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BEFORE
EDWIN H. BENN
ARBITRATOR

In the Matter of the Arbitration

between

COUNTY OF LEE AND THE SHERIFF
OF LEE COUNTY

and

ILLINOIS FRATERNAL ORDER OF POLICE
LABOR COUNCIL, LODGE No. 220

CASE NOS.:

S-MA-03-142
Arb. Ref. 03.312
(Interest Arbitration)

OPINION AND AWARD

APPEARANCES:

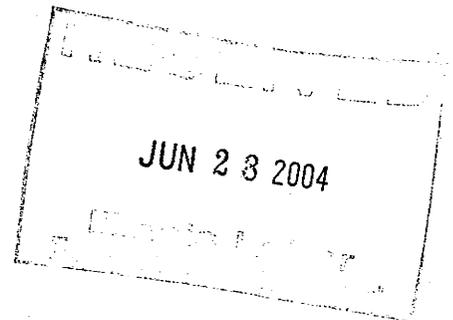
For the County: Linda A. Giesen, Esq.

For the Sheriff: Nick A. Cetwinski, Esq.

For the FOP: Gary L. Bailey, Esq.

Dates Briefs Received: May 17, 2004 (Sheriff); June 7, 2004 (County);
June 8, 2004 (FOP)

Date of Award: June 24, 2004



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I. BACKGROUND

This is an interest arbitration. The collective bargaining agreement ("Agreement") between the co-employers County of Lee ("County") and the Lee County Sheriff ("Sheriff") and the Illinois Fraternal of Police Labor Council, Lodge No. 220 ("FOP") expired on November 30, 2003.¹ The Agreement covered three units of employees in the Sheriff's Office — Patrol (Unit A), Corrections (Unit B) and Supervisory/Administrative (Unit C).²

After negotiations, the parties were unable to agree upon all terms for a new Agreement and reached impasse. The unresolved issues are:³

1. Wages.
2. Salary pay plan.
3. Cost of insurance.
4. Changes to insurance language.

This proceeding followed to resolve those issues.⁴

¹ FOP Exhibit Book 1 at Tab 9, Section 26.1; County Exh. B.

² Agreement at Section 1.1.

³ Ground Rules at ¶5.

⁴ This proceeding is conducted under the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.* (the "Act"), with the under-

[footnote continued]

II. THE STATUTORY FACTORS

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

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

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

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

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages,

[continuation of footnote]

signed designated by the parties as the sole arbitrator, the parties having waived the tripartite panel referred to in Section 14(b) of the Act. Ground Rules at ¶3.

While the County of Lee and the Lee County Sheriff are co-employers (*see* Agreement at Preamble, p. 6, referring to the County and Sheriff as "Co-Employers"), the County and the Sheriff were separately represented at the hearing. For ease of reference, the co-employers shall sometimes be referred to as the "County" or the "Employer".

The parties reached tentative agreements on various issues. Those agreements are incorporated by reference into this award. Ground Rules at ¶7. Although in dispute immediately prior to the hearing, the parties also reached agreement on the duration of the new Agreement (2 years) and the procedures for the creation and operation of an Advisory Insurance Committee, which agreements are also incorporated into this award. *Id.* at ¶¶ 5(e), 6(a); Tr. 6-7.

hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

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

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

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

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

III. DISCUSSION

The parties are at impasse over issues related to wages and insurance. Because of the issues in-

volved, this dispute is best analyzed by first looking at the insurance issues and then considering the wage issues.⁵

A. Changes To Insurance Language

Section 15 of the Agreement provides:

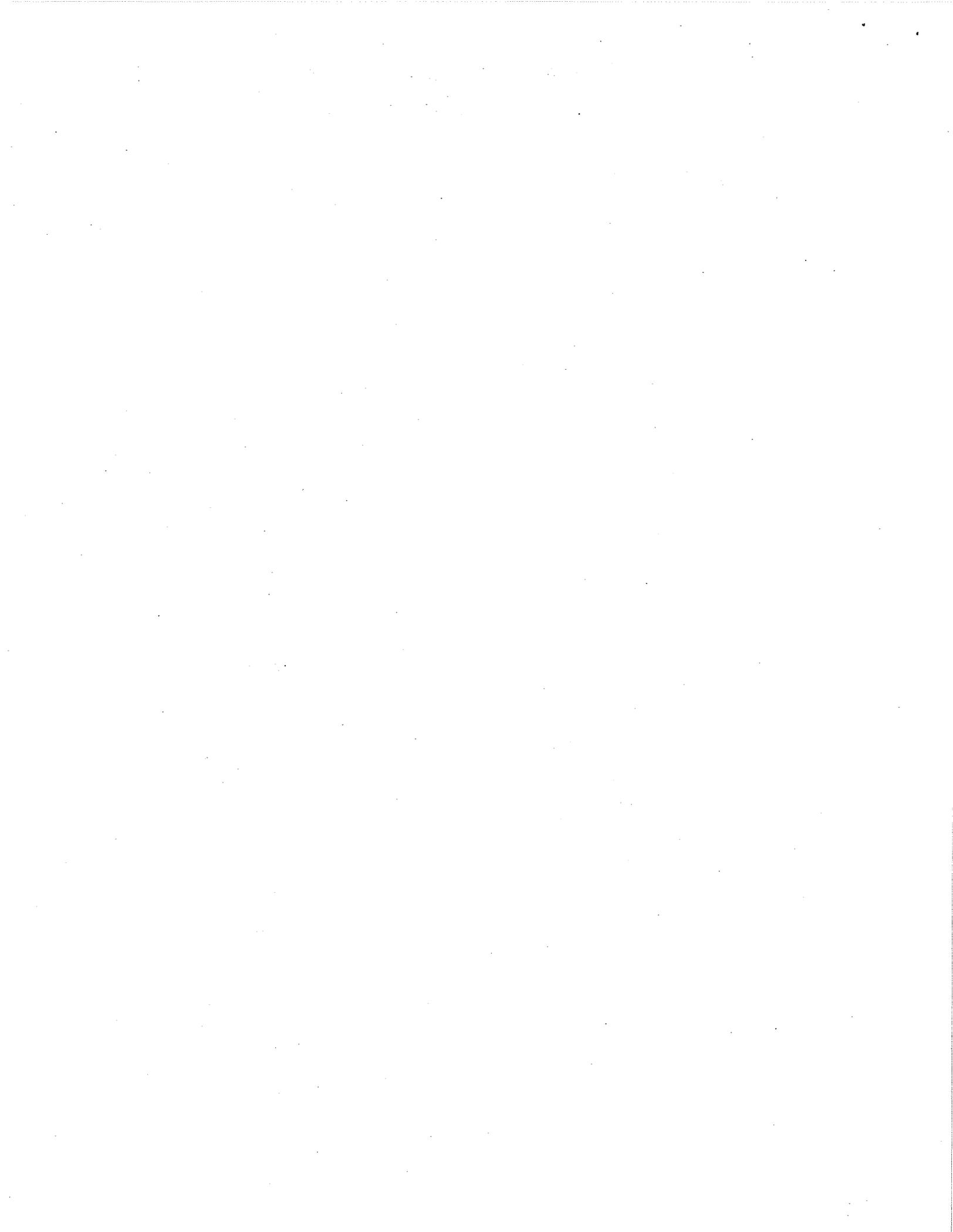
ARTICLE XV: INSURANCE AND PENSION

Section 15.1: Health Insurance

The Employer shall provide group health insurance benefits to all full-time employees, as well as permanent part-time employees working in excess of thirty (30) hours during a normal work week, with such benefits to be provided under the same terms and conditions and in the same amounts as applicable to all non-represented County employees. They shall become eligible for such coverage after completing thirty (30) calendar days of continuous employment, effective the first of the

⁵ The Sheriff (Sheriff Brief at 6-10) deferred to the County's positions on the economic issues in dispute. However, for wages and changes to the wage schedule, the Sheriff requests that the County Board be ordered to provide necessary funds through the appropriate supplemental budgeting process. *Id.* at 6-7.

Clearly, any increased funds for the terms imposed under this award (whether those terms be the Employer's or the FOP's offers) will have to be provided for through the County's financial and budgeting procedures. However, I am merely the interest arbitrator setting the terms of the parties' collective bargaining agreement. Should terms be awarded and, in the future, not paid presents a hypothetical situation. It therefore would not be appropriate for me to comment on the consequences of a failure to pay those awarded terms.



following month. In the event the Employer finds it necessary to require additional payments from employees for insurance, it will do so in the same manner and in the same amounts as charged to all non-represented County employees. The County expressly reserves the right to modify coverage, change benefit levels, implement cost containment measures, change carriers, or to self-insure as it deems necessary.

Furthermore, any other provision to the contrary notwithstanding, the following shall apply to all employees covered by the terms and conditions of this Agreement.

- (a) employees shall have the following deductible: \$250 single/\$750 dependent (3 or more), with deductibles based on per person; \$250 each with a \$750 maximum;
- (b) employees "co-insurance" payment shall be five thousand dollars (\$5,000.00); and,
- (c) a ten thousand dollar (\$10,000) life insurance policy for any employee eligible for health insurance benefits under this Agreement.

Beginning the next policy year, the Employer shall make reasonable efforts to provide additional coverage for orthodontia and optical benefits at the individual employee's cost and option so long as such does not provide any additional cost to the Employer

* * *

Section 15.5: Meet and Bargain

In the event the County finds it necessary to require payment from employees for insurance greater than presently being paid; it will notify the Lodge and bargain the economic impact of such at a Labor Management Conference. Any premium contribution increases required of

employees covered under this Agreement will be the same increases as assessed to all other County employees.

The FOP seeks to change Sections 15.1 and 15.5 to read (FOP Brief at 31-32 [with the exclusion of headings, strike through language to be deleted; underlined language in bold to be added]):

ARTICLE XV: INSURANCE AND PENSION

Section 15.1: Health Insurance

The Employer shall provide group health insurance benefits to all full-time employees, as well as permanent part-time employees working in excess of thirty (30) hours during a normal work week, with such benefits to be provided under the same terms and conditions and in the same amounts as applicable to all non-represented County employees, **unless otherwise herein specified.** They shall become eligible for such coverage after completing thirty (30) calendar days of continuous employment, effective the first of the following month. ~~In the event the Employer finds it necessary to require additional payments from employees for insurance, it will do so in the same manner and in the same amounts as charged to all non-represented County employees.~~ The County expressly reserves the right to modify coverage **as long as the coverage remains substantially the same as compared to what currently exists,** change benefit levels, implement cost containment measures, change carriers, or to self-insure as it deems necessary.

Furthermore, any other provision to the contrary notwithstanding, the following shall apply to all employees covered by the terms and conditions of this Agreement.

- (a) employees shall have the following deductible: \$250 single/\$750 dependent (3 or more), with deductibles based on per person; \$250 each with a \$750 maximum;
- (b) employees "co-insurance" payment shall be five thousand dollars (\$5,000.00); and,
- (c) a ten thousand dollar (\$10,000) life insurance policy for any employee eligible for health insurance benefits under this Agreement.

Beginning the next policy year, the Employer shall make reasonable efforts to provide additional coverage for orthodontia and optical benefits at the individual employee's cost and option so long as such does not provide any additional cost to the Employer.

* * *

Section 15.5: Meet and Bargain

In the event the County finds it necessary to require payment from employees for insurance greater than presently being paid; it will notify the Lodge and **request to bargain the economic impact of such** at a Labor Management Conference. ~~Any premium contribution increases required of employees covered under this Agreement will be the same increases as assessed to all other County employees.~~

The Employer's proposal results in the following changes (Memo of April 12, 2004 at 6; Tr. 77-80; see also, FOP Brief at 32-33)⁶:

⁶ Reference in the Employer's proposal to "section 5.c" is to specific insurance costs set forth in its proposal in its Memo of April 12, 2004 at 5.

ARTICLE XV: INSURANCE AND PENSION

Section 15.1: Health Insurance

The Employer shall provide group health insurance benefits to all full-time employees, as well as permanent part-time employees working in excess of thirty (30) hours during a normal work week, with such benefits to be provided under the same terms and conditions and in the same amounts as applicable to all non-represented County employees. **They Employees** shall become eligible for such coverage after completing thirty (30) calendar days of continuous employment, effective the first of the following month. In the event the Employer finds it necessary to require additional payments from employees for insurance, it will do so in the same manner and in the same amounts as charged to all non-represented County employees. The County expressly reserves the right to modify coverage, change benefit levels, implement cost containment measures, change carriers, or to self-insure as it deems necessary. **However, prior to implementing any changes, the County agrees to review and consider the recommendations of the Advisory Insurance Committee. In the event the County finds it necessary to require payments from employees for insurance greater than the Contract provides, it will notify the Lodge and bargain the economic impact of such proposed changes at a Labor Management Conference.**

The costs assessed to the employee, including both the monthly contribution and the deductible shall be as outlined in section 5. c) above.

The Employer shall also provide Furthermore, any other provision to the contrary notwithstanding, the following shall apply to all employees covered by the terms and conditions of this Agreement.

- (a) ~~employees shall have the following deductible: \$250 single/\$750 dependent (3 or more), with deductibles based on per person, \$250 each with a \$750 maximum;~~
(b) ~~employees "co insurance" payment shall be five thousand dollars (\$5,000.00); and,~~
(c)

a ten thousand dollar (\$10,000) life insurance policy for any employee eligible for health insurance benefits under this Agreement. **Said policy decreases to \$6500 at age 65 and to \$5000 at age 70.**

~~Beginning the next policy year, the Employer shall make reasonable efforts to provide additional coverage for orthodontia and optical benefits at the individual employee's cost and option so long as such does not provide any additional cost to the Employer~~

Under the existing insurance language in Section 15.1, the Employer has very broad discretion with respect to requiring additional payments from employees for insurance and for modifying coverage, changing benefit levels, implementing cost containment measures, changing carriers or self-insuring. The parties specifically agreed in Section 15.1 that "[i]n the event the Employer finds it necessary to require additional payments from employees for insurance, it will do so in the same manner and in the same amounts as charged to all non-represented County employees." The parties further agreed in that

section that "[t]he County expressly reserves the right to modify coverage, change benefit levels, implement cost containment measures, change carriers, or to self-insure as it deems necessary." That is *very* broad authority.

While the Employer seeks to change certain aspects of the insurance benefits and costs (*see* III(B) *infra*), with respect to its ability to *make* changes (as opposed to the specifics of the changes), the Employer correctly characterizes its offer as "... basically proposing that the language remain the same"⁷ The language changes proposed by the Employer essentially work in the concept of the Advisory Insurance Committee agreed to by the parties.⁸

The FOP's proposal substantially reduces the existing authority of the Employer to make changes to insurance and employee costs as presently provided in Section 15.1. The FOP's proposal strikes the language "[i]n the event the Employer finds it necessary to require additional

⁷ Tr. 77-78.

⁸ *See* County Brief at 8 ("The County's proposal maintains substantially the existing language amendments for the purpose of building in the process of reviewing and considering recommendations from the agreed upon Advisory Insurance Committee").

payments from employees for insurance, it will do so in the same manner and in the same amounts as charged to all non-represented County employees" and, while allowing the Employer to maintain the right to modify coverage, requires that any such change in "... coverage remains substantially the same as compared to what currently exists." The FOP's proposal also prohibits changes in benefit levels. Finally, with respect to requiring additional payments from employees for insurance, the FOP's proposal changes Section 15.5 from "economic impact" bargaining over such changes to full-fledged bargaining.

Simply stated, for all purposes, the Employer seeks to maintain the *status quo*, while the FOP seeks a substantial change limiting the Employer's authority with respect to making changes concerning insurance.

In these cases, the burden is on the party seeking to change the *status quo* to justify the change.⁹ In this case, that burden falls on the

FOP. Where, as here, the language which is sought to be changed has come about through the collective bargaining process, the burden requires the party seeking the change to show that the "... system is 'broke' and in need of 'repair' ..." and, if that is not done, "... I cannot change the parties' previous agreement."¹⁰

The FOP cannot meet its burden on this issue.

First, in addition to the recently expired Agreement, the Employer's broad authority to implement changes in insurance has existed in *seven* prior collective bargaining agreements with the FOP dating back to 1990.¹¹ Thus, for almost 14 years, the parties have negotiated Agreements giving the Employer the broad ability to make changes in insurance.

Second, the fact that the Employer has sought to make significant changes in insurance pursuant to that broad authority (*see* III(B), *infra*) does not mean that the system is broke — it only means that the

⁹ See *County of Winnebago and Sheriff of Winnebago County and Illinois Fraternal Order of Police Labor Council*, S-MA-00-285 (Benn, 2002) at 18:

The FOP seeks to change the *status quo*. The burden is therefore on the FOP to justify that change.

¹⁰ *Id.* at 19-20.

¹¹ In addition to the recently expired Agreement, *see* Article XV of the contracts expiring on November 30 in 1991, 1993, 1994, 1996, 1998, 2000 and 2002. FOP Exhibit Book 2 at Tabs 59-64.

Employer is exercising the authority that the parties agreed the Employer had for such a long time. The fact that the FOP does not like the manner in which the Employer is exercising the authority it has had for such a long time is not, in and of itself, a valid reason for changing the *status quo*.¹²

Third, the FOP argues (FOP Brief at 36) that “[t]he comparables support the Union’s proposal.”¹³ The FOP looks to Whiteside, Livingston, Bureau and Ogle counties and concludes “[o]nly in Lee County can the employer unilaterally change the co-premiums with the employees bearing the economic circumstances of the changes until a later date when the parties agree upon the

amounts at issue” *Id.* Assuming the comparability of those counties and the accuracy of the FOP’s conclusion, in this case external comparability does not outweigh the fact that the parties have agreed for approximately 14 years that the Employer has broad authority with respect to insurance changes. Given the length of time the parties have granted the Employer that authority, the fact that other counties may not have similar broad authority cannot require a change in the authority given to the Employer for so long simply because the Employer now seeks to utilize that authority.

Fourth, with respect to internal comparability, the FOP’s argument requesting to change the language cannot hold up.¹⁴ Under the terms of the language the Employer seeks to retain, cost changes, if implemented, must be implemented for other employees of the Employer through the exercise of similar authority — the FOP represented employees are not the only employees affected by such changes. See Section 15.1 (“In the event the Employer finds it necessary to require

¹² See *Winnebago County, supra* at 18-19, addressing an attempt to change a negotiated scheduling provision that was not operating to the satisfaction of the employees:

But the parties negotiated the 11.5 hour provision in the Agreement. The FOP may not now like that provision and perhaps anticipated eventually getting back to the 12 hour schedule. However, the fact remains that the provision came about through negotiations. Given the lack of comparability support for the FOP’s position and no real reason for me to conclude that the 11.5 hour system is “broke” and in need of “repair”, I cannot change the parties’ previous agreement.

¹³ See Section 14(h)(4)(A) of the Act listing the comparability factor.

¹⁴ Again, see Section 14(h)(4) of the Act.

additional payments from employees for insurance, it will do so in the same manner and in the same amounts as charged to all non-represented County employees"). See also, Section 15.5 ("Any premium contribution increases required of employees covered under this Agreement will be the same increases as assessed to all other County employees").

Fifth, the FOP argues (FOP Brief at 37):

The contract must be changed. It simply is unfair. ... What is the point of having negotiated a contract when the benefits can be unilaterally changed? ...

The short answer is that for almost 14 years the parties have agreed that the Employer has that authority.¹⁵

¹⁵ Perhaps a change of the facts will show why I cannot alter such long standing language simply because the Employer now seeks to utilize that language. Let's assume that for many years when inflation was not a factor, the wage provisions of the Agreement contained an uncapped cost of living escalator provision — *i.e.*, that for stated increases in the cost of living, employees would get an uncapped corresponding negotiated increased percentage added to their pay. Let's assume further that high inflation sets in and the cost of living skyrockets, thereby contractually requiring a substantial increase in the employees' wages. Although the increased wages resulting from operation of the escalator clause may be "unfair" to the Employer, if the Employer made a proposal to eliminate or modify that long standing cost of living

[footnote continued]

However, the employees and the FOP are not without relief to contest changes implemented by the Employer. While the Employer has the right to make changes concerning insurance as specified in Section 15.1, that right is not an unfettered and unreviewable one.

Any subsequent changes the Employer makes to insurance pursuant to the authority it has in Section 15.1 is an exercise of a management right. The Employer's exercise of its managerial prerogatives can be challenged through the grievance procedure which ends in final and binding arbitration.¹⁶ While an arbitrator hearing a grievance under the Agreement does not

[continuation of footnote]

increase language, the FOP would have a very strong argument that the system is not broke, but is simply working as the parties contemplated and agreed. That is the argument the Employer makes here. It takes more than being "unfair" as a result of changed economic conditions to alter previously negotiated language. The parties negotiated that language. They must be presumed to have contemplated the ramifications of that language. Unless the process resulting from the negotiated language is shown to be "broke", the parties must live with the consequences of that language.

¹⁶ Section 7.1 of the Agreement provides that "[a] grievance is defined as any unresolved difference between the Employer and the Lodge or any employee regarding the application, meaning or interpretation of the Agreement" Section 7.8 provides for a dispute resolution process culminating in "final and binding" arbitration.

make a *de novo* determination concerning the propriety of the Employer's managerial decisions, under the Agreement any managerial decisions the Employer makes — including insurance changes during the life of the Agreement — is subject to review by an arbitrator under the grievance procedure to determine whether that decision was arbitrary, capricious or in bad faith.¹⁷ Add to the mix that the parties have agreed upon the utilization of an Advisory Insurance Committee where employees have input and the Committee makes recommendations, the FOP's argument that the long standing insurance authority granted to the Employer now "simply is unfair", cannot be persuasive to justify a changing of the *status quo*. If the FOP disagrees with subsequent insurance changes made pursuant to the managerial authority the parties have agreed for so

long vests in the Employer, then the FOP can grieve such changes under the grievance procedure to determine whether there was an arbitrary exercise of a management right.

With respect to the language concerning the Employer's authority to make changes, the Employer's proposal essentially maintains the *status quo* that has existed in the parties' Agreements for approximately 14 years. The changes sought by the Employer work in the concept of the Advisory Insurance Committee and places reference to benefits in other sections of the Agreement. This is an economic issue — therefore, I can only choose one party's offer and cannot structure something different.¹⁸ On balance, the Employer's offer on insurance language is adopted.

¹⁷ Elkouri and Elkouri, *How Arbitration Works* (BNA, 5th ed.), 660 ("Even where the agreement expressly states a right in management, expressly gives it discretion as to a matter, or expressly makes it the 'sole judge' of a matter, management's action must not be arbitrary, capricious, or taken in bad faith"). See also, *South Central Bell Telephone Co.*, 52 LA 1104, 1109 (Platt, 1969) ("... [A]ction is arbitrary when it is without consideration and in disregard of facts and circumstances of a case, without rational basis, justification or excuse").

¹⁸ See Ground Rules at ¶5 ("The parties agree that the ... issues are economic" and "... the Arbitrator must choose either the County's offer or the Union's Final offer as to each issue"). See also Section 14(g) of the Act ("As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors presented in subsection (h)").

B. Changes To Insurance

In its final offer, the FOP proposed the following changes to insurance:¹⁹

Effective January 1, 2003: Increase co-payments to:

\$50/mo. for single coverage

\$125/mo. for dependent coverage

No change to deductibles.

Effective upon Award: Application of all Blue Cross/Blue Shield provisions, except as specified otherwise.

Effective December 1, 2004: Increase premium co-payments to:

\$55/mo. for single coverage

\$110/mo. for plus-one coverage

\$175/mo. for family coverage

The FOP also sought to add certain language to the second paragraph of Section 15.1 to read²⁰:

* * *

(d) employees shall also make monthly co-payments toward the cost of health insurance premiums: from January 1, 2003 through November 2004, employees will pay no more than \$50 for single coverage and no more than \$125 for family coverage; from December 2004, employees will pay no more than \$55 for single coverage, no more than

\$110 for employee plus one (1) coverage and no more than \$175 for family coverage (employee plus two or more dependents).

(e) effective upon complete implementation of this Agreement, the coverage and benefit levels provided for in the Blue Cross/Blue Shield policy in effect in January 2004 shall apply to employees in the bargaining unit except as provided for otherwise herein.

The FOP explained its offer in its Brief (FOP Brief at 24):

The Union proposes two increases during the two-year contract. Under the Union's offer, the Union would increase its annual contributions in the first year of the contract \$600 for single coverage and \$498.96 for family coverage. The Union would increase its annual contributions in the second year of the contract \$660 for single coverage and \$1,098.96 for family coverage -- for an overall increase of \$1,260 for single coverage and \$1,597.92 for family coverage during the term of the Agreement.

The Employer proposed the following changes (Memo of April 12, 2004 at 5; see also, County Brief at 6-7):

1/1/03 - 4/30/04

Employee Monthly Contribution for Insurance

Single Coverage \$50.00
Family Converge \$125.00

Employee Deductibles

\$250 single

¹⁹ FOP Exhibit Book 1 at Tab 3, p. 7.

²⁰ Id.

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\$750 dependent (three family members must satisfy individual deductibles)

Retiree Contributions

No changes from existing

5/1/04 - 11/30/04

Employee Monthly Contribution for Insurance

Single Coverage	\$50.00
Single+1 Coverage	\$135.00
Single+2 or more	\$200.00

Employee Deductibles

\$1000 single
\$3000 dependent (three family members must satisfy individual deductibles)

Retiree Contributions

No changes from existing

12/1/04 - 11/30/05

Employee Monthly Contribution for Insurance

Single Coverage	\$60.00
Single+1 Coverage	\$175.00
Single+2 or more	\$225.00

Employee Deductibles

The deductible amount will be based upon recommendations received from the Advisory Insurance Committee

Retiree Contributions

Single	\$275 Month
Single+1	\$675 Month
Single+2 or more	\$850 Month
	or amount of premium (whichever is less)

Employer Contributions

Employer shall contribute a maximum \$655,000 to the cost of employee health insurance. This amount represents the employee insurance line item of the insurance levy. The amount has been increased by 5% from the 2003/2004 levy. This amount along with employee contributions will be used to fund the employee medical insurance benefit.

First, what cannot be ignored is that in making the proposed changes, the Employer is, for all purposes, implementing the broad authority it has long had under Section 15.1 of the Agreement to "... to require additional payments from employees for insurance ... modify coverage, change benefit levels, implement cost containment measures, change carriers, or to self-insure as it deems necessary" — authority which I have found shall be carried over into the new Agreement. See discussion at III(A) *supra*.

Second, insurance is presently a nightmare and at a crisis level for employers, employees and unions — a fact acknowledged by the FOP. FOP Brief at 25 ("The Union recognizes the increases in health insurance industry are creating problems across the country").²¹

²¹ See *City of Countryside and Illinois Fraternal Order of Police Labor Council* (Benn, [footnote continued])

Third, from an internal comparability standpoint, as structured and as required by Sections 15.1 and 15.5, the increased costs and premium contributions are the same for other groups of employees.

Again, this is an economic issue and I can only pick one offer. On balance, given the above factors, the Employer's offer on insurance shall be adopted.

C. Wages

The FOP proposes a 3% increase on all steps to both wage plans effective December 1, 2003 and retroactive on all hours paid; and a

[continuation of footnote]

2003), 12 ("Insurance costs are skyrocketing which makes bargaining on this issue border on the impossible"). See also, Freudenheim, "Workers Feel Pinch of Rising Health Costs" from the New York Times (October 22, 2003):

As health care costs head into a fourth consecutive year of double-digit increases, employers are shifting a growing share of the burden onto people who make the heaviest use of medical services.

The trend — evident as companies begin informing workers of their benefit choices for the coming year — takes the form of fast-rising co-payments and deductibles, higher payroll deductions to cover spouses and children and new kinds of health plans that give workers a fixed sum to spend.

On average, the annual out-of-pocket costs for employees of large companies have more than doubled since 1998, to \$2,126 this year ... [and] expecting a 22 percent jump next year, to \$2,595.

similar 4% increase effective December 1, 2004.²²

The Employer proposes a wage freeze for the period December 1, 2003 through November 30, 2004 and a 2% increase effective December 1, 2004 through November 30, 2005.

In terms of external comparables used by the FOP (Whiteside, Ogle, Bureau and Livingston counties), the FOP concludes that "[t]here is little difference between the final offers when the rankings of the wage comparables are revealed."²³ In its Brief, the Employer looks at the same counties and concludes that, depending on years of service, the Employer's wage proposals varied from .7% to 26% above the average, while the FOP's proposal varied from 3.7% to 35% above the average.²⁴

The problem here is obvious. I am not satisfied that an "apples to apples" comparison can be made in this case. The FOP focuses on rankings, while the Employer focuses on averages. Further, the wage plans for the different counties are not the same as the ones under

²² FOP Exhibit Book 1 at Tab 3; FOP Brief at 7.

²³ FOP Brief at 11.

²⁴ Employer Brief at 2-4.

the Agreement and the impact of the wage proposals on the individual employees who fall within the various steps of the plans vary widely. Additionally, the time periods when the comparisons are made are not always similar to give a valid basis for comparisons, particularly when we are looking into future years when those other counties may be in negotiations for represented employees and it is just not known what the product of those negotiations will yield for the future years. Making these kinds of comparisons and trying to realistically look at the future and extrapolating valid wage comparisons is often as difficult as trying to catch a greased pig.

However, for the sake of discussion, I will assume that external comparability favors the Employer's wage proposal. In this case, that is not sufficient for me to conclude that the Employer's wage proposal should be adopted.

First, I must return to insurance. I have adopted the Employer's insurance proposals. As discussed at III(B) and as shown by comparing the parties' final insurance offers, those increased contributions, costs, deductibles and maximum Employer payment obligations will place a *significant* impact on the employees'

out of pocket expenses and will seriously cut into any wage increases they receive. At the same time that these increased insurance costs are imposed by the Employer, the Employer seeks a wage *freeze* in the first year and a 2% wage increase in the second year. Section 14(h)(6) of the Act looks to "[t]he overall compensation presently received by the employees, including ... insurance" If the Employer is going to get the kinds of significant insurance concessions from the employees as it did on the insurance issue, it cannot realistically expect to also get a wage freeze in the first year of the Agreement coupled with only a small increase in the second year of 2% when the insurance roll backs become quite significant.

Second, cost of living is a factor.²⁵ With respect to the Employer's wage proposal, after citing the Consumer Price Index from the Department of Labor, the FOP correctly argues (FOP Brief at 17) that "[a]ll of these numbers are greater than the 0% wage proposed by the County" While these are fairly non-inflationary times, the Employer's offer of a wage freeze in the

²⁵ See Section 14(h)(5) of the Act.

first year and a 2% wage increase in the second year does not favor well when the cost of living is considered.

The employees received their last wage increase in December, 2002.²⁶ The FOP provided data from the Department of Labor, Bureau of Labor Statistics ("BLS") through February, 2004. FOP Exhibit Book 1 at Tab 35. The most recent statistics from the BLS are through May 2004.²⁷

Looking at the effective date of the first year wage increase (December 1, 2003), the BLS data show²⁸:

	Midwest Urban	Chicago
12/02	175.5	182.4
12/03	178.4	185.5
% Increase	1.6%	1.7%

Looking at the present data as of May, 2004 and comparing these numbers to December, 2002 shows:

	Midwest Urban	Chicago
12/02	175.5	182.4
05/04	182.9	188.7
% Increase	4.2%	3.4%

Stated simply, the above shows that while the Employer offered 0% for 2003, there was a 1.6 - 1.7% increase in the Midwest Urban and Chicago-Gary-Kenosha numbers.

²⁶ Agreement at Section 14.1 and Appendix.

²⁷ See www.bls.gov.

²⁸ For these examples, the BLS data for Midwest Urban and Chicago-Gary-Kenosha (referred to in the tables as "Chicago") have been used.

Similarly, while the Employer offered at 2% increase over the life of the Agreement (the wage increase taking effect in December, 2004), as of May, 2004, there has been a 4.2 - 3.4% increase when compared to the last wage increase in December, 2002. Those comparisons favor the FOP's offer of 3% and 4% increases rather than the Employer's offer of a wage freeze in the first year and a 2% increase in the second year.

On balance, I find that even assuming external comparability favors the Employer's wage offer, because of the significant increased insurance costs to the employees and the cost of living factor, the FOP's wage offer of 3% in the first year and 4% in the second year shall be adopted.²⁹

D. Changes To The Pay Plan

Both parties have proposed changes to steps in the pay plan.

The FOP proposes to add three steps (at 22, 24 and 26 years of

²⁹ The Employer's references (Employer Brief at 3) to other benefits (uniform allowance, perfect attendance bonus, lump sum holiday pay, sick day buy back, SLEP retirement benefits and social security benefits) also do not change the result. The Employer simply cannot expect to impose such a large insurance cost on the employees and also expect to get a wage freeze in the first year and a 2% increase in the second year.



service) with a 3% difference between the steps on the pay plans effective December 1, 2003.³⁰

The Employer proposes to add two steps (at 25 and 30 years of service) with a 3% difference between the steps on the pay plans, but not effective until December 1, 2004.³¹

The analysis here is really no different than that used to determine wages as discussed *supra* at III(C). As before, even assuming external comparability favors the Employer's wage offer, because of the significant increased insurance costs to the employees and the cost of living factor, the FOP's offer must be adopted. The conclusion on this issue is particularly underscored by the fact that the Employer's offer to add the steps to the pay plan does not take effect until the second year of the Agreement, effective December 1, 2004, thereby again freezing any wage increases for the employees in the first year of the Agreement. Again, the bottom line is that these employees are going to take a substantial financial hit on the in-

creased insurance costs they must now absorb. The FOP's step increases shall be adopted.

IV. CONCLUSION

The Employer has prevailed on the insurance issues and the FOP has prevailed on the wage issues. In response to the insurance crisis now facing employers, unions, employees and the public in general, the Employer has proposed and has prevailed on its insurance proposals which shift a significantly greater bearing of the costs to the employees than they previously experienced. However, because of that significant cost shifting, under the relevant factors in Section 14(h) of the Act, I find that the Employer cannot realistically expect to also obtain a wage freeze for the first year and a small percentage increase in the second year of the Agreement.

V. AWARD

In sum, I find that:

1. All tentative agreements made by the parties are included in this award.
2. The Employer's offer on changes to the insurance language is adopted.
3. The Employer's offer on changes to insurance is adopted.

³⁰ FOP Exhibit Book 1 at Tab 3, pp. 4-6; FOP Brief at 20.

³¹ Memo of April 12, 2004 at 2-4; County Brief at 5-6.

4. The FOP's wage offer is adopted.

5. The FOP's offer on changes to the pay plan is adopted.



Edwin H. Benn
Arbitrator

Dated: June 24, 2004

