BEFORE
ANN S. KENIS
ARBITRATOR

In the Matter of the Interest Arbitration **between** **THE VILLAGE OF LISLE, ILLINOIS** **and** **METROPOLITAN ALLIANCE OF POLICE, CHAPTER 87**	FMCS No. 100511-02194-A

OPINION AND AWARD

APPEARANCES:

For the Employer:	James Baird, Esq. Benjamin Gehrt, Esq. CLARK BAIRD SMITH LLP
For the Union:	Richard J. Reimer, Esq. Chris W. Potthoff, Esq. Alfred J. Molinaro RICHARD J. REIMER & ASSOCIATES, LLC
Place of Hearing:	Lisle, Illinois
Dates of Hearing:	November 12, 2010, January 11 and February 14, 2011
Briefs Exchanged:	April 7, 2011
Date of Award:	May 6, 2011

I. BACKGROUND

A. Introduction

This is an interest arbitration proceeding held pursuant to Section 14 of the Illinois Public Relations Act (5 ILCS 315/14)(Act). The parties are the Village of Lisle (Employer or Village), a non-home rule community located in DuPage County, and the Metropolitan Alliance of Police Chapter 87 (Union or MAP). The prior collective bargaining agreement between the Village and the Union expired on April 30, 2009. The parties entered into negotiations over a new contract and, although they were able to resolve most matters, there nevertheless are unresolved issues remaining between them. The Village and the Union were unsuccessful in resolving those issues through mediation and now seek to resolve their impasse through interest arbitration. They waived the tripartite panel for purposes of this proceeding and appointed the undersigned neutral as sole member.

The parties agreed that all tentative agreements would be incorporated into this Award and the Arbitrator would retain jurisdiction in the event there was any dispute as to matters that were tentatively agreed upon by the parties. They also stipulated that the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to her as authorized by the Act. Specifically, the three unresolved issues in dispute are: 1) wages; 2) compensatory time; and 3) duration. The parties agree that wages and compensatory time are economic issues. Under Section 14(g) of the Act, interest arbitrators do not have authority to fashion any form of compromise resolution different from the parties' final offers insofar as economic issues are concerned. Accordingly, the Arbitrator shall select either the Union's final offer or the Village's final offer as the more appropriate resolution of these two disputed economic issues after consideration of the relevant statutory factors under Section 14(h) of the

Act. The third issue – the duration of the agreement – is non-economic in nature, so the Arbitrator may select either of the parties' final offers as to this issue or fashion her own resolution.

B. The Parties

The Union represents 33 sworn patrol officers. MAP was first certified as the exclusive bargaining representative for the contract period beginning May 1, 2005 through April 30, 2009. Previously, the officers were represented by the Fraternal Order of Police (FOP) from at least 1986 through 2001 and by the Policemen's Benevolent & Protective Association Labor Committee (PB&PA) from approximately 2001 until 2005. Twenty three officers are at the top step of the salary schedule. [1]

The Village reports a population of approximately 23,506 residents and employs 140 full-time and part-time employees.[2] In addition to MAP, the Village has one other bargaining unit – the public works employees – who are represented by the International Union of Operating Engineers, Local 150. There is no municipal fire department.

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[1] Officers at the top step who exceed standards of performance receive a $1,000 salary enhancement.

[2]The number of Village employees has recently decreased. On April 19, 2011, the Union submitted a Motion to Supplement the Record with Union Exhibit #48, a memorandum from the Village Manager regarding Employee Separation Plan Payouts dated March 31, 2011 along with a draft resolution authorizing payments of separation incentives in the amount of $244,041 to ten employees who applied for a voluntary separation incentive and an eleventh employee who was leaving the Village due to outsourcing of his job functions. According to Union Ex. 48, the Village anticipated a net cost savings of $591,394.l00 as a result of the Employee Separation Payouts.

The Village did not oppose the Union's motion, requesting instead that the Arbitrator consider the affidavit of Finance Director Kimberly Schiller, which states that at the time of the hearing in this case, the Village projected a $991,000 budget deficit for 2011-2012; that the final approved budget was a balanced budget due to adjustments to the Village's expenses and its projected revenues; and that the largest line item adjustment was the $591,000.00 savings realized by the ten employees who elected to participate in the voluntary separation plan (VSP). The affidavit further states that the Village would not have offered a VSP if it did not need to balance the budget and was able to avoid involuntary layoffs as a result of the savings from the VSP. Finally, Ms. Schiller attests that the VSP did not create a budget surplus and that, if the Union's wage proposal is awarded, the Village will again have to engage in deficit spending in fiscal year 2011-2012.

Under Section 14(h)(7) of the Act, an arbitrator may consider "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings." Accordingly, the Union's motion to supplement the record is granted as is the Village's request to supplement the record with the affidavit of Ms. Schiller.

C. Statutory Factors

The statutory provisions in pertinent part governing the issues in this case are found in Section 14 of the Act:

> (g) 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). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).
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> (h) Where there is no agreement between the parties…the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
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> (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:
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> (A) In public employment in comparable communities.
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> (B) In private employment in comparable communities.
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> (5) The average consumer prices for goods and services, commonly known as the cost of living.
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> (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.
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> (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
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> (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.

D. Prior History and Comparable Communities

There is a history of interest arbitration proceedings between the Village and its police department bargaining unit dating back to 2001. The parties introduced in evidence the December 16, 2002 interest arbitration award issued by Arbitrator Benn, which resolved the issues of wages, duration, merit pay and sick pay after the PB&PA and the Village reached impasse on those issues for their 2001-2005 agreement. In that 2002 case, the parties stipulated on a non-precedential basis to eight comparable communities: Batavia, Bensenville, Bloomingdale, Glen Ellyn, Libertyville, Morton Grove, Villa Park and Westmont. At that time, Lisle was ranked near the bottom of the comparable communities. Both wage proposals included a base wage increase plus an equity component. Arbitrator Benn ultimately chose the Village offer which allowed an equity adjustment and pointed to gradual movement toward the comparable communities. The parties agreed that wages and duration were inextricably intertwined and so whichever offer was accepted for wages would also be accepted for duration. The Union attempted to change the status quo on merit pay and the Village attempted to change the status quo on sick leave. Both were unsuccessful as neither party was able to demonstrate a compelling need to change the status quo.

In addition to the interest arbitration before Arbitrator Benn, the parties had reached impasse and were prepared to arbitrate their most recent 2005-2009 contract before Arbitrator McAlpin. The Union states that its goal in that interest arbitration was to be "average" amongst the stipulated comparable communities: Batavia, Bloomingdale, Glen Ellyn, Libertyville, Morton Grove, Villa Park, Westmont and Woodridge. The parties reached an agreement on wages and duration on the day of arbitration. As the parties' collective bargaining agreement shows, the bargaining unit received a wage increase of 4% per year plus a 1.5% equity

adjustment for each year of the contract. [3] The parties also agreed that the four year duration of the contract would be non-precedential for future bargaining.

On the first day of hearing in this case, the parties acknowledged that not all the comparable communities in the prior interest arbitration with Arbitrator Benn and the comparable communities in the other interest arbitration case before Arbitrator McAlpin are still comparable to the Village. Instead, the parties agreed on a non-precedential basis that the following eleven communities are comparable to Lisle: Bensenville, Darien, Franklin Park, Glen Ellyn, LaGrange, Lemont, Lockport, Oswego, Roselle, Villa Park and West Chicago. [4]

II. DISCUSSION AND RESOLUTION OF THE DISPUTED ISSUES

A. Contract Duration (Termination -- Section 32)

1. The Parties' Final Offers

The expired contract covered the period May 1, 2005 through April 30, 2009. The parties disagree about the duration of the successor agreement. The Union proposes a three-year contract duration covering the period May 1, 2009 through April 30, 2012. The Employer proposes a four year contract duration covering the period May 1, 2009 through April 30, 2013.

2. The Union's Position

The Union contends that its final offer on duration must be adopted because it more nearly complies with the applicable factors set forth under Section 14(h) of the Act. Three year contracts are the norm for these parties. Moreover, the external comparables favor a three year agreement. Of the eleven most recent contracts negotiated by the stipulated comparable

[3] The prior 2005-2009 agreement includes a step-plan pay system whereby officers are eligible to advance yearly in the pay schedule. Officers advance a full step if they meet standards, and they advance 1.5 steps if they exceed standards. Officers are not eligible to advance to the next step if they are rated below standards but, during the term of the prior agreement, no officers were rated below standards. Rather, two-thirds of the officers were rated as exceeds standards and one-third of the officers were rated as meets standards in an average year. Neither party proposes changes to the step plan.

[4] Since not all communities have longevity pay and other communities have stipends and other enhancements such as educational incentives which Lisle does not have, the Union's comparisons are based on top base salary only.

communities, nine have had durations of three years or less. In addition, while the Union objects to the Village's reference to comparing Village police officers to non-public safety units, including Local 150, the two Lisle school district bargaining units and the Lisle Woodridge Fire Protection District unit, a review of the contracts held by those bargaining units shows their average contract duration is 2.88 years. If the Arbitrator gives any weight to those contracts with respect to wages, as the Employer urges the Arbitrator to do, then equal consideration should be given on the issue of duration. Finally, the Union submits that a shorter duration contract makes more sense in light of the projected uncertainty of the direction of the economy.[5]

3. The Village's Position

If the parties submitted identical wage proposals for the fourth year of the bargaining agreement, there would be no reason to award a three year contract. Here, although the wage proposals are not identical, they are extremely close to one another. The Union proposes a 2.75% wage increase in the fourth year of the agreement, while the Village proposes a 2.5% wage increase. The difference of 0.25% translates into less than $6,000 for the entire bargaining unit. Because the parties value the fourth year of the bargaining agreement so similarly, the Union's three-year proposal should be awarded only if there are compelling reasons for a shorter contract term. There are none here, the Village contends.

On the contrary, the Village states, several significant factors favor the Village's proposal. First, in 2003, the Illinois legislature extended the contract bar period from three years to four years, thereby expressing a preference for longer contracts so that the parties could have longer periods of labor peace in between contract negotiations. Second, the comparable communities are evenly split between three-year and four-year contracts. Equally important,

[5] City of Galena and Illinois FOP Labor Council, Case No. S-MA-09-164 (Callaway, 2010)("A commitment to long term in the present economy is atypical, and too much of a crapshoot…The Union's shorter length is least objectionable for the choices."

these comparable communities have on average 22 months of labor peace between the execution and termination of their collective bargaining agreements. Here, the Union's proposal would likely leave only eleven months or less between the date of the Arbitrator's award and the expiration of the bargaining agreement – less than half the average length of labor stability in the comparable communities. Finally, the Arbitrator has been authorized to fashion her own award regarding this non-economic item. The Arbitrator could incorporate language into her award of a four-year contract that says the duration is non-precedential.

4. Discussion and Analysis of the Parties' Proposals on Duration

The Village has raised compelling reasons for a four-year contract. The parties have engaged in extensive bargaining, mediation and finally interest arbitration in an effort to get a successor agreement in place. A shorter contract would start the process all over again in very short order. Generally, it is beneficial and in the interest of labor stability to take some time to examine the operational impact of the new contract. Having a respite period would enable the parties to negotiate a successor contract on a more informed basis than would be possible if a three-year contract with a term ending in April 30, 2012 were awarded.

Based on the conditions of the present economy, however, the Arbitrator is reluctant to lock the parties into a longer contract duration notwithstanding the fact that they are not far apart with respect to wage increases for the fourth year of the contract. Economic conditions continue to be uncertain and volatile. We do not know if the economy is recovering or on its way to faltering again. The economy is the pink elephant sitting in the corner of the room and it is impacting more than just wages. As Arbitrator Benn stated in Boone County: "It seems in this case to make more sense for the parties to get back to the bargaining table sooner rather than

later so that they can address their constituents' needs which certainly cannot be predicted at this precarious time." [6]

Equally important, the parties stipulated to eleven communities as comparable to Lisle. When the contracts of these communities are carefully examined, one cannot help but notice that, with two exceptions, all of the more recently negotiated contracts are for a three year term or less.[7] Some of these communities have previously negotiated three year contracts so their current contract duration follows a pattern. Others, however, have shortened the duration of their contracts from four years to three or even two years in some communities.[8] It is clear that there has been a shift to shorter contracts among the comparable communities despite the legislative preference for contracts of longer duration. Realistically, this is likely due at least in part to the parties' reluctance to project years out into the future with fixed obligations having no idea what the economic conditions will be.[9]

A collective bargaining agreement of four years' duration will not be unprecedented for the Village. The evidence shows that the Village's police officers have been represented by a union since 1986, although they have changed bargaining representatives twice during that time frame. Since 1986, the parties have had seven different collective bargaining agreements. Five of those seven agreements have had durations of three years. The parties' two most recent contracts were four years in length but the duration was non-precedential for the last contract. This history suggests that three year agreements are the norm, as the Union has argued.

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[6] County of Boone/Boone County Sheriff and Illinois FOP Labor Council, Case No. S-MA-08-010 (Benn, 2010).
[7] Franklin Park (2007-2011 CBA) and Oswego (2009-2013 CBA) are the only comparable communities with current four year contracts. The remaining communities have CBA's with the following duration: Bensenville (2010-2012); Darien (2007-2010); Glen Ellyn (2009-2012); Lemont (2009-2012); Lockport (2008-2011); Roselle (2009-2012); Villa Park (2009-2012); West Chicago (2010-2012).
[8] Bensenville (four year CBA to two year CBA); Glen Ellyn (four year CBA to three year CBA); Lemont (four year CBA to three year CBA); Lockport (four year CBA to three year CBA).
[9] The internal comparables cited by the Village are accorded less weight than the external comparables whose unit members perform work similar to the work performed by police officers in Lisle. Even so, it is noteworthy that none have negotiated four year contracts.

While I recognize that there is latitude for the Arbitrator to fashion a result different from either of the parties' two proposals on this non-economic issue, I find that the evidence and the relevant Article 14(h) factors provide strong support for a three-year contract duration. Accordingly, the Agreement shall be effective for the period May 1, 2009 through April 30, 2012.

B. Wages (Section 14.1 and Section 14.3 Retroactivity)

1. The Parties' Final Offers

The Union proposes a 2.75% across the board increase effective each May 1st of the years 2009, 2010 and 2011, with all wage increases retroactive to May 1, 2009. The Village proposes a 2% wage increase effective May 1, 2009; no change in the listed steps of the salary schedule effective May 1, 2010; a 2% increase effective May 1, 2011 and a 2.5% increase effective May 1, 2012.

The parties agreed that the duration of the contract would not control the parties' wage proposals. To this end, they further agreed that their wage proposals would be modified as follows depending on the resolution of the duration issue:

> **Union**:
> In the event that the arbitrator determines that a four year agreement is appropriate, the Union's wage proposal will include a 2.75% increase effective May 1, 2012 for each step listed in the salary schedule.
>
> **Village:**
> In the event that the arbitrator determines that a three year agreement is appropriate, the Village's wage proposal will remove any reference to a May 1, 2012 increase.

Since it has been determined that a three year agreement is the appropriate duration for the successor agreement, the Village's wage proposal will not include reference to a May 1, 2012 increase.

2. The Union's Position

The Union contends that its final offer is more closely aligned with the applicable factors under Section 14(h) of the Act. The Union's proposed annual increases of 2.75% would enable Lisle to maintain a third place ranking among the stipulated comparable communities, while the Village's proposal would cause the unit to lose significant ranking. The Union states that it is not trying to be "number one." On the contrary, even its own proposal would cause a drop in ranking from two to three. However, the Union maintains that, if external comparables are to have any meaning, the bargaining unit should not be subject to a significant drop in rank nor should it have its equity adjustments wiped out.

Equally important, the Union points out that while wage increases among the stipulated comparable communities vary, the three year average percentage increase among the external comparables is 3.3%. The Union's 2.75% wage proposal across three years is both below the average generally and below the average percentage increase for each year. By contrast, the Village's proposal is less than half of the average annual increase among the comparable communities.

The Union submits that the Village's wage offer is not supported by internal comparability either. It is well-established that non-union employees should not be used as internal comparables for police officers.[10] The Village's non-represented employees do not have the benefit of impasse or arbitration under the Act and must accept whatever wage and benefit package is offered by the Village.

Moreover, even if the Arbitrator is willing to consider the possibility of comparing MAP with Local 150 – the only other bargaining unit in the Village -- two distinct and compelling

[10] See, e.g., City of Taylorville, IL, Case No. S-MA-04-274 (McAlpin, 2006); City of Effingham, IL, Case No. S-MA-07-151 (McAlpin, 2009).

reasons demonstrate that it is not appropriate. First, there is no evidence of a historical pattern of wage parity between Lisle police officers and its public works employees. On the contrary, the evidence shows that both unions have received different wage increases since at least 2005. Second, the disparity between the Village's final offer on wages and its existing contract with Local 150 is readily apparent. The Village's final offer to the Union provides for a 6% wage increase over a four year contract with no guarantee that they will not institute layoffs and no offer of a "me too" clause. In contrast, the Village has a contract with public works, executed in October 2008 and modified in 2010, that provides for a 12% increase in wages over the course of four years, plus a $1,200 equity increase, plus guarantees against layoffs, furloughs and reductions in hours, plus a "me too" clause if any other employees receive better wages or benefits. The Village also told Local 150 members that unless they agreed to the 2010 concessions, union members would be laid off.

The Union rejects the Village's attempt to focus the Arbitrator's attention on the fact that the public works contract provides for a 0% wage increase in 2010. To the Union, comparing only a specified fraction of their wages is disingenuous and the Arbitrator should give no weight to the Village's claim of parity. The Village has not presented any evidence that police officers are comparable to other Village employees who are not assigned to work as sworn officers. Therefore, the Union submits that the Village's claims of internal parity should be disregarded.

By the same token, the Union asserts that reliance by the Village on non-comparable external employers is inappropriate. The Village's references to public safety unions of non-comparable communities, non-public safety unions from a variety of states and local governments, and generalized summaries that include non-represented employees and non-public

safety personnel should be disregarded. In the Union's view, the data is misleading, inaccurate or simply not comparable to the bargaining unit and therefore should be given no weight.

Next, the Union contends that the consumer price index supports the conclusion that the Union's final offer on wages is the more reasonable. The Union points out that current calculations show CPI at 1.8% for 2010. The Village's proposed 0% wage increase for 2010 does not come close to the CPI. The Union asserts that the Village should not be permitted to justify its wage proposal by relying on Arbitrator Benn's decision in County of Boone and Boone County Sheriff, Case No. S-MA-025 (Benn, 2009). In that case, the arbitrator emphasized the CPI and rejected the external comparability factor in favor of "the extraordinary circumstances which are present in this transition case as a result of current economic conditions." However, at the time of Arbitrator Benn's decision, the economy was in "free fall." More recent cases, including Arbitrator Cohen's in City of Morris and Metropolitan Alliance of Police, Chapter #63, Case No. S-MA-10-180 (Cohen, 2010), have recognized that certain economic indicia show signs of improvement and the cost of living is projected to increase, although at a slower rate than before the "great recession," prompting Arbitatror Cohen to conclude that comparables should again be the major consideration. The Union suggests that a similar analysis is proper here.

With regard to the interest and welfare of the public and the Village's financial ability to pay, the Union states that at no time has the Village argued it is financially unable to pay the wages sought by the Union in this interest arbitration. [11] While the Village of Lisle may have experienced a slight economic downturn, the Village has failed to provide evidence that it has suffered more than other municipalities. On the contrary, the annual "State of the Village" report

[11] See, Arbitrator Hill's discussion regarding "ability to pay" versus "willingness to pay" in Macoupin County Health Dept. (Hill, 2008)

has highlighted since 2007 -- and even during the bleakest times for the overall economy -- the Village's low debt, a high bond rating and low property taxes, comparing itself favorably with other DuPage County communities. More particularly, and notwithstanding the Village's claims to the contrary at hearing, the 2010 and 2011 "State of the Village" reports documented a positive outlook and reported two major companies moving their headquarters to Lisle. In addition, the Union submits that Lisle has increased its total assets and decreased its liabilities, with the result that it is ranked third on both measures among the eleven comparable communities.

No doubt the Village has experienced a financial impact due to the economy, the Union acknowledges, but it has managed to weather the economic storm. One of the belt-tightening measures undertaken by the Village was to change the structure and costs for the employee share of insurance.[12] The Union recognizes that health care proposals are not directly before the Arbitrator but requests that the Arbitrator take note of the increased cost to employees. Essentially, the Village has shifted the burden of the PPO rate increases to its employees. As a result, PPO rates in October 2009 increased by $380 per year for single coverage and $1,222 per year for family coverage, with similar increases in 2010. The Union contends that these large increases in health insurance costs significantly diminish the impact of wage increases for bargaining unit members. For example, if the Village's wage proposal is adopted, the 2009 PPO increase virtually eliminates any wage increase. The effect is even more striking in 2010, where the Village proposes a 0% wage increase. In that scenario, officers would, in effect, lose salary.

Finally, the Union argues that the Village failed to introduce any evidence that adoption of the Union's final wage offer will materially affect its ability to continue programs currently in place. Overall, while the Village relies on "financial collapse" and "economic downturn," the

[12] The Union has filed an Unfair Labor Practice seeking to resolve this issue.

reality is that Lisle has withstood the economic conditions impressively well. The Union's proposals will not have any significant negative impact on the Village's ability to provide services to its citizens. The Village should not be permitted to cherry-pick whatever calculus yields them the lowest possible wage increase. For all these reasons, the Arbitrator should adopt the Union's final wage offer.

3. The Village's Position

The Village maintains that it has not been immune to the effects of the "great recession." According to the testimony Kimberly Schiller, who has been the Village Finance Director for 24 years, the Village has reduced its reserves and is "not seeing any significant upwards trends in any of those revenue sources…" Property and sales tax revenues have declined. Two major car dealerships have closed their doors and another is now in competition with a nearby dealership in another suburb. The state is behind on income tax payments owed to the Village (and all other municipalities). Building permit revenue is down. General fund revenues have dropped by more than $2 million. At the same time, the Village's pension contributions, health insurance costs, and liability insurance have all increased. The net effect of all these economic stressors is reflected in the Village's general fund balance, which has fallen from more than $8.6 million in 2005 to just over $6.3 million in April, 2010. The Village has reduced its operating reserves from six months of expenses to just four months. Essentially, the Village has been engaged in deficit spending and is using its operating reserves to cover the difference, Schiller testified.

In an attempt to close the budget gap, the Village has cut expenses in virtually all areas. It budgeted a 0% increase in operating expenses for 2011-2012 and a 0% wage increase for non-union personnel for the third consecutive year; instituted a hiring freeze; deferred equipment and vehicle purchases; eliminated bagged leaf pick-up for residents and contributions to senior

citizens programs; eliminated its utility tax rebate program and decreased its sales tax rebate program; reduced its contribution to a teenage anti-drug program and the annual festival; eliminated non-grant sidewalk extensions and deferred street resurfacing and improvements projects; reduced employee travel, training, tuition, and fitness reimbursement programs; started electronic distribution of the newsletter; increased its deductible for risk and liability insurance; and obtained concessions from Local 150 to defer their 2010 merit and equity increases and receive a zero percent wage increase for May 2010.

Despite these efforts, revenues were still projected to fall short for the fiscal year 2011-2012 budget. The Village was ultimately able to balance its budget but only by accepting the voluntary resignation of ten employees. Any wage increases awarded to the Union employees will exacerbate the budget problem. The Union has put forward a wage proposal that is $121,125 more expensive than the Village's wage proposal. At a time when the Village has had to cut benefits to senior citizens, eliminate valued services, and freeze salaries for all other Village employees, there is no justification for the Union's wage proposal, the Village submits. Schiller testified that the cost of the Union's wage proposal, compared to the Village's wage proposal, would create a bigger gap in the budget that would somehow have to be filled.

Against that background, the Village contends that its wage proposal comports more closely with Article 14(h) factors under the Act. Internal comparability, for example, favors the Village. Non-represented employees have had their salaries frozen since 2010. Public works employees represented by Local 150 had a negotiated 4% wage increase in 2010 but because of the Village's difficult financial times, Local 150 agreed to freeze the 2010 wage scale in exchange for no bargaining unit layoffs until April 30, 2011. Therefore, no Village employees received a wage increase in 2010. Under the Village's proposal, the police officers will share the

sacrifice borne by all other Village employees who took a zero percent wage increase in 2010. Even then, the police officers will receive step increases that the other Village employees did not receive. The Union's proposal unfairly exempts the officers from the "shared pain" of all other Village employees and the Village residents.

External comparability is another factor which supports the Village's wage proposal. The Union's stated goal was to be average among the comparable communities. The Village's wage proposal accomplishes that goal, and then some. Officers will exceed the average salary in the comparable jurisdictions regardless of whether they are rated as "meets" or "exceeds" standards. [13] In fact, the officers' salaries will stay above average even in 2010, the year for which the Village has proposed no changes to the salary schedule. The Village's police officers will maintain above-average wages under the Village's proposal even though the Village's EAV, net assets, property tax, and sales tax have suffered more than the comparable jurisdictions.

In addition, the data from other external employers supports the Village's position. In 2010, the Lisle-Woodridge Fire Protection District and the teachers of Lisle Unit School District No. 202 implemented 0% wages increases. During the same period of time, the average first year wage hike in the United States in 2010 was only 1.6%; private sector wages and salaries increased by 1.5%; and public sector wages and salaries only increased by 1.1%. Even though the Village has proposed a freeze in the salary schedule in 2010, officers' salaries will still increase by 1.89% because of step progression. Thus, the officers' wage increases will still exceed the average wage increases received by employees locally and throughout the United States.

[13] The Village's calculations are based on top salary plus longevity.

The cost of living is also a critical factor in today's economic climate, as other arbitrators have recognized.[14] For 2009 and 2010, the first two years of the new contract, the cost of living decreased by a total of 0.90%.While the Village's proposal will allow the officers to maintain, and even slightly improve their purchasing power, the Union's proposal would give the officers salary increases that far exceed the changes to the cost of living. This factor favors the Village's proposal.

The Village next argues that the Union's proposal is contrary to the interests and welfare of the public. The recession has taken a heavy toll on the Village's finances. Unless the Village can somehow tap into some undiscovered revenue source, the general fund reserves will continue to decline. The Union's proposal, which would add an additional $121,125, will unnecessarily hasten that decline. Moreover, as Finance Director Schiller testified, using the general fund reserves to fund salary increases is not a sound practice because salaries are not a one-time expense. If the Village has to use its reserves to pay for everyday expenses like salaries, the general fund will eventually run dry.[15]

Moreover, the Village argues that there is a growing body of interest arbitration authority that recognizes the downward pressure on wages as a result of the current economic crisis.[16] As in those cases, the Union's proposal would fall on the backs of other employees in the form of reduction in staff and reductions in service to accommodate the increase. The Village has already accepted the voluntary resignation of ten employees. If the police officers were losing purchasing power because of inflation, or if the Village were paying below-market wages and there was a need for them to "catch-up," then the Union's proposal to add an additional $121,000 in

[14] Village of Midlothian and Teamsters Local 700, Case No. S-MA-10-148 (Benn, 2010); City of Belleville and Illinois FOP Labor Council, Case No. S-MA-08-157 (Goldstein, 2010); Village of Plainfield, Case No. S-MA-93-187 (Perkovich, 1993); Village of Downers Grove and IAFF (Fletcher, 1994).
[15] See, Logan County and Sheriff's Dept. and FOP (LeRoy, 1994).
[16] Wabash County Sheriff and FOP, Case No. S-MA-09-020 (Feuille, 2010); City of Belleville and FOP, Case No. S-MA-08-157 (Goldstein, 2010); City of Rockford and PBLC, Case No. S-MA-09-125 (Yaffe, 2010).

expenses to the Village's strained budget *might* make sense. But that is not the case here. The officers will still receive salary increases that exceed the rate of inflation and their wages will still exceed the average wages paid to officers in the comparable jurisdictions. Although the Union emphasizes that total compensation is an important factor because officers are being asked to pay more for health insurance, the Village submits that this issue is a red herring. Article 15 health insurance issues are not at issue in this interest arbitration. In any event, the Village pays the lion's share of health insurance costs for Village employees. This is an expensive benefit and should be viewed from the standpoint of the increased expenses the Village has had to pay at the same time its revenues have decreased. All told, the interests and welfare of the public are supported by the Village's proposal.

Finally, the Village contends that it is not in the public interest for it to pay police officers more than the level necessary to remain competitive in the local labor market. The Village's wage proposal will give the officers above-average wages. Furthermore, the Village does not have any problem recruiting or retaining officers. Not a single officer has left the Village to work for another police department in the state of Illinois. Although the Village currently has a hiring freeze, the most recent hiring list had 76 candidates eligible to be hired as patrol officers. Equally important, the Village maintains that it would have a serious morale problem with the non-represented and Local 150 employees if the only group of employees that receives a wage increase in 2010 is the police officers, who are already the highest paid Village employees. The Village argues that it is not in the interest and welfare of the public to have a disgruntled Village work force.

In summary, the Village asserts that when all the evidence is taken into account, especially the severe financial problems it has been grappling with, the relevant Article 14(h) factors compel the conclusion that the Village's wage proposal is the most reasonable.

4. Discussion and Analysis of the Parties' Wage Proposals

Section 14(h) of the Act sets forth eight factors that an arbitrator is to consider in analyzing competing proposals in an interest arbitration. As evidenced by the express language of Section 14(h), however, not all of the eight listed factors will apply in each case, or with equal weight. To be sure, though, the external comparability factor is highly relevant. The parties have agreed upon the communities they deem to be comparable to the Village of Lisle. Wage agreements for police officers in these comparable communities represent a guide in determining what the parties would have agreed to had the bargaining process not broken down.

Some recent interest arbitration awards have accorded external comparability less weight than might have traditionally been given due to the instability of a crashing economy. The difficulties in using comparable communities as a weighty factor in cases presented after the economy tanked but where the contracts in the comparable communities had been negotiated before the economy crashed have been discussed in a number of awards.[17] I agree that a direct comparison becomes more difficult where the interest arbitrator is being asked to set wages based on comparables negotiated before our current economic difficulties were even a glimmer on the horizon. Under those circumstances, trying to compare wages in the "comparable" communities against the new economic realities facing the parties truly becomes an "apples to oranges" comparison.

[17] See, e.g., County of Boone/Boone County Sheriff and Illinois FOP Labor Council, Case No. S-MA-08-010 (Benn, 2010).

In this case, however, the parties' prior four year contract expired April 30, 2009. At that point, the parties would have been well aware that economic circumstances had dramatically changed. That information also would have been known in those stipulated comparable communities where collective bargaining agreements were negotiated after 2008, when the economy began its free fall. These include contracts for seven of the external comparables: Bensenville (5/01/10 – 4/30/12); Glen Ellyn (11/01/09-- 10/31/12); Lemont (5/01/09 – 4/30/12); Oswego (7/01/09—4/30/13); Roselle (1/01/09 – 12/31/12); Villa Park (5/01/09 – 4/30/12); and West Chicago (5/01/10—12/30/12). In the remaining stipulated comparable communities, including Darien (5/01/07—4/30/10), Franklin Park (5/01/08 – 4/30/11), LaGrange (5/01/07 – 4/30/11) and Lockport 7/01/08—6/30/11), it can be argued that the parties negotiated their contracts without having had the full brunt of the financial maelstrom to consider as part of their bargaining strategy.

The effect this has on the factor of external comparability becomes evident when one breaks out the two groups and sees the downward pressure on wage increases that has taken place in our current post-crash economy:

Annual % Increase Among Stipulated Comparable Communities

Municipality	Fiscal Year 2009 Increase	Fiscal Year 2010 Increase	Fiscal Year 2011 Increase	3 Year Ave.
Bensenville	3.0%	3.0%	N/A	3.0%
Darien *	3.9%	N/A	N/A	3.9%
Franklin Park *	0.0%	3.5%	N/A	1.75%
Glen Ellyn	3.5%	1.5%	2.5%	2.5%
LaGrange*	3.5%	4.0%	N/A	3.75%
Lemont	2.4%	4.0%	5.0%	3.79%
Lockport*	7.6%	7.6%	7.1%	7.46%
Oswego	2.7%	0.0%	2.3%	1.67%
Roselle	8.4%	3.3%	3.7%	5.14%
Villa Park	0.0%	0.0%	2.0%	0.67%
West Chicago	4.0%	0.0%	4.0%	2.67%
(* = pre-2009 contracts)				
Overall Average	3.6%	2.7%	3.8%	**3.3%**
Average Pre-2009 contracts	3.75%	5.03%	7.1%	**5.29%**
Average Post-2009 contracts	3.43%	1.69%	3.25%	**2.79%**
Union Proposal	2.75%	2.75%	2.75%	**2.75%**
Village Proposal	2.0%	0.0%	2.0%	**1.33%**

As the foregoing table suggests, the Union's wage proposal is more consistent with the stipulated comparables. Looking at the overall averages for wage increases during the period from 2009 through 2011, the Union's proposal falls below average generally and below, or near, the average in each year. Moreover, even if I were to completely exclude those external comparables whose contracts were negotiated pre-2009 based on the idea that they cannot be readily compared to this post-2009 case, the Union's proposal is still the more reasonable. The Union's wage proposals are well below average for 2009 and 2011 when compared with the stipulated comparable contracts negotiated in this post-crash environment. And, although the

Union's proposal for 2010 exceeds the average of the post-2009 contracts by a little more than 1%, it is still more closely in line with those comparables than the Employer's proposal, which is far below the average for each year and on average generally. Put a bit differently, even if I recognize that there has been a downward pressure on wages for the comparable contracts negotiated since 2009, the Union's average wage proposal of 2.75% over three years is far closer to the 2.79% average wages increases that have been negotiated in the comparable communities since 2009 than the Village's 1.33% proposal over three years.

I understand the Employer is arguing that the Village is nevertheless above average in wages when compared to the comparable communities. If its proposed wage increases are adopted, the Village police officers' top base salary would be 4% above the 2009 average ($78,039.18 compared to the $75,038.26 average); 1.10% above the 2010 average ($78,039.18 compared to $77,192.45); and 1.20% above the 2011 average ($79,599.96 compared to $78,656.76). In the Village's view, the Union has expressed its desire to be "average" amongst the comparables and the Employer's proposed wages achieve this result.

A careful reading of the record supports a different conclusion. The Union forthrightly concedes that it hoped to move up to an average rank among the external comparables that were agreed upon for the 2002 interest arbitration before Arbitrator Benn because at that time the Village was ranked at the bottom as far as wages were concerned. Since that time, however, the communities that were deemed comparable to the Village have changed to reflect the economic and financial changes that have taken place in the Village. By 2008, the Village ranked second in top base salary among the external comparables stipulated to by the parties in this proceeding.

In 2009, the first year of the contract at issue, adoption of either party's wage proposal would put Lisle at number three out of twelve when top base salaries of all the stipulated external

comparables are considered. In 2010, if the Employer's wage proposal is accepted, Lisle would be repositioned downward to fifth out of twelve, while the Village's comparative rank would remain the same at three out of twelve if the Union's proposal is adopted. In 2011, the Employer's proposed 2.0% increase would result in Lisle being ranked fourth out of twelve, compared to the Union's 2.75% proposal, wherein Lisle would retain its third place ranking. The Union argues that while Lisle will lose a ranking at the outset in 2009 under both the Village's and the Union's proposals, the more reasonable approach would be to maintain a fairly steady position vis-à-vis these external comparables unless other Section 14(h) factors under the Act require a different finding. I agree. Absent other factors which change the balance, it is reasonable for the Union to maintain its relative standing among the external comparables. Adoption of the Employer's proposal would cause police officers to lose ground – in one year, significant ground -- when compared to the stipulated communities. Moreover, the Union's proposal for a 2.75% wage increase across the board more closely approximates the average 2.79% wage increases negotiated in comparable communities subsequent to the onset of the "great recession." Accordingly, I find that external comparability supports the Union's final wage offer.

The Union contends that evidence of external comparables becomes additionally relevant and must be considered in conjunction with Section (h) (6) of the Act and the "overall compensation" paid to its members. The Union asserts that the wage proposal offered by the Employer would barely keep pace with the increases in the health insurance costs for its members, even though Village patrol officers now pay the highest monthly costs among comparable communities.

In examining this factor, it must be noted that the Union has filed an unfair labor practice seeking to resolve the issue of bargaining in bad faith with respect to this issue. The Union charges that during negotiations for the current agreement, the Village changed the structure and costs for the employee share of insurance. This issue is not directly before the Arbitrator and I am reluctant to step into the fray in light of the pending ULP. Moreover, the parties have not presented any proposals relative to health care for resolution in this interest arbitration proceeding nor has any evidence been presented regarding the bargaining that took place with regard to this issue. Given these circumstances, I find that there is insufficient evidence from which to make an assessment under Section 14(h)(6). In a similar circumstance, Arbitrator Elliott Goldstein cautioned against giving weight to the overall compensation factor when little is known about the bargaining process or the actual give and take during negotiations:

> I understand that an additional factor in the assessment of the overall compensation received by the employees under consideration (Section 14(h)(6)). To some extent this overlaps comparability because any assessment has meaning only in terms of what other employees are receiving. This Arbitrator interprets subsection 6 of the standards as an assessment of bargaining history, the experience of these parties in achieving the present wage and benefit structure. The assessment of compensation is a reference to what the parties have negotiated, under what circumstances and over what time period. The Arbitrator in evaluating total compensation, aside from comparability, must consider where the parties have been and what is a reasonable adjustment, if any, in that total compensation. What is not mandated by Section 14(h)(6), though, is my guessing about bargaining history of other groups of employees, or the precise deals cut, based on a comparison of overall compensation comparability.
>
> Obviously, there is a direct correlation between take-home pay and employee-paid health insurance premiums, and that is what the Union presumably relies on here as proof positive of a genuine quid pro quo. However, as anyone who has engaged in this process knows, open issues of an economic nature are handled in literally countless ways. Thus, for the Union to promulgate what is essentially a 'disparate treatment' argument where health insurance premiums are concerns, there must be proof that this is really so. [18]

The cost of living is another factor to be considered. The Village points to the fact that the employees' salary increases outpaced the increases in the cost-of-living in every year during

[18] City of Belleville and FOP, supra, p. 39.

the previous collective bargaining agreement. More directly relevant than pre-"Great Recession" figures, however, is how the police officers will fare under the current agreement. For the year 2009, the consumer price index for the Chicago-Gary-Kenosha area (all items) dropped to -1.2 annually. This may reflect the bottoming out of the economy, since in 2010 the CPI for the Chicago-Gary-Kenosha area (all items) increased to 1.8% for an average increase of 0.6%. It is difficult to extrapolate how consumer prices will be affected for the year 2011.[19] Overall, however, the Village's position is supported by CPI evidence for 2009 and the Union's position is supported by CPI increases in 2010 and CPI trends upward thus far in 2011.

On the internal comparability factor, the Village contends that the non-union employees did not receive any salary increases in 2009 and 2010 and their salaries are frozen in 2011 for the third consecutive year. In addition, Local 150 employees received no salary increase in 2010. Under these circumstances, the Village asserts that its final wage proposal should be adopted because all employees should share in the sacrifice necessary in these difficult economic times.

There are several difficulties with the Village's position. First, the non-union employees are not directly comparable to the represented police officers. They do not bargain over their wages and have no say in the Village's decision to freeze their wages. As Arbitrator Dilts has explained:

> 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 jurisdictions must be compared with union jurisdiction only under the greatest caution.[20]

[19] I will take Arbitrator's notice, however, that the May 13, 2011 new release from the Bureau of Labor Statistics, Dept. of Labor, Midwest Information Office, reported that the CPI (all items) for Chicago-Gary-Kenosha rose 2.7% over the last 12 months, primarily due to increased energy prices. The all items less food and energy index increased 0.8% over the year.

[20] Sioux County Bd. of Supervisors, Iowa, 87 LA 552 (Dilts, 1986).

Second, it is generally accepted that represented police and fire employees are not comparable to public works employees, clerical workers, dispatchers, or other represented employees who do not work in the area of public safety.[21] The work performed by police officers differs dramatically from non-sworn employees and their goals and objectives in bargaining are not necessarily aligned. That point is underscored by the fact that there is no evidence of a historical pattern of wage parity or cross-unit wage uniformity between Lisle police officers and the public works employees who are represented by Local 150. Arbitrator Feuille explained the analytical difficulty in making such pay comparisons in Wabash County and FOP, supra:

> …I note that Section 14(h)(4) gives primary emphasis to wage comparisons 'of the employees involved in the arbitration proceeding with …other employees performing similar services...in comparable communities.' As a practical matter, this means that the external wage comparisons involving unit members with their occupational peers in comparable counties deserves significantly more weight than the internal comparisons of unit members with other County employees performing dissimilar services.
>
> This conclusion does not mean that the pay status of other County employees should be completely ignored. After all, Section 14(h)(4) calls for wage comparisons 'of the employees involved in the arbitration proceeding …with other employees performing similar services and with other employees generally…' Certainly other County employees are included within the meaning of 'other employees generally.' However, the pay comparisons with other County employees certainly deserves less weight than the pay comparisons with unit members and their peers doing similar work in comparable counties.

Even if I were to compare Local 150 with the Union, it is evident that there is a wide disparity between the Village's wage proposal for its police officers and the wages negotiated for public works employees. True, the contract with Local 150, executed in October 2008 and modified in 2010, does provide for a 0% wage increase in 2010 and that is what the Village is seeking here. But that is where any similarity ends. Local 150 agreed to a modification of 2010 wages in exchange for a no-layoff guarantee and a "me too" clause if other employees get better

[21] See, City of Taylorville, IL, Case No. S-MA-04-274 (McAlpin, 2006); City of Effingham, IL, Case No. S-MA-07-151 (McAlpin, 2009).

wages or benefits. There is no evidence that the same protections were offered to the Union in return for agreeing to a 0% wage increase in 2010. Equally important, when viewed more broadly, it must be remembered that the Local 150 contract calls for a 4% wage increase for each of the remaining years of their contract term. By contrast, the Village proposes a 2% increase for 2009 and for 2011 for patrol officers. That is a very substantial difference.

Thus, while I understand the Village's "share the pain" argument, particularly when all other Village employees have a 0% wage increase for 2010, the internal comparability factor does not favor the Village's wage proposal because the other Village employees are not similarly situated to the police officers. The evidence does not support the conclusion that the Village police officers should have imposed on them a 0% increase for 2010 that was agreed to by public works employees who perform different kinds of work, obtained quid pro quos for that 2010 wage reduction, and who otherwise have a very healthy wage increase over the remaining term of their contract. Moreover, non-represented employees are not similarly situated to the police officers and do not provide a reasonable basis of comparison.[22]

I recognize that underlying the Employer's position is the state of the economy. The impact of the "great recession" beginning in 2008 continues with no strong rebound on the horizon. Like most other municipal governments, the Village of Lisle has been impacted by the economic downturn. It has seen a reduction in revenue at the same time its expenditures are increasing. Its general fund reserves have fallen from $8.6 million in 2005 to $6.3 million in April, 2010. Although the Village was able to balance its budget for 2011-20112, it did so by accepting the voluntary separation of ten Village employees. When these circumstances are

[22] The Village cites additional statistics to show that wages among other external comparables -- who are not among those communities stipulated by the parties – were either frozen or resulted in wage increases of less than 2.0% in 2010. These statistics have been given consideration but they are not as probative as the stipulated comparable communities where working conditions are more directly comparable and wages can be compared for the entire contract term.

fairly considered, the Employer argues, it is clear that adoption of the Union's wage proposal would be contrary to the interests and welfare of public under Section 14(h) (3) of the Act.

Weighed against these considerations, however, is the fact that the Village has not advanced an inability to pay argument as the basis for justifying its final wage offer. Indeed, in its "State of the Village" reports, it has consistently taken the position that Lisle's financial picture is strong, its bond rating is high and its debts are low. The Village has been prudent in reducing its expenditures and reports in its 2011 State of the Village that revenues and expenses are "looking through a stronger lens" and there is "increased economic vitality" with the advent of Suncoke locating its headquarters in Lisle in May 2011, Lucent taking over 1.2 million square feet of office space, and Navistar bringing 2800 jobs as it locates its world headquarters in Lisle.

Equally important, the Village's financial situation is on a par with the external comparable communities. The parties stipulated on the first day of the hearing that they agreed to eleven communities that were comparable to Lisle. Put a bit differently, there was agreement that these particular municipalities fell within 50% above or below 2009 measures which included population, EAV, state and local sales tax, equalized assessed valuation per capita, and state and local sales tax per capita. The Village has pointed out that on some measures, Lisle falls above the average and on other measures, it falls below the average. Overall, however, the point to be made is that the comparable communities are experiencing similar financial constraints in this post-Great Recession landscape yet they have agreed to average wage percentage increases of 2.79% over three years or a total of 8.37% -- figures that far exceed the 1.33% average or total 4.0% over three years that the Village proposes.

The interest arbitration awards cited by the Village do not call for a different result. Although these are recent cases where arbitrators have awarded employer proposals which

included zero percent increases for one of the years of the contract term, the overall wage increases were, for the most part, significantly higher than the Village's wage proposal in this case. In Wabash County Sheriff, supra, Arbitrator Feuille awarded a 6.5% wage increase over three years. In City of Danville, supra, Arbitrator Hill adopted the employer's proposed 7% wage increase over a three period period. Arbitrator Goldstein adopted the employer's 6.75% proposal in City of Belleville, supra. The City of Rockford, supra, is the only case cited by the Village where a wage increase comparable to Lisle's proposal was awarded, and in that case the evidence showed that there were financial difficulties far more severe than Lisle's.

The Arbitrator is limited by Section 14(g) of the Act to selecting the last offer of settlement which more nearly complies with the applicable factors set forth in Section 14(h). As the foregoing discussion indicates, the external comparables strongly support the Union's wage proposal. Although the Village's claim of fairness is understandable and its desire to have all employees "share the pain" of a 2010 zero percent wage increase has been fully considered, the internal comparables and the additional external comparables offered by the Village are not as probative as the stipulated external comparable communities which are experiencing similar negative financial constraints as a result of the overall economy and are impacted by the same CPI figures. The stipulated external comparables provide the most reasonable indication of what a reasonable wage increase should be for Lisle patrol officers based on the new economic realities. The Village has not demonstrated that it is unable to pay for its own offer or the Union's offer, which calls for a 2.75% increase with no equity adjustment for the three years in dispute, nor has there been a persuasive showing that the adoption of the Union's proposal would be detrimental to the public interest. Certainly, economic conditions and the effect on Village revenues warrant a more conservative salary increase than in the past, but that effect was

adequately taken into consideration by the Union's proposal, which is more closely aligned with the reduced wage increases seen in the recent contracts negotiated in comparable communities.

For all these reasons, I find that the evidence and the applicable Section 14(h) factors provide more support for the Union's final proposal on wages.

C. Compensatory Time (Section 6.5)

1. The Parties' Proposals

Both parties have proposed changes to Section 6.5, Compensatory Time. The Village proposes to change the language of Section 6.5 as follows:

> **As a general rule, employees who work overtime shall receive payment for their overtime work. However, employees may request compensatory time off in lieu of overtime pay. If the Chief of Police or his designee agrees in writing, employees who request compensatory time off may receive such time off added to their compensatory time bank, in lieu of pay, where unusual and compelling circumstances are shown. Up to eighty (80) hours of compensatory time may be banked; once the eighty (80) hour cap is reached, overtime worked must be compensated by overtime pay in accordance with Section 6.4 Departmental procedures concerning compensatory time must comply with the Fair Labor Standards Act and applicable case law regarding the use of accrued compensatory time off**. Once the Officer's compensatory time bank has been drawn down by the use of compensatory time off, the Officer may again elect to receive overtime in the form of compensatory time rather than pay, up to the **80**-hour cap. At the end of the Village's fiscal year, however, all compensatory time remaining in each Officer's compensatory time bank shall be bought out by the Village at the Officer's then applicable straight-time hourly rate of pay, thus reducing each Officer's compensatory time bank to zero as of the beginning of the next fiscal year.

> The Union's proposal read as follows:
>
> In lieu of overtime pay, an Officer may elect to receive compensatory time off at the rate of time and one-half (1 and ½ times worked). Up to forty hours of compensatory time may be banked; once the 40-hour cap is reached, overtime worked must be compensated by overtime pay in accordance with Section 6.4. Compensatory time off shall be scheduled and taken in **full shift blocks, (i.e. 8 hour blocks for specialty positions and 11.5 hour blocks for patrol**) in accordance with the Departmental procedure used to schedule time off; **however, Departmental procedures concerning use of comp time must comply with the Fair Labor Standards Act regarding the use of comp time**. Once the Officer's compensatory time bank has been drawn down by the use of compensatory time off, the Officer may again elect to receive overtime in the form of

> compensatory time rather than pay, up to the 40-hour cap. At the end of the Village's fiscal year, however, all compensatory time remaining in each Officer's compensatory time bank shall be bought out by the Village at the Officer's then applicable straight-time hourly rate of pay, thus reducing each Officer's compensatory time bank to zero as of the beginning of the next fiscal year.

2. Village's Position

The Village contends that its compensatory time proposal preserves the option of providing cash compensation instead of compensatory time off by requiring the Chief's consent for the accrual of compensatory time. At the same time, the Village would double the limit of the amount of compensatory time that could be banked, with approval of the Chief. The Village maintains that the ability to approve requests to accrue comp time is important because it enables the department to better manage its costs and to operate in an efficient manner. Under the Village's proposal, if the parties don't agree to the use of comp time, the officer will be paid time and one-half for all overtime hours worked. The Village submits that its proposal is not unique. On the contrary, four of the comparable communities provide management with the right to deny requests to accrue compensatory time. Similarly, the Local 150 agreement and the handbook policy that covers non-represented employees allow the Village to approve or deny requests to accrue compensatory time off. Accordingly, the Village's proposal on this issue should be adopted.

3. The Union's Position

The Union contends that its final offer with respect to compensatory time is to effectively maintain the status quo by changing the language only to clarify the schedules of the different members of the bargaining unit and to state that the Village must comply with applicable law. The Union states that it wants to explicitly reference the Village's obligation to comply with applicable law because there has been a problem with denying compensatory time due to the

Department being at "minimum manning." In the Union's view, requiring the Village to follow applicable law will result in it having to grant compensatory time requests unless the request would unduly disrupt the operation of the department, consistent with a Seventh Circuit case on this subject.[23]

The Village, by contrast, seeks a "breakthrough" and proposes to include new provisions that will permit the Chief or his designee to eliminate the creation of compensatory time and permit the Village to deny compensatory time. As the evidence showed, the Village has not met its burden of demonstrating a need to change the status quo. Moreover, neither the internal comparables cited by the Village nor the stipulated external comparable communities provide support for the Village's proposal. Accordingly, the Union maintains that its own proposal with regard to compensatory time must be adopted.

4. Discussion and Analysis Regarding the Parties' Compensatory Time Proposals

Under the 2005-2009 contract, Officers who work overtime can elect to be paid or have time off. If they choose to take compensatory time, that time off goes into a "bank" which is capped at 40 hours. At first blush, the Village's proposal appears to be a boon for Officers because it doubles the cap to 80 hours. As the Village concedes, however, the current contractual cap is "not a hard cap" because it operates as an "earn it and burn it" system. Officers can earn comp time, take those earned hours of comp time, and then repeat the process without ever exceeding the current 40 hour cap. Therefore, the increased cap would not necessarily be viewed by the bargaining unit as an added benefit.

The more significant change set forth in the Village's proposal is that officers would be required to obtain written approval from the Chief of Police or his designee in order to receive compensatory time. Moreover, written approval would be granted only where "unusual and

[23] Heitmann v. City of Chicago, 560 F.3d 642 (7th Cir. 2009).

compelling circumstances are shown." The Village maintains that "comp time is hurting us because as you get lean in a department, when individuals take comp time, it may force you into a hire back or overtime situation." The Village acknowledges that it would rather pay overtime than give time off because they want the officers on the job. The Union opposes this Village proposal, stating that there has been a problem with the Village not allowing employees to take compensatory time off when the Department is operating with minimum manning. If the Village's proposal is adopted, the Union argues that employees' requests would be routinely denied and Officers would not be allowed to use their comp time.

I am not persuaded that the Village has offered any persuasive reason to adopt its proposal. The Village did not establish that its compensatory time off proposal would generate any meaningful overtime cost savings. There is no probative evidence that the current system has created operational hardships for the Village. Significant, too, is the fact that while four of the external comparables provide the right to deny requests to accrue compensatory overtime, the remaining seven do not and none of the external comparables impose the further restriction that "unusual and compelling circumstances" be shown. Finally, the Village's claim that internal comparable groups within the Village have similar language is not persuasive. As indicated in earlier discussion, neither the unrepresented employees of the Village nor Local 150 is comparable to this bargaining unit. And, even if I consider the language contained in the unilaterally promulgated Village handbook, or Local 150's contract, neither requires employees to show "unusual and compelling circumstances" in order to earn compensatory time.

It is noted that both parties' proposals incorporate language stating that departmental procedures must comply with the Fair Labor Standards Act regarding the use of compensatory

time. To that extent, there is agreement as to the change in the language of Section 6.5 of the contract.

The only other modification sought by the Union in its proposal is to incorporate language existing elsewhere in the contract. The current compensatory time language in Section 6.5 specifies only an eight hour shift. However, patrol officers work an 11.5 hour shift. Section 6.2 of the existing contract states that compensatory time can be used to add to any other benefit time in order to reach the 11.5 hours required for patrol officers to take a day off. The Union's proposed language, if adopted, would achieve consistency in these two contract provisions.

For the reasons explained above, I find that the Union's compensatory time proposal more nearly complies with the applicable Section 14(h) decision factors than does the Village's compensatory time proposal. Accordingly, the Union's proposal is adopted.

AWARD

The issues are resolved as discussed in Section II of this Award. In summary, these issues are resolved as follows:

1. Contract Duration (Section 32). The Union's final offer is selected.

2. Wages (Section 14.1). The Union's final offer is selected. Section 14.3 Retroactivity shall be changed to reference May 1, 2009.

3. Compensatory Time (Section 6.5). The Union's final offer is selected.

4. Tentatively Agreed to Changes. As noted above, the parties' tentative agreements on all of the other issues resolved during their negotiations for their successor collective bargaining agreement are incorporated into this Award by reference.

5. Retention of Jurisdiction. Pending preparation and execution of the parties' successor agreement, the parties agree that the Arbitrator will retain jurisdiction.

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ANN S. KENIS, Arbitrator

Dated: June 6, 2011