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BEFORE  
EDWIN H. BENN  
ARBITRATOR

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MAY 08 2002

Illinois Labor  
Relations Board

**In the Matter of the Arbitration**

**between**

**THE COUNTY OF WILL AND THE  
WILL COUNTY SHERIFF**

**and**

**METROPOLITAN ALLIANCE OF  
POLICE, WILL COUNTY SHERIFF'S  
POLICE MANAGEMENT ASSOCIATION,  
CHAPTER 123.**

**CASE NO.:** S-MA-00-123  
Arb. Ref. 01.233  
(Interest Arbitration)

**OPINION AND AWARD**

**APPEARANCES:**

For the Co-Employers: Nicholas E. Sakellariou, Esq.

For the Union: Joseph R. Mazzone, Esq.

Place of Hearing: Joliet, Illinois

Date of Award: May 5, 2002

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## **I. BACKGROUND**

The Union represents Sergeants and Lieutenants of the Will County Sheriff's Police. County Exh. 1 at Article I. The parties to the Agreement are Will County and the Sheriff of Will County (referred to as the "County"). *Id.* at Preamble.

The parties reached impasse on various economic issues for their 2000 - 2003 Agreement. This interest arbitration followed under the terms of the Illinois Public Employee Labor Relations Act ("IPLRA").

## **II. ISSUES IN DISPUTE**

The following issues are in dispute:

1. Court time
2. Stand by pay
3. Schedule change compensation
4. Call out pay
5. Canine care
6. Posting, transfers, shift schedules and temporary assignments
7. Sick leave accumulation and buy back
8. Group insurance
9. Uniforms and equipment
10. Wages
11. Family Medical Leave

## **III. THE STATUTORY FACTORS**

Section 14(h) of the IPLRA lists the following factors for consideration in interest arbitrations:

(h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (A) In public employment in comparable communities.
  - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

#### **IV. COMPARABLE COUNTIES**

Because Section 14(h)4(A) of the IPLRA requires examination of "comparable communities", the first task is to determine which counties are "comparable" to Will County.

The County views the counties of Lake, DuPage, Kane, Peoria, Winnebago and Kendall as comparable to Will County. County Brief at 3. The Union argues that Lake, DuPage, Kane, Winnebago and Sangamon counties are comparable to Will County. Union Brief at 4-5. The parties therefore disagree on whether Kendall, Peoria and Sangamon Counties are comparable to Will County.

While Section 14(h)(4) of IPLRA requires consideration of “comparable communities”, it gives absolutely no clue on how to determine whether a community is “comparable”. Given that lack of assistance from the statute, over the years I have used a process of taking the communities agreed to by the parties as comparable and comparing that set of communities to the disputed communities in relevant areas raised by the parties.<sup>1</sup>

Taking factors and data presented to me by the parties (County Exh. 13; Union Exh. 4), the following is known about the agreed upon and contested counties<sup>2</sup>:

County	Population	Square Miles	EAV (\$Billion)	Retail Sales (\$1000)	Median Household Income	Sgts. and Lts.
DuPage	904,161	334	\$22.5	\$12,825,281	\$62,825	47
Kane	404,119	520	\$6.8	\$3,116,605	\$53,337	22
Lake	644,356	448	\$16.08	\$8,562,339	\$63,354	26
Will	503,266	837	\$8.8	\$3,286,191	\$54,061	58
Winnebago	278,418	514	\$3.05	\$2,754,452	\$41,004	20
Peoria	183,433	620	\$2.01	\$1,847,369	\$39,579	10
Kendall	54,544	321	\$.9	\$370,951	\$58,694	7
Sangamon	188,951	868	\$2.5	\$1,991,949	\$40,851	18

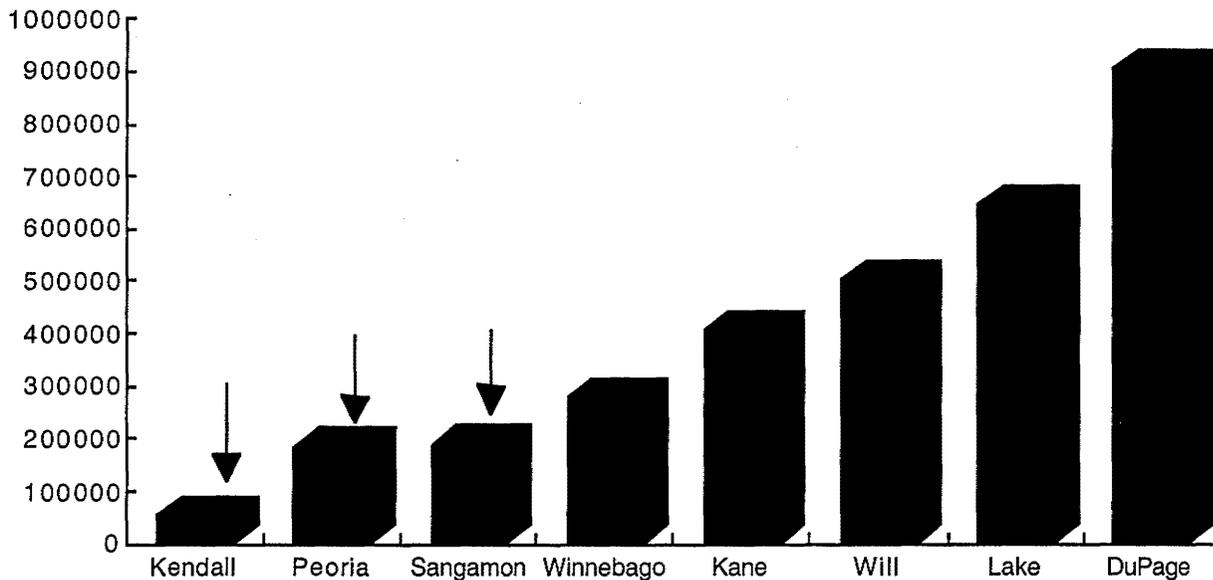
Examining the data as charts (contested counties indicated by a downward pointing arrow) yields the following:

<sup>1</sup> See generally, my article *A Practical Approach to Selecting Comparable Communities in Interest Arbitration Under the Illinois Public Labor Relations Act*, Illinois Public Employee Relations Report, Vol. 15 (Chicago-Kent College of Law, 1998) and cases cited therein.

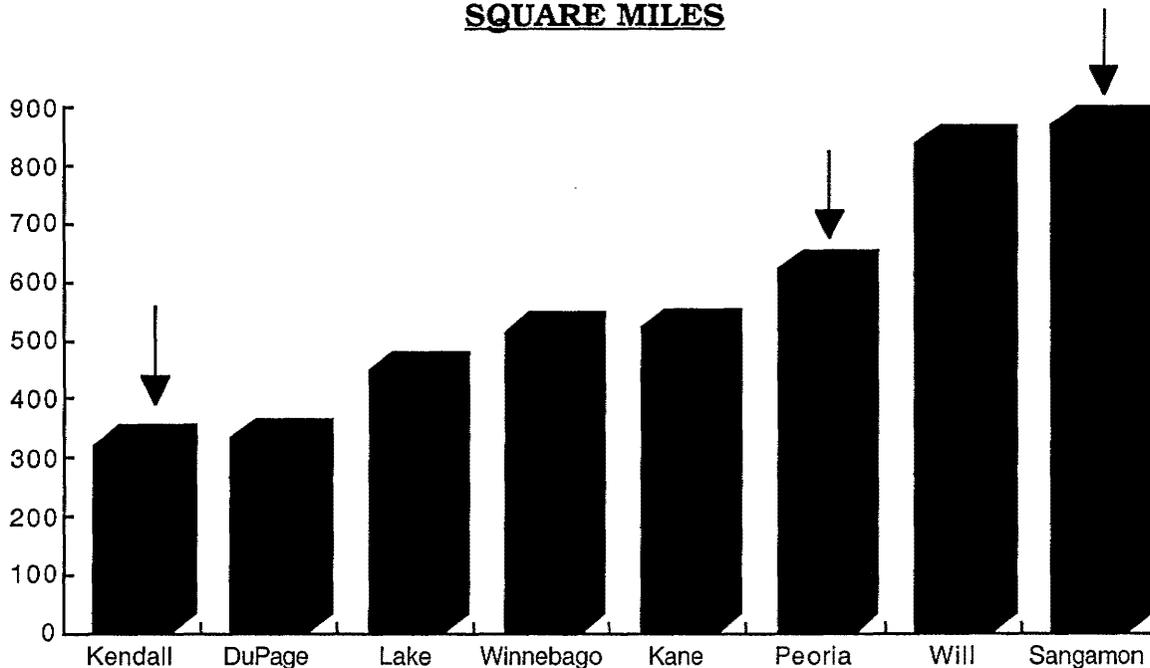
<sup>2</sup> I only used those factors presented by the parties which I deemed relevant. Where the parties' data were in conflict (e.g., the number of sergeants and lieutenants), I used an average. If data on a county was not presented on a factor for a particular county, I used the same source a party used (e.g., for retail sales and median household income for Kendall and Peoria counties — which the Union argues are relevant factors but did not present data on because it does not agree with the inclusion of Kendall and Peoria on the list of comparable counties — I used the U.S. Census Bureau website used by the Union for the counties the Union argues are comparable). Finally, a small bit of original research had to be done for the EAV for Sangamon County (which was not offered by the County because it does not contend that Sangamon is comparable, but the County still wants me to examine EAV).

As I have stressed over the years, this is by no means the perfect or the only system for determining comparable communities. It is simply a rational and orderly method for analyzing the often voluminous data presented in these kinds of cases and takes into account the factor in Section 14(h)(2) of the IPLRA — “stipulations of the parties.” I am just looking at the set of comparables agreed to by the parties (i.e., those stipulated as comparable) and seeing how the disputed communities compare to that agreed upon set of comparables.

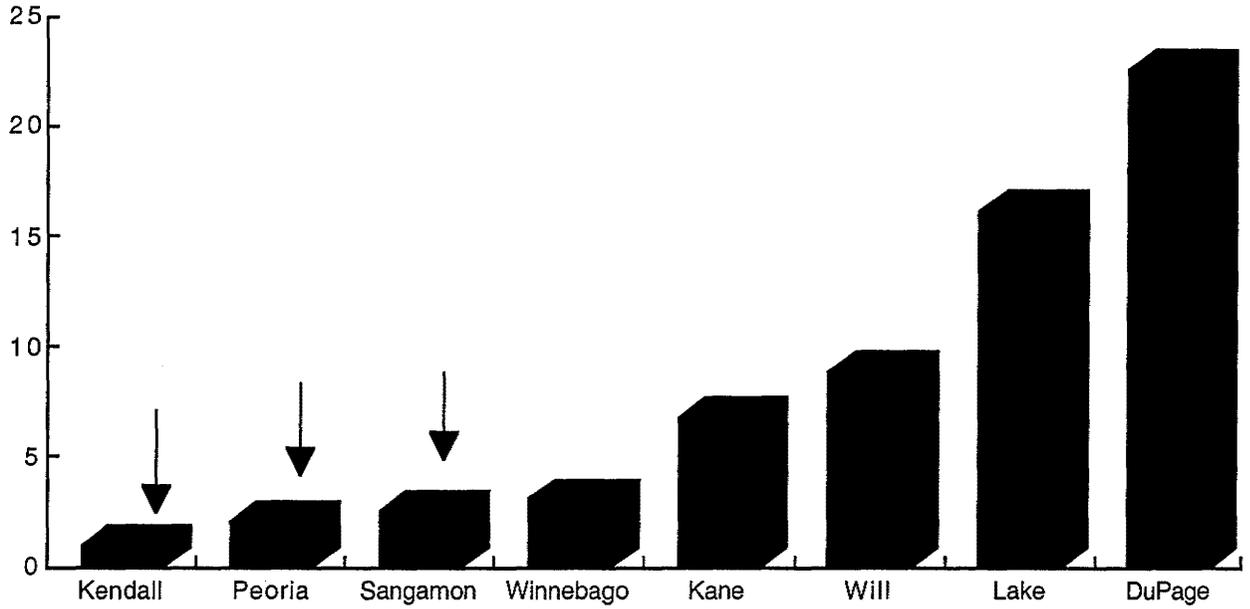
**POPULATION**



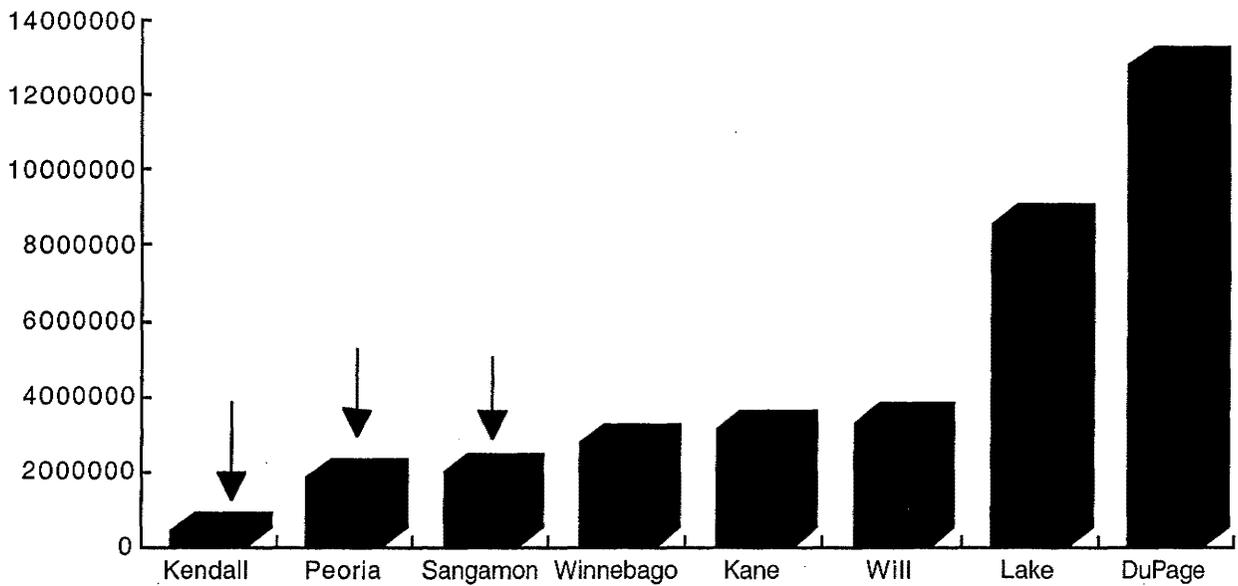
**SQUARE MILES**



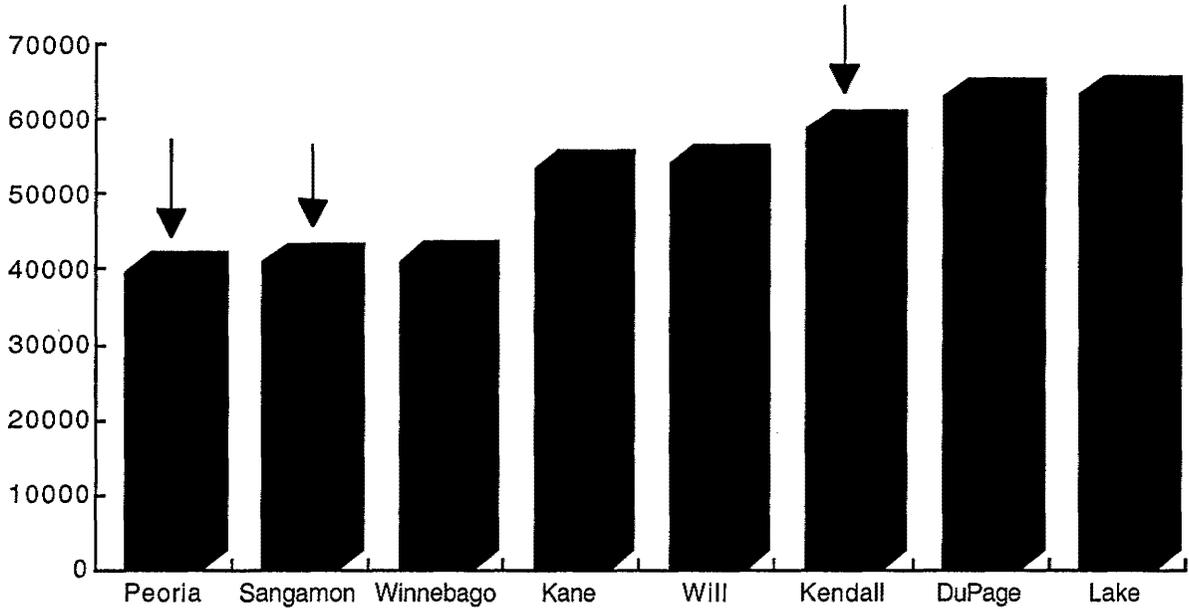
**EAV**



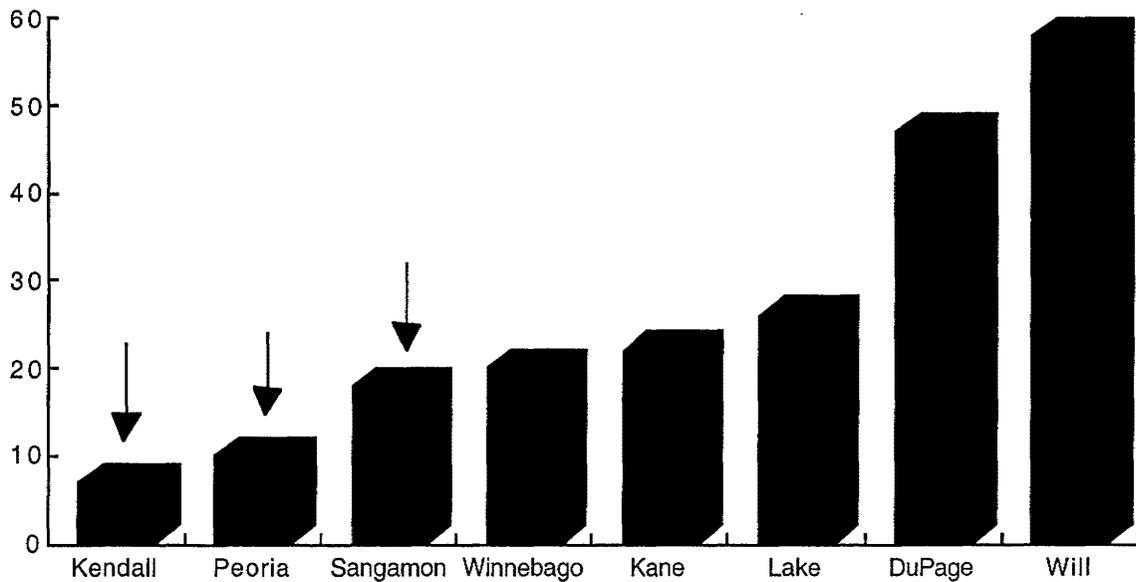
**RETAIL SALES**



**MEDIAN HOUSEHOLD INCOME**



**SERGEANTS AND LIEUTENANTS**



From this analysis, the conclusion appears evident. Kendall, Peoria and Sangamon counties are not comparable to Will County. In the areas of popu-

lation, EAV, retail sales and numbers of sergeants and lieutenants, Kendall, Peoria and Sangamon fall outside the set of agreed upon comparable counties. With respect to median household income, only Kendall falls within the set of agreed upon comparables. And, with respect to geographic size (square miles), only Peoria falls within the set of agreed upon comparables.

In making the appropriate comparisons for external comparables, I will therefore only consider DuPage, Lake, Winnebago and Kane as comparable counties to Will County.<sup>3</sup>

#### **V. RESOLUTION OF THE ISSUES IN DISPUTE**

Turning to the issues in dispute, the following resolutions are made<sup>4</sup>:

##### **1. Court Time**

Section 7.3.1 of the Agreement requires payment of court time at a minimum of two hours at the overtime rate. County Exh. 1 at Section 7.3.1.

The Union seeks to increase court time to three hours. Union Exh. 3 at Section 7.3.1, p. 17, Union Exh. 5; Union Brief at 6.

The County seeks to maintain court time at two hours. County Exh. 3 at 1; County Brief at 6.

Two of the external comparable counties pay three hours for court time (Lake and Winnebago). Union Exh. 4(e), p. 17. Two of the external comparable counties pay the benefit at two hours (DuPage and Kane). *Id.* For the external comparables, this is a draw.

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<sup>3</sup> Interestingly enough, and hopefully not by mere coincidence, this conclusion is the same result reached in the parties' prior interest arbitration. *County of Will, Sheriff of Will County and MAP, S-MA-98-11* (McAlpin, 1998) at 12, 19-21.

<sup>4</sup> While much of the following analysis will focus on comparability, that approach is not intended to ignore or give little weight to the other statutory factors. The discussion which follows analyzes the arguments made by the parties, which arguments basically focused on comparability.

However, the Deputies receive three hours for court time. County Exh. 6 at Article 7.3, p. 15. Internal comparability therefore favors the Union's offer.

With external comparability at a draw and internal comparability favoring the Union's offer, on balance, the Union has carried its burden to justify the increase.

The Union's offer is adopted.

## **2. Stand-By Pay**

Section 7.7 of the Agreement provides (County Exh. 1 at Section 7.7):

### **Section 7.7 Stand-by**

If Employees are allowed at liberty, while on Stand-By, even if required to call-in, from time to time or if equipped with a "beeper" or similar device, such time is not compensable.

The Union seeks to replace that language with the following (Union Exh. 3 at Section 7.7, p. 18):

### **Section 7.7 Stand-by**

a. Any time spent by an Employee, away from the Employer's premises, under conditions so circumscribed that they restrict the Employee from effectively using time to pursue personal interests, constitutes compensable time, including the time an Employee is required to remain at home, awaiting recall to duty.

b. If Employees are allowed at liberty, while on Stand-by, even if required to call-in from time to time, or if equipped with a "beeper" or similar device, such time is not compensable.

c. Employees in the Evidence Section and Criminal Investigations who are required by the Employer to be on stand-by duty shall be compensated with compensatory time at the rate of one (1) hour of compensatory time for every sixteen (16) hours, or part thereof, on stand-by duty.

*See also*, Union Exh. 6; Union Brief at 6-7.

The County seeks to maintain the current language. County Exh. 3 at 1; County Brief at 6-7.

The Union's offer defines stand-by status and adds a one hour compensatory time benefit for every 16 hours on stand-by for employees in Evidence and Criminal Investigations.

The Union's offer mirrors the language found in the Deputies Agreement. County Exh. 6 at Section 7.9, p. 16. Internal comparability therefore favors the Union's offer.

However, external comparability does not. According to the Union, DuPage provides standby pay "only for court time"; Kane and Lake provide "none"; and Winnebago provides a "minimum 3 hours overtime." Union Exh. 4(f), p. 18.

The burden is on the Union to justify the change it seeks. While internal comparability favors the Union's offer, from what is before me it does not appear that the benefit sought by the Union exists in the external comparables at all or, at a minimum, to the same extent it seeks here. The Union has not carried its burden.

The County's offer is adopted.

### **3. Schedule Change Compensation**

The Union seeks to add the following provision to Article 7 (Union Exh. 7, Union Exh. 3 at Section 7.9, p. 18):

#### **Section 7.9 Schedule Change Compensation**

If Employees' duty hours or days off are changed unnecessarily, indiscriminately, or without the required ten (10) calendar days notice, they shall be paid one and one-half (1 1/2) times their regular straight time hourly rate, for all such time worked different than their scheduled duty hour or days, excluding emergency situations, as defined by the Employer.

The County opposes the addition. County Exh. 3 at 1; County Brief at 7-8.

The Union's offer mirrors the language found in the Deputies Agreement. County Exh. 6 at Section 7.6, p. 16. Internal comparability therefore favors the Union's offer.

There does not appear to be a similar benefit in the external comparable counties. See Union Exh. 4. Indeed, according to the Union, the desired addi-

tion is "... based solely on the evidence contained in the agreement for the Will County Sheriff's Deputies." Union Brief at 7.

Again, the burden is on the Union to justify the change. Beyond the fact that the benefit appears in the Deputies Agreement, there is no justification for the desired change to meet the Union's burden. The benefit does not appear to exist in the comparable counties.

Further, as pointed out by the County (County Brief at 7):

The deputies in the Sheriff's Office operate under a structured environment with structured shifts based on annual seniority selection. (Employer Ex. 6, Section 9.6, Page 19) The sergeants and lieutenants are not deputies, but individuals who supervise deputies, who are responsible for the operations of various divisions within the Sheriff's Office, who stand in the place of the Sheriff in various public functions, and who often serve as the commanding officers of the entire Sheriff's Office. (T.162-167) Limiting the Sheriff's flexibility in altering the schedules of his command staff to meet the needs of the department is unacceptable.

While I don't know that the result of the Union's argument is "unacceptable", it remains that aside from not existing in the external comparables, the Union's offer could limit the Sheriff's flexibility in using his managers without an underlying justification for such a limitation. The Union's burden to justify the change has not been carried.

The County's offer is adopted.

#### **4. Call Out Pay**

The Union seeks to add the following provision to Article 7 (Union Exh. 8, Union Exh. 3 at Section 7.11 [sic], p. 19):

##### **Section 7.11 Call Out**

**7.11.1** An Employee called to work outside their scheduled hours shall receive a minimum of two (2) scheduled hours pay at the rate of time and one-half. Such compensation shall begin at the time the Employee is notified to return to work.

The County opposes the addition. County Exh. 3 at 1; County Brief at 8.

The Union's offer mirrors the language found in the Deputies Agreement. County Exh. 6 at Section 7.8, p. 16. Internal comparability therefore favors the Union's offer.

External comparability shows that DuPage, Kane and Lake pay call outs at the overtime rate. Union Exh. 4(g), p. 19. Winnebago pays call outs only for sergeants and does so at the overtime rate. *Id.*

Thus internal comparability favors the Union's offer and external comparability shows that call outs are paid. Here, the employees have no call out benefit. While it is accurate as the County argues (County Brief at 8) that the evidence does not show that the external comparables receive a minimum two hours as the Union seeks, this is an economic issue and I can only choose between the offers as presented.<sup>5</sup> Given that internal comparability favors the precise benefit sought by the Union and that external comparability favors the benefit generally (*i.e.*, without a specified minimum two hours), on balance, the Union has satisfied its burden.

The Union's offer is adopted.

#### **5. Canine Care**

The Union seeks to add the following provision to Article 7 (Union Exh. 3 at Section 7.10, p. 19):

##### **Section 7.10 Canine Care Compensation**

Any Employee assigned to the canine unit shall receive as compensation for the extra duties involved in the care of the dog, training, and other extra duties as required shall receive one and one-half hours at the officers' overtime rate for the above duties per day.

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<sup>5</sup> See Section 14(g) of the IPLRA ("As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors presented in subsection (h)").

The County offers a monthly stipend of \$215 per month which is in addition to the dog food and other items which are paid by the Sheriff's Office. County Exh. 3 at 1; County Brief at 8-9.

The Deputies Agreement does not provide for the benefit. County Exh. 6. There is nothing presented on the issue for the external comparables.

The parties agree that there shall be a new benefit for canine care. The question here is the reasonableness of the offers to justify the degree of change sought by the Union. It has not been shown that a \$215 per month stipend in addition to provided dog food and other items offered by the County is unreasonable. The Union's offer is vague and open ended, with no specified limit on the amount of overtime that could be claimed for caring for the dog — which could lead to a potential abuse. Of the two offers, I therefore find the County's offer the more reasonable.

The County's offer is adopted.

**6. Posting, Transfers, Shift Schedules and Temporary Assignments**

Although treated as separate proposals by the Union (Union Exh. 3; Union Brief at 7-11), because these areas of dispute are not new to the parties, I will treat these issues together.

The Union characterizes its offers (Union Exhs. 10-13) as an "... attempt to add minimal procedures and limitations on how the Employer notifies its employees of job openings ..."; "... consideration be given to the work record, training history, and seniority of employees who request intra departmental transfers ...."; "... have shift schedules determined by seniority and to eliminate the current memorandum of understanding concerning rotation of officers to the jail"; and "... mirror[ing] the current procedure used by the County ... [for the] deputies." Union Brief at 7-11.

The County opposes these changes. County Exh. 3 at 1-3; County Brief at 9-16.

These areas of dispute were addressed by Arbitrator McAlpin in the parties' previous interest arbitration, *County of Will, Sheriff of Will County and MAP Chapter #123, supra* at 2 (items 2-4, 7), 21-23. In pertinent part, Arbitrator McAlpin found (*id.* at 21, 23):

... The Union's reasoning is that these items were obtained in the Employer's negotiations with the deputies, and the Arbitrator understands that many of these items have been part of the deputies' contract for a number of years. In addition, the Union pointed to four (4) arbitrations which it had lost. There was, however, no showing in the record that the sheriff had abused his current authority in this area. This Arbitrator has always found that even when given broad discretionary authority, management must act in a manner that is not arbitrary, capricious, unreasonable or discriminatory. There was no persuasive showing in the record that with respect to the above items, the sheriff has acted in any way that would be contrary to those criteria. The mere loss of an arbitration decision in and of itself is not enough to justify such broad and sweeping changes. In addition, the fact that the deputies' contract contains similar language is also not a full justification for these proposals since this unit is a supervisory unit and, therefore, the sheriff should have somewhat broader discretion with respect to the movement of personnel as long as this authority is not abused. Therefore, this Arbitrator finds that the Union ... has not made the case persuasive enough to allow this arbitrator to change the status quo.

\* \* \*

Regarding ... temporary assignments, as with other Union proposals, there is no sufficient justification within the record for movement from the status quo. The two (2) examples given by the Union contain, in this Arbitrator's opinion, appropriate rationale by the sheriff for their tenure. In the absence of a proven need, the status quo will be maintained, and the Union's proposal will be rejected.

I agree. The parties have been through these issues before — in grievance and interest arbitrations. There is no reason justified by this record that would cause me to find that the Union has demonstrated the need for a change — particularly when the parties have been through an interest arbitration over the same issues. Individual disputes will have to be handled on a case-by-case basis concerning whether the County was arbitrary or capricious in its man-

agerial decision making.<sup>6</sup> Given the history of these disputes, there is no justification to change these provisions.

The County's offer is adopted.

## **7. Sick Leave Accumulation And Buy Back**

Article XI provides as follows:

### **Section 11.1 Sick Leave**

\* \* \*

**11.1.4** An Employee can accumulate up to a maximum of one thousand nine hundred and twenty (1,920) Sick Leave hours.

\* \* \*

**11.1.7** Seventy-five percent (75%) of the accumulated Sick Leave shall be payable in the event of death or permanent disability of the Employee. Fifty percent (50%) of the accumulated Sick Leave shall be payable, in the event of non-disability retirement. In the event of resignation, Employees shall be paid eight (8) hours for each year of service, not to exceed their accumulated Sick Leave balance.

The Union seeks to increase the accumulation of sick leave by 480 hours to 2400 hours. Union Exh. 14; Union Brief at 11-12. The Union also seeks to allow resigning employees 5% of their accumulated but unused sick leave, not to exceed 50% of their accumulated sick leave balance. Union Exh. 14; Union Brief at 12.

The County seeks to maintain the current sick leave benefits. County Exh. 3 at 3-4; County Brief at 16-17.

With respect to the internal comparables, the Deputies, Executive Branch, and Health Department employees can accumulate a maximum of 240 days. County Exh 10. LPNs and exempts can only accumulate 180 days. *Id.*

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<sup>6</sup> Elkouri and Elkouri, *How Arbitration Works* (BNA, 5th ed.), 660 ("Even where the agreement expressly states a right in management, expressly gives it discretion as to a matter, or expressly makes it the 'sole judge' of a matter, management's action must not be arbitrary, capricious, or taken in bad faith."). See also, *South Central Bell Telephone Co.*, 52 LA 1104, 1109 (Platt, 1969) ("In general, ... action is arbitrary when it is without consideration and in disregard of facts and circumstances of a case, without rational basis, justification or excuse.").

Therefore, in terms of accumulation, the Sergeants and Lieutenants receive the same or greater than other employee groups.

Turning to buyback and the internal comparables, the Deputies and the Sergeants and Lieutenants receive one day for each year of service upon resignation along with 75% for death/disability and 50% for retirement. County Exh. 10 at 1. In that respect, the internal comparables are the same. There are other groups of employees who received two days per year of service upon resignation (Exempts, Executive Branch, LPNs and Heath Department). *Id.* at 1-2. However, those groups receive only 50% for death/retirement. *Id.* Again, the benefit received by the Sergeants and Lieutenants appears equal to or better than the other employee groups.

With respect to external comparables and accumulation of sick leave limits, according to the Union, DuPage accumulates up to 1200 hours while Kane, Lake and Winnebago have no maximum and unlimited accumulations. Union Exh. 4(l) at p. 24. With respect to external comparables and buyback at resignation, according to the Union, DuPage uses a formula ranging from 50% to 100% depending on years of service while Kane, Lake and Winnebago have no provisions. Union Exh. 4(m) at p. 25.

The Union's proposal is a hefty increase for this accumulation and buyback at resignation. The accumulation sought by the Union seeks to add 60 days or an increase of 25%, when the Sergeants and Lieutenants already receive the same or better than the other employee groups. The buyback at resignation proposed by the Union also amounts to a large increase, when the Sergeants and Lieutenants already receive the same as the Deputies.<sup>7</sup>

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<sup>7</sup> According to the County, "[a]pplying the Union five percent proposal at buy out to its proposed maximum accumulation, the buy out would increase from one day to fifteen (15) days for each year of service, fifteen (15) times the current benefit and seven and one-half (7 1/2) times the benefit received by any other employee group. County Brief at 16-17.

The external comparables do not tip the balance in favor of the Union. While three of the four counties may have a better accumulation benefit, three of the four have no buy back for resignation, let alone one of the magnitude sought by the Union.

On balance, the Union has not justified the desired increases.

The County's offer is adopted.

### **8. Group Insurance**

Article XIII of the Agreement provides for insurance, requiring the County to provide group insurance including comprehensive medical coverage (through a HMO or PPO for hospitalization and physician, eye/vision care, prescription drugs and dental coverage); short term disability; and term life. Section 13.1.1. Under Section 13.1.2, "[t]he coverage and conditions provided by the Employer's Group Insurance Program shall be set forth in the County Health Plan, adopted December 21, 1995." Finally, under Section 13.1.5, for comprehensive medical and dental coverage, "[t]he Employee shall contribute to the cost of the Health plan by making a contribution each pay period based upon 1% of base pay for single coverage, and 2% of base pay for family coverage."

The County seeks to make certain changes to the benefit levels — increasing some, while decreasing others. County Exhs. 3 at 5-6, 5; County Brief at 18-19.

According to the County (County Brief at 18-19):

... The plan changes proposed by the Employer, which do not take effect until December 1, 2001, are intended to modernize the plan and mitigate the increased costs of the plan. These changes do not save the County any money on the insurance coverage. (Tr. 134) The plan changes, as summarized in Employer Exhibit 5, provide both enhancement of some benefits, and reduction in other benefits. Benefits which have been increased include short term disability payments, increased PPO lifetime maximum, increased payment for annual physicals, and increased dental benefits. Benefits which have been reduced include, HMO office and emergency room copays, prescription drugs, PPO out of pocket limits, deductibles and chiropractic benefits. However, an examination of the benefits which have been reduced reveals that the actual increased dollar

cost to the employee is minimal: e.g. Five Dollar (\$5.00) increase in HMO office copays; Two Dollar (\$2.00) increase in generic prescription drugs; One Hundred Dollar (\$100.00) increase in PPO single out-of-pocket expenses.

The Union opposes the changes in the levels of benefits. Union Brief at 13-16.

Pointing to the percentage of pay as opposed to a percentage of premium, the Union points out that because of their higher pay, Sergeants and Lieutenants pay more for insurance than do most other employees and therefore the Union seeks to place a cap on required employee payments (“... \$100 dollars for family coverage, and \$50.00 per single coverage.”). Union Brief at 13; Union Exh. 3 at Section 13.1.5.

The County opposes the cap. County Brief at 19-20.

Other County employees have the same plan and contribution requirements (*i.e.*, percentage of base pay) as offered to the Sergeants and Lieutenants.

With respect to employee contribution levels, according to the Union, employees in DuPage, Kane, Lake and Winnebago make the same contributions as other employees in their respective counties. Union Exh. 4(r) at p. 30. Contribution levels for the external comparables vary. Union Exh. 4(o) at p. 27.

Internal comparability favors the County’s offer. The insurance plan made available to the Sergeants and Lieutenants is the same as that made available to other County employees.

For the sake of discussion I will assume that external comparability favors the Union’s position. But that comparison does not support the Union’s position on this issue. The requested changes must be examined.

With respect to the percentage of base pay as the employee contribution level as opposed to a fixed or capped amount, the Union is correct that because

the Sergeants and Lieutenants are higher paid than most County employees, their dollar contribution will be higher than employees who are paid less. However, the overall impact on the Sergeants and Lieutenants is the same as on other employees — the same fixed percentage of their pay covers health insurance. On the other hand, to impose a cap as the Union seeks would be inequitable in that if the contribution levels exceed the cap sought by the Union, other employees would be paying a larger portion of their pay for insurance than would the Sergeants and Lieutenants.

But most important, the concept of a cap is new. The *status quo* is no cap. The Union must therefore demonstrate why such a cap is necessary. Given that it is not known whether the Union's proposed cap will be exceeded (and, if so, to what level — therefore making the issue hypothetical) and, if such a cap level is exceeded, the inequity of giving the Sergeants and Lieutenants a potential lesser percentage of contribution than other employees, the fact that the Sergeants and Lieutenants *might* have to pay contributions in excess of that proposed cap is insufficient to change the *status quo* of no cap.

With respect to the level of benefits, as the County points out, some have increased while others have decreased. But, there has been no showing that overall package has been substantially changed from that previously given to the employees.

On balance, with the same plan existing for other County employees which has the same percentage impact on all employees along with the same levels of benefits which have not been shown to have substantially changed, the County's position must prevail.

The County's offer is adopted.

**9. Uniforms And Equipment**

Under Section 14.1 of the Agreement, employees receive uniforms from the County. Section 14.2.1 of the Agreement also provides for \$125 per quarter for plain clothes. Section 14.4 provides an annual \$400 for care and cleaning of uniforms and equipment.

The Union argues for a graduated increase for the plain clothes allowance seeking \$150 per quarter for FY 2000; \$175 per quarter for FY 2001; and \$200 per quarter for FY 2002. Union Exh. 17; Union Brief at 16.

The County opposes those changes. County Exh. 3 at 7; County Brief at 21.

Internally, the Deputies receive the current benefit level received by the Sergeants and Lieutenants. County Exh. 6 at Section 14.2. Internal comparability favors the County's offer.

With respect to the external comparables, according to the Union, DuPage has a quartermaster system; Kane and Winnebago pay \$800 per year; and Lake has a quartermaster system with \$500 per year for plain clothes. Union Exh. 4(s), p. 31.

The Union has not justified the change it seeks. Internal comparability favors the County's offer. The providing of uniforms and the \$500 per year (\$125 per quarter) for plain clothes is equivalent to Lake County and, coupled with the \$400 per year cleaning allowance, appears superior to DuPage, Kane and Winnebago.

The County's offer is adopted.

**10. Wages**

The County's offer for wages is (County Exh. 4 at 9, County Brief at 22):

Effective 12/1/00 - 3.0%

Effective 12/1/01 - 3.35%

Effective 4/1/03 - 5.3%

The Union seeks the following wage increases (Union Exh. 18; Union Brief at 18):

Effective 12/1/00 - 4%

Effective 12/1/01 - 4%

Effective 12/1/02 - 6%

In terms of external comparables, according to the Union, the 2000 wages of Will and the comparable counties showed the following (Union Exh. 4 at 32-33)<sup>8</sup>:

**Lieutenants**

<b>County</b>	<b>Start</b>	<b>Top</b>
DuPage	\$47,975	\$68,536
Kane	\$63,624	\$63,624
Lake	\$59,780	\$91,314
Will	\$60,435	\$71,862
Winnebago	\$60,315	\$65,140

**Sergeants**

<b>County</b>	<b>Start</b>	<b>Top</b>
DuPage	\$41,368	\$59,098
Kane	\$56,496	\$56,496
Lake	\$54,529	\$82,829
Will	\$54,879	\$65,234
Winnebago	\$54,833	\$58,220

The above shows that the County is second highest in the field of comparable counties with respect to start and top pay for Sergeants and Lieutenants.

<sup>8</sup> The Union did not provide data for Kane County. Union Exh. 4 at 32-33. The Kane County data came from County Exh. 14.

The task here is to attempt to see if either party's offer significantly changes the employees' positions with respect to the comparable communities. Given the variety of wage schedules in collective bargaining agreements and the timing of increases, pending negotiations, etc., it is often hard to make realistic comparisons to the other comparable communities. This difficulty is compounded when comparisons for future years of the agreements are attempted.

However, the positioning of the employees and the disparity in wages (*e.g.*, for the top pay, the County really sits by itself when compared to the county above and below it) really forced the Union to agree to the obvious (Tr. 83-84):

[Q]: ... [I]n terms of the comparables that you have picked, will your offer change your ranking?

[A]: No. ...

[Q]: I guess the other side of the coin is, what does the county's offer do, does it lower it?

[A]: ... [T]he difference between the union's proposal and the county's proposal will keep us very close in top end to DuPage, but everybody else is so sufficiently far away that it would not change our rankings other than maybe to switch places with DuPage ....

The employees are paid towards the top of the comparable counties. The County's offer does not appear to change the current rankings of the employees in that respect. External comparability has not been shown to favor the Union's offer.

The Union argues that it seeks the same wage offer given to the County Deputies (Union Brief at 16; Union Exh. 18). The County disputes that conclusion arguing that when the impact of the wage offer given to the deputies is considered, the wage offer to the deputies was not 4%, 4% and 6% as sought by the Union here. County Brief at 24-26,

For purpose of discussion and to give the Union the benefit of the doubt, I will assume (without deciding) that internal comparability favors the Union's

offer. However, considering that the Sergeants and Lieutenants sit so well when compared to the other comparable counties and that they are among the highest paid employees in the County, a favorable internal comparable comparison to the deputies cannot tip the scale in favor of the Union's wage offer. Further, at present, these are non-inflationary times. The cost-of-living (a statutory factor for consideration in Section 14(h)(5)), weighs against the Union's offer.

On balance, the County's wage offer shall be adopted.

#### **11. Family Medical Leave**

The County seeks to add a provision that the FMLA leave period shall be a rolling year period. County Exh. 3 at 4. That provision is found in the Deputies Agreement. County Exh. 6 at Section 11.11, p. 31.

The Union opposes the addition. Union Brief at 17.

Not much was offered on this topic. The burden here is on the County to justify this addition. There is insufficient evidence or reasons in this matter to justify the insertion of such language into the Agreement.

The Union's offer is adopted.

#### **VI. CONCLUSION AND AWARD**

On the disputed issues, the following offers are adopted:

1. Court time - Union's offer.
2. Stand by pay - County's offer.
3. Schedule change compensation - County's offer.
4. Call out pay - Union's offer.
5. Canine care - County's offer.
6. Posting, transfers, shift schedules and temporary assignments - County's offer.
7. Sick leave accumulation and buy back - County's offer.

8. Group insurance - County's offer.
9. Uniforms and equipment - County's offer.
10. Wages - County's offer.
11. Family Medical Leave - Union's offer.

A handwritten signature in black ink, appearing to read "Edwin H. Benn", is written over a horizontal line.

Edwin H. Benn  
Arbitrator

Dated: May 5, 2002

