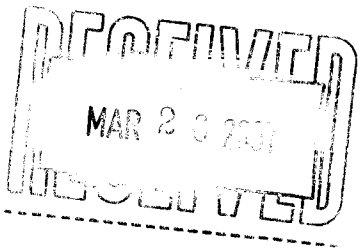
INTEREST ARBITRATION

OPINION AND AWARD



IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

THE VILLAGE OF WESTERN SPRINGS
("Employer," "Village," or "Management")

AND

THE METROPOLITAN ALLIANCE OF POLICE, CHAPTER 360, WESTERN SPRINGS POLICE OFFICERS
("Union", "MAP" or "Bargaining Representative")

Arb. Case No. 05/046

Before: Elliott H. Goldstein
Sole Arbitrator by Stipulation of the Parties

Appearances:

On Behalf of the Union:

Chris W. Potthoff, Attorney
Richard J. Reimer, Attorney

On behalf of the Employer:

Jill Leka, Attorney
Winnie Wong, Attorney

I. INTRODUCTION

By mutual agreement and pursuant to Section 14(p) of the Illinois Public Relations Act ("IPLRA" or "Act"), the Village of Western Springs and the Metropolitan Alliance of Police, Chapter 360, selected the undersigned as the neutral arbitrator to decide an unresolved non-economic issue in connection with the parties' negotiations for a collective bargaining agreement covering Village police officers. Pursuant to the parties' agreement, no hearing was held and each party submitted evidence in support of its position to the Arbitrator prior to filing briefs, according to an agreed-upon schedule.

The parties also agreed to waive the requirement of a three member arbitration panel, and that I am to sit as Chairman and sole member of the Interest Arbitration Panel for the instant case. Briefs-in-chief were submitted dated May 31, 2006. The date for the issuance of this Opinion and Award was set and subsequently extended, so that the final date for the Arbitrator to render this Opinion and Award was ordered to be April 10, 2007.

II. STATEMENT OF FACTS

A. General Background

The facts of record establish that the Village of Western Springs is a small municipality, with a population of over approximately 12,000 residents. The Village's Police Department is small and consists of the following sworn officers: fourteen police officers, five sergeants, one lieutenant, and one Director of Law Enforcement Services. Since turnover in the Department is

relatively low, most police officers have been with the Village Police Department for several years. Those facts cause the Village to argue that many Village residents are not only well acquainted with each other, but also with members of the Village Police Department, I note.

B. History of Exclusive Bargaining Representatives

In 1990, Teamsters Local No. 714 ("Teamsters") was certified as the exclusive bargaining representative of all full-time sworn police officers below the rank of sergeant. The Teamsters represented the officers from 1990 through 2003. In 2003, MAP was certified as the officers' sole and exclusive bargaining representative.

C. Bargaining History Regarding Solicitation

Since 1991, the Village has included language in the Labor Agreements covering police officers prohibiting them from soliciting. As early as December of 1990, during negotiations with the Teamsters, the Village proposed a provision restricting solicitation. More specifically, the Village proposed a "No Solicitation of Local Businesses" provision in its initial proposal to the Union. The Village indicated that it did not appreciate the Union soliciting money throughout the community or advertising within the community.

Although the Teamsters initially objected to restraints upon its ability to advertise, the parties ultimately agreed to incorporate a provision restricting both the Teamsters and the unit employees from soliciting in Western Springs into the Village's

1991-1995 Labor Agreement with the Teamsters. The Labor Agreement provided:

> "**No Solicitation of Local Businesses.** The Union agrees that its officers, affiliated organizations, and members of the bargaining unit will not solicit merchants, businesses, residents or citizens located within the Village of Western Springs for contributions, donations or to purchase advertising in any Union or Union related publication or associate membership in the Union or any Union organization without prior written approval of the Village Manager."

Similarly, the Village's 1995-1999 Labor Agreement with the Teamsters restricted solicitation. Again, the 1999-2003 Agreement between the Village and the Teamsters included the same provision restricting solicitation, the evidence establishes.

D. Village Reasons For No Solicitation in Western Springs

Since at least 1991, both police officers as well as the Union itself, by or through any representative or agent, have been prohibited from soliciting funds for the Union either in person or by phone.[1] The Village contends that it has historically prohibited such solicitation because it is its position that there might be confusion that could occur when police officers solicit on behalf of a union. Its reasoning is that, even if an officer did not formally state that he or she was soliciting on behalf of the Village, did not use and/or display the Village name or wear the

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[1] The Village of Western Springs and the Western Springs Police Department historically have not solicited funds from residents, businesses, or merchants in Western Springs, with the exception of the Illinois Special Olympics "Adopt-A-Cop" program. The Village participated in the "Adopt-A-Cop" program annually since 1987.

Village uniform, because residents recognize officers, residents at times may still perceive that the officer was soliciting on behalf of the Village. Moreover, residents and/or businesses may perceive that they would not be provided the same level of service or police protection from the police department if they did not donate funds, the Village specifically asserts.

It is clear from the exhibits and affidavits submitted herein that the Village Board and Village Manager remain concerned that if solicitation by bargaining unit employees were to be allowed, residents still may recognize the officers and/or their voices; accordingly, such solicitation could cause confusion for residents and businesses within Western Springs, Management firmly believes. The Village also argues that that type of solicitation has caused confusion in other communities as to what entity actually is conducting the solicitation; what entity or funds actually benefit from the solicitation; and whether or not the citizens will receive the same level of police protection, absent a donation. A sampling of documents which the Village believes establishes that sort of confusion in other jurisdictions in the Northern Illinois area was presented into the record and discussed in detail in the parties' briefs, I note.

E. Other Restrictions On Solicitation

The evidence of record also shows that the Village has not only restricted solicitation by the Union and police officers, but has also regulated solicitation, canvassing, and peddling in general via the Village Code. The Village Code requires that

persons who solicit or peddle obtain a license from the Village which must be carried and displayed. Additionally, uninvited peddling, soliciting, or canvassing is specifically prohibited.

F. Negotiations Leading Up To The Current Contract With MAP

After MAP was certified as the exclusive bargaining representative, the Village and MAP began negotiations by agreeing upon Ground Rules for Negotiation. In its initial proposals, MAP then proposed as regards the issue of solicitation the following provision:

> "The Chapter agrees that no bargaining unit employee will solicit any person or entity for contributions on behalf of the Western Springs Police Department of the Village of Western Springs..." and that the section "shall not be construed as a prohibition of lawful solicitation efforts by bargaining unit members directed to the general public... And does not apply to the solicitation efforts of the Metropolitan Alliance of Police or any of its agents who are not bargaining unit employees."

The record reveals that, in turn, in its Initial Non-Economic Proposal to MAP on June 24, 2003,[2] language consistent with the Village's prior Labor Agreements with the Teamsters. Indeed, the Village proposed virtually identical language restricting solicitation, I note.

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[2] **"Section 6. No Solicitation of Local Business.** The Chapter agrees that its officers, affiliated organizations, and members of the bargaining unit will not solicit merchants, businesses, residents or citizens located within the Village of Western Springs for contributions, donations or to purchase advertising in any Chapter or Chapter related publication or associate membership in the Chapter or any Chapter related organization without prior written approval of the Village Manager."

There is no dispute on this record that MAP was unwilling to agree to continue the language from the Teamsters' contract proposed by the Village at any point in the negotiations preceding this interest arbitration. For example, on August 7, 2003, in response to MAP's consistent position that the Village could not restrict the activities of non-employee MAP agents, the Village offered a counter proposal wherein it modified the prior language to restrict solicitation only by members of the bargaining unit and specifically noted that the restriction did "not apply to the solicitation efforts of the Metropolitan Alliance of Police or any of its agents who are not bargaining unit employees." In part, this was in response to MAP's contention that the prohibition of non-employee Union solicitation was a permissive, not a mandatory topic of bargaining under the controlling Illinois case law. See Village of Bensenville and Metropolitan Alliance of Police, 14 PERI 2042 (ILRB 1998) and The Declaratory Ruling regarding solicitation in Village of Wilmette and Service Employees International Union, Local 73, Case No. S-DR-02-009 (General Counsel Jacalyn J. Zimmerman, ILRB, June 12, 2002).

As of October 17, 2003, solicitation, as well as other issues, remained an open issue between the Village and MAP, the record reveals. At that time, MAP's position was that the Village should place no restrictions on employee soliciting, except that employees would not be allowed to solicit on Village time or use the Village name or equipment. The Village on the other hand continued to maintain that, as it had from August 7, 2003 forward, bargaining

unit employees but not the Union's other representatives or agents would be prohibited from soliciting citizens, businesses, merchants, etc., with the Village of Western Springs on behalf of MAP. MAP's position on October 17th in the parties' negotiations was that it wanted the "Bensenville language"[3] incorporated into the contract.

The record shows MAP was firm in its position at that time, and, in fact, took the negotiating tactic that the Village could "take it or leave it," if the undisputed assertions in Management's affidavits are to be credited. Given that contention, the Village

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[3] "While the Village acknowledges that bargaining unit employees may conduct solicitation of Bensenville merchant's residents or citizens, the Chapter agrees that no bargaining unit employees will solicit any person or entity for contributions on behalf of the Bensenville Police Department or the Village of Bensenville.

Bargaining unit members agree that the Village name, shield or insignia, communication systems, supplies and materials will not be used for solicitation purposes. Solicitation for the benefit of the collective bargaining unit may not be done on work time or in a work uniform. The bargaining unit employees agree that they will not use the words "Bensenville Police Department" in their name or describe themselves as the "Village of Bensenville." Bargaining unit members shall have the right to explain to the public if necessary, that they are members of an organization providing collective bargaining, legal defense and other benefits to all patrol-rank police officers employed by the Village.

The foregoing shall not be construed as a prohibition of lawful solicitation efforts by bargaining unit members directed to the general public. Each party hereto agrees that they will comply with all applicable laws regarding solicitation.

This Section 10.5 does not apply to the solicitation efforts of the Metropolitan Alliance of Police or any of its agents who are not bargaining unit employees."

therefore now claims that MAP never offered to accept a quid pro quo for changing what the Village believes was the status quo, i.e., the language in the labor contracts between the unit's former Union representative, IBT No. 714, and this Village, I note.

Thereafter, the parties decided to submit the issue of solicitation, along with other unresolved issues, to interest arbitration.[4] Prior to interest arbitration, on May 27, 2004, the Village submitted proposed Ground Rules and Stipulations ("Ground Rules") (which included comparables) to MAP, along with a letter asking MAP to review the proposed Ground Rules and Stipulations. MAP indicated only that it had an issue with Section 4 of the Ground Rules.[5] Accordingly, the Village removed Section 4. Thereafter, MAP did not express any issues or concerns regarding the Ground Rules and Stipulations.

Although the Ground Rules were not signed, on June 7, 2004, the Village and MAP exchanged final offers pursuant to the Ground Rules. With respect to solicitation, MAP proposed the following:

> While the Village acknowledges that bargaining unit employees may conduct solicitation of Western Springs merchants, residents or citizens, the Chapter agrees that no member of the bargaining unit will personally conduct any solicitations and that no bargaining unit

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[4] The majority of the 2003 Agreement between MAP and the Village incorporated language from the previous Agreement between the Village and Teamsters, the record evidence discloses.

[5] "**4. Public Statements.** All negotiations shall be closed to the public, press and persons other than those designated as members of the respective negotiating teams. No statements concerning the contents of negotiations shall be released to the news media or public until after the parties agree that impasse has been reached."

> employee will solicit any person or entity for contributions on behalf of the Western Springs Police Department of the Village of Western Springs.
>
> Bargaining unit members agree that the Village name, shield or insignia, communication systems, supplies and/or materials will not be used for solicitation purposes. Solicitation for the benefit of the collective bargaining representative by bargaining unit employees may not be done on work time or in a work uniform. The bargaining unit employees agree that they will not use the words "Western Springs Police Department" in their name or describe themselves as the "Village of Western Springs". Bargaining unit members shall have the right to explain to the public, if necessary, that they are members of an organization providing collective bargaining, legal defense and other benefits to all patrol rank officers employed by the Village.
>
> The foregoing shall not be construed as a prohibition of lawful solicitation efforts by bargaining unit members directed to the general public. Each party hereto agrees that they will comply with all applicable laws regarding solicitation.
>
> This Section 6 does not apply to the solicitation efforts of the Metropolitan Alliance of Police or any of its agents who are not bargaining unit employees.

The Village proposed that:

> The Chapter agrees that members of the bargaining unit will not solicit merchants, businesses, residents or citizens located with the Village of Western Springs for contributions, donations or to purchase advertising in any union or union-related publication or associate membership in the union or any union-related organization without the prior written approval of the Village Manager.

On June 8, 2004, after final offers were exchanged, the Village, through its attorneys, sent MAP's attorney e-mail correspondence with an attached draft of solicitation language that

it could accept. On June 9, 2004, MAP and the Village reached a tentative agreement on a number of issues, including the issue of solicitation, with the solicitation language subject to approval of the MAP President.[6] The agreed-upon language restricted solicitation by bargaining unit members on behalf of MAP, but the restriction did not prohibit "the solicitation efforts of the Metropolitan Alliance of Police or any of its agents who are not bargaining unit employees." It is apparent that the agreement on the final language of the no-solicitation rule at that point was an important part of the parties reaching the June 8, 2004 tentative agreement, both parties agree. It is also not disputed however

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[6] The June 8, 2004 Tentative Agreement on solicitation provided:

> Bargaining unit members agree that when it conducts solicitations that are permitted, the Village name, shield or insignia, communication systems, supplies and materials will not be used for solicitation purposes. Solicitation for the benefit of the collective bargaining representative by bargaining unit employees may not be done on work time or in a work uniform. The bargaining unit employees agree that they will not use the words "Western Springs Police Department" in their name or describe themselves as the "Village of Western Springs." Bargaining unit members shall have the right to explain to the public, if necessary, that they are members of an organization providing collective bargaining, legal defense and other benefits to all patrol-rank police officers employed by the Village.
>
> Except as provided above, the foregoing shall not be construed as a prohibition of lawful solicitation efforts by bargaining unit members directed to the general public. This provision does not apply to solicitation efforts of the Metropolitan Alliance of Police or any of its agents who are not bargaining unit employees. Each party agrees that they will comply with all applicable laws regarding solicitation. This provision shall not be subject to the grievance and arbitration procedures set forth in this Agreement.

that this tentative agreement was expressly conditioned on, among other things, the express approval of MAP's President, Joseph M. Andalina, I note.

It is also not disputed that President Andalina would not approve the no solicitation language, contained in footnote 6, and refused to sign off on the tentative agreement of June 8, 2004 on that basis. See Village Exhibit 21 and Union Exhibit 36, the affidavit of MAP President Andalina. It is also stipulated, as already mentioned, that the above-referenced tentative agreement was expressly conditioned on the approval of President Andalina, as well as the ratification of that agreement by the bargaining unit members and the Village Council, the facts of record show.

The parties also agree that the tentative agreement of June 8, 2004 resolved all the then pending issues, with the exception of solicitation language which is the sole subject of this arbitration. All other sections of the current collective bargaining agreement between these parties were ratified and signed by both parties in September, 2004 and indeed all contractual provisions except a no-solicitation rule have been implemented, the evidence of record reveals.

The evidence finally discloses that, on June 25, 2004, MAP's attorney, via e-mail correspondence, offered to include language restricting the rights of bargaining unit employees to solicit within the Village of Western Springs and stated that he was authorized to do a side letter. However, negotiations on the side letter later fell apart, and ultimately MAP would not agree to such

a side letter nor to reduce and incorporate that restriction into the contract language. Thereafter, as already mentioned, the Chapter and Village approved the contract implementing all provisions other than that dealing with solicitation, and agreed that the issue of solicitation would be the sole issue submitted to this interest arbitration.

It was upon these facts that this case came to me for resolution.

III. ISSUE AT IMPASSE

Pursuant to the Parties' Final Offer, and by agreement of the Parties, the following issue is at impasse:

(1) Article XIV, §6, Solicitation (Un. Ex. 1)

IV. THE PARTIES' FINAL OFFERS

The Parties' final offers may be summarized as follows:

1. Union Proposal

Section 6. No Solicitation.

While the Village acknowledges that bargaining unit employees may conduct solicitation of Western Springs merchants, residents or citizens, the Chapter agrees that no bargaining unit employee will solicit any person or entity for contributions on behalf of the Western Springs Police Department or the Village of Western Springs.

Bargaining unit members agree that the Village name, shield or insignia, communication systems, supplies and materials will not be used for solicitation purposes. Solicitation for the benefit of the collective bargaining representative by bargaining unit

employees may not be done on work time or in a work uniform. The bargaining unit employees agree that they will not use the words "Western Springs Police Department" in their name or describe themselves as the "Village of Western Springs." Bargaining unit members shall have the right to explain to the public, if necessary, that they are members of an organization providing collective bargaining legal defense and other benefits to all patrol-rank police officers employed by the Village.

The foregoing shall not be construed as a prohibition of lawful solicitation efforts by bargaining unit members directed to the general public. Each party hereto agrees that they will comply with all applicable laws regarding solicitation.

This Section 6 does not apply to solicitation efforts of the Metropolitan Alliance of Police or any of its agents who are not bargaining unit employees. (Un. Ex. 1, Final Offer Dec. 9, 2005).

2. Village Proposal

Section 6. No Solicitation of Local Businesses.

While the Village acknowledges that bargaining unit employees may solicit on behalf of the Metropolitan Alliance of Police, the Chapter and bargaining unit employees agree that bargaining unit employees will not solicit merchants, businesses, residents or citizens located within the Village of Western Springs (1) for contributions or donations to the Chapter or any Chapter related organization; (2) to purchase advertising in any Chapter or Chapter related publication; or (3) for associate membership in the

Chapter, without the prior written approval of the Village Manager. (Village Ex. 2, Final Offer Dec. 15, 2005).

V. THE STATUTORY CRITERIA

A. IPLRA, Section 14 - Interest Arbitration Provisions

The statutory provisions governing the issues in this case are found in Section 14 of the IPLRA:

> **(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).
>
> **(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.
>
> **(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 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.

VI. CONTENTIONS OF THE PARTIES

A. The Village

The Village argues its final offer should be adopted by this Arbitrator because solicitation is a breakthrough issue. The Village reasons that the prior Labor Agreement between the Village and the Teamsters established that the status quo in Western Springs is to have a no-solicitation contractual provision in its collective bargaining agreement with its police force. A recognition of that fact requires a finding that the line of arbitral authority that has developed since "impasse resolution came to police and fire in 1986 in this state" that analyzes and controls "breakthroughs that would substantially change the long-standing status quo" is applicable in the instant case. See Village of Arlington Heights, Case No. S-MA-88-89 at p. 12, 93 (Briggs, arb. Jan. 29, 1991); City of Highland Park, at p. 18 (Feb. 7, 1995), where I stated that "The Union ... is seeking to change the status quo, to obtain through this interest arbitration something that it could not have obtained and could not have been expected to have obtained through collective bargaining."

It is not the role of interest arbitration to so alter the relationship between the parties. Since the Village has had a no solicitation provision restricting bargaining unit members from soliciting its residents, businesses, and merchants since at least 1991, no solicitation is the status quo, the Village asserts over and over again. MAP has not and cannot meet the high burden necessary to justify deviating from the status quo, it also concludes, based on the following specific contentions.

First, MAP cannot demonstrate the restriction upon solicitation by bargaining unit employees, which has been in existence since 1991, does not work, the Village strongly believes. Contrary to MAP's "erroneous perception" that the Village's final offer restricts MAP's ability to solicit, it adds, the Village's final proposal actually only restricts solicitation by bargaining unit employees and not MAP agents or officers or affiliates who are not bargaining unit members.

That observation suggests that the standard of reasonableness is not violated by either the status quo or the tentative agreement's no-solicitation language -- now rejected -- nor is a breakthrough required because there is any genuine harm done to the Union's right to solicit truly voluntary donations, the Village urges.

Second, the Village's proposed language does not create any "equitable or due process problems" for MAP because the Village's proposal does not treat MAP differently than any other organization that wishes to solicit in Western Springs and has no effect on

MAP's ability to fund raise. As the Village assesses the ramifications of its final offer to the extent the Union claims otherwise, its arguments are either made in simple error or in an effort to cover up the truth here, the Employer avers. Simply put, this Village believes MAP's solicitation techniques have been the subject of numerous complaints throughout the greater Chicago/Will County area, and that fact should be recognized by me. The attempt by the Union to raise issues of a right to "free speech" in this commercial context cannot outweigh the real potential for disruption and arrogance its tactics often bring, the Village insists.

Third, the Village has not resisted bargaining, but rather as illustrated by the bargaining history, was flexible and willing to negotiate on the issue of solicitation, it maintains. Thus, MAP has not and cannot demonstrate any need for change from the status quo, it says. The Employer is quick to point out that MAP is the party who has been inflexible and that it, not the Village, bargained on this point on the basis of "take it or leave it" as regards its demand for the so-called "Bensenville language."

Finally, on this line of argument, even assuming MAP could meet this burden, MAP cannot establish that it offered a reasonable quid pro quo, a prerequisite for the change, the Employer avers. It thus claims that the bargaining history reveals that if there is a question of bad faith bargaining in this case, the fault lies with the Union. The Village strongly argues that its own flexibility and willingness to exchange value for language in this

provision it deems minimally acceptable is clearly evident from what it -- rather than this Union -- offered across-the-table as the record when fairly read must reveal.

In addition, the Village's offer should be adopted because MAP previously tentatively agreed to restrictions upon solicitation by bargaining unit members within the Village of Western Springs. This Arbitrator should give the tentative agreement considerable weight in determining the reasonableness of the parties' offers because it was reached by the parties' representatives after bargaining and it was only rejected because MAP's president refused to sign off on it, not because the real party at interest, i.e., the bargaining unit employees, rejected the restriction upon solicitation. Accordingly, the Arbitrator should adopt the final offer that most closely resembles the tentative agreement.

It is also to be remembered that, as this Village views the evidence, the statutory factors, including public policy, fully support adopting the Village's final offer. The Village's rationale for bargaining the restrictions on the solicitation provision initially, and now desiring and proposing to maintain it, is that in a small community like Western Springs, confusion is likely to occur if bargaining unit employees are allowed to directly solicit funds. Community members might perceive that the bargaining unit employees are soliciting on behalf of the Village or the Village Police Department (instead of MAP) and/or that the level of service or protection they receive is somehow dependent upon their contributions. To the Employer, the Village

management's concerns are well-founded and reasonable in light of the problems and confusion relating to solicitation in other communities, even when conducted by non-employees.

For all these reasons and the reasons argued below, the Arbitrator should adopt the Village's final offer, the Employer concludes.

B. <u>The Union</u>

Based on the specific facts in this case, which the Union emphasizes are essentially undisputed, since the parties presented the case through argument and the submission of exhibits, rather than by way of a formal evidentiary hearing, the Union urges that its final offer should be selected as more reasonable in all its aspects. MAP's arguments in support of that position may be summarized as follows.

Initially, the Union stresses that its proposed comparable communities were selected on the basis of updated, neutral and verifiable data. The Union argues that it prepared a database of all the communities in the Chicago metropolitan area in a spreadsheet. The spreadsheet contained values for population, sales tax and equalized assessed valuation (EAV). These particular values were selected because they represent a community's relative resources available to pay wages and benefits for their employees. The values were obtained from the most recent government sources, namely the 2000 census for population, and the Illinois Comptroller's 2004 Fiscal Responsibility Report Cards for the sales

tax and EAV. These numbers were then used to compute a value for per capita sales tax and per capita EAV.

After the data had been assembled, the values for Western Springs were compared to all of the other communities in the Chicago metropolitan area, starting at +/- 10%. No communities matched all the criteria at +/- 10%, so the search was expanded in 5% increments up until +/- 50%. At +/- 50%, seven Chicago metropolitan communities were identified as having comparable resources available to pay wages and benefits. These communities were:

Cary
Clarendon Hills
LaGrange Park
Lindenhurst
Palos Heights
Palos Hills
Warrenville

In order to make a valid labor market comparison, communities which were 25 miles or more distant from Western Springs were eliminated. This resulted in the following communities:

Clarendon Hills
LaGrange Park
Palos Heights
Palos Hills
Warrenville

The Union points out that the summary of this data is included in Union Exhibit 31. Of the Union's five proposed communities, four of these communities fell within all comparable criteria at +/- 50%, it asserts. One community, Palos Heights, fell outside the +/- 50% comparable criteria on the issue of per capita tax, but was within 56% of Western Springs' per capita tax, the Union also

submits. As Palos Heights fell within the primary criteria of population, EAV and sales tax revenue, and only slightly fell outside of the criteria on the narrower criteria of per capita sales tax, it was included within the Union's list of comparables, the Union further argues.

On the other hand asserts MAP, the Village's selection of comparable communities is flawed because it is based on less precise criteria and uses outdated data. Similar to the Union's methodology, the Village uses a 25 mile radius, as well as criteria for population, EAV and sales tax revenue. The Village's data is inferior, however, because it uses fiscal year 2000 and 2001 data instead of the available fiscal year 2004 data. Using this methodology, the Village generated a list of communities that fell within +/- 50% of Western Springs population, EAV and sales tax revenue. The Village did not make any comparisons based on per capita EAV or per capita sales tax revenue, the Union also claims.

Because the Village uses a portion of the Union's analytical methodology, all but one of the Union's comparable communities are present in the Village's list, the Union stresses. The Village's nine proposed comparable communities are:

Clarendon Hills
Palos Hills
Flossmoor
LaGrange
LaGrange Park
Prospect Heights
River Grove
Riverside
Warrenville

The Village's list thus includes communities that were excluded from the Union's list. Those communities are:

Flossmoor
LaGrange
Prospect Heights
River Grove
Riverside

The difference between the Union's and the Village's list is attributed entirely to the recentness of the data, the Union maintains. While the use of per capita figures for EAV and sales tax revenue would further demonstrate a reason to exclude three of the municipalities, it would not be necessary to consider it in order to match the Union's and Village's lists. However, when considered, the differences become clear. For example, argues the Union, Flossmoor's 2004 sales tax revenue ($167,543) is less than 25% Western Springs' sales tax revenue and its per capita sales tax of $18.01 is less than 33% of Western Springs' per capita sales tax revenue. LaGrange Village's sales tax revenue is more than 50% of Western Springs' sales tax revenue.

Based on a similar line of reasoning, Prospect Heights did not disclose their 2004 EAV at the time of this writing, but their 2002 EAV was only $191,000,000, with a resulting per capita EAV of $11,182, placing them below 50% threshold on two factors. River Grove's EAV of $180,526,918 was even less than Prospect Heights and their per capita sales tax revenue of $87.26 was too high for consideration. Finally, Riverside's sales tax revenue of $289,440 excludes it from consideration, claims the Union. Had the Village used more timely data, the communities of Flossmoor, LaGrange,

Prospect Heights, River Grove and Riverside would have been excluded by its own criteria and methodology, it thus submits.

For the above stated reasons, the Union asserts that the Village's additional proposed comparable communities are not, in fact, comparable to Western Springs in any meaningful way and urges the Arbitrator to adopt the Union's proposed comparable communities.

The Union emphasizes that the importance of external comparability data in the context of interest arbitration proceedings has been repeatedly recognized by this Arbitrator. It cites Teamsters Local #714 and County of Cook and Sheriff of Cook County, Case No. L-MA-95-001 (1996), where I note:

> "In fact, many commentators have indicated that external comparability, at least, is indeed the most important factors in the usual interest arbitration case. The Neutral Chair agrees with that generalization, although it obviously does not always resolve the specific dispute. The particular facts must always be reviewed, in the appropriate and specific factual context and developed through proofs on the record." (Id. p. 13)

Other arbitrators have continued to follow what appears to be the prevailing view amongst Illinois arbitrators and placed greater emphasis on external comparability data in several interest arbitration awards, the Union observes. See, for example, County of Winnebago and Sheriff of Winnebago County and Illinois Fraternal Order of Police Labor Council, Case No. S-MA-00-285 (Benn, 2002), where the Arbitrator adopted the FOP's Final Wage Offer based on external wage comparability data offered by the FOP. Similarly, in City of Naperville and Illinois Fraternal Order of Police, Labor

Council, Case No. S-MA-92-98 (Benn, 2000), Arbitrator Benn found that external comparables outweigh the other statutory considerations, including internal comparability data, and adopted the FOP's Final Offer.

Despite the Union's emphasis on the differences in the parties' proposed external comparables, MAP forthrightly concedes that the comparable communities proposed by both sides in the current case indicate at least to it that "an overwhelming majority of the communities do not include language on solicitations in their contracts." Indeed, says MAP, the exhibits submitted into this record from both the Union and the Village provide "compelling evidence to support the Union's assertion that its Final Solicitation Offer is supported by external solicitation comparability data." Of the Union's comparable communities, MAP emphasizes, only Warrenville includes any reference to solicitation. Warrenville police officers are represented by MAP and the language of that section is almost identical to the Union's proposal, the Union asserts. Additionally, none of the other collective bargaining agreements proposed by the Union contain any solicitation provisions, it says.

A review of the Village's proposed communities only strengthens the Union's position, says MAP. Of the five additional communities proposed by the Village, Flossmoor, LaGrange, River Grove and Riverside do not contain any reference to solicitation language. Prospect Heights, a municipality whose police officers are represented by MAP, contains solicitation language virtually

identical to the Union's proposal for this contract, argues MAP.

Consequently, of all the comparable communities proposed by the Village and Union, only two of the ten have a collective bargaining agreement that contain any reference to solicitation, MAP contends. Both of those communities' police departments are represented by the Union, and both have language virtually identical to the Union's proposal for this contract, it stresses. Thus, there is simply no support for the Village's language on solicitation found in any of the proposed comparable communities, MAP urges. The language of the Village's final offer is not represented anywhere in any of the comparable communities and it would be incompressible for the Village to claim that any review of the comparable communities supports their position, the Union accordingly concludes.

To the Union, internal comparability favors its final offers, too. As the Village of Western Springs contains no other bargaining units with a collective bargaining agreement, there is no support for the Village's final offer in other Village contracts. Support for the Union's final offer, however, is found in a review of the solicitation language found in its other contracts, which is its internal comparability. Union Exhibits 6-27, combined with Village Exhibit 31, represent all of the solicitation language found in collective bargaining agreements between the Union and other municipalities and counties. The language in these collective bargaining agreements is either identical to, or at the very least substantially similar to the

Union's final offer, and is based on the language derived from the Village of Bensenville and Metropolitan Alliance of Police, 14 PERI 2042 (ILRB 1998), hereinafter referred to as the "Bensenville language."

Since Bensenville, the Union has attempted to make the Bensenville language standard in all of the collective bargaining agreements in which the municipality has suggested or requested solicitation language. While there are Union contracts that do not conform precisely to the Bensenville language, this is due to errors made by attorneys during the contract negotiation process, the Union argues. Union President Joseph A. Andalina has reluctantly signed the contracts with these variations, and did so only in cases where the changes were brought to his attention after the local chapter had ratified the contract.

Throughout negotiations, it was repeatedly explained the Union organization (not the local chapter) has a policy regarding solicitation language and that any changes to their language had to be approved by the Union. The Union's strict adherence to this policy is evidenced by the tentative agreement reached on June 8, 2004, says MAP. Just prior to the originally scheduled interest arbitration, the Union and the Village negotiation teams were able to come to agreement on all items. One part of this tentative agreement was a modification to the Union's solicitation language. The Union emphasizes that the tentative agreement on this item specifically stated that it was subject to approval by MAP. Upon review, the Union was unwilling to accept the modifications to this

language, it acknowledges that fact does not provide a basis for overriding the applicable statutory criteria, the Union strongly contends.

In sum, the Union urges that it is clear that the Union's Final Offer on solicitation is consistent with other collective bargaining agreements negotiated by the Union; while the Village's final offer bears no resemblance to language found in any of the Union's other collective bargaining reasons.

In reply to the arguments raised by the Village, the Union asserts as follows:

(1) There is a clear need to break from the current status quo.

(2) The Union's offer is more similar to the tentative agreement of June 8, 2004.

(3) The Village's public policy argument is disingenuous and without merit.

This is the first contract between the Village of Western Springs and MAP, the Union reminds the Arbitrator. MAP has, and will continue to utilize fund raising in order to defray the costs and expenses of managing a labor union, it typically solicits in the municipalities where it represents bargaining units. Additionally, a cursory view of MAP's AG 990 IL Report shows that a substantial portion of its income comes from this activity, and limiting its ability and right to solicit will have a chilling effect on its ability to render services to its bargaining unit members, the Union claims. This is a clear demonstration of an equitable problem for the Union, should its ability be restricted in the manner of the status quo language, it therefore concludes.

The remaining issue proposed by the Village is that the Union did not offer a quid pro quo for its change from the status quo. The Village suggests that the Union's offer should be rejected on the basis that it does not offer a quid pro quo for choosing to remove the provisions that would render it a permissive subject of bargaining. As previously stated, and conceded by the Village in its brief, the status quo language involves a permissive subject of bargaining. During negotiations, the Village's proposals maintained the blanket prohibitions against the Union and therefore preserved its status as a permissible subject of bargaining. There was accordingly no duty to offer to bargain. Finally, the Village's claim that MAP was unwilling to offer any concession is also without merit as it acknowledges that a side letter was authorized to address some of the Village's concerns.

Based on the foregoing, its final offer should be adopted, the Union thus urges.

VII. FINDINGS AND DISCUSSION

The traditional way of conceptualizing interest arbitration is that parties should not be able to attain in interest arbitration that which they could not get in a traditional collective bargaining situation. Otherwise, the point of bargaining would be destroyed and parties would rely on interest arbitration rather than pursue it as a last resort. On this concept, one arbitrator stated:

> If the process [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 parties particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining. Will County Board and Sheriff of Will County (Nathan, 1988) quoting Arizona Public Service, 63 LA 1189, 1196 (Platt, 1974); accord, City of Aurora, S-MA-95-44 at pp. 18-19 (Kohn, 1995).

There should not be any substantial "free breakthroughs" that would not be possibly negotiable by the parties across-the-table; this indeed is the general rule for economic demands, I note. For example, if the Arbitrator awards either party a wage package which is significantly superior to anything it would likely have obtained through collective bargaining, or gives the other party a non-economic term of the contract that it never could bargain to get, too, that party is not likely to want to settle the terms of its next contract through good faith collective bargaining, many interest arbitrators have pointed out. It will always pursue the interest arbitration route. See, e.g., Village of Bartlett, FMCS Case No. 90-0389 (Kossoff, 1990). That is why there is such a great emphasis on the question of whether or not either party in point of fact ever moved from its initial proposal on solicitation,

or offered to trade other items for the inclusion of its proposal in the parties' labor contract.

However, as has been developed in some detail above, it is clear from this record that neither party moved much from the point of its respective initial proposals on solicitation throughout the majority of the bargaining in 2003 and 2004 until the last possible moment prior to the establishment of the ground rules for the presentation f the then-scheduled interest arbitration in May, 2004, I note.

In part, this apparent impasse on solicitation perhaps was caused by the Village's belief that the prior no solicitation rule between it and the Union which had formerly functioned as this unit's collective bargaining representative, IBT No. 714, represented the "status quo." One basis for this bargaining position indeed may have been my earlier decision addressing this very issue -- which constitutes the status quo and whether a new representative union should be bound by prior bargaining history and a prior union's status quo -- had found that "absent proof of fraud or misfeasance on the part of the prior Union in its bargaining for the bargaining unit, ... the most important factors [(in determining status quo)] is the history of what went before, i.e., past practice and bargaining history." Village of Elk Grove and MAP, ISLRB Case No S-MA-95-11 at pp. 22-23 (Feb. 28, 1996).

Another aspect of this issue of what is the status quo in this case, though, is the fact stressed by MAP that under the language of Section 6 of the prior contracts between this Village and IBT

No. 714, the Union itself was prohibited from conducting solicitation without the prior approval of the Village Manager. The Union not only has strongly argued that such a restriction on solicitation is in direct opposition to the Union's practice of conducting fund raising in many of the communities where it has local chapters, but it contends that it is clearly established that a proposal to limit the fund raising efforts of non-employees is not a mandatory subject of bargaining. See Village of Bensenville and Metropolitan Alliance of Police, 14 PERI 2042 (ILRB 1998) supra.

The "permissive status" of the subject of whether non-employee representatives or agents of a union may solicit money means to MAP that the "past practice and bargaining history" before the current round of bargaining stands on a different footing from what was at issue in the case in Village of Elk Grove Village and MAP, supra.

When I decided that the prior contractual provisions between MAP and the Village of Elk Grove Village were indeed the status quo (Id. at 20) to MAP, the Village could not attempt to enforce the language from the expired contract, absent agreement to actually incorporate that language in the current negotiated contract between these parties, and a demand to go to interest arbitration over what the Employer has maintained is the "status quo" would be an unfair labor practice, it stresses. See Village of Bensenville and Metropolitan Alliance of Police, 14 PERI 2042 (ILRB 1998) supra. That is the "plus element" that takes this case out of the

line of cases exemplified by Village of Elk Grove Village and MAP, ISLRB No. S-MA-95-11, supra, as MAP sees it.

A change in the identity of the exclusive bargaining representative in and of itself may not justify a departure from the status quo, I note. If a union or public employer could simply erase all prior bargaining history every time its elected representative changes, any stability in the collective bargaining process would be destroyed, I have now found on several occasions. Moreover, a party might choose to change representatives for that very purpose -- just to start over. Yet, here, the fact that the language in the contracts between the Village and the Teamsters prohibiting soliciting by officers remained unchanged from 1991-2003, is simply irrelevant, I hold. The former language impermissibly impinges this Union's right to fund raise as the expired language does, while still maintaining that MAP cannot demonstrate a compelling need for change from the status quo, misses the point, I specifically reason.

Indeed, even the Village has demonstrated that the language needs to change by its shift in position in its final offer, it is to be remembered. After all, prior to its final offer, the Village's proposals included provisions that would have limited the Union's ability to fund raise by requiring prior written authorization of the Village Manager in a manner consistent with the expired contract language.

The changes reflected in the tentative agreement of June 8, 2004, and the Village's final offer, reflect that the status quo

doctrine actually does not apply in the instant case, I thus rule. The overall goal of interest arbitration which is "designed to merely maintain the status quo and keep the parties in an equitable and fair relationship, according to the statutory criteria" cannot control the resolution of this case, I am thus persuaded, based on the specific facts of this case. The Village is not proposing the "status quo" language; neither is MAP, I therefore hold.

Another straw man issue is the entire question of the differences in external comparable jurisdictions, I also rule. While the Union vigorously presented arguments on its perceptions that the Employer's data in compiling its list of comparables was faulty, there was no objection to these comparables made at the time the ground rules were prepared, I note. Although the ground rules were never signed, still that fact is of some weight, I also conclude.

More important, though, the analysis of both MAP and the Village reveals that there is essentially no difference in result, no matter which set of comparables is used as a basis for analysis. Consequently, I find that both sets of comparables would serve the purpose as regards the statutory factor of external comparability and I so rule.

Both parties went to great pains to detail its analysis of external comparability. However, as I found in the Village of Bensenville and the Metropolitan Alliance of Police, Bensenville Police Chapter #165, ISLRB No. S-MA-05-104, the simple fact is that, in cases where tentative agreements have been reached, this

"extra statutory factor" must be evaluated. In this case, I find, as I did in Bensenville, but also in The County of Ogle and the Ogle County Sheriff, Co-Employers and the Illinois Fraternal Order of Police Labor Council, ISLRB Nos. S-MA-03-051, 053 and 054 (May 2, 2005), that the first inquiry as a threshold matter, must not be the applicability of the statutory factors to these factual circumstances, but the proper weight to be given to the June 8, 2004 tentative agreement between these parties.

It is also important to note, as the parties have agreed, that my authority is not limited to a selection of either party's last, best offer, as would be the case for economic issues under the provisions of the Illinois Public Employees Relations Act, 5 ILCS 315/I, as amended. Because solicitation is a non--economic issue, I have the ability to adopt the language of the tentative agreement on the pending issue, if I determine it should be given conclusive weight.

1. The Illinois Arbitral Precedent

This inquiry thus begins with the charge given to Illinois interest arbitrators by the line of arbitral authority that has developed since impasse resolution came to police and fire in 1986 in this state and the precedent imported from those that preceded Illinois with third party resolution of interest disputes. The Arbitrator's commission is to approximate that to which the parties would have agreed had they been able to reach a bilateral agreement.

In the view of some, what better indication of what the parties would have agreed to than the agreement actually reached by their representatives? The parties' representatives are most often, if not nearly always, better informed on the issues, the comparables and the relative strengths and weaknesses of each party's bargaining positions. Who better than to delineate what the parties would have agreed to if an overall agreement had been reached? This view was adopted by Arbitrator James M. O'Reilly in his City of Alton award:

> There was no evidence that the tentative agreement reached on July 24, 1994 was negotiated based upon a lack of knowledge of parity relationships, misinformation, or a lack of awareness of external comparisons. Thus it must be considered to have been negotiated in good faith and the Neutral Arbitrator can find no compelling reason that he would be able to render an Award which would be more reasonable than the parties were able to achieve during the collective bargaining process.[7]

Others lean more to the democratic side of the equation -- regardless of what the negotiators agreed to, it was understood to be subject to ratification. Nothing should interfere with the absolute right of the governing body or membership to vote to approve or disapprove the tentative agreement their representatives reached. Arbitrator Peter Meyers articulated this view in his County of Sangamon award:

> Tentative agreements reached during the course of collective bargaining sessions are just what their name suggests, tentative. A

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[7] City of Alton and IAFF Local No. 1255, FMCS No. 95-00225 (O'Reilly, 1995) at p. 3.

> tentative agreement on an issue has been reached by the parties' bargaining representatives does not represent the final step in the collective bargaining process; such an agreement instead is an intermediate step. For a tentative agreement to acquire any binding contractual effect, it generally must be presented to the parties themselves, ratified and ultimately executed before it may be imposed as binding upon the parties' relationship.[8]

Arbitrators O'Reilly and Meyers seem to represent the polar extremes on the question. However, this question has been raised in several Illinois interest arbitrations, and while at first reading the awards might seem to be at extreme variance with each other, there is a pattern to the decisions. On some occasions the tentative agreements were ignored by the neutral; on others they were accorded some weight in the analysis. In still others, they were given great weight.

A careful reading of those arbitration awards, and taking into consideration all of the factors considered by the neutrals, a consensus of opinion can be found.[9] Tentative agreements, reached in bilateral good faith negotiations, but subsequently rejected by a party, are to be accorded some weight in a subsequent interest arbitration. What weight to be accorded is a question of the specific circumstances of each case.

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[8] County of Sangamon and Sangamon County Sheriff and Illinois Fraternal Order of Police Labor Council, S-MA-97-54 at pp. 6-7.

[9] See, e.g., City of Peru and Illinois Fraternal Order of Police Labor Council, S-MA-93-153 (Berman, 1995); City of Waterloo and Illinois Fraternal Order of Police Labor Council, S-MA-97-198 (Perkovich, 1999); and Oak Brook and Teamsters Local 714, S-MA-96-73 (Benn, 1996).

In his 2002 City of Chicago award, Arbitrator Steven Briggs summed the positions of many of those Illinois interest arbitrators who had previously considered the question in Illinois:

> In the relatively short history of Illinois public sector interest arbitration there have been a handful of cases where a tentative agreement was negotiated by the parties' representatives, recommended for ratification by the union bargaining team, then rejected by the union membership. The interest arbitrators to whom those cases were presented had to decide what weight, if any, should be given to the terms of the negotiated settlements. The parties to these proceedings cited each of those cases (citations omitted) and quoted selectively from them in their post hearing briefs. In the interest of brevity, the undersigned Arbitrator will not repeat those quotes here. Generally, Illinois interest arbitrators have concluded that the weight to be afforded a rejected tentative agreement depends upon:
>
> (1) the circumstances surrounding the negotiations that led to it (Was it negotiated in good faith by informed responsible representatives?);
>
> (2) the nature of the tentative agreement itself (Is it an accurate reflection of the accord the parties would have reached in a normal strike-driven process? Is it based upon miscalculation or other error?); and
>
> (3) the reasons for rejection (Legitimate concern over financial and other issues? A simple unjustified desire for more? Internal union politics?)[10]

Among the arbitration awards that Briggs reviewed in his opinion was that of Arbitrator George Fleischli who also considered

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[10] City of Chicago and Fraternal Order of Police Lodge #7 (Briggs, 2002), at pp. 19-20.

the import of a tentative agreement rejected by the union membership in Schaumburg in 1994:

> In dealing with this aspect of the dispute, a balance must be struck. On the one hand, it is important that the authority of the parties' respective bargaining teams not be unnecessarily undetermined. Specifically, in the case of the Union, its bargaining team ought not be discouraged from exercising leadership. Some risk taking must occur on both sides, if voluntary collective bargaining is to work and arbitration avoided, where possible. Clearly, the Union's membership had the legal right to reject the proposed settlement. However, the Union's membership (and the Village Board) must understand that, while it is easy to second guess their bargaining teams, whenever a tentative agreement is rejected, it undermines their authority and ability to achieve voluntary settlements.
>
> On the other hand, serious consideration should be given to the stated or apparent reasons for either party's rejection of a tentative agreement. If, for example, the evidence were to show that there was a significant misunderstanding as to the terms or implications of the settlement, those terms ought not be considered persuasive. Under those circumstances, there would be, in effect, no tentative agreement. However, if the terms are rejected simply because of a belief that it might have been possible to "do a little better," the terms of the tentative agreement should be viewed as a valid indication of what the parties' own representatives considered to be reasonable and given some weight in the deliberations.[11]

Neither Briggs nor Fleischli found any error or misunderstanding of the cost as a basis for the rejections by the union memberships in their cases. Rather, in each instance it was

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[11] Village of Schaumburg and Illinois Fraternal Order of Police Labor Council, Schaumburg Lodge No. 71, S-MA-93-155 (Fleischli, 1994) at pp. 33-34.

determined the membership thought its negotiators had given away too much at the table and should have "hung tough" to do better. In both instances, the tentative agreements were accorded weight -- described by Fleischli as "persuasive" in Village of Schaumburg and as "significant weight" by Briggs in City of Chicago:

> On balance, while the Board supports the FOP's right to reject the Tentative Agreement, it also recognizes that the Tentative Agreement reflects a delicate balance of accommodation. Any significant change in that balance -- any material modification of the ecosystem that has evolved through the collective bargaining process - could easily inflict more harm than good on the parties, their future relationship, and on the many other entities affected by the outcome of these proceedings. Accordingly, and for the reasons explained in the foregoing paragraphs, the Board has decided to give the Tentative Agreement significant weight.[12]

Arbitrator Marvin Hill was presented with an opportunity to consider the weight to be given to rejected tentative agreements in his City of Waukegan decision. Hill indicated that he was in accord with Fleischli's Village of Schaumburg reasoning:

> A tentative agreement indicates what the parties, or their duly appointed representatives thought was a result otherwise conducive to their interests. They are the insiders and presumptively know the environment and numbers better than any neutral. While certainly not dispositive (nor "res judicata") of a specified result in an interest arbitration, a party would be hard pressed to argue that a tentative agreement should be ignored by an arbitrator.[13]

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[12] City of Chicago, at p. 21.

[13] City of Waukegan and IAFF Local 473, S-MA-00-141 (Hill, 2001) at p. 66.

> Second, Baird failed to recognize the fact that the Union was proposing a wage system that involved "double-compounding" ...
>
> Third, the compressed bargaining/mediation time (2 1/2 hours) contributed to Baird's failure to compare the Union's offer to the other external comparable communities. Baird and the bargaining team only later realized that by adopting the Union's proposal, the City's traditional economic position vis-a-vis comparable communities with regard to wages would have drastically increased, without consideration of the City's relatively inferior and deteriorating economic position vis-a-vis communities such as Evanston.
>
> Fourth, Baird failed to consider the lucrative total economic package that the IAFF bargaining unit employees would obtain, when one also factored in the tentatively agreed to increases in paramedic pay and holiday pay.
>
> Fifth, and finally, the bargaining team grossly underestimated the impact of the economic settlement with the IAFF would have on other City bargaining units, most notably the FOP ...[14]

Arbitrator Hill credited the City's arguments as to the wage portion of the tentative agreement, not the remainder of the settlement.[15] Clearly, the first two "errors" by the Waukegan management team were of the type described by Arbitrator Fleischli in Village of Schaumburg. Failing to discern that the offer from the fire union was different from a previous one goes to the question of whether there was ever a "meeting of the minds" in Waukegan and certainly bears on the weight of the tentative agreement. The parties were not agreeing to the same offer.

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[14] City of Waukegan at p. 66-67.

[15] City of Waukegan at p. 67.

Waukegan and certainly bears on the weight of the tentative agreement. The parties were not agreeing to the same offer. Failing to understand that the fire union was proposing a double-compounding also goes to the question of whether a true agreement was reached.

Every negotiator, whether experienced or amateur, knows that he or she had better evaluate a proposed deal before accepting it. Allowing a party to extricate itself from the impact of a tentative agreement by pleading either that Bensenville is a binding standard, or by saying the attorneys have not always read carefully the negotiation no solicitation rules for all MAP Chapters, as President Andalina essentially states (Union Ex. 36), should not be enough to avoid the consideration of the tentatively negotiated terms of a labor contract, the better reasoned decisions all strongly indicate. I definitely agree for the reasons the above noted precedent decisions previously suggested, and I so hold.

2. The Western Springs/MAP Chapter 360 Tentative Agreement

What are the facts of this case against which the principles adopted by Illinois interest arbitrators may be applied to determine the weight to be given to this tentative agreement?

As the Union has emphasized, the Village spends thirteen pages of its brief-in-chief asserting a claim based on public policy which the Village believes supports the adoption of its final offer. The rationale that it uses to substantiate its public policy position appears to be two-fold. First, it claims that persons and business in the Village might get confused. Second, it

attempts to back that argument up with reports and claims from a significant number of Chicago-area municipalities who expressed concern with some fund raising efforts of MAP or other unions who represent rank and file police officers. While the Union vigorously presented arguments on its perceptions as to the underlying motivation of the Employer in pressing that contention and what MAP believes is an extremely broad no solicitation provision as set forth above, throughout negotiations and, the parties think the issue in this case is important enough to go to interest arbitration over this single issue, the simple fact is that enough evidence was presented to convince this Arbitrator that the Employer had at least some legal or factually based considerations for demanding some sort of no solicitation provision.

More important, as the Union itself stresses, what makes this case distinguishable from Village of Elk Grove Village, supra, and Village of Wilmette, supra, is that the issue in those matters revolved around the creation and implementation of solicitation language, in the first instance, and thus those precedent cases are not illustrative in deciding between two functionally similar sets of restrictions, as is the case here, I hold. After all, in the instant case, the Union is not denying that the Village has a legitimate interest in creating a rule against solicitation. Rather, the Union is insisting that such a rule must only affect the employees, and that it be equitable to the Union itself, as the Union repeatedly contended.

The genesis for the tentative agreement on June 8, 2004 was the recognition of the needs and interest of both parties, and a negotiated response to satisfy both, I firmly believe. While the Union has emphasized that there was an express reservation of final approval by MAP for the tentative agreement by MAP President Andalina, the fact is that there clearly was a negotiated result on the solicitation issue by experienced and professional representatives of both parties. There were offers and counter offers. These were trades for the language tentatively agreed to, the stipulated facts establish, as I read the exhibits and documents of record.

A tentative agreement was reached between experienced negotiators for both sides, I am thus persuaded, and the only intervening event that altered the course of ratification was President Andalina's belief that the agreed no solicitation provision did not mirror the Bensenville language or that there might have been an ambiguity in the bargained for provision on the issue of whether non-employee agents or representatives of MAP may solicit in Western Springs without any condition precedent, such as approval by the Village Manager. That claimed ambiguity, however, is not evident to me, from my own reading of the tentative agreement.

Moreover, the parties' subsequent tentative agreement to clarify the matter in a side letter which would limit the reach of the tentatively agreed to no solicitation rule set forth in footnote 6, infra, clearly would have resolved the concerns of

President Andalina, I find. It is very important to me that the negotiators reached agreements on such a side letter, and the Union then repudiated that agreement, too, the facts of record reveal. My response to these factual circumstances is that the tentative agreement should be enforced, then, under the applicable Illinois precedent, "absent very strong facts dictating some other conclusion." See my discussion in The County of Ogle and the Ogle County Sheriff, Co-Employers, supra at p. 52.

In this case, I find no "strong facts" to trump the fact of the negotiated tentative agreement as the best reflection of what the parties would bargain -- and indeed did bargain-- at arm's length. What is contemplated in this statutorily driven bargaining is that the bargainers be authorized to "make a deal" on all the issues and that deal, at minimum, has to be considered some evidence of what a freely struck deal would be, I specifically conclude.

Given the Act's impasse resolution structure, culminating in interest arbitration as the method to "simulate a bilateral negotiated agreement," I am thus convinced, I reiterate, that the strong presumption must be that the tentative agreement under review in this case must be given great weight, as both parties have at least indirectly argued, I also note. It is to be remembered that what is contemplated for the proper role of any interest arbitrator is to find "the closest approximation" to what the parties would bargain in a strike-driven impasse resolution setting if that avenue available in the private sector and in

Illinois to teachers and other employees in education, for example, could be used by the police and fire fighters. What better way to do that than to look with great care at what the parties' duly authorized negotiating teams actually bargained, I again am constrained to point out. See County of Ogle and Ogle County Sheriff, Co-Employers, supra, at p. 53

These observations suggest the answer to the critical issue of the weight to be given by me in this specific case to the tentative agreements under review. I determine that great and controlling weight must be given to the fact and existence of these tentative agreements in this particular case, for all the reasons set forth above.

VIII. CONCLUSION

No generalization by an arbitrator can provide a final resolution to the general problem of the issue of what weight is proper to be given to a rejected tentative agreement in a given case. The facts in each case must be analyzed with great care, I stress.

I of course understand the logic behind the argument that an interest arbitrator routinely or automatically giving a tentative agreement a binding effect in an interest arbitration would override part of the comprehensive statutory scheme of the Illinois Public Employees Labor Relations Act. The parties in the instant case have correctly identified the fact that one basic principle contained in the Act is the ability of the Union's rank and file to ratify such tentative agreements or reject them, while the involved

Employer has an equally clear, basic right to formally approve and adopt such tentative agreements or to reject those bargains in their official capacity as a public Employer entity. The reservation of final approval of this specific tentative agreement to President Andalina is also an undisputed fact -- still, it should be apparent that the facts of a given case are a good deal more important than any generalization determining the weight properly to be given the June 8, 2004 tentative deal. I find the above unique and particularized facts to be controlling in this case, as I have detailed in some length above, and I so hold.

IX. AWARD

Using the authority vested in me by the parties' stipulations, as set forth above, I select the parties' tentative agreement as to Article XIV, Section 6, as set forth in footnote 6 above, to be the no solicitation provision to be included in the parties' current labor contract, and I so rule. On balance, this provision most fully complies with the controlling Illinois precedent cases and the applicable Section 14(h) decisional factors, I further specifically find. It is so ordered.

ELLIOTT H. GOLDSTEIN
Arbitrator

March 21, 2007