INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD

METROPOLITAN ALLIANCE OF POLICE
CHAPTER 360

and

THE VILLAGE OF WESTERN SPRINGS

FMCS Case No. 10-02482-A
Police Officers - Wage Reopener

OPINION AND AWARD

of

John C. Fletcher, Arbitrator

January 15, 2011

I. Procedural Background:

This matter comes as an interest arbitration between the Village of Western Springs ("the Employer" or "the Village") and the Metropolitan Alliance of Police, Chapter 360 ("the Union" or "the Chapter") pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). The record in this case establishes that the Village employs thirteen sworn police officers who belong to the unit represented by this Union for purposes of collective bargaining.[1] Relevant to this case is the fact that seven of the thirteen bargaining unit members are already at the top step on the wage schedule, and the remaining six officers are at various stages in the step advancement process under Article XI (Salaries) of the parties' current Collective Bargaining Agreement.

---

[1] Employer Exhibit 9.

The issue in dispute arises from the parties' inability to reach agreement as to the matter of annual salaries for the contract year 2010 - 2011. At present, the parties are operating under a collective bargaining agreement in effect from April 1, 2007 to March 31, 2011, Article XI of which provides in relevant part as follows:

> The Village and Union will reopen negotiations for the purpose of negotiating over the annual salaries to be effective April 1, 2010. Negotiations shall begin no later than January 30, 2010. If the parties are unable to reach agreement, the dispute shall be resolved in accordance with the alternative impasse resolution process set forth in Appendix A, except that the notice dates shall not be applicable.[2]

It is stipulated that the two opposing proposals as they are presented herein below with respect to the economic issue of wages represent the parties' respective "last best offers", and it is further established that, "The Arbitrator must choose either the Village's offer or the Union's offer on each issue presented inasmuch as the following issue is an economic issue within the meaning of Section 14(g) of the Illinois Public Labor Relations Act: Article XI, Section 1 – Wages (5/01/10 – 4/30/11)."[3]

A hearing before the undersigned Arbitrator was held on October 1, 2010. At the hearing, the Union was represented by:

Richard J. Reimer Esq.
Richard J. Reimer and Associates
15 Spinning Wheel Road, Suite 310
Hinsdale, Illinois 60521

Counsel for the Employer was:

---

2 Employer Exhibit 5, Union Exhibit 6.
3 Ground Rules and Pre-hearing Stipulations.

Jill D. Leka, Esq.
Clark, Baird, Smith
6133 North River Road, Suite 1120
Rosemont, Illinois 60018

Post-hearing briefs were received by the Arbitrator on November 29, 2010, at which time the record was closed.[4]

II. Ground Rules and Pre-Hearing Stipulations

1. The Arbitrator in this case shall be Arbitrator John C. Fletcher. The parties stipulate that the procedural prerequisites for convening the arbitration have been met, and that the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, including but not limited to the express authority and jurisdiction to make adjustments to wages. Each party expressly waives and agrees not to assert any defense, right or claim that the Arbitrator lacks jurisdiction and authority to make such adjustments. However, the parties do not intend by this agreement to predetermine whether any adjustments to wages in fact should be made.

2. The hearing in said case will be convened on October 1, 2010, at 10:00 a.m. The requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act, requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment, has been waived by the parties. The hearings will be held at the Western Springs Village Hall, 740 Hillgrove Avenue, Western Springs, Illinois.

3. The parties have agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the employer and exclusive representative and agree that Arbitrator Fletcher shall serve as the sole arbitrator in this dispute.

4. The hearing will be transcribed by a court reporter or reporters whose attendance is to be secured for the duration of the hearing by agreement of the parties. The cost of the reporter and the Arbitrator's copy of the transcript shall be shared equally by the parties.

[4] *See;* Footnote 20, below.

5. The parties agree that the following issue is in dispute, that the issue, which is a mandatory subject of bargaining, is submitted for resolution by the Arbitrator, and that the Arbitrator must choose either the Village's offer or the Union's offer on each issue presented inasmuch as the following issue is economic within the meaning of Section 14(g) of the Illinois Public Labor Relations Act:

Article XI, Section 1 – Wages (5/01/10 – 4/30/11)[5]

6. The parties agree that the following communities shall be comparable for purposes of this hearing: Clarendon Hills, LaGrange, LaGrange Park, Lemont, Palos Heights, Palos Hills, Riverside, and Westchester.

7. The parties agree that the Arbitrator shall incorporate into the collective bargaining agreement any tentative agreements reached during negotiations between the parties.

8. All other contract provisions shall remain "Status Quo" from the 2007-2011 Collective Bargaining Agreement, except date changes, where applicable.

9. Final offers shall be exchanged prior to the commencement of the hearing. Such final offers may not be changed except by mutual agreement of the parties. Each party shall be free to present its evidence in either the narrative or witness format, or a combination thereof. The Union shall proceed first with the presentation of its case-in-chief. The Village shall then proceed with its case-in-chief. Each party shall have the right to present rebuttal evidence. Neither party waives the right to object to the admissibility of evidence.

10. Post-hearing briefs shall be submitted to the Arbitrator, with the copy for the opposing party sent through the Arbitrator at a date to be agreed upon at the completion of the hearing; further extensions as may be mutually agreed to by the parties or as granted by the Arbitrator. The post-marked date of mailing shall be considered to be the date of submission of a brief.

11. The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator shall issue his award within sixty (60) days

[5] It is noted for the record that Article XI of the applicable Collective Bargaining Agreement states that annual salaries established as a result of this arbitration shall be effective April 1, 2010 and not May 1, 2010. Furthermore, the present contract expires on March 31, 2011 and not April 30, 2011. It is not clear why the parties' stipulated ground rules that differ in this regard from the negotiated terms of the Agreement.

after submission of the post-hearing briefs or any agreed upon extension requested by the Arbitrator.

12. Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.

13. Except as specifically modified herein, the provisions of the Illinois Public Labor Relations Act and the Rules and Regulations of the Illinois Labor Relations Boards shall govern these arbitration proceedings.

14. The parties agree that the arbitration proceedings are not subject to the public meeting requirements of the Illinois Open Meetings Act, 5 ILCS 120/1, *et seq*. All sessions of the hearing(s) will be closed to all persons other than the Arbitrator, court reporter, representatives of the parties, including negotiation team members, witnesses to be called at the hearing, resources persons of the parties, members of the bargaining unit, and elected officials and management staff of the Village.

15. The parties represent and warrant to each other that the undersigned representatives are authorized to execute on behalf of and bind the respective parties they represent.

16. The Arbitrator shall retain the official record of the arbitration proceedings until such time as the parties confirm that the award has been fully implemented.

III. Factual Background

The record in this matter establishes that Metropolitan Alliance of Police Chapter 360 was certified as the exclusive bargaining representative for full-time Western Springs police officers below the rank of sergeant in 2003. Prior to that time, Western Springs police officers were represented by Teamsters Local 714, and in all, the Village has had a collective bargaining relationship with this particular group of law enforcement employees for approximately twenty years. (Tr. 7.) While certain matters under prior contracts have proceeded to interest arbitration under the applicable statutes, the evidence in this case demonstrates that the economic issue of wages has never, before now, been

submitted by these parties for impasse resolution pursuant to Appendix A of the applicable 2007-2011 Collective Bargaining Agreement.

There are, according to the record, currently thirteen members in this bargaining unit. The Village and MAP Local 360 have successfully negotiated two collective bargaining agreements, the more recent being the current 2007-2011 contract. As stated by the Employer, "To preserve the bulk of the tentative [2007-2011] agreement and to address the circumstances that led to the rejection of the agreement, the parties agreed to reopen the contract to negotiate the issue of wages for the final year at a later date." [6] Thus, between January, 2010 and March, 2010 the parties met and conducted two negotiating sessions. While they reached accord regarding the specific circumstances of a retiring officer's salary, they were unable to agree on the more general subject of 2010-2011 salaries for remaining members of the bargaining unit. The parties duly submitted to mediation concerning the impasse issue of wages, though with little success, and on March 29, 2010, arbitration under the Act was invoked.[7] As set forth herein above, the Employer and the Union jointly adopted ground rules and pre-hearing stipulations with respect to this arbitration. In relevant part, they specifically agreed that the communities of Clarendon Hills, LaGrange, LaGrange Park, Lemont, Palos Heights, Palos Hills, Riverside and Westchester would be externally comparable for purposes of examining the evidence in light of applicable statutory criteria.

---

[6] Employer brief at page 1.

[7] Union Exhibit 4.

The Village of Western Springs is a non-home rule community located in Cook County, Illinois. The Village is approximately 2.32 square miles in feature, and has a recorded population of 12,493 persons.[8] According to evidence not in dispute, Western Springs is a relatively small Chicago suburban "bedroom community" without notable retail or commercial development, and is bordered on all sides by residential areas of neighboring communities. Western Springs is thus somewhat limited in terms of opportunities for growth or expansion. At present, the Village employs approximately sixty-three full-time workers, and only two groups are unionized; the Village's sworn police sergeants and its sworn police officers. In the past, two additional non-sworn employee groups have been represented by unions, but that is not currently the case. Thus, the record establishes only one "internally comparable" bargaining unit for purposes of applying statutory criteria in this case; the Village's police sergeants.[9]

Particularly relevant to this case, the Village's police sergeants recently organized and negotiated their first contract with Western Springs represented by MAP Chapter 456. The Village and the sergeants' bargaining representatives were unable to reach agreement on a number of issues, and interest arbitration under the Act was accordingly invoked. Outstanding matters of impasse were heard by Arbitrator Peter R. Meyers on March 15 and 17, 2010. On July 28, 2010 Arbitrator Meyers' full decision was issued which, in pertinent part, awarded the Village's "last best offer" with respect to annual

[8] Employer Exhibit 1.

[9] The Arbitrator duly notes Employer counsel's vigorous urging that he also consider the Village's non-union employees "internally comparable." That particular argument will be addressed in detail herein below.

salaries. The Employer argues in this case that in so doing, Arbitrator Meyers approved no (a 0%) across the board wage increases for police sergeants in 2010. The correctness of that particular contention will be examined in detail below, but at this juncture it is relevant to note that both final offers for the contract year 2010 in the case before Arbitrator Meyers were structured in terms of total salary at each step and not as a percentage wage increase. In other words, Arbitrator Meyers evaluated both proposals for that contract year in terms of total annual salaries as compared with those of externally comparable communities.[10]

Because the specific issue of police officer salaries is "economic" in nature under the statutes, the Village's relative financial condition at this point in time is particularly relevant. In fact, it represents the Employer's basic if not sole foundation for proffering a 0% wage increase for the year 2010 (and into 2011) under this contract. Importantly, the Village makes no specific contention that it is simply unable to pay the general 2.75% wage increase the Union is seeking. Instead, predictably, the Employer argues that broad financial strain attributable to the recent economic downturn makes the Union's final offer the less reasonable of the two proposals. In support, as will be examined in more detail below, the Employer cites anticipated operating budget deficits which will further strain the general fund from which law enforcement costs are drawn. The Union, however, counters that the Village has faired more favorably than many neighboring

[10] *See*; Employer Exhibit 15.

communities, and thus has little defense for a wage proposal that would bring measurable harm to the bargaining unit in terms of relative wages.

IV. Statutory Authority and the Nature of Interest Arbitration

The statutory provisions governing the issues in this case are found in Section 14 of the Illinois Public Labor Relations Act. In relevant part, they state:

> 5 ILCS 315/14(g)
>
> On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute… the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive… As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).
>
> 5 ILCS 315/14(h) – [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]
>
> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
>
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
>
> (A) In public employment in comparable communities.
>
> (B) In private employment in comparable communities.

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

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

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

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

Though citing the above statutory foundation and authority for interest arbitrations under the Act is customary in most, if not all, modern awards, the Arbitrator does so here for the specific purpose of establishing context for his subsequent findings in this case, being well aware that neither party is unaware of the language. Certainly, the Arbitrator's basic philosophy on the subject of interest arbitration will hardly come as a surprise to the parties here, because he has articulated his overall perspective in detail in a number of other awards under the Act.[11] However, as the Arbitrator has stated on numerous prior occasions, it is worth mentioning that interest arbitration in general is intended to achieve resolution to an immediate and *bona fide* impasse, but not to usurp, or be exercised in place of, traditional bargaining. Some arbitrators have characterized the unique, indeed discrete, function of interest arbitration, as opposed to that of

[11] *See;* e.g., County of Cook, Illinois/Sheriff of Cook County and Metropolitan Alliance of Police, Chapter 222, ILRB Case No. L-MA-04-006 (2006); City of Alton and International Association of Firefighters, Local 1255, ILRB Case No. S-MA-06-006 (2007).

grievance arbitration, as actual avoidance of any gain on the part of either party that could not have been achieved through the normal course of collective bargaining. Otherwise, some, including this Arbitrator, have reasoned that the entire collective bargaining process could (or would) be undermined to the extent that parties, at the first sign of impasse, might immediately resort to interest arbitration simply because the avenue is open to them. See, for example, Will County Board and the Sheriff of Will County; (Nathan, 1988), in which the arbitrator concluded in relevant part as follows:

> "If the process [of interest arbitration] is to work, it must not yield substantially different results than could be obtained by the parties through bargaining. Accordingly, interest arbitration is essentially a conservative process. While, obviously value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it his function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to the parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse…" (Emphasis added.)[12]

While the *Arizona Public Service* decision relied upon by Arbitrator Nathan predates this interest arbitration by some 37 years, the principles set forth therein (as they are in Nathan's *Will County*; supra) are as rock-solid today as they were then. In sum and substance, there is a single overarching idea here; no substantial "breakthrough" should be awarded in the interest arbitration process, and the Arbitrator is absolutely convinced as to the soundness of this central and controlling idea. Obviously, were this Arbitrator, or any other for that matter, to award an economic advantage significantly superior to that

[12] Arbitrator Nathan quotes Arizona Public Service; 63 LA 1189, 1196 (Platt, 1974); accord; City of Aurora; S-MA-95-44 at pages 18-19 (Kohn, 1995).

which could have been secured at the bargaining table, it would be very likely that the prevailing party would, in the future, simply by-pass bargaining altogether and jump right to interest arbitration in hopes of a repeat victory. Were that to happen, interest arbitration would most certainly "usurp" the near-sacrosanct purpose of sovereign and bilateral agreement between employees and employers, and that cannot be allowed to happen. Furthermore, it would be nearly impossible for an arbitrator to subsequently determine what the parties may (or may not) have been able to achieve had real bargaining occurred. Thus, without a crystal ball, determining which proposal the parties "would likely have achieved on their own" is, at best, problematic, and for reasons which follow, that is particularly true in this instance.

As noted in Metropolitan Alliance of Police Cook County Department of Corrections and the County of Cook/Sheriff of Cook County; ILRB Case No. L-MA-04-006, the Arbitrator's opinion on this matter does not depart from the following relevant and long-held opinion he expressed in Village of Downers Grove and the Downers Grove Professional Firefighters; Case No. S-MA-94-246 (1994):

> "For instance, explore the notion that impasse arbitration ought not to award either party a better deal than that which it could have expected to achieve through negotiations at the bargaining table. Without a crystal ball, who can tell with any degree of certainty what the expectations of either party were. Going in, both sides know that the final option available, if impasse occurs, is last best offer arbitration. The bargaining table, in most negotiating environments, is not the final available stop. Mediation, fact-finding, emergency boards, arbitration, strike, lockout, blue flu, discharge, bankruptcy, discontinuance of the enterprise, decertification, as well as legislative lobbying and court action, may also be viable pursuits for negotiating objectives. Moreover, and importantly, under the IPLRA, impasse arbitration, with its last best offer approach, is an essential

> ingredient of the labor relations process for Illinois security employees, peace officers and firefighters. The Act is designed to substitute self-help and other traumatic alternatives, resources available in some other environment (and also the threat of self help which may hang as a sword over the negotiating table), with a less disruptive procedure to produce settlement…"

In context, the Arbitrator was acknowledging the fact that it is quite often difficult to discern what would likely have resulted from bargaining had impasse not occurred. However, notice also that the Arbitrator clearly explained (seventeen years ago) that interest arbitration under the Act is specifically designed to function in place of "self help and other traumatic alternatives" and not to serve as an escape from the bargaining table simply because those traditional "self-help" options are not available to peace officers in Illinois. In spite of that instruction, it nevertheless appears, that is likely what happened here.

In essence, negotiated wage reopeners signal a future (and contractual) commitment on both sides to bargain in good faith concerning the understandably delicate matter of employee pay during the term of an otherwise complete and enforceable collective bargaining agreement. For obvious reasons, and the instant case is no exception, wage reopeners have been increasingly employed as a negotiating tool in these precarious economic times to secure timely contracts while at the same time preserving parties' respective rights to re-visit contentious (and potentially obstructive) issues such as employee wages in a more current fiscal environment. Thus, while the Arbitrator is not called upon in this case to rule in favor of or against altering any

particular *status quo*, there was still a manifest agreement codified in Article XI of the 2007-2011 Agreement that the matter of 2010-2011 police officer wages would be fairly dealt with when the time came.

Because this forum (given the obvious impasse that brought the parties to it) must as previously noted be viewed as an extension of the bargaining process and not a substitution for it, it is axiomatic that a prior contractual arrangement to reopen wage negotiations mid-term must mean something. Put another way, the Arbitrator is not charged with conducting a "*de novo*" examination of how current economic indicators and other statutory criteria impact this Collective Bargaining Agreement over the course of its entire term. The discrete issue before the Arbitrator concerns the parties' evident inability to agree upon the sole matter of 2010-2011 police officer salaries, and thus their respective arguments and evidence must establish something more than (or different from) the reality that existed when the contract, which included the instant wage reopener, was implemented. In other words, *the Arbitrator's decision as to which of the two proposals should prevail here must be rooted in proof of what has changed in the relevant economic environment since postponement of negotiations for 2010-2011 salaries became the mutual solution to earlier impasse on this issue.* This is particularly true, because the Employer now proposes 0% wage increases for the contract year 2010 when increases were granted in the two previous contract years. More importantly, there is no evidence that the contract was deliberately front-loaded to accommodate a later wage freeze. Thus, reasonably, the Employer must establish that the present economic

environment and/or other statutory criteria support the notion that the present outlook for the Village is so unfavorable (compared to what it was when wage increases for prior years were approved), that what is now essentially a wage freeze for police officers in Western Springs is warranted.

V. Outstanding Issue

Article XI – Annual Salaries 2010-2011

VI. External Comparables

In this case, the parties have stipulated that the following communities are externally comparable:

Clarendon Hills
LaGrange
LaGrange Park
Lemont
Palos Heights
Palos Hills
Riverside
Westchester

Section 14(h) of the IPLRA establishes eight factors for consideration by arbitrators when examining the suitability of last best offers in interest arbitration. As noted by Arbitrator Benn in City of Chicago and Fraternal Order of Police Chicago Lodge 7; (2010), it is recognized that, in theory at least, none of the established criteria should receive more attention under statutory language than the others. However, prior

to 2007 and 2008, interest arbitrators in Illinois generally afforded greater weight to the factor of comparability (both internal and external), and indeed many cases were tried and [reasonably] decided on that criterion alone. Relevant to significant changes in the economic climate after 2007, Arbitrator Benn commented as follows:

> "Wisdom too often never comes, and so one ought not to reject it merely because it comes late."[13] It is fair to conclude that prior to 2009, few in this area of practice – public administrators, union officials, advocates and neutrals – could have foreseen the drastic economic downturn we are now going through and then try to reconcile those conditions with the way parties present interest arbitrations and how neutrals decide those cases based wholly or partially on the comparability factor. That became readily apparent to me when I was asked to use comparable communities as a driving factor in cases decided after the economy crashed, but where the contracts in the comparable communities had been negotiated prior to the crash. I found that I just could not give the same weight to comparables as I had in the past. Given the drastic change in the economy, looking at those comparable comparisons became "apples to oranges" comparisons…

Early on in the recent economic downturn, Arbitrator Benn reasoned that it was nearly impossible to find contracts negotiated under more favorable economic circumstances truly comparable in the present statutory sense, because the <u>context</u> of those contracts, i.e. the timing and tenure of them, rendered them intrinsically disparate. Just as Arbitrator Benn observed, while two communities may themselves be legitimately "comparable" in the statutory sense, it is often difficult, if not impossible, to make an "apples to apples" comparison when the essential framework in which their contracts are being (or were) negotiated is completely different. *This conundrum is particularly*

[13] Arbitrator Benn quotes a maxim from <u>Henslee v. Union Planters National Bank & Trust Co.</u>, 334 U.S. 595, 600 (1949) (Frankfurter dissenting) long held as one of this Arbitrator's most favored citations.

troublesome when arbitrators operating in these trying times are charged under the Act with resolving truly contentious economic issues such as wages and health insurance.

In attempting to fulfill their statutory duty under the Act to resolve impasse issues in the aftermath of "the Great Recession" (as some have called it), some arbitrators therefore, under the discrete circumstances before them at the time, concluded that communities which under normal conditions would have been considered "comparable," were no longer so because substantive wage increases (for example) negotiated before the economy crashed made no sense afterward. That being said, Arbitrator Benn duly noted that this was not necessarily a permanent divergence from what was once the "norm" in interest arbitrations under the Act. In relevant part, he noted:

> But before leaving comparability, one final finding must be made. My conclusion in this case – i.e., that comparisons to comparable communities are not appropriate for the reasons set forth above – is without prejudice to either party's ability to advance comparability arguments in future negotiations and interest arbitration proceedings. For example, during the next round of negotiations or any interest arbitration, [the union] retains the right to argue that its members are entitled to above average or "catch up" wage increases to restore whatever differentials or rankings it believes have been compromised by this award or that the then current wage rates should be not considered the *status quo* given the unique circumstances of this case. Likewise, the City retains the right to argue that above average or "catch up" wage increases are not appropriate based on comparability or other relevant factors. For me, and for the time being, this economic downturn has merely caused a hiatus in the use of the comparability factor. That is how I believe comparability should be approached for the present and that is how I have ruled in other awards decided in this recession.[14]

[14] *City of Chicago*; supra.

This Arbitrator understands, without fully embracing, Arbitrator Benn's cogent analysis of his often-cited "that was then, this is now" reasoning, because Arbitrator Benn apparently recognized that interest arbitrators, similar to municipalities and bargaining units, do not function in a vacuum.[15] In other words, Arbitrator Benn endeavored to apply the statutory criterion of comparability in a living and active sense, while at the same time cautioning parties in this forum to expect the pendulum to swing the other way as the economy stabilized. While his logic has come under significant fire of late, it is still true that interest arbitration, as an instrument, is a conservative process which must never be permitted to usurp bargaining. In that sense, because bargaining occurs in the real world, real world circumstances must naturally come into play in interest arbitration if the arbitrator is, at least in recognized theory, charged with avoiding any outcome the parties would not have agreed to had they been left to their own devices.

That being said, there is also cause not to altogether abandon the statutory criterion of comparability. In point of fact, there is considerable recent arbitral support for its resurgence as a preeminent factor in Illinois interest arbitration. In relevant part, Arbitrator Harvey Nathan reasoned as follows in Village of Niles and Metropolitan Alliance of Police Chapter 357; ISLRB S-MA-08-219 (August, 2010) :

> The Village does not propose a different group of comparable communities. Rather, it argues that comparability is a less important factor in these bad economic times. It cites arbitrators such as Edwin Benn, who stated that because of the "recession*** there is a hiatus in the use of the comparability factor." (No case citation supplied.) This is nonsense.

[15] "There comes a point where this Court should not be ignorant as judges of what we know as men." Watts v. Indiana 338 U.S. 49 (52) (1949).

> Comparability is a critical factor in Illinois interest cases. Terms and conditions of employment are not self defining. They are driven by the market place. What makes one offer more appropriate than another is strongly influenced by what the comparable communities are paying. If the comparability group is truly similar in the features discussed above, then they are more likely as a group to be suffering from the same economic climate. This is not a case where half the village burned down or some other unique catastrophe. The comparable communities, all of which are within easy driving distance of Niles, are faced with the same economic problems: People are out of work, afraid to spend if they are working, have homes that are decreasing in value, have seen their savings decrease in value, and are furious at whatever governmental entity is within spitting distance. If anything, comparability is more significant in these times than otherwise. Communities can learn from each other how to handle economic times not seen by taxpayers since before World War II. (Emphasis original.)

While Arbitrator Benn's reasoning may have been relevant in the early days of the recent recession, particularly when the economy was in "free-fall" and no one could predict where and under what circumstances it would stabilize, Arbitrator Nathan makes a point which is particularly salient in the case at bar. *The Employer in this case has proposed 0% wage increases for the contract year 2010 when there is no evidence that any other of the agreed-upon externally comparable communities have taken action to freeze salaries during the term of their applicable collective bargaining agreements.*[16] Thus, it appears that the Employer has relied upon a general trend in other Illinois

[16] The Employer here argues that because Clarendon Hills will not pay police officer wage increases in the calendar year 2010, Western Springs is on solid ground with its 0% proposal. However, in making this argument the Employer ignores the real effect of Clarendon Hills 2010 - 2011 wages. The record establishes that the term of the applicable Clarendon Hills contract is only one year; May 1, 2010 through April 30, 2011. (Employer Exhibit 1, Book 2.) True enough, across the board wage increases during the term of that contract were deferred to January 1, 2011. However, every police officer in Clarendon Hills received a 2.5 % wage increase during the term of this one-year contract, so it cannot be said that Clarendon Hills negotiated a wage freeze in manifest recognition of Arbitrator Benn's "that was then, this is now" reasoning.

communities to gain wage freezes in interest arbitrations where they have been granted under entirely different and discrete circumstances.

In relevant part, Arbitrator Elliott Goldstein observed as follows in City of Belleville and Illinois Fraternal Order of Police; S-MA-08-157 (August 26, 2010):

> As I have done so often before in this setting, I yet again still note that *accurate* comparability is indeed the "traditional yardstick" used in measuring the viability of last best offers, in that the relevant marketplace is closely examined for purposes of comparing what other similarly situated employee groups are receiving from their respective (and ostensible analogous) employers. However, the particular facts must always be reviewed in their appropriate context. (Village of Skokie and Skokie Firefighters Local 3033, I.A.F.F., S-MA-89-123 (Goldstein, 1990). That is the critical point here – context is everything, in my opinion.
>
> ***
>
> What the city proposes in the obvious alternative, is to front-load the contract with a 3.25% wage increase for 2008 (which is exactly what the Union seeks in that year), and also add a 1% "catch-up" increase for police officers with fewer than 15 years of service (which exceeds what the Union has proposed). Rather than suggesting a wage reopener in the subsequent two years of the contract, the City then proposes to essentially freeze wages in the contract's second year (in opposition to the Union's bid for an additional 3.0% across the board increase) in direct response to fiscal hardship which it cited as its motivation here. The real question is "so what?"
>
> I want to be very careful in placing limitations on what I am saying in the instant case. I emphasize that I have carefully analyzed the evidence on external comparability contained in this record. I have not woodenly said that because the overall economic situation is difficult, or the City of Belleville feels that heat, external comparability is of critical significance, in my view. (Emphasis original.)

What Arbitrator Goldstein endeavored to do here, and this Arbitrator believes he was successful in accomplishing, was to hold Arbitrator Benn's reasoning in tension with Arbitrator Nathan's. In other words, "that was then, this is now" cannot be followed in a

lock-step manner even when the ill-effects of the economic downturn can be demonstrated, nor can external comparability necessarily rule the day when thoughtful reflection on context precludes "wooden" application of that particular statutory criterion.

As did Arbitrator Goldstein in *Belleville*, supra, this Arbitrator finds satisfaction somewhere in the middle as to the intrinsic value of external comparability under these particular circumstances. That is to say that because the parties have stipulated to a common list of externally comparable communities, and further because there is no indication in this record that comparing them to Western Springs in proper context would produce a totally unrealistic picture of current marketplace reality, *the statutory criterion of external comparability will enjoy a place of significance in this case.*

VII. Internal Comparables

The only other bargaining unit in the Village is the Western Springs Police Sergeants represented by Metropolitan Alliance of Police Chapter 456. The record establishes that the sergeant's unit is newly-formed and the Village and MAP 456 recently entered into their first collective bargaining agreement, which was implemented subsequent to the aforementioned interest arbitration before Arbitrator Peter Meyers in March, 2010.[17] In his findings, Arbitrator Meyers specifically noted that, "One statutory factor, an internal comparison with the contractual wage structure that applies to the Department's patrol officers, also is of help in resolving this particular dispute."[18] Here, the fact that represented police sergeants are "internally comparable" to police officers in

[17] Employer Exhibit 15.
[18] Id at page 39.

MAP Chapter 360 is not substantively in dispute. In other words, both the Union and the Employer acknowledge that comparison of the instant wage proposals with the contractual wage structure of Western Springs sergeants is reasonable, if not entirely supportive of either of their final offers.

Where there is dispute, however, is in the fact that the Employer has also cited non-unionized employee groups, upon whom wage freezes were imposed by the Village in 2010, as "internally comparable" with this bargaining unit. Contrary to the Employer's assertion, the Union argues, police officers are not comparable with non-represented public works employees, clerical workers, dispatchers, administrators, and other non-union employees. Moreover, the Union argues, the Village patently ignores the inappropriateness of comparing police and fire units with other classifications of community personnel.[19] Importantly, the Union argues, non-union employees are, by definition, incapable of bargaining with their employer. In support, the Union cites Sioux County Bd. Of Supervisors, Iowa, 87 LA 552 (Dilts, 1986), wherein the arbitrator reasoned in relevant part that:

> Employees represented by a union have an effective vehicle to present their views on such issues as salary and fringe benefits, that being collective bargaining. Employees without such representation cannot be said to be similarly situated and therefore are not truly comparable for present purposes without specific evidence to the contrary. Work rules and other important aspects of employment may be presumed to be quite different under collective bargaining contracts than in their absence. Non-union

[19] *See*; e.g., City of Effingham, Illinois; S-MA-07-151 (McAlpin, 2009): "As this Arbitrator knows, public safety units are very hard to compare with non public safety units and are, therefore, not helpful in resolving the instant case."

> jurisdictions must be compared with union jurisdiction only under the greatest caution.

Here, the Employer would have the Arbitrator credit the Village's action to freeze 2010 wages for non-union personnel as support for the instant "last best offer" of similar 0% wage increases for this bargaining unit. The Employer will not prevail on this point. As has been previously noted, interest arbitration has, at its very foundation, the collective bargaining relationship. Thus any employee group not similarly situated in this regard cannot by any stretch be considered "comparable" under the statutes. Certainly, the Village is free to unilaterally impose changes in working conditions (such as wage freezes) upon non-union employees, and then live or die by that sword. However, police officers in Western Springs are party to a bilateral collective bargaining relationship whereby the Village is not privileged to unilaterally change substantive working conditions without engaging in mandatory negotiations. Therefore, it cannot be said that police officers are functioning under the same fundamental structure and understanding as non-unionized Village employees and must therefore automatically succumb to the same "sword."

Therefore, for purposes of this arbitration, police sergeants represented by MAP 456 will be considered the only internally comparable employee group.[20]

---

[20] Under date of December 28, 2010, the Employer faxed the Arbitrator a copy of the December 13, 2010, award of Arbitrator Perkovich in S-MA-10-075, University of Illinois and Illinois FOP Labor Council, arguing, *inter alia*, that there the arbitrator rejected the notion advanced here by the Union that "non-sworn" internal comparables were inappropriate because of their diminished role. The Union objected to consideration of *University of Illinois,* and moved to have the employer's post-closure contact stricken. The Union's motion to strike will not be granted, as like most other interest arbitrators, this

VIII. Consumer Price Index and Other Relevant Criteria

In this particular case, traditional examination of CPI and other data with respect to established externally comparable communities (and the Village's relative standing therein) is of little value in this case other than to review what has changed since the 2007-2011 Collective Bargaining Agreement was ratified with the instant wage reopener included. This is true because, as previously stated, the Arbitrator is not called upon to place the economic impact of the entire Agreement under scrutiny. What was true for the parties in terms of reaching agreement for 2008 and 2009 wages is still true today. In other words, whatever statistical factors and evidence were explored when this Agreement was generated in the first place, and that includes relevant full term CPI data which the Employer now argues supports a 0% wage increase for 2010, were already in place when the parties agreed to reopen wage negotiations for the final year of the contract. Thus, the Arbitrator is compelled only to examine present circumstances in terms of what has changed since then. *Any other reasoning would render the reopener agreement meaningless.* Presumably, the Employer and the Union were unable to reach accord as to wages for 2010-2011 because, at the time, the impact of increases in terms of harm to the Village under [then] unknowable economic circumstances was too far down the road to assess. Thus, it is apparent that a bilateral and negotiated decision was made

---

Arbitrator has access to all of the Illinois Interest Arbitrations and frequently reviews those not cited by the parties in preparation of his decisions. With that said, *University of Illinois* has been carefully reviewed. It is significant to note that the internal comparables in *University of Illinois* were unionized employees, AFSCME and GESO, while those here are not. The December 28, 2010 communication from the Employer also reiterates its argument that the 2010 wage increase for its Sergeants was not an across the board increase. That argument is visited elsewhere in this award, and is rejected.

to defer the matter until the "picture" could come clearer, and for that reason, neither party had ought now assert facts that were already in evidence when postponement became the only viable solution to their impasse on wage rates for 2010.

In sum, the Arbitrator will consider the parties' respective proofs on the economic issue of 2010-2011 wages in the context of what has changed since the balance of the contract, with all its other provisions having full force and effect until March 31, 2011, was negotiated and implemented.

IX. The Issue

2010 WAGES

The Union proposes 2.75 % across the board salary increases effective April 1, 2010 in addition to scheduled step increases.

The Employer proposes 0% across the board increases as of April 1, 2010 but maintains scheduled step increases.

X. The Positions of the Parties

The Position of the Union:

At the outset, the Union argues that its proposal for a general 2.75% wage increase more closely complies with the statutory factors set forth in Section 14(h) of the Act. Specifically, the Union argues, because the Village has not proven (or even argued) "inability to pay", the statutory criteria of internal and external comparability support its final offer. First, the Union argues, its wage proposal is internally comparable with the

new sergeant's contract. The Village repeatedly (and erroneously) argued that the sergeants were granted a "0%" wage increase in 2010, the Union observes. However, the Union argues, that is simply not the case. The record establishes, the Union argues, that the sergeant's contract under consideration was the inaugural collective bargaining agreement in which longevity steps were first established. Thus, the Union argues, the salary dollars set forth in the agreement were not expressed in terms of percentage-type wage increases. Nevertheless, the Union argues, it is absolutely inarguable that each of the four sergeants received a significant increase in pay between the contract years 2009 and 2010. Specifically, the Union notes, the smallest increase in actual pay was awarded to the most senior sergeant at 2.51 %. The two next senior sergeants each received a 6.1% increase, and the most junior member of that bargaining unit received a 15.06% increase. Thus, the Union argues, it is plain to see that every sergeant received a significant increase in pay in 2010, and "it is unfathomable that the Village could make its claims of a 0% increase…"[21]

The Union further argues that its wage proposal is also supported by external comparability data. In point of fact, the Union notes, every one of the comparable communities provided some form of annual increase during fiscal year 2010 as follows:

[21] Union brief at page 15.

Clarendon Hills	2.47%[22]
LaGrange	4%
LaGrange Park	4%
Lemont	4%
Palos Heights	2.5%
Palos Hills	n/a[23]
Riverside	3.85%
Westchester	3.25%
Average	**3.6%**

Importantly, the Union submits, its proposed wage increase of 2.75% is significantly less than the majority of comparable communities and also below average, in express recognition of the present economic climate. Furthermore, the Union argues, Clarendon Hills, LaGrange Park, Lemont and Palos Heights all negotiated their current contracts during or after the current downturn.

In terms of overall ranking among comparable communities, the Union notes that Western Springs falls generally into 6th place. It is important to note, the Union argues, that a 2.75% wage increase will not improve the relative standing of Western Springs police officers among their counterparts in other communities. Thus, the Union reasons, it is clear that the Employer's offer of 0% will widen the gap between Western Springs officers and there colleagues in externally comparable communities ranking above them in terms of wages. In that sense, then, the Union argues, the Employer essentially urges the Arbitrator to adopt a wage proposal that violates not only the bargaining history

[22] As previously noted the Clarendon Hills increase was deferred to mid-term of a one-year contract.

[23] Palos Hills is currently negotiating 2010 police officer salaries.

between these parties, but also contradicts the practice in every comparable community that has a collective bargaining agreement.

The Village of Western Springs has also failed to demonstrate inability to pay proposed increases of 2.75% for contract year 2010 – 2011, the Union argues. Even in light of record evidence that Western Springs has faced recent fiscal challenges, the Employer has not demonstrated that it has suffered more than other comparable municipalities, the Union argues. Any purported reliance on the CPI-U is also disingenuous, the Union says. During 2009 when the CPI-U was in the negative, the Village awarded a 3.5% raise to (at the time) non-union sergeants, and a 2% increase to all other employees who enjoyed no ability to negotiate over wages, the Union notes. Clearly, the Union concludes, the CPI-U was not a concern for the Village then, and should not be used as a shield in this interest arbitration now. To the extent that the Village may still argue that CPI is relevant, the Union submits, the Arbitrator need look no further than the current calculations, which show the present CPI up 2.4%.

As to the Village's assertion of a "pension crisis", the Union argues that there are two reasons why this particular argument should fail. First, the Union points out, "pension funding" is not among the statutory criteria set forth in Section 14 of the Act. Second, the Union notes, the Village of Western Springs is a member of the Illinois Municipal League. Ironically, the Union argues, part of the purported pension fund "crisis" can be directly attributed to funding decision made by the IML.

In sum, the Union argues, "bargained-for stability is a rare and valuable commodity in labor relations… It cannot be understated that the purpose of interest arbitration is to yield a result that likely could have been obtained at the bargaining table." The Village, the Union submits, cloaks its motive to break a historical pattern of annual wage increases in terms of financial collapse and economic downturn. In reality, the Union argues, the wage increase proposed will have little or no negative impact on the Village's overall ability to provide services to its citizens.

For that and all the foregoing reasons, the Union urges the Arbitrator to adopt its final proposal as to 2010-2011wages.

The Position of the Employer:

The Employer argues, on the other hand, that its wage proposal is consistent with comparable wages within the Village and among other communities. The Employer relies, admittedly, on the statutory factor of internal comparability, in that, "The Village's non-represented employees have received no wage increase for 2010 [and] the Sergeants have received no across the board wage increase for 2010 as a result of Arbitrator Meyer's award." These steps had to be taken, the Employer argues, in light of the fact that operating expenditures have consistently exceeded estimates and the general fund is losing ground to make up for revenue shortfalls elsewhere. "Against this overwhelming pattern of 0% wage increases for all other Village employees and continuing budget shortfalls, the patrol officers are hard-pressed to argue that internal comparability

supports a 2.75% across the board increase for 2010," the Employer argues.[24] It must also be noted, the Employer argues, that a 2.75% wage increase for police officers would narrow a wage gap with police sergeants that was intentionally created in the Village's flagship contract with that group. "This in turn would result in the sergeants seeking a greater across-the-board increase as their wage reopener approaches in the next months, at a time when the Village's financial outcast and that of the nation, remains unstable at best," the Employer states.[25] Even with no increase in 2010-2011 salaries, the Employer argues that, over the life of this contract, the Village's proposal will yield raises in individual officer salaries between 12.5% and 41.75%.

External comparability also favors the Village's proposal, the Employer argues. The LaGrange and Westchester agreements were negotiated in 2007 and the LaGrange Park and Riverside agreements in the first half of 2008, the Employer states, and should thus be discounted for lack of economic context. Furthermore, the Employer argues, the communities of Clarendon Hills, which negotiated a 0% increase and Palos Hills which also presently seeks a 0% increase, support the Village's offer over that of the Union.[26]

Cost of living factors also support the Village's proposal, the Employer argues. Over the term of the contract, police officer pay increases will far outpace inflation, even

---

[24] Employer brief at page 14. As for the sergeants, the Employer submits that increases in pay "came only in the form of step increases" and not general increases. (Id.)

[25] Employer brief at page 16.

[26] Again it is noted that the Employer has misstated the facts with respect to Clarendon Hills. The most recent contract between the Village of Clarendon Hills and IFOP Labor Council is not a 2-year contract, but a one year contract in effect between May 1, 2010 and April 30, 2011. (Employer Exhibit 1, Book 2.) Furthermore, police officers in Clarendon Hills did receive a negotiated wage increase of 2.5% during the term of the one-year contract which will have already taken effect as of January 1, 2011.

though indicators are less favorable of late. The Village also notes that police officers "receive generous compensation and are among the Village's most highly compensated employees."[27] In support, the Employer cites the realities of overtime and officer specialty pay as evidence of higher-than-average earnings among police officers. The Employer also argues that increases in health insurance premiums has strained the Village, while increases in overall police officer earnings over the life of the contract will more than keep pace with employee contributions.

The Employer also argues that, "The interest and welfare of the public and the Village's financial ability deserve significant consideration in this proceeding and support the Village's proposal."[28] In support, the Employer cites general fund declines as evidence that expenditures are outpacing income over time. There are many reasons for this, the Employer notes, among which are declines in interest revenue, building permit revenue, and sales tax revenues. Pension fund obligations are also straining the Village's budget, the Employer argues. In all, the Employer argues, the Village is suffering financially and "the growing body of interest arbitration authority that recognizes the downward pressure on wages as a result of the current economic crisis, lends further support to the Village's wage proposal."[29]

---

[27] Employer brief a page 22.
[28] Employer brief at page 24.
[29] Employer brief at page 26.

For all the foregoing reasons, the Employer accordingly argues that, pursuant to applicable statutory criteria and the undisputed evidence of financial hardship, the Village's proposal is "the only reasonable proposal."

Discussion

Upon the whole of this record, the Arbitrator is convinced by the evidence that the Union's wage proposal should prevail. This case was, for the most part, well-prepared on both sides in terms of statistical proofs and evidence (which is not always the case), and based upon what is essentially undisputed data, the Arbitrator's analysis of the record favored the Union's last best offer in the end. It must be stated, however, that the Arbitrator does have one general observation as to the characterization of certain proofs which, in his mind, misrepresented at least two crucial facts in an attempt to skew the evidence it favor of the Village.

First, as the Arbitrator carefully analyzed herein above, the statutory criteria of internal and external comparability were paramount in this case, particularly because interest arbitration was invoked to cure impasse on a wage reopener and not to cement salaries over the course of the entire contract term. As a natural consequence, other statutory criteria, such as CPI data and overall earnings among Village employee groups, had force only to the extent that the essential context of overarching wage discussions for the entire Agreement changed since the balance of the contract was approved. The Arbitrator's specific analysis of that evidence (or lack of it) will be discussed below in more detail. At this point, the Arbitrator mentions the fundamental philosophy of his

analysis only to state that the *criterion of comparability was important here*, and the Employer's representation of certain facts in its analysis of both internal and external comparisons was plainly distorted in an attempt to support the Village's final proposal.

At the outset of argument (see page 13 of the Employer's brief), the Village first stated that its proposal for a "wage freeze", while perhaps "draconian at first blush", was "warranted based upon consideration of comparability factors, in particular internal comparability." Certainly, it is not disputed that the Employer's non-union employees were subject to an involuntary wage freeze in 2010. However, for reasons stated above, which must come as no surprise to the Employer, in the opinion of this Arbitrator, non-represented employee groups are <u>not</u> comparable under the Act. They are, as noted, fundamentally (and crucially) unlike, in that the Employer is privileged to unilaterally alter working conditions of non-union employees.[30] At the risk of stating the obvious, that is not the case with public service employee groups who are represented by unions for purposes of collective bargaining in Illinois. Under controlling law, wages are a mandatory subject of bargaining, which makes what the Employer has unilaterally imposed on non-union employees elsewhere in the Village's organization fundamentally irrelevant. ("*Employees represented by a union have an effective vehicle to present their views on such issues as salary and fringe benefits, that being collective bargaining. Employees without such representation cannot be said to be similarly situated and*

[30] *And*, frequently non-represented employees enjoy "management perks" that are not provided to unionized employees.

therefore are not truly comparable for present purposes without specific evidence to the contrary." Sioux County Bd; supra.)

The Arbitrator understands that the Employer's assertion of internal comparability with non-union workers is just that; an assertion and not a misstatement of fact. However, the Employer went one step further, and also claimed firm internal comparability with the newly-represented police sergeants unit, members of which the Village stated received "no across the board increase for this year (2010)."[31] Actually, the Village is technically correct in so stating, if we are to understand "across the board" to mean an equal percentage increase to each and every member of the bargaining unit. True enough, that is the normal application of the term "across the board" in this setting. However, reality must be placed in context here. The police sergeants, whom the Village asserts were not awarded equal percentage wage increases by Arbitrator Meyers, never presented a final offer which expressly included references to such raises. Moreover, the contract before Arbitrator Meyers represented the first between the Village and police sergeants, so the context of the two competing wage proposals for 2010 was meant to establish "step pay" for that year. Importantly, neither the Union nor the Employer expressed their wage proposals for that year in terms of percent increase. Thus, in relevant part, Arbitrator Meyers explained:

> Each party's proposal suggests a four-step salary structure, but the actual numbers show that there is a significant gap between the parties, particularly at the top step. The Village's proposal does not include a break-out of salary figures at each step for 2009, so it is difficult to make a

[31] Employer brief at page 13.

> step-to-step comparison of the bottom line figures for that year. Both side's proposals do break out the salary figures at the individual steps for 2010, so these proposed salary numbers offer the opportunity for the most complete comparison between the parties' competing salary proposals.[32]
>
> ***
>
> Both parties' salary proposals attempt to bridge at least some of the gap between Western Springs' salary levels and the average salaries and ranges established by the external comparables' salary levels. From this, it is clear that although the parties do not agree on how much of a salary increase should be adopted in their new contract, they nevertheless do agree that the salaries paid to Western Springs' sergeants must be made more competitive compared to that of their colleagues in the externally comparable communities.
>
> ***
>
> These general economic considerations weigh in favor of the Village's proposal for a smaller salary increase for 2009 and 2010, followed by a re-opener for 2011. (Emphasis added.)[33]

Any reasonable reading of Arbitrator Meyer's findings firmly establishes that the Village, while perhaps couching its final offer in terms of step increases, did not propose to freeze sergeant salaries in 2010. The Employer will likely counter this statement with an argument that step increases for police officers were also preserved for 2010 in this current contract. However, once again, context is important. The proposed sergeant's contract before Arbitrator Meyers was the very first one, and as such, base salaries for the bargaining unit in terms of negotiated steps were not yet contractually established as they are here. Consequently, and particularly because the Employer has so strongly argued in favor of a general wage freeze for police officers because of financial hardship manifestly

---

[32] From this, it is clear that neither party specifically proposed "across the board" increases for 2010 of a stated percentage, though analysis of the Union's breakout establishes a petition for a general 2% increase for 2010. (Employer Exhibit 15 at page 35.)

[33] Id., at pages 36-38.

recognized by Arbitrator Meyers the sergeant's interest arbitration, what emerges is the truth that the Employer deliberately couched its argument regarding the factor of internal comparability in such a way as to cloud the inescapable fact that Arbitrator Meyers was not even asked to freeze base salaries for sergeants.

The Arbitrator also concludes that facts concerning the externally comparable community of Clarendon Hills are misrepresented. At page 17 of its brief, the Employer states that, "Clarendon Hills recently executed a 2-year contract." This is simply not the case. While the collective bargaining agreement between IFOP and Clarendon Hills does indeed span parts of two calendar years, the actual contract has force and effect for only 12 months, as its negotiated term is from May 1, 2010 to April 30, 2011. Thus, obviously, it is a one-year contract. This is important, because the Employer further argued that the Village of Clarendon Hills "negotiated a 0% increase"[34], and while this is technically true for the 6 months of the contract that fell in 2010, the whole picture is somewhat different. Article XXIII of the 2010-2011 Clarendon Hills contract provides for across the board increases of 2.5 percent to take effect on January 1, 2011. Thus, while it is technically true that police officers in Clarendon Hills did not receive an increase in the first six months of their new agreement (and those months happened to fall in 2010), general wage increases were awarded during the term of the first (and only) contract year.

[34] Employer brief at page 20

Interestingly, the Village of Western Springs' wage schedule is similar to that of Clarendon Hills in that it does not strictly follow a calendar year. This interest arbitration concerns annual salaries "to be effective April 1, 2010" and continued into 2011. There is no indication in this record that the Union in this case seeks another wage increase on January 1, 2011. Thus, both Clarendon Hills and Western Springs' police officers petitioned for wage increases in the contract year spanning 2010 and 2011. The only difference is that Clarendon Hills' officers negotiated to receive their increase in the second half of the contract year, whereas the Union in this case proposes that increases take effect the first half of the contract year. Certainly the Arbitrator recognizes the reduced overall dollar value of deferred wage increases such as those negotiated in Clarendon Hills. However, "lower increases" are not what the Employer argued in terms of external comparability with Clarendon Hills. Plainly, the Employer would have had this Arbitrator believe that Clarendon Hills actually "froze" wages for police officers in 2010 and as such, he should consent to do the same in Western Springs. As explained above, that is simply not the case, and the Arbitrator will not be swayed by this, if not outright deception then substantive slant of the evidence, into thinking otherwise.

When all is said and done, interest arbitration is, and should remain, an honorable and conservative endeavor, because it is unquestionably founded on (and designed to protect) the parties' fundamental bargaining relationship. The Act establishes prevailing law, and in the end, the facts are the facts. While the Arbitrator understands and applauds vigorous and thorough advocacy, integrity cannot be sacrificed in the process, and there

is a line that simply should not ever be crossed where evidence is concerned. The parties are cautioned again that whatever risk invoking the Act may bring to their respective interests should be addressed at the bargaining table, where the only lines that exist are the ones they construct for themselves. Once the neutral process commences however, the merit of final offers, particularly those of an economic nature, must necessarily rise or fall according to a true and accurate account of the facts. That is the risk, of course, and much has already been said by this and other arbitrators on that subject.

As to the merit of the parties' respective arguments, then, the Arbitrator's evaluation of the evidence, regardless of how it was presented, favors the Union's final proposal overall. With respect to internal comparability, the only employee group in Western Springs comparable to police officers represented by this Union is the police sergeants. As noted herein above, annual salaries for police sergeants were not frozen in 2010. In point of fact, between 2009 and 2010, the smallest overall raise in that group was 2.51 %. , and that was for the most senior of the four members of the bargaining unit. Two more junior sergeants received increases of 6.1 % in that contract year, and the most junior sergeant received a whopping 15.06% pay raise. While these were obviously not straight across the board increases comparable to what the Union proposed in this case, it certainly cannot be said that in the inaugural sergeant's contract, wages were frozen because of fiscal strain. Thus, for all the foregoing reasons relative to the statutory criterion of internal comparability, the Arbitrator does not find the Union's petition for a

general 2.75% wage increase unreasonable in comparison to the Employer's proposal of a wage freeze.[35]

The statutory criterion of external comparability also persuades that the Union's offer should prevail. It is established in this record that in 2009, the Village of Western Springs ranked 7th among the stipulated externally comparable communities in terms of population, 1st in EAV, and 6th in sales tax revenues.[36] The evidence also demonstrates that between the years of 2004 and 2009, Western Springs police officers maintained a consistent relative ranking of 6th in terms of wages (at 10 years of service) as compared with those of police officers in other externally comparable communities.[37] Even with the Union's proposed 2.75% increase, Western Springs police officers will maintain a sixth place ranking among its external comparables.[38]

In terms of percent increases over the course of time among externally comparable communities, Western Springs was very near the average, and with the Union's proposal, that will stay true. The evidence establishes the following:

---

[35] Again, the Arbitrator understands that police officer step increases are not at issue here. However, the Village has argued extreme financial hardship in defense of its proposed general wage freeze, so significant overall pay increases in the sergeant's unit for 2010 cannot be denied relevance.

[36] Union Exhibit 12.

[37] Union Exhibit 14.

[38] Id., at page 7. It is recognized that Palos Heights and Palos Hills were not included, as wage contracts for 2010 were not in place at the time of arbitration.

Year	% Increase for Western Springs	Average for External Comparables
2005	4.00%	3.71%
2006	5.00%	4.59%
2007	4.00%	4.37%
2008	4.50%	4.11%
2009	3.50%	3.61%
2010 (proposed)	2.75%	3.59%[39]

It is also noted that a number of comparable communities negotiated 2010 pay increases for police officers during or after the beginning of the most recent economic downturn. Clarendon Hills approved a 2.47% increase on May 1, 2010 (to take effect January 1, 2011), LaGrange Park awarded 4% on May 1, 2008, Lemont awarded 4% on May 1, 2009, and Palos Heights awarded 2.5% on January 1, 2010. Thus, the "apples to apples" test articulated by Arbitrator Benn has been sufficiently satisfied in this particular case. It is clear that comparable communities are not shying away from modest pay increases under present circumstances, though it is equally clear that we are unlikely to see pre-recession raises any time soon. The Employer argues that even its proposed wage freeze would not alter this bargaining unit's relative standing of 6th place among externally comparable employee groups. However, while this may be true, a wage freeze would undeniably worsen their position when even with the Union's proposed increase, wages are already below average for the group. Thus, for the Employer to prevail on this

[39] Excluding Palos Hills and Palos Heights. The record establishes that Palos Heights police officers ultimately negotiated a general wage increase of 2.%, though that increase is not reflected in the above table, which was prepared by the Union for arbitration prior to ratification of the Palos Heights contract. (*See;* Union brief at page 19.) Only Palos Hills is still negotiating 2010 salaries at the present time.

particular criterion, given the fact that none of the other communities have achieved a wage freeze from their represented police officers, there must be some evidence in this record that indicates that Western Springs is suffering a more substantive fiscal hardship than they are, and there is no comparative proof of that in this case.

It is also important to note that, even in the absence of comparative proof that Western Springs is somehow worse off than other comparable communities from a financial standpoint, Western Springs police officers were not at the top of the pay heap to start with. In fact, as previously stated, wages for this group have remained consistently below average for several years, and it is just as likely that other municipalities are suffering, and have suffered, in the same ways Western Springs has. As cogently noted by Arbitrator Nathan in *Village of Niles*; supra: "Terms and conditions of employment are not self defining. They are driven by the market place. What makes one offer more appropriate than another is strongly influenced by what the comparable communities are paying. If the comparability group is truly similar in the features discussed above, then they are more likely as a group to be suffering from the same economic climate… The comparable communities, all of which are within easy driving distance of Niles, are faced with the same economic problems: people are out of work, afraid to spend if they are working, have homes that are decreasing in value, have seen their savings decrease in value, and are furious at whatever governmental entity is within spitting distance." (Emphasis original.) Certainly in this case, it is reasonable to assume that communities in this comparable group are suffering the same plight as Western

Springs, and if they are not, there should be some evidence of it in this record. There is none.

Perhaps even more notable are the recent findings of Arbitrator Donald Cohen in City of Morris and Metropolitan Alliance of Police, Chapter 63; S-MA-10-180 (November, 2010), wherein he observed in relevant part as follows:'

> All of the foregoing are measures considered by Arbitrator Benn and other arbitrators in their recent awards dealing with the economic conditions with which communities are confronted. Notwithstanding, these arbitrators also have considered the possibility that the economy will commence a recovery.
>
> Notable, is the fact that Arbitrator Benn, in his Boone decision (reference omitted) observed that on October 1, 2008 the Dow Jones Industrial Average stood at 10,831 and on the trading day before the issuance of his award, had fallen to 7,278 – a 33% decrease. Clearly this was an element in the factors underlying his determination that the state of the economy was the primary consideration in determining appropriate wage rates.
>
> As of Friday, November 19, 2010, the Dow Jones had risen to 11,203 – a 4% increase over the high adverted to by Benn in his award. I do not profess to be Cassandra, prophesying the future of the nation's moribund economy, but the telltale sighs of a rebound are readily apparent in the upsurge of the Dow Jones; the repayment of government loans; General Motors coming out of bankruptcy and recently having a highly successful initial public offering of stock; and the fact that the cost of living is projected to increase, albeit at a slower rate. These point to the fact that comparables are again the major consideration.

Thus, holding the instructions of Arbitrators Nathan and Cohen in tension with obvious concerns about the ongoing state of the economy as expressed by Arbitrator Benn, this Arbitrator concludes that, absent evidence that these stipulated comparable communities are no longer truly comparable in terms of how they weathered the common storm, a *bona fide* "inability to pay" defense constitutes the Employer's sole statutory

liberation from the criterion of comparability which clearly supports the Union's position. In this record, while there is certainly predictable proof that the Village of Western Springs has suffered fallout directly attributable to the recession, there is no evidence that it would be unable to meet payroll, or that services to the public would be substantively harmed, if the Arbitrator awarded the Union's wage proposal.

On December 15, 2009, the Village Manager for Western Springs submitted his final 2010 Budget Message to the President and Board of Trustees. Therein, Patrick Higgins noted in relevant part as follows:

> The recession's impact on the Village of Western Springs, while substantial, has been less severe than in many municipalities in the region. The historically conservative nature of the Village's fiscal policies and staffing practices has mitigated the recession's impact. In some cases the Village's revenues have been more constant than in other communities. Real estate values have remained more stable, although new home and teardown permits have essentially stopped for 24 months…
>
> ***
>
> In discussion with the Board earlier, it was pointed out in my October 8th memorandum that the "economic world of the spring of 2006" was unlikely to ever return and, that being the case, that rightsizing the General fund was preferable to temporary half-measures: "rather, the approach is to realistically view our immediate and mid-term economics, through 2012, and permanently readjust our organizational size and goals accordingly."

What the Village Manager obviously recognized here, was the generally favorable manner in which Western Springs has managed the impact of the recession thus far. Furthermore, he, reasonably indeed, noted that the boon times of 2006 were not likely to return any time soon, and thus suggested that long-term adjustments in thinking were preferable to temporary half-measures in terms of cure. Actually, the same sensible

approach can be applied in this setting. The economy has perceptibly stabilized, though it has not nearly recovered, and it is important to credit (in a statutory sense) the fact that other communities (which may not have faired as well as Western Springs overall) have still endeavored to keep pace with rising inflation by implementing, albeit considerably smaller than before, wage increases in new collective bargaining agreements. Even Arbitrator Benn noted when conditions were at there bleakest, that at some point in time the economy would begin to turn around, and responsive wage adjustments would need to be made. Thus, because that very scenario appears to be [incrementally] happening now, for certainly "free fall" cannot be used to describe the economy at present, there must be sound reasons for rejecting the actions of comparable communities under these present circumstances which favor the Union's proposal over that of the Village, and there are none.

As to other factors referenced by the Employer, such as rising health insurance costs and the overall favorable compensation comparison of police officers with other Village employees, the Arbitrator again notes that this dispute concerns a mid-term wage reopener. The parties have not entered this process to secure a new contract in a fresh negotiating environment. It can safely be presumed that health insurance costs were rising when this contract was negotiated in full. Furthermore, it is likely, given the relatively modest wage increase proposed by the Union here, that police officers in Western Springs have <u>always</u> faired favorably in comparison with other Village employees. Certainly, specialty pay has been in place for many, many years, as have

allowances and overtime. These factors were obviously not obstacles to pay increases in the first two years of this contract, and they are not obstacles now.

Similarly, the Employer's reliance on overall CPI data over the life of this contract is misplaced. Actually, inflation is on the rise, and is now higher than it was during the first two years of the contract. Thus, if negative numbers were not obstacles to pay increases in the first two years of this contract, CPI data now in the positive should certainly be no obstacle at this point in time.

For all the foregoing reasons, then, the Arbitrator concludes that the Union's final proposal with respect to wages is more reasonable and should thus be adopted. His order to that effect follows.

Order

The Union's Final Proposal is adopted. It is so ordered.

XI. Conclusion and Award

The foregoing order represents the final and binding determination of the Neutral Arbitrator in this matter and it is directed that the parties' collective bargaining agreement be amended to incorporate the specific determination made above.

John C. Fletcher, Arbitrator

Boone County, Illinois, January 15, 2011