

ILLINOIS STATE LABOR RELATIONS BOARD

INTEREST ARBITRATION

OPINION AND AWARD

-----  
IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

**THE COUNTY OF OGLE AND THE OGLE COUNTY SHERIFF,**  
Co-Employers  
("Employer," "County" or "Management")

AND

**THE ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL**  
("Union," "FOP" or "Organization")

ISLRB NOS. S-MA-03-051  
                  S-MA-03-053  
                  S-MA-03-204

Arb. Case No. 03/072  
-----

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

**Appearances:**

**On Behalf of the Co-Employers:**

Nicholas E. Sakellariou, Attorney  
Christopher S. Ward, Attorney  
McKeown, Fitzgerald, Zollner, Buck, Hutchison & Ruttle

**On Behalf of the Union:**

Thomas F. Sonneborn, General Counsel  
Illinois FOP Labor Council

Table of Contents

	<u>Page</u>
I. INTRODUCTION.....	2
II. BACKGROUND.....	7
III. THE PRE-HEARING STIPULATION.....	8
IV. THE STATUTORY FACTORS.....	9
V. COMPARABLE JURISDICTIONS.....	14
A. The Union's Comparable Jurisdictions.....	14
B. The Employer's Comparable Jurisdictions..	18
VI. THE PARTIES' FINAL OFFERS.....	22
A. The Employer's Final Offer.....	22
1. Sergeants and Corporals.....	22
a. Wage Proposal.....	22
b. Insurance Proposal.....	22
c. Retiree Insurance Proposal.....	22
2. Patrol and Corrections and Control 3 and Corrections Clerk.....	22
a. Wage Proposal.....	22
b. Insurance Proposal.....	23
c. Retiree Insurance Proposal.....	23
3. Unit C.....	23
a. Wage Proposal.....	23
b. Insurance Proposal.....	23
c. Retiree Insurance Proposal.....	23
B. The FOP's Final Offer.....	24
VII. BARGAINING HISTORY.....	25
A. The Current Bargaining.....	25
1. Sergeants and Corporals.....	27
a. Wage Proposal.....	27

b. Insurance Proposal.....	27
c. Retiree Insurance Proposal.....	27

-i-

	<u>Page</u>
2. Patrol and Corrections and Control 3 and Corrections Clerk.....	27
a. Wage Proposal.....	27
b. Insurance Proposal.....	27
c. Retiree Insurance Proposal.....	27
3. Unit C.....	28
a. Wage Proposal.....	28
b. Insurance Proposal.....	28
c. Retiree Insurance Proposal.....	28
B. The Previous History.....	28
VIII. DISCUSSION AND FINDINGS.....	32
A. The Duration or Length of the Contract Issue.....	32
1. Background.....	32
B. The Wage Issue.....	40
C. The Rejected Tentative Agreement.....	42
1. The Illinois Arbitral Precedent.....	42
2. The Ogle County Tentative Agreement..	50
3. Conclusion - Tentative Agreements....	56
IX. AWARD.....	57

**I. INTRODUCTION**

Pursuant to the Illinois Public Employees Relations Act, 5 ILCS 315/1, as Amended, et. seq. (hereinafter referred to as the "Act"), The County of Ogle and The Ogle County Sheriff, Co-Employers (hereinafter referred to as "Employer," "County" or "Management") and The Illinois Fraternal Order of Police Labor Council (hereinafter referred to as the "Union," "FOP" or "Organization"), submitted their final offers in collective bargaining with regard to the three labor contracts to which these parties are signatory. This Arbitrator, sitting as Chairman and sole member of the Arbitration Panel, was selected to hear and decide this case on the merits. The hearing on the merits took place on June 22, 2004. The specific bargaining units involved, as reflected in the filings with the Illinois Public Employment Labor Relations Board, are as follows:

- S-MA-03-051: Corrections Officers, Bailiffs,  
Corrections Clerks,  
Control 3 Personnel  
(hereinafter sometimes referred to  
as "Unit C")
- S-MA-03-053: Patrol Deputies and Detectives
- S-MA-03-204: Patrol Corporals, Patrol Sergeants,  
Corrections Corporals and  
Corrections Sergeants

The arbitrations were consolidated for hearing by agreement of the

parties and consent of this Arbitrator.

The record further reflects that an initial preliminary hearing was conducted on May 18, 2004 to determine whether a proposal dealing with the requested payment of 50% of the health insurance premiums for retirees which had been made by the Union in negotiations during a reopener in the corporals and sergeants' contract, was a mandatory subject of bargaining and appropriate for consideration in these proceedings.

The evidence of record also discloses that during the bargaining for all three labor contracts being negotiated in the fall, 2002, contained an identical proposal advanced by the Union for the payment by the Employer of 50% of the health insurance premiums for retirees but that the specific proposal regarding the corporals and sergeants unit was the only one made during negotiations for a reopener as regards wages and insurance for the employees in the bargaining unit. This was so because the other two bargaining units' collective bargaining agreements had expired and the negotiations for patrol deputies and detectives and the Unit C clerical employees were stipulated to be for new labor contracts for each group. Consequently, the issue of whether the Union proposal on payment of retirees' health benefits for the corporals and sergeants was the only one which presented the issue of whether that proposal and the ensuing negotiations and tentative agreement involved a mere permissive topic of bargaining, I note.

I considered the evidence and arguments of the parties on the narrow issue of whether that proposal for the corporals' and

sergeants' contract, involving as it did the payment of health insurance premiums for retirees, was a mandatory subject of bargaining during the reopener for "wages and insurance benefits."

I also noted that the bargaining teams for the parties had reached tentative agreement for all terms for the two new collective bargaining agreements, as well as for the settlement of the negotiations involving the reopener for the corporals and sergeants' unit on November 21, 2002. Each of these tentative agreements included a new provision for the payment by this Employer of 50% of the health insurance premiums for retirees, the record evidence also establishes.

The parties further stipulated that, upon the presentation of these three tentative agreements to the full County Board for ratification, the County Board rejected all three, namely, the tentative agreement involving the reopener for the corporals and sergeants as well as the tentative agreements for the other units' successor labor contracts. Essentially, that rejection of the three tentative agreements is what caused impasse and the parties' recourse to this interest arbitration to resolve this collective bargaining dispute using the procedures provided to do so in the Act.

During the course of the May 18, 2004 hearing, the evidence and arguments of the parties relative to the narrow issue of whether the specific proposal advanced by the Union involving the payment by this Employer of a portion of the health insurance premiums for retirees could be considered a mandatory subject of

bargaining and thus appropriate for consideration in these proceedings was expanded so as to touch upon the sole issue of what weight should be given by the Neutral Arbitrator to the three tentative agreements just mentioned in my consideration of the merits of the case. As to these additional arguments, I stated that the parties would be put to these proofs at the hearing on the merits in this case, and that I did not think it prudent to prejudge the critical issue of the significance of the fact that tentative agreements were bargained and then rejected by the County Board until all facts were developed and the points and authorities on this issue were fully briefed.

After hearing the arguments and evidence on the narrow issue of whether the tentatively agreed-to provision for payment of some portion of the insurance premiums for retirees during bargaining over a reopener for "wages and insurance benefits," the fact of such an agreement indeed was part of the bargaining history. So, on that basis, I found that tentative agreement was just as relevant to the resolution of the matters being presented for consideration in these proceedings as everything else that had occurred, whether the topic was originally mandatory or permissive.

I also determined that each impasse issue was appropriate for consideration in these proceedings under the rubric of Section 14(h) of the Act. The hearing on the merits was accordingly set June 22, 2004.

As noted, the hearing was held at the Ogle County Courthouse, Oregon, Illinois, on June 22, 2004, and a transcript of the record

was made. Post-hearing briefs were ordered to be filed pursuant to the ground rules and stipulations of the parties and the timetable agreed to by the parties and approved by the Arbitrator at the conclusion of the hearing.

Due to an extended illness during the month of August, counsel for the Union requested an extension of the brief due date to October 12, 2004. Counsel for the Employer agreed to the Union's request, and the extension was ordered by me. Subsequently, the counsel for the Employer became ill and a second extension was requested and granted, making the final date for filing post-hearing briefs November 1, 2004. Due to similar circumstances involving this Arbitrator, the date for issuance of this Award was extended and, ultimately, May 4, 2005 was set as the date for the Opinion and Award's issuance.

At the hearing on the merits, the parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of all witnesses. As has become customary in the presentation of the evidence in interest arbitrations in the State of Illinois, pursuant to the above-mentioned Act, much of the evidence came in by way of oral presentation by counsel for the respective parties, and their references to and explanations of statistical and other documentary evidence, as well as economic studies and data concerning this County and the proposed comparable jurisdictions presented by the FOP and the Employer.

References in this Opinion and Award to Joint Exhibits,

Employer Exhibits and Union Exhibits introduced at the hearing, will be made, respectively, as follows: (Jt. Ex. \_\_\_\_\_); (Cty. Ex. \_\_\_\_\_); and (Un. Ex. \_\_\_\_\_). References to the transcript of the testimony given at the hearing on June 22, 2004 will be made as follows: (Tr. \_\_\_\_\_). References to source documents, if any, will be made, illustratively, as follows: (Boone Contract, Sec. \_\_\_\_\_).

Finally, from my reading of the record in this matter, I agree with the Employer that the unresolved issues are as follows:

1. Length or duration of the three contracts (based solely on the Union's wage offers);
2. Wages for three fiscal years, 2003 (December 1, 2002-November 30, 2003) i.e., FY based on the final offers by both parties, and the Union wage offers for fiscal years 2004 and 2005;
3. Health insurance; and
4. The Union's proposal of a 50% payment of retiree health insurance premiums by this Employer for retirees once covered by all three units.

## **II. BACKGROUND**

Ogle County is a non-home rule county located in north central Illinois. Its governance is conducted by a County Board comprised of 24 members with a Chairman elected by the County Board members.

The Chairman has only one (1) vote and no veto authority. By law, Ogle County is subject to the Illinois Governmental Tax Cap provisions. These provisions limit the amount of annual real estate tax levy increases to 5%, or to the amount of increase in

the Consumer Price Index (CPI), whichever is less. The tax cap is applicable to all of the non-home rule local governments, the Employer points out.

The County has a population total of 51,729 people and is geographically comprised of 759 square miles. The County employs 275 full-time employees, 65 of which are employed by the Sheriff's Department. The Sheriff's Department has a total of 46 sworn officers, 9 of whom are Sergeants and 2 of whom are Corporals.

### **III. THE PRE-HEARING STIPULATIONS**

The parties entered into a comprehensive pre-hearing stipulation that contained provisions summarized below:

1. That all statutory procedural prerequisites had been met and that the Arbitrator has the statutory authority to issue retroactively effective changes in wages and other compensation.
2. That the parties waived the statutory requirement that the hearing commence within fifteen days of the Neutral's appointment.
3. That the statutory tripartite panel scheme had been waived.
4. That the costs of transcription would be equally shared.
5. That the impasse issues were as follows:
  - a) the wages for the employees in each unit to be effective 12/1/03 and 12/1/04; and
  - b) the contribution of the Employer toward the costs of retiree insurance benefits.
6. That the parties' predecessor agreement, the ground rules for negotiations, the pre-hearing stipulation and all tentative agreements reached by the parties during negotiations were to be submitted to the Neutral.
7. That the previously reached tentative agreements were to

be incorporated by reference into the award issued by the Arbitrator.

8. That final offer exchange was to occur prior to the hearing.
9. That each party was free to present its evidence in either narrative or witness format, with the Union proceeding first with its case-in-chief.

10. That post-hearing briefs would be filed by simultaneous post-mark within forty-five days of the close of hearings or as otherwise agreed or ordered by the Arbitrator.
11. That the Arbitrator was to base his findings and decision on the statutory factors set forth in Section 14(h) of the Act and issue that award within sixty days of the filing of briefs or as otherwise extended by mutual agreement.
12. That the parties were free to continue to bargain subsequent to the hearing.
13. That the provisions of the Act would govern the proceedings except as otherwise modified by the stipulation.
14. That the representatives were authorized to execute and bind their respective party to the provisions of the stipulation.

#### **IV. THE STATUTORY FACTORS**

The Act sets forth those factors upon which the Arbitrator is to base his "findings, opinions and order." In Section 14(h):<sup>1</sup>

Where there is no agreement between the parties, or where there is an agreement, but the parties have begun negotiations for a new agreement or amendment of the existing agreement, and wage rates, 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 interest 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

---

<sup>1</sup> See also the parties' pre-hearing stipulation quoted above that contains a reference to this section of the Act.

arbitration 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 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.

Among the eight factors set forth in Section 14(h) of the Act, there are three that have been consistently identified as being the most critical in interest arbitration. As the Union has argued, in nearly every award issued, arbitrators typically look to (1) the pay and benefits received by other similarly situated employees; (2) the impact of inflation on the employees' purchasing power; and (3) whether the employer has the ability to pay the wages or other benefits the arbitrator deems appropriate.

However, as the parties recognize, in this specific case, the plain fact is that perhaps the most important "factor" for this inquiry is the relevance and impact of the three tentative agreements already mentioned which is at issue because of the Union's three year wage proposal, on the impasse issues. This is so because, except for the duration of the three contracts, the other impasse issues were fully resolved by the tentative agreements of November 21, 2002, prior to their rejection by the County Board, the record evidence establishes.

The FOP stresses that there is a line of arbitral authority that has developed since "impasse resolution came to police and fire in 1986 in this state" that tentative agreements negotiated by the parties must normally be given controlling or, at least, very great weight. This, then, as will be developed below, is, to the FOP, an "extra-statutory factor" under the circumstances of this case. The Union reasons that the basic principle in Illinois and in those other states with similar provisions for third party resolution of interest disputes is that the interest arbitrator's "core commission" is to "approximate the bargain" that the parties would have hammered out in good faith negotiations in a "strike-driven" process.

What interest arbitrators do is to try to guess what a voluntary mutual agreement would contain then, guided by the 14(h) factors. The "best evidence" of what that bargain would have been is the tentative agreements of the actual bargaining teams in this case, even if one party or the other (here, the Employer) finally

rejects the negotiated "deal" during the statutory mandated approval process, as was the case here, the Union insists.

The Employer, on the other hand, while at least acknowledging to some extent the Illinois precedent on the issue of the weight to be given such tentative agreements, stresses that, in this specific instance, several of the factors counter any alleged rule that great weight is to be given to tentative agreements as reflecting a "negotiated bargain." It first asserts that the lead negotiator for the Employer, former County Board Chair Daws, was not a professional negotiator, as the Union attempts to contend. The Employer also urges that the "claimed consideration" for the tentative agreements, including a payment of 50% of retirees' health insurance benefit premiums, was the Union's dismissal of all unfair labor practices, grievances, and/or other legal actions that were then pending over the Employer's "minor" but admitted unilateral changes in the County's insurance benefit plan for "current employees" made by Management in FY 2002.

The "tradeoff" by the Union of these assorted legal claims has been exaggerated as to the "real" benefit to the Employer, Management submits. It argues also that all the "actual" factors under Section 14(h) of the Act favor its final offers, and undercuts the Union's, so that it is simply untrue that the tentative agreements made by the parties' negotiating teams on or about November 21, 2002 can fairly be considered to be a true example of a proper arms-length bargain in this case so as to be sufficient to make the tentative agreements under review binding on

the Neutral in this interest arbitration, as the Union would have it.

Finally, the Employer reasons that if I were to accept the Union's position that the tentative agreements control this case, I would effectively be eliminating the Employer's option to reject or accept this sort of tentative agreement, as is expressly provided for under the terms of the Act. Simply put, the provision of the Act giving the Employer authority to formally accept or reject agreements arrived at by the parties' respective negotiating teams so as to "finalize" the bargain, and the Union's rank and file to similarly ratify their team's tentative agreements, too, to make the bargain final, would be rendered a nullity, the Employer maintains. This would be especially unfortunate and erroneous in this case where the Employer's Chief Bargainer, Daws, specifically informed the Union's team no final deal would be made until the entire Board reviewed all of the tentative agreements and formally adopted it (Tr. 61-64). No estoppel or lack of notice can be claimed by the Union in this case, Management avers.

When all these factors are considered together, the Neutral should give the tentative agreements of November 21, 2002 and December 11, 2002 for Unit C no weight, Management insists.

The resolution of the precise weight to be accorded the November 21, 2002 tentative agreements then is, I rule, one of the major tasks involved in this case, even though the weight to be accorded such tentative agreements is not expressly made a "statutory factor" under Section 14(h), I recognize. The task of

attempting to ferret out the closest approximation to a bilateral agreement that would have been negotiated by these parties, in good faith, had they been successful in their across-the-table bargaining, is, as the Union has asserted, the "commission" of the Neutral Interest Arbitrator under the impasse resolution procedures provided for by the Act.

As I read this statute, the Section 14(h) factors set forth immediately above indeed have been placed into this statute to be the standards used for that very task, as the Employer has argued.

I am also convinced, however, as the Union has suggested, and I again reiterate that, in a real sense, the resolution of that "extra 14(h) factor" issue of the proper use of the fact of the rejected tentative agreements is the crux of this case. The discussion of proper resolution of this issue will thus occupy much of this Opinion and Award, as will be evident from what follows, I note.

## **V. COMPARABLE JURISDICTIONS**

### **A. The Union's Comparable Jurisdictions**

The Union submitted six proposed comparable counties for consideration, three of which were also submitted by the Employer, I further note. These are: Boone, Stephenson and Whiteside Counties. See Un. Ex. 13. The three comparable counties submitted by the Union which differ from that of the Employer are DeKalb, Grundy and Kendall Counties, the evidence of record also revealed. The Employer, however, strongly disputes whether these three

counties are truly comparable with Ogle County. It urges that Grundy and Kendall Counties are really a part of the Chicago collar counties, and Ogle County clearly is not. It also urges that DeKalb County's population is too large to be comparable to the Employer. Thus, it asserts its set of comparables are the better choice, the record makes plain. The Union of course disagrees, and both sides gave detailed reasons for their respective positions on the proper comparison counties, the record evidence shows.

One point of agreement by this Union and Employer is the importance generally of external comparability in interest arbitration determinations by neutrals applying the statutory standards provided under the Act, as set forth above. As the Union has stressed, in the words of Arbitrator Herbert Berman in one of the early interest arbitrations pursuant to the Illinois Act:

Comparability, the fourth factor, is the most important factor to arbitrators, The employer's "ability to pay" the wages and benefits requested, the third factor, and the "cost of living," the fifth factor are the other factors of primary significance.<sup>2</sup>

According to the Union, the comparables selected by it for consideration in this matter are the better choice. It states its comparables were chosen through a method outlined in Union's Exhibit Book #1, Exhibits 11 through 25, as follows:

- Looking first state-wide, the Union sought all

---

<sup>2</sup> Village of Westchester and Illinois Firefighters' Alliance, Council 1 (S-MA-89-93), Arb. Herbert H. Berman, 1989, at p. 6. This position has been echoed by countless other arbitrators in Illinois proceedings since the inception of the IPLRA's application to police and fire disputes in 1986, the Union correctly suggests.

counties with a population of plus or minus 50% of that of Ogle.

- The list was then narrowed to jurisdictions regionally located near Ogle County.
- Those jurisdictions were then exposed to examination on various factors including median home value, median family income, crime statistics, number of full-time sworn officers, jail population, EAV, per capita EAV, public safety expenditures, general fund revenue and general fund expenditures.

The jurisdictions most closely aligned with Ogle County on these factors were then analyzed for purposes of making comparisons of wages, insurance benefits and retirees' insurance benefits, the Union avers. Those counties were:

Boone  
DeKalb  
Grundy  
Kendall  
Stephenson  
Whiteside

- The average 2000 census population among these jurisdictions was 55,411. Ogle County's population was 51,032.
- The average median family income was \$46,762; Ogle's was \$45,448.
- The average median home value was \$116,683. In Ogle County that figure was \$102,700.
- The average EAV was \$928 million. Ogle County's EAV exceeded that figure, being last reported at \$1.2 billion.
- The per capita income among the Union's comparables was \$18,204, while Ogle County's amount was \$23,500.
- Average 2002 jail population ranged from a low of 1,263 in Whiteside County to a high of 3,358 in Kendall County. Ogle averaged 2,734.

The comparables selected by the Union thus provide a valid

basis upon which to make salary and insurance comparisons, it argues. It then goes on to claim that those comparables more than sufficiently support the Union's position on wages,<sup>3</sup> health insurance and retirees' insurance costs.

In reviewing those charts, I note that, as the Union says, it has only included salary and benefit data that resulted from collective bargaining in the comparable jurisdictions. If the contract was silent, it was so noted. Only collectively bargained data was used by the FOP in making comparisons in an interest arbitration context, the Union stresses.

The Union then argues that, after reviewing the comparable exhibits, I should find the Union's positions well supported. However, I also note that the comparability charts set forth in Union's Exhibit Book #2, Exhibits 29 through 57, were not really then analyzed in the Union's brief, as promised. Instead, an examination of the parties' tentative agreements of November 21, 2002 was undertaken for the remainder of its brief, in addition to its assessment of the precedential weight it deems proper to be given these specific tentative agreements.

It was the rejection of the tentative agreements by Management that ultimately led to these proceedings, the FOP argues, as explained already at several points above. Therefore, in a real

---

<sup>3</sup> Less than the Employer's final offer, because, as the Union sees it, it is "trying to stay true to the essence of the deal that was made," while the Employer is throwing in a bit more after backing out of the key piece of the settlement from the perspective of the employees (the tentative agreement on the payment of 50% of retirees' health insurance premiums), the Union

sense, the Union is basically saying that the use of comparables, including all the charts and data presented by the Union and the Employer in this case is really "window dressing." The crux of this case, as the Union sees it, is that the tentative agreements should be given great weight and adopted as the primary basis for an award in its favor, it urges.

The Union's selection of its set of external comparables, and its discussion of the comparisons as to wages and health insurance among the comparables on the record and in its exhibits is actually only a fall back position, in the event I reject the Union's primary argument that the tentative agreements "must be enforced as binding," given the particular circumstances of this case, the record clearly reveals.

**B. The Employer's Comparable Jurisdictions**

In Employer's Exhibit 13, it has presented five Illinois Counties as the appropriate comparable jurisdictions to be considered. Four of the five counties, Boone, Stephenson, Lee, and Whiteside are contiguous to Ogle County, it stresses. The only comparable county offered by the Employer which is separated from Ogle County is Henry, it also emphasizes, but Henry County is contiguous to both Whiteside and Lee Counties and thus "forms a viable comparable jurisdiction" because of its likeness in the total population and geographic size, I am told. See Employer Ex. 13.

The Employer's comparable jurisdictions provide a rational

---

argues.

comparison between operations which are similar, Management also suggests County government and the sheriff's office, in particular, provide a distinct law enforcement operation in all five comparable counties, in that the office not only is required to provide traditional patrol services, but it is required to provide for the maintenance and operation of the county jail, county courthouse and for the service of civil process and warrants. That is also true of Ogle County, the Employer further stresses. While no comparable jurisdiction will be identical to Ogle County, it concedes, the comparable jurisdictions provided by the Employer all have a "local nexus of comparison," it strongly claims.

To the Employer, there is a deviation of population amongst the counties of no greater than 2,000 people for Henry and Stephenson Counties and no greater than 8,000 people for Boone and Whiteside Counties. It further argues that the maximum deviation amongst the population of the comparable counties submitted by the Employer is merely approximately 15,000, and that represents the difference between Ogle and Lee Counties, the Employer also points out. This population comparison is much closer than the Union's comparables, the Employer avers.

Within the five comparable counties used by the Employer as comparable to it, the Employer emphasizes, Ogle County is:

- a. second in population;
- b. second in size;
- c. third in total sheriff's full-time employees;

and

- d. third in total deputies. See Employer Ex. 13.

The Employer further argues that, when analyzing the comparable jurisdictions, "geography must be a prime consideration." Based on that factor, as well as economics and population, the Employer stresses, the parties both have agreed that Boone, Stephenson and Whiteside Counties are comparable jurisdictions. Not surprisingly, the Employer notes, all three are contiguous to Ogle County. See Cty. Ex. 12.

With respect to those counties where the parties differ, the Employer presents Lee and Henry Counties as comparable jurisdictions, as already mentioned. Of the two, one, Lee County is contiguous, the Employer is also quick to point out. The other, Henry County, is only one county removed from Ogle and, furthermore, is located in the northwest quadrant of Illinois, it argues.

The Union's comparables of Grundy and Kendall Counties, on the other hand, are fast becoming part of the Chicago/Joliet collar counties. As such, the factors of geography and economics are not truly comparable to Ogle County, the Employer strongly contends.

Because of the similarity in geography, perhaps, Lee County and Henry County are quite comparable in terms of the most commonly used economic factors, that is, median family income, median family home value, and per capita EAV, Management argues. Lee County has a median family income of \$83,400.00. This represents a difference of less than \$20,000.00 from Ogle County, the Employer maintains. Its median home value at \$40,967.00 is also more comparable than Grundy, Kendall, and DeKalb Counties, the three counties proposed

as comparables by the Union which have been rejected by this Employer, it emphasizes.

Similarly, Henry County is quite close to Ogle County when comparisons of median home value, median family income and per capita EAV are considered, as the Employer sees it. As to all those factors, Grundy County, Kendall County and DeKalb County reflect numbers which are substantially higher than the median values in Ogle County, the Employer also emphasizes. DeKalb County, which the Employer acknowledges is contiguous with Ogle County, has the single largest population among the proposed comparables, says the Employer. Its population is 88,969 people. The difference between that figure and the population of Ogle County is roughly 38,000 people, the Employer stresses. See Un. Ex. 13. DeKalb County is an inappropriate comparable because its population is almost double that of Ogle County, the Employer directly asserts, as already mentioned.

The primary problems the Employer has with the Union's set of comparables is that, as the Employer sees it, the Union has "created a trap which must be avoided... because they are skewed so that Ogle County falls in the middle on a bar chart." That gives a false impression of where it probably should be placed, if the comparables were not "cherry-picked," the Employer directly asserts.

Perhaps more important, as already noted, Kendall and Grundy Counties are essentially part of the collar county area bordering Chicago and are experiencing some of the rapid growth associated

with Chicagoland and the Will County municipalities of Plainfield and Joliet, says this Employer. Thus, it argues that "a close analysis of the proposed comparables" reveals that the Employer's proposed grouping is far more representative. It insists the comparison counties chosen by it more closely resemble Ogle County with respect to median family income, median home value, population and size. The Employer's proposed comparison group should be adopted by the neutral arbitrator, Management thus submits.

## VI. THE PARTIES' FINAL OFFERS

### A. The Employer's Final Offer

#### 1. Sergeants and Corporals (Cty. Ex. 4)

a. **Wage Proposal:** Across the board increase of 6.75% to each step effective December 1, 2002. (No proposal on wages for FY 2004 or FY 2005, the record shows).

b. **Insurance Proposal:** Plan benefits and employee contributions (continued cost sharing at 75% of the premium to be paid by the Employer and 25% of the premium to be paid by the employee) as implemented during the period from December 1, 2002 through November 30, 2003. In addition the Employer retains the right to offer alternate voluntary insurance plans with alternate benefits and alternate employee premium contributions.

c. **Retiree Insurance Proposal:** The County rejects the Union's proposal to institute a new benefit providing that any employee who collects a pension through IMRF shall have 50% the cost of single premiums paid by the County. It presents no proposal to change the status quo (it indicates IMRF provisions give a 30% payment to retirees for health benefits, wholly apart from the Union's proposal to have Management pay into a Union established trust fund 50% of the benefits cost).

#### 2. Patrol and Corrections and Control 3 and Corrections Clerk (Cty. Ex. 5).

a. **Wage Proposal:** Across the board increase of 3.5%

to each step effective December 1, 2002. Add new shift

differential of \$.75 per hour for Control 3 using the same language as is applicable to patrol corrections.

**b. Insurance Proposal:** Plan benefits and employee contributions (continued cost sharing at 75% of the premium to be paid by the Employer and 25% of the premium to be paid by the Employee) as implemented during the period from December 1, 2002 through November 30, 2003. In addition, the Employer retains the right to offer alternate voluntary insurance plans with alternate benefits and alternate employee premium contributions.

**c. Retiree Insurance Proposal:** The County rejects the Union's proposal to institute a new benefit providing that any employee who collects a pension through IMRF shall have 50% the cost of single premiums paid by the County. It presents no proposal to change the status quo (it indicates, again, that the IMRF provides a 30% payment to retirees for health benefits, again wholly apart from the Union's proposal to have Management pay into a Union established trust fund 50% of the benefit's total costs).

3. **Unit C** (Cty. Ex. 6)

**a. Wage Proposal:** Across the board increase of 3.0% to each step effective December 1, 2002 for all employee groups. Telecommunicators with 10 years or more of service as of December 1, 2002, to receive a \$1,500.00 one time signing bonus.

**b. Insurance Proposal:** Plan benefits and employee contributions (continued cost sharing at 75% of the premium to be paid by the Employer and 25% of the premium to be paid by the employee) as implemented during the period from December 1, 2002 through November 30, 2003. In addition, the Employer retains the right to offer alternate voluntary insurance plans with alternate benefits and alternate employee premium contributions.

**c. Retiree Insurance Proposal:** The County rejects the Union's proposal to institute a new benefit providing that any employee who collects a pension through IMRF shall have 50% the cost of single premiums paid by the County. Some reasoning for maintaining the status quo is set forth in prior two County proposals.

**B. The FOP's Final Offer**

As part of its final offer, the Union has proposed that the tentative agreements reached by the negotiators on November 21, 2002, for fiscal year 2003, as mentioned at several places above, be adopted in their entirety as a part of its final offer. However, the Union has also expanded the adoption of the tentative agreement, the record shows, as follows:

First, the Union has proposed two additional years of wage increases (FY 04 and FY 05) at 3% per year in addition to the step increase. Second, the Union has agreed to a modified health insurance proposal accepting the health insurance for fiscal year 2003 as it was implemented by the County for the duration of the three years of the contracts (Tr. 41-43). Specifically, the Union's final offer as presented at hearing is as follows:

The Union proposes as its final offer on wages and retiree insurance benefits that the tentative agreements reached by the parties be enforced in their entirety for the contract year commencing December 1, 2002.

The Union further proposes that all steps in the respective pay plans for the patrol and corrections unit and the civilian unit each be increased by three percent (3%) effective December 1, 2003 and three percent (3%) effective December 1, 2004, and the employees continue to move through the pay step plan.

The Union further proposes that the percentage differentials negotiated in the December 1, 2002 sergeants and corporals agreement be maintained for the periods December 1, 2003 through November 30, 2005.

The Union finally proposes that any employee who collects a pension through IMRF shall have 50% of the cost of premiums paid by the

County.

## VII. BARGAINING HISTORY

### A. The Current Bargaining

The parties engaged in negotiations only for the County's fiscal year of 2003 (FY 03), December 1, 2002 to November 30, 2003, over the terms of three separate collective bargaining agreements:

1. the Sergeants and Corporals;
2. the Patrol and Corrections (including deputies, corrections officers, control 3 and civilian clerk; and
3. Unit C (including telecommunicators; maintenance; light maintenance; clerks and cooks).

Under the Patrol and Corrections Agreement, fiscal year 2003 was the last year of the Agreement and was the subject of a wage and insurance reopener, as already explained. (Article XXIX, Section 1, Emp. Ex. 2, p. 39). The other two agreements expired as of November 30, 2002, the record indicates.

At the bargaining table, the Union was represented by a professional negotiator. The County was represented by Jerry Daws, at that time the Chairman of the County Board, who had previously represented the County in all of its negotiations with this Union and its predecessor, but who then had not negotiated labor contracts other than those involving Ogle County. The County Board Chairman, Daws, also is one of the twenty-four members of the County Board and has one vote with no veto power (Tr. 61).

The negotiators reached one year tentative agreements for: a) the Corporals and Sergeants on November 21, 2002 (Emp. Ex. 9); b)

for the Patrol and Corrections on November 21, 2002 (Emp. Ex. 10); and for Unit C on December 11, 2002 (Emp. Ex. 11). Prior to reaching these tentative agreements, and on many occasions during the course of the negotiations, again as already noted, Daws explained to the Union that any tentative agreement that the negotiators reached would have to go to the County Board for its approval (Tr. 61-62). According to Daws' testimony, the bargaining custom, which was understood by the Union, was that the County Board would not review any individual issues during the negotiations, but that only the full package would be brought to the Board for their formal consideration (Tr. 61-64) and/or adoption or rejection. The County Board rejected the tentative agreement reached by the negotiators, the parties concede, because the tentative agreements include a new retirement benefit which would have required the County to pay for 50% of the cost of retirees' health insurance coverage (Tr. 61-64).

At the hearing, the Union confirmed that the parties had not engaged in negotiations over any matters, including wages and insurance, for fiscal years 2004 and 2005 (Tr. 39), the record indicates. As is evident by the tentative agreements (Emp. Exs. 9, 10 and 11) and by the parties' presentations at the hearing, the parties only negotiated over wages and insurance for the bargaining unit members for one year, fiscal year 2003, for all three agreements (Note that FY 03 was the last year of the Patrol and Corrections Agreement and subject to a reopener for only wages and health insurance) (Tr. 39, 40, 44 and 45).

The payment of 50% of the retirees' health insurance was a new benefit, but, the Union contends, the parties tentatively agreed to that benefit in consideration of the Union's acceptance of the Employer's proposal on employees' health insurance, including the dismissal of all legal action regarding the Employer's unilateral changes to its health insurance plans made in FY 2002.

The original tentative agreements are summarized as follows:

1. **Sergeants and Corporals** (Emp. Ex. 9)

**a. Wage Proposal:** Pay for Sergeants shall be 10% above the wage of the top seniority pay of a deputy assigned to the detective division. Pay for Corporals shall be 5% above the wage of the top seniority pay of a deputy assigned to the detective division.

**b. Insurance Proposal:** Current deductibles be maintained throughout the term of the contract.

**c. Retiree Insurance Proposal:** The County Board shall begin to contribute 50% of the cost of single health insurance coverage through the County policy when the employee retires after at least meeting the minimum wage and time statutory requirement of their pension fund, or retires on a duty related disability pension. This contribution shall continue until the employee reaches the age at which Medicare coverage begins. Any employee who collects a pension through IMRF shall have 50% the cost of premiums paid by the County.

2. **Patrol, Corrections and Control 3 and Corrections Clerk**  
(Emp. Ex. 10)

**a. Wage Proposal:** Across the board increase of 3.25% to each step on December 1, 2002. Across the board increase of .25% on November 30, 2003. Add new shift differential of \$.75 per hour for Control 3 using the same language as is applicable to patrol and corrections.

**b. Insurance Proposal:** Current deductibles be maintained throughout the term of the contract.

**c. Retiree Insurance Proposal:** The County shall begin

to contribute 50% of the cost of single health insurance coverage through the County policy when the employee retires after at least meeting the minimum age and time statutory requirement of their pension fund, or retires on a duty related disability pension. This contribution shall continue until the employee reaches the age at which Medicare coverage begins. An employee who collects a pension through IMRF shall have 50% the cost of premiums paid by the County.

3. **Unit C** (Emp. Ex. 11)

**a. Wage Proposal:** Across the board increase of 3% to each step on December 1, 2002 for all employee groups. Telecommunicators with 10 years or more of service to receive a \$1,500.00 one time signing bonus.

**b. Insurance Proposal:** Current deductibles be maintained throughout the term of the contract.

**c. Retiree Insurance Proposal:** The County shall begin to contribute 50% of the cost of single health insurance coverage through the County policy when the employee retires after at least meeting the minimum age and time statutory requirement of their pension fund, or retires on a duty related disability pension. This contribution shall continue until the employee reaches the age at which Medicare coverage begins. An employee who collects a pension through IMRF shall have 50% the cost of premiums paid by the County.

**B. The Previous History**

The parties have not historically agreed to multi-year wage and insurance provisions, the Employer has strongly argued. The Sergeant's and Corporal's Agreement was a one year agreement (Emp. Ex. 1, Article XXIX, Sec. 1, p. 42). Even when the parties have previously entered into multi-year agreements, those agreements have not included wages and insurance for the term of the agreement. Instead, in those multi-year agreements, the parties have provided for annual wage and insurance reopeners, the Employer maintains. To Management, this illustrates a "practice" of one

year agreements on wages and payments/provisions of the County's health insurance plan.

The Patrol and Corrections Agreement was a multi-year agreement with annual wage and insurance reopeners as identified in item number four in the letter from the Union to the Sheriff's Office dated January 16, 2001 (part of Emp. Ex. 2). Also, Article XXIX, Duration and Signature, Sec. 1, Term of Agreement and Reopener, of the Patrol and Corrections Agreement provides for the fiscal year 2003 wage and insurance reopener (Emp. Ex. 2; Note that this replacement Article without a page number was added after the first reopener. Also note that the last two pages of Emp. Ex. 2 sets forth the health insurance language in effect prior to the first reopener for fiscal year 2002).

Item four of the January 16, 2001 Union letter, the reopener language, is also applicable to the non-sworn agreement for Unit C (Emp. Ex. 3). The replacement page for Article XXIII, Insurance and Pension, without a page number, displays a tentative agreement notation dated October 23, 2001, identifying a reopener modification to the insurance provisions of the agreement.

While the parties' method of replacing pages in the agreement after a reopener makes for a confusing contract, the Employer argues, it also asserts that the documentary evidence also demonstrates that the parties have not historically been able to agree to wages and insurance for more than one year at a time, the Employer again strongly contends.

The Employer thus concludes that, by the conduct of the

parties at the bargaining table in the fall of 2002 in only discussing wage and insurance terms for one year, as well as the clear practice reflected in the existing bargaining agreements, as just noted, and as made evident by the parties' exhibits, either a single year agreement or multi-year agreements with annual wage and insurance reopeners is the parties' clear pattern. Therefore, the Union's demand for two additional years in this contract, including a 3% wage increase for all members of the Patrol and Corrections Unit and the members of Unit C for a 3% increase each year is a breakthrough totally unrelated to any issue presented across-the-table in the actual negotiations that have culminated in this interest arbitration, the Employer submits.

Moreover, to the Employer, the absolutely clear, historical pattern of "bargaining insurance benefits" for only one year at a time precludes the acceptance by this Arbitrator of the 2003 fiscal year insurance provisions of FY 2003 as being frozen for three years, as the Union's proposal would entail, effectively, the Employer alleges. The freezing of health insurance costs and benefits for three "extra" years is another breakthrough and added provision never offered across-the-table or negotiated at all, the Employer further contends.

Additionally, according to the Employer, the specific provision for parrotting (10% and 5% for Sergeants and Corporals, respectively, from the highest level of the Patrol Officer wage schedule as part of its offer for fiscal year 2003) to be continued in effect so as to give this group a 3% increase in fiscal years

2004 and 2005, too, similarly is a breakthrough, the Employer submits. This illustrates that the Union's offers are unreasonable, it claims.

Based on all the foregoing, the Employer urges that its offer be accepted as the more reasonable in all its aspects, I am told.

The Union, on the other hand, argues that its wage and insurance offers for FY 2004 and FY 2005 are merely a practical way to put the parties where they should be absent the Employer's unreasonable rejection of the November 21 and December 11 (on Unit C), 2002 tentative agreements. It places a 13% pay raise for each year for all three units, which fits the comparables and the cost-of-living or CPI index data. It also permits the parties to begin bargaining in September, 2005, for a new contract for FY 2006 (and thereafter), as if the parties implemented the tentative agreements, which should have been the case had the parties followed the spirit of the Act and the precepts of good faith bargaining, says the FOP. The only reason that it did not happen was a change in the political winds in November, 2002 in Ogle County, the Union insists. Such a change in the political makeup of the County Board should not mean that three years' worth of raises and benefits is lost to the sworn officers, corporals and sergeants, and employees covered by Unit C.

The Arbitrator is authorized by the 7th and 8th factors included in Section 14(h) to "make it right," the Union also submits. Adoption of the Union's final offers on all three impasse issues would be more reasonable and appropriate, and I should therefore enforce the tentative agreements and the specific Union final offers should be adopted as the "last, best offers," the Union concludes.

## VIII. DISCUSSION AND FINDINGS

### A. The Duration or Length of the Contract Issue

#### 1. Background

This issue raises several questions, since as Management has stressed and the Union has conceded, the parties in their negotiations in 2002 bargained in all three of the negotiations then taking place only with regard to fiscal year 2003, I note. As already mentioned several times, in point of fact, I also agree with the Employer that the bargaining involving the Corporals and Sergeants Unit was for a reopener solely concerned with wages and health insurance, the record clearly discloses. As to that unit, obviously, no mandatory bargaining could have occurred for future time periods, since that labor contract still had one year before it expired. As to the other two units involved, bargaining over wages and insurance was confined to fiscal year 2003, by the respective bargaining teams, although negotiations for other issues may have extended beyond that point. The record is not absolutely clear whether or not that happened, but the relevant fact is that as to wages and insurance, only FY 2003 was negotiated as a tentative agreement, the facts of record reveal.

What is absolutely plain from the evidence of record, I also stress, is that the parties were also involved during these negotiations in a serious, good faith attempt to resolve the significant issue as to the propriety of certain Management changes in the current employee health insurance benefit program admittedly

unilaterally made by the Employer in fiscal year 2002, I note.

Those particular changes had resulted in the Union's filing unfair labor practices with the Illinois Public Employee Labor Relations Board. Grievances were also filed over those unilateral changes, and perhaps other legal claims related to this dispute, apparently, the record indicates. Appeals on various aspects of the whole range of litigation were also taking place, the record developed at hearing also demonstrates, as the Union pointed out. It firmly believes the giving up of these legal actions and acceptance of Management's actions in modifying the parties' health insurance plan was a significant quid pro quo for the Employer's acceptance of the Union's proposal that Management pay 50% of the retirees health insurance premiums, I am persuaded.

The Union also argues that the fact of the negotiations dealing with the insurance benefit changes made in 2002 reveals that the overall negotiations were not necessarily narrowly focused on fiscal year 2003, as it says the Employer has essentially wrongly contended. The FOP also argues that its take on the bargaining history which serves as background in this case is critical to an understanding of why the Union has submitted the wage proposals for fiscal years 2003, 2004 and 2005 as part of its final offers, even though the negotiations preceding this interest arbitration did not specifically encompass the two later fiscal years for wages and insurance, but only fiscal year 2003.

The Union submits that the Employer's conduct in rejecting the tentative agreements and forcing the parties to interest

arbitration has delayed the process so that, as a practical matter, fiscal years 2004 and 2005 have passed without any ability for these parties to negotiate on new terms and conditions for that period of time. It contends that, as a practical matter, this Employer's cries of unfairness based on the Union's never having presented wage offers in the bargaining under review is disingenuous at best and, in all likelihood, represents a real example of playing the system to the maximum benefit of Management.

As a matter of equity and fairness, the Union asserts, the interest arbitration should grant wage increases of 3% for fiscal year 2004 and 3% for fiscal year 2005 for patrol officers and corrections, and Unit C, to place the parties in the position they likely would have been in if the bargaining process had not broken down. The "parity" granted by the tentative agreements with the corporals and sergeants would have an identical impact on their wages, the Union also asserts. Good labor relations and "a better future for collective bargaining" between these parties demand the adoption of the three year contract term actually tied into the Union's last best wage offer of 3% per year, it thus urges.

The Union also argues that its proposal for a three year contract term is "virtually the industry standard" and that I should affirm its contention that the fact that this Employer rejected the tentative agreements under scrutiny because of a mere change in the political winds, just when those tentative agreements were placed before the County Board for approval, means the Union should be able to expand the duration of the contract to the

industry norm. It also asks that I affirm its position that the 3% wage demands fit the comparables and thus find that the Employer has not been disadvantaged by the failure of the parties to "actually negotiate for a three year contract as to wages."

The Union thus concludes that both external comparability and the relevant cost-of-living data fully support its wage offer as covering the last two of the three years contained in its offer, thus making the duration of the contract, "fit the timing of the issuance of the interest arbitration." This is the more appropriate and reasonable "final duration of the contract offer," based on the unique circumstances of the case, it urges.

The Union also notes that its three year offer on health insurance would essentially freeze bargaining on the health insurance issue regarding the bargaining unit's current employees.

In effect, it asserts, such a freeze has the specific result of giving the Employer what it obtained not only by its unilateral changes in fiscal year 2002, but also by the "equally invalid, illegal and contractually defective unilateral changes" in health insurance provisions in fiscal year 2003, too. As the Union stated on the record, its offer concerning insurance is tied to all three years and essentially places the insurance issue for its current employees back on the bargaining table only when bargaining for fiscal year 2006 would begin, namely, in September, 2005, I recognize.

The Employer disagrees with each of these propositions, as set forth in detail above. It argues that internal comparability and

the proven practice of the parties is that both wages and insurance benefits have only been negotiated by these parties over the years in one year increments. It suggests that the proven practice of having one year labor contracts generally, or three year contracts with reopeners the last two years for wages and health insurance benefit issues, must properly be viewed as totally preventing the Union's trick of tying wages and health insurance to a period two years beyond what the parties ever negotiated across-the-table prior to this interest arbitration.

Boldly stated, the Employer simply says I have no authority to grant a proposal on an "economic" interest arbitration issue that was never in any way bargained for by the parties to the point of impasse before the final offer arbitration process began. This is obviously exactly the case in this current matter, it maintains. Therefore, as a matter of the scope of my authority under the Act, I should reject the Union's "sneak attack" expansion of the actual impasse issues and decide only the wage and insurance issue for fiscal year 2003 that the parties actually negotiated over in good faith, the Employer insists.

The Employer also suggests that the alleged negative climate that would be caused by a decision in this interest arbitration to limit my decision as to the three impasse issues -- wages, insurance benefits for current employees and the proposal advanced by the Union for a 50% payment of insurance benefit premiums for retirees -- simply has no relevance to the factors I am permitted to consider under Section 14(h) of the Act. What the Union has to

say about the practical effect of such a limitation may be "good labor relations," the Employer states. It also, however, asserts that such a consideration is not permitted either by the statutory factors spelled out in Section 14(h) or in light of the past practice and expectations of these parties, as evidenced by the proofs of record. It also states that the external comparability and cost-of-living data proffered by the Union as to wages for the second and third years of the Union's wage proposal, fiscal years 2004 and 2005, are, at best, inconclusive and in fact cannot trump the obligation of the parties to directly bargain about these most critical terms of employment, I note.

After careful consideration, and despite my first blush reaction that the Union is absolutely correct about the negative impact of the dragging out of this case on the bargaining relationship between these parties, I agree with the Employer that I cannot extend the contract term to the "normal" three year blanket and I do hold.

First, arbitrators are extraordinarily reluctant to disturb a clear past practice when such a pattern is found to exist. In this case, the Employer has convincingly shown that, as regards wages and insurance benefits, these particular parties commonly have bargained for contractual commitments of only one year, I am convinced. Whether these parties have used "one year long contracts" or contracts of three years' duration, with reopeners in the second and third year for wages and insurance benefits, what is clear on this record is that this Employer and this Union have

hammered out a pattern of dealing with the important issues of wages and health insurance benefits one year at a time, I find. That conclusion offsets any "equity" claims of this Union, as set forth above, I am also convinced, based on the "normal precepts" of collective bargaining, I hold.

Additionally, as the Employer has argued, I am further persuaded that I would be on less than firm ground were I to adopt the Union's proposal on wages which extends over a three year period, when the parties only bargained as to wages and insurance benefits for a one year term during their negotiations. Obviously, impasse could not have been reached as to fiscal years 2004 and 2005 as to either of these issues if they were never brought up at the table at all, let alone "negotiated to impasse," common sense says.

Also, the whole theory and structure of Section 14(h) is such that my charge is not to "do right, in an abstract sense," but to apply the defined factors set forth in Section 14(h) to the facts of the case, logical analysis demands. It is one thing to say I stand in the shoes of the bargainers and must attempt to craft a contract along the lines of what they could do if the process were strike driven. I understand that, as long as the factors to get me to that point of what the contours of the "freely bargained, arms-length deal" would likely be. It is proper, too, to deal with the weight to be placed on rejected tentative agreements as proof of what the deal "truly would be." It is quite another to claim, as the Union does, that I can go farther and decide issues not

bargained to impasse by the parties -- not even talked about across-the-table during the period of negotiations -- and somehow resolve those issues on a last-best final offer of an impasse issue. I cannot, I definitely rule.

My concern is how I could justify a finding that would stretch the contract to cover a three year wage proposal, and, additionally, freeze the health insurance benefit package for current employees for two years beyond the focus of bargaining prior to impasse and this interest arbitration, I say again. Whether what the Union has proposed is good or bad labor relations -- and I clearly think it would be a better path to follow -- cannot overcome these factors preventing me from going along with what the Union has proposed, precisely as the Employer has suggested, I finally observe. I cannot extend the duration of the wage offer and insurance offer to three years, I hold.

Stability is important in bargaining, I certainly understand. Good labor relations and a feeling of fairness is also critical to a successful relationship between Management and its Union-represented employees. The facts as analyzed here, and the statutory criteria provided in Section 14(h), simply mandates my conclusion that I am not able to give the Union the extreme departure from both the practice of the parties and what the statute contemplates, I thus find. I agree with the Employer that the issues at impasse must focus on FY 2003, but disagree with it that the tentative agreements are not relevant to the proper assessment of the appropriateness of the parties' final offers on

the remaining three issues.

Based on the foregoing analysis, I find in favor of the County as to the first issue and specifically conclude that my jurisdiction is only to decide the wage proposal for fiscal year 2003; the health insurance benefit impasse issue for fiscal year 2003; and, finally, the impasse issue concerning the proposal advanced by the Union that the Employer pay 50% of the insurance premium for retirees, also for fiscal year 2003.

**B. The Wage Issue**

By way of background, I emphasize that I have only given a partial recitation of the parties' detailed arguments concerning external comparables in the instant case. I set forth these contentions so as to give a flavor for what the parties were arguing and to make clear that I understand their respective positions. However, as to the external comparability issue, it is also important to note that in point of fact the Employer has presented a wage proposal that the Union concedes is in some respect "richer" than what the Union has proposed as its wage demand. As the Employer interprets it, this is based on its analysis of external comparables, among all the statutory factors, I specifically note.

To the Union, however, the offer of an "extra" economic benefit relating to wages is the Employer's not so subtle way to cover up the fact that Management repudiated tentative agreements that were validly negotiated and where consideration was exchanged.

Simply put, the Union believes that this sweetener cannot offset

the agreement of the Union to accept the unilateral changes in health benefits for current employees made by Management in fiscal year 2002 (and, at hearing, also covering changes made in fiscal year 2003) in exchange for Management's commitment to pay 50% of the insurance premiums for retirees.

What these facts show, in my view, is, as mentioned at several points above, that the primary issue in this case is not external comparability or the other specific statutory factors under Section 14(h). The question of which set of comparables are most appropriate has nothing to do with the wage issue, or the health insurance benefit package issued for current employees, I note, because, as to both proposals, what the Employer is proposing either is better than what the Union has advanced as its proposal or, the external comparables simply have nothing to do with the resolution of the dispute (the insurance benefit package).

I therefore firmly believe that there is no justification for a detailed analysis of which group of external comparables makes the most sense. The Employer accuses the Union of "cherry-picking" and of creating a universe which of necessity places Ogle County in the middle of the "bar chart" or graph. The Union, on the other hand, says that Management has overemphasized geography so as to stack the external comparables in a way that artificially places Ogle County at or near the top of the comparison group. I find however that whatever comparison group is used is not relevant to the outcome or resolution of the actual impasse issues remaining. I therefore will not make a ruling as to which group of external

comparables is the "more appropriate" in this instance, instead leaving that task to negotiations between the parties or later interest arbitration proceedings, if necessary. Dicta is to be avoided, I remind the parties.

What is pertinent in the current case to the resolution to the wage issue, as well as the other two impasse issues still to be resolved, is the weight to be accorded the tentative agreements entered into between these parties on November 12, 2002, which then were rejected by the County Board, as the parties have stipulated.

I therefore will now attempt to "untie that Gordian knot," as follows.

**C. The Rejected Tentative Agreement**

The parties reached a tentative agreement on all impasse issues during the negotiations, but that tentative agreement was rejected by the Ogle County Board. At the hearing, the parties' representatives disputed what weight, if any, should be accorded the rejected tentative agreement.

**1. The Illinois Arbitral Precedent**

This inquiry begins with the change given to Illinois interest arbitrators by the line of arbitral authority that has developed since impasse resolution came to police and fire in 1986 in this state and the precedent imported from those that preceded Illinois with third party resolution of interest disputes. The Arbitrator's commission is to approximate that to which the parties would have agreed had they been able to reach a bilateral agreement.

In the view of some, what better indication of what the

parties would have agreed to than the agreement actually reached by their representatives? The parties' representatives are most often, if not nearly always, better informed on the issues, the comparables and the relative strengths and weaknesses of each party's bargaining positions. Who better than to delineate what the parties would have agreed to if an overall agreement had been reached? This view was adopted by Arbitrator James M. O'Reilly in his City of Alton award:

There was no evidence that the tentative agreement reached on July 24, 1994 was negotiated based upon a lack of knowledge of parity relationships, misinformation, or a lack of awareness of external comparisons. Thus it must be considered to have been negotiated in good faith and the Neutral Arbitrator can find no compelling reason that he would be able to render an Award which would be more reasonable than the parties were able to achieve during the collective bargaining process.<sup>4</sup>

Others lean more to the democratic side of the equation -- regardless of what the negotiators agreed to, it was understood to be subject to ratification. Nothing should interfere with the absolute right of the governing body or membership to vote to approve or disapprove the tentative agreement their representatives reached. Arbitrator Peter Meyers articulated this view in his County of Sangamon award:

Tentative agreements reached during the course of collective bargaining sessions are just what their name suggests, tentative. A tentative agreement on an issue has been reached by the parties' bargaining repre-

---

<sup>4</sup> City of Alton and IAFF Local No. 1255, FMCS No. 95-00225 (O'Reilly, 1995) at p. 3.

sentatives does not represent the final step in the collective bargaining process; such an agreement instead is an intermediate step. For a tentative agreement to acquire any binding contractual effect, it generally must be presented to the parties themselves, ratified and ultimately executed before it may be imposed as binding upon the parties' relationship.<sup>5</sup>

Arbitrators O'Reilly and Meyers seem to represent the polar extremes on the question. However, this question has been raised in several Illinois interest arbitrations, and while at first reading the awards might seem to be at extreme variance with each other, there is a pattern to the decisions. On some occasions the tentative agreements were ignored by the neutral; on others they were accorded some weight in the analysis. In still others, they were given great weight.

A careful reading of those arbitration awards, and taking into consideration all of the factors considered by the neutrals, a consensus of opinion can be found.<sup>6</sup> Tentative agreements, reached in bilateral good faith negotiations, but subsequently rejected by a party, are to be accorded some weight in a subsequent interest arbitration. What weight to be accorded is a question of the specific circumstances of each case.

---

<sup>5</sup> County of Sangamon and Sangamon County Sheriff and Illinois Fraternal Order of Police Labor Council, S-MA-97-54 at pp. 6-7.

<sup>6</sup> See, e.g., City of Peru and Illinois Fraternal Order of Police Labor Council, S-MA-93-153 (Berman, 1995); City of Waterloo and Illinois Fraternal Order of Police Labor Council, S-MA-97-198 (Perkovich, 1999); and Oak Brook and Teamsters Local 714, S-MA-96-73 (Benn, 1996).

In his 2002 City of Chicago award, Arbitrator Steven Briggs summed the positions of many of those Illinois interest arbitrators who had previously considered the question in Illinois:

In the relatively short history of Illinois public sector interest arbitration there have been a handful of cases where a tentative agreement was negotiated by the parties' representatives, recommended for ratification by the union bargaining team, then rejected by the union membership. The interest arbitrators to whom those cases were presented had to decide what weight, if any, should be given to the terms of the negotiated settlements. The parties to these proceedings cited each of those cases (citations omitted) and quoted selectively from them in their post hearing briefs. In the interest of brevity, the undersigned Arbitrator will not repeat those quotes here. Generally, Illinois interest arbitrators have concluded that the weight to be afforded a rejected tentative agreement depends upon:

(1) the circumstances surrounding the negotiations that led to it (Was it negotiated in good faith by informed responsible representatives?);

(2) the nature of the tentative agreement itself (Is it an accurate reflection of the accord the parties would have reached in a normal strike-driven process? Is it based upon miscalculation or other error?); and

(3) the reasons for rejection (Legitimate concern over financial and other issues? A simple, unjustified desire for more? Internal union politics?)<sup>7</sup>

Among the arbitration awards that Briggs reviewed in his opinion was that of Arbitrator George Fleischli who also considered

---

<sup>7</sup> City of Chicago and Fraternal Order of Police Lodge #7 (Briggs, 2002), at pp. 19-20 (hereinafter "City of Chicago").

the import of a tentative agreement rejected by the union membership in Schaumburg in 1994:

In dealing with this aspect of the dispute, a balance must be struck. On the one hand, it is important that the authority of the parties' respective bargaining teams not be unnecessarily undetermined. Specifically, in the case of the Union, its bargaining team ought not be discouraged from exercising leadership. Some risk taking must occur on both sides, if voluntary collective bargaining is to work and arbitration avoided, where possible. Clearly, the Union's membership had the legal right to reject the proposed settlement. However, the Union's membership (and the Village Board) must understand that, while it is easy to second guess their bargaining teams, whenever a tentative agreement is rejected, it undermines their authority and ability to achieve voluntary settlements.

On the other hand, serious consideration should be given to the stated or apparent reasons for either party's rejection of a tentative agreement. If, for example, the evidence were to show that there was a significant misunderstanding as to the terms or implications of the settlement, those terms ought not be considered persuasive. Under those circumstances, there would be, in effect, no tentative agreement. However, if the terms are rejected simply because of a belief that it might have been possible to "do a little better", the terms of the tentative agreement should be viewed as a valid indication of what the parties' own representatives considered to be reasonable and given some weight in the deliberations.<sup>8</sup>

Neither Briggs nor Fleischli found any error or misunderstanding of the cost as a basis for the rejections by the union memberships in their cases. Rather, in each instance it was

---

<sup>8</sup> Village of Schaumburg and Illinois Fraternal Order of Police Labor Council, Schaumburg Lodge No. 71, S-MA-93-155 (Fleischli, 1994) at pp. 33-34.

determined the membership thought its negotiators had given away too much at the table and should have "hung tough" to do better. In both instances, the tentative agreements were accorded weight -- described by Fleischli as "persuasive" in Village of Schaumburg and as "significant weight" by Briggs in City of Chicago:

On balance, while the Board supports the FOP's right to reject the Tentative Agreement, it also recognizes that the Tentative Agreement reflects a delicate balance of accommodation. Any significant change in that balance -- any material modification of the ecosystem that has evolved through the collective bargaining process - could easily inflict more harm than good on the parties, their future relationship, and on the many other entities affected by the outcome of these proceedings. Accordingly, and for the reasons explained in the foregoing paragraphs, the Board has decided to give the Tentative Agreement significant weight.<sup>9</sup>

Arbitrator Martin Hill was presented with an opportunity to consider the weight to be given to rejected tentative agreements in his City of Waukegan decision. Hill indicated that he was in accord with Fleischli's Village of Schaumburg reasoning:

A tentative agreement indicates what the parties, or their duly appointed representatives thought was a result otherwise conducive to their interests. They are the insiders and presumptively know the environment and numbers better than any neutral. While certainly not dispositive (nor "res judicata") of a specified result in an interest arbitration, a party would be hard pressed to argue that a tentative agreement should be ignored by an arbitrator.<sup>10</sup>

Interestingly, based on the unique facts of his case,

---

<sup>9</sup> City of Chicago at p. 21.

<sup>10</sup> City of Waukegan and IAFF Local 473, S-MA-00-141 (Hill,

Arbitrator Hill determined that the tentative agreement in Waukegan -- otherwise, in his view, entitled to great weight in the arbitration -- would not be so honored because of a series of major mistakes by the City's management regarding the terms that led to the tentative agreement.

In management's words:

First, and most importantly, the City's bargaining team erred in its calculations of the total cost of the Union's final offer of 4 percent wages for each of the four years of the proposed contract. Chief Negotiator Baird confused the Union's offer of 4 percent plus a 2 percent equity with an earlier, off-the-record Union proposal of 4 percent plus a 1 percent equity adjustment. As a result the City's bargaining team grossly underestimated the total wage cost of the four-year contract.

Second, Baird failed to recognize the fact that the Union was proposing a wage system that involved "double-compounding" ...

Third, the compressed bargaining/mediation time (2 1/2 hours) contributed to Baird's failure to compare the Union's offer to the other external comparable communities. Baird and the bargaining team only later realized that by adopting the Union's proposal, the City's traditional economic position vis-a-vis comparable communities with regard to wages would have drastically increased, without consideration of the City's relatively inferior and deteriorating economic position vis-a-vis communities such as Evanston.

Fourth, Baird failed to consider the lucrative total economic package that the IAFF bargaining unit employees would obtain, when one also factored in the tentatively agreed to increases in paramedic pay and holiday pay.

Fifth, and finally, the bargaining team grossly underestimated the impact of the

---

2001) at p. 66.

economic settlement with the IAFF would have on other City bargaining units, most notably the FOP ...<sup>11</sup>

Arbitrator Hill credited the City's arguments as to the wage portion of the tentative agreement, not the remainder of the settlement.<sup>12</sup> Clearly, the first two "errors" by the Waukegan management team were of the type described by Arbitrator Fleischli in Village of Schaumburg. Failing to discern that the offer from the fire union was different from a previous one goes to the question of whether there was ever a "meeting of the minds" in Waukegan and certainly bears on the weight of the tentative agreement. The parties were not agreeing to the same offer. Failing to understand that the fire union was proposing a double-compounding also goes to the question of whether a true agreement was reached.

However, failing to consider the totality of benefits available to one party or the other in a negotiation, and failing to consider the implications of accepting a proposal in relation to comparability, whether external or internal, cannot be viewed as excusable mistakes, mistakes that run to the essence of whether a deal was made, as the Union has correctly suggested, I rule.

Every negotiator, whether experienced or amateur, knows that he or she had better evaluate a proposed deal before accepting it.

Allowing a party to extricate itself from the impact of a tentative agreement by pleading "dumb and careless" or by saying

---

<sup>11</sup> City of Waukegan at pp. 66-67.

<sup>12</sup> City of Waukegan at p. 67.

the political winds have shifted, may not be enough to award the consideration of the tentatively negotiated terms of a labor contract, the better reasoned decisions find in my opinion, and I definitely agree, as the Union has specifically suggested.<sup>13</sup>

## 2. The Ogle County Tentative Agreement

What were the facts of this case against which the principles adopted by Illinois interest arbitrators may be applied to determine the weight to be given to this tentative agreement?

These employees' quest for employer contributions to the costs of retiree insurance coverage did not begin with this round of negotiations, but rather its predecessor. Consider the testimony of Sergeant Cliff Myers:

Q. And on how many occasions have you participated at the bargaining table?

A. My first occasion would have been in 2001 when we settled the first sergeants/corporals.

Q. And in those negotiations do you recall making a proposal regarding the cost of retirees insurance?

A. Yes.

Q. Would you briefly tell the Arbitrator just to set the stage here -- you don't have to go into great detail, but what was it that you and your fellow officers were proposing in 2001?

A. We had spoken with DeKalb County who had set up a trust fund for their retirees in service, at which time our lodge was looking to start essentially the same kind of

---

<sup>13</sup> Knowing the experience and sophistication of the management negotiator in Waukegan, the last three "mistakes" cited by the Employer struck the Union advocate more as the City's negotiator graciously falling on his own sword in hopes of strengthening the City's chances of negating the tentative agreement. I tend to agree, given my perspective on the arguments presented.

trust. We asked them at the table about contributing to that or setting up some kind of a percentage to pay toward retirees insurance, at which time we were asked to bring that back to the table in 2002 when they were more prepared to discuss that. In the interim, we had set up the trust and to this date the trust is still being funded.

Q. And it's being funded by employees?

A. Employees that belong to Lodge 240, yes.

Q. So in the 2001 negotiations did the Employer indicate anything to you about wanting to see the trust get established, getting off the ground before talking about it [sic] contributions?

A. They felt if we established a trust and the rest of the board -- the employees were showing some kind of contribution, it would be easier to get the board to agree to contribute some themselves.

Q. And that trust has been established?

A. Yes.

Q. And the employees are contributing?

A. Yes.<sup>14</sup>

The genesis for the tentative agreement in 2002 was the discussion had in the 2001 contract talks. The same negotiators represented the County in 2002 that had done so in 2001. The Employer sent three members of its County Board to negotiate with the Union, one of whom was the County Board Chairman. While the Employer later would suggest that its team was inexperienced, former Board Chairman Daws outlined his actual experience during his testimony:

---

<sup>14</sup> Transcript of hearing at pp. 34-36 (Emphasis added).

- Q. How many contracts did you negotiate with the FOP?
- A. Negotiated all that were negotiated after the inception of the FOP.
- Q. So --
- A. Whatever number that is.
- Q. Two rounds of negotiation, three rounds, do you know?
- A. At least two.
- Q. And prior to the FOP being there, were you involved in negotiations with another union?
- A. Yes.
- Q. Any idea how many rounds of negotiations you represented the County in with them?
- A. I think the bargaining unit became -- inception of the bargaining unit was 1986 and I was involved in all the negotiations from that time on.<sup>15</sup>

A tentative agreement was reached between experienced negotiators for both sides, I am thus persuaded, and the only intervening event that altered the course of ratification was a changing of the political guard in Ogle County. The employees and the Union should not be subject to the winds of politics --- the County sent authorized negotiators to sit down with the Union and reach an agreement which they did. That agreement should be enforced, absent very strong facts dictating some other conclusion.

To hold otherwise would open the door to what would verge on bad faith bargaining, I suggest. It is not enough to say that the parties will "review the entire deal" at the acceptance/rejection stage provided for under the Act. What is contemplated in this

---

<sup>15</sup> Transcript at pp. 63-64.

statutorily driven bargaining is that the bargainers be authorized to "make a deal" on all the issues and that deal, at minimum, has to be considered some evidence of what a freely struck deal would be, I conclude. To hold otherwise is inconsistent with the better reasoned precedent. It is fully consistent with the "core purpose" or commission under which I work to find that the tentative agreements are important evidence, to be considered as I try to find the closest equivalent of the bargain that would have been achieved through unilateral negotiations, if the process had not broken down, I again stress.

I understand the logic behind the Employer's contention that an interest arbitrator's giving a tentative agreement a binding effect in an interest arbitration would override part of the comprehensive statutory scheme of the Illinois Public Employees Labor Relations Act. This Employer has correctly identified the fact that one basic principle contained in the Act is the ability of the Union's rank and file to ratify such tentative agreements or reject them, while the involved Employer has an equally clear, basic right to formally approve and adopt such tentative agreements or to reject those bargains in their official capacity as a public Employer entity.

Yet, if the interest arbitrator's role is to find the closest approximation of what the parties would bargain in a strike-driven impasse resolution setting, what better way to do that than to look with great care at what the parties' duly authorized negotiating teams actually bargained, I again am constrained to point out.

Given the Act's impasse resolution structure, culminating in interest arbitration as the method to "simulate a bilateral negotiated agreement," I am convinced that the strong presumption must be that the tentative agreements under review in this case must be given great weight, as the FOP has argued.

It is also my conclusion that another factor that favors the Union's claim that these tentative agreements must be enforced is the fact that, in this case, there clearly was a quid pro quo for the Employer's promise in all the tentative agreements that it would pay 50% of the retirees' single health insurance premiums. The consideration given by the Union was the acceptance of the County's insurance plan for fiscal year 2003, plus the dismissal of all pending legal actions involving the County's acknowledged unilateral changes in that plan made in FY 2002.

The Employer seeks to minimize the benefit to it of the "consideration" behind this bargain. It seeks to cast the basis for the deal as a bad bargain and directly asserts that the tradeoff negotiated by its team is simply insufficient to support the Union's contention that "a deal is a deal." The impact of this argument, from the standpoint of my role as interest arbitrator, is that I should recognize the "mistake" underlying the tentative agreements, and disregard them. Therefore, says the Employer, I should proceed to apply the "normal" statutory factors set forth in Section 14(h) and, in so doing, rule for Management on all three impasse issues. That is the basic position of the Employer. The record makes plain.

My conclusion on this issue is that it would be inappropriate for me to make the sort of evaluation of the "bona fides" of the tentative agreements that Management denies. First, I find that the Employer's argument as to a "mistake," as noted above, does not reflect the sort of errors on its part that truly would require a finding that there was a "no meeting of the minds" between these parties as to be consideration that was being exchange for the agreement to pay part of the retirees' insurance premiums.

Moreover, to do as the Employer asks, I would have to engage in guesswork as to what value the quid pro quo truly had at the time the deal was made, and I, in my role as interest arbitrator, am perhaps in the worst position to do that. In other words, despite the theory and teaching of the Section 14(h) factors, I am being asked by the Employer, at least indirectly, to weigh or judge the cost benefit of the negotiated deal, separate and apart from the eight statutory factors. I find no authority in the statute to make that sort of judgment, I specifically rule.

These observations suggest the answer to the critical issue of the weight to be given by me in this specific case to the tentative agreements under review. I determine that great and controlling weight must be given to the fact and existence of these tentative agreements in this particular case, for all the reasons set forth above. I rule, as the Union has demanded, that the tentative agreements must be the basis for the resolution of the three impasse issues, including the wage issue.

One issue specific to wages remains to be discussed. The Union has presented a proposal for three years' duration as regards wages. The Employer's proposal is for one year, as is the practice of the parties, as I already have determined. When there is such a difference in final offers, an issue arises as to whether I must consider, and have the authority, to look at the "total package," or each year's offer independently. Many cases reflect the basis of the problem, with varying results, I note.

In this case, as I analyze the factual circumstances, the parties must have contemplated my consideration of the Union's final offer on wages based on each year being a separate, "final and best offer." This is so, I am persuaded, because, despite no direct discussion on the points, the parties stipulated the Union's wage offer would be for three years, while the Employer would present its final wage offer for FY 2003, as it then did just prior to hearing, I note. Neither side then raised the issue of the lack of congruity between the offers. Consequently, I hold that I do have the authority to evaluate the Union's wage offer consistent with the terms of the tentative agreements, and look to each year independently and not as part of an entire package, I rule.

### **3. Conclusion - Tentative Agreements**

The facts of this case, by necessary implication, mean that the Union's position that the tentative agreements on the three impasse issues covered by these agreements, in this specific case, control the findings on each issue. The tentative agreements are held to reflect the more reasonable and valid final offers.

Accordingly, the Union's offer on wages for fiscal year 2003 is adopted; its final offer on health insurance and retirees' health insurance premium payments is similarly adopted as the more reasonable and appropriate. With those findings in mind, I thus will proceed to issue the following Award.

#### **IX. AWARD**

Using the authority vested in me by Section 14 of the Act and by the parties' stipulations, set forth above:

1. I select the Union's final offer on wages for fiscal year 2003, namely, that the tentative agreements for each bargaining unit reached by the parties, be enforced, for the contract year commencing December 1, 2002. On balance, this offer on wages is supported by convincing reasons as being more appropriate than the Employer's' final offer on wages, as set forth above, and as more fully complying with the applicable Section 14(h) decisional factors.

2. The Union's final offer on insurance, namely that the plan benefits and employee contributions (continued cost sharing at 75% of the premium to be paid by the Employer and 25% of the premium to be paid by the employee) as implemented during the period from December 1, 2002 through November 30, 2003, is adopted as the more appropriate and reasonable final offer, I rule.

3. As per the discussion in the Opinion section above, incorporated herein as if fully rewritten, the Union's final offer as to payment of retirees' health insurance premiums is adopted for

each bargaining unit, again as reflected in the parties' respective tentative agreements.

4. That the previously reached tentative agreements as to all issues be incorporated by reference into this Award, as per numbered paragraph 7 of the parties' pre-hearing stipulations. It is so ordered.

Respectfully submitted,

---

**ELLIOTT H. GOLDSTEIN**  
**Arbitrator**

May 2, 2005