

**ILLINOIS LABOR RELATIONS BOARD
INTEREST ARBITRATION
LISA SALKOVITZ KOHN,
ARBITRATOR**

**COUNTY OF KANKAKEE and the SHERIFF
OF KANKAKEE COUNTY,
Employer,**

and

**ILLINOIS FRATERNAL ORDER OF POLICE
LABOR COUNCIL,
Union.**



Case No. S-MA-07-046

Hearing Held: June 13, 2008

Hearing Closed: October 1, 2008

Appearances:

For the County and Sheriff: James K. Borcia,
Tressler, Soderstrom, Maloney & Priess

For the Union: Gary L. Bailey,
Illinois FOP Labor Council

ARBITRATION AWARD (corrected 1/30/09)

I. INTRODUCTION

This is a impasse arbitration held pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1, *et seq.*, subject to certain agreed-upon modifications set forth in their Ground Rules and Stipulations, Joint Exhibit 1. The Union, the Illinois FOP Labor Council, and the Employer, the County of Kankakee and the Sheriff of Kankakee County, selected the undersigned Arbitrator to serve as the sole member of the arbitration panel in this matter, waiving their respective rights to appoint an Employer and Union delegate to the panel. Jt. Ex. 1, ¶ 3. The parties have stipulated that there are no procedural matters at issue, and that the Arbitration Panel has jurisdiction and authority to rule on the mandatory subjects of bargaining submitted to it as authorized by the Act. *Id.* At the hearing, held September 10, 2002, both parties were given the opportunity to present such evidence and argument as they desired, including an examination and cross-examination of all witnesses. The parties submitted post-hearing briefs, the latter of which was received on October 1, 2008. The record was closed at that point.¹ The parties have directed that their tentative agreements on other matters, as set forth in Joint Exhibit 4, shall be incorporated into the Arbitrator's award in this matter. Jt. Ex. 1, ¶ 7.

¹On October 3, 2008, the County sent an email to the Arbitrator and the Union stating that "The FOP's brief raises a number of issues that require clarification by the County," and offering its response. The Union objected. The Arbitrator, not having reviewed the briefs or the County's response, stated that she would rule on whether to strike all or part of the response in due course, and would permit the Union to respond to any new material not stricken. After reviewing the email and the briefs, the Arbitrator finds that the County's response adds nothing to her consideration, and is stricken.

II. ISSUES

The parties submitted the following issues to the Arbitrator, stipulating that they are mandatory issues of bargaining and economic issues within the meaning of Section 14(g) of the Illinois Public Labor Relations Act, and that the Arbitrator must choose either the County's offer or the Union's offer on each issue:

"Union Issues:"

1. Section 22.1 - Wages for Corrections Officers
2. Section 22.1 - Wages for Clerks
3. Section 22.1 - Rank Pay
4. Section 22.1 - Clothing Allowance

"Employer Issues:"

1. Section 4.8 - Members Rights
2. Section 21.1c - Hours of Work
Section 21.1d - Hours of Work
Section 21.4b - Hours of Work
3. Section 22.1 - Wage Language

In addition, the parties have submitted an additional issue, the Union's proposal on Section 26.8 - Residency, stipulating that it is a mandatory subject of bargaining, and is non-economic within the meaning of Section 14 (g) of the Act, and that the Arbitrator may choose either party's offer or may write her own provision.

III. STATUTORY FRAMEWORK

Section 14(h) of the Act, 5 ILCS 315/14(h), provides that:

[T]he arbitration panel shall base its findings, opinions, and order upon the following factors, as applicable:

- (1) The lawful authority of the employer;
- (2) Stipulations of the parties;
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs;

- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities;
 - (B) In private employment in comparable communities:
- (5) The average consumer prices for goods and services commonly known as the cost of living;
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, and 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.

In the discussion that follows, the factors most determinative of the outcome of this Interest Arbitration are highlighted. However, all the statutory factors, including all of the parties' stipulations, have been considered in reaching this decision and Award.

IV. BACKGROUND AND EXTERNAL COMPARABLE COMMUNITIES

Kankakee County, Illinois, has a population of approximately 109,000, with a median family income of \$57,338. In 2006, the County had a per capita personal income of \$27,718, or 72% of the State average, ranking it 52nd in the State.² The Union represents a bargaining unit consisting of 113 Corrections Officers and 8 Office Clerks. The last contract was effective from December 1, 2003 to November 30, 2006.

This is the parties' first interest arbitration, so there is no historical identification of

²Based on data from the Economic Alliance of Kankakee County and the Bureau of Economic Analysis of the U.S. Department of Commerce.

“comparable communities” upon which an arbitrator may rely in making the comparison of “wages, hours and conditions of employment of employees involved in the arbitration proceeding” with those of employees in “comparable communities,” as provided in Section 14(h)(4)(A) and (B). In selecting a pool of comparable communities, arbitrators traditionally consider a variety of factors in an effort to identify communities whose demographic, financial and other labor market characteristics approach those of the jurisdiction in arbitration sufficiently that a pattern of terms in their agreements might be relevant in determining what the arbitrating parties reasonably would have agreed to had their bargaining process not broken down. What factors should be considered will vary depending on the issues where impasse has been reached: For example, a community’s tax base may be highly relevant to a dispute over wages or health insurance, but less relevant to a dispute over the non-economic issue of residency. *City of Macomb and Illinois FOP Labor Council*, No. S-MA-01-161, p. 15 (Malin, 2002).

Following the traditional approach, the Union considered nine counties in geographic proximity to Kankakee County: Will, Kendall, Grundy, LaSalle, Livingston, McLean, Ford, Champaign, and Vermilion Counties. The factors cited by the Union for each county were total population, total workforce, total payroll, equalized assessed valuation of property, the general fund balance, total revenues, total expenditures and the crime index per 100,000 residents. The Union suggests that Will is not comparable to the rest of the group because it is so much larger in all measures that any other county on the list. The arbitrator agrees. At the other end of the spectrum, Livingston, Iroquois, and Ford Counties are much smaller than the other counties, particularly in total general revenues,

total general expenditures and crime index. Vermilion has a relatively high crime index within the group of ten counties considered, but its lower EAV, in contrast to the relatively large full-time workforce and substantial population renders its less than comparable to Kankakee. What is left as a comparable group of counties are Champaign, McLean, LaSalle, Kendall and Grundy counties. Within this group, the statistics examined by the Union are as follows:

County	Population	EAV	FT Salaries	FT Emp.	Gen. Fund Balance	Total Gen. Revenues	Total Gen. Exp.	Crime Index per 100K
Champaign	179,669	2,801,111,358	30,445,303	729	2,972,175	28,248,787	28,103,328	7,263
McLean	150,433	2,920,446,010	29,605,018	726	11,264,567	36,557,052	35,893,170	5,110
LaSalle	111,509	1,981,988,738	18,782,150	530	8,687,624	24,090,462	22,415,566	3,171
Kendall	88,158	2,338,598,389	13,390,894	165	9,636,509	18,040,938	17,939,933	2,058
Grundy	45,828	1,307,393,031	7,655,091	240	4,061,315	12,495,807	12,739,028	1,119
AVERAGE	115,119	2,269,907,505	19,975,691	478	7,324,438	23,886,609	23,418,205	3,744
Kankakee	103,833	1,905,050,370	21,546,773	531	4,963,509	18,040,938	17,939,933	2,058

The Employer asserts that there are no communities comparable to Kankakee, because Kankakee, unlike the counties considered by the Union, has been listed on the 2007 “poverty watch” list of the Heartland Alliance for Human Needs & Human Rights, a private organization.³ However, it is unclear to what extent the “needs” criteria identified by that organization represent services that are or should be the responsibility of the County, as opposed to state, federal, or municipal governments, and there is no indication that this information was relied upon by the County, or relayed to the Union, in the course of their negotiations. In particular, the County has not asserted that it lacks the ability to pay as a basis for its final offer on any of the identified issues. As a result, this private ranking is of little value in assessing the appropriate resolution to the issues identified by

³In fact, it appears that Livingston County was also on the Alliance’s poverty watch list for 2006.

the parties.

Although the Employer also asserts that the Kankakee County jail is significantly larger and has more employees than the jails in the counties in the Union’s comparison, there is no evidence in the record to support this comparison, so there is no reason to conclude, as the Employer does, that a wage increase for corrections officers would have a larger impact in Kankakee County than it would in the other counties. In addition to some of the data in the table above, the Employers cites the following statistics from the record:

County	EAV per capita	Sales tax	Sales tax per capita	Property tax	Sales tax per revenue	Property tax per revenue
Champaign	\$ 15,165	\$ 6,251,474	\$ 33.84	\$ 7,140,060	22.1%	25.3%
McLean	\$ 18,116	\$ 5,812,716	\$ 36.06	\$ 9,395,546	15.9%	25.7%
LaSalle	\$ 17,529	\$ 971,371	\$ 8.59	\$ 3,325,287	4.0%	13.8%
Kendall	\$ 26,527	\$ 2,941,261	\$33.36	\$ 5,265,261	16.3%	29.1%
Grundy	\$ 28,528	\$ 2,641,563	\$57.64	\$ 3,882,716	21.1%	31.1%
AVERAGE	\$ 21, 173	\$ 3,723,677	\$ 33.90	\$ 5,801,774	15.9%	25.0%
Kankakee	\$ 17, 463	\$ 9,183,846	\$84.18	\$ 3,582,918	31.5%	12.3%

The Employer correctly notes that none of these counties precisely mirrors Kankakee. Kankakee has the highest sales tax by far, and gets a much lower proportion of its revenue from property taxes than all of the “comparable” counties other than LaSalle. However, the purpose of identifying a group of comparable communities is to smooth out these differences to the extent possible, and on most measures, Kankakee is within the range of the group identified by the Union. No single county or community is likely to be absolutely comparable on all measures to any other; however, by considering a group that roughly approximates the characteristics of the relevant economic and labor market, an arbitrator may derive a reasonable sense of what would have resulted in the community in question, had the parties been able to bargain to agreement. Kankakee County is not so unique that these assessments are impossible. The Union’s group of communities

provides a reasonable basis for comparison here.

The additional statutory factors listed in Section 14 of the Act will be discussed below as relevant to the various issues in the parties' final offers.

VI. ANALYSIS AND CONCLUSIONS

A. Economic Issues

1. Corrections Officer Wages

The Union's final offer on corrections officer wages is to increase the current pay scale as follows:

As of 12/01/06:	Add \$1000 to each step, then increase 4.0%
As of 12/01/07:	Add \$1000 to each step, then increase 4.0%
As of 12/01/08:	Add \$1000 to each step, then increase 4.5%
As of 12/01/09:	Add \$1000 to each step, then increase 4.5%

The County's final offer on wages for corrections officers (and all bargaining unit employees) states:⁴

In addition to the wages and economic benefits set forth in the previous labor agreement between the parties, all employees will receive the following raises from their pay as of November 30, 2006, retroactive to December 1, 2006 according to the following schedule:

12/1/06	12/1/07	12/1/08	12/1/09	Total Raise	Average Raise per year
7.49%	7.07%	6.06%	6.55%	27.17%	6.79%

Because of the different structures used, the County's offer is higher for a few steps during several years of the contract, but overall, it appears that the Union's offer would require more "new money" than the Employer's.

⁴The County confirmed at the hearing and clarified in Appendix A of its post hearing brief that the percentage increases would apply each year to the entire 20 steps of the Corrections Officer pay scale.

The Union contends that its offer is justified by both internal and external comparability. The average corrections officer pay for the five comparable counties in 2006-2007 ranged from \$35,945 for a new hire up to \$54,305 after 20 years, the highest step on the Kankakee pay scale, and even higher, up to \$57,326 after 30 years, the highest step on the Grundy County and Kendall County scales. In comparison, the 2005-2006 pay rate for corrections officers in Kankakee County ranged from \$26,000 for a new hire up to \$40,310 after 20 years. The Kankakee County rates are respectively 38.25% and 34.72% less than the corresponding average rates in the comparable group. After 30 years, the Kankakee County corrections officer would make 42.21% less than the average. Under the Union's offer, by the 2009-2010 contract year, a Kankakee corrections officer would still make less than the **2006-2007** comparison group average, 2.2 % less for a new hire, and 5.1% less after 20 years, with the difference over 6% at some levels. Although the Employer's offer is slightly higher than the Union's for employees with more than 15 years' service by 2009-2010, it is substantially less at the lower levels, beginning at 5.9% below the average for new hires. It is impossible to gauge how these offers will compare with the 2009-2010 average for the comparison group, since only LaSalle and Grundy Counties have negotiated their rates for that period.⁵

The more important factor to the Union is that its final offer purportedly maintains the pay disparity between the County's sheriff's deputies and the corrections officers.

⁵The increases negotiated so far are 7.0% for each of the next four years in Grundy County; 3.0% for each of the next four years in LaSalle County; a 4.0% for the next year in Champaign County; increases of 4.0%, 4.0% and 5.0% in Kendall County, and increases of \$1,000 for each of the next two years in McLean County.

According to the Union, this disparity is discussed by the parties at the bargaining table. The Union offer does not bring corrections officers' pay scale up to that of the sheriff's deputies'. Instead, the Union's offer of \$1000 + 4.0%, \$1000 + 4.0%, \$1000 + 4.5%, and \$1000 + 4.5% is identical to the increases the County agreed to give the sheriff's deputies for contract years 2005 through 2009. Considering the Employer's offer, the Union notes that the Employer has failed to explain how it arrived at the non-rounded percentages for each year's raise.

The Employer justifies its offer on the grounds that the increases it proposes are much higher than the negotiated increases for December 2004 (3%) and 2005 (2.5%), and for the years 1999 to 2002 (2.3%), and that its offer of straight percentage increases is consistent with the structure of those previous increases for this unit. The Employer asserts that the Union has offered no reason to depart from this methodology, other than the example of the sheriff's deputies' contract. However, the Employer rejects the importance of internal comparability with its sheriff's deputies, on the ground that the sheriff's deputy and corrections officer positions are not comparable and have never been treated as comparable by the parties. The parties agree that sheriff's deputies are more highly skilled and in Kankakee County historically have been paid at a higher rate than corrections officers.⁶

⁶The County appended a variety of data from the U.S. Department of Labor and Forbes magazine concerning the relative qualifications, training, and duties of sheriff's deputies and corrections officers. (Appendices B, C and D to County's brief) Even though the parties agree that sheriff's deputies are generally a more highly skilled and highly paid job classification, this data should have been presented at the hearing when it would have been subject to cross-examination and response by the Union. Those Appendices have not been considered by the Arbitrator in reaching her decision.

With respect to other statutory factors, it should be noted that both parties' offers significantly exceed the cost of living increases of 3.31% in 2006 and 2.83% in 2007. The County is not asserting an inability to pay either increase, but contends that the interests and welfare of the public dictate that the County maintain a fiscally responsible budget and should not pay a higher increase unless there is some public benefit from that expenditure, and there is no evidence on the record that the Union's higher offer is necessary to solve a retention or recruitment problem in the bargaining unit.

The Arbitrator finds that both parties have made reasonable offers as to the wages of the corrections officers. Both well exceed the cost of living data. However, the County's offer, as overall the more fiscally-conservative of the two, more closely complies with the statutory factors listed in Section 14(h). In particular, the County's offer is well within the range of the comparable counties, as is the Union's. On this record, internal comparisons with the sheriff's deputies are of little value: The parties disagreed in their presentations as to the extent that the sheriff's deputies' contract has been used as a guide to the parties in reaching agreements for the corrections unit, and the units' contracts themselves fail to demonstrate a historical relationship over time. The mere fact that the Union's offer mimics what the sheriff's deputies achieved in their last negotiation is not a sufficient reason to select its offer over the County's, particularly where some steps in the pay scale proposed by the County actually exceed the same steps in the Union offer. While it is in the interest of public welfare that the County provide a competitive wage and benefit package in order to attract and keep quality public servants, the data about comparable counties and the absence of recruitment or retention problems within the County's corrections unit

demonstrate that the Employer’s offer will suffice to service the interests and welfare of the public in this regard. Therefore, the public interest is better served by the County’s offer, which will place a smaller burden on the County’s budget. For these reasons, the County’s offer as to the wages of corrections officers is adopted.

2. Clerks Wages

The Union’s final offer on clerks’ wages is to increase the current pay scale as follows:

- As of 12/01/06: Add \$1000 to each step, then increase 4.0%
- As of 12/01/07: Add \$1000 to each step, then increase 4.0%
- As of 12/01/08: Add \$1000 to each step, then increase 4.5%
- As of 12/01/09: Add \$1000 to each step, then increase 4.5%

The County’s final offer on wages for clerks states:⁷

In addition to the wages and economic benefits set forth in the previous labor agreement between the parties, all employees will receive the following raises from their pay as of November 30, 2006, retroactive to December 1, 2006 according to the following schedule:

12/1/06	12/1/07	12/1/08	12/1/09	Total Raise	Average Raise per year
7.49%	7.07%	6.06%	6.55%	27.17%	6.79%

The new wage schedules would be, respectively:

Union Proposal

<u>Eff. Date</u>	<u>Start</u>	<u>After 6 mos</u>	<u>After 1 yr.</u>	<u>After 2 yrs.</u>	<u>After 3yrs.</u>
12/1/06	\$ 11.48/hr	\$ 12.03/hr	\$ 12.57/hr	\$ 13.13/hr.	\$ 13.68/hr.
12/1/07	\$ 12.44/hr	\$ 13.01/hr	\$13.58/hr	\$ 14.15/hr	\$ 14.72/hr
12/1/08	\$ 13.50/hr	\$ 14.10/hr	\$ 14.69/hr	\$ 15.29/hr	\$ 15.89/hr
12/1/09	\$ 14.61/hr	\$ 15.24/hr	\$ 15.85/hr	\$ 16.48/hr	\$ 17.11/hr

⁷The County confirmed at the hearing and clarified in Appendix E of its post hearing brief that the percentage increases would apply each step of the wage schedule for Office Clerks.

County Proposal

<u>Eff. Date</u>	<u>Start</u>	<u>After 6 mos</u>	<u>After 1 yr.</u>	<u>After 2 yrs.</u>	<u>After 3yrs.</u>
12/1/06	\$ 11.35/hr	\$ 11.92/hr	\$ 12.48/hr	\$ 13.05/hr.	\$ 13.62/hr.
12/1/07	\$ 12.15/hr	\$ 12.76/hr	\$ 13.36/hr	\$ 13.97/hr	\$ 14.58/hr
12/1/08	\$ 12.89/hr	\$ 13.53/hr	\$ 14.17/hr	\$ 14.82/hr	\$ 15.46/hr
12/1/09	\$ 13.73/hr	\$ 14.42/hr	\$ 15.10/hr	\$ 15.79/hr	\$ 16.47/hr

The parties agree on a desire to maintain historical parity between the clerks and the corrections officers in this bargaining unit, and their proposals reflect that. They both propose the same increase for the clerks as they do for the corrections officers. This is a strong indication that internal comparability is the driving force on this issue. Having determined that the Employer’s final offer for the corrections officers most closely satisfies the statutory factors in Section 14(h), I find that the Employer’s final offer for the clerks is also the most appropriate in light of those factors.

3. Rank Pay

Section 2 of Appendix D of the parties’ 2003-2006 contract states:

Command Corrections Officers shall be paid a base pay according to the pay schedule set forth in Section 1 of Appendix D above. Additionally, they shall receive yearly command rank pay, payable pro-rata in each pay period as follows:

	Corporal	Sgt.	Lieutenant
***	***	***	***
12-1-05	\$2,200	\$3,725	\$5,650

The Union proposes to increase rank pay by \$500 each year:

	<u>Corporals</u>	<u>Sergeants</u>	<u>Lieutenants</u>
Current	\$2,200	\$3,725	\$5,650
12/1/06	\$2,700	\$4,225	\$6,150
12/1/07	\$3,200	\$4,725	\$6,650
12/1/08	\$3,700	\$5,225	\$7,150
12/1/09	\$4,200	\$5,725	\$7,650

The County proposes to leave the Command Officers' pay unchanged.

The Union's primary argument is based on internal comparability. The extra pay for the corporals, sergeants, and lieutenants among the sheriff's deputies increased \$500 in December 2005, December 2006, December 2007 and December 2008. Among sheriff's deputies, as of December 2008, corporals make an extra \$4,500 per year, sergeants make an extra \$6,100 per year, and lieutenants make an extra \$8,000 per year.

The County contends that in seeking an increase, the Union is seeking change in the *status quo*, for which it must "provide strong reasons and a proven need," and must show that it offered a *quid pro quo* of sufficient value. *County of Cook/Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council, L-MA-96-009 (McAlpin, 1998)*. Ironically, the Union characterizes the County's position as changing the *status quo*, because the County would depart from the pattern of annual increases in rank pay. Which offer would change the *status quo*?

In fact, the "*status quo*" analysis that will be discussed in detail later in this decision is not readily applicable to most wages or wage-like terms. Arbitral reluctance to approve a final offer that would result in a significant change in the *status quo* between the parties

derives primarily from the desire not to have interest arbitration become an easy and attractive route for a party that has failed to provide meaningful inducements at the bargaining table to achieve the changes desired. However, a percentage or flat dollar wage increase is not ordinarily a change in *status quo* that imposes a heightened burden of proof.⁸ Where routine increases are at issue, the arbitrator's inquiry is more properly on the likely bargain - the amount of the increase, if any - that the parties would have reached on their own in light of relevant labor market and other relevant, mostly economic, influences. The parties' competing final offers on rank pay are best considered in light of these standard factors, rather than as changes in *status quo*.

With respect to rank pay, the Arbitrator finds that the Union offer is the more appropriate, when the applicable statutory factors are applied. The notion that it is desirable to preserve a differential in compensation between the rank-and-file and command officers is reflected both in the parties' previous agreements for corrections officers, and in the County's sheriff's deputies' contract. Just as the County saw fit to agree to measured annual increases in the command pay for sheriff's deputies, the same considerations support preserving the value of the corrections officer command positions. The amounts in question are not large, and the County has offered no countervailing reason to decrease the relative value of the command positions within the corrections officer unit. The Union's offer will be adopted.

⁸A "non-routine" increase that would be a change in *status quo* can be imagined, such as one that would tie an increase to performance, or would alter substantially the underlying structure of a wage scale. That is not the case with the Union's rank pay increase proposal. See, however, the discussion below of the parties' clothing allowance offers.

4. Clothing Allowance

The current agreement provides corrections officers with an annual clothing allowance paid in December each year. The allowance was \$400 effective December 1, 2003. It was increased to \$450 effective December 1, 2005. The Union's offer is that the allowance be increased by \$50 each year of the new contract to \$500 in December 2006, \$550 in December 2007, \$600 in December 2008 and \$650 in December 2009. This amounts to a 37.13% increase over the life of the contract.

The County's offer is that the allowance be increased once, to \$500, effective the first year of the contract, but that the payment be made in two installments, half in December and half in June. This is a 11.11% increase over the life of the contract.

Within the comparable counties, there is wide variation: In Champaign and Grundy Counties, the County simply provides corrections officers with uniforms and equipment, replacing pieces as needed. In Kendall County, new hires are provided with uniforms, but there is no provision for replacement or an allowance to replace worn items. LaSalle County provides an initial issuance of uniforms, and a voucher account of \$500 annually for replacement of worn items; however, the process was still under negotiation at the time of ratification of the 2005 contract. McLean County provides uniforms other than shoes, and a reimbursement of up to \$100 annually for shoes. Kankakee County sheriff's deputies also receive an annual allowance, payable in December of each year. Since 2002, that allowance has been \$700, and will continue at that rate through November 2009.

Although this is a single issue, there are two aspects to consider – the amount of

the allowance, and the schedule on which it will be paid. With respect to the amount of the allowance, the Union's proposal will result in a larger allowance than LaSalle's \$500 voucher, but less than the sheriff's deputies' allowance. The County's proposal would equal LaSalle's voucher. Neither party offered any evidence of the actual costs incurred by officers to replace worn uniform items. Were the amount of the allowance the only feature of the parties' proposal, it would be tempting to say that the Union had failed to justify the much larger increase it proposes.

However, the County proposes that the allowance be divided into two semi-annual payments. This would be a change from the present payment schedule. In contrast to an increase in the dollar amount of the allowance, a change in the structure of the allowance is the type of change in *status quo* that arbitrators are reluctant to grant without proof that the imposition of the change is warranted, given the parties' failure to adopt it voluntarily through collective bargaining. Both parties recognize that the party proposing a significant change in the *status quo* bears the burden of providing strong reasons and a proven need for the change. See, e.g., *MAP Cook County Dept. of Corrections Chapter 222 and County of Cook/Sheriff of Cook County*, L-MA-04-006 (Arb. Fletcher, 2006). As Arbitrator Nathan observed, "[I]t is the party seeking the change that must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process." *Will County Board/Sheriff of Will county and AFSCME Local 2961*, S-MA-88-9, pp. 52-53 (Nathan, 1988).

The County's stated reason for the change to a semi-annual payment is "to better ensure that the allowance is actually used for uniform clothing." The County asserts that,

“Based on past experience, officers who receive the entire allowance in December may view this as a holiday bonus and spend the allowance on items other than clothing uniforms.” There is no evidence to support this. The County also reasons, without evidence, that because uniforms may wear out throughout the year, having a second allowance payment in June assists in replacing those worn out items, thereby enabling employees to better manage the clothing allowance for its intended purpose. Even this reasoning is open to question: The Union responds, again without evidentiary support, that the single payment increases the employee’s ability to use it effectively whenever an item wears out and/or when a vendor offers a discount.

The Arbitrator concludes that the alteration of the single-payment schedule for the clothing allowance is a matter best addressed at the bargaining table. The County has failed to demonstrate that there is a proven need for the change or that the proposal meets that need without imposing an undue hardship on the other party. *Cf. County of Rock Island and Illinois Fraternal Order of Police Labor Council, S-MA-04-060 (Arb. McAlpin, 2005)* It is therefore unnecessary to consider whether the Union has unduly resisted efforts at the bargaining table to address the supposed problem (a factor considered by the neutrals in *Will County, supra* (Arb. Nathan) and *City of Burbank and Illinois Fraternal Order of Police Labor Council, S-MA-97-56, p. 13 (Arb. Goldstein, 1998)*) or whether the County offered a *quid pro quo* at negotiations sufficient to “buy” the change. *County of Rock Island, supra*. Because the Arbitrator cannot pick apart the offers on an economic issue, but must accept either one or the other in full, the County’s inclusion of the provision to change the structure of the clothing allowance as well as the amount requires that the

Union's offer be accepted as the more appropriate choice.

5. Union Negotiating Team

Article 4, Section 8 states:

Members designated as being on the Union negotiating team who are scheduled to work during the time meetings will occur, shall, for the purpose of attending scheduled negotiations, be excused from their regular duties without loss of pay. If a designated Union negotiating team member is in regular day off status on the day of negotiations, he will not be compensated for attending the session.

The Employer proposes to add after the first sentence the following language:

The Employer shall not be required to pay more than a maximum of three (3) bargaining unit members while serving on the union negotiation team.

The Union opposes any change to the section. The parties have stipulated that this is an economic issue.

The County asserts that the new language would place a reasonable limit on the number of members of the negotiating team that will be compensated while attending negotiations, without restricting the number of members who may attend. According to the County, there has been a problem with the number of employees coming to negotiations rather than working at their jobs, with most, in the County's view, not substantively participating in the sessions. The County provided sign-in sheets for two meetings, the first and the fourth, showing that the Union team at those sessions included thirteen employees. However, it is unclear how many of the attendees were paid for the time attending those meetings, and how many were off duty. The County contends that it is unnecessary and unjust for the County to be forced to pay for this many employees to attend negotiations.

The Union objects that in order to adequately represent the interests and desires of the 113 corrections officers (including corporals, sergeants, and lieutenants) and the 8 clerks in the unit, the Union's bargaining team usually consists of clerks, corrections officers, and representatives of some of the ranks, and draws on corrections officers serving on different shifts. According to the Union the County has identified no problems with the existing contract language or the parties' practice. The Union is concerned that if employees have to take paid time off to leave work and come to the bargaining table, the negotiations will be artificially shortened and employees will be able to attend less often; however, the Union suggests that this will not result in greater or faster Union capitulation, because of the availability of interest arbitration.

Neither party has discussed the example of the comparable counties. Of those, Champaign County has a provision identical to the existing language here, with a crucial addition:

In the event the Union negotiating team has more than two (2) employees regularly attending scheduled bargaining, the paragraph can be reopened for the purpose of negotiating time off and pay to affected employees.

In Kendall County, the number of employees in pay status that may participate on the Union negotiating team is limited to two, with the provision that two more employees may be excused from duty, "so long as it does not interfere with the operations of the Employer." In LaSalle County, a maximum of four employees may be granted time off with pay to attend negotiation sessions that occur during their regular working hours. In McLean County, members of the negotiation team who are scheduled to work on a day when negotiations will occur are responsible for arranging coverage of their post that is

acceptable to the County, but it does not appear that those members of the team are compensated for their time in negotiations. However, there is no information in the record as to the size of the bargaining units covered by each agreement, so it is impossible to tell how the limitation proposed by the Employer truly corresponds to the limits in those four comparable counties. In addition, there is no limitation in Grundy County, nor in the contract for the Kankakee County sheriff's deputies.

If the County is correct that the number of employees receiving pay for attending negotiations has become a burden, then it may be time for the parties to explore a solution, but that is best done at the bargaining table. The County has failed to disclose how much it has paid for bargaining team attendance. It is impossible to gauge whether attendance is unduly inflated, as the County argues and the Union denies. At this point, the parties are in the best position to determine at the bargaining table whether there is a problem, and if so, how best to solve it. The Union's proposal is more reasonable at this time.

6. Hours of Work (Clerks)

Article 21 currently states, in relevant part:

Section 1. Definitions

* * *

- (c) Work Day: Eight (8) consecutive hours of work within a 24-hour period for clerks; eight and one-half (8 ½) hours of work for corrections officers.
- (d) Work Shift: Eight (8) consecutive hours of work for clerks; eight and one-half (8 ½) hours of work for corrections officers beginning at a regular, designated time and ending at a regular, designated time.

Section 4. Overtime

* * *

- (b) Daily
All work performed in excess of eight (8) hours in any work day for clerks, eight and one-half (8 ½) for corrections officers.

* * *

Section 5. Meal Periods

All employees shall be granted an uninterrupted meal period of thirty (30) minutes during the work shift. Office clerks shall receive meal breaks consistent with past practice (1 hour)

The County offers to change Sections 1 (c), 1(d) and 4(b) of Article 21 to read as follows (leaving Section 5 unchanged):

Section 1. Definitions

* * *

- (c) Work Day: Eight and one-half (8 ½) consecutive hours of work within a 24-hour period for clerks and corrections officers.
- (d) Work Shift: Eight and one-half (8 ½) hours of work for clerks and corrections officers beginning at a regular, designated time and ending at a regular, designated time.

Section 4. Overtime

* * *

- (b) Daily
All work performed in excess of eight and one-half (8 ½) hours in any work day for clerks, and for corrections officers.

The Union opposes the change. The parties have stipulated that this is an economic issue.

The County explains that this proposal is intended to correct “the current inconsistency” in the numbers of hours that clerks and corrections officers work. Corrections officers have an 8.5 hour workday with a half-hour for lunch, while clerks have an 8-hour work day with a whole hour for lunch. The County asserts that there is no reason why the clerks should have an extra half-hour of lunch. According to the County its offer would result in clerks’ maintaining their current 8-hour work day including a half-hour lunch break.⁹ The Union asserts that the County’s proposal would lengthen the

⁹At the hearing and in its post-hearing brief, over Union objection, the County offered, in the alternative, that clerks could continue to take a one-hour lunch break but be scheduled to work an 8 ½ hour day. However, the parties had already submitted their final offers, so the County’s alternative proposal is not properly before the Arbitrator.

clerks' work hours, and shorten their paid lunch break, in conflict with Article 21, Section 5, which the County has not proposed to change. The County has offered nothing in exchange for this drastic change, the Union contends. The external comparable communities are of limited help here. Though Champaign, Kendall, LaSalle and McLean Counties provide a 30-minute lunch break, none of those units includes clerks. The Grundy contract covers Dispatchers, not clerks, but the contract merely provides that "the present practice" with respect to meal and break periods shall be maintained.

The Union's proposal, to maintain the *status quo*, is more appropriate here. While the County asserts that the clerks should work the same schedule as Corrections Officers, the County has failed to describe the duties of the clerks or to present any other evidence to show why that synchronization is desirable. The County has offered no *quid pro quo* to induce the Union to accept this increase in hours of work and decrease in the length of the lunch break. Moreover, since Article 21, Section 5 specifically provides for a one-hour lunch for clerks, adoption of the County's final offer would leave Article 21 internally contradictory. For all these reasons, the County's offer on Article 21 is rejected.

7. Wage Language (Article 22, Section 1)

Article 22, Section 1 states:

Section 1. Wage Schedule

Employees shall be compensated in accordance with the wage schedule attached to this Agreement as Appendix D and made a part hereof.

The County proposes to add to that section:

All employees in the bargaining unit are hourly, non-exempt and will be paid per Appendix D entitled "Base Wage Schedule." The hourly pay will be determined by dividing the annual salary as enumerated in Appendix D by 2080. The biweekly straight time payments shall be determined by multiplying the hourly rate times eighty (80) hours and the new rate shall be effective on December 1st of each year thereafter and end of November 30th of each year.

The County asserts that this is not a request for a substantive change to the agreement, and will not affect employees' pay, but instead will provide a better description of how they are paid. The Union opposes this change on the ground that 2080 may not be the proper divisor for finding the correct hourly rate under the federal Fair Labor Standards Act; some employees believe that the correct rate is 2054.¹⁰

Even after the hearing on this proposal, the parties remain divided as to whether the County's calculations are correct. In fact, there is no evidence as to the officers' actual work schedules, their days on and off within a pay period, their rotation, if any, or other information that would allow an independent determination of the proper method for calculating employees' regular hourly rate. Because the County has failed to demonstrate the accuracy of its formulation, or a need to insert it into the contract, the County's offer is rejected.

B. Non-Economic Issue - Residency

The parties have stipulated that the remaining issue, a new residency clause, is a non-economic issue. As such, the Arbitrator is free to adopt either side's final offer, or to draft a compromise award.

¹⁰The total of 2054 hours per year is equivalent to 158 hours of work in each of 13 28-day work periods. Sheriff's deputies assigned to the Patrol Division have a 28-day work period, but there is no indication in this record whether any corrections officers are on a 28-day work period. It is unclear why the divisor of 2054 would be more appropriate than 2080 for the corrections unit.

The Union proposes to add a new Section 26.8 (Article 26, Section 8):

Section 26.8 Residency

Employees in the bargaining unit as of the date of the execution of this Agreement shall have no residency requirement. Employees hired after the execution of this Agreement shall reside, within one year of the commencement of their employment, within a thirty-mile radius of the county line of Kankakee County.

The County proposes to add a new Section 8 to Article 26:

Section 8. Residency

All employees within the bargaining unit affected by this Agreement, as a condition of their continued employment, must have their place of abode within the County of Kankakee. An exception to this Section will be made for bargaining unit employees employed by the Employer as of April 30, 2007.

Since January 1, 1997, the County has required that all employees be County residents. At the time that policy was adopted, the County grandfathered all existing employees then residing outside of the County as long as they continued to reside in their current residence. All employees who then lived in the County were required to continue to live in the County. Residency requirements could be waived for “hard to fill technical and professional positions.” However, individuals who fulfilled the residency requirement and had equal qualifications were to be given preference for hire.

The County was forced to waive the residency requirement when it increased the workforce several years ago in order to staff a new jail. It could not find enough eligible applicants who lived in or were willing to move into the County. As a result there are now a number of corrections officers who live outside the County’s borders, with County permission.

At the most recent negotiations, the Union proposed to extend the waiver of the residency requirement to all employees, including those more senior than the employees

newly hired under the waiver. According to the Union, the inability of the County to staff corrections positions solely with County residents was proved by its efforts to fill the new positions necessitated by the new jail. In order to continue to attract and retain qualified corrections officers, the County must relax the residency restrictions, the Union contends. Even if the County can attract a new corrections officer willing to live in the County, the Union speculates that officer is likely to want to leave the County as the officer's children grow and educational opportunities take priority. The County will then lose its investment in its training of that officer.

The County's offer would grandfather all existing employees as of the expected signing of the contract (April 30, 2007), but the County does not propose to eliminate the residency requirement entirely. Instead, the County proposes to require all employees not employed as of April 30, 2007 to be residents of the County. The County urges that the corrections officers and clerks should be subject to the same residency requirement as other County employees. According to the County, the waiver of the residency requirement ended three years ago, but the County has had no difficulty hiring clerks and corrections officers who reside within the County, having hired a total of 45 new bargaining unit employees since the beginning of 2006. The County speculates that relaxing the residency requirement for this bargaining unit would lead to pressure from other County employees for the same opportunity, threatening a mass exodus of County employees. The County also envisions that this exodus would reduce the County's population, resulting in a higher per capita cost of County services and lower overall housing values, and requiring either higher taxes or a reduction in services provided, all to the detriment of the public. The

County objects that the Union's proposal as a "breakthrough issue," a change in the *status quo*, and contends that the Union has failed to prove that the *status quo* is dysfunctional or has created hardships or inequities for employees.

As we have already noted, interest arbitrators are unwilling to modify a *status quo*, in the absence of clear evidence that such a drastic action by the neutral is warranted in the absence of the parties' ability to reach voluntary agreement on the issue.

In each instance, the burden is on the party seeking the change to demonstrate, at a minimum: (1) that the old system or procedure has not worked as anticipated when originally agreed to or (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

Will County Board, supra, at 51-52; quoted in *City of Burbank, supra*, at 13. However, the *status quo* that the Union seeks to change is not one that was the product of collective bargaining – the residency policy effective January 1, 1997, was unilaterally adopted by the County at the point that bargaining was not required. On the other hand, the County's offer, that employees "must" be County residents, eliminates its discretion to relax the requirement as needed for "hard to fill technical and professional positions."

In this case, it is clear that the residency requirement at one point inhibited recruitment of corrections officers in the numbers needed when the workforce expanded to staff the new jail. However, the policy itself contemplates such a situation, by providing explicitly for a waiver for "hard to fill technical or professional positions." The policy even preserves the preference for residents when the requirement has been waived, at least

where qualifications are equal. Thus, the County's waiver of the residency requirement in order to staff the new jail was consistent with its policy. More important, the record shows that the County has been able to recruit and retain corrections employees even after the residency requirement was reinstated.

As the parties' final offers indicate, they are agreed that the residency requirement should be waived for all employees on the payroll as of a date certain, effectively extending the waiver to those who were already employed when more junior non-residents were hired. The County has not explained why it is willing to agree to this "grandfathering" but it is understandable that more senior employees and the Union would deem it a particular inequity that senior employees were denied a perceived privilege granted to the more junior employees hired while the requirement was waived.

The question remains whether the residency requirement should be loosened for all employees, future hires included. The Union proposes a 30-mile limit outside the County's borders, noting that the neutral has the power to select a different limit if more appropriate. However, the Union has failed to demonstrate that the current policy is dysfunctional, particularly in light of the explicit discretion to waive the residency requirement as needed. There is no evidence that the County is having trouble any more recruiting or retaining corrections officers or clerks, or that the requirement has worked a hardship on bargaining unit members. There is no evidence that educational institutions or housing opportunities in the County are inadequate or undesirable, or that corrections officers and clerks are exposed to danger by living in the County. The Union offers no basis for the 30-mile limit, other than a reference at the hearing to commuting time within

that geographic area.

In sum, it appears that the primary genesis for the Union proposal was the inequity of retaining the residency restriction for senior employees while more junior employees had been exempted, rather than any dysfunctionality of the restriction itself. Grandfathering more senior employees will address that issue, without unduly upsetting the historic parity among all County employees.

It remains to draft the language for the new residency provision. The arbitrator has the authority in case of a non-economic issue to draft a compromise rather than accepting one offer or the other. With respect to the residency requirement, it is clear that the discretion to waive the requirement, while preserving a preference for residents, has been an essential aspect of the policy. It would be unfair to adopt the County language that renders the requirement more rigid for this bargaining unit than the existing policy applicable to all other County employees. In addition, the provision must specify which employees are to be grandfathered. The County had picked a cut-off date of April 30, 2007, explained as the anticipated ratification date of the collective bargaining agreement. At least fifteen employees have been hired since then, and the County has offered no reason to exclude them from the grandfathered group. In light of the delay occasioned by these proceedings, it seems most equitable to continue the County policy effective January 1, 1997 and redesigned April 2001 for the bargaining unit, but to grandfather out all employees employed as of the date of execution of the agreement.

Therefore, the Arbitrator will include in the Agreement the following language as Article 26, Section 8:

All employees hired after the date of execution of this Agreement shall comply with the Residency Requirement of the County, effective January 1, 1997 and redesigned April 2001. All employees hired on or before the date of execution of this Agreement are exempt from the residency requirement.

AWARD

In addition to the tentative agreements reached during negotiations between the parties, the following provisions shall be part of the collective bargaining agreement December 1, 2006 through November 30, 2010:

- Union Negotiating Team, Article 4, Section 8: No change (Union's final offer)
- Hours of Work/Overtime, Article 21, Sections 1(c), 1(d) and 4(b): No change (Union's final offer)
- Wages - Corrections Officers, Article 22, Section 1: The County's final offer (increases of 7.49%, effective December 1, 2006; 7.07%, effective December 1, 2007; 6.06%, effective December 1, 2008; 6.55%, effective December 1, 2009, as reflected in Attachment A hereto)
- Wages - Rank Pay, Article 22, Section 1: The Union's final offer (increases of \$500 effective December 1, 2006, December 1, 2007, December 1, 2008 and December 1, 2009 as reflected in Attachment A hereto)
- Wages - Clerks, Article 22, Section 1: The County's final offer (increases of 7.49%, effective December 1, 2006; 7.07%, effective December 1, 2007; 6.06%, effective December 1, 2008; 6.55%, effective December 1, 2009, as reflected in Attachment A hereto)
- Wages - Calculation of Hourly Pay and Biweekly Straight Time Payments, Section 22, Section 1: No change to Section 1 (Union's final offer)
- Clothing Allowance, Article 23, Section 1: The Union's final offer:

Section 1. Allowance Amount and Payment

Effective 12-1-06 all corrections officers shall receive a yearly clothing allowance of \$500.00; effective 12-1-07 clothing allowance shall be increased to \$550.00; effective 12-1-08 all corrections officers shall receive a yearly clothing allowance of \$600.00; effective 12-1-09 clothing

allowance shall be increased to \$650.00. This clothing allowance is to be paid in the first pay period of December each year.

The Employer will supply all new hires with equipment listed in an Appendix attached hereto and made part of this Agreement. If the new employee is separated from their employment with the Kankakee County Sheriff's Department within one year of their hire date, all issued equipment shall be returned to the Employer. Additionally, current employees who have not previously purchased a coat shall receive one upon written request to the Employer.

- Residency, Article 26, Section 8 (new)(language drafted by Arbitrator)

Section 8. Residency

All employees hired after the date of execution of this Agreement shall comply with the Residency Requirement of the County, effective January 1, 1997 and redesignated April 2001. All employees hired on or before the date of execution of this Agreement are exempt from the residency requirement.

Respectfully submitted,



Lisa Salkovitz Kohn
Arbitrator

Dated: December 24, 2008

AWARD ATTACHMENT A

APPENDIX D
WAGE SCHEDULE & OTHER ECONOMIC BENEFITS

Section 1. Wage Schedule - Corrections Officers

Effective	12-1-06	12-1-07	12-1-08	12-1-09
0	\$27,947	\$29,923	\$31,736	\$33,815
1	\$31,775	\$34,021	\$36,083	\$38,446
2	\$32,626	\$34,933	\$37,050	\$39,477
3	\$33,194	\$35, 541	\$37,695	\$40,164
4	\$33,762	\$36,149	\$38,340	\$40,851
5	\$34,328	\$36,755	\$38,982	\$41,535
6	\$34,896	\$37,363	\$39,627	\$42,223
7	\$35,463	\$37,970	\$40,271	\$42,909
8	\$36,031	\$38,578	\$40,916	\$43,596
9	\$36,598	\$39,185	\$41,560	\$44,282
10	\$37,166	\$39,794	\$42,206	\$44,970
11	\$37,733	\$40,401	\$42,849	\$45,656
12	\$38,301	\$41,009	\$43,494	\$46,343
13	\$38,867	\$41,615	\$44,137	\$47,028
14	\$39,435	\$42,223	\$44,782	\$47,715
15	\$40,002	\$42,830	\$45,425	\$48,400
16	\$40,570	\$43,438	\$46,070	\$49,088
17	\$41,137	\$44,045	\$46,714	\$49,774
18	\$41,705	\$44,653	\$47,359	\$50,461
19	\$42,273	\$45,262	\$48,005	\$51,149
20	\$42,840	\$45,869	\$48,649	\$51,836

21+ receive an annual 2.5% longevity increase; all employees covered by this scale receive longevity increases on their anniversary date of hire, while base pay increases are effective each December 1.

Section 2. Wage Schedule - Command Officers

Command Corrections Officers shall be paid a base pay according to the pay schedule set forth in Section 1 of Appendix D above. Additionally, they shall receive yearly command rank pay, payable pro-rata in each pay period as follows:

	<u>Corporal</u>	<u>Sgt.</u>	<u>Lieutenant</u>
12/1/06	\$2,700	\$4,225	\$6,150
12/1/07	\$3,200	\$4,725	\$6,650
12/1/08	\$3,700	\$5,225	\$7,150
12/1/09	\$4,200	\$5,725	\$7,650

Section 3. Wage Schedule - Office Clerks

Effective 12/1/06, civilian employees shall be paid in accordance with the following pay scale:

<u>Eff. Date</u>	<u>Start</u>	<u>After 6 mos</u>	<u>After 1 yr.</u>	<u>After 2 yrs.</u>	<u>After 3yrs.</u>
12/1/06	\$ 11.35/hr	\$ 11.92/hr	\$ 12.48/hr	\$ 13.05/hr.	\$ 13.62/hr.
12/1/07	\$ 12.15/hr	\$ 12.76/hr	\$ 13.36/hr	\$ 13.97/hr	\$ 14.58/hr
12/1/08	\$ 12.89/hr	\$ 13.53/hr	\$ 14.17/hr	\$ 14.82/hr	\$ 15.46/hr
12/1/09	\$ 13.73/hr	\$ 14.42/hr	\$ 15.10/hr	\$ 15.79/hr	\$ 16.47/hr