



the arbitrator's appointment. The parties also waived the provision in Section 14(b) of the Act for the appointment of panel delegates by the employer and exclusive representative and stipulated that the undersigned arbitrator has jurisdiction and authority to rule on the mandatory subjects of bargaining submitted to him. Post-hearing briefs were received by their due date of July 21, 2017, and exchanged between the parties.

#### Statutory Criteria

Section 14(h) of the Act sets forth the criteria on which the arbitration panel shall base its findings, opinions, and order:

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 the wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinion and order upon the following factors, as applicable:

(1) The lawful authority of the Employer.

(2) Stipulations of the parties.

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

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

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

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

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

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

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in 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 private employment.

#### Bargaining History

The prior Agreement between the parties was for five years, from July 1, 2010, through June 30, 2015. The negotiated wage increases under that Agreement were as follows:

7/1/11 - 1.0% increase  
7/1/12 - 2.5% increase  
7/1/13 - 3.5% increase  
7/1/14 - 4.0% increase

During negotiations in 2015 and 2016 the parties reached tentative agreement on a number of provisions but were unable to do so on wages and the numbers of hours in a shift. The parties were negotiating on the basis of a three-year term for the new Agreement.

The FOP's proposal dated March 9, 2016, for wages was 3%, 3%, 3%. Management's response was 0%, 0%, and a reopener for the third year. According to the parties' proposals that are in evidence, the Employer's first wage proposal in the successor contract negotiations, made on November 18, 2015, offered 0% wage increases for FY 2016 and FY 2017. Mediation under the auspices of the Federal Mediation and Conciliation Service was unsuccessful, and on September 7, 2016, the FOP filed a demand

for compulsory interest arbitration with the Illinois Labor Relations Board. The parties had previously requested a panel of arbitrators from the Federal Mediation and Conciliation Service, and the undersigned was selected by the parties to serve as arbitrator from that panel. When it became evident that the interest arbitration process would not conclude until after the beginning of the third year of the Agreement, the parties agreed to extend the term of their successor agreement by a fourth year.

### Issues and Final Offers

There are two issues in dispute between the parties, wages and shifts.

#### **WAGES**

##### **The Union's Final Offer on Wages**

The following wage increases are to be paid retroactively for all current or former members for all hours in paid status:

7/1/15 - 2.00%

7/1/16 - 2.00%

7/1/17 - 2.00%

7/1/18 - 2.00%

##### **The University's final offer on Wages**

July 1, 2015 - 0%

July 1, 2016 - 0%

July 1, 2017 - 0%

July 1, 2018 - Wage Reopener

#### **SHIFTS**

##### **The Union's Final Offer on Shifts**

The Union wants to change the basic shift hours of police officers from eight hours per day to 12 hours per day. It would accomplish this without increasing overtime by scheduling officers to work 80 hours during each 14 day period, with one workday of eight hours instead of 12 hours during said period to avoid overtime. The days off during the 14-day period would be so ordered that each officer would have a three-day weekend off (Friday, Saturday, and Sunday) every other week. The 12-hour workday would not apply to specialty assignments such as Investigator, who would continue to work an eight-hour day.

The 12-hour day would impinge upon Article XII of the Agreement, Benefits, in that, under Article XII, officers who do not work on a holiday receive only eight hours' pay and bereavement days are calculated on the basis of an eight-hour day. The Union's final proposal would permit the officer to use accumulated compensatory time or vacation time to cover the unpaid time off for the holiday or for bereavement leave.

The actual wording of the Union's final offer regarding hours of work is as follows:

#### ARTICLE VI - HOURS OF WORK

Section 1. The basic work schedule for ~~employees~~ regular patrol officers and telecommunicators shall normally be ~~forty (40) hours each week composed of five (5) consecutive days of work consisting of eight (8) consecutive hours each; followed by two (2) consecutive days off eighty (80) hours each fourteen days composed of a rotating schedule of fourteen days as following: 2 days on (Monday, Tuesday), two days off (Wednesday, Thursday) three days on (Friday, Saturday, Sunday), two days off (Monday, Tuesday), two days on (Wednesday, Thursday), three days off (Friday, Saturday, Sunday).~~ One day during the work period shall be an eight (8) hour work day, as determined between the supervisor and the employee. The work week for payroll purposes shall commence at 12:00 a.m. each Monday and end after 11:59 p.m. on the last day of the pay period (Sunday) ~~each Sunday~~. The provisions of this section may be modified by mutual agreement of the Employer and the employee.

When time spent attending training would result in an employee being in pay status for less than ~~8 hours for the day~~ 12 hours for the day (or 8 hours on the short day), the employee

shall be allowed to return to work or use accrued leave (vacation or compensatory time) for the period necessary to account for ~~8 hours in~~ full pay status for the day. This paragraph does not pertain to training situations when an employee is being paid on an overtime basis.

Section 2. Each ~~eight-hour~~ shift shall allow for and include a paid one-half ( $\frac{1}{2}$ ) hour lunch period and two (2) breaks which shall be granted at the discretion of the immediate supervisor, except when attending training. Employees, while at lunch, remain on-call and subject to performing any and all duties as the work may require. Any employee who is required to perform duties during their lunch period shall be allowed to complete the lunch period when time so permits. When attending training, paid lunch periods shall be limited to one-half ( $\frac{1}{2}$ ) hour per day and extended breaks shall be without pay.

Section 3. Non-probationary employees shall be permitted to bid by classification and seniority shifts ~~and days off as previously determined by the department head or designee.~~ Regular 12-hour shifts shall be composed as follows: (A 7a-7p, B 7p-7a, C 7a-7p, D 7p-7a, and Team Shifts, E 5p-5a and F 5p-5a) as previously determined by the department head or designee. Current specialty assignments (i.e., Records and Investigations) shall work as assigned by the Chief. Bid sheets shall state regular shift assignments for the power shift police during all break periods. This bid will occur three (3) times each calendar year approximate to the fall, spring and summer semesters and shall be completed and new schedule posted no later than thirty (30) calendar days prior to the cycle change unless otherwise mutually agreed between the Union and the Employer (via email is satisfactory)...

Section 4. For those on 12-hour shifts, all hours worked in excess of twelve (12) hours in the work day (unless working a short day of eight (8) hours, in which case overtime shall be paid after eight (8) hours), or eighty (80) hours in the fourteen (14) day work period shall be overtime, and compensation for such hours shall be at a rate of one and one-half times the basic hourly rate. Overtime payment computation will be based on completed work in six (6) minute segments rounding to the next highest segment. Employees required to work on their third consecutive scheduled day off within the fourteen (14) day work period shall be paid at two (2) times their hourly rate.

For those on 8-hour shifts, all hours worked in excess of eight (8) hours in the work day or forty (40) hours in the work week shall be overtime and compensation for such hours shall be at a rate of one and one-half times the basic hourly rate. Overtime payment computation will be based on completed work in six (6) minute segments rounding to the next highest segment. Employees required to work on their second scheduled day off within the work week shall be paid at two (2) times their hourly rate. Employees with Sunday-Monday off shall have Monday considered as their second day off.

The provisions of the above paragraph, relative to employees receiving two (2) times their hourly rate, shall not apply to hours and/or overtime worked as a result of a grant and/or special funding source that does not provide for this overtime rate. In such cases, overtime shall be paid at one and one-half times the basic hourly rate. Additionally, separate hours and/or overtime list(s) shall be established for each grant and/or special funding source.

#### ARTICLE XII - BENEFITS

E. In the event that an employee wishing the Holiday off would place his/her shift in a below minimum staff status, the following procedure will be used to attempt to find a replacement. The overtime procedure will be used with the following exceptions:

1. The replacement opportunity will initially be offered to employees in the same classification.
2. A Police Telecommunicator may voluntarily serve as a replacement for a Police Officer if there is not a Police Telecommunicator working the shift.
3. A Police Officer may voluntarily serve as a replacement for a Police Telecommunicator.
4. A Police Corporal may voluntarily serve as a replacement for a Police Sergeant.
5. A Police Sergeant may voluntarily serve as a replacement for a Police Corporal.
6. The replacement employee shall not receive double time if the Holiday is on the employee's second day off.
7. An employee who is forced off on a holiday shall receive eight (8) hours pay, and that day shall be designated as his/her "short" day of eight (8) hours. If it is not possible to designate that forced holiday day off as the

eight (8) hour day, then the employee shall be allowed to use accumulated compensatory or vacation time for four (4) hours...

Section 5. Bereavement Leave.

A. Leave with pay of up to five consecutive days (maximum of 40 hours) per occurrence will be granted to an employee in the event of the death of a member of the employee's immediate family, household, in-law, or a relative. In the event of a loss of a spouse, domestic partner, parent, mother-in-law, father-in-law, or child, an employee is eligible for 10 days (maximum of 80 hours) of bereavement leave. Employees may supplement paid bereavement leave with compensatory time or vacation time to stay in full pay status during the five or ten consecutive days of bereavement leave.

Section 6. Terminal Diagnosis of a Family Member Leave

A. In the case of an employee where a grandparent, parent, mother-in-law, father-in-law, spouse, domestic partner, or child or, with approval, a brother/sister, has received a terminal diagnosis, the employee will be granted up to 10 days of paid leave (maximum of 80 hours) for the care of the individual.

ADDENDUM B  
OVERTIME PROCEDURE

II. DEFINITIONS

1. Overtime - For those on 12-hour shifts, any time authorized to be worked in excess of twelve (12) regular pay hours per day, or eighty (80) regular pay hours per work period of fourteen days (or after eight (8) hours worked on the employee's "short" day. For those on 8-hour shifts, any time authorized to be worked in excess of eight (8) regular pay hours a day, or forty (40) regular pay hours per week. Departmental operational needs will determine when overtime will be offered.

**The University's Final Offer on Shifts**

Article VI, Section 1 shall remain current contract language.

### Comparable Employers

The parties are in agreement that the employers to be used for comparison with the University should all be state universities. In addition they are in agreement that the following six state universities should be included in the list of comparable employers:

Southern Illinois University Carbondale (SIU Carbondale)  
Southern Illinois University Edwardsville (SIU Edwardsville)  
Northern Illinois University (NIU)  
Eastern Illinois University (EIU)  
Illinois State University (ISU)  
University of Illinois Urbana-Champaign (U of I UC)

The Union, however, argues that the list of comparable universities should also include University of Illinois Chicago (U of I Chicago) and University of Illinois Springfield (U of I Springfield). The Employer contends that those two universities should not be included.

In support of its position the Union relies on Arbitrator Stallworth's decision in Board of Trustees of Southern Illinois University and FOP Labor Council, S-MA-01-239 & S-MA-01-240 (2003). The Union notes that in that case the arbitrator selected the following universities as comparable to SIU Carbondale: SIU Edwardsville, Eastern Illinois University, Western Illinois University, Illinois State University, Northern Illinois University, and University of Illinois Urbana-Champaign. Those six universities together with SIU Carbondale comprise the seven universities that both parties in the present proceeding agree should be considered as comparable.

#### U of I Springfield

The Union makes the following argument why U of I Springfield should be added to that group of seven. Arbitrator Stallworth disqualified U of I Springfield because it "has 16 police personnel, only two of whom are full-time employees." (p. 12 of Stallworth decision). That is no longer the case, the Union asserts. Now, the Union argues, U of I Springfield has 15 full-time, sworn union police officers, the same as Eastern Illinois University, and is therefore no longer an outlier. It should therefore be included in the group of universities comparable to the Employer, the Union contends.

In addition, the Union argues, in University of Illinois at Springfield and IFOP Labor Council, S-MA-00-282 (Perkovich, 2002), Arbitrator Perkovich ruled that the comparable employers for U of I Springfield included Eastern Illinois University, Illinois State University, SIU Edwardsville, U of I Urbana-Champaign, and Western Illinois University. The fact that U of I Springfield was found to be comparable not only to Western Illinois University but also to Eastern Illinois University, Illinois State University, SIU Edwardsville, and U of I Urbana-Champaign, all four of which the parties herein agree are comparable to Western Illinois University, the Union contends, makes it not unreasonable to consider U of I Springfield to be comparable to the Employer Western Illinois University.

The Employer argues that none of the University of Illinois schools is comparable to Western Illinois University because the U of I universities have a different revenue stream that is more reliable. The University of Illinois system, the Employer asserts, has a diverse revenue structure where more income possibilities are available to the schools because of their professional programs, medical school, and other specialized areas of study. In addition, the Employer argues, the enrollment at the U of I universities is more stable than at Western Illinois University because the population around Western Illinois University is declining. The Employer asserts that it would not have proposed U of I Urbana-Champaign as a comparable university except for Arbitrator Stallworth's widely accepted ruling.

A reading of Arbitrator Stallworth's opinion in the SIU interest arbitration case makes clear that in rejecting U of I Springfield as a comparable university, he did not rely only on the number of police officers in the bargaining unit. After noting the number of police personnel, Arbitrator Stallworth stated, "It is difficult to imagine that the conditions at that Springfield campus are comparable to a sufficient degree to those at the University located in Carbondale, Illinois and at the other larger state universities." It was therefore the conditions at the Springfield campus rather than the particular number of police personnel that drove Arbitrator Stallworth's determination.

The Union has provided very little information regarding the conditions on the U of I Springfield campus. The

very little that it has provided does not support the inclusion of U of I Springfield as a comparable university. Union Exhibit 7 shows a Crime Index of 34 for U of I Springfield, or only approximately one-third of the Crime Index figure of 101 for the University. No information was provided regarding the current enrollment at U of I Springfield as compared with the University. In his opinion, which was written in November, 2003, Arbitrator Stallworth gave the enrollment at U of I Springfield as 4,299 as compared with 13,206 at Western Illinois University. A large discrepancy in enrollment would also weigh against finding comparability.

With regard to Arbitrator Perkovich's award, he did not do an independent analysis regarding comparability of U of I Springfield with any other university in the group found to be comparable. He merely stated in his award, "The parties do agree that among Illinois universities the following are comparable: Eastern Illinois, Illinois State, Southern Illinois at Edwardsville, Western Illinois and the University of Illinois at Champaign-Urbana." Award, p. 3. There is no explanation in the opinion of the basis of the parties' selection of their comparable employers. Nor does Arbitrator Perkovich give any basis for his selection of the comparable jurisdictions other than that the parties agreed on those universities.

On these facts the group of comparable employers selected in the Perkovich award carries very little weight for any other interest arbitration. In fact, although Arbitrator Stallworth's award was written some 18 months after Arbitrator Perkovich's award and he discusses the Perkovich award in his opinion, Arbitrator Stallworth nevertheless rejected U of I Springfield as a university comparable to Western Illinois University and the other universities that were found to be comparable in the Perkovich award.

There are additional considerations why Arbitrator Perkovich's award does not support the Union's position. Although he included Western Illinois University, Arbitrator Perkovich rejected the inclusion as comparable employers in the case before him of SIU Carbondale and Northern Illinois University - universities that the parties in this proceeding agree are comparable to Western Illinois University. That would indicate that different criteria formed the basis for the agreed comparable universities in the case before Arbitrator Perkovich

than are guiding the parties in this case in choosing mutually agreeable comparable universities.

Still another basis why Arbitrator Perkovich's award does not support the Union's position in this case is the reasons he gave for rejecting the additionally proposed universities. These included the difference in enrollment of each of the additionally proposed universities with that at the U of I Springfield and the difference in their crime index. Both of those considerations apply in the present case. The arbitrator concludes that the record does not support the inclusion of U of I Springfield as a comparable university in this proceeding.

#### U of I Chicago

The Union acknowledges that U of I Chicago "is more urban than its counterparts" but "urges its inclusion on the grounds that it is not appreciably larger than UIUC." The Union then compares the crime statistics for U of I Chicago with those for U of I Urbana-Champaign and concludes that "the statistics for sworn bargaining unit members, and the number of crimes they handle, are extremely similar between UI-C and UIUC." Actually the Union's figures for U of I Chicago are higher than for U of I Urbana-Champaign. According to the Union's data, U of I Chicago has 71 sworn officers as compared with 63 for U of I Urbana-Champaign; and a crime index of 340 as compared with 334 for Urbana-Champaign.

The University correctly observes in its brief that "[t]he Union made no direct comparison to WIU." Instead the Union compares U of I Chicago to U of I Urbana-Champaign and, after finding them to be similar, argues that U of I Chicago is also comparable to Western Illinois University. The arbitrator agrees with the University's position that the comparison of a proposed comparable should be with the Employer and not with one of the comparable employers. That was the approach of Arbitrator Perkovich, for example, in Case No. S-MA-00-282, supra, where, in rejecting the additional universities proposed as comparable employers, he compared them with the university whose case was being arbitrated and not with one of the other universities comparable to that employer. Award at page 4.

That approach makes sense since the comparable jurisdictions themselves are chosen on the basis of a comparison with the employer whose case is being arbitrated. One might

deviate from this approach by making a comparison with the average of all of the comparable jurisdictions, but not as the Union has done in this case, by a comparison with the university which most differs from Western Illinois University among all of the universities in the comparison group. In this connection it should be noted that Arbitrator Stallworth himself stated that he was "tempted to reject the University of Illinois - Urbana as well [from the group of comparable jurisdictions] due to its large size." Award at pages 12-13.

Another reason why U of I Chicago is not similar to the Employer is found in the undisputed testimony of Matthew Bierman, Vice President for Administrative Services at Western Illinois University and Acting Budget Director, who testified that U of I Chicago and the University of Illinois schools as a whole "have a much more diverse revenue structure than what we do." He noted also that U of I Chicago is located in a more populated area of the state "by which to grow their enrollment" whereas Western Illinois University has less people in its region. Tr. 337-338.

Mr. Bierman's testimony is confirmed by an article by Dawn Rhodes in the September 14, 2017, on-line issue of The Chicago Tribune which reported that "the University of Illinois at Chicago . . . posted the biggest percentage gain in freshman enrollment among the state's 12 public universities this fall." The same article noted, "Beyond the University of Illinois system, the nine other state universities recorded total enrollment decreases as large as 11 percent. . . ." That is consistent with Mr. Bierman's testimony that Western Illinois University was expecting a decrease in enrollment which could be as high as nine percent. The greater enrollment and superior ability to raise revenue plus the much higher crime index and number of sworn officers cause this arbitrator to find that U of I Chicago is not a comparable university to the Employer.

The arbitrator finds that the comparable universities to Western Illinois University are those agreed to by the parties, namely, SIU Carbondale, SIU Edwardsville, Northern Illinois University, Eastern Illinois University, Illinois State University, and University of Illinois Urbana-Champaign.

The Union's Arguments on Wages

The Union argues that there are eight reasons to support its position that its final offer on wages is the more reasonable. First, it asserts, its offer more closely tracks the cost of living. Citing the Bureau of Labor Statistics CPI-All Urban Consumers Report based on data extracted on May 2, 2017, the Union notes that for the period July 1, 2015, to July 1, 2016, inflation rose by about .82%. In the 10 months from July 1, 2016, to May 1, 2017, the BLS report shows an increase of another 1.7%. The overall increase of 2.5%, the Union argues, is closer to the Union's offer of 4% over two years than the University's offer of 0% over that period. The trend of inflation, as indicated by the BLS data, the Union contends, is accelerating. The Union cites prior arbitration awards supporting the principle that wages should increase as fast as the cost of living in order to allow employees to maintain their economic status quo. "This being the case," the Union asserts, "the Union's proposal of 8% wage increase over four years is much more likely to keep pace with the accelerating cost of living than the Employer's offer of 0% over four years."

A second reason why its final offer on wages is more reasonable than the Employer's, the Union contends, is that it is closer to the wage increases given at comparable universities. The Union prepared the following chart showing wage increases negotiated at comparable universities for the relevant years:

	2015-2016	2016-2017	2017-2018	2018-2019
EIU	1.00%			
ISU*	0.00%	2.00%		
NIU	0.00%			
SIU - Carbondale	2.25%	2.50%		
SIU - Edwardsville	--	--	--	--
U of I Urbana-Champaign	2.00%			
Average increases	1.05%	2.25%		

The 2017-2018 and 2018-2019 columns in the chart have no entries because none of the universities have yet negotiated wages for those years. The Union argues that the average increase of 3.30%

over two years "is much closer to the Union's proposal of 4% than the Employer's of 0%."

The Union notes that "the Employer repeatedly emphasized that other internal Unions had accepted a pay freeze," but argues that the external comparisons are more important than internal comparisons. There is not evidence, the Union asserts, of an historical pattern of comparability between FOP and other bargaining units at the University in regards to wage settlements. In addition, according to the Union, the comparison by the University to the faculty bargaining unit is misplaced because the faculty "have much different credentials, do different work, in different departments, on different shifts, under completely different conditions, and have a very different recourse to resolving impasses at negotiation." This is also true generally, the Union asserts, of the other internal units.

The third reason its wage offer is the more reasonable of the two, the Union maintains, is that the University police officers are underpaid when compared to police officers at the comparable universities. According to the Union's figures, the University's police officers as of the end of the 2014-2015 contract year were paid below the average of the comparable universities at starting salary and after the 1 year, 5 year, 10 year, and 15 year intervals. In addition, the Union asserts, their top pay was \$2,368 below the average of the other universities. With the Union's 2% offer, the Union argues, the University's police officers "will approach general parity with other universities, but with the Employer's 0% offer, the disparity will grow until some are as much as -\$3,300 below average." In the remaining years of the contract, the Union asserts, on the basis of a 0% increase in wages, the University's police officers will be much worse off than they are now with little hope of reversing their downward momentum.

The Union argues that the University telecommunicators will fare even worse. The Union has provided figures for the comparable universities. They show that as of the end of the expired contract on June 30, 2015, four of the other comparable universities employed telecommunicators in their police department: Illinois State University, SIU Carbondale, SIU Edwardsville, and U of I Urbana-Champaign. Their average annual wages after one year, according to the Union figures, was \$39,527 as compared to \$35,124 at Western Illinois University. This large gap in the average annual wage, according to the Union

figures, continued after 5 years, 10 years, 20 years, and at top pay. "Giving these underpaid employees no raises whatsoever for three or four years will only worsen this demoralizing state of affairs," the Union contends.

The fourth reason why its offer on wages is more reasonable than the University's, the Union argues, is that in the winter of 2016, the University administration announced that it was experiencing financial shortfalls due to low enrollment and lack of funding by the State. It requested that all employees accept a series of unpaid furlough days. According to Union testimony every union at the University rejected the University's request except the FOP. Every police officer with more than one year of service, the Union notes, lost eight days of pay in 2016. Eight days of pay, the Union asserts, is 3% of an employee's annual salary. "It is not out of line," the Union argues, "to suggest that the sacrifices that the FOP voluntarily made should inform the Arbitrator's decision as to which wage offer is the more reasonable - even if the furlough agreement was not made as strict *quid pro quo* for wage increases." It is eminently reasonable, the Union suggests, for the bargaining unit to receive a 2% raise in a year in which most members gave up 3% of their pay.

The fifth argument made by the Union in support of its final wage offer is that the approximately 30 officers in the bargaining unit earn between \$50,000 and \$60,000 annually so that a 2% wage increase would cost the University approximately \$1,000 or \$1,200 per officer per year. Paying officers this additional amount in each of four years would not be excessive, the Union contends, given the University's workforce of 1602 full-time employees and overall expense budget of \$303,814,000. It cites a 2003 interest award by Arbitrator Stallworth at Southern Illinois University, which, according to the Union, acknowledged that "[t]here is no question that the State Of Illinois, on which the University relies for funding, is in poor financial condition and is demanding serious fiscal adjustments from the University," but ruled that, given the size of the FOP unit the impact of the union's 2% wage proposal would be minimal.

Arbitrator Stallworth, the Union states, also relied on "the fact that the Union's requested raise was consistent with the raise received by other officers at comparable universities." The Union points out that in the course of the parties' negotiations it proposed 0%, 0%, and 1.5% over three years in

exchange for the University's agreement to a 12-hour shift. The fact that the University did not accept that offer, the Union argues, "would seem to indicate that it did not view risk of possibly having to pay the Union's proposed wage increases as a material threat to operations, since it passed over an opportunity to secure a much cheaper deal."

The sixth argument made by the Union in support of its wage offer is that ultimately the State of Illinois has been providing funding to the University, although not always in a timely manner, and that by means of these appropriations and cost-cutting measures on its part the University is able to meet the costs of the Union's final wage offer. The University's position that the budget crisis justifies a three-year wage freeze, the Union contends, therefore does not hold up.

The Union asserts that Acting Budget Director Matthew Bierman agreed in his testimony that, although the University's revenues were down seven million dollars in the previous year, its overall operating expenses were down ten million dollars, resulting in a net gain to the University of three million dollars. Although State funding decreased from \$51M in fiscal year 2015 to \$14.9 M in 2016, the Union argues, the University, through a stop-gap budget adopted by the State legislature on June 30, 2016, received \$37,328,112 in FY 2017 appropriations as reimbursement for FY 2016 expenses paid.

The Union points out that the fact that the 2017 appropriation was given as reimbursement for the shortfall in the FY 2016 appropriation to meet the University's expenses is stated in the University's own FY16 financial audit. The Union also notes the following observation in the financial audit:

A review of the University's Statement of Net Position at June 30, 2016 shows that although the University had a decline in Net Position, its financial foundation remains strong with assets and deferred outflow of resources at \$300.1 million and liabilities of \$130.2 million.

The Union argues that because of the University's strong financial foundation "it is extremely unlikely that a modest wage increase given to thirty employees would have any significant detrimental impact upon University operations." In addition, the Union asserts, the University can meet the costs of a modest wage

increase by means other than layoffs such as leaving vacancies unfilled or raising tuition.

The Union contends that the University's budget for FY 2016 as compared with FY 2015 shows that the University expected that it might need to give wage increases in 2016. In support of its contention, the Union inserted the following table in its brief, which it states is based on the information contained in Employer Exhibit 10, which includes a compilation of data related to the University's budgets and the State's appropriations. (For privacy reasons the arbitrator has substituted the initials of the officer for the officer's full name):

<b>Sworn Officer</b>	<b>FY15</b>	<b>FY16</b>	<b>Increase</b>
G. H.	\$69,049	\$69,313	0.38%
Z. F.	\$57,377	\$57,668	0.51%
D. K.	\$75,952	\$76,242	0.38%
T. A.	\$69,049	\$69,313	0.38%
B. B.	\$54,727	\$57,668	5.37%
C. B.	\$75,952	\$76,242	0.38%
K. M.	\$81,648	\$81,648	0.00%
T. C.	\$81,648	\$81,648	0.00%
A. S.	\$54,727	\$57,668	5.37%
K. B.	\$69,049	\$69,313	0.38%
M. T.	\$54,727	\$57,680	5.40%
E. H.	\$54,727	\$54,937	0.38%
J. V.	\$57,448	\$59,410	3.42%
J. J.	\$59,170	\$59,397	0.38%
S. W.	\$59,170	\$59,397	0.38%

The Union further argues that Employer Exhibit 10 reveals that the Personal Services budget item, which includes both salaried and hourly employees, increased from \$1,230,253 in FY 2015 to \$1,398,828 in FY 2017, an increase of 13%. In the actual event, however, the Union asserts, no wage increases were given or proposed for the bargaining unit members. In addition, the Union notes, the bargaining unit members accepted furlough days in FY 2016, which were not anticipated in the budget. The combination of no wage increases and furlough days, the Union argues, means that the University spent even less of its budgeted line items for salaries than it had intended. "These facts," the Union contends, "make the Union's request for a 2%

raise even more reasonable, especially in light of how underpaid WIU employees are compared to those law enforcement officers at other comparable universities.”

The seventh reason for accepting the Union’s final offer over the University’s, the Union contends, is that on July 6, 2017, the Illinois General Assembly passed a budget that retroactively provided the University with \$20.1m in additional funds for FY 2017 and allocated another \$46.3m for FY 2018 together with an additional \$21m in full reimbursement for MAP funds advanced by the University to its students during the period of the budget impasse in the legislature. Although the \$46.3m is less than the budgeted \$51.4m level of funding received in FY 2015, the FY 2016 operating expenses, the Union argues, were \$10m less than the prior year as a result of belt-tightening measures undertaken by the University in FY 2016. Therefore, the Union contends, “it may be expected that the \$46m will see the University through FY 2018.” At the very least, the Union asserts, “it shows that the Union’s request for a 2% raise is not unreasonable, and need not result in drastic personnel cuts or reduced operations. . . .”

The Union’s eighth and final argument in support of its wage offer is that a reopener for wages in FY 2019 is not optimal. The Union points out that FY 2019 begins on July 1, 2018, which is less than a year away. Noting that Article XV, Section 1 of the Agreement requires that notice to bargain be given between two and six months before the contract expires, that means, the Union asserts, that the parties could be back at the table a few months from now. Should bargaining for the fourth year of the Agreement again result in impasse, the Union contends, they could then once more find themselves in interest arbitration with its attendant costs in time and expense. The Union cites three interest arbitration awards which it contends support its position that in such circumstances a longer contract is preferred in interests of stability of the bargaining relationship.

#### The University’s Arguments on Wages

It is the position of the University that its wage proposal “best aligns with the factors under the Act” and that therefore “its economic proposal should be selected.” Its proposal, the University contends, “aligns with the economic

realities facing Illinois, and as the facts in evidence demonstrate in particular, Western Illinois University." According to the University, its "proposal reflects its economic circumstances with the prospect of hope that there will be an economic turnaround with an offer to re-open the contract to negotiate wages in 2018." Its proposal, the University contends, "is a responsible proposal for the University, its employees and taxpayers." Although the legislature passed a budget for fiscal year 2018, the University acknowledges, it asserts that the budget "did not fully fund the needs of WIU and has too much uncertainty [for the University] to commit to a fiscally risky deal."

The University makes the following argument about its financial condition which it attributes to the testimony of Vice President for Administrative Services and Acting Budget Director Matthew Bierman. It is to be noted that Mr. Bierman gave his testimony on May 17, 2017, which was almost two months before the Illinois legislature passed a budget on July 6, 2017, for the 2017 and 2018 fiscal years. The University's argument based on Mr. Bierman's testimony is as follows:

The Illinois legislature has not passed a budget and the University has been in financial limbo for the past two or three years, with no relief on the horizon. The University derives most of its revenue from State appropriations and tuition and fees. In the past the breakdown was approximately 65% of revenue from State appropriations and 35% from tuition. Over time this has reversed itself so that now the University relies on tuition for 63% of its revenue and on the State appropriation for 37%. The University has experienced a continuous decline in student enrollment in every class since 2006, and that puts downward pressure on the school's revenue.

The University [its argument based on Mr. Bierman's testimony continues] is essentially without the ability to add any more payroll. It is operating "month to month." It has received no state appropriation for FY 2017. In order to sustain operations the University has turned to student fees and parking fees as a means to operate. Funds derived from such fees, however, are almost gone. In FY 2016 the State essentially did not provide funding to the University, resulting in a decrease of 70.98% in its general revenue fund from FY 2015 to FY 2016. In FY 2016 the University overspent its appropriated budget by \$30m. At the same time, the University

expended its entire reserves and had to borrow from its restricted funds. In FY 2015 the general revenue fund had already decreased by 2.48% from the previous year.

A 2% across the board annual wage increase to the police officers bargaining unit [the University's argument proceeds] would require cuts to be made. On November 28, 2016, the University received \$8.4m in finding as a stop-gap appropriation for FY 2017. This was in addition to an earlier stop-gap appropriation from the state of 14.9m for FY 2016 plus \$5m in MAP funding. Nevertheless the funding fell \$41m short of the funding the University received the previous year.

The University [to continue with its argument based on Mr. Bierman's testimony] has taken many belt-tightening measures in the past 18 months. In June, 2016, it began the process of eliminating four academic programs to ensure the most efficient use of the University's resources. In April, 2016, the University laid off 110 non-instructional staff to protect its cash reserves. In 2016 the University instituted a mandatory furlough program. The University has cut \$16m from its budget the last five years, enrollment has dropped 35% since 2006, and there has been no funding or MAP grant receipts in two years.

The University notes that after the close of the hearing in this case the State of Illinois passed a budget that allotted \$20.1m to the University for FY 2017, \$46.3m for FY 18, and \$21m in reimbursement of MAP grants for fiscal years 2017 and 2018 that had been advanced to students by the University in the absence of State appropriations. In announcing the State appropriations, the University points out, University President Jack Thomas stated that the University had to endure furloughs, pay reductions, layoffs, hiring freezes, spending limits, and other cost-saving measures just to keep operations going.

The University argues that the newly passed State budget "falls significantly short of [the] anticipated FY 17 appropriation" of \$54.1m. Instead, the University asserts, it received only just over \$20m. While acknowledging that there are no FY 2018 documents in the record, it nevertheless argues, based on the anticipated operating budget for FY 2017 of \$237m, with \$51.4m coming from the State, that the \$46.3m allocated for FY 2018 represents at best a \$5m shortfall. In addition, the University contends, it overspent its budget by \$14m in the two

previous years, and the new appropriation does not cover the expenditures over the budget during the last two fiscal years.

The situation at Western Illinois University may have been improved by the resolution of the budget impasse and the passage of a State budget in July, 2017, the Employer argues, but it is still bad. "There is a definite shortfall, even with the State appropriation," the University asserts, "and with declining enrollment and a tuition freeze, as well as all other sources of funding tapped, there is no way to make it up." Even with the appropriation, the University argues, it has no idea when it will begin to receive the money from the State and how it will be distributed. The Employer argues that financial uncertainty or financial distress is a factor that arbitrators can use to determine the more appropriate final economic offer, citing University of Illinois and Fraternal Order of Police, Case No, S-MA-10-075 (Robert Perkovich, 2010). In that case the arbitrator chose the employer's final offer of a 0% increase for the single year 2009 over the union's final offer of a 2½% wage increase. As the University notes in its brief, the university there provided testimony that it was under financial distress because of reduced payments of State appropriations and delays in receiving the amounts appropriated.

Regarding the statutory factor of external comparisons the University argues that its proposal of a wage freeze and a final year reopener is within line of what has been negotiated at the comparable universities. What is unusual in this case regarding external comparability, the University asserts, is "[t]he fact there are not any comparable contracts to examine. . . ." None of the comparable universities, the University states, has a wage scale currently in existence to use as a guide. The University contends that this is because "money for wages is non-existent statewide."

The only comparable university that currently has its officers under contract, according to the University, is Illinois State University. Illinois State University wage rates, the University asserts, are directly tied to the "campus wage program" and not to any bargained amount by the Union. The University does not dispute the Union's figures regarding wage increases among the comparable universities for fiscal years 2016 and 2017. For FY 2017 the University points out that the average increase of 2.25% was based on only two contracts. In addition, the University notes, the contracts involved for both

fiscal years "span back to 2013 and 2014 when the budget crisis was not at the level it is now." There was no budgetary crisis when they were negotiated, the University argues.

The University cites a statement made at the arbitration hearing by Union counsel attributing the small number of contracts to look at in attempting to make external comparisons on wages "to the situation with the state." The University picks up on that statement and asks the arbitrator to "use the external comparables to confirm what [Union counsel] stated, there is a 'situation with the state' that is causing the State of Illinois' public universities to: 1) not be able to come to an agreement with their police unions, and 2) likely because of budgetary constraints due to the fiscal crisis as described by [the University Budget Director]." The fact that there are only two contracts among the comparable universities for the 2017 fiscal year and none for fiscal year 2018, the University contends, shows that the University's offer is more reasonable and more in line with the other comparable universities than the Union's request for a 2% wage increase on July 1 of each year from 2015 through 2018.

Turning to internal comparisons, the University argues that they "heavily favor WIU as union and non-union employees alike have experienced years of wage freezes and in some case[s], wage cuts." The University asserts that "every other employee group has taken a wage freeze or wage cut, and the FOP is asking for a 2% raise." The University notes the following wage or salary modifications by other internal unions:

The Faculty Union agreed to both rescind its 1% increase in FY 17 **and** take a 3% cut to its base (with the possibility of restoration). The administrative UPI unit likewise reduced a 4% increase to a 2% increase, as part of a contract renewal of its 2014 agreement. In July of 2016, IUOE Local 399 agreed to a deferment of its raise. AFSCME Local 417 Building Services union also reduced its 4% raise to 2% by agreement in its contract extension agreement.

The University argues that there are two strong factors which weigh heavily in favor of its proposal: 1) the unrebutted testimony that every employee at the University has received no raise unless they had a previously negotiated agreement by FY 2016 and 2) that "every other employee has done

their part to assist WIU in keeping the doors open. The only group of employees to not do so is the FOP." Acknowledging that the FOP group did, in fact, take furloughs, the University asserts that "[e]very employee had to take a furlough."

With respect to the cost-of-living criterion the University questions why the Union used the BLS's national index instead of the Midwest Region CPI, which the University deems to be more appropriate. Further, the University asserts, the CPI has increased only recently, and during the final year of the contract when the FOP received a raise of 4%, the CPI dropped almost a percent. The CPI should not be given significant weight, the University maintains, especially considering the clear evidence of a financial struggle at WIU and throughout the state of Illinois at all institutions of higher learning.

#### Analysis and Conclusions on Wages

The University has correctly observed that the dearth of negotiated university contracts after FY 2016 was due to the "situation" in the state. The "situation" consisted of a lack of a State budget for more than two years with resultant uncertain, haphazard, and delayed funding. FOP and other police unions appear to have adopted a strategy of delaying negotiations as long as possible with the hope that a budget would eventually be passed that provided needed funding for universities' operating expenses including wages. In the present case a budget was, in fact, passed by the legislature after the close of the hearing but before the due date for filing briefs.

In the arbitrator's opinion with the passage of the budget the dire picture painted by Vice President for Administrative Services and Acting Budget Director Bierman does not apply for the fiscal years 2016 and 2017. For example Mr. Bierman testified that in FY 2015 the State appropriated \$51.4m for Western Illinois University and that in FY 2016 the State appropriation dropped to \$14.9m, what he characterized as a "dramatic change." (Tr. 296). There was also a reduction in tuition and related fees from students in the amount of approximately \$1.2m. (Auditor General's Compliance Examination for Year Ended 6/30/2016, Schedule 5, p. 47). Because of the greatly reduced FY 2016 State appropriation, the University, Mr.

Bierman testified, overspent its appropriated budget by \$30m in FY 2016. The University, he stated, had only \$23m in reserves and therefore had to borrow \$7m from an internal fund consisting of money generated from grants and fees. (Tr. 291).

On cross-examination, however, the Union brought out that in a stopgap appropriation made by the State on June 30, 2016, for FY 2017, \$37.3m was appropriated as reimbursement to the University for FY 2016 expenses paid by the University. (Tr. 310-311, Un. Exh. 51). In addition the University was reimbursed in full for \$11.2m of MAP funding it had advanced in FY 2016 for student aid. That appropriation plus the MAP reimbursement in this arbitrator's opinion would have made up for any shortfall in the FY 2016 State appropriation and MAP funding and would have permitted the University to restore its \$23m in reserves and pay back the \$7m it borrowed from its grants and fee fund while still leaving a remainder of \$7m for operating expenses in FY 2017. In view of the delayed receipt by the University of the \$37.3m from the State as reimbursement for expenses paid by the University in FY 2016, it is understandable why the University would have been reluctant to agree to a 2% wage increase for the FOP unit in FY 2016. Now, however, that the money has been received by the University the arbitrator would see no reason based on ability to pay to withhold a wage increase to the FOP unit for that fiscal year.

The same is true in this arbitrator's opinion for FY 2017. On June 30, 2016, the General Assembly and the Governor approved a FY 2017 stop gap appropriation in the amount of \$31.4m meant to provide six months funding for the University. (Emp. Exh. 10, p. 8). In November, 2016, the University received an additional \$8.4m from the State of Illinois. (Tr. 297). As of November, 2016, Mr. Bierman testified, the University had received \$39.8m of the \$51.4m it had budgeted to receive in FY 2017. (Tr. 300, Emp. Exh. 10, p. 12, Table 2).

After the close of the hearing, on July 6, 2017, the General Assembly passed a budget that allotted \$20.1m to the University for FY 2017, \$46.3m for FY 18, and \$21m in reimbursement of MAP grants for fiscal years 2017 and 2018 that had been advanced to students by the University in the absence of State appropriations. These facts are undisputed. \$39.8m plus \$20.1m adds up to \$59.9m in appropriations for FY 2017, which is \$8.5m more than the University budgeted to receive from

the State for FY 2017.<sup>1</sup> According to the evidence, therefore, there would be no reason based on ability to pay to withhold a 2% wage increase to the employees in the FOP bargaining unit for FY 2017.

Turning now to external comparisons, the arbitrator notes that five of the six comparable universities negotiated agreements covering FY 2016. Three of them provided wage increases for FY 2016: EIU (1.0%), SIU-Carbondale (2.25%), and U of I Urbana-Champaign (2.0%). Two of the comparable universities, ISU and NIU, negotiated a 0% increase for FY 2016. Three of the five therefore negotiated some increase for FY 2016. And one of the other two that negotiated a 0% increase for FY 2016 negotiated a 2.0% increase for FY 2017. The foregoing is reflected in the table which appears above at p. 14 and is reproduced here for ease of reference:

1 The arbitrator is aware that nobody has testified or even argued that the University received total appropriations for FY 2017 that added up to \$8.5m above the budgeted amount for that fiscal year. The record, however, plainly shows that this happened unless either Mr. Bierman's testimony was mistaken or Emp. Exh. 10 was in error. To reiterate how the \$59.9m figure was arrived at as the amount appropriated by the General Assembly for FY 2017: Employer Exh. 10, p. 10, which appears to be the second page of the WIU Board of Trustees Resolution setting forth the FY2017 All-Funds Budget, contains the following two sentences: "On June 30, 2016, the General Assembly and the Governor approved an FY17 stopgap appropriation, meant to provide 6 months of funding for the University. This amount was \$31.4 million." At Tr. 297 Mr. Bierman testified that for FY 17 the University received \$39.8m from the state consisting of the June 30<sup>th</sup> stopgap and an additional \$8.4m in November, 2016. He testified at Tr. 300 that the formal budget for FY 2017 "budgeted that we would receive \$51.4 million from the state." He added, "Again, to date, we've received \$39.8 million from the State of Illinois, so we are short nearly 11 or \$12 million." It is undisputed that on July 6, 2017, the General Assembly appropriated an additional \$20.1m to the University, which is \$8m more than the additional \$12m the University was hoping to receive.

	2015-2016	2016-2017	2017-2018	2018-2019
EIU	1.00%			
ISU*	0.00%	2.00%		
NIU	0.00%			
SIU - Carbondale	2.25%	2.50%		
SIU - Edwardsville	--	--	--	--
U of I Urbana-Champaign	2.00%			
Average increases	1.05%	2.25%		

Thus at none of the comparable universities have the parties agreed to two consecutive contract years of 0% wage increase, let alone three consecutive years as the University is here proposing. Based on the fact that three of the five comparable universities that negotiated agreements have agreed on a wage increase for FY 2016; that two of those three increases were for at least 2.0%; and that one of the two universities which had no increase in FY 2016 negotiated a 2.0% increase for FY 2017 this arbitrator concludes that for FY 2016 external comparisons clearly favor the Union's final offer over the University's.

Only two of the six comparable universities completed negotiations for the 2017 fiscal year. At one (SIU-Carbondale) they agreed to a 2.5% wage increase, and at the other (NIU), a 2.0% wage increase. This is not a sufficient number upon which to make a meaningful comparison, but, to the extent that the comparison group negotiated agreements for FY 2017, each agreement provided for a wage increase in the same amount or for a greater amount than the increase proposed in the Union's final wage offer. The results of wage negotiations among the comparable universities for FY 2017, although limited in number, clearly favor the Union's final offer.

None of the universities in the comparison group has completed negotiations for FY 2018 or 2019. The University attributes this absence of agreements for fiscal years 2018 and 2019 and the paucity of agreements for FY 2017 to the financial plight of the universities. It argues that this shows that the University's offer is more reasonable and in line with the other

comparable universities than the Union's request for a 2% wage increase on July 1 of each year from 2015 through 2018.

The arbitrator disagrees that the lack of negotiated agreements indicates that the University's final offer on wages is more reasonable than the Union's final offer. Rather, the arbitrator believes, it indicates a reluctance, at least on the part of the unions, to negotiate in the highly abnormal situation of a budget impasse and consequent inability to rely on regular funding for the universities that continued for a period of over two years. Under these circumstances the absence of negotiated agreements tells us little, if anything, about the reasonableness of either party's offer.

The arbitrator turns now to a consideration of the internal comparisons criterion. The University has contracts covering seven other bargaining units with the following unions: The University Professionals of Illinois Local 4100, IFT/AFT (UPI) each for the faculty and for a separate unit of Civil Service administrative employees; Pipe Trade District Council No. 34 for its plumbers and pipefitters; International Union of Operating Engineers on behalf of Local Union 399 for its landscape maintenance employees; International Union of Operating Engineers on behalf of Local Union 399 for its mechanical maintenance/heating plant employees; AFSCME Local 417 for its clerical employees; and AFSCME Local 417 for its building service employees.

Five of the foregoing seven internal agreements have no provision for a 0% increase in wages for any contract year. The remaining two agreements (with the UPI union) will be discussed below. In addition, all of the five agreements provide for more than one wage increase during their multi-year terms. For example the University's agreement with Pipe Trade District Council No. 34, by its terms, runs from July 1, 2010, through June 30, 2013. However Article XVI of that agreement provides that it shall automatically be renewed thereafter from year to year unless either party gives notice to the other of a desire to modify or terminate the agreement.

There is no claim that the Pipe Trade agreement has been terminated. The article on Wages in that agreement states, "The negotiated hourly wage rate for classifications within the bargaining unit . . . shall be the prevailing wage certified to the Employer by the Illinois Department of Labor for McDonough

County, as stated in Section 2 below." Section 2 lists the job classifications covered by the agreement, including, among others, Plumber, Plumber Sub-Foreman, Pipefitter, and Pipefitter Sub-Foreman. The published prevailing rates for different job classifications, by county, appear on the Illinois Department of Labor website. The arbitrator checked the 2017 and 2015 published prevailing rates for Plumber, Plumber Foreman, Pipefitter, and Pipefitter Foreman.

Effective June, 2017, the prevailing hourly rates for Plumber and Plumber Foreman in McDonough County were \$35.57 and \$38.77 respectively; in June, 2015, the prevailing wages for these occupations were \$34.52 and \$37.63. For Pipefitter and Pipefitter Foreman the corresponding rates effective June, 2017, were \$38.50 and \$42.74; effective June, 2015, the prevailing rates for these occupations were \$37.40 and \$41.51. The arbitrator did not find any prevailing rate information on the Illinois Department of Labor website for 2016. Even if it be assumed that there were no prevailing wage increases in 2016, the increases of more than a dollar/hour between 2015 and 2017 show that the wage increases being received by the plumbers and pipefitters unit after expiration of their 2010-2013 collective bargaining agreement, percentage-wise, are significantly higher than the University has offered the FOP unit. They come to approximately 3% over two years for each of the classifications, which is much closer to the Union's final wage offer of 2% per year than the University's offer of 0% for each of the first three years of the contract.

The University's agreement for landscape maintenance employees with the IUOE is effective for the term June 6, 2014, through June 30, 2017. The contract provides a 2.0% wage increase for FY 2015 and wage reopeners for FY 2016 and 2017. Addendum A-1 of the Agreement states that effective July 1, 2015, "the percentage available for this increase shall be the percentage given as across-the-board to non-represented civil service employees in excess of 2% in FY 16." Effective July 1, 2016, Addendum A-1 states, "The percentage available for this wage increase shall be the percentage given as across-the-board to non-represented civil service employees in excess of 1% in FY 17 or in excess of 3% in FY 16 and FY 17 if combined." Although the meaning of the language of Addendum A-1 is far from clear to this arbitrator, as best as he can tell the parties contemplated a wage increase both in FY 2016 and 2017. They did not negotiate a 0% increase for either fiscal year 2016 or 2017. The

Landscape Maintenance contract had not yet expired as of the date of hearing in this matter, and the record is silent regarding the wage picture between the parties under that contract after FY 2017.

The Mechanical Maintenance/Heating Plant agreement between the University and IUOE is effective from August 1, 2014, through July 31, 2019. It provides a wage increase of 2% each effective August 1, 2014, and August 1, 2015, and a 1% increase effective August 1, 2016. On July 5, 2016, however, the parties entered into a letter of agreement in which they agreed "to defer the upcoming 1% wage increase to August 1, 2017." The letter of agreement stated that the implementation of the 1% increase would be discussed prior to August 1, 2017, and "that the deferred 1% increase to be discussed would be in addition to the Campus Salary Program increase for FY18 if provided for non-negotiated."

The Mechanical Maintenance/Heating Plant agreement is significant in that it covers the same period of time as the current Agreement that is the subject of this arbitration - fiscal years 2016 through 2019 - plus fiscal year 2015. Contrary to the University's position in the present case, however, there is no provision for a 0% percent increase for any year of the contract. Although no wage increase was given for FY 2017, the negotiated 1% increase for that year was not eliminated but merely deferred. In addition, the agreement leaves open the possibility of a wage increase for FY 2018 if a wage increase is provided for non-union employees in that year. The Employer made no offer in this case to the FOP for a wage increase contingent on a wage increase being given to non-union employees. It is by no means apparent that a wage increase will not be provided to non-union employees in FY 2018.

The present contract between the University and AFSCME for the building service unit was originally entered into effective from July 1, 2010, through June 30, 2015. It provided the following wage increases: FY 2011, 0%; FY 2012, 1%; FY 2013, 2.5%; FY 2014, 3.5%; and FY 2015, 4%. The parties subsequently negotiated an extension to the agreement which reduced the FY 2015 increase from 4% to 2% and provided a 2% increase for FY 2016 and a 1% increase for FY 2017. The total combined increase of 3% for fiscal years 2016 and 2017 is much closer to the Union's final offer of a 2% wage increase for each of those years than the University's offer of 0% each year.

The current AFSCME Clerical contract is effective from July 1, 2015, through June 30, 2018 - the same period that the University and the FOP originally intended their successor Agreement to run until they decided to go to interest arbitration and added a year to their contract. Both the FOP and the AFSCME contracts expired on the same date, June 30, 2015, and were open for negotiation at the same time. The AFSCME Clerical Agreement states on its first page that it is "made and entered into this Second (2<sup>nd</sup>) day of October 2015. . . ." The agreement was therefore signed in the midst of the budget impasse at the same time that the University and FOP were negotiating their contract.

The AFSCME Clerical agreement provides for a 2% across-the-board increase for FY 2016 and a 1% increase for FY 2017. For the third year of the agreement, FY 2018, the parties agreed to a wage reopener. By contrast the University never offered the FOP anything other than a 0% increase for the first two years of their new agreement, fiscal years 2016 and 2017. The University has provided no explanation why it apparently had the financial means to agree to 2% and 1% increases respectively to AFSCME for the first two years of their agreement (fiscal years 2016 and 2017) but claims that it would be a financial hardship for it to agree to give any wage increase to the FOP unit for these same two years.

With regard to the two agreements with the UPI, the one for the Civil Service administrative unit originally ran from FY 2011 through FY 2015, and provided the following wage increases: FY 2011, 0%; FY 2012, 1%; FY 2013, 2.5%; FY 2014, 3.5%; and FY 2015, 4%. The parties thereafter negotiated an extension agreement which reduced the FY 2015 wage increase from 4% to 2% and provided increases of 2% and 1% respectively for FY 2016 and FY 2017. The University notes the UPI's agreement to reduce its FY 2015 wage increase from 4% to 2%.

The arbitrator points out, however, that for fiscal years 2016 and 2017 the UPI Civil Service unit received wage increases of 2% and 1% respectively as opposed to the 0% increase the University is offering to the FOP unit. It is true that for FY 2011 the UPI Civil Service unit received a 0% wage increase, but in that year the state was still suffering from the effects of the Great Recession, and there is no evidence in the record that the FOP unit received more than a 0% wage

increase for FY 2011. In this connection the arbitrator notes that for FY 2012 both the FOP unit and the UPI Civil Service unit received a 1% wage increase.

With regard to the UPI faculty bargaining unit, the University stresses that "[t]he Faculty Union agreed to rescind its 1% increase in FY 17 and take a 3% cut to its base (with the possibility of restoration)." The UPI agreed to a 3% base salary reduction for FY 2017 and FY 2018 from their FY 2016 salary levels, but on the basis of a conditional deferral. If the University-wide Full-Time-Equivalent enrollment reaches a stated amount in FY 2019 and certain budgetary and State Appropriation requirements are met, the University must pay back the deferred monies in equal amounts in FY 2019 and FY 2020. At this time there is no way of knowing whether the money will have to be paid back.

Even, however, if the money has to be paid back to the faculty members, they will have received a 0% wage increase for FY 2017 and FY 2018. However, the deferral/reduction agreement provided valuable consideration to the faculty members. The University agreed to increase paid terminal/compassionate care leave from 10 to 15 days. In addition, the agreement provided that "one course of tutored study per faculty member per academic year (Fall and Spring semester) would be waived, notice of non-retention for Union B Senior Associate Faculty will be extended from one month to nine months, and procedures will be investigated for alleviating the annual leave cap during the academic year which will be reset on September 1<sup>st</sup> of each year." In contrast with the foregoing agreement with the UPI for the faculty members, the University is not offering any benefit to the FOP bargaining unit in exchange for receiving no wage increase.

Moving now to the cost-of-living factor, the Bureau of Labor Statistics report issued on September 14, 2017, stated that the CPI-U for the entire United States had increased by 1.9% from August, 2016, to August, 2017. The University objects to the use of the index for the entire United States and asserts that the Midwest CPI index would be more appropriate. The CPI-U Midwest index, however, increased by 1.5% over the same one-year period, which is much closer to the Union's final offer on wages than the University's. The arbitrator's calculations show that the CPI-U Midwest index has increased 2.04% from August, 2015, to August, 2017. The low unemployment rate in the country

together with the most recent CPI figures indicates that the increase in the cost-of-living will probably be greater for the remaining period of the contract than the approximately total 2% increase for the first two years of the contract.

The University has a valid point in arguing that the wage increases during the period of the immediately preceding contract far exceeded the increase in the cost-of-living for the same period of time. That would ameliorate the fact that the cost-of-living index has already risen by 2% during the first two years of the contract and is likely to increase by an even greater amount during the remaining two years. Nevertheless the cost-of-living factor is normally assessed in terms of whether the employer's or the union's final wage offer (or entire economic package) more closely approximates the cost-of-living increase (or decrease) expected during the life of the agreement that is in issue before the arbitrator.

For example, in the present case the record is silent regarding the considerations that were involved in the agreement of the parties to an 11% (11.43% compounded) wage increase over the four-year term of the previous agreement. It may have been to make up for low past wage increases. Nor did the prior contract's wage provisions result in the wages of the Western Illinois University's officers becoming out-of-line with the wages of officers at the comparable universities. On the whole, at the end of fiscal year 2015 their wages were in about the middle of the group of seven comparable universities. For all of these reasons the more relevant consideration in this case is how the parties' final wage offers compare with the cost-of-living increases during the term of the agreement in issue rather than how wage increases under a previous agreement compared with cost-of-living increases under that agreement. Plainly the cost-of-living factor favors the Union's position in this case.

After having considered all of the statutory factors the arbitrator selects the Union's final offer on wages over the University's. As the discussion above shows, the University eventually received all of the state appropriations that it budgeted for in FY 2016 and FY 2017. It is true that the State's actual budgeting for FY 2016 resulted in a \$30m shortfall to the University which caused it to dip into its reserves in the amount of \$23m and borrow \$7m from an internal fund composed of grants and fees. Nevertheless the June 30,

2016, stopgap budget allotted \$37.3m for FY 2017 that could be used to cover expenses incurred and paid for by the University in FY 2016. This more than covered the \$30m shortfall suffered by the University in FY 2016.

In FY 2017, the year ended with the University short approximately \$12m compared to what it had budgeted to receive as a State appropriation that fiscal year. Shortly thereafter, however, on July 6, 2017, the General Assembly, after a budget stalemate with the governor lasting well in excess of two years, finally passed a budget that appropriated additional funds in the amount of \$20.1m to the University for FY 2017.

Now that the University has received all of the funds that it budgeted to receive as State appropriations for fiscal years 2016 and 2017, and taking into consideration all of the cost-cutting measures that the University put into place in FY 2016 and FY 2017, including layoffs and furloughs, the arbitrator sees no reason to find that the ability to pay factor supports the adoption of the University final offer on Wages. The evidence in the record regarding the University's financial picture for FY 2018 is insufficient, and for FY 2019 nonexistent, to permit the arbitrator to make any reliable judgment regarding the University's ability to meet its expenses for those years. As for fiscal years 2016 and 2017, however, as noted, although delayed, the full amount budgeted was received, and there is no reason to believe that the University would not have the money needed to cover a 2% wage increase for each of those years without financial hardship. On balance, therefore, the arbitrator finds that the ability to pay statutory factor favors the Union's final offer in this case.

The external comparisons factor, to the extent that the other comparable universities have negotiated agreements, favors the Union's final offer. Thus for FY 2016, three of the five comparable universities that have negotiated an agreement for that year have agreed to a wage increase. Only two in the comparable group of universities have negotiated agreements for FY 2017, and both of them have provided an increase of 2% or more. Of the two that had bargained a 0% increase for FY 2016, one bargained a 2.0% increase for FY 2017, and the other had not concluded any agreement for FY 2017. As of the date of hearing, therefore, no other university had negotiated two consecutive 0% wage increases, let alone three, as the University is here proposing. Although the number of agreements available for

comparison after FY 2016 is very small, to the extent that comparisons are available for the four-year contract period here involved, the external comparison factor favors the Union final offer on wages.

The University argues that the "[i]nternal comparables heavily favor WIU as union and non-union employees alike have experienced years of wage freezes and in some case, wage cuts." In the same vein the University asserts that "every other employee group has taken a wage freeze or wage cut, and the FOP is asking for a 2% raise." Of the five other internal contracts, excluding the two with UPI, however, not one provides for a wage freeze. One of those five agreements - the one covering the mechanical maintenance/heating plant employees - provides for deferral of the FY 2017 wage increase to FY 2018. Even, however, if the parties ultimately decide to waive any increase for FY 2017, that would be only one contract year without a wage increase, not three consecutive years as the University is proposing here in its final wage offer.

The University's four agreements respectively for the plumbers and pipefitters, the landscape maintenance employees, the AFSCME building service employees, and the AFSCME clerical employees contain no provision for a wage freeze, let alone one for consecutive contract years. Similarly, the UPI agreement for Civil Service administrative employees has no provision for a wage freeze. Five of the seven internal agreements at Western Illinois University thus have no provision for a wage freeze for any of the years that will be covered by the new Agreement between the University and FOP. A strong majority of the internal agreements therefore have no provision for a wage freeze for the contract years at issue in this case.

The UPI faculty agreement does provide for a 3% salary reduction for fiscal years 2017 and 2018, which may have to be repaid later, depending on future enrollment and State appropriations. At the least, therefore, there would be a wage freeze for those two fiscal years. In order to obtain the UPI's agreement to those concessions, however, the University had to agree to five increased paid compassionate leave days and a reduced tutored study course load for the faculty. By contrast, in the present case the University has not offered the FOP any inducement to accept a three-year wage freeze and reopener on wages for the fourth year of the contract.

Based on the foregoing analysis of the terms of the other internal agreements it is difficult to see on what basis the University is claiming that other union employees have experienced years of wage freezes. When one reads the other union agreements, including the negotiated modifications of those agreements, one finds no example of consecutive years of wage freezes, except for the UPI faculty memorandum of agreement that provides for two consecutive years of a reduced salary to faculty that may be repaid in the future and for which the University had to give a valuable *quid pro quo*.

When asked by University counsel whether during the past 12 months any union employees had seen a wage increase, Mr. Bierman acknowledged that wage increases were being paid under existing contracts that provide for wage increases. (Tr. 269). One of those existing contracts is the agreement between AFSCME and the University for the clerical unit which runs through June 30, 2018, and was negotiated during the same period of time as the contract that is the subject of this proceeding.

As noted above, however, unlike the position taken by the University in the negotiations for the successor FOP agreement, where the University has never offered more than a 0% increase for any year of the contract, the University concluded an agreement with AFSCME during the budget impasse on October 2, 2015 for its clerical unit that provided wage increases of 2% and 1% respectively for fiscal years 2016 and 2017 and a wage reopener for FY 2018. No explanation has been provided by the University why it had the financial resources to negotiate wage increases for the first two years of the successor agreement to the clerical contract which covers a much larger unit of employees than the FOP contract, but claims that it would create financial hardship for it to provide any increase for any of the first three years of the successor FOP contract which expired on the same date as the clerical agreement.<sup>2</sup>

Based on the facts that the great majority of the University's internal agreements provide wage increases for at least some of the contract years during the term of the FOP agreement at issue in this case; that only one of the seven

2 According to the parties' briefs the FOP bargaining unit consists of between 20 and 30 employees. The collective bargaining agreement for the AFSCME clerical unit lists 41 separate job classifications.

other internal agreements provides for consecutive wage freezes, which was agreed to by the UPI only in exchange for a valuable *quid pro quo*; that the other six internal agreements contain no provision for a wage freeze except that one of the six provides for deferral of a wage increase in one year; and that the AFSCME clerical contract for a much larger unit than the FOP unit provides wage increases for the first two years of a three year agreement and a wage reopener for the third, although it expired on the same date as the FOP contract and was signed in October, 2016, during the budget impasse, the arbitrator finds that the internal comparison criterion favors the Union's final offer.

The arbitrator has already found that the cost-of-living factor favors the Union's final wage offer. With regard to the interests and welfare of the public, there are equally compelling arguments in support of both parties' final offers. To the extent that public employees' wages are lower, the tax burden on the public is less. On the other hand, however, for the police officers to go three consecutive years without a wage increase on top of taking voluntary furloughs in FY 2016 equal to approximately 3% of their wages for most of the officers is likely to have a negative effect on their morale.<sup>3</sup> The interests and welfare of the public factor therefore does not favor either party's final offer more than the other's.

The arbitrator has found that the external comparisons, internal comparisons, and cost-of-living factors favor the Union's final offer on wages over the University's final offer. The record does not establish that the University would not have the financial ability to meet the costs of the Union's final wage offer. The record affirmatively shows that the University has received all monies budgeted to be received from the State for fiscal years 2016 and 2017, although belatedly, and that, in addition, it instituted significant cost savings for both of those fiscal years.

These considerations would support a finding that the University does have the financial ability to meet the costs of

3 Contrary to the University's assertion in its brief that "[t]he only group of employees to not" do its part to assist WIU in keeping the doors open, University witness Bierman acknowledged on cross-examination that the only bargaining unit that agreed to take furloughs in the spring of 2016 was the FOP unit and that no other bargaining unit agreed to take furloughs since then for fiscal 2017. (Tr. 320).

the Union's final wage offer for FY 2016 and FY 2017. As for fiscal years 2018 and 2019 any attempt to predict the University's ability to cover its wage costs for those years based on the record in this case would be highly speculative. In this connection the arbitrator notes that at the same time that the General Assembly approved fiscal year 2017 and 2018 budgets it also voted to increase the State income tax, which would mean that the State should have more money available to work with. The arbitrator is not satisfied that the record supports a finding that the University would not have the financial ability to meet the costs of the Union's wage offer for fiscal years 2018 and 2019.

The arbitrator concludes that since the factors of external comparisons, internal comparisons, and cost-of-living favor the Union's final wage offer; and the evidence does not support a finding that the University does not have the ability to meet the costs of the Union's final wage offer; the Union's final wage offer should be adopted over the University's final wage offer. The arbitrator therefore selects the Union's final offer on wages. The arbitrator has considered all of the applicable statutory factors in reaching this decision even if all of them were not specifically mentioned in his analysis.

#### The Union's Arguments on 12-Hour Shift Issue

The Union argues that the appropriate standard in judging whether its final offer on shifts should be adopted is Arbitrator Goldberg's approach in City of Bloomington and IAFF Local 49, S-MA-08-242 (Goldberg, 2011), which was followed by Arbitrator Stanton in City of Danville Police Command Officers Assoc., S-MA-11-336 (Stanton, 2013):

I find the term "need" too strong, suggesting an absolute necessity. Instead, I prefer to ask whether (1) the City has shown a legitimate interest in the change it seeks; (2) the proposed change meets the City's legitimate interest without imposing undue hardship on the Union, and (3) the City has proposed an adequate quid pro quo for the proposed change.

The Union argues that it has satisfied the foregoing standard by showing that it has a legitimate interest in remedying the poor morale among the unit because of the 8-hour shifts; that 12-hour

shifts would resolve this problem, and may be implemented without imposing an undue hardship on the Employer; that they are safer and more effective in the long term; that they were bargained for fairly to no avail; and that the Union offered a more than fair *quid pro quo* in exchange thereof which the Employer turned down.

The Union contends that the 8-hour shifts have a demoralizing effect on the employees. The main problem, according to the Union, is that many of the officers rarely get a weekend off unless they use vacation or comp time. With 12-hour shifts, the Union notes, officers would have every other weekend off and thereby have more time with their families when their spouses are not at work and their children off from school. According to the Union's testimony the University has rebuffed the Union's effort to achieve a 12-hour shift structure for more than a decade of negotiations.

In terms of the effect of adopting a 12-hour shift arrangement on the University's operations, the Union contends that studies show that it greatly benefits employees and employers alike. The Union also cites personal testimonials as to its advantages. A sergeant from another university is quoted as stating that 12-hour shifts lead to better morale at work and a better attitude to one's job; to greater productivity; and greater motivation. Another officer from a city police force is quoted as asserting that 12-hour shifts eliminated almost all mandatory overtime. A third officer from a sheriff's department is cited as confirming that switching from 8-hour to 10-hour shifts cut down on sick leave abuse and overtime as well as caused improved morale.

The Union also placed into evidence published studies that found positive results from instituting 12-hour shifts in terms of reducing absenteeism, turnover, severe fatigue, and overtime and improving morale. Another study produced by the Union found no decline in cognitive function from switching from an 8-hour to a 12-hour shift and that employees' domestic and social lives improved; and that there was also improvement in their physical health, sleep patterns, and mood. Twelve-hour shifts, in another study that the Union quotes, were found to be more healthful for those working night shifts because at least three days off are required to recover from the effects of working a long series of night shifts. The Union also introduced into evidence a four-year study by the Center for

Public Safety at Northwestern University of the City of Oak Park, Illinois Police Department of the results of switching from an 8-hour to a 12-hour shift that, the Union states, found morale at an all-time high, no negative internal impact, more family time available for the officers, lower commuting costs, higher motivation for self-initiated work, much fewer citizen complaints, and a positive impact on public perception of police performance and conduct.

The Union contends that the University's chief argument against the 12-hour shift - that it would prove unsafe because an employee could work a full 12-hour shift and then be required to work an additional six hours if the officer on the next shift was absent and nobody else was available to fill that slot - is unconvincing. First, the Union asserts, the studies it has offered into evidence show that 12-hour shifts result in less overtime and fewer holdovers than 8-hour shifts. Second, the Union contends, even under an 8-hour shift arrangement employees are occasionally required to work a double shift. Third, the Union argues, if the concern is the officers' safety, they should be allowed some meaningful input in the decision, and the officers believe that they would be safer, healthier, and happier in working 12's rather than 8's. "[T]he only surefire method of reducing the likelihood of long holdovers," the Union asserts, "is to increase staffing: something that is completely and exclusively within the Employer's unquestioned authority to do."

The Union contends that the University refuses to seriously entertain the possibility of 12-hour shifts. It asserts that for three contracts in a row it has submitted proposal after proposal for an alternative shift for which it has offered a *quid pro quo* to no avail. In the present negotiations, according to Union testimony, after a full year of negotiations, the Employer's HR Representative stated that "12's are no longer on the table and they never were" and that they were "a dead issue." That statement, the Union argues, shows that the Employer's objections had less to do with the merits of the issue than an unspoken decision to engage in a series of cynical stalling tactics.

The Union contends that the University does not have a reasonable basis for refusing to institute 12-hour shifts as shown by the shifting explanations given by the Employer in rejecting the Union's shift proposals. Two contracts ago, the

Union asserts, the University stated that it would be too difficult for its payroll department to implement the change to a 12-hour shift only to acknowledge subsequently that it was feasible to make the change. A second argument advanced during the last negotiations, according to the Union, was that there was no clear exception in State overtime laws to legally accommodate telecommunicators working a 12-hour shift. In response, the Union notes, it drafted language to update the State labor laws to clarify the matter, and its proposed language was adopted by the General Assembly. The University, the Union notes, nevertheless maintained its opposition to the Union 12-hour shift proposal.

In the last round of negotiations, the Union asserts, the University took the position that a 12-hour shift could not be done because of staffing levels. Although the Union bargaining team then prepared multiple schedules to show that a 12-hour shift was feasible, the Union argues, the University continued to oppose the Union shift proposal. Still another objection to the Union's 12-hour shift proposal was raised during the arbitration hearing, according to the Union, when the University contended that it could make it necessary for an officer to work an 18-hour shift as the result of absenteeism on the following shift. The Union argues that this objection is without merit for the reasons stated above at page 39, first full paragraph.

The Union argues that shifts of a longer period of time than 8 hours are common at other universities. Among the comparable universities, Northern Illinois University and Southern Illinois University at Edwardsville, it states, are on 12-hour shifts, and University of Illinois at Urbana-Champaign is on an 10-hour shift schedule.

The Union asserts that during the last round of negotiations, when it became apparent that the Employer considered a 12-hour shift to be a "dead issue," the Union "took the drastic step of dropping its proposal for three years of 3% raises, and switched to a package deal wherein the employees would switch to 12's in the coming year (seven months in the future) in exchange for taking a contract with raises of 0% in FY16, 0% in FY17, and 1.5% in FY 18." This was a generous *quid pro quo*, the Union contends, that would have saved the University \$67,000 over two years without even consideration of savings on future pension obligations.

The Union argues that it "has responded to the Employer's priorities by creating a package that gave the Employer a large economic concession in exchange for a shift change which would most likely either be cost-neutral or actually save money." It is the arbitrator's function "to determine what reasonable parties would have agreed to at the table," the Union asserts, and the package that it proposed, "on its face, shows a reasonable exchange that satisfies both Parties' most pressing needs."

The Union reminds the arbitrator that the parties have agreed that the 12-hour shift proposal is non-economic and asserts that therefore the arbitrator "is fully empowered by the Labor Act to impose his own resolution to the matter, and if need be, fashion his own language to set forth a solution that reasonable parties *should* have arrived at, but didn't." Its first request, the Union states, is that the arbitrator select the Union's 12-hour language as written. Failing that, however, the Union requests the arbitrator to fashion an award that would permit the 12-hour shift to be implemented for a substantial trial period with the right of the Police Chief "to terminate the shift if it prove substantially more expensive than 8's, or demonstrably more dangerous than 8's (due to documented fatigue, reduced performance, etc.); and that disputes arising out of this language may be resolved by a neutral pursuant to the Parties' agreed-upon dispute-resolution language in Article V of the Contract."

The Union contends that such a solution would address the concerns of both parties while allowing them to engage in a trial period to see if the 12-hour shifts are as good as they are reported to be. The Union cites testimony by Chief Scott Harris at the arbitration hearing which it interprets as indicating that his main objections to 12-hour shifts were that they were unsafe because they would result in officers regularly working 18-hour shifts and that they would be more expensive because of overtime requirements.

#### The University's Arguments on 12-Hour Shift Issue

The University argues that the Union 12-hour shift proposal is "widely different from the current practice of a standard 8 hour shift" and is "a 'breakthrough' proposal

radically changing the working relationship and collective bargaining relationship between the parties." As the party proposing the change from the status quo, the Union, the University contends, bears the burden of proving a compelling need for its proposed changes. Further, the University asserts, the demonstration of a need for change must begin at the bargaining table and should not originate at arbitration. The Union, the University maintains, did not comply with these requirements. "All that was placed in evidence," according to the University, "was that the Union previously asked for a shift change, but otherwise provided neither any reason for it nor any offer of a quid pro quo for such a breakthrough."

The University argues that the parties have previously discussed alternative scheduling proposals as part of their negotiations and, ultimately, could not come up with a workable alternative shift. It was only after the parties could not come up with a workable 12-hour shift, according to the University, that it informed the Union that it would maintain the status quo on shifts. The University makes the following arguments why switching to a 12-hour shift schedule would create substantial staffing problems for the department:

1. Covering overtime would require officers to work 18-hour shifts. For example, covering the 12-hour shift of an absent officer would require the officers respectively on the preceding shift and on the following shift to work an additional 6 hours, or an 18-hour shift. Chief Harris expressed his concern about an employee working 18 continuous hours making life and death decisions and getting into accidents. Although currently employees sometimes work double shifts, they would then work 16 hours straight and not 18 hours. In cases of overtime a 12-hour shift creates a danger to the officers, other employees, students, and the community because of officer fatigue. The Union has no answer to this concern.

2. Overtime would be more difficult to fill because in an 8-hour shift arrangement, if necessary an officer can work a double shift. The University cannot work an officer 24 hours. On a 12-hour shift the unavailability of officers because of comp time, vacation, bereavement leave, or other paid or unpaid release time could make it almost impossible to cover necessary overtime.

3. A 12-hour shift structure would require four platoons, each headed by a sergeant. The department is currently staffed with only three sergeants.

4. Sergeants are not represented by the Union. The Union's proposal requires that sergeants also work a 12-hour shift. It is fundamentally unfair to change the shift schedule through the interest arbitration process and have an unrepresented group dragged along in the process.

5. On the issue of weekends off, officers are allowed to accrue vacation time and comp time and three release days, and this gives them the opportunity to take off some weekends and holidays even if scheduled to work those days. A 12-hour shift schedule will create scheduling problems because employees who have weekends off as part of their schedule will still have vacation, comp, and release days available to them to use.

6. Fewer officers would be available to cover football games and other special events under a 12-hour shift schedule.

7. Addendum B to the contract is a six-page program dealing with how overtime assignments and call-ins are to be handled and is a work-in-progress. Changing to a 12-hour shift schedule is likely to raise a whole host of new issues regarding overtime assignments and call-ins.

The Union's final proposal on shifts should be rejected by the arbitrator, the University contends, because of its failure to provide a *quid pro quo* for the breakthrough it is seeking. For a proposal that is a breakthrough to be accepted, the University argues, "the Union is required to provide both evidence that the 'system is broken' and that there was a *quid pro quo*," citing Village of Oak Brook, S-MA-15-018 (James R. Cox, 2016). The Union, the University asserts, provided neither in this case. Noting Union witness Crawford's testimony that in one of its proposals the Union did provide a wage freeze as a *quid pro quo* for the 12-hour shift, the University argues that a "wage freeze is not actually a *quid pro quo* as the Union is not giving anything it currently has in its agreement to WIU." In any event, the University contends, "the current proposal before the arbitrator is not a wage freeze, but a 2% wage increase." Therefore, the University points out, the Union's current final offer on shifts provides no *quid pro quo*. "The Union wants to have its shift change and its raise," the University argues.

The University contends that the Union did not call anyone from the bargaining unit to provide a reason for changing to a 12-hour shift. The Union called three members of the bargaining unit to testify at the hearing, the University asserts, but not one of them ever gave a reason why the Union wanted a 12-hour shift or any change in the current shift scheduling. Instead, according to the University, the Union relied on the subjective statements from officers in other bargaining units with other employers whose working conditions are different than those of the officers in the University bargaining unit.

With regard to the articles relied on by the Union, the University argues that none of them definitively states that a 12-hour shift is the best and only way to staff a police force. Such a concept, the University contends, is belied by the fact that it has successfully staffed its police force with an 8-hour shift for many years. It notes that one of the articles states that there should be employee involvement in shift schedule determination. That is the case here, the University asserts, because there is collective bargaining. The one example in that article of a successful 12-hour shift schedule, the University contends, is not statistically significant.

A second article relied on by the Union, the University argues, provided mixed reviews and cited a study whose findings "indicated neither benefits nor disadvantages to the worker in extended shifts and compressed work weeks." The study, according to the University, explained that "while some employees experienced the advantages expected by realizing 12 hour shifts, this was offset by others for whom the extended shifts created a daily hardship." Another article relied on by the Union is discounted by the University because it was published by the Police Officer Association of Michigan, which the University describes as a biased police union source. Still another article relied on by the Union, the University points out, acknowledged that there are ". . . questions of mental and physical fatigue" associated with a 12-hour shift.

The Northwestern University study of the impact of the 12-hour patrol shift schedule in the Oak Park, Illinois, police department, in the section headed Results of the Shift Length Experiment, the University argues, listed the following as one

of the key findings: "Twelve-hour shifts may pose safety risks to officers and the public." The University asserts that the whole premise of the study was to determine whether to move the Oak Park police force off of a 12-hour shift. One of the conclusions of the study, according to the University, was that there was no marked difference in performance between a 12-hour and any other shift.

One of the three articles that it introduced into evidence, the University asserts, concluded that "[o]fficers working the 12 hour shifts reported greater levels of sleepiness and lower levels of alertness at work than those assigned 8 hour shifts." The same article, according to the University, also concluded that there were no qualify of life benefits from 12-hour shifts. A second article, the University argues, likewise noted increased sleepiness in in 12-hour shift personnel as compared with 8-hour shift personnel.

This case, the University argues, should not be decided on the basis of the cited articles or any scholarly material. Except for the self-serving Michigan police union article, the University contends, every article from both parties noted significant drawbacks to the 12-hour shift, including decreased alertness and increased safety concerns for officers. Overall, the University maintains, these articles "certainly do not overtly advocate for a 12 hour shift as advantageous for this unit, and more likely demonstrate that it would be negative" because of the same concerns expressed by the Chief in his testimony.

The Union witnesses, especially the officers in the unit, the University argues, gave no compelling reason for wanting a 12-hour shift. The Union, the University asserts, provided no compelling reason under the statute or logically to change the current shift scheduling. The University contends that Employer witness Lieutenant Clark, a former member of the Union bargaining committee, provided the correct explanation for why the Union did not insist on a 12-hour shift in past negotiations, namely, that the Union always went for the money.

The statutory factor of external comparisons, the University argues, favors the status quo as requested by the Employer in that three in the comparison group - Eastern Illinois University, Illinois State University, and Southern Illinois University Carbondale - use an 8-hour shift, and the

contracts of the remaining three universities contain "language [that] allows for the employer to change the shifts, as needed."

In addition, the Employer asserts, SIU Edwardsville has both 12 and 8 hour shifts because of, according to the contract, the "unusual nature of University's business." Since the record is silent regarding SIU Edwardsville's unusual nature of business, the University argues, it cannot be assumed that what works at SIU Edwardsville would necessarily work at Western Illinois University.

The criterion of internal comparisons, the University argues, clearly favors the University's final offer in that not one of the University's other employee units has anything other than an 8-hour shift. Accordingly, the University asserts, neither the internal or external comparable units support the Union's position that there should be 12-hour shifts for this unit, and the University's proposal on shifts should be selected.

#### Analysis and Conclusions on 12-Hour Shift Issue

The arbitrator agrees generally with the Union's formulation of the standard it must meet to prevail in its effort to change the existing language on shift scheduling. However, the arbitrator believes that the words "compelling reason" rather than either "legitimate interest" or "compelling need" would better express the kind of showing that may be expected of the party that wishes to materially change the existing contract language concerning a term of employment. In addition, as the Union acknowledges, there should be an adequate *quid pro quo* offered for the proposed change. Further there must be a consideration of whether or not the proposed change is unduly detrimental to the other party.<sup>4</sup>

<sup>4</sup>In the case cited by the Union, City of Bloomington and IAFF Local 49, S-MA-08-242 (Goldberg, 2011), the issue before the arbitrator was economic and involved health insurance costs. The arbitrator therefore formulated the relevant portion of the applicable standard in terms of whether "the proposed change meets the City's legitimate interest without imposing undue hardship on the Union." The 12-hour shift issue is non-economic, and the arbitrator believes that in such case it is more appropriate to analyze the proposal in question in terms of whether it is unduly detrimental to the opposing party.

The arbitrator does not agree with the Union's contention that the University refuses to entertain the possibility of a 12-hour shift. The fact that Chief Harris proposed a trial period, with the University having the right to call off the trial if it believed it was not working out, shows that the University did take the Union shift proposal seriously. It was the Union bargaining team that turned the University's counter-offer down because it did not want the University to have the sole say on whether there was good reason to discontinue the trial. Nevertheless the fact remains that the University took the Union proposal seriously and made a serious response.

The Union's effort to portray the 12-hour shift issue as a no-brainer is not persuasive. The most comprehensive and thorough of the studies introduced into evidence, the one prepared by the Center for Public Safety at Northwestern University for the Oak Park, Illinois Police Department, in the section headed Overall Conclusions and Recommendations, while finding that it was in the best interests of the department to continue with the arrangement "at this time," refrained from recommending that the 12-hour shift arrangement be continued on a permanent basis. Among the Conclusions and Recommendations were the following:

With respect to the operational and administrative data findings, there is far more positive evidence for the success of the 12-hour shift implementation than there is evidence of adverse effect. The positive impact on patrol officer and sergeant morale and quality of work-life balance is truly impressive, as is the positive impact on public perception of police performance and conduct.

However, a few serious questions raised in the interview, focus group, survey and external research segments of the report remain to be addressed. We believe that additional research work is needed before

(footnote 4 cont.) Arbitrator Goldberg also stated that "[t]he ultimate question for the interest arbitrator in his/her role as substitute for the collective bargaining process on these economic issues for which the parties could not reach agreement is which of the offers should have been accepted by reasonable negotiators." Goldberg Award, p. 21.

any final decisions are made with respect to continuing the 12-hour shift arrangement on a permanent basis.

In particular, we remain concerned about the impact of the 12-hour shift arrangement on internal and external communications, employee training and development, and officer fatigue, safety and health.

The study also recommended that "a fresh consideration of the advantages and disadvantages of a 10-hour shift should be conducted, given the trend of results noted in the review of recent research."

In terms of the statutory criteria, external comparisons do not favor the Union's final offer over the University's. Three of the six comparable universities - Eastern Illinois University, Illinois State University, and Southern Illinois University Carbondale - all have 8-hour shifts. A fourth comparable university, U of I Urbana-Champaign, has a 10-hour shift arrangement. A majority of the comparable universities therefore have a shift arrangement other than a 12-hour schedule. Nor do any of the other internal bargaining units have anything but an 8-hour shift schedule. The internal comparisons criterion therefore favors the University's final offer.

In the end therefore the Union must rely on its argument that it has satisfied the standard for supporting a change in the status quo "by showing that it has a legitimate interest in remedying the poor morale among the unit because of the 8-hour shifts; and that 12-hour shifts would resolve this problem, and may be implemented without imposing an undue hardship on the Employer; . . . and that the Union offered a more-than-fair quid pro quo in exchange thereof - which the Employer . . . turned down."

The difficulty with that argument, however, as the University points out in its brief, is that "the current proposal before this arbitrator is not a wage freeze, but a 2% increase." The arbitrator disagrees with the University's contention that a wage freeze is not a quid pro quo because it is not giving anything the union currently has in its agreement. In a situation where the statutory criteria would otherwise justify a wage increase, a proposal by a union to forego a wage

increase clearly provides a monetary benefit to the employer and can, in appropriate circumstances, constitute a *quid pro quo* in exchange for some other benefit to the bargaining unit.

The University correctly points out that in the posture that the final offers are now presented before the arbitrator "[t]he Union wants to have its shift change and its raise." Based on the lack of a quid pro quo for the Union's final offer to change from an 8-hour to a 12-hour shift arrangement, the fact that the shift scheduling at the external group of comparable universities does not favor the Union's final offer on shifts over the University's, and a consideration of all of the applicable statutory criteria, the arbitrator selects the University's final offer on shift schedule over the Union's.<sup>5</sup> The arbitrator expresses no opinion on the question of whether the statutory criteria would have favored the Union's final offer on shifts, either outright or on a trial basis as proposed in its brief, had an adequate *quid pro quo* been included in the offer.

<sup>5</sup>The arbitrator is aware that had the Union in this case fashioned a final offer of consecutive 0% wage increases, similar to its earlier package proposal, it would have been assured of no wage increase for at least two years (since the Employer was also proposing no wage increase) without any assurance that its shift proposal would be adopted by the arbitrator. This may tell us something about the Union's priorities or thinking but it does not change the fact that it offered no *quid pro quo* for a substantial change that it was seeking in a major term of employment.

A W A R D

1. The Union's final offer on Wages is adopted.
2. The Employer's final offer on Shifts is adopted.
3. The tentative agreements of the parties shall be incorporated into the parties' successor labor agreement.

Respectfully submitted,

Sinclair Kossoff  
Arbitrator

October 17, 2017