

IN THE MATTER OF ARBITRATION

BETWEEN

County of Rock Island

AND

**ILLINOIS FRATERNAL ORDER OF
POLICE - LABOR COUNCIL**

ARBITRATION AWARD:

**ILLINOIS STATE LABOR
RELATIONS BOARD CASE NO.
S-MA-04-060
Rock Island Sheriff's Department**

**Before Raymond E. McAlpin,
Neutral Arbitrator**

APPEARANCES

**For the Union: Gary Bailey, Attorney
Ted Street, FOP Rep**

**For the Employer: Art Eggers, Attorney
Karla Steele, Attorney**

PROCEEDINGS

The Parties were unable to reach a mutually satisfactory settlement of their negotiations covering the period December 1, 2004 - November 30, 2005 Reopener and, therefore,

submitted the matter to arbitration pursuant to the Illinois Public Employee Labor Relations Act. The Parties did not request mediation services. The hearing were held in Rock Island, Illinois on May 10, 2005. At these hearings the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses, and to make such arguments as were deemed pertinent. The Parties stipulated that the matter is properly before the Arbitrator. Briefs were received on June 30, 2005.

The Parties determined not to file reply briefs in this matter on July 8, 2005.

STATUTORY CRITERIA

(h) Where there is no agreement between the Parties, or where there is an agreement but the Parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

1. The lawful authority of the Employer.
2. Stipulations of the Parties.
3. The interests and welfare of the public and the financial ability of the unit of government to

meet those costs.

4. Comparison of the wages, hours and conditions of employment of the employees involved in the Arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 1. In public employment in comparable communities.
 2. In private employment in comparable communities.
 5. The average consumer prices for goods and services, commonly known as the cost of living.
 6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
 7. Changes in any of the foregoing circumstances during the pendency of the Arbitration proceedings.
 8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, Arbitration or otherwise between the Parties, in the public service or in private employment.
- (I) In the case of peace officers, the arbitration decision shall be limited to wages, hours and conditions of employment and shall not include the following: (I) residency requirements; (ii) the type of equipment, other than uniforms, issued or used; (iii) manning; (iv) the total number of employees employed by the department; (v) mutual aid and assistance agreements to other

units of government; and (vi) the criterion pursuant to which force, including deadly force, can be used; provided, nothing herein shall preclude an arbitration decision regarding equipment or manning levels if such decision is based on a finding that the equipment or manning considerations in a specific work assignment involve a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the factors upon which the decision may be based, as set forth in subsection (h).

ISSUES

	<u>Union</u>	<u>Employer</u>
Procedural Issue:	2 separate wage reopeners.	1 wage reopener.
Wages 12/01/03- 11/30/04:	Variable increase, primarily based on 4% increase to most steps for most deputies and lieutenants & 4.5% increase to most steps in the present pay scale for sergeants, 4 steps to each of the pay scales are added under the Union's proposal.	3% general wage increase.

Wages
12/01/04- 4% general wage increase. 4.269% general wage
11/30/05: increase.

COMPARABLES

The Parties have agreed to and stipulated the following six counties for the comparables in this matter and they are as follows:

Champaign County
Macon County
McLean County
Peoria County
Sangamon County
Tazewell County

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

The Arbitrator must first determine whether there are one or two issues in this interest arbitration. The Union filed two separate demands to bargain - the first on August 7, 2003 and the second on September 24, 2004. With respect to the first demand to bargain, when the Union filed for compulsory interest arbitration, the Labor Board was informed that the interest arbitration would

be limited to wages for the second year reopener. The County made no protest to either event. Subsequently, the Union proposed to postpone the hearing in order to consolidate the two reopeners into one arbitration hearing and the County agreed. The facts are clear from the letters entered into evidence and remain undisputed. The Union has been consistent as to the separate nature of these reopeners. The County, however, did an about face and now argues that there is only one issue. Up to that point there was no dispute by the County as to the Union's interpretation. It is the Union's position that the County is only taking this tact to avoid an embarrassing outcome. Nonetheless, it is the Union's position that both of its final offers, while separate, are the most appropriate regardless of the resolution of this procedural dispute.

Of the statutory factors required of interest arbitrators, there are four that are most relevant to this dispute. The first of those is comparability. Most interest arbitrators have found that external comparables are the most important factor when gauging the appropriateness of various proposals. The Union provided significant and detailed evidence regarding the wages paid in the comparables to the three ranks involved. The Employer for its part downplayed the weight of their significance and offered evidence supporting its contention that Rock Island County is the weak sister of these other counties and, therefore, comparisons are flawed. The Employer's case relies primarily on pity based on the fact that, compared to the six counties, Rock Island is the weak sister of the group with fewer resources and diminished capacities. Therefore, Rock Island argues that it should be excused from maintaining competitive salaries.

The County wants to be free from having to provide competitive salaries although it accepts

the burden of having to provide its taxpayers with public safety services. The record shows that Rock Island is in the middle based on crime statistics. The County attempted to downplay the work performed by the men and women of this bargaining unit even to the point of comparing them to the employees of the County Zoo.

The record in this matter shows that Rock Island County deputies are behind the comparables. In fact they are behind the average of the salaries of the deputies in comparable jurisdiction and almost every year of service. They are most frequently ranked fifth or sixth amongst the comparables. The Union's offer tends to reverse this situation while the County's offer actually magnifies the current disparity. While the effect of the Union's offer is slight, it produces a far more reasonable result than that advocated by the County. The Rock Island law enforcement officers are experiencing all the dangers inherent with the work at a far lower wage rate than their counterparts are being paid for performing identical work.

The Union's final offer for the first wage reopener includes the addition of four new steps in the pay plan. This proposal was designed to turn around the systematic depression of salaries without having the County experience inordinately huge pay increases therefore making the deputies pay plan more competitive. The additional steps do not subject the County to excessive costs due to the placement of the steps. In addition it provides for smoother wage transitions for younger deputies and brings those deputies closer to average than ever before. If the Union would have had to propose an across-the-board pay increase in order bring the deputies' closer to mid-range, the proposal would have been much higher. The County for its part holds on to its theory that it is exempt from having

to provide competitive salaries to its employees. Its proposal would in fact cause the deputies to rank even lower among the comparables than they are now.

With regard to the sergeants and lieutenants, their salaries are well behind the average salary of the comparable sergeants and lieutenants at every year of service. The level of disparity is severe and significant. In fact the County only made wage comparisons with respect to deputies and not sergeants or lieutenants. Apparently the County feels that the minority in the bargaining unit deserves absolutely no consideration whatsoever.

Not all sergeants and lieutenants are under collective bargaining agreements. Four of the comparables' sergeants and two of the comparables' lieutenants are under collective bargaining agreements. The Union's analysis shows that both sergeants and lieutenants are significantly below average at every year of service, most in the double digit area. The facts are that, because there are only six lieutenants and eight sergeants in the bargaining unit, it is far easier for the County to afford to bring those classifications closer to the average of the counterparts in terms of salary. Again, the County's offer would magnify this severe disparity while the Union's final offer maintains the standing that the Rock Island County sergeants will be most frequently ranked fifth among the comparables in any year of service with the lieutenants being even worse off than the sergeants. The facts are that the deputies, sergeants and lieutenants are being cheated out of a competitive wage and that the Union's proposal was most appropriate when examining the factor of comparability.

The Union understands that under the status quo concept it has the burden of showing that

special circumstances exist to impose the new benefit or new procedure. There are many examples of breakthrough situations awarded by interest arbitrators. The Union's proposal contains the addition of four steps. The County may argue that this is a deviation from the status quo. However, the Union has met its burden to prove that its wage offer is more reasonable under the circumstances of this case. As in other arbitrations, the comparable data overwhelming supports the Union's offer. The Union's offer is practical on every level since the County refuses to address, let alone acknowledge, the wage disparities for the sergeants and lieutenants which are way out of control. Therefore, the Union's proposal is most appropriate when examining the traditional factors of collective bargaining.

With respect to the interest and welfare of the public, the County does not make a case for an inability to pay. It asserts a difficult-to-pay case. It implies that its financial condition is not capable of addressing the financial requests of the Union. Despite the County's arguments, it is in better financial shape today than in previous years, and it has strong and vibrant economic growth, therefore, it has the money to address the problems that exist in the compensation plan. After all, the County has not even attempted to change the comparables found by Arbitrator Fischer. Possible financial problems do not overcome the other factors in Section XIV, in fact other interest arbitrators have found that actual financial problems do not overcome the importance of maintaining comparable wages. It is in the interest and welfare of the public to provide excellent law enforcement service in Rock Island County. Therefore, it is the Union's proposal that is most appropriate.

The Arbitrator must consider cost of living. The Employer's offer for the first reopener year

is below the cost of living. The Union's offer is greater than the cost of living but not significantly excessive, and it is the more reasonable of the two offers. Arbitrators have also found that the cost of living in the interest arbitration has no relation to the consumer price index but should be a measure of pay in comparable situations since the Bureau of Labor Statistics does not provide a true measure of cost of living. Based on that theory, it is the Union's proposal that is much more reasonable.

The other four statutory factors - lawful authority of the Employer, stipulations of the Parties, the overall compensation and changes during dependency - do not have any effect on this arbitration case. Therefore, the evidence presented by the Union supports its final offer and, as a result, the Arbitrator should accept that offer in its entirety.

EMPLOYER POSITION

The following represents the arguments and contentions made on behalf of the Employer:

The Parties have agreed on six comparable counties. Rock Island County has the following ranks among the seven counties: fifth in population, last in EVA, second to last in median value of single family owner-occupied homes, fifth in general fund revenues, sixth in general fund revenues per capita, and second to last in medium family income and fifth in median family household income. Despite this, Rock Island County ranks in the middle for public safety expenditures and third in

public safety expenditures per capita.

The Union has argued that there are two wage reopeners the result of which would be that the Arbitrator would be able to consider the Parties' proposals for each year separately as opposed to being bound to award one Party's proposal for both years together. The plain language of the contract states that there is one reopener and that that reopener is for wages for the last two years of the contract. The Union argued that, since it sent two reopener letters and there was no response from the sheriff, it was able to change the terms of the contract by actions it took or actions the County failed to take at that time. However, the Parties agreed to only one reopener and one period of time for the notice and negotiation of the reopener. The only reason the Union would like the Arbitrator to find there are two reopeners is that the Union's offer is higher in the first year while the County's offer is higher in the second year.

With respect to the wages, the offers are detailed above. This is a breakthrough proposal by the Union and a change in the status quo. The steps that are currently in the contract have been the same throughout the 16 year bargaining relationship. Generally speaking, a change in the status quo requires a need for change or that the need can be addressed without imposing undue hardship or that there is a quid pro quo.

The Union has not stated a compelling need for the change in the wage schedule. The Union argued that wages are below average, yet the wages paid are still ranked well among the communities especially when considering the County's rank in terms of financial data. There has been no sudden

change since the Parties' last negotiation that justifies any change much less a breakthrough. The ranking of wages does not show a compelling need for adding new steps, particularly given the County's financial data. Likewise, the rolling effect argued by the Union is hardly a reason to drastically alter the wage schedule and add new steps. The rolling effect is an expected phenomenon when considering that all the counties do not have the same steps.

The Union also argued that there should be a greater difference between the top deputy rates and the top sergeant rates and the top lieutenant rates. The Union did not show why such a change is necessary. There was no showing that it is difficult to retain or recruit sergeants and lieutenants of a particular longevity. Therefore, the Union has not proven a compelling need for a breakthrough of a structural change in the wage schedule, nor has the Union offered a sufficient quid pro quo.

With respect to other factors the County's financial status mitigates in favor of the County's proposal. Rock Island County is not as wealthy as most of the comparable counties. In addition, the cost of living index mitigates in favor of the County's proposal. The increase proposed by the County in the second year is much closer to the CPI and the third indicates that it would exceed CPI. Therefore, CPI for the past three years supports the County's wage proposal.

The comparable counties' general wage increase on a percentage basis is more generous under the Rock Island County proposal than any of the comparable counties. The County believes that data for Macon and MacLean Counties is incorrect in the Union's book.

The internal comparables support the County's position in that all bargaining units have settled for exactly the same percentage as is being offered to the deputies.

The workload of Union's members compared to comparable counties should also be considered. Rock Island County ranks in the middle in terms of the crime rate index. Also the number of sworn officers per resident is lower in Rock Island County than any other county.

Despite the above, the financial data shows that the wages currently enjoyed by the deputies rank well among the comparable counties' current wages, particularly when focusing on the deputy position. Rock Island County generally ranks in the middle of the pack based on actual wages for the two years of the reopener. For all of the reasons the Arbitrator should rule in favor of the County's wage proposal.

DISCUSSION AND OPINION

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Illinois legislature determined that it would be in the best interest of the citizens of the State of Illinois to substitute interest arbitration for a potential strike involving public employees. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair

and equitable in this circumstance. The statute provides that the Arbitrator must choose the last best offer of one side over the other. The Arbitrator must find for each final offer which side has the most equitable position. We use the term “most equitable” because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of 8 factors contained within the Illinois revised statute (and reproduced above). It is these factors that will drive the Arbitrator’s decision in this matter.

Prior to analyzing each open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion.

This is difficult to apply in this Collective Bargaining context. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector employees generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. In any event, both sides have agreed that the wage increases for this bargaining unit would exceed the cost of living percentage increases no matter what source.

Procedural Issue:

In contract interpretation cases, the arbitration process is not a court of equity in which the Arbitrator has the luxury of determining what is fair, equitable or even reasonable in the face of what might be considered by some to be unreasonable contract language. Where an arbitrator determines that the contract language is clear, it is his/her obligation to order the Parties to follow that course of action. Arbitrators receive their authorities from the appropriate arbitration statutes, the issues stipulated by the Parties, and most importantly the Labor Agreement. It is the Arbitrator's obligation to read the agreement, and once he/she determines the intent of that language, to relate that intent

to the Parties. This must be done irrespective of the Arbitrator's personal feelings as to what would constitute an appropriate or perhaps even a reasonable provision of a Collective Bargaining Agreement.

As with all arbitration matters, the Arbitrator is bound by the clear language of the Collective Bargaining Agreement. That language states in pertinent part, "The Employer and the Union may reopen the agreement for the sole purpose of negotiating wage rates only to become effective on the first day of the second year and the first day of the third year of the agreement." Despite the Union's effort to bifurcate the reopeners, the Arbitrator finds that this language is clear and unambiguous and that the reopen is a singular event covering both the second and third years of the Collective Bargaining Agreement. Therefore, the Arbitrator finds that he is obligated to treat the issues as a single event and not allow for such bifurcation.

Wages:

The Employer has argued that it is in a difficult economic position which provides the main justification for its proposals. This ties into statutory criterion #3, "The interest and welfare of the public and the financial ability of the unit of government to meet these costs." The Employer made a number of compelling arguments in this area and certainly, if this were the only criterion to be considered, it would place the Employer's proposal in a most favorable light. However, this

Arbitrator has always found that interest and welfare of the public is a two-sided coin. Certainly, the residents of Rock Island County have the right to expect that their units of government will operate in a financially responsible way. However, the citizens of Rock Island County would also be placed at a disadvantage were the County be over time unable to attract and retain competent employees. This is particularly true in the command staff area. The Arbitrator would also have to consider the long term morale of the bargaining unit. The Arbitrator would also consider the fact that given the record in this case either Party's offer would not place an undue financial hardship on the County of Rock Island. In any event this factor somewhat weighs in favor of the Employer's position.

With respect to cost of living, this Arbitrator's position on cost of living is well published and well known and is contained within the record of this award above. The Arbitrator finds that cost of living criterion is not determinative with respect to either side's offer.

Internal comparables are next. The Employer argued that the internal comparables, at least on a percentage basis, favor the Employer's position and, in fact, the record shows that the offer made to the deputies, sergeants and lieutenants on a percentage basis is exactly the same as that accepted by five other bargaining units. There is no showing in the record as to what that means in terms of dollars, however, this Arbitrator has consistently found that public safety units are extremely difficult to compare with non-public safety units and that the only other bargaining unit that has at least some internal comparability would be that of firefighters/paramedics, which we do not have in this case. Therefore, the Arbitrator finds that internal comparables are not determinative in this matter.

The Employer also argued that the bargaining unit has a lighter workload than other comparable counties. While the crime statistics place Rock Island in the middle, it has a greater number of sworn officers than all but two other counties and have the highest ratio of sworn officers per resident. The Arbitrator does not find this argument particularly persuasive. The crime index shows that the Rock Island bargaining unit experiences crimes at a higher rate than three counties and at a lower rate than three other counties. Likewise, it is the Sheriff that determines the number of sworn officers that he needs to complete the mission in Rock Island and that is an employer determination and not a union determination.

We are then left with the external comparables. To their credit the Parties have agreed to the comparables. The overwhelming evidence in this case shows that this bargaining unit based on actual dollars paid is losing ground with respect to the agreed upon comparables under the Employer's offer. This is true even though the Employer's offer in the third year of the contract and second year of the reopener is somewhat higher than the Union's proposal. This Arbitrator has always been very reluctant to compare percentage increases and has consistently found that actual dollars of pay are the most important when making a determination based on external comparables. Therefore, the Arbitrator finds that the external comparables criterion strongly favors the Union's proposal.

We come then, finally, to the status quo. As noted above, this Arbitrator has found that in this matter the burden falls heavily on the Union to justify its position, provide strong reasons and a proven need. The Arbitrator finds that the Union has fully met the criteria for changing the status quo

with the exception of a quid pro quo. There is a proven need for a change. The change proposed by the Union would meet that need and there would not be an undue hardship, therefore, the Arbitrator finds that the Union has met its burden and will so award.

AWARD

Under the authority vested in the Arbitration Panel by Section XIV of the Illinois Public Employees Labor Relations Act the Arbitrator finds that the wage proposal which most nearly complies with Sub-Section XIV(h) is the Union's offer.

Dated at Chicago, Illinois this 1st DAY of August, 2005.

Raymond E. McAlpin, Arbitrator
