

**BEFORE ARBITRATOR
STEVEN M. BIERIG**

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN: THE VILLAGE OF LAKE BLUFF, ILLINOIS AND THE ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL	ISSUES: 1) 2018 WAGES 2) USE OF PART-TIME OFFICERS ILRB CASE NO. S-MA-16-123 FMCS NO. 170412-01473-6 ARB. NO. 17-99
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Before: Steven M. Bierig, Arbitrator

APPEARANCES:

**For The Illinois Fraternal Order of Police
Labor Council:**

Jeffrey Burke

For The Village of Lake Bluff:

**Jill P. O'Brien
Laner Muchin**

Locations of Hearing:

**40 East Center Ave.
Lake Bluff, Illinois**

Date of Hearing:

February 12, 2018

Post -Hearing Briefs Exchanged:

May 7, 2018

Date of Award:

June 6, 2018

AWARD:

For reasons stated in this Opinion and Award, the Arbitrator finds:

The following shall be incorporated into the May 1, 2016 – April 30, 2019 Collective Bargaining Agreement between the parties:

Wages:

The Union's offer is adopted.

Wage Schedule for May 1, 2016 – April 30, 2019 Contract	
Date	% Increase
May 1, 2016	2.50%
May 1, 2017	2.50%
May 1, 2018	2.50%
TOTAL INCREASE = 7.50%	

Use of Part-Time Officers:

The Union's position is accepted and the *status quo* shall remain.

**Steven
Bierig**

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Steven M. Bierig, Arbitrator
June 6, 2018

I. **INTRODUCTION**

The Interest Arbitration Hearing took place on Monday, February 12, 2018, at 40 East Center Avenue in Lake Bluff, Illinois. The Hearing commenced at 11:00 a.m. before the undersigned Arbitrator, who was appointed to render a final and binding decision in this matter. At the Hearing, the parties presented their positions and evidence in narrative form and were afforded a full opportunity to examine and cross-examine. A 170-page transcript of the Hearing was prepared. The parties filed Post-Hearing Briefs that were exchanged through the Arbitrator on May 7, 2018, at which time the evidentiary portion of the Arbitration was declared closed. All parties stipulated to this Arbitrator's jurisdiction and authority to issue a final and binding Award in this matter. (Jt. Ex. 2)

II. **RELEVANT STATUTORY LANGUAGE**

Section of The Illinois statute concerning use of Part-Time Police Officers:

Sec. 3.1-30-21. ***Part-Time Police.*** A municipality may appoint, discipline, and discharge Part-Time Police Officers. A municipality that employs Part-Time Police Officers shall, by ordinance, establish hiring standards for Part-Time Police Officers and shall submit those standards to the Illinois Law Enforcement Training Standards Board.

Part-Time Police Officers shall be members of the regular Police department except for pension purposes. Part-Time Police Officers shall not be assigned under any circumstances to supervise or direct full-time Police Officers of a Police department. Part-Time Police Officers shall not be used as permanent replacements for permanent full-time Police Officers.

Part-Time Police Officers shall be trained under the Intergovernmental Law Enforcement Officer's In-Service Training Act in accordance with the procedures for Part-Time Police Officers established by the Illinois Law Enforcement Training Standards Board. A Part-Time Police Officer hired after January 1, 1996 who has not yet received certification under Section 8.2 of the Illinois Police Training Act shall be directly supervised.

(65 ILCS 5/3.1-30-21; eff. 1/1/96)

III. RELEVANT CURRENT CONTRACT PROVISIONS

**ARTICLE IX
MANAGEMENT RIGHTS**

Except as specifically limited by the express provisions of this Agreement, the Council recognizes that certain rights, powers and responsibilities belong solely to and are exclusively vested in the Employer, and these rights shall be liberally construed. Specifically, but without limiting the generality of the foregoing, it is understood and agreed that this Agreement does not affect and shall not be deemed or constricted to impair the Employer's right, in its sole discretion and judgment. To do the following on a unilateral basis:

- a. To determine, control, regulate and direct matters of inherent managerial policy;
- b. To supervise and direct the working forces;
- c. To determine the functions of the Police Department and its mission;
- d. To determine the nature and extent of service offered to the public by the Employer;
- e. To determine, plan, direct and control the Employer's overall budget;
- f. To determine the Employer's organizational structure;
- g. To select new employees, and establish examination techniques and eligibility requirements;
- h. To assign, reassign, schedule or alter the assignments issued to the working force or any individual therein;
- i. To plan, direct, schedule, control and determine the operations or services to be conducted by Officers of the Employer and to change them from time to time;
- j. To hire, promote, demote, suspend, recall, discipline, or discharge non-probationary employees for just cause;
- k. To hire, promote, demote, suspend, recall, discipline or discharge probationary employees for any or no reason;
- l. To train employees and select employees for training opportunities;
- m. To change or eliminate existing methods, equipment or facilities or introduce new ones;
- n. To make, alter, modify, eliminate, and enforce reasonable rules, regulations, including those known as the Village of Lake Bluff Rules and Regulations for the Police Department, policies, procedures, special orders and operating reasonable directives governing matters including, without limitation, performance, safety, quality, and other behavioral guidelines governing Officers;
- o. To determine the nature, extent, duration, character and method of operation including the right to contract out or subcontract;
- p. To assign and/or schedule overtime assignments;
- q. To determine the quality and quantity of work required to be performed by the employees to ensure maximum mobility, flexibility and efficiency of operations;
- r. To determine the methods, means, organization and number of personnel by which such operations and services shall be made or provided; and,
- s. To establish performance standards and evaluate employees.

ARTICLE XIII
WAGES AND OTHER COMPENSATION

Section 1. Wages

Employees shall receive an annual salary in accordance with the below schedule:

	5/1/2014	5/1/2015
Patrol Officer	2.500%	2.500%
Start	\$66,537	\$68,200
After the End of Probation	\$73,921	\$75,769
After 2 Years	\$77,614	\$79,554
After 3 Years	\$81,304	\$83,337
After 4 Years	\$84,997	\$87,122
After 5 Years	\$88,688	\$90,905
	*	*

ARTICLE XV
HOURS OF WORK AND OVERTIME

Section 1. Purpose of Article

This Article sets forth the normal work cycle and establishes the basis for calculating overtime payments. Nothing in this article shall be construed or misconstrued as a guarantee of hours work per day, per week, or per work cycle.

Section 2. Normal Work Cycle

The normal work cycle for Officers covered by this Agreement shall be fourteen (14) days consisting of ten (10) shifts of eight (8) hours. Current lunch/break practices shall remain in effect.

IV. THE PARTIES AND ISSUES

The parties to this Interest Arbitration are the Village of Lake Bluff, Illinois (“Lake Bluff” or the “Village”) and the Illinois Fraternal Order of Police Labor Council (the “Union”). This Interest Arbitration concerns the parties’ Collective Bargaining Agreement in effect from May 1, 2016 through April 30, 2019 (the “Contract”). The Bargaining Unit consists of Police Officers

below the rank of Sergeant. The only two issues that are before me are the questions of 2018 Wages and the potential use of Part-Time Officers.

V. PROPOSED EXTERNAL COMPARABLE COMMUNITIES

Because this is the parties' first Interest Arbitration, they had not previously agreed upon external comparables. For the issue of wages, the Union proposes the following four Comparable Communities, which consist of the organized municipalities within 15 miles of Lake Bluff, have a population within 50% of Lake Bluff's population, and within plus or minus 25% of the traditional comparability factors¹:

- Hawthorn Woods
- Kildeer
- Lincolnshire
- Riverwoods

While the Village did not object to the Union's external comparables, it contended that the traditional statutory comparability analysis is not appropriate in this instance. Instead, the Village offered, for the issue of wages, a list of what it considered Competitive Communities; these are communities that the candidates for the Village's Officer vacancies are likely to also consider. The Village further indicated that they do not consider the list as Comparable Communities, but rather that the list supports the reasonableness of its proposal. The Village's Competitive Communities are as follows:

¹ The Union identified "traditional comparability factors" as (1) equalized assessed valuation; (2) public safety (Police) expenditures; (3) general fund balance; (4) median household income; (5) median home value; (6) number of full-time sworn departmental employees; (7) index crimes from 2015 Crimes in Illinois.

- Libertyville
- Lincolnshire
- North Chicago
- Vernon Hills
- Waukegan
- Deerfield
- Glencoe
- Gurnee
- Highland Park
- Lake Forest

For the past 10 years, the Village Administrator has used these Competitive Communities for analysis of the Village's financial position. (Er. Grp. Ex. 1; Un. Ex. 23; Tr. 15-22, 111-117)

VI. INTERNAL COMPARABLES

The parties agreed there were no appropriate internal comparables. As discussed below, the 2018 wage data for only other relevant Public Safety Unit, the Sergeants, is unavailable. The Village's Firefighters are all volunteers. The non-public safety Public Works Unit, represented by the Union of Operating Engineers, Local 150, was not considered appropriate. (Tr. 89)

VII. TENTATIVE AGREEMENT

The parties reached a Tentative Agreement regarding other unspecified issues, which shall be incorporated into this Award.

VIII. STIPULATIONS OF THE PARTIES

The relevant stipulations between the parties are as follows:

1. **Arbitrator's Authority:** Pursuant to Section 14(b) of the Act, the parties agree to waive a tripartite panel and appoint Steven M. Bierig as the sole Arbitrator and Chairperson to hear and decide the issue presented. The parties stipulate that the procedural pre-requisites for convening the arbitration hearing have been met and the Arbitrator had jurisdiction and authority to rule on those mandatory subjects brought to him by the Illinois Labor Relations Act.

2. **Hearings:** The hearing in this case will convene on February 12, 2018, and shall continue, if needed, at such other and future dates and times as may be agreeable to the parties or ordered by the Arbitrator and necessary to conclude the hearing. The requirements as set forth in Section 1230.80(a) of the Rules and Regulations of the Illinois Labor Relations Board, regarding the commencement of the arbitration hearing within fifteen (15) days following the chairperson's appointment have been waived by the parties. All hearings will be in [sic] held at the Employer's facility, or other location mutually agreed upon by the parties or ordered by the Arbitrator.

* * *

5. **Issues in Dispute:** The parties agree that the following issues remain in dispute: (1) FY 2018 wage increase; and (2) use of part time Officers. The parties agree that there are no other issues in dispute.

6. **Final Offers:** Final Offers shall be submitted on all of the issues prior to the start of the hearing on February 12, 2018. Once exchanged at the start of the hearing, final offers on each issue in dispute may not be changed except by mutual agreement.

7. **Evidence:** The parties agree that the following information shall be submitted by stipulation to Arbitrator Bierig at the start of the hearing:

- a. All tentatively agreed upon articles, sections of subsections of the proposed collective bargaining agreement (Joint Exhibit 1), which the parties agree shall be incorporated into the Arbitrator's Award;
- b. These Ground Rules and Stipulations of the Parties (Joint Exhibit 2);
- c. Materials or testimony offered as evidence of the parties' bargaining history shall not include the parties' "off-the-record" proposals.

* * *

9. **Post-Hearing Briefs:** A post-hearing brief shall be submitted to Arbitrator Bierig no later than thirty (30) days from the receipt of the full transcript of the hearing by representatives of the parties. Extensions of time to file briefs may be

mutually agreed to by the parties or allowed by the Arbitrator absent mutual agreement. The post-marked date of mailing shall be considered to be the date of submission of a brief. There shall be no reply briefs.

10. **The Award:** The Arbitrator shall base his findings and decisions upon the applicable factors set forth in Section 14(h) of the Illinois Labor Relations Act and issue the same within 60 (60) days after the submission of briefs or any agreed upon extension requested by the Arbitrator, and shall retain the entire record in this matter for a period of six months or until sooner notified by the parties that retention is no longer required. The Arbitrator will incorporate the Parties' tentative agreements into his award and make them part thereof.

* * *

(Jt. Ex. 1; Tr. 11)

IX. ISSUES

As noted above, the issues submitted to the Interest Arbitrator for resolution are:

- 1) **2018 WAGES (Joint Issue) - Economic**
- 2) **USE OF PART-TIME OFFICERS (Village Issue) – Hybrid**

(Tr. 138-141)

X. THE PARTIES' FINAL OFFERS PRESENTED FEBRUARY 12, 2018

<u>ISSUE</u>	<u>VILLAGE OFFER</u>	<u>UNION OFFER</u>
Article XIV, Section 1. Wages	<p>The following across the board increases will be provided to covered employees who are employed on the date(s) indicated:</p> <p>May 1, 2016 2.5%</p> <p>May 1, 2017 2.5%</p> <p>May 1, 2018 2.25%*</p> <p>Total Increase 7.25%</p> <p>Total Increase 7.50%*</p>	<p>May 1, 2016 2.25%</p> <p>May 1, 2017 2.25%</p> <p>May 1, 2018 2.25%</p> <p>Total Increase 7.5%</p>

	<p>*Plus 0.25% as “quid pro quo” for use of Part-Time Officers</p> <p>The increases above shall be made retroactive to employees who were employed on the date(s) indicated and the date of the issuance of the Arbitrator’s Award.</p>	
<p>Article, New Section , Use of Part-Time Officers</p>	<p><i>New</i></p> <p>The Village may employ certified part-time Officers to perform duties covered by this collective bargaining agreement subject to the following strict conditions in accordance with the provisions of 65 ILCS 5/3.1-30-21:</p> <ol style="list-style-type: none"> 1. The village will adopt the hiring standards applicable to part-time Officers by Ordinance in accordance with the Illinois Law Enforcement Training Standards Board. 2. Part-time Officers shall be trained under the intergovernmental Law Enforcement Officer’s In-service Training Act in accordance with the procedures for full-time Police Officers established by the Illinois Law Enforcement Training Standards Board. 3. Part-time Police Officers shall not be assigned under any circumstances to supervise full-time Officers of the Police Department. 4. Part-time Police Officers shall not be assigned under any circumstances to direct full-time Officers of the Police Department. 5. Part-time Police Officers shall not be used as permanent replacements for permanent full-time Officers of the Police Officers. 6. No part-time Officer used until and unless the part-time Officer has fully satisfied all applicable certification requirements applicable in Illinois in order to perform services as a full-time Police Officer. 7. Part-time Officers will only be used to perform hours of work that exists or become available because a full-time Officer is unavailable and/or unwilling to work as scheduled for a period of seven (7) calendar days or more. 8. Part-time Officers will not be used to permanently replace a full-time Officer who quits, is retired or leaves his employment with the Village for any voluntary or involuntary reason (also referred to as an “attrition 	<p><i>Status Quo</i></p> <p>(i.e., there will be no new language.</p>

	<p>factors”).</p> <p>9. Part-time Officers will not be used for the purpose of replacing a full-time Officer who is on layoff status.</p> <p>10. Part-time Officers will not be used to reduce the number of Bargaining Unit positions or to erode the Bargaining Unit.</p> <p>11. Part-time Officers may not be used to reduce overtime opportunities for full-time Officers. More specifically, the Department will first offer to full time Officers the opportunity to work any overtime shift prior to offering such opportunities to part-time Officers (as long as the Officer has agreed to work the overtime hours at least five (5) calendar days from the date/time the available overtime assignment is posted for foreseeable overtime shifts).</p> <p>12. Part-time Officers will be laid off prior to the layoff of any full-time Officer.</p> <p>13. The Village will submit the hiring standards applicable to full-time Police Officers to the Illinois Law Enforcement Training Standards Board.</p> <p>14. In the event that the Union and/or a Bargaining Unit employee has reason to believe a part-time Officer has not satisfied the condition set forth above and is otherwise not qualified to safely perform the essential job functions of a Police Officer (either with or without a reasonable accommodation of disabled or pregnant), the parties agree to promptly schedule a meeting at an agreed upon time and place to discuss the issue by committee comprised of two (2) Officers designated by the Bargaining Unit and two (2) members of management. Time spent by a full-time Officer in meetings for this purpose will be considered “working time: of held during the Officer’s scheduled workingtime.</p>	
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XI. STATEMENT OF FACTS

A. Introduction

The Union represents all sworn Police Officers below the rank of Sergeant, who are employed by the Village. The Bargaining Unit currently consists of 10 Full-Time Patrol Officers. The Officers are tasked with the duties of law enforcement and patrolling the Village; the Department operates 8-hour shifts, 7 days per week, 24 hours per day. The instant Union has represented the Bargaining Unit since at least 2000. The most recent contract expired April 30, 2016. In addition, the Union represents a separate Bargaining Unit consisting of the Police Sergeants currently comprised of three members. The Police Chief and Deputy Chief are Management positions outside of the Bargaining Unit. The Sergeants' Unit contract expired April 30, 2017, and is not involved in the instant matter. (Er. Ex. 2-4, 7; Un. Ex. 6; Tr. 9, 24, 41, 85-86, 90)

The Village also has a non-public safety, non-Interest Arbitration Bargaining Unit contract. The International Union of Operating Engineers, Local 150 ("Local 150") represents the Village's Public Works Unit, which consists of approximately seven employees. The current Local 150 Contract is in effect until April 2019. (Er. Ex. 5; Tr. 87)

The Department's Special Order #01-12-19 addresses minimum manpower requirements and establishes a procedure by which shift coverage is to be handled in the event of a shortage; Special Order #05-01-01 addresses schedule changes and establishes a procedure by which the Department handles time requests to use paid time off (vacation, holidays, personal days) as well as shift changes and trades between Officers. The Department does not currently use Part-Time Officers, or auxiliary staff. In order to accommodate the three annual special events hosted by the Village each year, the Department retains its Officers on their

regular Patrol duty and utilizes Lake County Sheriff's Deputies for which the Village pays a stipend to the County. (Er. Ex. 11-12; Tr. 91-92)

B. Village Description

The Village of Lake Bluff is a suburb located approximately 35 miles north of downtown Chicago. Lake Bluff covers approximately four square miles and is bordered by the Great Lakes Naval Station on the north, Lake Forest on the south, Lake Michigan on the east, and Libertyville on the west. According to the 2018 Census data, the population of Lake Bluff is slightly below 6,000. The Village government consists of an elected Village President, currently Kathleen O'Hara, a Board of Trustees, and a Village Clerk. The day-to-day operations are overseen by Village Administrator R. Drew Griffin. Susan M. Griffin is the Village's Director of Finance. (Er. Ex. 1, 29, 30; Tr. 85, 87)

C. Bargaining History Leading to this Interest Arbitration

As noted above, the prior contract between the parties expired on April 30, 2016. On November 2, 2015, the Union presented the Village with a Formal Notice of Demand to Bargain, at which time the parties also entered into a Mediation Agreement. The parties held negotiation sessions in 2016 on April 4, May 6, June 16, July 26, September 23, and December 19, and in 2017, met with a Federal Mediator on September 29, October 18, November 2, and November 20. On December 12, 2017, the Union filed a Demand for Compulsory Interest Arbitration with the Illinois Labor Relations Board. (Un. Ex. 3)

D. The Statutory Factors

The Bargaining Unit in the instant case consists of sworn Public Safety employees, who are unable to strike, and is therefore covered by Section 14 of the Illinois Public Labor Relations Act. Section 14(h) of the Act obligates the Arbitrator to consider the following factors in reaching a decision:

* * *

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

Section 14(h) of the Act requires that the Interest Arbitrator base its decision upon the following criteria, 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 costs of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

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

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

5 ILCS 315/14(h)

Each of these factors is relevant, although no one factor is determinative. An Arbitrator has discretion to rely upon some factors more heavily than others, where appropriate. The Act does not rank the factors by importance. In *City of Decatur and International Association of Firefighters, Local 505, S-MA-29* (Eglit 1986), Arbitrator Eglit observed that the importance of each statutory factor is not ranked: "... moreover, the statute makes no effort to rank these factors in terms of their significance, and so it is for the panel to make a recommendation as to which factors bear most heavily in this particular dispute." Thus, some of the statutory factors may be deemed by the Arbitrator to be more significant than others, depending upon the issues and the evidence presented. *See also City of Waukegan and MAP, Waukegan Police Sergeants, Chapter No. 285, S-MA-07-092* (Martin, 2008).

XII. DISCUSSION

A. Introduction

As noted above, the two issues submitted to this Interest Arbitrator for resolution are:

- 1) WAGES (Joint Issue) - Economic**
- 2) USE OF PART-TIME OFFICERS (Village Issue) – Hybrid**

After a review of all of the evidence, stipulations, exhibits, testimony, Post-Hearing briefs and all of the factors identified in Section 14(h), I have reached the following determinations regarding the issues:

Wages:

The Union’s offer is accepted.

Wage Schedule for May 1, 2016 – April 30, 2019 Contract	
Date	% Increase
May 1, 2016	2.50%
May 1, 2017	2.50%
May 1, 2018	2.50%
TOTAL INCREASE = 7.50%	

Use of Part-Time Officers:

The Union’s offer is accepted. The *status quo* shall remain in that Part-Time Officers will not be utilized.

B. Positions of the Parties and Analysis

1. Wages

The parties’ proposals on wages are as follows:

<u>ISSUE</u>	<u>VILLAGE OFFER</u>	<u>UNION OFFER</u>
Article XIV, Section 1. Wages	<p>The following across the board increases will be provided to covered employees who are employed on the date(s) indicated:</p> <p>May 1, 2016 2.5% May 1, 2017 2.5% May 1, 2018 2.25%*</p> <p>Total Increase 7.25%</p> <p>Total Increase 7.50%*</p> <p>*Plus 0.25% as “quid pro quo” for use of Part-Time Officers</p>	<p>May 1, 2016 2.5% May 1, 2017 2.5% May 1, 2018 2.5%</p> <p>Total Increase 7.5%</p>

	<p>The increases above shall be made retroactive to employees who were employed on the date(s) indicated and the date of the issuance of the Arbitrator’s Award. To award wage increases as follows:</p>	
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a. The Village’s Position on Wages

The Village contends that its final offer for 2018 is reasonable. It is identical to the Union’s final offer, provided that the Village is permitted the right to use Part-time Officers in return. Years 2016 and 2017 are not in dispute. The Village also notes that a number of the traditional Section 14 statutory factors are not in dispute, specifically Factor #1 in that both final offers are within the lawful authority of the Village, Factor #2 in that the stipulations of the parties were presented into evidence and agreed to in advance, Factor #3 in that the Village has the financial ability to pay the Union’s demand, and Factor #7 in that there has been no substantial change of circumstances since the parties began negotiations.

Regarding Factor #5, the average consumer prices for goods and services, commonly known as the consumer price index, or CPI, the Village notes that this Arbitrator and others, have found the CPI to be a very compelling factor. *See County of Lake and Lake County Sheriff’s Department, S-MA-11-066*, at p. 24 (Bierig, 2012). *See also County of McHenry and IL FOP Labor Council, S-MA-11-004*, at p. 131 (Benn, 2012). Arbitrator Benn stated, “... for comparability purposes, my focus has been on the best indicator of how the economy is doing – i.e., the cost of living factor.” *See also Highland Park and ICOPS, Arb. Ref. 13.340*, at p. 19 (Benn, 2014). The Village argues that it is well established that when both parties’ final offers exceeds the cost of living during the successor agreement, the final offer closest to the cost of living should prevail. *See City of Burbank, S-MA-97-56*, at p. 9-11 (Goldstein, 1998). According to the Bureau of Labor Statistics Consumer Price Index for urban areas (“CPI-U”), the month-to-month increase in the

CPI from May 2016 through December 2017 was 3.0%, compared to the combined 5.0% wage increase that was agreed upon for years 2016 and 2017. Thus, over the 3-year term of the Contract, under the Village’s offer, the Unit members would receive a 7.25% wage increase whereas the CPI-U is likely to increase a total of 4% during the same 3-year period, making the Village’s proposal of 2.25% for the third year closer to the CPI-U than the Union’s proposal. The cost of living factor strongly supports the Village’s proposal on wages.

DATE RANGE	CPI-U 12-MONTH AGGEGATE	AGREED PROPOSAL
May 2016 – Dec 2016	1.0%	2.50%
Jan 2017 – Dec 2017	2.0%	2.50%
TOTALS:	3.0%	5.00%

(Er. Ex. 21)

Regarding external comparability, the Village argues that the Union’s analysis is faulty. First, none of the four communities selected by the Union, Hawthorn Woods, Kildeer, Lincolnshire, and Riverwoods, has a contract extending into 2018. Therefore, information about those communities offers little or no guidance to the 2018 wage issue here. Second, the Village contends that the Union’s methodology for selecting comparables was not neutral, but was rather focused on more affluent communities. Third, the Union openly admitted that its comparison focused solely on wages, and did not consider the overall compensation package. The Village notes that under Section 14(h)(4)(A) of the Act, the relevant comparison must be based on “wages, hours, and conditions of employment,” and not only on wages. Last, the Village argues that throughout the collective bargaining and mediation process prior to Interest Arbitration, the Union never mentioned any of the comparables in support of its economic proposals. The Village argues that two of the four comparables relied upon by the Union reflect wage increases for 2016 and/or 2017 that were designed to “catch up” for past

inequities, thereby inflating their wage increases for those years. Also, while Lake Bluff pays all but 14% of its Bargaining Unit member’s health insurance premiums, Hawthorn Woods’ Officers must pay 25% of their health insurance premiums. (Tr. 62, 120)

Conversely, for at least the past 10 years, the Village Manager has examined the wages and insurance paid by Competitive Communities located in Lake County and the North Shore suburban area of Chicago in order to give his recommendations about annual Village budget and collective bargaining proposals. The most recent information regarding the Competitive Communities is identified below:

EMPLOYER	2016	2017	2018	TOTAL (if available)
Libertyville	2.50%	2.75%	2.50%	8.0%
Lincolnshire	2.50%	N/A	N/A	2.50% (1 year)
North Chicago	2.00% (plus one time equity potential 11/1/16)	2.00%	2.00%	6% (plus one time equitable 2016)
Vernon Hills	2.50%	2.75%	2.75%	8.00%
Waukegan	2.00%	2.00%	N/A	4.00% (2 years)
Deerfield	2.25%	2.50%	N/A	4.75% (2 years)
Glencoe	2.50%	2.50%	2.75%	7.75%
Gurnee	2.25% - 3.00% (tied to CPI-U each year)			6.75% (minimum)
Highland Park	2.00%	2.50% (Includes 0.50% equity adjustment)	2.75% (Includes 0.75% equity adjustment)	7.25% (includes equity adjustments)
Lake Forest	Unclear, but future increases tied to LOS	1.00-2.25%	0.00-2.50%	N/A
Village Proposal	2.50%	2.50%	2.25% (plus 0.25% for PT proposal)	7.25% (plus 0.25%)
Union Proposal	2.50%	2.50%	2.50%	7.50%

(Er. Ex. 23)

Regarding internal comparables, the Village noted that there was no internal data available regarding 2018 wages increases for its other Public Safety Unit, Sergeants, because the parties did not begin bargaining a successor contract covering the same 3-year period. The Village did note that the Public Works Department Unit represented by Operating Engineers, Local 150 provides a 2% wage increase effective May 1, 2018. (Er. Ex. 5; Tr.88)

Thus, the Village contends that its final offer of 2.25% is not only appropriate for 2018 and is more reasonable than the final offer presented by the Union, but is the offer more likely to have been agreed upon at the bargaining table. Therefore, the Village's final offer should be adopted. (Tr. 118-119)

b. The Union's Position on Wages

The Union argues that the evidence supports its proposal on wages as compared to that of the Village. The Union notes that at issue is only the last year of the 3-year Contract, in which the Union's offer is only 0.25% more than that of the Village.

The evidence shows that the Union's proposal for 2018 more closely matches the annual increases that the Bargaining Unit has received for many years. From 2012 to 2015 Unit members received a 2.5% annual wage increase. Prior to 2012, the members received even greater increases: 4% in 2008 and 2009, 2.75% in 2010, and 2.875% in 2011. Therefore, the 2.5% the Union offers represents the lowest increase in the past 10 years and continues a pattern of seven consecutive years of 2.5% annual increases. (Tr. 28, 76)

Regarding external comparability, after its multi-level analysis conducted on a number of potential Comparable Communities, the Union proposes that Hawthorn Woods, Kildeer, Lincolnshire and Riverwoods are the most comparable to the Village based upon traditional comparability factors used. Conversely, the Village has not proposed any external comparables.

Although most of the comparables have agreed-upon wage increases for 2016 and 2017, none have 2018 data available. However, none of the comparables have had wage increases in either 2016 or 2017 lower than 2.5%. For 2016 and 2017, Hawthorn Woods agreed to 3% and 4% respectively, Kildeer agreed to 2.75% for each of those years, and Lincolnshire agreed to 2.75% and 2.5% respectively. The data for Riverwoods only shows a 2.5% increase for 2016. The Union points out that the instant Unit members are neither the lowest nor highest paid compared to the external communities. Nevertheless, the Unit members will need an increase of no less than the lowest increase received by comparable external units, that being 2.5%, so as to maintain the Union's ranking in comparison to other external comparables. Therefore, the Union's final wage offer should be adopted. (Un Ex. 1, 5; Tr. 29-36, 66-68, 79-80, 116, 118)

As for internal comparability, the Union notes that of the Village's two other Bargaining Units, the Public Works Department and the Police Sergeants, only the Sergeants bargain pursuant to Section 14 of the Act. Therefore, the only appropriate internal comparable is the Sergeants. The Sergeants 2014-2016 agreement provided for a 2.5% wage increase in each of the three years. That said, however, there is no 2018 data yet available from that Unit.

Regarding the cost of living statutory factor, the Union argues that it is of no value here because the parties have historically not used the cost of living as a guide. Thus, it dismisses the cost of living data provided by the Village that shows modest increases in the CPI-U over the past few years. Nonetheless, the Union points out that the CPI-U for March 2018 was an increase of 2.4% over March 2017, and thus Unit members' wage increases will still be significantly offset by increases in the cost of living. This fact favors the Union's offer that provides a 0.25% increase over the final offer from the Village.

The Union argues that there is no question that the Village has the ability to pay the cost of the Union's proposal. According to the Union, its 2.5% wage increase would cost the Village

just over \$200 per year per member during the third year of the Contract. In addition, the Village's alternate proposal, an additional 0.25% increase as a *quid pro quo* for its use of Part-Time Officers, would result in a 2.5% increase for year three, which matches the Union year three proposal. This factor favors the Union's offer.

The Union requests that its wage offer be adopted.

c. Analysis

In considering the wage increase proposals of both parties, I find that the statutory factors favor the Union's proposal. I base this determination upon a number of factors, especially the external comparables and the forecasted CPI-U.

First, I find that the external comparables favor the Union. Overall, the 2018 data for those communities that the Village considers competitive, and for which are not contingent on unknown factors, shows that the average 2018 wage increase is 2.4%. This average is based upon the wage increases of Libertyville (2.5%), North Chicago (2.0%), Vernon Hills (2.75%), Glencoe (2.75%), and Highland Park (2.00%, after subtracting the 0.75% equity adjustment). The 2.4% average of the communities the Village considers competitive is closer to the Union's 2.5% proposal than to the Village's 2.25% proposal without consideration of the additional 0.25% contingent upon gaining the right to use Part-Time Officers. While the Village asserted at the Arbitration that it is not offering its list of Competitive Communities as external comparables pursuant to Section 14(h)4(A), the data should not be ignored.

Next, I note that internal comparables are a significant factor when reviewing Public Safety Units. Interest Arbitrators place emphasis on the internal comparability factor. *See City of Marshfield*, Decision No. 25298-A, p.15 (Nielsen, 1988). In the instant case, however, there is only one Public Safety internal comparable Unit, the Police Sergeants, and there is no data

available for 2018 to offer any guidance. Thus, in this case, the use of internal comparables is not useful.

Regarding the cost of living factor, I have reviewed the CPI-U and I find that it favors the Union's offer. Since 2008, Illinois Arbitrators have recognized the significance of cost of living data in the wage analysis for purposes of Interest Arbitration. Where both parties' final offers exceed the cost of living, Arbitrators have indicated that the final offer nearest to the cost of living should prevail. See *City of Burbank*, Case No. S-MA-97-56, p. 9-11 (Goldstein, 1998); See Also *County of McHenry and IL FOP Labor Council*, S-MA-11-004, p. 131 (Benn, 2012); See Also *Highland Park and ICOPS*, Arb. Ref. 13.340, p. 19 (Benn, 2014).

While I find that the CPI-U is not as significant a factor as it was during the 2008 Recession, it nonetheless continues to be a valuable tool in the determination of an appropriate compensation offer. Because the wage increase proposal for year three is the only year in contention, my determination as to whether the CPI-U data favors either proposal must be based upon a projection. The most recent data from the Federal Reserve Bank of Philadelphia's Survey of Professional Forecasters projects that the CPI-U for 2018 will be 2.5%. See, <https://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters>.²

I note that Interest Arbitrators have relied almost exclusively on this particular CPI forecast tool. As Arbitrator Benn recently observed, "Although not always completely accurate, the forecasters are the best tool interest arbitrators have to look at future years in collective bargaining agreements for examination of the cost of living factor – and the *Survey of*

² "The forecasters expect current-year headline CPI inflation to average 2.5 percent, up from 2.1 percent in the last survey."

Professional Forecasters remains one of the most respected.” *Cook County Sheriff/County of Cook*, Case No. L-13-005-008 (Benn, 2016); *See Also City of Collinsville*, Case No. S-MA-12032 (Nielsen, 2013); *City of Chicago*, Case No. L-MA-12-005 (Bierig, 2013).

In summary, the Union’s wage offer of 2.5% for 2018 is closer to the forecasted change in the cost of living index than the Village’s wage offer of 2.25%, without the additional 0.25% the Village offers contingent upon it receiving the right to use Part-Time Officers.

Therefore, based on the factors identified in the Act, especially the external comparables and the CPI-U, I find that the Union’s offer shall be accepted.

2. Use of Part-Time Officers

The parties have made the following final proposals regarding a new section relating to the Village’s potential ability to utilize Part-Time Officers:

ISSUE	VILLAGE OFFER	UNION OFFER
<p>Article, New Section , Use of Part-Time Officers</p>	<p><i>New</i></p> <p>The Village may employ certified part-time Officers to perform duties covered by this collective bargaining agreement subject to the following strict conditions in accordance with the provisions of 65 ILCS 5/3.1-30-21:</p> <ol style="list-style-type: none"> 1. The village will adopt the hiring standards applicable to part-time Officers by Ordinance in accordance with the Illinois Law Enforcement Training Standards Board. 2. Part-time Officers shall be trained under the intergovernmental Law Enforcement Officer’s In-service Training Act in accordance with the procedures for full-time Police Officers established by the Illinois Law Enforcement Training Standards Board. 3. Part-time Police Officers shall not be assigned under any circumstances to supervise full-time Officers of the Police Department. 4. Part-time Police Officers shall not be assigned under any circumstances to direct full-time Officers of the Police 	<p><i>Status Quo</i></p> <p>(i.e., there will be no new language.)</p>

	<p>Department.</p> <p>5. Part-time Police Officers shall not be used as permanent replacements for permanent full-time Officers of the Police Officers.</p> <p>6. No part-time Officer used until and unless the part-time Officer has fully satisfied all applicable certification requirements applicable in Illinois in order to perform services as a full-time Police Officer.</p> <p>7. Part-time Officers will only be used to perform hours of work that exists or become available because a full-time Officer is unavailable and/or unwilling to work as scheduled for a period of seven (7) calendar days or more.</p> <p>8. Part-time Officers will not be used to permanently replace a full-time Officer who quits, is retired or leaves his employment with the Village for any voluntary or involuntary reason (also referred to as an "attrition factors").</p> <p>9. Part-time Officers will not be used for the purpose of replacing a full-time Officer who is on layoff status.</p> <p>10. Part-time Officers will not be used to reduce the number of Bargaining Unit positions or to erode the Bargaining Unit.</p> <p>11. Part-time Officers may not be used to reduce overtime opportunities for full-time Officers. More specifically, the Department will first offer to full time Officers the opportunity to work any overtime shift prior to offering such opportunities to part-time Officers (as long as the Officer has agreed to work the overtime hours at least five (5) calendar days from the date/time the available overtime assignment is posted for foreseeable overtime shifts).</p> <p>12. Part-time Officers will be laid off prior to the layoff of any full-time Officer.</p> <p>13. The Village will submit the hiring standards applicable to full-time Police Officers to the Illinois Law Enforcement Training Standards Board.</p> <p>14. In the event that the Union and/or a Bargaining Unit employee has reason to believe a part-time Officer has not satisfied the condition set forth above and is otherwise not qualified to safely perform the essential job functions of a Police Officer (either with or without a reasonable accommodation of disabled or pregnant), the</p>	
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	<p>parties agree to promptly schedule a meeting at an agreed upon time and place to discuss the issue by committee comprised of two (2) Officers designated by the Bargaining Unit and two (2) members of management. Time spent by a full-time Officer in meetings for this purpose will be considered "working time: of held during the Officer's scheduled workingtime.</p>	
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a. The Village's Position

Preliminarily, the Village asserts that its use of Part-Time Officers within the restrictions of its final offer may not even be a mandatory subject of bargaining. Without waiving its right to assert that position in the future, the Village agreed to submit this issue to this Interest Arbitrator for the purposes of this Contract only. (Tr. 136, 138)

Regarding comparables, the Village first notes that as an internal comparable, its Public Works Unit contract with Operating Engineers, Local 150 provides the right to use part-time employees to perform available work. Regarding the external comparable, it is very significant that all four of the communities cited by the Union utilize Part-Time Officers to varying degrees. According to the Village, it intentionally drafted its final offer to include many of the same safeguards protecting Full-Time Officers' interests as those found in the instant Union's contracts with other communities. (Er. Ex. 5; Tr. 72, 105-106)

The main thrust of the Village's position turns on the issue of whether the Village's final offer constitutes a breakthrough item, or whether it instead qualifies as a relatively minor change to the *status quo*, which would require a lower burden of proof. The Village is proposing only a modest change to the *status quo* in determining how it will fill occasional vacant shifts that arise when Full-Time Officers are unavailable. The proposed Contract language provides unequivocal assurances that no Part-Time Officer would be used to perform any work unless all

Full-Time Officers were first offered the opportunity to work on an overtime basis. Further, the Contract's Management Rights provision should be liberally construed so as to not impair the Village's discretion and judgement to act:

- To determine, control, regulate and direct matters of inherent managerial policy;
- To determine the functions of the Police Department and its mission;
- To determine the nature and extent of service offered to the public by the Employer;
- To determine, plan, direct and control the Employer's overall budget;
- To determine the Employer's organizational structure;
- To select new employees, and establish examination techniques and eligibility requirements;
- To plan, direct, schedule, control and determine the operations or services to be conducted by Officers of the Employer and to change them from time to time;
- To determine the nature, extent, duration, character and method of operation including the right to contract out or subcontract;
- To determine the quality and quantity of work required to be performed by the employees to ensure maximum mobility, flexibility and efficiency of operations; and
- To determine the methods, means, organization and number of personnel by which such operations and services shall be made or provided.

(Jt. Ex.1, Article IX p. 8)

The Village dismisses the Union's claim that the use of Part-Time Officers is detrimental to the Full-Time Officers. The Village denies that Part-Time Officers will have the potential to erode the Bargaining Unit. Paragraph #5 of the Village's proposal expressly prohibits the use of Part-Time Officers as permanent replacements for Full-Time Officers; Paragraph #8 expressly

prohibits the use of Part-Time Officers to permanently replace Full-Time Officers through attrition; Paragraph #9 expressly prohibits the use of Part-Time Officers to replace a Full-Time Officer who is on layoff status.; and Paragraph #10 expressly prohibits the use of Part-Time Officers to reduce the number of Bargaining Unit positions or to erode the Bargaining Unit. Further, the Union's implication that the use of Part-Time Officers as proposed by the Village could be in conflict with Illinois law is incorrect. The introduction to the Village's final offer expressly states that the use of Part-Time Officers would strictly adhere to the conditions set forth in the statute related to Part-Time Officers, 65 ILCS 5/3.1-30-21. (Er. Ex. 19; Tr. 23-24, 58-59, 69, 96, 98-99, 103)

The Village rejects the Union's contention that Part-Time Officers pose a safety risk to other Officers or to the general public, alleging that they will have less training. Part-Time Officers would go through the same training qualifications as Full-Time Officers. Paragraph #1 requires the Village to adopt by Ordinance hiring standards for Part-Time Officers that comport with State of Illinois standards; Paragraph #2 requires Part-Time Officers to be trained to the State of Illinois standards that exist for Full-Time Officers; Paragraph #6 prohibits the use of a Part-Time Officer unless and until the Officer has fully satisfied the certification requirements in Illinois that are required of Full-Time Officers. The Village also refutes the Union's claim that Part-Time Officers, by their part-time employment, will not spend as much time in the Village and, therefore, will have less familiarity with the Village, its streets, its businesses and its citizens. In response, the Village noted that at the Hearing, the Union was unable to offer examples of other communities whose Part-Time Officers pose a safety issue. (Er. Ex. 20; Tr. 25-26, 96, 103, 143-159)

The Village also rejects the Union's proposition that the use of Part-Time Officers is intended solely to save the Village money, and that such savings will come at the expense of

public safety. Paragraph #14 of the proposal includes a complaint mechanism for resolving conflicts regarding the Union's potential concern if a Part-Time Officer has either not satisfied relevant proposed conditions or is not qualified to safely perform the essential job functions of a Police Officer. (Ex. 7; Tr. 25-26, 42, 44, 104)

The Village disagrees with the Union's argument that the proposal would allow the Village to use Part-Time Officers for Bargaining Unit work, thereby replacing Bargaining Unit positions with Part-Time Officers. However, Paragraph #7 requires that Part-Time Officers will only be used to perform work that exists or becomes available because a Full-Time Officer is unavailable and/or unwilling to work as scheduled for a period of seven days or more. Paragraph #11 explicitly states that Part-Time Officers will not be used to reduce overtime opportunities for Full-Time Officers. The Department will first offer any overtime opportunities to Full-Time Officers prior to offering such opportunity to Part-Time Officers. (Er. Ex. 15; Tr. 23, 95, 98-99, 101-102)

The Village notes that in other cases, this Arbitrator has applied Arbitrator Nathan's 3-pronged breakthrough analysis to determine whether a party has satisfied its burden of demonstrating that a change of *status quo* is necessary:

- 1) the old system or procedure has not worked as anticipated when originally agreed to; or
- 2) the existing system or procedure has created operational hardships for the employer or equitable or due process problems for the union; and
- 3) the party seeking to maintain the *status quo* has resisted attempts to bargain over the change (i.e., refused a quid pro quo).

Will County Board and Sherriff of Will County, Case No. S-MA-88-09 (Nathan, 1988); See also, *City of Burbank*, Case No. S-MA-97-056 (Goldstein, 1998)

Regarding the first prong, the Village asserts that there is little dispute that the existing system is broken. According to the Village, there are several factors contributing to the instant proposal for Part-Time Officers. First, the Family and Medical Leave Act had not yet been passed when the parties negotiated their first contract in 2000. Second, the parties did not anticipate the 2016 change in Illinois law that requires employers to permit eligible employees to use paid sick days for their covered family members' illness, injury and medical appointments. Consequentially, the number of employees who take extended periods of time off has increased exponentially. Further, in 2000, the Village could not have anticipated that one out of its roster of 10 available Full-Time Officers would have had the need to take an extended military leave.

The Village argues that historically, it has operated with a roster of 10 Full-Time Officers working 8-hour shifts to cover all 21 available shifts every week. There is no dispute that when the Department is operating with its full roster of 10 Full-Time Officers, it is able to effectively provide the citizenry excellent protective and law-enforcement services throughout the Village. The Village argues that this is so even with the unusual increase in theft activity that took place in 2016 and 2017. (Er. Ex. 8, 11, 16, 25; Tr. 99-100, 110, 125-126).

However, the Department contends that in recent years, there have been several instances in which the Department was unable to adequately cover all 21 weekly shifts due to the unavailability of Full-Time Officers for extended periods of time. At the time of the instant Hearing, only 6 of the 10 Full-Time Officers were available to cover all of the Patrol shifts. Two Full-Time Officers had not yet completed their Field Training Program and thus could not Patrol independently, one Full-Time Officer was on extended maternity leave, and one other Full-Time Officer was on extended military leave and would not complete his deployment until October 2018. (Er. Ex. 8, 17, 18; Tr. 92-94, 125-127, 133)

Next, the Village asserts that the second prong of the breakthrough test is met due to the operational hardship created when a Full-Time Officer seeks time off for extended leave and no Full-Time Officers are available. Although the Village's Full-Time Officers have generally been willing to work additional hours as necessary, the Village contends that it must have a reliable alternative plan when necessary to avoid situations in which a Full-Time Officer must work 20 or more hours in a day, as recently occurred. If one additional employee were to take an extended absence, the Department's workforce would be reduced by one-third, presuming seven active Full-Time Officers. The Village emphasizes that this is not a cost savings measure, but preparation in the event the Village needs additional staff to cover available shifts. (Er. Ex. 15; Tr. 79, 107, 167)

The evidence shows that, among the 10 Bargaining Unit employees, only 6 were available to perform Patrol functions independently at the time of the instant Hearing. It is clear that there may be times when all 10 Full-Time Officers are available and no Part-Time employees are necessary. The proposed Contract language provides unequivocal assurance to the Bargaining Unit Officers that no Part-Time Officers would be called upon to work when all 10 Full-Time Officers are available to work. It also provides that in the event that there is a shortage of Officers, all shifts will be adequately covered.

The Village rejects the Union's suggestion that it simply hire one or more Full-Time Officers to meet its manpower needs. It contends that to hire one new Officer, the annualized cost over the first five years is \$143,874. The Village contends that hiring an additional Full-Time Officer is an extremely inefficient use of the Village's resources. Such a hire would create excess staffing, leading to layoffs. The use of Part-Time Officers is a much more efficient use of the Village's resources. (Er. Ex. 13-14, 24; Tr. 99, 108-109, 157-158, 167-168)

The Village contends that the current system is not working as anticipated. The Village's current approach to time off was designed without knowledge of changes in Federal and State law, and the Village could not anticipate the number of employees taking leaves. The existing system has created operational hardships for the Department. Although its Officers are currently working large amounts of overtime, the Village cannot anticipate that that will continue, especially if another Officer takes extended leave. (Tr. 134-135)

The third prong of the breakthrough test involves whether the party seeking to maintain the *status quo* has resisted attempts to bargain over the change. Here, the Union has consistently refused to engage in serious discussion regarding the Village's offer. The Union's insistence upon maintaining the current system of staffing is not consistent with the realities of the Village's obligations to the public and therefore could present a safety risk to the public. Arbitrators have consistently ruled that where a party has established that there is a need to depart from the *status quo* and the opposing party's rights are not harmed, the change should be awarded. *See Village of Posen, S-MA-09-182*, at p. 9 (Fletcher, 2011). (Tr. 44)

Further, while not statutorily required, the Village insists that it offered the Union a valuable *quid pro quo* in the form of the 0.25% wage increase. While the Union minimized the value of that offer, it is relevant that the Union never identified an amount that could justify that change. The Union has made it clear that they are opposed to using Part-Time Officers and unwilling to address the problem while at the bargaining table. The Union offered no reasonable alternative to address or minimize the problem the Village faces. (Tr. 82-83, 97, 165-166)

The Union concludes that for all of these reasons, the Village's proposal should be accepted.

b. The Union's Position

The Union is opposed to adoption of a provision that would allow the Village to employ Part-Time Officers to perform Bargaining Unit work. Further, the proposal includes an additional 0.25% wage increase should the Arbitrator adopt the proposal, which would make the parties' wage proposals identical.

First, as a threshold matter, the Union rejects the Village's assertion that pursuant to the Management Rights provision, the Village could unilaterally implement use of Part-Time Officers. The Union argues that it is well established that the use of part-time employees to perform Bargaining Unit work is a mandatory subject of bargaining. In *City of Marengo*, 20 PERI ¶199 (2004), the employer hired three Part-Time Officers after one of its Full-Time Officers resigned and another went on maternity leave. The City did not bargain with the Union prior to hiring the Part-Time Police Officers, nor did it give notice to implement its decision to assign Bargaining Unit work to Part-Time Officers. In *Marengo*, the ALJ found that the use of Part-Time Officers was a mandatory subject of bargaining. In the instant matter, the parties have negotiated this issue to impasse and have advanced the impasse to Interest Arbitration, confirming that it is a mandatory subject.

Regarding the Village's breakthrough analysis, the Union notes that to seek a breakthrough carries a very high burden. In this instance, the Village has failed to demonstrate that the current system, as agreed to by the parties, does not work.

First, the Village has failed to present any evidence to support its determination that Part-Time Officers are essential for the Village to provide adequate Police services. Current Bargaining Unit members have been covering all of the required shifts and have been performing all of the necessary tasks. The Union notes that since 2008, when the Bargaining Unit consisted of 13 Full-Time Police Officers, the Unit has decreased to its current size of 10:

Illinois FOPLabor Council
Patrol Bargaining Unit Erosion

<u>January 1 of Each Year</u>	<u>Number of Officers</u>
2008	13
2009	12
2012	9
2013	9
2015	10
2016	10
2017	11
2018	10

(Un. Ex. 5, p. 21; Tr. 36-41)

The Union argues that the Village's perceived shortage of Full-Time Officers is of its own creation. If such shortage is causing a problem, a premise that the Union disputes, the Village could simply hire one additional Full-Time Officer, which would not even restore the Unit to its historical level. The Union contends that the lack of evidence presented by the Village supports the Union's contention that the use of Part-Time Officers is merely an attempt by the Village to save money. (Tr. 27, 42)

Further, the Union insists that the Village's plan would not fulfill its public safety responsibilities and is ill-conceived. The Village did not know who these Part-Time Officers would be, where they would come from, and how they would be equipped. Further, the Union acknowledges that State law provides for a minimum training requirement; however, the Village has made no provision for the manner in which Part-Time Officers would be familiarized with the rules, policies, procedures, and practices of the Department. The Union asserts that because

these Officers would work only part time, they would spend less time in the Village on duty, and be less familiar with the local roads, alleys, schools, businesses, and neighborhoods, resulting in slower response times to emergency calls for service or requests for backups. Even Full-Time Officers from other communities, used as Part-Time Officers in the Village, will have less experience and familiarity with the Village. Less familiarity with the Village's policies and procedures will lead to more errors in arrests and mishandling of evidence that will result in the dismissal of more charges. Thus, the Union contends that the Village is taking a gamble on public safety. (Un. Ex. 5; Tr. 25-26, 50-57)

Further, the Union notes that statutory factor 14(h)(3) requires the Arbitrator to consider the interests and welfare of the public. If the Village's proposal was adopted, it is unlikely that the Village will save money in the long run due to the problems that will result from a lower quality of service. Specifically, the Union contends that litigation, liability, health insurance and workers compensation insurance costs will all rise as a result of Part-time Officers having less experience, less in-service field training, and less familiarity with the Village's operations. Ultimately, the public, the Officers and the Village will suffer the consequences. The Union urges that the system is not broken now, but will be if the Village's proposal is adopted. (Tr. 44)

Next, regarding the Village's contention that other communities have contracts that permit the use of Part-Time Officers, the Union argues that the Village provided no evidence that those employers are actually using Part-Time Officers, and if so, to what extent. According to the Union, the contracts of municipalities may allow for the use of Part-Time Officers, but does not identify under what circumstances such Officers may be used. For example, Part-Time Officers might only be used for specific functions, such as directing traffic at a parade once a year. The fact that a provision exists in a contract to use Part-Time Officers to perform

Bargaining Unit work in and of itself does not prove that the employer is actually using them.

(Tr. 72-73)

The Union also argues that the use of Part-Time Officers will have a substantial impact on the Bargaining Unit members' work opportunities and erode the Unit. In *Marengo*, the ILRB noted that Part-Time Officers have an impact on Bargaining Unit members. Here, Part-Time Officers taking unfilled shifts will result in fewer overtime opportunities for Bargaining Unit members. Because the Village can set a lower wage rate initially for Part-Time Officers, the combination of lost overtime opportunities and the inclusion of lower-compensated employees will weaken this Unit's bargaining power. (Tr. 50)

Perhaps most significantly to the Bargaining Unit members, the Union argues that inclusion of Part-Time Officers raises the concern of the intentions of the Village. The Village has reduced the Bargaining Unit's size, and now seeks to replace Full-Time positions with an undetermined number of Part-Time Officers. Despite the Village's claims to the contrary, the evidence demonstrates that the Village will seek to expand the use of Part-Time Officers to the detriment of Full-Time Officers. (Tr. 23-24, 59, 69)

Last, the Union rejects the Village's offer to add 0.25% to the third year of its proposed 2.25% wage increase as the *quid pro quo* to the utilization of Part-Time Officers. The Union contends that the 0.25% increase is of such a minor consequence, that it cannot be sufficient to qualify as a reasonable *quid pro quo*. Thus, the 0.25% is not a true *quid pro quo*, and does not compensate for the loss of a significant amount of overtime hours.

Therefore, the Union urges that, for all the above reasons, the Village's proposal should not be adopted.

c. Analysis

After a review of the all the evidence and arguments in this matter, I find that the Village's proposal is a breakthrough and that the Village has failed to meet its burden to show that such a breakthrough is appropriate. For the reasons discussed below, the *status quo* shall remain.

The initial inquiry in the analysis of this Interest Arbitration issue involves whether the Village's proposed use of Part-Time Officers qualifies as a relatively minor change in the *status quo* of existing benefit, requiring a lower burden of proof, or whether the Village's proposal constitutes a new or dramatically changed benefit that would be considered a breakthrough issue, requiring a heightened standard of proof. It is well known that the party seeking to change an existing provision of a contract bears the burden of proving the need for the change. In cases in which the requested change is to improve the *status quo* of an existing benefit, such as an increase in pay or amount of vacation time, Arbitrators require a lower burden of proof that demonstrates that the change is preferable or more equitable, based on the factors identified in the Act. *Village of Oak Brook and Illinois F.O.P. Labor Council*, Case No. S-MA-09-017 (McAlpin, 2011)

Conversely, where the requested change seeks to create an entirely new or a significant change in a benefit or procedure, Arbitrators apply a higher standard, the breakthrough analysis, before the Section 14(h) factors are considered. "The traditional way of conceptualizing Interest Arbitration is that parties should not be able to obtain in Interest Arbitration any result which they could not get in a traditional collective bargaining situation." *City of Burbank and Illinois Fraternal Order of Police Labor Council*, Case No. S- MA-97-056 (Goldstein, 1998)

As established in *Will County Board and Sherriff of Will County*, Case No. S-MA-88-09 (Nathan, 1988) and *City of Burbank*, Arbitrators typically apply a 3-factor test that a party must meet in order to demonstrate that a major change in the *status quo* is needed:

- 1) the old system or procedure has not worked as anticipated when originally agreed to; or
- 2) the existing system or procedure has created operational hardships for the employer or equitable or due process problems for the union; and
- 3) the party seeking to maintain the *status quo* has resisted attempts to bargain over the change (i.e., refused a quid pro quo).

City of Burbank, Case No. S-MA-97-056 (Goldstein, 1998)

With these principles in mind, the Arbitrator considers, "... what the parties may have reasonably agreed to if they had been successful in compromising and settling the open issues." *Wood Dale Fire Protection District and Wood Dale Professional Fire Fighters Ass'n*, S- MA-07-260, at p. 33 (Winton, 2008).

I have carefully considered the record in this case, including all the evidence and arguments that have been proffered by the parties. I agree with the Union that the Village's proposal to permit the use of Part-Time Officers is a breakthrough issue. I find that by proposing a second tier of employees, even with the proposed restrictions, the Village is attempting to significantly change the *status quo* in the Department. I disagree with the Village that this is a minor change in existing working conditions. Rather, I find that it is a major modification to the existing personnel structure. Therefore, I shall apply the breakthrough analysis to this matter. As noted above, the breakthrough analysis calls for a higher burden of proof.

I note that the Village testified, and the Union did not dispute, that since 2010, a period of 8 years, it has essentially maintained the number of Full-Time Officers on its roster at 10. While the Village argues that its proposal has no effect on the current Bargaining Unit, after applying Arbitrators Goldstein's and Nathan's 3-part test, it is evident that the addition of Part-Time Officers will change the *status quo* in a significant fashion. I find that the evidence reveals that the Village seeks to obtain through this Interest Arbitration a significant departure from the *status quo* that qualifies as a breakthrough change based on the precedent cited above.

Addressing the 3 factors, I first find that the evidence does not establish that the Department's current roster of 10 Full-Time Officers has not worked as intended, and thus does not meet the breakthrough standard. The Village contends that the system is broken because of unanticipated Federal and State employee leave laws. It claims that when the parties negotiated their inaugural Contract in 2000, the Family and Medical Leave Act had not yet been passed. It further claims that the parties did not anticipate in 2016 a change in State law requiring employers to permit eligible employees to use paid sick days for purposes including illness, injury and medical appointments of the employee or a covered family member.

According to the Village, the use of Part-Time Officers to supplement its roster of 10 Full-Time Officers will enable the Village to continue to provide excellent Police service when an excessive number of Full-Time Officers are on extended leave. The first measure of a breakthrough analysis is:

- 1) the old system or procedure has not worked as anticipated when originally agreed to; or

I have reviewed the testimony and documentary evidence in this case and find that it is uncontested that the Village, with 10 Full-Time Officers, has successfully been meeting all of its Patrol shift requirements, in accordance with Special Order 01-12-19 Minimum Manpower Requirements, in spite of roster vacancies. I note that three of those vacancies should have been eliminated by the date of this Award. The Officer on maternity leave was expected to return to duty by the end of April 2018, as well as the two new hires who were in their FTO phase, should all have been in full duty status by the issuance of this Award. Last, the Officer who was on extended military leave status at the time of this Hearing is expected to return in September 2018.

Thus, I find that the Village's argument is unpersuasive. The Family and Medical Leave Act preceded the parties' 2000 negotiations. There is no evidence in the record that during the initial contract negotiations in 2000, or during any successor negotiations prior to the instant matter, the Village sought to employ Part-Time Officers. The Village considers the system broken because of its unanticipated high use of available Federal and State personal leave laws. However, the change in Illinois law permitting broader use of sick days for covered employees does not mandate an increase in the total number of sick days an employee receives.

Conversely, the Union has argued, and the Village did not dispute, that active Full-Time Officers have consistently managed all of the open shifts by working overtime. The Village cited only one instance in which a Full-Time Officer ended up working 20 hours, a situation that neither the Village nor the Union wants repeated. However, that one aberration does not amount to a systemic breakdown that would justify adopting a major change to the Contract through Interest Arbitration.

As noted above, in order to meet the standard for a breakthrough, the party requesting the breakthrough must prove that the relevant aspects have been met. Interest Arbitration is an extremely conservative process, and parties must not be able to obtain in Interest Arbitration what it could not achieve in negotiations. It is a last resort process, only to be utilized when parties that cannot strike cannot reach agreement after good faith bargaining.

In the instant case, I find that the use of Full-Time Officers to meet shift requirements has worked as intended, albeit not necessarily in a perfect manner, but it has worked nonetheless. The Village has essentially argued that the current system would work better with the availability of Part-Time Officers under specified conditions. That very well may be true. However, that is not the standard required to be met in order to grant a breakthrough change. That determination is best left to the parties themselves through collective bargaining and not unilaterally imposed by an Interest Arbitrator.

As noted above, the first prong to meet the threshold of a breakthrough analysis is to prove that the system is not working as it was intended. I find that coverage of open shifts using Full-Time Officers on overtime is working as intended. Even if I were to agree with the Village that it could function better through the strategic use of Part-Time Officers filling vacancies exceeding seven days, that does not meet the initial standard to show that the system is not working as intended. The Village argued that using Part-Time Officers to fill excessive vacancies is a better approach than hiring one more Full-Time Officer. The Village's reasoning is not a valid justification to obtain a breakthrough change in Interest Arbitration. The Village has not shown that filling open shifts with its current roster of active-duty Full-Time Officers has not worked as the parties intended.

As noted by Arbitrators Nathan and Goldstein, the party pursuing a breakthrough change to the *status quo* must show that either the first or second requirement has been met. The second prong of the 3-pronged test requires that the moving party must show:

2) the existing system or procedure has created operational hardships for the employer or equitable or due process problems for the union; and

Based on the evidence presented, I cannot find that the existing system has created operational hardships for the Village. While there may have been some inconveniences, I do not find that such inconvenience rises to the level of an operational hardship. Thus, I find that the Village has been unable to meet either of the first two prongs of the 3-pronged test.

The third prong of the test requires:

3) the party seeking to maintain the *status quo* has resisted attempts to bargain over the change (i.e., refused a *quid pro quo*).

I note that in order to obtain a breakthrough change, the party seeking the change must first prove that one of the first two requirements has been met, and further, that the party seeking to maintain the *status quo* (here, the Union) has resisted attempts at the bargaining table to address these issues. As noted above, I have determined that the Village has not met its initial burden to show that the system is broken or that it has suffered operational hardship. While it is unnecessary to reach the third prong, I have reviewed the evidence regarding the parties' negotiation and mediation sessions.

The Union contends that while the Village has proposed a wage increase of 0.25% if the Village gained the right to use Part-Time Officers under specified circumstances, the proposal was not sufficient to qualify as a *quid pro quo*. Conversely, the Village contends that the Union

failed to offer a meaningful counteroffer that would address the Village's concerns. There is no evidence in the record to show that the Union ever offered any counter-proposal. Rather, the Village contends that the Union simply rejected the proposal at the bargaining table and in mediation. However, the Union contends that essentially, no realistic proposal was presented by the Village. Thus, the Union contends that it has not resisted bargaining over this issue. It appears that while the Union did not proffer any offer on Part-Time Officers, it considered the Village's proposal to be so minor as to not constitute a proposal.

While I find that there is some evidence to show that the Union did resist bargaining over this issue, ultimately, because neither the first nor second prongs of the 3-pronged test were met by the Village, I need not reach a legal determination of whether the Union has resisted bargaining on the question of Part-Time Officers.

As noted by numerous Arbitrators, Interest Arbitration is a fundamentally conservative process and parties should not be able to obtain in Interest Arbitration what they could not at the bargaining table. In the instant case, the Village sought to significantly modify the current Contract by obtaining the ability to use Part-Time Officers to perform Bargaining Unit work. I find that this is a breakthrough issue and that the Village has not met its burden to prove that its proposal meets the standards under the 3-pronged breakthrough test. Thus, the Union's proposal is accepted and the *status quo* shall remain.

XIII. AWARD:

For reasons stated in this Opinion and Award, the Arbitrator finds:

The following shall be incorporated into the May 1, 2016 – April 30, 2019 Collective Bargaining Agreement between the parties:

Wages:

The Union's offer is adopted.

Wage Schedule for May 1, 2016 – April 30, 2019 Contract	
Date	% Increase
May 1, 2016	2.50%
May 1, 2017	2.50%
May 1, 2018	2.50%
TOTAL INCREASE = 7.50%	

Use of Part-Time Officers:

The Union's position is accepted and the *status quo* shall remain.

**Steven
Bierig** Digitally signed by Steven Bierig
DN: cn=Steven Bierig, o=Steven M.
Bierig -Attorney-Arbitrator-Mediator,
ou, email=arb438@comcast.net,
c=US
Date: 2018.06.06 16:22:59 -05'00'

**Steven M. Bierig, Arbitrator
June 6, 2018**