

FEDERAL MEDIATION AND CONCILIATION SERVICE
BEFORE ARBITRATOR CARY MORGEN

In the Matter of an
Interest Arbitration between

County of Kankakee/)	
Kankakee County Sheriff)	
(Joint Employers))	
)	FMCS No. 16-02604-1
and)	ILRB No. S-MA-15-125
)	
Illinois Fraternal Order of Police)	
Labor Council --)	
Lieutenants Unit 150-C)	

INTEREST ARBITRATION OPINION AND AWARD

A hearing was held on January 24, 2017, in Kankakee, Illinois, before Interest Arbitrator Cary Morgen, having been jointly selected by the parties, County of Kankakee/Kankakee County Sheriff (hereinafter, the “Joint Employers,” “County,” or “Sheriff”) and Illinois Fraternal Order of Police Labor Council (hereinafter, the “Union”).

The Union was represented by its counsel, Jeff Burke, Esq., and the Joint Employers were represented by its counsel, David Hibben, Esq. Both parties gave its presentations in narrative fashion—there was no cross-examination. Jeff Burke testified for the Union. Kankakee County Board President Andy Wheeler testified for the Joint Employers. Both parties were afforded the opportunity to provide rebuttal testimony. A transcript of the proceedings was prepared. The record remained open to allow the parties to submit additional exhibits. Both parties filed post-hearing briefs with supplemental exhibits the last of which was post-mark dated May 24, 2017, at which time the record was closed.

I. THE PARTIES' STIPULATIONS and ISSUE IN DISPUTE

The pertinent stipulations are as follows:

1. Arbitrator's Authority: Pursuant to Section 14(p) of the Act, the parties agree to waive a tripartite panel and appoint Arbitrator Cary Morgen as Arbitrator and Chairperson to hear and decide the issues 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 of bargaining brought to him by the Illinois Labor Relations Act.

2. Hearings: The hearing in this case will convene on January 24, 2017, 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 held [sic] at the Sheriff's Media Room, or other location mutually agreed upon by the parties or so ordered by the Arbitrator.

* * *

4. Attendance: The parties agree that the arbitration hearing(s) is/are not subject to the public meetings requirement of the Illinois Open Meetings Act, 5 ILCS 120/1 et seq. All sessions of the hearing will be closed to persons other than the Arbitrator, court reporter(s), representatives of the parties, including witnesses who may be called to testify at the hearing, resource persons of the parties, members of the bargaining unit represented by the Union and the elected officials and management staff of the Employers.

5. Issue in Dispute: The parties agree that the following issues remain in dispute: (1) wage. The parties agree there are no other issues in dispute. Final offers shall be submitted on all of the issues prior to the start of the hearing on January 24, 2017. Once exchanged at the start of the hearing, final offers on each issue in dispute may not be changed except by mutual agreement. The parties further agree that issue 1 is economic in nature.

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

- a. All tentatively agreed upon articles, sections or 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. [m]aterials or testimony offered as evidence of the parties' bargaining history shall not include the parties' "off-the-record" proposals.

7. Presentations: The Union shall proceed first with its case-in-chief. The Employer shall proceed next with its case-in chief. Once both parties have presented their cases-in-chief, the parties may present additional rebuttal evidence and/or witnesses. The parties may present evidence by witnesses and/or narrative presentation of the advocates, who may be sworn on oath.

8. Post-Hearing Briefs: A post-hearing brief shall be submitted to Arbitrator Morgen no later than thirty (30) days from the [close of the evidentiary portion] 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.

9. The Award: The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois Labor Relations Act and issue the same within sixty (6) 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.

10. Continued Bargaining: Nothing contained herein shall be construed to prevent negotiations and settlement of the issues identified in Paragraph 5 at any time, including prior, during, or subsequent to the arbitration hearing.

II. RELEVANT CONTRACT PROVISIONS

ARTICLE 22 **HOURS OF WORK/OVERTIME**

* * *

Section 4. Overtime

- (a) Lieutenants shall not receive overtime until the employee has reached 50 hours. Lieutenants can take compensatory overtime for any time over 50 hours.

* * *

ARTICLE 23
WAGES AND COMPENSATION

Section 1. Wage Schedule

Lieutenants shall be compensated in accordance with the wage schedule attached to this Agreement as Appendix A and made part hereof. The wages listed in Appendix A of the Agreement reflect wage increases effective immediately and will continue as listed in the pay appendix.

* * *

APPENDIX A
WAGE SCHEDULE

Dec. 1st, 2013 - Dec. 1st, 2014

\$90,090.00

December 1st, 2013-November 30th, 2014

0%

* * *

III. FINAL OFFERS

A. The Union

To Amend Appendix A of the Contract, its wage schedule, to reflect a 2% wage increase per year of the contract on all compensated hours for all current and former bargaining unit members effective 12/1/2014, 12/1/2015, and 12/1/2016.

B. The Employer

Effective 12/1/14 each member of the bargaining unit shall a receive 0%.

Effective 12/1/15 each member of the bargaining unit shall a receive 0%.

Effective 12/1/16 each member of the bargaining unit shall a receive 1%.

IV. RELEVANT STATUTORY LANGUAGE

The Illinois Public Labor Relations Act

* * *

Section 14. Security Employee, Peace Officer and Fire Fighter Disputes.

* * *

- (g) At 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 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)...
- (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, if 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 price 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 hospital 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.

* * *

- (j) Arbitration procedures shall be deemed to be initiated by the filing of a letter requesting mediation as required under subsection (a) of this Section. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this Act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. Of a new fiscal year has commenced either since the initiation of arbitration procedures under this Act or since any mutually agreed extension of the statutorily required period of mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration. The foregoing limitations shall be inapplicable, and such awarded increases may be retroactive to the commencement of the fiscal year, and other statute or charter provisions to the contrary, notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

5 ILCS 315/14

Section 15. Act Takes Precedence.

- (a) In case of any conflict between the provisions of the Act and any other law, executive order or administrative regulation relating to wages, hours and conditions of employment and employment regulations, the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control...
- (b) Except as provided in subsection (a) above, any collective bargaining contract between a public employer and a labor organization executed pursuant to this Act shall supersede any contrary statutes, charters, ordinances. Rules or regulations relating to wages, hours and conditions of employment or regulations adopted by the public employer or its agents..
- (c) It is the public policy of this State, pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution, that the provisions of this Act are the exclusive exercise by the State of powers and functions which might otherwise

bra exercised by home rule units. Such powers and functions may not be exercised concurrently, either directly or indirectly, by any unit of local government, including any home rule unit, except as otherwise authorized by this Act.

* * *

5 ILCS 315/15

Section 21. [untitled]

Subject to the appropriation power of the employer, employers and exclusive representatives may negotiate multi-year collective bargaining agreements pursuant to the provisions of this act.

5 ILCS 315/21

V. BACKGROUND AND BARGAINING HISTORY

The Sheriff currently has three (3) bargaining unit members who hold the rank of lieutenant. Their day-to-day responsibilities include oversight of police patrol, investigations, and administrative functions. Beginning in the 1970s, the Union represented two bargaining units employed jointly by the Sheriff of Kankakee County and the County of Kankakee. One historical unit still in existence is the Correctional Division Unit which includes in total approximately 100 corrections deputies, officers or various ranks, and some civilian employees. The second historical unit included Sheriff's deputies, corporals, sergeants, and lieutenants. In November 2013, the Illinois Labor Relations Board ("ILRB") issued a unit clarification that removed the lieutenants from the second historical bargaining unit and created an autonomous third bargaining unit also represented by the Union.¹ The remaining Sheriff's deputies, corporals, and sergeants unit currently has about 40 members. (Un. brief at p. 1; Un. Exs. 3, 7; Tr. 10, 30-31)

¹ Hereinafter, "the lieutenants" refers to those lieutenants who are members of Bargaining Unit 150-C within the Sheriff's Department. Any reference made to the lieutenants within the Correctional Division command staff is noted accordingly.

Since November 2013, the parties have had two contracts for the lieutenants. First was a one-year “provisional contract” entered into while the ILRB unit clarification certification was pending. Upon certification of the unit, the parties entered into a comprehensive agreement for one year effective November 30, 2013, through November 30, 2014. In October 2014, the parties executed a Memorandum of Understanding (“MOU”) in which they agreed to temporarily put negotiations for a successor contract on hold because the County was experiencing financial difficulties. (Jt. Ex. 2; Un. Exs. 3-4; Tr. 10-12)

On February 25, 2015, the Union sent the joint employers a Formal Notice of Demand to Bargain with the Union representing the lieutenants. The parties met twice in late 2015. On December 18, 2015, the parties requested that the FMCS assign a mediator to the negotiations. The parties met with the federal mediator February 8, April 21, and May 2, 2016. On July 7, 2016, the parties filed a Demand for Compulsory Interest Arbitration with the ILRB followed by a routine Request for Mediation Panel October 31. The parties held one more negotiation session on January 10, 2017, however, agreement could still not be reached. (Un. Exs. 3, 5; Tr. 12-13, 15)

VI. PRESENTATIONS AND POSITIONS OF THE PARTIES

A. The Union

The Union argues that the evidence supports adoption of its final offer. The lieutenants have not received an increase in their base pay since 2009, although other bargaining units of the Employers’—especially other units in the Sheriff’s Department represented by the Union—have received substantially larger pay increases than the County’s final offer. Further, non-law enforcement units in the County have received pay increases while the lieutenants have not. The County cannot demonstrate an inability to pay a 2% raise to three (3) employees when it has demonstrated the ability to pay raises to other units.

As a threshold matter, the Union disputes the County's assertion that it lacks lawful authority, pursuant to statutory factor (1). Specifically, the County claims that it is prohibited by Illinois statute, 55 ILCS 5/6-1000, from paying retroactive wage increases. The Union cautions this Arbitrator to view that claim with substantial doubt, because in 30 years of interest arbitration experience in Illinois there is not one case to support the County's assertion. Moreover, if the County was correct, public employers would never have to give retroactive pay, especially given that contracts are seldom resolved within the first year of expiration, particularly those resolved through interest arbitration.

The cited statute, 55 ILCS 5/6-1000, merely provides that counties need to pass an annual budget, and does not allow them to unilaterally waive retroactive pay awarded either through collective bargaining or interest arbitration. The Union rejects the application of 55 ILCS 5/6-1000 to the instant dispute because Section 14(j) of the Act, which this Arbitrator is authorized to interpret, explicitly provides "an award of retroactive pay is appropriate." Further, Section 15 of the Act provides that the Act shall "prevail and control" in the event of conflict with "any other law...executive order or administrative regulation relating to wage..." The County's assertion that it is statutorily obligated to "close its books" at the end of each fiscal year,² and therefore cannot pay wages retroactively, is trumped by Section 15 and is explicitly authorized pursuant to Section 14(j).

The Union also dismisses the County's reliance on *State of Illinois Department of Central Management Services v. American Federation of State, County and Municipal Employees, Council 31*, 51 N.E.2d 738, 401 Ill.Dec. 907 (2013). The Union distinguishes the case because it involves payments from the State of Illinois to a State bargaining unit. The Court found, pursuant to the appropriations clause of the Illinois Constitution, "The General Assembly by law shall make appropriations for all expenditures of public funds by the State." Thus, the County's alleged restriction on its appropriations power applies only to the Illinois General Assembly, not to the County.

² The County's fiscal year begins December 1 and ends November 30 the following year.

The Union then turns to the County's financial ability to meet its costs—statutory factor (3). In 2016, the average earnings for the lieutenants—base pay \$90,090 plus shift differentials, and possible incentives including non-tobacco use, educational, and physical fitness—was \$95,046. Lieutenants do not receive overtime pay; they are eligible to receive compensatory time after 50 hours worked. (Un. Exs. 4, 7; Tr. 16-17) The Union contends that the per-employee cost of a 2% increase is approximately \$1,800 plus another \$400 roll up for taxes and pension cost; thus, each year of the contract the County's total cost would increase by \$2,200 per employee. The increased annual cost for the entire bargaining unit over the three years would break down as follows:

Year 1 -- \$6,600 (\$2,200 x 3 bargaining unit members)

Year 2 -- \$13,200 (\$6,600 Year 1 + \$6,600 Year 2)

Year 3 -- \$19,800 (\$6,600 Year 1 + \$6,600 Year 2 + \$6,600 Year 3)

Total Cost of Union proposal over 3 years = \$39,600 (\$6,600 + \$13,200 + \$19,800)

(Un. Ex. 7 at pp. 1-4; Tr. 18-19)

The Union insists that although the County has experienced revenue shortfalls in prior years—General Fund revenues for FYs- 2015, 2016, and 2017 were respectively \$27 million, \$25 million, and \$24 million—expenses have been reduced 30% since 2013. The County is in sound, stable financial condition. The County Jail expansion and the influx of Federal Immigration and Customs Enforcement (“ICE”) detainees being housed there is providing millions of unbudgeted annual revenue that enables the Employers to afford the Union's final offer. The Union argues that FY-2016 ended \$663,888 over budget after a \$120,000 debt reduction payment, more than enough to pay for the approximate \$3,9600 total cost of the Union's three-year wage proposal. Further, according to its FY-2017 budget, the County anticipates revenues over \$24 million for its General Fund, which includes a \$500,000 inter-fund debt reduction payment. (Un. Exs. 7 at p. 5, 12; Tr. 19-21)

In addition, there is \$2.5 million available in overpayments the County made funding the juvenile detention center that it opened in the late 1990s in joint ownership with Will County. The facility is physically located in Will County; the two counties entered into a trust agreement to fund the facility and to cover maintenance and overhead operating costs. The Union asserts that for the past 20 years Kankakee County has had a levy to pay its share. However, in 2013, the County realized it overestimated maintenance costs, and as a result the fund had grown to \$2.5 million. The money is held in a separate account under the control of the Will County Building Commissioner and does not show up under Kankakee County's General Fund. In 2014, the Kankakee County Board passed an ordinance to add language that allows the funds in the trust to also be used for the rehabilitation of the Kankakee County Courthouse. The Union argues that the County could have added language to the ordinance to permit the funds to be used "for any other lawful purpose." Moreover, the Union believes that the funds have thus far not been used for the Courthouse and are still available. (Un. Exs. 7, at p.15, 18-19; Tr. 24-28)

On the revenue side, the FY-2017 budget substantially understates its revenues because it does not account for the recent influx of ICE prisoners. Pursuant to a 2013 agreement with the U.S. Marshals, the County receives \$80 per day for each ICE prisoner housed at the Kankakee jail facility. Although the County received no revenue for the first four years of the agreement, at the end of calendar year 2016—the beginning of FY-2017—ICE reorganized its prisoner distribution system and began sending new prisoners to Kankakee. In all of FY-2016, the County received \$413,680 in revenues from ICE. However, in December 2016—the first month of FY-2017—the County received \$261,280 which was only a partial month's payment and only at the beginning of the influx of new ICE prisoners. The Union contends that in FY-2017 the County will receive over \$3 million, which would be approximately \$2.5 million more than FY-2016. (Un. Exs. 7 at p. 5, 12 at p. 1, 13, 18(a,b,c); Tr. 21-23)

In his March 2, 2017, address to the County Board Finance Committee, Sheriff Downey stated that ICE had 110 prisoners housed in Kankakee with more coming. At a subsequent Finance Committee meeting in March, Downey stated that the "county revenue is increasing," and noted that for February prisoner bed rentals amounted to \$1.9 million. Downey said he

anticipates ICE revenue for FY-2017 to be well over \$8 million. This compares to 2016 when the County received just over \$5 million in total housing revenues across all revenue funds. The Union argues that these additional unbudgeted revenues provide ample resources to afford the Union's wage proposal. (Un. Exs. 14(a,b))

The Union also proposes that because it is in the best interest and welfare of the public to attract and keep quality emergency services, it is essential to provide competitive wages and benefits. A competitively-compensated workforce enables the community to attract and retain the most qualified employees, thereby reducing employee turnover and the costs associated with training new employees, which serves the public's financial interests as well.

The Union claims the County does not have a hiring freeze; job postings come out with some regularity. The recently-elected Sheriff (Downey) retired as an employee of the Sheriff's Office; his elected-office salary is budgeted separately, leaving in excess of \$100,000 in the Department's budget. The Union proposes that any of the current vacancies—those left by Corporal Ryan, Undersheriff O'Keefe, and two Corrections Unit lieutenants—could pay for the Union's final offer. (Un. Ex. 9; Tr. 63-65)

Last, the Union points out that in June 2013 the County Board entered into a \$20,000-per-month service consulting agreement in an effort to attract a landfill operator to locate in the County. The Union concludes that if the County could have afforded \$20,000 a month in an unsuccessful attempt to attract a landfill operator, it could certainly have afforded to pay the lieutenants' raise proposal. (Un. Ex. 7 at pp. 6-12; Tr. 23-24)

Turning to factor (4)—the comparables—the Union first notes while external comparability is a statutory factor, none of the comparable communities established by the parties at their 2008 Interest Arbitration had bargained-for lieutenants as does the County. Moreover, that Interest Arbitration involved the Correctional Unit, not the Lieutenants Unit as is the case here. Therefore, the parties agreed at the instant Hearing that there were no external comparables that this Arbitrator need consider. (Tr. 32-33)

Second, regarding internal comparability, the Union notes that effective December 1, 2014, the deputies, corporals, and sergeants bargaining Units (A and B) received a 2% wage increase plus a \$1,000 or \$1,500 increase in base pay.³ Further, the corporals and sergeants—who the lieutenants directly supervise—receive overtime pay, unlike the lieutenants. The Union submitted an analysis to show that in 2015 and 2016 almost all of the eight (8) corporals and five (5) sergeants individually earned more than any of the three (3) lieutenants who supervised them. Specifically, in 2015, the corporals and sergeants earned, on average, \$98,745 and \$105,516 respectively. Conversely, the lieutenants' average earnings for 2015 were \$95,401. Thus, on average, a corporal earned \$3,344 more and a sergeant earned \$5,115 more than a lieutenant in 2015. On average in 2016, a corporal earned \$2,183 more and a sergeant earned \$3,358 more than a lieutenant. For 2015 and 2016 combined, corporals averaged \$5,527 more and sergeants averaged \$8,473 more than the lieutenants who supervised them over the two-year period. (Un. Exs. 8-9; Tr. 29-30, 32-35)

The Union also argues that the Correctional bargaining unit it represents—which is comprised of Correctional officers and command staff (including Correctional lieutenants)—received base pay wage increases of 3% on December 1, 2014, and 4% on December 1, 2015. Correctional command staff also received an increase in their command stipend. In addition, County civilian, non-public safety bargaining units received wage increases. Specifically, on December 1, 2014, the Coroner's Office bargaining unit received a 3% wage increase. In January 2016, the Board authorized a 2% wage increase for the Coroner's Office and Recorder, Treasurer, and Auditor offices' represented employees. Yet despite these increases given to comparable internal bargaining units, the lieutenants have received no increase in their base salary since 2009. (Un. Exs. 8, 15, 17; Tr. 31)

The Union next argues that the cost of living, statutory factor (5), also supports its final offer. Although the cost of living is not rising sharply, it is rising nonetheless. Between the

³ To correct the record, I note that the joint Unit A and Unit B Agreement, effective December 1, 2012, to November 30, 2015, provides for a 0% increase effective December 1, 2012, but employees with 0-9 years of service received \$1,000 increase to base pay and employees with 9 or more years of service received a \$1,500 increase in base pay; a 2% increase December 1, 2013; and a 2% increase December 1, 2104. (Un. Ex. 11.D.3 at pp. 35, 46)

lieutenants' last increase in base pay and the instant Hearing, the cost of living has increased 5%. The Union argues further that the CPI does not take into account increased costs for healthcare or college tuition. Its final offer of 2%, 2%, 2% would bring the base wage more in line with the CPI than the County's offer of 0%, 0%, 1%, which would be the first base rate pay increase in 7 years and yet still does not meet the increase in CPI over that time. The Union also highlights the nexus between the comparability factors and the economy. It argues that if a 1% wage increase is reasonable under the economic circumstances, i.e., cost-of-living, the comparables will provide support for the Union's wage proposal. Similarly, if the comparables do not reflect such minimal increases, then the County's argument for a 1% wage proposal has less weight and is based on economic hysteria rather than fact. (Un. Ex. 10; Tr. 35-36)

The Union also contends that increased health insurance costs will offset pay increases. It notes that in 2011 the County's PPO Plan "A" single/family deductibles were \$500/\$1,500, and single/family premiums \$73.31/\$216.19 per pay period. In October 2014, Plan "A" single/family deductibles were \$5,000/\$10,000 (recognizing that the employee's portion of the deductible was \$1,000 with the County paying the remainder), and single/family premiums-per-pay-period were \$76.12/\$229.87. However, for calendar year 2017, coverage options included an HSA [Health Savings Account], HMO, and two PPOs. The Platinum PPO had single/family deductibles of \$1,000/\$5,000 with single/family premiums-per-pay-period at \$78.28/\$236.04. (Un. Exs. 7 at p. 5, 17; Tr. 36-37)

In conclusion, the Union insists that whereas its final offer is supported by the statutory factors which must be applied, the County's final offer is based solely on its desire to not pay wage increases to the lieutenants, despite its clear ability to do so. These employees have done their part and made sacrifices for the County in recognition of its financial difficulties. The total cost of the Union's wage proposal is barely \$40,000. The Union reemphasizes the fact that the bargaining unit members have not received an increase in their base pay since 2009, yet the cost of living has substantially increased since then. For all of the above reasons, the Union contends its final offer should be adopted.

B. The County

The County asserts that although all of the applicable statutory factors favor its wage proposal, the first factor—the lawful authority of the employer—standing alone, requires the County’s final offer to be awarded. The County contends that its Board does not have lawful authority to implement the Union’s final offer based upon Illinois statute, which the Illinois Supreme Court further clarified in *State v. AFSCME*, 2016 IL 118422.

According to the County, under 55 ILCS 5/6-1001, its Board is required to pass an annual appropriations bill. The statute allows the County—being one with a population of over 100,000 but less than 3,000,000 inhabitants—up to 90 days following the close of a fiscal year to pay any remaining obligations from that fiscal year’s funds. Moreover, under 55 ILCS 5/6-1005, “neither the county board nor anyone on its behalf shall have power, either directly or indirectly, to make any contract or to do any act which adds to the county expenditures or liabilities in any year anything above the amount provided for in the annual budget for that fiscal year...no contract shall be entered into and no obligation or expense shall be incurred on behalf of a county unless an appropriation therefor has been previously made.”

The County continues that it lacks lawful authority to pay retroactive wages pursuant to the Illinois Supreme Court’s decision in *State v. AFSCME*, 2016 IL 118422. One of the issues before the Court concerned the fact that the State had previously argued before Arbitrator Edwin Benn that Section 21 of the Act mandates expenditures, pursuant to a collective bargaining agreement, are contingent on appropriations by the Legislature; conversely, AFSCME argued that such an interpretation of Section 21 would reduce the collective bargaining rights of public employees. Arbitrator Benn agreed with AFSCME, and ordered the State to pay the disputed 2% pay increase retroactively. He specifically stated that the courts and not the arbitrator had authority to interpret Section 21 of the Act. The State appealed to the Circuit Court which upheld the award in part and vacated the award in part. ASFCME appealed to the Appellate Court which reinstated Arbitrator Benn’s award in total. The State appealed to the Supreme Court.

The Court held Arbitrator Benn “acted within the scope of his authority, and that his award was guided by contract principles and not his own notions of fairness and justice. The Court held that “the award ‘drew its essence’ from the CBA.” ¶ 38. Nevertheless, the Court also went on to state that “[a]n arbitration award which otherwise derives its essence from the collective bargaining agreement is not enforceable if the award contravenes paramount considerations of public policy.” ¶ 41. In its conclusion the Court held:

[s]ection 21 of the Act, when considered in the light of the appropriations clause, evinces a well-defined and dominant public policy under which multiyear collective bargaining agreements are subject to the appropriation power of the State, a power which may only be exercised by the General Assembly. We further hold that the arbitrator’s award, which ordered immediate payment of the 2% wage increase without regard to the existence of corresponding appropriations from the General Assembly, violated this public policy. Accordingly, we reverse the judgments of the appellate court and circuit court, and vacate the arbitration award. ¶ 56.

Based upon *State v. AFSCME*, the County concludes that an award that does not comply with the appropriation requirement of Section 21 of the Act is improper and subject to being vacated. The County notes in particular AFSCME had argued that Section 21 “should apply only to collective bargaining agreements with local governmental employers such as municipalities and counties.” ¶ 47.

In the instant matter, the County Board did not appropriate funds for annual increases in prior fiscal years and there are not sufficient funds appropriated for the raises proposed by the Union. In fact, for the fiscal year ending November 30, 2012, through the fiscal year ending November 30, 2016, the Sheriff’s Office actually exceeded its appropriation for “personal services”—the line item from which the lieutenants salaries are paid as follows:

<u>FY (November 30,)</u>	<u>Original Budget</u>	<u>Actual Spent</u>	<u>Deficit</u>
2014	\$3,686,147	\$4,516,362	\$ 830,215
2015	\$1,745,796	\$2,883,153	\$1,137,357
2016*	\$2,720,539	\$3,011,381	\$ 290,842

*Note: The 2016 audit process not yet complete.

The County's appropriation for the current fiscal year (December 1, 2016–November 30, 2017) includes barely enough money to fund its proposed 1% increase for the lieutenants Unit. There is no funding available for the Union's proposed retroactive increases of 2% for FY-2015 (effective December 1, 2014) and 2% for FY-2016 (effective December 1, 2015), or for a 2% increase for current FY-2017 (effective December 1, 2016).

Therefore, under the lawful authority factor alone, the Union's final offer cannot be awarded by the Arbitrator, and the County's final offer must be accepted.

The County then turns to statutory factor (3): The interests and welfare of the public and the financial ability of the County to meet those costs. The County insists that "its finances are in dire straits," and that it "can't afford [the Union's] wage proposal." In 2015, the County's auditors reported:"⁴

As indicated in the accompanying government-wide statement of net positions as of November 30, 2015, the County has deficit unrestricted net position totaling \$(15,630,683), with a deficit unrestricted net position of \$(18,952,828) for Governmental Activities. The government-wide statement of activities reports a \$3.7 million negative change in net position for the year. The deficit is principally the result of the trend over the last number of years of expenses exceeding revenues, and the implementation of the new pension reporting standard which reported \$25.1 million of additional long-term liabilities and additional expense of approximately \$4.5 million. The County has issued tax anticipation warrants for operating funds four times since November 13, 2013. The County has also been using interfund borrowings to fund operations.

During the year, the County's bond ratings were lowered. For unlimited tax general obligation debt, Moody's rating was downgraded from Baa3 to Ba3, and Standard & Poor's remained the same at A-. For outstanding debt certificates, Moody's rating was downgraded from Ba1 to B1.

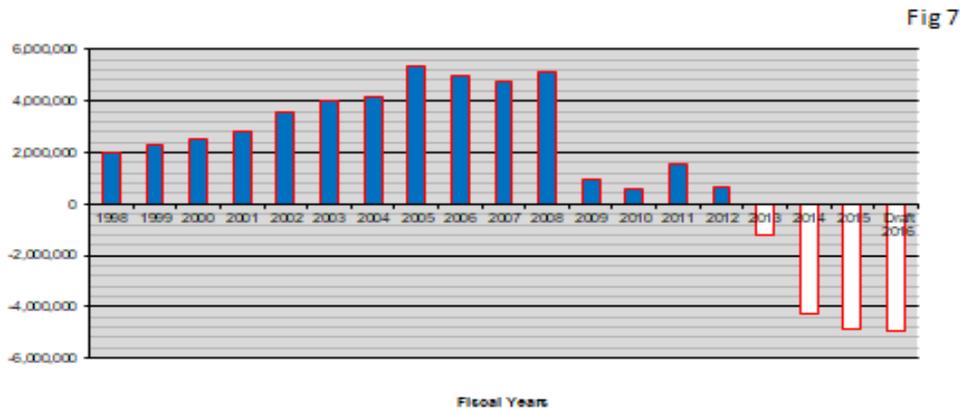
The General Fund cash balances at November 30, 2015, plus the \$4 million of tax anticipation warrants received in December 2015 are only adequate to fund two month's expenditures. The County is projecting a negative cash balance at November 30, 2016 [see, General Fund chart below].

These factors create an uncertainty about the County's ability to continue as a going concern. Management is developing a plan to significantly reduce expenditures, primarily through enforcing compliance with budgeted allocations, additional staff reductions,

⁴ Wheeler explained that the 2016 audit process was still ongoing as of this Hearing but that he expects similar statements to the 2015 report. (Tr. 41)

possible employee benefit reductions, and other cost control measures. The County is actively pursuing additional short-term financing that could be issued this fall upon repayment of the tax anticipation warrants which were issued in December 2015. The ability of the County to continue as a going concern is dependent upon the plan's success. The financial statements do not include any adjustments that might be necessary if the County is unable to continue as a going concern.

General Fund Year-End Balance



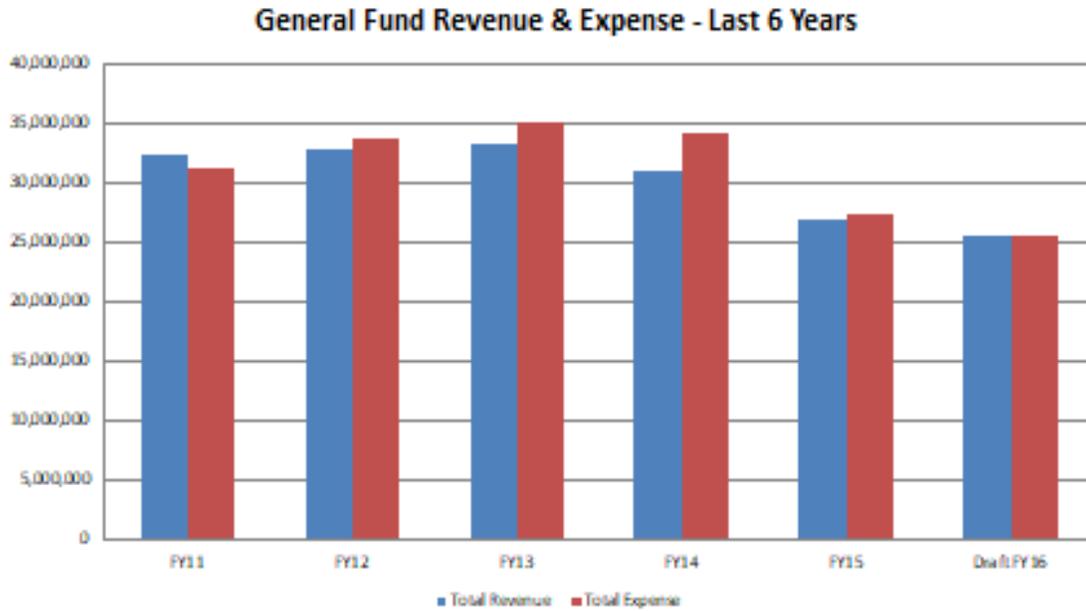
(Er. Ex. 2; Er. Supp. at p. 20; Tr. 39-40, 57-59)⁵

Wheeler testified that since 2013 revenues have fallen at a faster rate than have its expenses. Moreover, sales tax revenues since 2013 have plummeted on average \$3.4 million per year—most of which occurred between 2014 and 2016—to historic lows since all the sales tax share agreements were taken away by the Illinois Department of Revenue:

⁵ The County included among its post-hearing exhibits a 36-page PowerPoint presentation titled “Supplemental Arbitration Presentation.” Hereinafter, I reference that presentation as “Er. Supp. at _”.

Excess Expense Over Revenues” 2011-2015

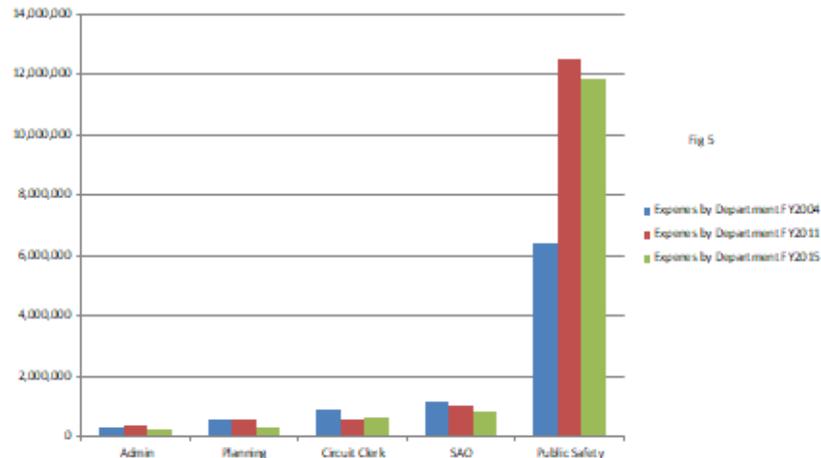
Fig 1



(Er. Supp. at pp. 3, 28)

Nevertheless, the County is committed to keeping its spending on public safety consistent and staffing at the same level, but has not made commitments to increase expense levels. Public safety in general, and the Sheriff’s Department especially, is a majority of the County’s budget:

Expense By Department: 2004-2015



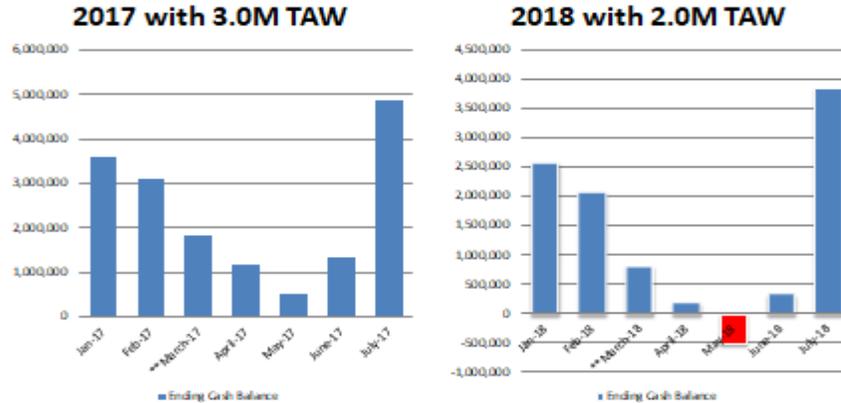
(Er. Supp. at p.7)

The County rejects the Union's claim that it has decreased expenses to offset its decreased revenues. The excess revenue over expenses in 2016 was due to a one-time wind farm fee and shifting \$1.2 million of debt service to the tax levy. The County's debt level has caused its credit rating to be lowered to junk bond status. Further access to outside funding for Tax Anticipation Warrants ("TAWs") to provide operating capital necessary to keep the County afloat has been eliminated. Local banks that had stepped up to assist have said they will be pulling out their support, as well. (Er. Supp. at pp. 2, 4, 17, 22, 30; Tr. 41-42, 51)

Wheeler testified that recently the County had only \$127,000 cash on hand after issuing payroll. (Tr. 47) The County borrowed \$3.5 million from its highway department bridge fund with no current plan to pay it back; the County has borrowed to keep people employed. However, with tighter State legal restrictions on the ability to inter-fund borrow, and a reduction in funds from TAWs in 2017 and 2018, the County's cash flow will probably drop another \$350,000 to \$600,000 in 2018. The County projects it will not have enough cash to meet payroll in May 2018, and possibly as early as February or March 2018:

Estimated Cash Flow: 2017-2018

Fig 3



(Er. Supp. at p. 8)

Thus, even a small amount of back pay could cause the County not to meet current obligations in 2017, according to Wheeler. Further, he testified that on January 23, the County learned that it must come up with \$1.1 million to pay for its liability insurance which is due before July 1, and will repeat again this December. On January 31, the County became aware that it missed its final \$666,200 bond payment on the Will County Juvenile Detention Center. (Er. Supp. at pp. 7, 33, 34; Tr. 43, 48-50)

The County insists that it has no surplus to pay bills between tax cycles and thus is forced to borrow to meet payroll. However, as soon as tax payments arrive in July and September the funds are paid back but immediately re-borrowed. In FY-2016, this amount was \$7 million and that was in addition to its TAW obligations. In response to the Union’s charge that the County had available \$500,000 to budget in FY-2017 for debt reduction, the County explained that it is a “good faith attempt” to reduce its debt and eventually break the borrowing cycle. Moreover, to access capital it must get to a \$1 million overall fund balance to be considered creditworthy. (Er. Supp. at pp. 5, 31; Tr. 20-21)

In regards to revenue from housing jail detainees, although the County had its first group of between 70 to 90 ICE detainees in October 2016, it received its first reimbursement check from the government—approximately \$177,000—about two weeks prior to the Hearing. Wheeler stated that the \$1.2 million cost to build a new jail has been moved to the tax levy. The County’s cash flow had to absorb the start-up costs which included hiring new corrections employees and providing additional food service. Even though the County is expecting more revenues to come in—approximately \$200,000 per month—there is no solid business model on which to base long-term predictability. While the budget did not include revenues from ICE detainee housing, it did not include the increased costs, either. The realization of further revenues allows the Sheriff’s Department to keep current staffing levels in lieu of substantial layoffs. (Er. Supp. at p. 7; Tr. 42, 46, 51-52)

At the Hearing, the Union pointed out that, in 2013, the County expended funds for a \$20,000-month landfill consulting contract. The County responded that it entered into the contract to attract a landfill operator to locate in the County as a sorely-needed revenue generator. Wheeler explained that the consultant was to be paid \$10,000-month with the remaining \$10,000 after an agreement was submitted. But after four or five months the County could no longer afford the agreement and stopped making payments, and about two years thereafter it bought-out the contract for around \$100,000. (Er. Supp. at pp. 10-11; Tr. 52)

Finally, according to the County, as of April 28, 2017, it owes \$3 million in accounts payable to the Juvenile Detention Center, Regional Office of Schools, Treasurer of the State of Illinois, its 9-1-1 service, Community Mental Health payments (for prisoners), and its vendor that provides election services. The County adds that this amount will double before it receives its first scheduled tax distribution in July. Board Chairman Wheeler testified that he has “not seen any governmental body or county in Illinois on the precipice that we’re at. We’ve already fallen off the cliff and hit the bottom.” Therefore, the County does not believe it has the financial ability to pay the Union’s wage proposal. (Er. Supp. at p. 9; Tr. 40, 59)

With respect to factor (4)—comparing wages, hours, and working conditions of similar employees—the County contends in its brief that neither party presented any other comparable

data and, therefore, this factor does not apply. Nonetheless, Wheeler testified that—although he was not involved in the negotiations—the wage increases provided for the Correctional Unit contract was to bring those employees “up to the medi[an] wage.” He added that “they were severely underpaid at the beginning of their contract.” The County does not dispute the wage increases to the other Sheriff Department Units. It argues, however, that those Agreements went into effect before the County’s massive loss in revenues which exceeded expenses particularly in the Sheriff’s Department. Nevertheless, the County honored those collectively-bargained-for pay increases despite the financial hardship created. (Er. Supp. at p. 14; Tr. 54)

With respect to Union Exhibit 9—comparing annual pay between the command staff ranks within the Sheriff’s office, and demonstrating that almost all of the sergeants and corporals were paid more in 2015 and 2016 than were the lieutenants—the County does not dispute the Exhibit’s accuracy. However, the County argues that lieutenants are “management,” like the Chiefs’, and as such do not receive overtime. The County further asserts it doubts the lieutenants feel they should be compensated more than the Chiefs or Sheriff whose positions have gone without an increase for many years. The County explained that the sergeants and corporals worked 400-500 hours of overtime a year to achieve their level of compensation. Wheeler noted that much of that overtime was mainly on a pipeline security detail that no longer exists, and thus the revenue to pay for the overtime also no longer exists, either. (Er. Supp. at p. 15; Tr. 54-55)

Regarding the 2% raise in the Coroner’s Office Agreement, the County contends that it was a back pay one-year agreement which cost approximately \$6,000 in total. Further, the contract was a net savings because the County did not have to subcontract more outside services, whereas the Union’s proposal for the lieutenants would be a net cost increase without additional revenue to offset the cost. In addition, Wheeler rejected any comparability to wage increases provided in the contracts for laborers and office personnel whose base wage is anywhere from \$12.50 to \$15.00 per hour. Wheeler said the impact of those contracts is much different versus the lieutenants who make over \$90,000 a year and who also receive incentive payouts, such as for physical fitness, education, etc. (Er. Supp. at pp. 12, 13; Un. Ex. 9; Tr. 55-56)

Next, as to the cost-of-living factor (5), the County asserts that the data it provided shows the annual average rate of inflation published by the federal government was 1.5% for 2013; 1.6% for 2014; 0.1% for 2015; and 2.4% unadjusted for the 12-month period ending March 2017. The County concludes that these are historically low rates of inflation and therefore favors its final offer.

The County also argues that statutory factor (6), overall compensation, favors its final offer, as well. The three (3) lieutenants receive the highest direct salary compensation of any represented County employee. They also receive the same or similar vacation, holidays, sick leave, health insurance benefits, pension, and stable work environment as do all other County employees.

The County acknowledged it budgeted for a \$355,000 reduction in the cost of health insurance between FY-2016 and FY-2017. However, employer requirements under the Affordable Care Act, along with a negative claim experience over the past three years, has forced the County to develop a more diverse benefit plan structure to mitigate the 20% year-over-year increase in premiums for FY-2016 and FY-2017. But the budgeted savings have yet to be realized. The County also notes that not included are employee health claim reimbursements it has to make due to its partial self-funding mechanism. Therefore, the County's health insurance costs are found not only in premiums it pays, but also in the significant financial risk it assumes through its partially self-funded plans to keep employee premiums down. (Er. Supp. at p. 6; Tr. 21)

With respect to factor (7), which concerns changes in any of the foregoing circumstances during the pendency of this arbitration process, the County argues that its financial condition continues to decline as the evidence it presented indicates. Therefore, this factor also favors the County's final offer.

Last, in regards to any other factors not confined to the foregoing, the County points to data published by the federal Bureau of Labor Statistics ("BLS"). The BLS average weekly wage in the United States is \$1,082, and in the State of Illinois is \$1,146, but is only \$802 in

Kankakee County. The County notes that the current rate of pay for Unit 150-C lieutenants is almost twice the BLS-published average weekly wage rate in Kankakee County. The data favors the County's final offer.

The County concludes that all of statutory factors favor its wage proposal. Nevertheless, the County insists that because it does not have lawful authority to implement the Union's wage proposal to begin with, that factor, in and of itself, requires adoption of the County's final offer.

VII. DISCUSSION

A. Introduction

Because the sole issue before me—wages—is an economic issue, Section 14(g) my statutory obligation is to “adopt the last offer of settlement which...more nearly complies with the applicable factors prescribed in subsection (h).” The Act does not require that all factors be addressed nor does it rank these factors in terms of their significance; it is my duty to determine which factors bear most heavily in this particular dispute. *See, City of Decatur and IAFF, Local 505, S-MA-86-29* (Eglit, 1986) p. 3.

The parties have not given me authority to set lieutenants' salaries at rates different from the parties' final offers, thus I am precluded by statute from fashioning a salary of my choosing. Instead, I must choose whichever proposal I find most equitable under all of the circumstances of the case. Arbitrator McAlpin has noted the term “most equitable” is used because, in Interest Arbitration, equity does not lie exclusively with one side or the other. *See, City of Effingham and ILFOP Labor Council, S-MA-07-151* (McAlpin, 2009) p.16; *see also, U of I Champaign and ILFOP Labor Council, S-MA-10-76* (McAlpin, 2010) p. 15. After careful examination of all the testimony, evidence, and arguments of the parties, I find the factors, when viewed in totality, weigh more in favor of the Union's final offer than the County's. Therefore, for the reasons explained *infra* I adopt the Union's final offer as follows:

To Amend Appendix A of the Contract, its wage schedule, to reflect a 2% wage increase per year of the contract on all compensated hours for all current and former bargaining unit members effective 12/1/2014, 12/1/2015, and 12/1/2016.

B. Analysis of Section 14(h) Factors

(1) *The lawful authority of the employer*

According to the County, this factor alone requires the Arbitrator to award the County's final offer. The County contends that it lacks lawful authority to pay the Union's wage proposal—specifically the 2% retroactive pay the Union wants for 2014 and 2015—based upon the following:

First, in accordance with Illinois Statutes, the Board is required to pass an annual appropriations bill (55 ILCS 5/6-1001), and it is prohibited from entering into any contract to obligate the County to an expense for which appropriation has not been previously made (55 ILCS 5/6-1005). Second, the County claims that it lacks lawful authority consistent with *State v. AFSCME*, 2016 IL 118422, in which the Illinois Supreme Court held, in essence, an arbitrator's award that orders payment of a wage increase without a corresponding appropriation from the General Assembly is a violation of public policy. The County concludes it does not have lawful authority because it neither had appropriated sufficient funds to pay for the retroactive raises proposed by the Union, and in light of *State v. AFSCME*, it would be a violation of public policy for this Arbitrator to adopt the Union's final offer.

I find the County's arguments unpersuasive. First, and most significant, the Union correctly points out Section 15 provides that the Act "or any collective bargaining agreement negotiated thereunder shall prevail and control" in the event of conflict with any other law or executive order regarding wages. Thus, the provisions of the Act precedes the statutes cited by the County (55 ILCS 5/6-1001 and -1005). The County did not cite any Interest Arbitration decisions to support its proposition, and I could find no such cases on point, either. Further, the Union correctly concludes that if the County's interpretation was accurate, public sector

employers would never have to give retroactive raises if a successor contract was resolved more than a year after the predecessor contract expires. This is particularly true in contract negotiations that reach an impasse and are ultimately resolved through Interest Arbitration, such as the instant matter.

Second, Section 14(j) of the Act clearly and unequivocally provides for awarding increases retroactively:

...If a new fiscal year has commenced either since the initiation of arbitration procedures under this Act or since any mutually agreed extension of the statutorily required period of mediation under this Act by the parties to the labor dispute causing a delay in the initiation of arbitration, the foregoing limitations shall be inapplicable, and such awarded **increases may be retroactive to the commencement of the fiscal year**, any other statute or charter provisions to the contrary notwithstanding. At any time the parties, by stipulation may amend or modify an award of arbitration. (emphasis added)

Here, the predecessor contract expired November 30, 2014, and the parties mutually agreed to defer negotiations for a successor agreement. The parties initiated negotiation for a successor agreement in 2015, initiated Interest Arbitration proceedings in 2016, and scheduled a Hearing with the undersigned Arbitrator for January 2017.

The circumstances under which this Arbitration comes before me are what the drafters of Section 14(j) seemed to have envisioned. Therefore, given that Section 15 provides precedence of the Act over any conflicting statutes—in this instance, statutes purporting to prohibit the County from paying retroactive increases—and, further, given that Section 14(j) of the Act clearly allows for an interest arbitrator to award retroactive increases, the County's contention that it lacks lawful authority based on Illinois Statute is rejected.

Next, with respect to the County's assertion that the 2016 Illinois Supreme Court's decision in *State v. AFSCME* essentially prohibits awarding the Union's retroactive wage increase proposal, because it would be unenforceable and subject to vacation as a violation of public policy, I respectfully disagree with County and instead concur with the Union that the instant Interest Arbitration is distinguishable from *State v. AFSCME*. The dispute in *State v.*

AFSCME initially arose from a grievance arbitrator's award to enforce granting a wage increase in a multi-year collective bargaining agreement between *AFSCME* and the State of Illinois. Conversely, the matter here concerns an Interest Arbitration between a union and a county joint-employer. The appropriation authority at issue in *State v. AFSCME* is that of the General Assembly and not of a county as is the case here. The Court concluded:

¶ 56 ...we hold that section 21 of the Act, when considered in the light of the appropriations clause, evinces a well-defined and dominant public policy under which multiyear collective bargaining agreements are subject to the appropriation power of the State, a power which many may only be exercised by the General Assembly. We further hold that the arbitrator's award, which ordered immediate payment if the 2% wage increase without regard to the existence of corresponding appropriations by the General Assembly, violated public policy...

The Court does not address an Interest Arbitration that awards a wage increase retroactively in accordance with Section 14(j) of the Act. It would be for a court to determine whether *State v. AFSCME* applies to an Interest Arbitration award made pursuant to Section 14(j), not for this Arbitrator to interpret, particularly in view that the parties have granted me no authority to do so—either in their Collective Bargaining Agreement or in their Stipulations. My authority, jurisdiction, and responsibilities in this Interest Arbitration derive from the Act, the parties' Collective Bargaining Agreement, and their arbitral Stipulations.

In view of the foregoing, I find that the County does have lawful authority. It would be for the courts and not this Interest Arbitrator to determine whether an award of retroactive increases in accordance with Section 14(j) may not be enforceable based upon considerations of public policy, even when said award is made pursuant with the strict, analytical framework mandated by Section 14(h).

(2) *Stipulations of the parties*

The Ground Rules and Stipulations of the Parties cited *supra* favors neither party.

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

As a seminal evidentiary matter, I note that at the Hearing the County did not utter the exact words: “inability to pay.” Nonetheless, the County began its presentation: “We can’t afford [the Union’s] wage proposal. We simply can’t afford it.” It ended its presentation: “We just don’t have the money.” Thus, there can be little dispute the County is claiming “inability to pay” rather than merely expressing its “unwillingness to pay.” This is a crucial distinction. To meet the inability to pay threshold, it is well-established the employer must show that the union’s offer would place such a heavy burden on the employer’s finances that funds would have to be shifted from other employer-provided services to pay the union’s offer, resulting in **the elimination or harmful diminution of essential County services, or extensive layoffs, or both.** See, *City of Granite City and Granite City Firefighters Assoc., Local 253, IAFF*, S-MA-93-194 (Edelman, 1994) p. 11; see also, *Jefferson County and ILFOP Labor Council*, S-MA-95-18 (Briggs, 1996) pp. 11-12; *County of Woodford and ILFOP Labor Council*, S-MA-09-157, (Feuille, 2009) p. 35.

After thorough review of the all the evidence and arguments of the parties evaluated under the heavy burden established by *Granite City*, I find the County has not met the necessary threshold showing for an inability to pay as I detail *infra*.

At the outset, let me make it clear to the parties that I recognize the County has been experiencing serious financial issues, as outlined in “Note 21” of the 2015 auditors’ report. The General Fund and Cash Flow Analysis data indicates the County has been and continues to be under financial stress, particularly with its difficulty to secure Tax Anticipation Warrants. Board Chairman Wheeler testified without rebuttal that as recently as two payroll periods prior to the Hearing, the county had only \$127,000 cash on hand after it made payroll. Wheeler projects that in May 2018, and possibly sooner, it will experience a negative cash flow and be unable to meet payroll. That potential situation, however, is short lived as tax receipts are received in June and July, according to the County’s own projection. (See, Er. Supp. at p. 8)

But as the Union contends, “the County is not broke.” There is insufficient evidence in the record as to how the approximately \$39,600 cost of the Union’s final offer places such a

heavy burden on the County's finances that it ultimately results in the harmful diminution of essential County services, causes extensive layoffs, or both. The County has not shown with any degree of specificity what essential services would have to be cut to make up the \$39,600 and/or how many layoffs would be required, and, importantly, the County has not demonstrated how such cuts and/or layoffs would be harmful to its residents' welfare. The evidence presented by the County of its purported inability to pay is not determinative.

In contrast, the supplemental evidence regarding revenue generated by the County housing ICE detainees in 2016 and beyond is most compelling. According to the March 1 County Board Finance Committee meeting minutes, Sheriff Downey reported ICE was now up to date with its payments—he had just received January's payment. Downey stated further that there were now 110 detainees, and after an inspection scheduled March 6-8 “[ICE] will begin bringing in a higher level of detainees.” (Un. Ex. 14(a) at p. 2) Next, the March 29 Finance Committee meeting minutes reported:

Sheriff Downey stated that the out of county revenue is increasing, which is a good thing. Though February, the total revenue, which includes overtime, salary reimbursement, inmate telephone. And some other inmate revenue is approximately \$2.2 million. If you multiply that out, based upon that number it will end up being \$8.9 million for the year. Housing only, or in other words, bed rentals, amounts to \$1.9 million. If you multiply that out over the remainder of the year, it totals \$7,988,000 for housing alone. Based upon what they're dealing with in relation to ICE, those trends are probably going to go up, so he anticipates that number to be well over the \$8 million mark for fiscal year 2017.

Sheriff Downey stated that they are progressing regarding ICE. The apprehension of those who ICE wants to detain continues to go up, and ICE continues to look for bed space. As soon as he is able to get some more staffing, he has advised ICE that they will take whatever they can. For those that [*sic*] wonder if ICE is paying, they are now completely up to date, as they have just received February's payment...

(Un. Ex. 49(b) at p. 3)

For February, March, and April 2017, the Sheriff's Office billed ICE \$301,957.61, \$224,323.94, and \$277,840.78, respectively. (Un. Exs. 18(a,b,c)) Sheriff Downey's report to the Finance

Committee—that he anticipates “well over” \$8 million” in detainee-related revenue generated for FY-2017—undermines the County’s contention that it would be unable to afford approximately \$39,600 for the Union’s final offer.

Last, I note that at the Hearing, the Union gave un rebutted testimony that several job vacancies currently exist in the Sheriff’s Department, including two Corrections lieutenants—purportedly one has a salary exceeding \$100,000—former undersheriff O’Keffe’s position, and Sheriff Downey’s former position within the Department which became vacant after his election. The Union, however, acknowledges the number of employees in the Department has been reduced due to prior layoffs, and though some have since been recalled, the overall staffing level is lower than prior years. Nonetheless, the County did not refute the Union’s inference that the cost of its final offer is less than one position vacancy in the Sheriff’s Department staffing.

After comprehensive review of the County’s fiscal situation contained in the record, I find there is insufficient evidence to demonstrate the County is unable to meet the estimated \$39,600 cost of the Union’s final offer. I also find that in this specific instance it is in the interests and welfare of the public for the lieutenants to be given their first base wage increase since 2009, particularly in light of the vital law enforcement/public safety services they provide to the residents of the County, which include supervising the sergeants and corporals in the departmental chain of command. Therefore, factor (3), on balance, favors the Union’s final offer more so than it favors the County’s.

(4) Comparables

Regarding factor (4), the parties agreed there were no comparable communities. (Tr. 32-33) My analysis is thus restricted to the internal comparables, the most important of which include the Sheriff’s Office patrol, corporal and sergeants’ Units, the Correctional officers and command Unit (which includes officers in the ranks of corporal, sergeant, and lieutenant). All of these Units are represented by the instant Union. In addition, the County has a number of non-

public safety bargaining Units including: Coroner's Office (Laborers Local 751); Recorder, Treasurer & Auditor Offices (Laborers Local 751); Highway Department (IUOE, Local 150, Public Employees Division); Health Department (AFSCME Council 31, Local 1874); and, Circuit Court & State's Attorney (AFSCME Council 31, Local 1874.)

In general, when comparing internal bargaining units, greater weight is given to comparisons made between other public safety units rather than with civilian, non-public safety units. As Arbitrator Bierig recently opined in *Village of Oak Lawn*:

I do not believe that the internal non-public safety employees are directly comparable because those Units do not have the right to strike and the employees are not placed in harm's way as are the public safety employees. Therefore, I have not found the wages of the non-public safety employees significantly relevant.

I note that internal comparables are a significant factor when reviewing public safety units. Interest Arbitrators place emphasis on the internal comparability factor:

An internal pattern satisfies the statutory aim of duplicating, as nearly as possible, what the results of voluntary settlement would have been. Further, sound labor relations policy dictates adherence to internal patterns, since breaking a pattern through the arbitration process will tend to discourage voluntary settlements and lead to dissension within the workforce. In short, there is a very strong presumption in favor of an offer which is consistent with the settlements reached through bargaining with other City units.

City of Marshfield, Decision No. 25298-A, p.15 (Nielsen, 1988).

See, *Village of Oak Lawn and Oak Lawn Professional Firefighters Assoc., Local 3405, IAFF*, S-MA-16-015, (Bierig, 2017), p. 59-60.

To follow is a summary of the County's various public safety/law enforcement command officer bargaining units and their respective percentage raises, and proposed raises, during the period December 2010 through December 2016:⁶

⁶ See, Un. Exs. 11.D.1., pp. 36, 38,47; 11.D.2., pp.63-64; 11.D.3., pp. 36, 45; 11.E.1., p. 42; 11.E.2., p. 45 (same as Un. Ex. 4). These exhibits are the wage schedules from the relevant collective bargaining agreements for the Sheriff's command ranks and the Corrections Division command ranks.

Unit: Effective Dates (December 1)	Sheriff Lieutenants	Sheriff Corporals and Sergeants ⁷	Correctional Division Officers and Command (Corp./Sgt./Lt.)
2010	0%	0%	0%
2011	0%	0%	3%
2012	0%	Lump-sum increase to base pay: \$1,000 (1-9 yrs.) \$1,500 (10-30 yrs.)	3%
2013	0%	2%	3%
2014	Proposed: Union 2% County 0%	2%	3%
2015	Proposed: Union 2% County 0%	Expired ⁸	4%
2016	Proposed: Union 2% County 1%	Expired	Expired ⁹

The County contends that wage increases provided to the Correctional Division Unit were because those employees were “severely underpaid” at the beginning of the contract and intended to bring them up to the “median wage.” The record is unclear as to what median wage the County refers to or in relation to which wages those employees were considered severely

⁷ The same increases were given to Patrol Unit A members. See, Un. Ex. 11.D.3, at p. 45.

⁸ The record is unclear as to a successor contract for this Unit.

⁹ *Id.*

underpaid. The Union testified without dispute that there are approximately 100 members in the Correctional Unit and, based on Union Exhibits 9 and 11.D.3, approximately another 13 members of Sheriff’s Unit B (corporals and sergeants), plus another approximately 34 members of Sheriff’s Unit A (patrol). The record is unclear as to the costs the County incurred for the wage increases provided in either the Correctional Unit or Sheriff’s Unit-B contracts, and how those costs compare to the estimated \$39,600 cost of the final offer for Sheriff Lieutenants, Unit-C.

In addition, below are the calculated percentage increases just for annual command rank pay, i.e., “stipend,” which is paid pro-rata over the year’s pay periods:¹⁰

Unit: Effective Dec 1:	Sheriff Corporal	Sheriff Sergeant	Sheriff Lieutenant	Corrections Corporal	Corrections Sergeant	Corrections Lieutenant
2011	0%	0%	0%	0%	0%	0%
2012	11%	8%	0%	2.3%	1.7%	1.3%
2013	10%	7.6%	0%	2.3%	1.7%	1.3%
2014	9%	7.6%	None Proposed	2.3%	1.7%	1.3%
2015	Expired	Expired	None Proposed	2.2%	1.7%	2.5%
2016	Expired	Expired	None Proposed	Expired	Expired	Expired

As noted, neither the Union’s nor the County’s final offers include an increase in command rank pay for the lieutenants. However, it appears that every other internal law enforcement/public safety comparable Unit has received an increase in command rank pay during their most recent contract.

¹⁰ *Id. footnote 4.* The calculations made to determine annual percentage increases in command rank stipend pay were all rounded to the nearest tenth of a percent.

Next, I find particularly compelling Union Exhibit 9, which compares the 2015 and 2016 year-end average individual and aggregate earnings among the entire Sheriff’s Office command ranks—both bargained-for and exempt—excluding the County Correctional Division. Essentially, the Union’s analysis shows that in both 2015 and 2016, average individual earnings of the Sheriff’s corporals and sergeants (Unit-B) exceeded the average individual earnings of the lieutenants who supervise them:

	2015 Average Earnings	2015 Amount Above Lieutenants Average	2016 Average Earnings	2016 Amount Above Lieutenants Average	2015 to 2016 Increase/ (Decrease) in Average Earnings	Combined 2015 & 2016 Amount above Lieutenants
Lieutenants¹¹ (3)	\$95,401	--	\$95,046	--	(\$355)	--
Sergeants (5)	\$100,516	\$5,115	\$98,404	\$3,358	(\$2,112)	\$8,473
Corporals (8)	\$98,745	\$3,344	\$97,229	\$2,183	(\$1,516)	\$5,527

Although the County does not dispute the accuracy of the Union’s data and analysis, it argues that these differences were the result of up to 400-500 overtime hours worked by the sergeants and corporals on a pipeline security detail. That detail, according to the County, no longer exists. (Un. Ex. 9; Tr. 34-35, 54-55)

The County defends its final offer to the lieutenants on the proposition that they “are management and thus salary exempt, just like the Chiefs and as such do not receive overtime.” Further, the County stated they “doubt that a Lieutenant feels that they should be compensated more than the Sheriff whose position has gone without an increase for many years, and that of the Chiefs.” (Er. Supp. at p. 15) However, I note the following included in the Union’s analysis:

¹¹ The Lieutenant’s base annual salary is \$90,090.

	2015 Average Earnings	2015 Amount Above Lieutenants Average	2016 Average Earnings	2016 Amount Above Lieutenants Average	Increase/ (Decrease) Average Earnings	Combined 2015 & 2016 Amount above Lieutenants
Chiefs¹²	\$105,391	\$9,990	\$108,956	\$13,910	\$3,565	\$23,900
Lieutenants	\$95,401	--	\$95,046	--	(\$355)	--

The above undisputed data from Union Exhibit 9 belies the County’s assertion that the chiefs—who are non-bargained for, management personnel—have gone without any increase, and, therefore, so too should the lieutenants. Yet the snapshot data reveals the chiefs’ annual earnings rose on average over 3% just between 2015 and 2016, whereas the lieutenants’ average essentially remained unchanged.

With regard to the non-public safety bargaining units, review of the parties’ supplemental exhibits reveals the following wage increases between December 1, 2009, and December 1, 2015:

	Coroner’s Office (Laborers’ Local 751)	Recorder, Treasurer, Auditor (Laborer’s Local 751)	Highway Dept. (IUOE, Local 150)	Health Dept. (AFSCME, Local 1874)	Circuit Court & State’s Attorney (AFSCME, Local 1874)
2009	NA	NA	NA	NA	2.5%
2010	NA	0%	NA	2%	3.25%
2011	\$500/per employee	3%	3% ¹³	2%	3.75%
2012	\$750/per employee	3%	3%	2.5%	4.0%
2013	2%	0%	3%	2.5%	NA
2014	3%	0%	NA	NA	NA
2015	2%	2%	NA	NA	NA

¹² There were three Chief positions in 2015 and two in 2016 due to Chief Downey being elected Sheriff.

¹³ The raise became effective April 2012 and was for the period December 1, 2010, through November 20, 2011. Raises each year are dependent on the employee maintaining satisfactory performance level.

There is no dispute that these civilian, non-public safety bargaining units are small. For, example the County's costs of the one-year, 2% raises effective December 1, 2015, for the Coroner's Unit and the Recorder/Treasure/Auditor Unit were \$6,100 and \$2,800, respectively.¹⁴ I acknowledge that the costs for most of the non-public safety Units' raises are *de minimis* in comparison the \$39,600 estimated cost for the lieutenants', and there is no dispute that the civilian employees' wages are not comparable with that of the lieutenants. Nonetheless, the County has chosen to provide some wage increases to various bargaining Units during the period 2009 to 2015, yet the lieutenants received none.

In view of the foregoing, I find that, on balance, the internal comparables favor the Union's final offer more so than the County's, particularly in light of raises provided to other public safety/law enforcement command rank employees.

(5) Cost of Living

Overall, I find the BLS Consumer Price Index ("CPI") data favors the Union's final offer.¹⁵ This is true whether I view the data only for the three years covered by the parties' proposals—2014, 2015, and 2016—but even more so when viewed over the period of time since the lieutenants received their last base salary increase in 2009. The first table below shows the CPI percentage points only in comparison to the three successor contract years in dispute (2014, 2015, and 2016):

¹⁴ Un. Ex. 17, pp. 6-8.

¹⁵ Although the Union's Exhibit 10 is based upon the CPI-W, the parties agreed the CPI index to be used is the CPI-U. However, the Union cautions this Arbitrator to not give too much weight to the CPI in general contending that it fails to take into account increased healthcare costs or college tuition, the latter being of particular importance. (Tr. 35-36, 65-66) For a thorough analysis of the Bureau of Labor Statistics CPI data and its application in Interest Arbitration, see *Village of Lansing and IL FOP*, S-MA-12-214, footnote 27 at pp. 18-19 (Benn, 2014).

	2014	2015	2016	Total	Ave/Year
CPI-U 12-Month Change¹⁶	1.6	0.1	1.3	3.0	1
Union Offer	2.0	2.0	2.0	6.0	2.0
Δ with CPI	0.4	1.9	0.7	3.0	1
County Offer	0.0	0.0	1.0	1.0	0.33
Δ with CPI	-1.6	-0.1	-0.3	-2	-0.67

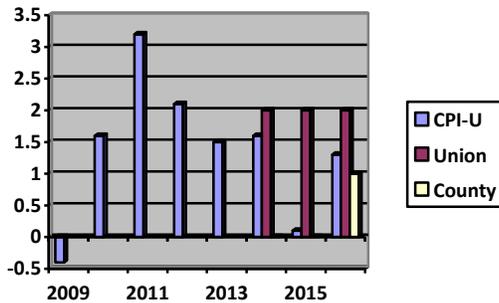
While the Union’s final offer averages 1 percentage point above the CPI for each year of the three-year proposed Agreement, the County’s final offer fails to keep track with the CPI whatsoever. The cumulative effect is the Union’s offer would exceed the CPI by 3.0 percentage points, whereas the County’s offer would keep the lieutenants 2.0 percentage points below the CPI. But, as previously noted, the lieutenants have not received an increase in base pay since 2009. The next table below examines the CPI percentage points over the period 2009 to 2016:

	Cumulative 2009 to 2013	2014	2015	2016	Total
CPI-U 12-Month Change	8.0	1.6	0.1	1.3	11.0
Union Offer	NA	2.0	2.0	2.0	6.0
Δ with CPI	NA	0.4	1.9	0.7	-5.0
County Offer	NA	0.0	0.0	1.0	1.0
Δ with CPI	NA	-1.6	-0.1	-0.3	-10

When examined from 2009 through 2016, the Union’s final offer cuts the gap with the CPI down to 5 percentage points, whereas the County’s final offer leaves a gap of 10 percentage points,

¹⁶ Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items. Bureau of Labor Statistics, CPI Detailed Report, p. 25. Access website <https://www.bls.gov/cpi/cpid1612.pdf>.

twice as much as does the Union. The chart below gives a visual display of the CPI from 2009 through 2016, and then adds a comparison with the Union's and County's offers in the last three years:



Arbitrator Bierig observes that, since 2008, Illinois arbitrators have recognized the significant of cost of living data in the wage analysis for purposes of Interest Arbitration. *See, Village of Oak Lawn and Oak Lawn Professional Firefighters Assoc., Local 3405, IAFF, S-MA-16-015, -0131 (Bierig, 2017) p.61.* It is generally accepted by arbitrators that when both parties' proposals exceed the CPI, the offer closest to the CPI should carry the day. *See, Id., p. 62,* citing *City of Burbank, S-MA-97-56 (Goldstein, 1998) pp. 9-11; see also, County of McHenry and ILFOP Labor Council, S-MA-11-004 (Benn, 2012) p. 131.*

However, this case is unique in that the Union's final offer exceeds the CPI by 3 percentage points—presuming the analysis is limited to years 2014, 2015, and 2016—whereas the County's final offer keeps the lieutenant 2 percentage points below the CPI. But as noted in the second table, if the analysis of the offers is based upon the eight years of CPI data since the lieutenants' last base salary increase in 2009, both final offers would keep the lieutenants' below the CPI. However, the County's final offer leaves a gap more than twice as large as does the Union's final offer.

Last, because the parties' proposed three-year Agreement would end November 30, 2017, I examined the 2017 CPI forecast by the well-established Philadelphia Federal Reserve Survey of Professional Forecasters. *See, e.g., City of Mt. Vernon and ILFOP Labor Council, S-MA-16-198 (Nielsen, 2017) p.13; County of Cook/Cook County Sheriff and ILFOP Labor Council, L-*

MA-13-003 (Reynolds, 2015) p. 20; *City of Rock Island and ILFOP Labor Council – Command Officers*, S-MA-11-183 (Benn, 2013) p.15 at footnote 29. The consensus forecast for the Headline CPI in 2017 is a 2.4 percentage point increase over 2016, while the more conservative Core CPI is forecast to increase 2.2 percentage points.¹⁷ Although under either CPI measure the lieutenants would fall behind the forecasted 2017 rise in the cost of living, the increase would have a less regressive effect on the lieutenants if they receive a 2% raise on December 1, 2016, under the Union’s final offer than a 1% raise under the County’s final offer.

In view of the above, I find the CPI-U data, on balance, favors the Union’s final offer more so than the County’s, particularly when consideration is given to the period of time that has elapsed since the lieutenants received any increase in base salary.

(6) Overall compensation

The Union argues that health insurance cost increases, particularly since 2011, have eroded employee pay and will continue to do so. From October 1, 2011, to October 1, 2014, the monthly PPO Plan A single premium rose 3.8% and family premium rose 6.3%. But it should be noted that the County pays 75% of the premium cost; the County’s premium costs increased the same percentage as it did for its employees. In 2014, the deductible formula structure significantly changed. In 2011, employees’ deductible was \$500 for single and \$1,500 for family. In 2014, the deductible went to \$5,000 for single and \$10,000 for family. However, pursuant to a health reimbursement arrangement, employees pay the first \$1,000 of the deductible and the County pays the remainder. (Un. Ex. 16)¹⁸

¹⁷ Access Web address, <https://www.philadelphiafed.org/research-and-data/real-time-center/survey-of-professional-forecasters/2017/survq117>. See also, Employer Supp. BLS Data Exhibit titled, “Consumer Price Movements March 2017.”

¹⁸ I note that per Union Exhibit 16, there was a greater variety of PPO plans available for the period October 2015 through December 31, 2016. Further, effective January 1, 2017, there are structural changes in health insurance plan choices available pursuant to the Affordable Care Act, according to the County. Because the record is unclear as to which plans comport with the previously-offered PPO plans, I will not attempt an apples-to-apples comparison of

Conversely, the County argues that this factor favors its final offer over the Union's. The three Bargaining Unit members already receive the highest direct salary among the County's represented employees. In addition, they receive the same or similar health insurance benefits, vacation, holidays, sick leave, pension, and stable work environment as other County employees.

Nonetheless, I find that factor (6) is, on balance, neutral and is not determinative as both the County's and employees' premium and deductible costs have increased. The fact that the lieutenants receive the highest salary among the County's bargained-for employees is immaterial.

(7) Changes during the pendency of the arbitration proceedings

The County contends that its financial position has continued to erode during the process of arbitration, as demonstrated by its financial presentation, and thus argues that factor (7) favors its final offer. However, as previously noted, the County's revenue stream from housing ICE detainees, according to Sheriff Downey, could exceed \$8 million for FY-2016. I recognize there are costs to the County associated with the revenue it receives from ICE. However, when juxtaposed with the nominal total cost of the Union's final offer (approximately \$39,600), I find it unreasonable and inequitable to continue what has essentially been a wage freeze for the lieutenants that began in 2009 and provide them with only a 1% increase for FY-2016, which is worth about \$3,900 to the Unit's members combined.¹⁹ Therefore, I find this factor, on balance, favors the Union more so than the County.

health care costs with the information available in the record. Suffice it to say, I recognize that these costs have gone up for both the Union and the County and will continue to do so.

¹⁹ 1% of \$90,090 base \approx \$900/year + \approx \$400 roll-up costs (which the Union testified includes payroll taxes and pension contributions) = \$1,300 \times 3 employees = \$3,900 total one-year cost. (Un. Ex. 7 at p. 3; Tr. 17-18)

(8) *Other factors normally or traditionally taken into consideration in the determination of wages*

Here, the County contends that its final offer is supported by BLS data on the average weekly wage rates: \$1,082 for the United States, \$1,146 in the State of Illinois, but only \$802 in Kankakee County.²⁰ The County argues that the current rate of pay for the lieutenants is almost twice the average of Kankakee County and, therefore, it concludes the data supports its final offer. However, I find that while the data may be statistically accurate, it is contextually misapplied. Any suggestion, explicit or implicit, that a law enforcement lieutenant's weekly wages should somehow be close to the average weekly wage for all employees in the municipality in which he or she serves fails to take into consideration the "unique nature of law enforcement": its required skills, knowledge, duties, and responsibilities. *See, City of Chicago and Fraternal Order of Police, Chicago Lodge 7, Arb. Re. 09.281, (Benn, 2010), pp. 47, footnote 101 (citing the City of Chicago's brief).*

In view of the foregoing I find factor (8) neither determinative nor favoring the County's final offer.

VIII. CONCLUSION

In this three-year successor contract dispute (fiscal years 2014, 2015, and 2016), the County's final offer is a wage freeze for the first two years (0%, 0%) and 1% for the third year. Conversely, the Union's final offer is 2% each year for all three years. The parties have not given me authority to set lieutenants' salaries at rates different from the parties' final offers; therefore, pursuant to Section 14(g) of the Act, I have no option but to select one offer or the other. Both parties' have raised valid, cogent, and thorough arguments in support of their respective positions. I have carefully reviewed and fully considered all of the testimony, evidence, and arguments of the parties including their cited authorities, in comportment with the strict rubric of

²⁰ See, Er. Ex. "BLS Economic Data," Quarterly Census of Employment and Wages, Average Weekly Wage Total, Q3 2016, p. 2. Note, however, the Exhibit also shows the "12 month percent change in average weekly wages Total Covered Sep 2015-Sep 2016" for Kankakee County is +7.2%.

all eight Section 14(h) statutory factors. I find factors (3), (4), and (5) to be particularly applicable and substantively determinative in this case.

The financial condition of the County has been, at best, tenuous for a number of years. Similar to other Illinois public employers, the recovery from the 2008 financial crises, often referred to as “the Great Recession,” has been slow in coming or seemingly non-existent. I do not discount the County’s arguments regarding its financial difficulties and its genuine concern. *See, Sec. of State, S-Ma-12-12-324 (Fletcher, 2014) p. 20.* The record reflects that in 2014 the parties executed an MOU to postpone negotiations for a successor contract in recognition of the County’s financial challenges. Nonetheless, it is also not lost on this Arbitrator that the instant Bargaining Unit (150-C) has been without an increase to its base salary since 2009.

In *Sec. of State*, the employer had offered a three-year wage freeze, and Arbitrator Fletcher noted:

Single-year wage freezes are not at all surprising in today’s economic climate. This Arbitrator recognized as much in awarding the employer’s proposal for a one-year wage freeze in *City of Peru, supra*. However, **this Employer’s proposal for a three-year freeze in wages is too harsh.** The Arbitrator will not assume that other police units in the State will receive comparable treatment, despite the economic stress of the times.

(*Id.* p. 19, emphasis in original)

Similarly, when faced with a fiscally-troubled city’s three-year wage freeze offer, Arbitrator Reynolds noted:

It is true that, along with almost all Illinois public employers, the City is in a tight fiscal situation in these economic times. I aware that one year wage freezes, as in Belleville, have been implemented. The City’s evidence may be sufficient to support such a freeze or a low overall wage increase, but I hesitate to impose a 3 year wage freeze absent undeniable evidence of severe economic restraints and consequences.

Of course, I may have found such a wage freeze to be appropriate if the FOP offer had been excessive, for instance in an amount to keep up with the external comparables as calculated by the FOP. However, their offer was not. **It is lower than that level but still higher than the cost of living, and higher than what may be appropriate in these economic times and the City’s fiscal condition. However, the offer is not so high as to make a 3 year wage freeze more appropriate.** (emphasis added)

City of East St. Louis and ILFOP Labor Council, S-MA-09-085, (Reynolds, 2010), pp. 20-21.

While the County's final offer of 0%, 0%, and 1% is not precisely a three-year wage freeze, as Arbitrators Fletcher and Reynolds were faced with, I find those cases instructive. Similar to *East St. Louis*, the Union's offer in this case could be characterized as "higher than the cost of living, and higher than what may be appropriate," that is, until you take into consideration the number of years the lieutenants have already gone without any increase in base salary, coupled with the fact that other public safety Units have been given percentage raises greater than what the County is offering here.

The County's final offer of zero raises in 2014 and 2015 is, in reality, a continuation of the wage freeze that has been in existence since 2009. By adding a 1% increase for 2016, the County's offer, in my view, is obliquely a regressive three-year wage freeze for 2014, 2015, and 2016. After evaluation of the entire record under the scrutiny of Section 14(h), I find the County's final offer "too harsh" and overall less fair and less equitable to both parties than is the Union's final offer. As discussed *supra*, the weight of the statutory factors favors the Union.

IX. AWARD

For the reasons set forth in this Opinion and Award, I find the following, along with all tentative agreements previously reached by the parties and as stipulated, shall be incorporated into the parties' successor Collective Bargaining Agreement, effective, December 1, 2014, to November 30, 2017, to be included herein. The sole issue before me is Wages, and I adopt the Union's final offer of settlement as I find it more nearly complies with the applicable factors prescribed in Section 14(h) of the Act. Therefore, Appendix A Wage Schedule of the Agreement hereby is amended to reflect the following increases on all compensated hours for all current and former bargaining unit members:

December 1, 2014 – 2%
December 1, 2015 – 2%
December 1, 2016 – 2%

DATED: July 21, 2017
(FMCS case number corrected and reissued August 1, 2017)

/s/ Cary Morgen
Cary Morgen, Arbitrator