikely that if the parties' negotiation process had not broken down they would have agreed to a compounded salary increase of 9.27% through 2016, given the very low rate of inflation. The cost of living strongly favors the Village's final offer.

Considering all of the statutory factors, with emphasis on the 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 with other employers generally in public employment in comparable communities, and the cost of living. I award the Village's final offer on salary.

Longevity Pay (Article VI, Section 6.3)

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[21]The Village's Appendix 5, updated as of Feb. 20, 2017, computes the cumulative changes in the CPI-U on a monthly basis beginning with April 2014, through January 2017 and finds a cumulative increase of 1.0%. For the reasons stated above, I will use my calculation of the annual increases in the CPI for 2014, 2015 and 2016.

Current Contract Language

Section 6.3. Longevity Pay. Employees on the active payroll with continuous unbroken service with the Village in a position covered by this Agreement shall receive monthly longevity pay in accordance with the following schedule:

Years of Continuous Unbroken Completed Service	Monthly Amount
8 years but less than 15 years	$58.33
15 years but less than 20 years	$83.33
20 years but less than 25 years	$108.33
25 years or more	$133.33

Effective May 1, 2011, and retroactive to said date, employees on the active payroll with the Village in a position covered by this agreement shall receive monthly longevity pay in accordance with the following schedule:

Years of Continuous Unbroken Completed Service	Monthly Amount
8 years but less than 15 years	$66.66
15 years but less than 20 years	$91.66
20 years but less than 25 years	$116.66
25 years or more	$145.83

For the purposes of this Section, an employee's absence which does not result in the termination of the employment relationship shall not affect an employee's eligibility to receive longevity pay upon an employee's return to work. In such a situation, the employee upon his return to work shall be credited with the number of years and months of service that he had immediately prior to going on leave, provided an employee shall continue to accumulate service credit while off from work due to an absence covered by the Worker's Compensation Act.

The Parties' Final Offers

Both parties' final offers delete outdated and no-longer-necessary contract language. Both maintain the existing schedule structure with payments at the 8, 15, 20 and 25 year levels. The Village maintains the status quo with respect to the amount of the payments while the Union increases the payments, effective May 1, 2015, to:

Years of Continuous Unbroken Completed Service	Amount

8 years but less than 15 years	$74.99 ($899.88 per year)
15 years but less than 20 years	$99.99 ($1,199.88 per year)
20 years but less than 25 years	$124.99 ($1,499.88 per year)
25 years or more	$158.33 ($1,899.96 per year)

Union's Position

The Union contends that its proposed increase of $100 per year at years 8, 15, and 20 and $150 at year 25 is consistent with prior increases that the parties have negotiated or offered, such as in the arbitration proceeding before Arbitrator Benn.

The Union argues that comparison with the comparable communities strongly supports its final offer. The Union compares the amount of longevity pay received by bargaining unit members in each community after 8, 15, 20 and 25 years. According to the Union, in 2013, at eight years, Skokie longevity pay was 48.1% above the average but at 15 years it was 48.1% below the average, after 20 years it was 52.3% below the average and after 25 years it was 34.8% below average. In 2015, when the Union's proposed increase takes effect, the Union calculates that under its proposal, Skokie is 45.9% below average at year 15, 50.9% below average at year 20 and 31.7% below average at year 25. In contrast, the Union calculates that under the Village's offer, at year 15, Skokie is 59.2% below average, 61.7% below average at year 20 and 43.0% below average at year 25.

Village's Position

The Village maintains that a pattern of internal comparability strongly supports an award of its final offer. The Village maintains that since fiscal year 1988-89, increases in longevity pay in the IAFF bargaining unit has always followed increases in the police bargaining unit and the amounts of increase have always been identical. According to the Village, the FOP has always set the pattern for increases in longevity pay and this bargaining unit has always followed that pattern. The Village characterizes the Union's offer as seeking a breakthrough by changing the structure of how longevity pay is determined, *i.e.*, moving from a situation where the FOP unit is the leader to one where the instant bargaining unit will be the leader. The Village maintains that the Union has offered no justification or quid pro quo for such a breakthrough. The Village discounts the probative value of the comparison to comparable communities, observing that Skokie has seniority-based benefits that are superior to those of or that do not exist in other communities. Theses include an average of slightly more than two additional 24-hour vacation days per year over a 30-year career and the right to receive a retirement vacation allowance of 12 hours vacation for every year of service if the employee has at least 20 years of service.

Discussion

The evidence establishes a very clear and long-standing pattern of parity between this bargaining unit and the police unit with respect to longevity pay and further establishes that

historically the police unit has led the way. Village Exhibit 46 shows that from FY 1988-89 through FY 1993-94, both units received longevity payments at 5, 10, 15, 20, 25 and 30 years of service and the payments were identical. In FY 1995-96, the FOP unit moved to the current structure of payment at 8, 15, 20 and 25 years. The instant bargaining unit followed suit in FY 1997-98 and the longevity payments were again identical until FY 2010-11 when, in accordance with Arbitrator Briggs' interest arbitration award, the amount of longevity pay at each step in the FOP unit increased. That increase was applied to the instant bargaining unit the following fiscal year as a result of Arbitrator Benn's award.

Longevity pay was before the arbitrators in two of the prior interest arbitrations between the parties. In his 1990 award, Arbitrator Goldstein observed that where Skokie fell with respect to the comparable communities in longevity pay could not be considered in a vacuum but must also take into effect other seniority-based compensation offered in Skokie that exceeds the similar compensation offered in other communities. Relying on the lengthy history of parity between the fire and police units, Arbitrator Goldstein awarded the Village's final offer which followed the longevity pay provided to the police unit. Similarly, Arbitrator Benn in his 2014 award, relied on the internal comparability between the instant unit and the FOP unit and awarded the Village's final offer which followed the longevity pay of the FOP unit. In light of the lengthy history where this unit has always followed the lead of the FOP unit with respect to longevity pay, I find it more likely than not that if the parties' bargaining process had not broken down, they would again have followed that pattern. Accordingly, I award the Village's final offer on longevity pay.

EMT-P Stipend (Article VI, Section 6.4

Current Contract Language

Section 6.4. EMT-P Stipend. An employee who is certified and functioning as a EMT-P shall receive a stipend per fiscal year (pro rata if less than a year) on the basis of the following:

Effective May 1, 2010 -- $4,150
Effective May 1,2011 -- $4,250
Effective May 1, 2012 -- $4,400

The Parties' Proposals

The following table compares the parties' final offers:

Union Effective Date	Union Amount	Village Effective Date	Village Amount
May 1, 2014	$4,550		
May 1, 2015	$4,700	May 1, 2015	$4,550

May 1, 2016 $4,850

May 1, 2017 $4,750

Union's Position

The Union maintains that the external comparables support its final offer, particularly in light of an increased workload for Skokie paramedics. The Union relies on the Hill and Gundermann awards which relied on the external comparables with respect to the EMT stipend. The Union contends that under its proposal, the stipend in Skokie will be $200 below the average of the comparable communities in 2014 whereas under the Village's proposal, the stipend will be 8.90% below the average. In 2015, says the Union, under the Union's offer, the bargaining unit is 4.33% below the average whereas under the Village's offer, it is 7.77% below average.

Village's Position

The Village contends that its final offer is more reasonable considering the increase in the CPI-U over the term of the contract. The Village observes that its final offer provides for a 7.95% increase over the term of the contract, compared to a 19.32% increase for the Union's final offer. Citing Arbitrator Benn's 2014 award for support, the Village maintains that its final offer should be awarded.

Discussion

Both parties recognize a need to increase the paramedic stipend. The Union suggests that the need is based on a need to maintain comparability with the other relevant municipalities. The Village does not address the Union's comparability analysis but relies on a comparison between the increase in the stipend and the increase in the cost of living.

It is not clear how the Village computed the Union's offer as calling for a 19.32% increase in the paramedic stipend. Under the Union's offer, the stipend will increase from $4,400 to $4,850, an increase of $450. From a starting point of $4,400, an increase of $450 over the life of the contract amounts to an increase of 10.23%. This is in line with the 10.40% compounded increase in base wages that the Village proposed and that I awarded.

External comparability is particularly probative with respect to the paramedic stipend. Internal comparability is irrelevant as no other Skokie employees receive a paramedic stipend. But, by providing a stipend for bargaining unit members who are certified and functioning as an EMT-P, the parties recognize that this certification and the performance of these duties add value to the bargaining unit member's services. A survey of comparable communities provides a meaningful reflection of how that added value has been monetized. My reliance on external comparability on this issue is also consistent with the Hill and Gundermann awards.

The following comparison is based on Union Exhibit 3, Tab 19, supplemented by the collective bargaining agreements settled and submitted after the close of the hearing. For 2017, where no data is available, I have assumed no increase in the differential between top firefighter pay and top firefighter paramedic pay. The Union exhibit excluded the paramedic differential for Morton Grove. I have added it based on the collective bargaining agreements for Morton Grove. The Union exhibit also listed the paramedic stipend for Park Ridge incorrectly and I have corrected it. Like the Union exhibit, I have excluded Elmhurst and Niles as outliers. Elmhurst does not appear to pay a higher salary for paramedic certification and Niles only has firefighter/paramedics. I have rounded off to the nearest dollar.

Municipality	2014 paramedic differential	2015 paramedic differential	2016 paramedic differential	2017 paramedic differential
Arlington Hts.	6,543	6,706	6,874	6,874
Des Plaines	1,123	1,123	1,123	1,123
Elk Grove Village	4,200	4,300	4,400	4,400
Evanston	4,925	5,048	5,174	5,174
Glenview	4,603	4,672	4,754	4,837
Highland Park	4,365	4,452	4,541	4,631
Morton Grove	4,729	4,859	4,992	4,992
Mt. Prospect	5,250	5,500	5,500	5,500
Northbrook	5,131	5,246	5,364	5,498
Oak Park	7,112	7,254	7,435	7,621
Park Ridge	4,788	4,932	5,006	5,082
Wheeling	3,890	3,997	4,097	4,199
Wilmette	5,770	5,914	6,047	6,153
Average	4,802	4,923	5,024	5,083
Village Offer	4,400	4,550	4,550	4,700
Union Offer	4,550	4,700	4,850	4,850

Using the average of the comparable communities as reflective of the general monetization of the value of paramedic certification and in keeping with the approach of Arbitrators Gundermann and Hill, I award the Union's offer.

Serving in Acting Capacity (Article XII, Section 12.21)

Current Contract Language

Section 12.21 Serving in Acting Capacity. The rate of compensation for firefighters assigned to perform the duties of a lieutenant shall be 5% (6% effective May 1, 2011; 7% effective May 1, 2013) above the employee's applicable hourly rate of pay for each hour that the employee is assigned to work in acting capacity during such an occurrence. Lieutenants acting as a captain shall be paid a differential of 4% (5% effective May 1, 2011; 6% effective May 1, 2013) above their applicable hourly rate of pay during such an occurrence. For these purposes, an occurrence shall be defined as serving in acting capacity for 12 hours or more. If more than one employee is assigned to work in acting capacity during one occurrence, each employee shall be paid for the respective number of hours that they worked in acting capacity during the occurrence in question.

> The foregoing increases in pay for serving in acting capacity shall be retroactive to the respective effective date.

The Parties' Final Offers

The Village proposes to increase the rate of compensation for serving in an acting lieutenant capacity from 7% to 8% and for a serving in an acting captain capacity from 6% to 7%, with both increases effective May 1, 2015.

The Union proposes to increase compensation for serving in an acting lieutenant capacity to 8%, effective May 1, 2014, and 9% effective May 1, 2016; and to increase compensation for serving in an acting captain capacity to 7% effective May 1, 2014, and 8% May 1, 2016.

Union's Position

The Union maintains that a comparison to the comparable communities mandates that its offer be awarded. The Union urges that Skokie's position on acting-up pay was "seriously out of line" with the external comparables and this motivated Arbitrator Hill to award the Union's offer on this issue in 2007. The Union maintains that the parties' history prior to the Hill Award is irrelevant as the Hill Award set the structure for serving in an acting capacity ever since. The Union maintains that, as demonstrated in Un. Ex. 3, Tab 24, the current differential of 7 percent for acting as a lieutenant ranks Skokie 14th out of 16, but the rank is actually worse because by requiring an employee to work in an acting capacity for at least 12 hours to qualify for acting-up pay, Skokie ranks dead last. In the Union's view, its proposal modestly improves Skokie's standing among the comparables and modestly reduces the difference between Skokie's compensation for acting-up and the average of the comparables. The Union urges that I award its offer.

Village's Position

The Village maintains that its offer is supported by the cost of living. The Village urges that its offer increases the payment for acting as a lieutenant from 7 percent to 8 percent, a 14.29% increase and increases the payment for acting as a captain from 6 percent to 7 percent, a 16.67% increase. The increase is magnified, says the Village, when one considers that these increased percentages are applied to increased base wages.

The Village urges that I consider the parties' offers in the context of their bargaining history. For most of their relationship, eligibility for extra payment when working in an acting capacity depended on the number of instances of such activity in a year. That changed with the Hill Award.

The Village urges that when looking at the comparable communities, one finds very little change in their contractual provisions for serving in an acting capacity. The Village argues that between May 1, 2006 and May 1, 2015, only four comparable communities changed their acting capacity provision at all and two of those merely increased the amount of the payment. The Village asks that I award its offer.

Discussion

I agree with the Union that the starting point for analysis is the Hill Award. Prior to the Hill Award, the parties' contracts provided that extra pay for serving in an acting capacity would result only when the number of instances exceeded a specified level. Initially this was specified as the level of such activity prior to January 1, 1988, but as the parties refined the provision in light of a grievance arbitration award from Arbitrator Randi Ambramsky, the parties specified the number of occurrences that would trigger payment of a premium.

In the proceeding before Arbitrator Hill, the Village proposed to maintain that structure but reduced the number of occurrences to trigger payment of the premium. The Union, however, sought a significant change in the structure of the provision, proposing that every time a bargaining unit member acted up for at least 12 hours in a shift, the member would receive an additional 4 percent if acting as a captain and 5 percent if acting as a lieutenant.

Arbitrator Hill granted the Union its requested breakthrough. He justified granting the breakthrough on what he characterized as a "situation . . . indefensible relative to the comparables." *Hill Award* at 40. He opined that "Skokie is seriously out of line with the comparables," *Id.* at 39, and "there is no parallel the Village can cite for its proposal." *Id.* at 40 (quoting and agreeing with the Union's brief).

It is often said that breakthroughs are disfavored in interest arbitration and that the party proposing a breakthrough has a particularly heavy burden to justify it. I adhere to this view and have explained that in determining what agreement the parties more likely would have reached

had their bargaining process not broken down, the agreement the parties reached in the past is more likely to reflect the agreement they would have reached than the fundamental change that one party is advocating. *See, e.g.*, *Will County supra*, at 6; *Illinois Fraternal Order of Police Labor Council and City of Macomb*, ISLRB No. S-MA-01-161 at 20 (Malin 2002). Other arbitrators have expressed a similar sentiment that breakthroughs should be presumed to be left to the parties' bargaining process rather than imposed by an arbitrator. *See, e.g., Highland Park, supra* at 5.

Although Arbitrator Hill did not expressly characterize the Union's proposal as a breakthrough, he did opine, "There are times when a statutory criterion so favors a party that other considerations pale in comparison." *Hill Award* at 41. Implicit in his award was a finding that because Skokie was such an outlier when compared to every other relevant municipality, the pressure to change its structure for handling service in an acting capacity was so great that had the parties reached agreement on the issue they more likely would have agreed to what Arbitrator Hill characterized as a "more than reasonable" and "modest" Union proposal. *Id.* at 41.

This issue was also presented to Arbitrator Benn. The Union proposed increasing the premiums by 4 percentage points effective May 1, 2013, while the Village proposed increasing the premiums by one percentage point effective May 1, 2011 and a second percentage point on May 1, 2013. Notably, Arbitrator Benn, who frequently places considerable weight on the cost of living in his analysis, did not focus on the cost of living on this issue, in contrast to the Village's argument before me. Instead, he observed that depending on when an employee worked shifts in an acting capacity, either offer could result in greater compensation for the employee. Arbitrator Benn awarded the Village's offer, reasoning:

> Given that this Agreement will expire April 30, 2014, this particular dispute is really about retroactive payments and positioning for the next round of bargaining which will begin shortly. This contract is, for all purposes, over. The bottom line is that at the end of the Agreement, the Village has increased the acting-up pay by an additional 2% total, while the Union seeks an increase of 4% – with that 4% increase coming in the last year of the Agreement. I can find no justification to increase a benefit by 4% in the last year of the Agreement as the Union requests, particularly where it may well be that the Village's offer is more beneficial to the employees over the life of the Agreement,.

Benn Award at 39.

Under the Hill Award, external comparability is highly relevant in comparing final offers on service in an acting capacity. Arbitrator Hill awarded the Union's final offer because he found that Skokie was an extreme outlier and because the Union's offer was modest and reasonable. We cannot assume that Arbitrator Hill would have awarded the Union's offer had the Union's offer been more aggressive with respect to the amount of the acting-up premium payments. Essentially, with respect to determining when a premium payment was due, Skokie, by not paying a premium until a minimum number of occurrences had been reached, was on a

different playing field than every other comparable community. The breakthrough awarded by Arbitrator Hill brought Skokie onto the same playing field as the comparable communities.

This does not mean, as the Union appears to argue, that consistent with the Hill Award whichever offer moves Skokie closer to the average premium payment among the comparables is necessarily the appropriate one to award. Were that the case, Arbitrator Benn would have awarded the Union's offer. Now that Skokie is on the same playing field as the comparable communities, data from those communities is relevant not only in absolute terms but also in showing movement in those communities with respect to service in an acting capacity.

As Village Ex. 55 shows, the treatment of service in an acting capacity in the comparable municipalities has been very stable. During the nine-year period from May 1, 2006 through May 1, 2015, Arlington Heights, Des Plaines, Elk Grove Village, Highland Park, Morton Grove, Niles, Northbrook, Wheeling and Wilmette have made no changes in this regard. Elmhurst made no change to its treatment of service as an acting captain but added a premium payment for serving as an acting lieutenant. Evanston changed the method for calculating the premium payment from "[f]our steps above the current step or Step A of rank to which assigned," to "same step in the higher rank as their regular assignment." Glenview increased the hourly premium from $3.00 to $4.50. Mt. Prospect changed from paying an hourly premium of $3.37 for serving as an acting lieutenant to "differential between their position and the equivalent position that they are assigned to." Oak Park increased the hourly premium and Park Ridge increased the per shift premium. Against this background, and taking into account that the premium in Skokie already increased by 2 percent under the Benn Award adopting the Village's offer, I find the Village's offer of an additional 1 percent increase is more appropriate than the Union's offer of an additional 2 percent increase. I award the Village's offer.

Comprehensive Medical Program and Dental Insurance Program (Article XV, Section 15.1)

Current Contract Language:

Section 15.1 Comprehensive Medical Program and Dental Insurance Program. The comprehensive medical program and dental insurance program that is currently in effect shall be continued during the term of this Agreement. The terms of the program "currently in effect" are those described in the employee benefit booklet and plan document effective May 1, 2009. The Village retains the right to change insurance carriers, benefit levels, or to self-insure as it deems appropriate, so long as the new basic coverage and basic benefits are substantially equivalent to those described in the aforementioned employee benefit booklet and plan document. Reasonably prior to the effective date of any such changes, the Village will advise the Union of the changes. Employees may elect single or family coverage in the Village health plan and in the dental insurance program offered by the Village during the enrollment period(s) established by the Village. The employee may also elect single or family coverage in an HMO selected and offered by the Village during the enrollment period(s) established by the Village. If the Village offers a

different HMO from those currently offered, such new HMO option shall be reasonably equivalent to the replaced HMO, subject to the market alternatives for HMOs that are then available and provided that the cost for new HMO is not higher than the cost for the Village plan. Effective May 1, 2009, and retroactive to May 1, 2009, the employee shall pay 12% of the premium or cost for single or family coverage, whichever is applicable, for the plan selected and said amount shall be deducted from the employee's paycheck.

Union's Final Offer

Maintain the status quo.

Village's Final Offer

Add to the end of Section 15.1 the following:
Effective June 1, 2017, and thereafter, the employee shall pay the same percent that the Village's unrepresented employees are paying (up to 15%) toward the cost of such premium or cost for single or family coverage whichever is applicable for the plan selected and said amount shall be deducted from the employee's paycheck

Union's Position

The Union maintains that the Village is proposing a breakthrough that it has not justified. In addition to proposing to significantly increase premium contributions, says the Union, the Village is also proposing to tie employee contribution levels to levels paid by non-represented Village employees. The Union avers that the Village offered no quid pro quo for this breakthrough and there is no evidence of any arms-length negotiations over it.

The Union disputes the Village's claim that the Village's offer is supported by consideration of internal comparability. The Union notes that for at least two years, bargaining unit employees contributed 13% of premiums while all others contributed 12%. Furthermore, says the Union, since 2004, the FOP contracts have tied their premium contributions to those paid by non-represented employees whereas the Union's contracts never have.

The Union argues that substantial uncertainty about the future of the ACA commands that I maintain the status quo, just as Arbitrator Benn did in his 2014 award. The Union asks that I award its final offer.

Village's Position

The Village argues that its final offer is supported by consideration of internal comparability. The Village argues that its final offer maintains Village-wide uniformity with respect to health insurance. The Village urges that such uniformity has been maintained for an extensive period of time except for the period governed by the Hill Award which awarded a

contribution rate of 13% that was not conditioned on the same rate being paid by other Village employees.

The Village disputes the Union's argument concerning the change in language for determining the amount of premium contributions. The Village maintains that the language tying the contribution rate to the rate paid by non-represented employees was designed merely to remedy a defect in a prior Village offer to the FOP relied on by Arbitrator Briggs in his 2010 FOP Award.

The Village discounts the significance of uncertainty over the future of the ACA. The Village argues that regardless of what happens to the ACA, the Village's contractual commitment is what will govern the parties. The Village asks that I award its final offer.

Discussion

I agree with the Union that the Village is seeking a significant breakthrough. In all of their prior contracts, the parties have specified the percentage of premiums that bargaining unit employees will pay. Under this approach, the employees assumed the risk that they could end up paying more than other Village employees and the Village assumed the risk that the employees could end up paying less. These risks were very real as for two years the employees did contribute 13% of premiums whereas all other Village employees contributed 12%. Under the Village's proposal, however, the employees will pay whatever premium contribution the non-represented employees will pay. In other words, under the Village's proposal, the Village will unilaterally set the premium contribution up to a maximum of 15%. This is a very significant change from the status quo.

The Village relies on internal comparability to justify this change. The Village's offer does track the language in the current FOP collective bargaining agreement. However, contractual language in the IAFF and FOP agreements has not been the same going back to 2004. The 2004-08 FOP contract provided that employees would pay 12% or premiums but 13% effective May 1, 2007, as long as the Village's unrepresented employees were paying at least 13%. That approach remained in the FOP contracts for 2008-12 and 2012-15. The IAFF contracts had no similar most favored nations type protection and as noted, employees in the instant bargaining unit actually paid 13% when all other Village employees were paying 12%.[22]

The issue of whether the arbitrator should impose a change in the method of determining

[22]The Union has characterized the FOP contracts as consistently linking the police officers' premium contributions to non-represented employees. I do not agree with that characterization because it ignores the very significant change to how FOP unit members' contributions would be determined under the 2015-19 contract. With the 2015-19 contract, the FOP agreed to change from a type of most favored nations protection s (we will pay more but if you charge non-represented employees less, we get to pay less) to a follow the leader approach (we will pay whatever the non-represented employees pay up to 15%) where the leader is the unilateral determination of the Village.

premium contributions sought by one party but resisted by the other party was also before Arbitrator Briggs in his 2010 FOP Award. The 2004-08 FOP contract provided that the contribution to health insurance premiums would increase to 13% effective May 1, 2007, as long as the non-represented employees were paying at least that amount. The contribution rate remained 12%, however, for the duration of the contract. For the 2008-12 contract, the FOP proposed that the contribution rate be 12% but increase to 13% effective May 1, 2010, provided that non-represented employees were paying at least 13%. The Village proposed that effective on or after May 1, 2010, the Village could increase the contribution rate up to 13.5%. The Village proposal did not condition the increase on non-represented employees having to pay at least as much as FOP-represented employees. Arbitrator Briggs found insufficient justification for the Village's proposed significant change to the status quo. He awarded the Union's offer. *Briggs FOP Award* at 47.

In his 2014 Award, Arbitrator Benn awarded the Union's offer to maintain the status quo with respect to health insurance, providing two reasons. First, the Village had proposed allowing it to increase premium contributions to 13% anytime after January 1, 2014, provided that non-represented employees were paying at least 13%. Arbitrator Benn observed that the Village had made a similar proposal in its interest arbitration proceeding with the FOP and Arbitrator Perkovich had rejected it. Arbitrator Perkovich, in his 2013 FOP Award observed that the only difference in the final offers on health insurance presented to him was that the FOP's offer continued the existing approach of giving the Village a window to increase premium contributions whereas the Village's offer allowed it to increase contributions at any time after a specified date. Arbitrator Perkovich followed Arbitrator Briggs's approach and rejected the Village's requested breakthrough in premium contribution adjustment methodology. *Perkovich FOP Award* at 5-6.

Second, Arbitrator Benn reasoned that continued uncertainty on the effects of implementation of the ACA cautioned against changing the status quo. He wrote (*Benn Award* at 40):

> Given the uncertainty of insurance at this time due to implementation of the Affordable Care Act and the recovering economy, the parties will be in a better position to discuss insurance on a going-forward basis rather than to have me change the *status quo* in a contract that, for all purposes, expired.

My review of the history of the relationships between the Village and the Union and between the Village and the FOP reveals that the only times the methodology for determining the percentage of premiums to be paid by bargaining unit members has been changed, it has been changed by agreement. On three occasions – Briggs with the FOP, Perkovich with the FOP and Benn with the instant Union – where the Village has sought to change the methodology via an interest arbitration award, the arbitrator has rejected the Village's offer. This history strongly weighs against awarding the Village's offer in the instant proceeding.

As I discussed previously in connection with the term of the agreement, there is now great uncertainty concerning the future of the ACA.[23] I recognize, as the Village argues, that changes in the ACA will not change the parties' contractual commitments, but changes in the ACA may well have effects on health care costs and health insurance markets.[24] Whatever I award will set the starting point in the parties' next round of negotiations for how to adjust to the healthcare and health insurance climate at that time. The significant uncertainty as to what that climate will be reinforces my inclination against awarding the breakthrough that the Village has sought.

The Village has cited a plethora of interest awards stressing the great weight given to the employer's interest in uniformity in health insurance benefits across all of its employees. I have considered all of these awards. To conserve space, I will address *Fraternal Order of Police Labor Council and Village of La Grange Park,* ILRB No. S-MA-08-171 (Goldstein 2009) as that is the award that the Village emphasizes the most in its brief. Before Arbitrator Goldstein, the union sought to maintain the status quo of employees contributing 10% to health insurance premiums and the employer offered increasing contributions to 11% effective May 1, 2009 and 12.5% May 1, 2010.

Arbitrator Goldstein awarded the employer's final offer. In so doing, he relied on a history that throughout the time that the union had represented the employees, it had agreed to contributions to health insurance premiums equal to the percentage paid by the non-represented employees. Notably, the only other employees who were represented were the public works employees and they did not participate in the employer's health insurance plan. Arbitrator Goldstein found that the relevant internal comparable was the non-represented employees.[25]

I agree with the Village and with Arbitrator Goldstein that in appropriate cases consideration of internal comparability can include non-represented employees. However, the history of the parties' relationship concerning health insurance that was before Arbitrator Goldstein was very different from the history of the Union and Village before me. Furthermore, the only issue before Arbitrator Goldstein was the percentage of premiums that the employee would pay. He was not presented with a proposed breakthrough change to the methodology for setting that percentage.

My review of *Village of La Grange Park* and the other awards cited by the Village does

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[23]In its brief, filed in July of 2016, the Village characterized the ACA being a "victim of the November election" as "a somewhat unlikely event" Village Br. At 86. In July of last year, I probably would have agreed with that characterization. But since November 8, 2016, we know that such characterization turned out to be inaccurate.

[24]I realize that the Village is self-insured but even self-insured parties do not operate in vacuums unaffected by market forces.

[25]Arbitrator Goldstein also relied on the employees' total compensation, particularly that the parties had agreed to 4% annual wage increases over the life of their three-year contract, very generous increases during the heart of the Great Recession.

not persuade me to award the Village's offer. For the reasons detailed above, I award the Union's offer with respect to health insurance.

Impasse Resolution (Article XII, Section 12.8 and Appendix A)

The parties stipulated that this issue and the one that follows are non-economic. The IPLRA does not require me to award one of the two final offers although it leave me free to do so.

Current Contract Language

Section 12.8 Impasse Resolution. In the event the terms and conditions of a successor agreement cannot be resolved by negotiation, disputed items shall be resolved in accordance with the statutory impasse resolution procedure (IPLRA, ILCS 315/4), except that the parties agree that the variances from statutory impasse procedures expressly set forth in Appendix A shall be followed to resolve any impasse arising between the parties as to the terms and conditions of the successor agreement to this agreement. The parties' agreement to such variances in procedures as are set forth in Appendix A shall not be construed as in any way binding on either party to continue such procedures in any successor agreement.

APPENDIX A
VARIANCES FROM STATUTORY IMPASSE PROCEDURE

(a) Selection of the Chairman of the Arbitration Panel. If either party serves a Demand for Compulsory Interest Arbitration, the Arbitrator shall be selected by utilizing the procedures specified in Section 13.3 of Article XIII (Grievance Procedure) of this Agreement. Unless mutually agreed otherwise, the parties agree that the arbitration proceedings shall be heard by a single, neutral arbitrator and that each party waives for the term of this Agreement the right to a three-member panel of arbitrators as provided in the Illinois Public Labor Relations Act ("Act").

(b) Mediation. Concurrent with the period during which the arbitrator is being selected and any period prior to the date(s) set for the hearing, the parties may continue good faith collective bargaining with the advice and assistance of the Mediator from FMCS.

© Issues in Dispute and Final Offers. Within seven (7) calendar days of the service of a demand that the arbitrator selection process commence, the representatives of the parties shall meet and develop a written list of those issues that are in dispute. Unless the parties agree to a different time frame, not later than fourteen (14) days prior to the arbitration hearing the representatives shall prepare a Stipulation of Issues in Dispute for each party to then execute. It is further agreed that:

(I) Each party retains the right to object to any issue on the grounds that the same constitutes a non-mandatory subject of bargaining; provided,

however, that each party agrees that it will notify the other of any issue that it regards as a non-mandatory subject of bargaining not later than thirty (30) days prior to the arbitration hearing. Should any disputes arise as to whether a subject is a mandatory subject of bargaining, the parties agree to cooperate in obtaining a prompt resolution of the dispute by the Illinois State Labor Relations Board ("Board") pursuant to the Act and the Rules and Regulations of the Board [Section 1200.140(b)]. Either party may file a petition with the Board's General Counsel for a declaratory ruling after receiving such notice from either party that it regards a particular issue a non-mandatory subject of bargaining.

(ii) Unless the parties agree to a different time frame, not less than seven (7) calendar days prior to the date when the first day the arbitration hearings are scheduled to commence, the representatives of the parties shall simultaneously exchange in person their respective written final last offers of settlement prior to arbitration as to each issue in dispute as shown on the Stipulation of Issues in Dispute. The foregoing shall not preclude the parties from mutually agreeing to resolve any or all the issues identified as being in, dispute through further collective bargaining or from modifying their final offers as provided by Section 14 of the Act.

(d) Conduct of Hearings. The parties agree that all arbitration hearings shall be conducted as follows:

(i) Hearings shall be held in the Village of Skokie, Illinois at a mutually agreed location. Hearings may be conducted outside the Village of Skokie only by written mutual agreement.

(ii) The party requesting arbitration shall proceed with the presentation of its case first as to the issues as to which it is the moving party. The non-requesting party shall then present its case. Each party shall have the right to submit rebuttal evidence and testimony, as well as to submit a post-hearing brief. Post-hearing briefs shall be simultaneously submitted directly to the arbitrator, with a copy sent to the opposing party's representative, within thirty (30) days of the receipt of a transcript of the hearing or such other time period granted by the arbitrator.

The arbitrator's decision and award shall be issued in writing directly to each party's representative within thirty (30) days of the close of hearings or the submission of post-hearing briefs, whichever is later.

Union's Final Offer

Delete Appendix A. Amend section 12.8 to provide for disputed items to be resolved in

accordance with IPLRA Section 14.

Village's Final Offer

Retain section 12.6. Amend Appendix A by deleting sections c(i). Renumber c(ii) as (d) and title it, "Final Last Offers of Settlement Prior to Arbitration." Renumber d and e, make a non-substantive grammatical change and delete the requirement that the arbitrator issue the award within 30 days.

Union's Position

The Union argues that deletion of Appendix A and reliance on the statutory section 14 procedures gives the parties maximum flexibility for designing their process on a case-by-case basis. The Union observes that section 12.8 expressly provides that Appendix A is not binding on future contract negotiations. Furthermore, says the Union, historically the parties have deviated from the specified procedures and timelines as appropriate under the circumstances,. In the instant proceeding, the Union avers, the stipulation of issues was not completed within 14 days of the hearing; it was reached five days prior to the hearing and signed on the day of the hearing. The Union also maintains that external comparability supports its proposal as only three of the comparable communities vary the statutory impasse procedures.

Village's Final Offer

The Village contends that its proposal maintains the status quo on identifying issues, submission of pre-hearing final offers and submission of final final offers. The Village maintains that these provisions have been included in the parties' contracts for many years and are justified and workable. It asks that its offer be awarded.

Discussion

I confess to being puzzled as to why the parties are at impasse over this issue. Neither party defends the status quo and the parties' arguments are not particularly compelling. As the Union has observed, regardless of what the agreement has provided, the parties have modified such provisions as appropriate under the circumstances they confront in each round of negotiations. In the instant proceeding, they developed their stipulated list of issues only five days before the hearing and signed it on the day of the hearing,. Thus, at issue here is simply the default process against which the parties will refine their process in light of the circumstances they encounter in the next round.

The Village proposes eliminating the process specified in Appendix A for resolving disputes over whether an issue is a mandatory subject of bargaining. But the Village does not specify what is problematic with the Appendix A process that justifies its removal. The Union proposes to delete all of Appendix A but gives no specifics as to what is problematic with the portions of Appendix A that the Village proposes to retain. Under these circumstances, I am tempted to say that a "tie" goes to the status quo. Even though neither party has proposed

retaining the status quo, because this is a non-economic issue I have authority to award it. But, such an award would impose on the parties the Appendix A process for resolving disputes over negotiability (and hence arbitrability) of contested issues and elimination of that process is the only thing on which the parties have agreed. Therefore, I reject the option of awarding the status quo. Under the circumstances, I opt for simplicity and that leads me to favor the Section 14 process as the default process. Therefore, I award the Union's final offer.

Disciplinary Investigations (Article XII, Section 12.17)

Current Contract Language

Section 12.17 Disciplinary Investigations. In lieu of the provisions of the Firemen's Disciplinary Act (50 ILCS 745/1 et seq.), employees shall have the following rights with respect to disciplinary investigations:

(a) An employee who has objective reasons to believe that questioning or interrogation by the Village may lead to discipline (i.e., discharge or suspension without pay) may request that a Union representative who is a member of the bargaining unit be present at such questioning or interrogation.

(b) An employee who has objective reasons to believe that questioning or interrogation by the Village may lead to discipline in excess of three (3) working days shall be entitled to the following:

(1) The right to request that an attorney be present at such questioning or interrogation, provided that if the employee has requested the presence of both a Union representative and an attorney, only one may be present in the room at the questioning or interrogation, with the understanding that the other may be nearby.

(2) The right to request written notice of the subject matter of the investigation prior to questioning or interrogation.

(3) The right to request that the questioning or interrogation be recorded by tape or other electronic means and, if requested, the right to a copy of any such recording.

(c) If an employee makes an appropriate request for either a Union representative or an attorney and the Union representative or attorney is not reasonably available, the employee may be questioned or interrogated without a Union representative or attorney being present.

(d) The presence of a Union representative or attorney at such questioning or interrogation shall not interrupt or interfere with the Village's right to question employees or the obligation of employees to respond to questions relevant to the

matter being investigated.

(e) The foregoing provisions shall not be applicable if the purpose of the meeting is solely for the purpose of informing the employee of disciplinary action (e.g., a one-day suspension without pay).

(f) If an employee is required to participate in questioning or interrogation during off duty hours, the employee shall be paid at his applicable hourly rate of pay for the time spent at such meeting.

(g0 No employee shall be required to submit to, or be disciplined for a refusal to submit to, a polygraph examination or any test questioning by means of any chemical substance, except as is provided in Article XII, Section 12.6 of this Agreement.

(h) The provisions of this Section do not apply to any employee charged with violating any provisions of the Criminal Code of 1961, or any other federal, state, or local criminal law.

(i) Notwithstanding any of the foregoing, the Village retains the right to question or interrogate employees in emergency situations involving an immediate danger to the health or safety of one or more persons without any obligation to wait until a Union representative or attorney is present at the questioning or interrogation. Notwithstanding the provisions of Article XIII, Section 13.3(d)(3), if a grievance is arbitrated concerning whether there was an emergency situation involving such an immediate danger, the Village shall proceed first with the presentation of its case.

(j) Admissions or confessions obtained during the course of any questioning or interrogation not conducted in accordance with the provisions of this Section may not be utilized in any subsequent disciplinary proceeding against the employee who made the admission or confession. The foregoing does not preclude an arbitrator from considering whether or not other relief is appropriate if it is determined that the Village violated the provisions of this Section

Union's Final Offer

Delete the entire provision and replace it with:

Disciplinary investigations shall be conducted in accordance with the provisions of the Firemen's Disciplinary Act, 50 ILCS 745/1, *et seq* and an employee's *Weingarten* rights.

Village's Final Offer

Maintain the status quo.

Union's Position

The Union maintains that I should award its offer because the current Section 12.7 deprives employees of rights that they otherwise would have under the Firemen's Disciplinary Act. The Union avers that under the Act, firefighters are entitled to have an attorney and a union representative present whereas under Section 12.7 they must choose between having an attorney or a union representative present. The Union further notes that under the Act, firefighters may not be questioned without first being given written notice of the allegations whereas under section 12.7 the requirement of notice only applies if the employee believes that questioning may lead to disciplinary action in excess of a three-day suspension. Finally, the Union points out, the Act requires that a record of all interrogations be made whereas Section 12.7 requires a record only if the employee believes the questioning may lead to discipline in excess of a three-day suspension and only if the employee requests that a record be maintained.

The Union contends that external comparability supports its proposal as all but three of the comparable municipalities rely on the Act. The Union asks that I award its final offer.

Village's Position

The Village points out that by its express terms, the Act applies "only to the extent there is no collective bargaining agreement currently in effect dealing with the subject matter of this Act." 50 ILCS 745/6. The Village avers that Section 12.17 in its current form has been included in every prior collective bargaining agreement between the parties going back to their first contract that covered 1987-90. The Village maintains that many of the provisions in the Act were drafted with a large department, such as the City of Chicago, in mind and are not particularly relevant to a small municipality such as Skokie. Furthermore, the Village avers, during negotiations, the Union did not offer any reasons for its proposal other than a desire to follow the Act and at the hearing the Union admitted that discipline has not been a major issue in the bargaining unit. The Village observes that under similar circumstances, Arbitrator Jay Grenig rejected a similar union offer in *City of Elgin and Local 439, IAFF*, ILRB No. S-MA-10-010 (Grenig 2013). The Village urges that I follow arbitrator Grenig's lead and award its final offer.

Discussion

The parties agreed to the language at issue in their first collective bargaining agreement which covered 1987-90. The provision has been retained in every contract since then until the instant dispute. In other words, the parties have agreed on this provision ten times over a span of 27 years (1987 - 2014). Even though the parties went to interest arbitration several times during this 27 year period, on none of those occasions was the issue of discipline submitted to the arbitrator. It was always resolved by agreement.

That the parties have agreed to this provision ten times over 27 years is very weighty evidence that if their bargaining process had not broken down this time they would have agreed

to it again. In other words, in light of this history, the Union is seeking a major breakthrough and accordingly has a very heavy burden of justification. That most other comparable municipalities rely on the Act does not justify the breakthrough unless those municipalities have recently changed from negotiated deviations from the Act to following the Act and there is no evidence that this has happened. In other words, it is likely that Skokie has, by agreement, always bucked the approach of the comparable communities. At the hearing, the Union stated, "[W]hile discipline up until this point has not been a major issue in this bargaining unit, we don't think that an employee should have to choose between having an attorney in the room and having the bargaining representative in the room who might be able to assist the employee in a different way than the attorney." (Tr. 115). The Village's Chief Negotiator testified that concern over having both an attorney and union representative in the room during interrogation was not raised during negotiations and the only presentation made by the Union's bargaining team was that the Union wanted to change the provision to follow the Act (Tr. 252-53). The Union has provided no evidence that Section 12.17 has ever been problematic in practice. That the Union thinks the Act would be better for employees than the contractual provision that the parities have agreed to on each of the ten prior occasions they have negotiated a contract does not justify the significant breakthrough that the Union proposes. I award the Village's final offer.

One final comment is in order. In concluding its brief, the Village has cited examples of awards in which arbitrators have awarded all or substantially all of the employer's final offers on the issues in dispute. In light of what may be a subtle message from the Village to the arbitrator to avoid any felt compulsion to issue a compromise award (and I realize I was not the arbitrator when the Village submitted its brief but I have tremendous respect for the integrity of Arbitrator Crystal), I feel compelled to comment that Section 14 of the IPLRA requires the arbitrator to adjudicate the issues on an issue-by-issue basis and with respect to economic issues to select the final offer of one of the parties on an issue-by-issue basis. I wish to assure the parties that I have done this based on my evaluation of the statutory criteria, the record and the arguments of the parties. I have not considered how many issues a particular party has won in deciding how to resolve the next issue on the agenda. Indeed, where the statutory criteria, the record and the parties' arguments led me to conclude that it was appropriate to award one party's final offers with respect to every issue presented to me, I have not hesitated to do so. *See. e.g., Macomb, supra* (awarding the employer's final offer with respect to every issue presented).

The parties stipulated that I incorporate by reference in the award the tentative agreements they have reached and I shall do so. They also stipulated that I retain jurisdiction until such time as the collective bargaining agreement is complete and executed and I shall do so.

AWARD

Based on all of the factors provided in Section 14(h) of the Illinois Public Employees Labor Relations Act, and for the reasons set forth in the opinion above, I award as follows:

1. The Village's final offer with respect to Duration and Term of Agreement (Article XXV, Section 25.1).

2. The Village's final offer with respect to Salaries and Other Compensation (Article VI, Section 6.1).

3. The Village's final offer with respect to Longevity Pay (Article VI, Section 6.3).

4. The Union's final offer with respect to EMT-P Stipend (Article VI, Section 6.4).

5. The Village's final offer with respect to Serving in Acting Capacity (Article XII, Section 12.21).

6. The Union's final offer with respect to Comprehensive Medical Program and Dental Insurance Program (Article XV, Section 15.1).

7. The Union's final offer with respect to Impasse Resolution (Article XII, Section 12.8 and Appendix A).

8. The Village's final offer with respect to Disciplinary Investigations (Article XII, Section 12.17).

9. The tentative agreements reached by the parties as set forth in Union Ex. 1, Tab 28, including the Side Agreement concerning Sections 12.9 and 15.8 with "Martin H. Malin" substituted for "Jules Crystal" in the Side Agreement.

10. The tentative agreements reached after the hearing but prior to the filing of briefs with respect to Access to Personnel File (Article XII, Section 12.12) and Entire Agreement (Article XXIII).

11. The Arbitrator retains jurisdiction until the collective bargaining agreement is complete and executed. The parties shall notify the Arbitrator when this occurs. If this has not occurred by April 10, 2017, the parties shall provide the Arbitrator with a status report.

Chicago, Illinois

March 10, 2017

Martin H. Malin, Arbitrator