INTEREST ARBITRATION

OPINION AND AWARD

---

IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

**AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 31, LOCAL 3762**
("Union", "AFSCME" or "Bargaining Representative")

AND

**COUNTY OF WARREN and SHERIFF OF WARREN COUNTY**
(“County”, “Sheriff” or collectively "Joint Employers")

Case No. S-MA-10-073
Arbitrator's Case No. 11/028

---

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

**Appearances:**

**On Behalf of the Union:**
Scott Miller, Esq., Staff Attorney AFSCME, Council 31

**On Behalf of the Joint Employers:**
Arthur Eggars, Esq., Califf & Harper, P.C.

**TABLE OF CONTENTS**

## I. PROCEDURAL BACKGROUND

This matter comes as an interest arbitration between the County of Warren (the "County") and the Sheriff of Warren County (the "Sheriff") (collectively the "Joint Employers") and the American Federation of State, County and Municipal Employees, Council 31, Local 3762 (the "Union") pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (the "Act"). The bargaining unit represented by the Union in this case is a mixed unit consisting of mostly civilian employees in various County offices, including the Circuit Clerk, Treasurer. Supervisor of Assessments, State's Attorney, Highway Department and the Sheriff's Office. There are 23 employees currently in the bargaining unit. At issue here are nine of the employees who work in the Sheriff's Office in the classification Jailer, also referred to as Correctional Officer. This dispute arises from the parties' impasse in negotiations for a successor to the Collective Bargaining Agreement in effect from December 1, 2005 through November 30, 2009.

The record establishes that bargaining for the instant Labor Contract began on October 29, 2009. The record is silent as to the total number of bargaining sessions between the parties, but it is undisputed that the parties failed to reach agreement on any issues prior to the hearing in this matter. The Union filed a demand for compulsory interest arbitration with the Illinois Labor Relations Board on March 9, 2010, limited to the nine Correctional Officers. The Joint Employers thereafter advised the Labor Board of the Joint Employers' position that the Correctional Officers at issue were not

entitled to interest arbitration under Section 14 of the Act. On April 18, 2011, the Labor Board issued a decision finding that the Correctional Officers are entitled to invoke Section 14 compulsory arbitration.

The hearing before the undersigned Arbitrator was held on September 8, 2011, at the courthouse in Monmouth, Illinois, commencing at 10:00 a.m. The parties were afforded full opportunity to present their cases as to the impasse issues set out hereinbelow, which included written and oral evidence, both testimony and narrative. A 111-page stenographic transcript of the hearing was made, and thereafter the parties were invited to file written briefs that they deemed pertinent to their respective positions. The parties each waived the tripartite arbitration panel and so I am appointed as the sole arbitrator to decide this matter.

At the hearing, the following individuals were present:

For the Joint Employers:

Arthur Eggars, Esq., Attorney
Sigrid Zaehringer, Esq., Attorney
Bruce Morath, Chief Deputy

For the Union:

Scott Miller, Esq., Attorney
Randy Lynch, Staff Representative

Post-hearing briefs were exchanged on November 8, 2011, and the record was thereafter declared closed.

## II. FACTUAL BACKGROUND

The Union is a labor organization within the meaning of Section 3(i) of the Act. It also is the exclusive bargaining representative within the meaning of Section 3(f) of the Act for, among others who are not at issue here, all Correctional Officers employed by the Joint Employers. The County and Sheriff are each employers within the meaning of Section 3(o) of the Act. The employees at issue, Correctional Officers, are security employees within the meaning of Section 3(p) of the Act, or so the parties stipulated before the Labor Board. These employees work at the County Jail and also provide courthouse security. The parties are currently negotiating their fourth Collective Bargaining Agreement covering this unit, the record further establishes.

The facts also demonstrate that the pay schedule for Jailers in effect for fiscal year 2009, the last year of the current contract, is as follows:

| 0-1 years | 1-5 years | 6-10 years | 11-15 years | 16 + years |
|---|---|---|---|---|
| $10.71/ hr. | $11.34/ hr. | $11.65/ hr. | $12.61/ hr. | $13.87/ hr. |

The record also reveals that seven of the employees at issue here are currently at the second step in the above schedule, one is at the fourth step and one is at the fifth step. Two of the employees at the second step will move to the third step during fiscal year 2012; one will move there during fiscal year 2013, two will move there during fiscal year 2014; and the last two will move to the third step during fiscal year 2015. Finally, I note that the employee currently

at the fourth step will move to the fifth step at the end of fiscal year 2015.

**III. STIPULATIONS OF THE PARTIES**

The record shows that the instant Labor Contract should have a five-year term, beginning December 1, 2009, by agreement of the parties. Moreover, I find that the following are the economic and non-economic issues in dispute:

Economic Issues:

1. Wages and Rank Differential for Sergeants
2. Personal Days
3. Uniforms

Non-Economic Issues:

1. Hours of Work and Overtime
2. Filling of Vacancies
3. Insurance Language

In addition to the foregoing, the parties entered into the following pre-hearing stipulations:

Pre-Hearing Stipulations

1. The Arbitrator in this matter is Elliott H. Goldstein. The parties agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the Joint Employers and Union.

2. The parties stipulated that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on the issues submitted. The parties further waived the requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act, requiring

the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment.

3. The Parties agreed that the Arbitrator has the authority to award wage increases and any other forms of compensation fully retroactive to May 1, 2008, May 1, 2009, and May 1, 2010 on all hours paid. Both parties waived any defense, claim, or right to challenge the arbitrator's authority to make the award retroactive.

4. The parties agreed that the hearing would be transcribed by a court reporter whose attendance was to be secured for the duration of the hearing by agreement of the parties. Additionally, the cost of the reporter and the Arbitrator's copy of the transcript would be shared equally by the parties.

5. The parties further stipulated that I should base my findings and decision in this matter on the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. (The "Act").

## IV. THE PARTIES' FINAL PROPOSALS

### A. The Union's Final Proposals

Economic Issue #1 – Wages and Rank Differential

The Union proposes the following wage increases:

Effective December 1, 2009:

- 2.00% across the board increase.

Effective December 1, 2010:

- 2.00% across the board increase.

Effective December 1, 2011:

- 2.00% across the board increase.

Effective December 1, 2012:

- 2.00% across the board increase.

Effective December 1, 2013:

- 2.00% across the board increase.

- Sergeants receive $0.75 per hour above the pay scale for Correctional Officers.

Economic Issue #2 – Personal Days

The Union proposes to increase annual personal days under Article XXIII from two to three.

Economic Issue #4 – Uniforms

The Union proposes that, beginning December 1, 2009, in addition to current clothing provision, Correctional Officers will be provided appropriate jackets, name tags and hats where necessary.

The Union proposes to maintain the status quo on all non-economic issues.

**B. The Joint Employers' Final Proposals**

Economic Issue #1 – Wages

The Joint Employers propose the following wage increases:

Effective December 1, 2009:

- 0.00% across the board increase.

Effective December 1, 2010:

- 1.00% across the board increase.

Effective December 1, 2011:

- 1.50% across the board increase.

Effective December 1, 2012:

- 2.00% across the board increase.

Effective December 1, 2013:

- 2.00% across the board increase.

The Joint Employers propose to maintain the status quo on all other economic issues.

Non-Economic Issue #1 – Hours of Work and Overtime

The Joint Employers propose the following changes to existing language[1]:

**ARTICLE VIII**
**HOURS OF WORK/OVERTIME**

> **Section 3. Work Schedule - Sheriff Department Only**
> Work schedules showing the employee's normal shifts and work days shall be posted on the department bulletin board. It is understood that the Sheriffs Department is a paramilitary law enforcement organization and that the direction of the department is solely reserved to the Sheriff; however, it is agreed that Jailers, Matrons and the Sheriff's Secretary shall have the right to request shift assignment and days off ~~on the basis of seniority so long as this does not interfere with the efficient operation of the Department as determined by the Sheriff~~ **subject to the approval by the Sheriff whose decision shall be final and shall not be subject to grievance and arbitration procedures**.

Non-Economic Issue #2 – Filling of Vacancies

The Joint Employers propose the following changes to existing language:

[1] All proposed deletions of existing language are shown above as stricken; proposed additions to language are shown in bold type.

**ARTICLE XI11**
**FILLING OF VACANCIES**

**Section 2. Posting**
Notice of permanent bargaining unit vacancies shall be posted on bulletin boards at each of those work stations stated in Article XIV, (Bulletin Boards) for five (5) calendar days. Such notice shall state the ~~position,~~ classification, the shift~~, the work location and assignment~~ and the rate of pay.

**Section 3. Filling of Vacancy**
Any bargaining unit employee may apply for a vacancy. The Employers may also fill the vacancy from outside the bargaining unit, as the Employers deem appropriate ~~if the outside applicant possesses greater skill and ability, as reasonably determined by the Employers, than a present employee applying for the vacancy. In the event any grievance pertaining to this topic is submitted to binding arbitration under Article X herein, the Employers' determination shall not be modified unless the Union demonstrates that the bargaining unit employee possess greater skill and ability than the outside applicant~~.

Non-Economic Issue #1 – Insurance

The Joint Employers propose to add to Article XIX Insurance and Pension, the following:

**Employees not providing information for the purpose of the County bidding health insurance within 10 days of the information request shall be disciplined.**

## V. RELEVANT STATUTORY LANGUAGE

Section 14 of the Act provides in relevant part:

5 ILCS 315/14(g)

On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute... the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive… As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

5 ILCS 315/14(h) – [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]

(1) The lawful authority of the Joint Employers.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.

(A) In public employment in comparable communities.
(B) In private employment in comparable communities.

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

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

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

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

## VI. EXTERNAL COMPARABLES

The County is located in western Illinois. Monmouth is the county seat. According to the 2010 Census, the County has a population of 17,707, the parties agree. Median home value in the County is $81,100 and the Per Capita Income is $19,961. The Union submits 13 Illinois counties for purposes of external comparability under applicable statutory criteria: Fulton, Hancock, Henderson,

Henry, Knox, Mason, McDonough, Mercer, Peoria, Rock Island, Schuyler, Stark and Tazewell. The Union points out that it did not "cherry pick" to obtain its list of proposed comparables. (Un. Brief, p. 17). It goes on to assert that it selected the counties on its list as comparables because they are contiguous, or nearly so, to Warren County and also because these counties have Collective Bargaining Agreements covering correctional officers. Two contiguous counties, Henry and Schuyler, should not be considered in this case, the Union suggests, because neither county has in effect a Collective Bargaining Agreement covering correctional officers.

The Union submitted the following data regarding its proposed comparables[2]:

| County | Population | Per Capita Income | Median House Value |
|---|---|---|---|
| Warren | 17,707 | $19,961 | $81,100 |
| Fulton | 37,069 | $20,469 | $78,300 |
| Hancock | 19,104 | $23,098 | $76,200 |
| Henderson | 7,331 | $21,960 | $74,300 |
| Henry | 50,486 | $25,023 | $103,800 |
| Knox | 52,919 | $20,872 | $79,600 |
| Mason | 14,666 | $23,456 | $81,800 |
| McDonough | 32,612 | $18,245 | $84,100 |
| Mercer | 16,434 | $25,081 | $103,200 |
| Peoria | 186,494 | $27,299 | $113,700 |

[2] U. Ex. 13.

| | | | |
|---|---|---|---|
| Rock Island | 147,546 | $24,476 | $109,200 |
| Schuyler | 7,544 | $21,730 | $70,400 |
| County | Population | Per Capita Income | Median House Value |
| Stark | 5,994 | $25,409 | $82,100 |
| Tazewell | 135,394 | $27,238 | $121,800 |

The Joint Employers maintain that external comparables are immaterial in light of the current economy. "Recent arbitration decisions have acknowledged that the recession has negated the value of the typical comparability analysis," I am told. (Er. Brief, p. 19) (citing County of Rock Island and American Federation of State, County and Municipal Employees, Council 31, ILRB Case No. S-MA-09-072 (Benn, 2010); City of Belleville and Illinois Fraternal Order of Police Labor Council, ILRB Case No. S-MA-08-157 (Goldstein, 2010)). Even in the context of the current economic downturn, the Joint Employers then argue, the County's "financial position is uniquely unstable." (Id.). For this reason, as will be further developed below, the Joint Employers offer no external comparables.

However, the Joint Employers also strongly challenge the Union's proposed comparables, contending, without elaboration, that the counties that comprise the Union's comparables group each have revenue structures that are dissimilar to Warren County's revenue structure. Consequently, urges the Joint Employers, each of the counties in the Union's comparability ground are less dependent on State reimbursements than is Warren County. That factual difference is of critical significance to a realistic assessment of the Union's claim

that external comparability should be the primary statutory factor in the instant case, the Joint Employers stress. In addition, the evidence shows that Warren County has had the smallest general fund among the Union's proposed comparables in each year since fiscal year 2005, the Joint Employers insist. (Er. Ex. 12).

It is also the Joint Employer's position that at least nine of the Union's proposed comparables are distinguishable from Warren County on population alone. At the high end, Peoria County, with a population of 186,494, is more than seven times that of Warren County. At the low end, Stark County, with a population of 5,994, is less than half that of Warren County. The only factor favoring the Union's list, the Joint Employers reason, is the proximity of the proposed counties to Warren County. This is an insufficient basis for finding them comparable, the Joint Employers aver.

In my judgment, the Joint Employers' appear to have misread my opinion in City of Belleville, supra, as providing support for their position that external comparability should not be considered in this case. In my discussion in Belleville, issued more than a year before the hearing here, I acknowledged once again "looking at what others [in the relevant marketplace] are getting and that in turn is of crucial significance in determining each parties' respective final offers. . .'" I certainly also acknowledged however that "[t]he particular facts must always be reviewed, in the appropriate context." City of Belleville, S-MA-08-157 (Goldstein, 2010) at p. 17 (quoting, Village of Skokie and Skokie Firefighters Local 3033, I.A.F.F., S-MA-89-123 (Goldstein, 1990) at p. 35). I also emphasized that the

"discussion [of external comparables] may have changed because times are hard," City of Belleville, supra, at p. 41, noting that annual increases of 3% to 4% are no longer common, but the framework of the analysis, i.e. the Section 14(h) factors, remained as before the so-called "great recession," I further stressed in my Belleville decision.

In this instant dispute, I reconfirm my view that the statutory factors, and especially external comparability, cannot be read out of the Act without the potential of turning the interest arbitration process into a crap shoot. "Interest arbitrators are essentially obligated to attempt to replicate the results of arms-length bargaining between the parties and do no more." City of Belleville, supra, at p. 40.

The Joint Employers' argument, I also would suggest, is fundamentally grounded in Arbitrator Edwin H. Benn's discussion of the issue in State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726, S-MA-08-252 (Benn, 2009), where Arbitrator Benn described in detail the "economic free-fall" that occurred in the last quarter of 2008. There, and in subsequent opinions, Arbitrator Benn determined that comparability should be put on temporary hiatus as a factor in deciding between competing wage offers.

I previously have noted my agreement with some aspects of Arbitrator Benn's reasoning, particularly to the extent that he suggested that the economic uncertainties of the time [the 2008-2009 years, certainly] militated against what then appeared to be a labor

relations preference for three-year contracts and for wage increases seemingly dictated mostly or solely by the comparables; see Forest Preserve District of DuPage County and Metropolitan Alliance of Police, Chapter 471, FMCS Case No. 091103-0042-A (Goldstein, 2009) at pp. 32-34.

Importantly, despite the cited holdings in Forest Preserve District of DuPage County, supra, even after the "great recession of 2008-09," I have repeatedly reaffirmed my view that "*accurate* comparability is indeed one traditional yardstick used in measuring the viability of last best offers, in that the relevant marketplace is closely examined for purposes of comparing what other similarly situated employee groups are receiving from their respective (and ostensibly analogous) Employers. However, the particular facts must always be reviewed in their appropriate context. (Village of Skokie and Skokie Firefighters Local 3033, I.A.F.F., S-MA-89-123 (Goldstein, 1990) at p. 35). That is the critical point here--context is everything, in my opinion." City of Belleville, supra, at p. 42.

At this point, three years after the economic collapse in 2008, the force of Arbitrator Benn's reasoning State of Illinois, Department of Central Management Services, supra, has faded, it seems to me. For one thing, there are relatively few public sector Labor Contracts that were negotiated before 2009 that are still in effect. In fact, all of the comparable contracts submitted in this case were executed in 2009 or later, I specifically stress. This fact is significant, I find. See Village of Morton Grove and Illinois Fraternal Order of Police Labor Council, ILRB Case No. S-MA-09-015 (McAllister, 2011), p.18

(finding that Arbitrator Benn's reasoning did not extend to contracts negotiated in 2009 or later).

Moreover, the impact of those labor contracts that were negotiated prior to the start of the recession, the effects of which seemed both uncertain in 2009 and 2010 and likely to be difficult if not disastrous to the communities involved, is now known and should be fairly easily and objectively provable. This is the crux of the "context" assessment that currently makes accurate external comparability possible and therefore mandated by Section 14(h)4, I hold. Singularly enough, the Joint Employers charging the Union with choosing its list of comparables solely by the fact of their location at or near Warren County, without the Joint Employers presenting a counter list, raised a serious decisional issue--what counties are properly to be considered external comparables?

Having examined the record thus far with particular respect to the statutory criterion of external comparability, I am persuaded that the external comparables submitted by the Union, with the exceptions of Peoria, Rock Island and Tazewell counties, are appropriate choices for comparison. On this, I am guided by Arbitrator Edwin Benn, who published certain useful guidelines in A Practical Approach to Selecting Comparable Communities in Interest Arbitrations Under the Illinois Public Labor Relations Act, Edwin Benn (1998), Chicago Kent College of Law Institute for Law and the Workplace, Vol. 15 Lead Articles, Issue 4.

The question of how to construct the universe of external comparability of course has been considered numerous times by the

arbitrators working as interest arbitrators under the Act. While there are permissible variations, the ground rules are recognized and ascertainable, I particularly point out. Any analysis of this issue must begin with the statutory rule itself, I stress. See 5 ILCS 315/14(g)4, referenced above. Both “employees performing similar services” and “other employees generally” in public and private employment “in comparable communities” are the specific standards Section 14(g)4 provides.

In relevant and helpful part, Arbitrator Benn advised on how to apply this general statutory language, as follows:

> From a practical standpoint, the determination of whether two communities are "comparable" is important and most difficult. First, the Act does not define "comparable communities." There is no legislative history concerning what the drafters intended when they used that phrase. Nor is there any judicial guidance. Arbitrators are therefore left to their own devices to discern how to determine comparability.
>
> Second, the notion that two communities can be truly "comparable" may not be realistic. As I observed in my award in Village of Streamwood; "It is not unusual in interest arbitrations for parties to choose for comparison purposes those communities supportive of their respective positions. The concept of a "true 'comparable' is often times elusive to the fact finder. Differences due to geography, population, department size, budgetary constraints, future financial well-being, and a myriad of other factors often lead to the conclusion that true reliable comparables cannot be found. The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more towards hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities."
>
> ***
>
> … This article offers one arbitrator's thoughts on a practical and reasonable method for making these difficult comparability determinations.

***

> To begin the analysis, the parties' lists of comparables are first examined to determine if there are communities over which the parties are not in dispute… If a contested community has sufficient contacts in terms of the identified factors with the range of agreed upon comparables, then it is reasonable to conclude that the contested community is also comparable to the community subject to the interest arbitration. Conversely, if the contested community does not have sufficient contacts with the agreed upon range of comparable communities, then it is reasonable to conclude that the contested community is not comparable. (Emphasis added).

I appreciate the Joint Employers' point in this case that none of Union's proposed comparables is an absolute match for Warren County, although some of them are fairly close, I find. I also note that the Union does not offer any evidence on factors such as department size or structure, EAV or jail populations, all of which are relevant, I certainly recognize.

These facts do not make the construction of a fair universe of comparables easy. However, I also again stress the Joint Employers offer no alternative comparables and they also offer no hint that they agree to any of the counties that the Union proposes. Inability to pay is the nearly exclusive focus of the Joint Employers' take on this case, I hold. Yet I cannot ignore comparables, I again say, because I am statutorily bound to consider them as one important decisional guide. There also is evidence on this record that provide rational connections between Warren County and many of the Union's proposed comparables, as I analyze the parties' proofs, I find. These factors will be detailed below.

Over the years, I have drawn from Arbitrator Benn's logic that no two proposed "comparables" can be truly comparable (identical) in

each and every way, I again stress. Indeed, Arbitrator Benn observed that, "The notion that two municipalities [or proposed comparable groups] can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn, tilts more towards hope than reality." Thus, for better or worse, as Arbitrator Benn notes, it is up to me to decide (on the basis of proffered proofs) which, if any, of the proposed comparables has a sufficient number of “useful contacts" so as to render them substantively similar for purposes of statutory comparison. It is the assessment of the “useful contacts” that is the necessary but tough job, I specifically hold.

As stated above, I find that Peoria, Rock Island and Tazewell counties will be excluded from the instant comparison. These three are bigger, richer, and not part of Warren Township’s labor market, as a practical matter, I am convinced. The remaining counties on the Union’s list, though, share proximity, population, median incomes, EAV and property values so as to have sufficient contacts with Warren County to make comparison useful, the facts set out in Union Exhibit 13 reveal, I conclude. However, no comparable contract data was submitted for Henry and Schuyler counties. Accordingly, the resulting list of external comparables will include the counties of Fulton, Hancock, Henderson, Knox, Mason, McDonough, Mercer and Stark, I hold.

**VII. INTERNAL COMPARABLES**

The parties are still in negotiations regarding the remainder of this bargaining unit, I am told. No evidence was submitted showing any agreements thus far reached with respect to the their terms and conditions of employment.

Neither party submitted any other evidence pertaining to internal comparables.

**VIII. OTHER FINANCIAL CONSIDERATIONS**

The Joint Employers are unable to pay the general wage increase proposed by the Union, the Joint Employers claim. The County's general fund, from which the County meets most of its payroll, was effectively $63,000 in the red at the time of the hearing, the Joint Employers argue. The County maintains some "restricted funds," but does not use money from these funds to cover shortages in the general fund, as restricted funds are earmarked for their specific purposes, the Joint Employers further claim.

Next, say the Joint Employers, for the last seven years, the County has had to borrowed money from its working cash fund to fund the general fund in order to meet its operational expenses. By statute, these borrowed funds must be entirely paid back to the working cash fund at or before the end of the fiscal year, which is November 30, the Joint Employers insist. The amount borrowed from the working cash fund in fiscal year 2011 was $450,000, it quickly adds, the most that the County has ever borrowed from the working cash fund. The County had not reimbursed the working cash fund with the any of the $450,000 at the time of the hearing in this matter, the Joint Employers also tell me. Furthermore, the current average County payroll is approximately $52,000, the Joint Employers submit. In addition, the County pays all or nearly all employee health insurance premiums, which are set at rates between $819 and $941 per month for the period of July 1, 2011 to June 30, 2012, the Joint Employers say.

The Joint Employers, though, do concede a point made by the Union at the arbitration hearing in this case, namely, that the County's audited financial report for 2010 showed that the County had $2.3 million in "available assets." The Joint Employers however respond that the referenced assets are not cash. The actual cash shown on the 2010 was $84,446, of which only $46,654 was available in the general fund. Moreover, the Joint Employers challenge the probative value of the audited financial statements introduced by AFSCME because the assets are shown based on an accrual accounting method. Once again, both the Joint Employers and this Union urge the other party's numbers are "lies—damn lies."

The major source of the County's fiscal problems, the Joint Employers directly argue, is the County's dependence upon reimbursement from the State of Illinois for a major portion of its revenues. All totaled, reimbursements from the State added up to 50.42% of the County's total revenues in 2010. Unfortunately, State reimbursements have been unreliable in terms of timeliness, and the State is often months in arrears on its obligations to the County, the Joint Employers argue. This circumstance makes it "dangerous for the County to commit to paying a 2% wage increase for the next few years." (Er. Brief, p. 16).

The Joint Employers also point out that the County Board placed two new tax initiatives before the County's voters in 2008 and 2009, both of which the voters rejected. The County also acted during 2011 to shift some operational costs from the general fund to restricted funds. The County is doing what it can to continue to meet it

obligations, the Joint Employers conclude. However, given the County's finances, the "offer of 0%, 1%, 1.5%, 2% and 2% is the more reasonable of the two general wage increase proposals," the Joint Employers submit. (Er. Brief, p. 13).

The Union counters the Joint Employers' arguments by pointing out that the County's audited financial reports for 2009 and 2010 show that the County's reserves at the end of 2010 were actually higher than the reserves available at the end of 2009. Moreover, the percentage of the County's expenditures represented by Correctional Officers' pay dropped in 2010 as compared to 2009. All in all, Correctional officers' pay makes up only a tiny fraction (less than 1%) of the County's expenditures from the general fund, the Union contends.

Moreover, the Union argues, certain County Board members actively campaigned against the tax initiatives in 2008 and 2009. Equally important, the financial problems faced by the Joint Employers, i.e. delays in receiving State reimbursements, are no different than those experienced by the comparables here, in the Union's view. There has been no showing of an actual inability to pay, just an unwillingness to pay, the Union finally urges. Its conclusion therefore is that Section 14(g)2 is inapplicable to the facts in this case, despite the Joint Employers' best efforts. To the Union, unwillingness to pay does not satisfy the inability to pay statutory defense represented by the words of Section 14(h)3, as interpreted by interest arbitrators and the courts. See City of Lebanon and Illinois Fraternal, Order of Police Labor Council, S-MA-08-137 (Arbitrator

James Murphy, September 9, 2009) (Found: City had difficulty paying proposed Union increases, but such a difficulty paying does not rise to the level of an inability to pay).

## IX. DISCUSSION AND FINDINGS

### A. Economic Issue #1 – Wages and Rank Differential

At the outset, the Joint Employers submit that the Union's proposals for a general wage increase and for a $0.75 per hour rank differential for sergeants constitute a single economic issue for purposes of this analysis. A look at the Union's actual final offer as submitted into this record at the opening of this arbitration hearing disclose that fact on its face, the Joint Employers argue. They cite a number of arbitration decisions said to support their arguments on the "finality of final offers" and the rule against proffering alternative offers including my award in City of Elgin and Policemen's Benevolent and Protective Association, Unit 5, ISLRB Case No. S-MA-00-102 (Goldstein, 2002), where I found the union's proposals for a general wage increase, equity adjustment and the addition of a seventh step to the pay schedule were in fact a single proposal. See also Village of Elk Grove Village and MAP Chapter 141, ISLRB No. S-MA-95-11 (Goldstein, 1996). (Alternative final offers inconsistent with mandated last, best offer rule under the Act).

These arbitration cases are of significance to the Joint Employers, because they also argue that the Union's proposed rank differential is an unwarranted breakthrough item, which should be the basis for rejecting the Union' position on wages as a whole. (Er. Brief, pp. 9-12). On the other hand, says AFSCME, the Joint

Employers raised these two points for the first time in their Brief. The Union also submits that its proposals for wage increases and the rank differential reasonably are separate proposals, even if it did not technically separate these issues at hearing or then formally ask that wage increases and rank differential be treated either individually or as one issue. Common sense makes it evident that Article XIV and Appendix A do not encompass the same proposal, and general wage increases and rank differential pay are separate concepts, too, the Union argues.

The Employer relied on several judicial opinions to support its "no change in the wage package" argument. However, in my view, the opinions cited by the Joint Employers each turn principally on the fact that the respective proposals at issue all added to the overall cost of compensation to be borne by the respective employers. Here, in contrast, I emphasize the Union's proposal for rank differential has no cost at present. After all, the Joint Employers and the Union agree that there are no sergeants in the bargaining unit or employed as corrections officers/jailers currently. There are also no plans to fill the sergeant's rank in the future.

The significance of this fact to my analysis will be discussed more below. For purposes of the immediate issue, I find the fact to be a reasonable basis for distinguishing City of Elgin, supra, and the cited judicial precedent. However, as will be developed below, the option to "repackage final offers," separate them, or present alternative offers is one that cuts at the heart of the whole "last and best offer" approach to economic proposals under the Act, I and

several other interest arbitrators have held. See Village of Elk Grove Village, supra, at pp. 29-35.

More important, perhaps, my response to this specific disagreement on the wage offer combination also depends, in large part, upon how the rank pay differential is characterized. If that proposal is a significant cost item as made now, it might be a breakthrough, although there is still the issue of whether such a breakthrough would make the entire wage proposal less reasonable than the Joint Employers' total offer. If, on the other hand, the rank wage differential will not prompt any cost as current conditions exist, but was made to keep a distinction in rank pay for the unfilled sergeant's slot, the breakthrough doctrine is inapplicable as a matter of common sense, I reason.

Based on this finding, I hold that the Union need only show the rank differential for sergeants is technically an economic argument under the applicable statutory standards, but that its explained purpose was to clean up contractual language for the future. Simply put, I find the Union's offer on wages and its demand for a rank pay differential for sergeants are both part of one issue, wages, because that is what the Union's final offer on its face says. However, because the proposal for a rank pay differential is a no-cost item, I cannot find it constitutes a breakthrough per se, thus blocking the entire Union Wage offer, and I so rule.

On the issue of general wage increases, the differences in two proposals lie in the first three years: the City proposes an across the board wage freeze in the first year of the contract; increases of

1% and 1.5%, respectively, in the second and third years. The Union proposes increases or 2% for each of the first through the third years of the contract. Both parties propose increases of 2% for each of the last two years, I note.

The Joint Employers rely substantially on their inability to pay arguments to support their wage proposal, the record shows. The Joint Employers assert that their wage proposal is the more reasonable of the two wage proposals because "the County's financial condition is precarious," I am told. (Er. Brief, p. 12).

As I stated earlier in this opinion, the Joint Employers' essential position is that circumstances outside the County's control "make it dangerous for the County to commit to paying a 2% wage increase for the next few years." (Er. Brief, p. 16). The Joint Employers also note that despite the County's precarious financial condition, it has managed to outpace CPI in granting wage increases to its employees. For example, during the term of the last contract, which ran from December 1, 2005 through November 30, 2009[3], one Correctional officer received wage increases amounting to 17.2%, when step movement is factored in. The increases in CPI-W and CPI-U for the same period were, respectively, 9.4% and 9.2%. In fact, the total wage increases received by each of the employees employed or hired during the last Labor Agreement exceeded both CPI-W and CPI-U, the Joint Employers argue.

[3] The Correctional Officers received across-the-board increases of 2.5% in each year of the last contract.

The Union places much more reliance on external comparability than on the CPI-W or CPI-U indexes, obviously. The Labor Contracts for the comparables submitted into this record "were all entered into during the current recession," the Union reminds me in no uncertain terms. (Un. Brief, p. 17). Many of the comparable contracts contain annual wage increases in fiscal years 2010 through 2012 of more than 3%, and none of them provide for less than the 2% per year that the Union is asking for here, the Union goes on to contend. (Un. Brief, p. 22). The Union also points out that the Correctional Officers at issue here are paid at rates below most of their counterparts in the comparables. The bargaining unit correctional employees are also well below the low ends of starting pay ($18.34/hr.) and maximum pay ($25.61/hr.) statewide for jailers and correctional officers in 2010 as shown in the data from the Illinois Department of Employment Security, it submits. (Un. Brief, p. 23). The wage increases called for in the Union's proposal will not close these gaps, it specifically avers.

The Union further asserts that the Joint Employers' position as to CPI is based on an inappropriate analysis. That is, the Union argues, including step movement in a CPI analysis amounts to "comparing apples to oranges." (Un. Brief, p. 22). When step movement is excluded, as it should be, AFSCME says, CPI data for the period December 2008 through July 2011 in fact favors the Union's proposal, it concludes. (Id.).

For the reasons which follow, I am persuaded by the Union that its final wage proposal is, overall, the more reasonable of the two "last best" offers.

First, the evidence reveals that none of the employees in the comparable counties, with the exception of Stark, received less than 2% for fiscal year 2010. Correctional officers in four of the seven comparables received increases of between 3% and 4%, I also note. This comparison holds steady for the second and third years of this contract, I find. I also hold that, while correctional officers in Stark County received no increases in wages in fiscal years 2010 and 2011, as the Joint Employers urged, those officers will receive a 4% increase in fiscal 2012, the record reveals. However, this is the only comparable that supports in any way the Joint Employers' proposal. It is also the smallest and poorest of the comparable counties, I further point out.

Second, I am not persuaded that CPI appreciably favors either party's offer. CPI is not a precise measurement of what particular employees are paying to live, but is a gauge of relative changes of an artificial benchmark, I recognize. It is a measure of inflation (or deflation) and establishes a context for the need to change terms and conditions of employment, to see how these particular bargaining unit employees will fare over time in terms of their specific buying power. See my discussion in City of Belleville, supra, at pp. 42-43. Here, I do not believe the "buying power" of the employees at issue will be much enhanced by selection of the Union's offer or much reduced by the selecting the offer submitted by the Joint Employers.

Third, the arguments from both sides as to whether the County has done enough to raise revenues are immaterial to my current analysis, I further find. Interest arbitrators are essentially obligated to attempt to replicate the results of arm's length bargaining between the parties and to do no more. See Arbitrator Nathan's discussion of the nature of the interest arbitration process in Will County Board and Sheriff of Will County, ISLRB Case No. S-MA-88-9, pp. 51-52 (1988). I have routinely accepted those principles over the years. See my decisions in City of Belleville, supra; City of Burbank and Illinois Fraternal Order of Police Labor Council, ISLRB Case No. S-MA-97-56 (1998) at pp. 11-12; and Policeman's Benevolent and Protective Association Unit 54 and City of Elgin, ISLRB Case No. 8-MA-00-102 (2002) at pp. 95-97.

Indeed, the Joint Employers are correct to point out that I am not authorized to interject myself into what are political questions of overall allocation of resources, and/or potential supplies of revenue. City of Belleville, supra. I cannot order the City to raise taxes, though in fact there is some evidence that this has already "reluctantly" been attempted to be done in response to budget shortfalls. Instead, economic data is evaluated solely with regard to the narrow issue of the propriety of each party's final offer, I emphasize.

What jumps out in this case is the CPI data is inconclusive because the Joint Employers' wage proposal and the Union's, too, are for small increases and both are smaller than even the low inflation rate as contained in either the CPI-W or CPI-U indexes over the

portion of the current Labor Contract that already has happened. As should be obvious, the Joint Employers' wage offer is "back-loaded"--that is, whatever new money is mostly placed into employee wages comes in the latter years of this labor agreement. Neither of these facts is dispositive of the issue of whose offer is most reasonable. The Union however has successfully proved that a wage comparison with the external comparables shows that these bargaining unit employees are already paid measurably less than other persons in the comparable counties doing the same work. The "back-loading" of this contract makes the jailers' relative position degrade further in this contract's term, I hold.

Fourth, indeed it is a fact that the correctional officers in Warren County will, cumulatively, stay well below the average among the proposed external comparables, and there will be slippage in its relative rank--certainly no catch-up, this record reveals. This determination that external comparability does demand more than the Employer's offer on wage is the critical determination to support the Union's arguments, especially in light of the generalized "the State is unstable in its payment patterns to us" relied upon by the Joint Employers, I hold.

Fifth, the Joint Employers' claim of inability to pay is somewhat unique, I conclude, too. The Joint Employers' claim here, as I see it, is not that its sources of revenue have dried up over the years, which is normally the case made[4], but that its primary source of

[4] Contrast the employer's evidence in City of Belleville, supra, which contained references to closed businesses and reduced tax bases.

revenue, the State, is unreliable in making timely reimbursements, I reiterate. The argument seems to be that the State has left the County in the position of frequently running short in its general fund and having to scramble to cover payroll and other expenses. What is really before me, I find, is a snapshot showing that the County's general fund was likely to have a negative balance on the first day of the 2012 fiscal year.

Sixth, I am convinced that the history of years past is not relevant, because that problem is political in its very essence. Certainly, the future is uncertain but the "great recession" seemingly has passed. The Joint Employers' reliance on the State of Illinois remaining a "low pay, no pay" revenue source would apply to all counties, I stress. Warren County may have these effects magnified by its own dependence on State of Illinois revenues to such a great extent, but the irregularity and significant delays in payment to each county affects all. I cannot equate that fact with a viability to pay the slightly lower offers for years 2 and 3 of this contract, with a freeze only in year one. Thus, in my opinion, the Joint Employers' arguments tend to show that the County may in any given week in the future have difficulty in meeting its payroll and other expenses because the State has not paid. That fact does not answer the question of inability to pay; it does illustrate unwillingness and difficulty to pay, which I find does not rise to the level demanded by Section 14(h)3, and I so hold.

Indeed, the County's position seems to be summed up in the statement of its own counsel at the hearing:

> One might wonder, given the fact that Warren County's financial condition and its general fund are in the condition that they are in, how then can Warren County be putting new money on the table. . .over the term of a five-year contract?

As a matter of context for this analysis, the fact that the State's reimbursements to the County are not always timely does not persuade me that the Joint Employers' offer is the more appropriate. See City of Lebanon, supra.

Based on all these considerations, I hold that the Union's wages offer is more reasonable and I adopt it for the pay increases for fiscal years 2010, 2011, 2012, 2013 and 2014.

**B. Economic Issue No. 2 – Rank Differential**

The Union supports what it presently claims is a separate proposal to establish a rank differential for sergeants of $0.75 per hour entirely on the rank differentials paid in the comparable counties, which appear to support the Union's position, I note. The Union concedes that there are no sergeants currently in the bargaining unit, but suggests that it is "not entirely unforeseeable that such a class of employee may exist." (Un. Brief, p. 23). The Joint Employers counter that the proposal is a breakthrough and that the Union has failed to meets its burden to prove the need for it.

The Joint Employers cite my discussion of the issue of departing from the status quo in City of Belleville, supra, at pp. 49-50, where I wrote:

> . . . [C]onventional wisdom on the subject of departing from *status quo* in interest arbitrations instructs that an interest arbitrator may depart from it when; 1)there is a proven need for the change; 2) the proposal [to depart from *status quo*] meets the identified need without imposing an undue hardship on the other party; and 3) there has been a

> *quid pro quo* to the other party of sufficient value to buy out the change or that other comparable groups were able to achieve this provision. See County of Cook/Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council; LLRB Case No. L-MA-96-009 (McAlpin, 1998).

I note that the important question of whether the above considerations would apply had there been any employees in the rank of sergeant is not before me, as I read this record. The fact that no sergeants have been employed in the bargaining unit would make my decision an easy one if the parties had presented two separate offers on wages--rank differential and pay rate--though I cannot analyze a wage proposal for a position that for all practical purposes does not exist and has no discernable costs. I cannot call the rank differential a "breakthrough or deal-breaker," either, I hold.

As already set forth above, under these circumstances, I rule that the rank differential proposal, without any incumbent sergeants now or apparently any sergeants planned to be added in the foreseeable future, is not the sort of breakthrough that would, in and of itself, make a particular last and best offer per se unreasonable. Simply put, the rank differential pay and wage rate items certainly could have been part of a final offer on wages package to be considered in its entirety or as separate items, by the parties agreeing to do so, one way or the other. The important fact is that the actual final offers put on the table make wages a single issue, with several subparts. See Employers' Exhibit book, Tab 1, pp. 1-3. I cannot separate the wage item or allow one party, here, the Union, to uncouple the parties' final wage proposal, without the agreement of

the other party, here the Joint Employers. Accordingly, I find there is no valid second issue on wages, and I so rule.

One important caveat should be noted. The idea of the parties agreeing on whether or not they are offering wages as two separate issues, Article XIV and Appendix A for rank differentials and wage rates respectively, or whether they in point of fact presented one overall proposal on "wages" for rank pay differential wage rates is significant, in my judgment. As I stated in Village of Elk Grove Village and Metropolitan Alliance of Police (MAP) Ch. 141 (1996) at pp. 32-33.

> I understand the detailed and carefully crafted argument by the Joint Employers that "final offers must be final," citing several well-respected arbitrators who have firmly ruled on this point. I also understand the need in the usual situation to maintain the clarity and finality of such last and best offers for the system to work in any sensible way at all. However, the potential policy reasons for that clarify in making parties stick to final offers--and the stipulation agreed to by these parties to make sure that would happen, Jt. Ex. 1, Stipulation No. 4--does not require a remedy of a directed "verdict," for what I believe is an obvious fact that Management has chosen to de-emphasize in its extensive arguments on this point: despite its rhetoric, it is obvious that the Union gave up on the alternative offers and retroactivity when it was "called on" by Management for violating the terms of both the Act and Jt. Ex. 1, the parties' stipulations.
>
> Simply put, as I indicated almost immediately at hearing, I believe that a "final award," to be effective and reasonable, must demand of me and the rest of the Panel actions which are legal and appropriate under the statute. Appendix A-2, which is the primary cause for the motion by Management under consideration, if seriously presented as an offer placed on the table, rather than as a mere illustration of the effect of Appendix A-1, would require such an illegal act on its face. As counsel for the Union clearly indicated at the time, he was proffering that "offer" at the behest of the bargaining unit, as an alternative to show the logic and reasoning for the offer that could legally be analyzed and granted, if appropriate

> and more reasonable than the Employer's counter proposal. That is the way I take what happened at hearing.
>
> Whether counsel for the Union at that moment meant Appendix A-2 to be exclusively an illustration of Appendix A-1 or whether my response caused him to quickly move in that direction I believe is largely irrelevant to the resolution of this particular issue. What was agreed to in the stipulations between the parties (Jt. Ex. 1), and required by the statute, is a final offer that represents the best and most reasonable assessment of each party as to what the Neutral must look to here. There can be no modifications by the Panel, as in "conventional" interest arbitration for non-economic contract proposals in this case.

On this issue, despite what I believe may originally have been an error by the Union in casting wages as a single proposal, there is no basis for a conclusion that the "options" offered the Arbitrator and/or "alternative" or separate offers for wages and rank differential are not in fact a single economic proposal. By the same token, there is no doubt in my mind that the facts are that the Article XIV offer on rank differential by this Union is not such a breakthrough so as to make the entire wage offer illegal, unreasonable, or inappropriate, as already set out above. I do not believe that as regards Joint Employers' contentions on both wage rates and rank differentials, there is no express provision in the Act itself, including Section 14(j), referring in any way to such a draconian penalty or remedy for separating the final offer without consent of the Joint Employers.

Ultimately, I am persuaded that even if the Union had at first in fact intended to make two offers, and in fact made only one, and then sought to change back to two offers at the briefing stage in this case, I would consider the actual final and best offers represented by

the Joint Employers' Exhibit Book, Tab 1, pp. 1-3. It makes no sense to decide that the circumstances of this case permit the Union to change its offer on rank differential to a separate offer without the Joint Employers' consent, which was never granted, I specifically find.

Based on these conclusions, I find that the rank differential proposal is not a separate final offer and it is part of the overall proposal of wages. As such, this proposal cannot be granted or rejected as a separate item, I hold.

**C. Economic Issue #3 – Personal Days**

The Union seeks to add a third personal day, an increase from the current allowance of two personal days under Article XXIII of the parties' contract. The Union contends, and the evidence shows, that the Union's proposal would place the employees in middle compared with their counterparts in the comparables list. The Joint Employers propose to maintain the status quo. Among other things, the Joint Employers argue that the addition of a personal day of will add to the County's financial problems. The Joint Employers also contend that the proposal is not warranted in light of the numerous paid holidays that the employees currently enjoy.

The Union's proposal presents substantially the issues as were presented to me in Jefferson County and Illinois Fraternal Order of Police Labor Council, ILRB Case No. S-MA-97-21 (Goldstein, 1998). There, the union sought additional personal leave for its members based entirely on comparables. I noted the lack of evidence of any difficulties or hardship to employees with only three personal days.

I had also seen no evidence of a quid pro quo being offered to that county. The status quo should not be broken absent strong and compelling evidence, I then reasoned. I thus ruled for the employer in that case. Id. at p. 49.

In the instant matter, I find that the Union has not presented any compelling evidence indicating that there is any valid reason to change the status quo on personal leave days. Moreover, I note that the Union's analysis of the comparables did not include a review of the total paid time off allowances enjoyed by employees in the comparable counties, a shortcoming that renders the Union's analysis unhelpful, frankly. I thus rule in favor of the Joint Employers' proposal that the Contract remain unchanged as to personal days.

**D. Economic Issue #4 – Uniforms**

The Union seeks to add jackets, name tags and hats to the provision for uniforms in Article XXV, Section 2 of the parties' contract. The current language includes three long sleeved and three short sleeved shirts, and a name tag, to be replaced as needed. The Joint Employers seek to maintain the status quo, contending that there is no need for the additional provisions.

The evidence shows that jackets are maintained at the jail for use by the Correctional Officers, who use them infrequently; name tags are already provided under the contract; and Correctional Officers do not need hats in the performance of their duties. Other than the generalized testimony from the Union's business agent that the Correctional Officers "do not like having to share the jackets," the Union offered no evidence to suggest that the current arrangement

worked a hardship on its members. I find, after careful consideration, little evidence upon which I could grant the Union's proposal as more appropriate in the instant case.

Since the Union has not presented any compelling evidence indicating that there is any valid reason to change the status quo on uniforms. I rule in favor of the Joint Employers' proposal that the Contract remain unchanged on this last economic offer.

**E. Non-Economic Issue #1 – Hours of Work/Overtime**

The Joint Employers seek to eliminate current language in Article VIII, Section 3 of the parties' contract that currently allows Correctional Officers to request shift and day off assignments on the basis of their seniority. The Joint Employers also seek to eliminate any recourse employees may have to the grievance and arbitration provisions of the contract to challenge assignments made by the Sheriff under the Section.

Early on in the course of Illinois interest arbitration, Arbitrator Harvey A. Nathan characterized the burden on the parties seeking a breakthrough as having to demonstrate, at a minimum:

> (1) That the old system or procedure has not worked as anticipated when originally agreed to, or;
>
> (2) that the existing system or procedure has created operational hardship for the Joint Employers (or equitable or due process problems for the union); and
>
> (3) that the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address the problem. Will County Board and Sheriff of Will County, ISLRB Case No. S-MA-88-9, p. 52 (Arb. Nathan – 1988).

I fully accepted long ago Arbitrator Nathan's reasoning as set out immediately above, namely, the Will County *status quo* rule.

Applying it here, I find that the only evidence presented by the Joint Employers on this issue was the testimony of the Chief Deputy who discussed various situations requiring assignment of employees on the basis of special qualifications, i.e. gender. No evidence was submitted as to practical problems that have in fact burdened the Sheriff under the current language.

I find that the Joint Employers have not presented any compelling evidence to satisfy either of the first two parts of the Will County *status quo* rule. I rule in favor of the Union's proposal that the Contract remain unchanged on Hours of Work/Overtime.

**F. Non-Economic Issue #2 – Filling of Vacancies**

The Joint Employers seek to eliminate current language in Article XIII, Section 3 of the parties' contract that restricts the Sheriff's right to hire from outside the bargaining unit to fill bargaining unit vacancies. The current language allows incumbent employees passed over in the filling of vacancies, where an outside applicant is hired, to challenge the Sheriff's decision through the grievance procedure. In such event, the Union bears the burden to prove that the grieving employee "possesses greater skill and ability than the outside applicant" in order to prevail. The evidence reveals that the parties were involved in arbitration in 2009 over a decision by the Sheriff to pass over a bargaining unit employee for a vacancy in courthouse security and to fill the vacancy with a new hire. The Joint Employers lost. (Un. Ex. 7). The Joint Employers suggested at the hearing in the current dispute that their desire to change the provision is cost related, namely, that allowing the Sheriff to hire

from the outside will potentially save the Joint Employers the cost of training new correctional officers to fill the resulting vacancies when incumbent bid to other jobs. Is that sufficient to establish that the status quo has not worked?

Of course, an adverse arbitration decision is not tantamount to a hardship, I rule. The fact that training costs may be incurred in filling resulting vacancies when incumbent employees move into new positions does not alone suggest that the subject contractual provision is not working as it was originally intended, I also find. Seniority is also the backbone of a Labor Contract, I stress. Consequently, I rule that the Joint Employers have not presented any compelling evidence to satisfy either of the first two parts of the Will County *status quo* rule. I thus rule in favor of the Union's proposal that the Contract remain unchanged as to the filling of vacancies.

**G. Non-Economic Issue #3 – Insurance**

The Joint Employers seek to add language to Article XIX of the parties' contract that states that they will be disciplined in the event they do not timely submit information requested by the Joint Employers whenever to County puts its health insurance out to bidding. The evidence presented by the Joint Employers suggests that they have encountered some resistance from employees to providing such information during the last bidding process. Some employees apparently raised objection under federal HIPPA law or some theory of privacy to their providing protected health information. It appears

that the Union advised its members at the time to provide the information, and they complied.

There are already multiple provisions in the contract that affirm the Joint Employers' authority to discipline employees for just cause. The Joint Employers have not provided a sufficient basis for adding yet another, and potentially confusing, provision, I hold. I rule in favor of the Union's proposal that the Contract remain unchanged as to Article XIX and specific discipline for failure to fill out insurance forms.

**X. AWARD**

Using the authority vested in me by Section 14 of the Act:

(1) I select the Union's last offer on Economic Issue No 1 with respect to Wages as being, on balance, supported by convincing reasons and also as more fully complying with all the applicable Section 14 decisional factors. Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I also award the Union's final offer with respect to Rank Differential, because it is part of the single wages proposal presented by the parties at the hearing of this matter.

(2) The claimed separate issue as to Rank Differential pay is deemed to be part of the first last, best offer, as noted immediately above.

(3) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Joint Employers' final offer on Economic Issue No. 3 with respect to

Personal Days because it represents the status quo and is most reasonable under the statutory criteria.

(4) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Joint Employers' final offer on Economic Issue No. 4 with respect to Uniforms because it represents the status quo and is most reasonable under the statutory criteria.

(5) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Union's final offer on Non-Economic Issue No. 1 with respect to Hours of Work/Overtime because it represents the status quo and is most reasonable under the statutory criteria.

(6) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Union's final offer on Non-Economic Issue No. 2 with respect to Filling of Vacancies because it represents the status quo and is most reasonable under the statutory criteria.

(7) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Union's final offer on Non-Economic Issue No. 3 with respect to Insurance because it represents the status quo and is most reasonable under the statutory criteria.

IT IS SO ORDERED.

Date: December 13, 2011

_____
Elliott H. Goldstein
Arbitrator