

**BEFORE  
EDWIN H. BENN  
ARBITRATOR**

**In the Matter of the Arbitration**

**between**

**COUNTY OF BOONE AND BOONE  
COUNTY SHERIFF**

**and**

**ILLINOIS FRATERNAL ORDER OF  
POLICE LABOR COUNCIL**

*S-MA-08-025 / DEPUTIES*

**CASE NOS.:** ~~S-MA-08-010~~  
Arb. Ref. 08.258  
(Interest Arbitration)

**OPINION AND AWARD**

**APPEARANCES:**

For the Employer:	John H. Kelly, Esq.
For the FOP:	Thomas F. Sonneborn, Esq. Becky S. Dragoo, Field Supervisor John R. Roche, Esq.

Date of Award: March 23, 2009

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## **I. BACKGROUND**

This is an interest arbitration under authority of Section 14 of the Illinois Public Labor Relations Act (“Act”).<sup>1</sup> The employees involved in this dispute are all sworn police officers in the classifications of Deputy Sheriff, Deputy Sheriff/Detective and Deputy Sheriff/Sergeant employed by the County of Boone and the Boone County Sheriff (“Employer”).<sup>2</sup> The most recent collective bargaining agreement for those officers between the Employer and the Fraternal Order of Police (“FOP”) was a three year contract covering the period December 1, 2004 through November 30, 2007.<sup>3</sup>

## **II. THE PARTIES' FINAL OFFERS**

The parties' final offers for the disputed issues are as follows:<sup>4</sup>

### **A. Duration**

With respect to duration, the Employer seeks a term of four years, while the FOP seeks a three year contract.<sup>5</sup>

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<sup>1</sup> 5 ILCS 315/14.

<sup>2</sup> Prior Agreement at Article I.

<sup>3</sup> *Id.* at Article XXIV.

<sup>4</sup> Employer Exhs. 1, 2; FOP Exh. Book A at Issues and Offers; Employer Brief at 2-13; FOP Brief at 10-12.

<sup>5</sup> As discussed *infra* at III(B)(3)(a), the parties did not agree upon duration of the Agreement. *See also*, FOP Brief at 12; Employer Brief at 13. At the hearing, the parties' offers were tied to duration with the Employer seeking a four year contract and the FOP seeking a three year contract. *Id.* The parties agreed that if I find a three year Agreement is appropriate, then I have the authority to delete the fourth year of the Employer's offer and, if I find a four year agreement is appropriate, the FOP's contingent offers for the fourth year should be considered. Tr. 91-92; FOP Brief at 12.

**B. Wages**

**1. Employer**

Date	Amount
12/1/07	3.50%
12/1/08	3.00%
12/1/09	3.00%
12/1/10	3.00%

**2. FOP**

The FOP broke its wage offer into three segments — one for deputies, one for Sergeants and one for two Sergeants who are “off the table” (*i.e.*, topped out on the salary table and earning more than the highest rate of \$30.67 per hour).<sup>6</sup>

For Deputies:

Date	Amount
12/1/07	4.50%
12/1/08	4.25%
12/1/09	4.25%
12/1/10	4.00%

For Sergeants, a new table:

Date	Amount
Start	29.32
After 1 yr.	29.82
After 2 yrs.	30.25
After 3 yrs.	30.67

For wage increases for Sergeants:

Date	Amount
12/1/08	4.25%
12/1/09	4.25%
12/1/10	4.00%

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<sup>6</sup> FOP Final Offer; FOP Brief at 10.

For two Sergeants who are “off the table”, increase salary by \$1.00 per hour followed by a 4.5% increase in year one (effective 12/1/07), and then followed by the increases set forth above.

**C. Insurance**

**1. Employer**

<b>Medical</b>		<u>08/01/09</u>	<u>08/01/10</u>	<u>08/01/11</u>
	Single	\$133.00	\$148.00	\$163.00
	Family	\$225.00	\$240.00	\$255.00
<b>Dental</b>		<u>08/01/09</u>	<u>08/01/10</u>	
	Single	\$30.00	\$30.00	
	Family	\$45.00	\$45.00	

**2. FOP**

<b>Medical</b>		<u>08/01/09</u>	<u>08/01/10</u>	<u>08/01/11</u>
	Single	\$133.00	\$133.00	\$148.00
	Family	\$225.00	\$225.00	\$240.00
<b>Dental</b>		<u>08/01/09</u>	<u>08/01/10</u>	
	Single	[status quo]		
	Family	[status quo]		

**III. DISCUSSION**

**A. The Statutory Factors**

Section 14(h) of the Act sets forth the factors to be considered in these cases:

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

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.

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

Section 14(g) of the Act sets forth the standard for selection of offers made by the parties:

... 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 prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors presented in subsection (h).

The issues in dispute are economic. Therefore, based on the factors set forth in Section 14(h) of the Act, Section 14(g) provides that this is a final offer arbitration — *i.e.*, I am constrained to select either the Employer's or the FOP's last offer for each issue in dispute in this case. I have no authority to impose an award different from one of the presented offers on an issue.

**B. Resolution Of The Disputed Issues**

**1. The Present Economic Climate**

The Employer points to several of my prior awards issued during the period 2004-2007 addressing the difficulty public employers and unions were then facing with respect to bargaining over health insurance:<sup>7</sup>

... [A]s I have unfortunately had to observe before, in the current economic climate collective bargaining between employers and unions on health care issues is most difficult. "Insurance costs are skyrocketing which makes bargaining on this issue border on the impossible."

\* \* \*

Presently, because of spiraling costs, insurance is simply a nightmare and at a crisis level for employers, employees and unions. ...

Given what is going on in the economy now, there is obvious irony in looking back at those insurance disputes and now wishing for the "good old days" when health insurance was the major difficulty in establishing terms of new contracts. The problems employers, unions and employees (and interest arbitrators) faced in recent years concerning health insurance now pale in comparison to the daunting task of how to set the terms of collective bargaining agreements in the face of the current economic crisis.

This is the second award that I have issued where, during the pendency of the proceedings, the economy tanked. See my award in *State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726*, S-MA-08-262 (January 27, 2009) ("ISP"). Like ISP, this dispute is a "transition" case. These proceedings began with the parties bargaining during a time when the economy had not yet commenced its major slide; was heard as

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<sup>7</sup> Employer Brief at 11 citing *Village of Lansing and Illinois FOP Labor Council*, S-MA-04-240 (2007) at 23, quoting *City of Chicago and FOP Lodge 7* (2005) at 14 and *County of Effingham and AFSCME Council 31*, S-MA-03-264 (2004) at 18.

an interest arbitration just as the economy was beginning to falter; and now sits for decision by me as the economy is, for all purposes, in free-fall.

The following changes in the economy have occurred since the start of these proceedings:

First, on October 1, 2008 — the date of the hearing — the Dow Jones Industrial Average (“DJI”) had already begun its slide, but was at 10,831. On the trading day before the issuance of this award, the DJI stood at 7,278 — a 33% decrease since the hearing.<sup>8</sup>

Second, contemporaneous with the dramatic fall in the stock market, credit markets have frozen up, many companies have gone out of business or cut back operations, massive layoffs have occurred and government bailouts of staggering proportions have commenced in an effort to get the economy moving again. The new administration has implemented economic stimulus packages in further efforts to jump start the failing economy. The results of those efforts are yet to be seen. And the news just keeps getting worse.<sup>9</sup>

Third, during the pendency of these proceedings, that national unemployment rate has dramatically increased. My involvement with the dispute in this case actually began in late August 2008 in an unsuccessful effort to mediate the terms of the new Agreement. According to the Bureau of Labor Statis-

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<sup>8</sup> DJI history can be found at <http://www.google.com/finance?client=ob&q=INDEXDJI:DJI>. On August 26, 2008, there was a mediation with the parties in an effort to resolve the dispute. On that date, the DJI was at 11,413, thus showing a 36% drop since that date. *Id.*

<sup>9</sup> “In key industries — manufacturing, financial services and retail — layoffs have accelerated so quickly in recent months as to suggest that many companies are abandoning whole areas of business ... The grim scorecard of contraction in the American workplace ... largely destroyed what hopes remained for an economic recovery in the first half of this year, and it added to a growing sense that 2009 is probably a lost cause.” <http://www.nytimes.com/2009/03/07/business/economy/07jobs.html>.

tics (“BLS”), the following changes have occurred in the national unemployment rate since August 2008:<sup>10</sup>

**NATIONAL UNEMPLOYMENT RATE (August 2008 - February 2009)**

<b>Month</b>	<b>Rate</b>
August	6.2%
September	6.2%
October	6.6%
November	6.8%
December	7.2%
January	7.6%
February	8.1%

The 8.1% unemployment rate in February 2009 was the highest since December 1983.<sup>11</sup> That is the worst national unemployment rate since the passage of the Act.<sup>12</sup>

Further, according to the March 6, 2009 BLS Economic News Release, with respect to the increases in the unemployment rate:<sup>13</sup>

**THE EMPLOYMENT SITUATION: FEBRUARY 2009**

Nonfarm payroll employment continued to fall sharply in February (-651,000), and the unemployment rate rose from 7.6 to 8.1 percent, the Bureau of Labor Statistics of the U.S. Department of Labor reported today. Payroll employment has declined by 2.6 million in the past 4 months. In February, job losses were large and widespread across nearly all major industry sectors.

\* \* \*

The number of unemployed persons increased by 851,000 to 12.5 million in February, and the unemployment rate rose to 8.1 percent. Over the past 12 months, the number of unem-

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<sup>10</sup> <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> <http://www.bls.gov/news.release/empsit.nr0.htm>.

ployed persons has increased by about 5.0 million, and the unemployment rate has risen by 3.3 percentage points. ...

With the report concerning February 2009, “[t]he economy has shed at least 650,000 jobs for three straight months, the worst decline in percentage terms over that length of time since 1975.”<sup>14</sup>

And, the predictions are that unemployment will be getting far worse.<sup>15</sup>

Illinois has been hit harder than the national rate. Using data from the Illinois Department of Employment Security (“IDES”), comparing the unemployment rate in Illinois with the national unemployment rate discloses the following:<sup>16</sup>

Month	State	National
Aug.	6.7	6.2
Sept.	6.7	6.2
Oct.	6.8	6.6
Nov.	6.9	6.8
Dec.	7.2	7.2
Jan.	7.9	7.6

Without yet knowing the February 2009 rate for Illinois (when the national average spiked to 8.1%), still, the January 2009 rate is the worst unem-

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<sup>14</sup> <http://www.nytimes.com/2009/03/07/business/economy/07jobs.html>, *supra*.

<sup>15</sup> See *e.g.*, <http://economix.blogs.nytimes.com/2009/03/06/economic-roundup-the-unemployment-rate/?scp=2&sq=unemployment%20rate&st=Search> (“The employment report indicated that the labor market continues to deteriorate at a rapid clip. We continue to look for the unemployment rate to approach 10 percent by the end of 2009” [quoting David Greenlaw and Ted Wieseman, Morgan Stanley]). Those kinds of predictions mark a dramatic increase since just two months ago, when predictions were for an 8.6% unemployment rate at the end of 2009. See *ISP, supra* at 8-9.

<sup>16</sup> [http://lmi.ides.state.il.us/laus/illaus\\_seasadj.htm](http://lmi.ides.state.il.us/laus/illaus_seasadj.htm). It should be noted that the big jump experienced in February 2009 in the national unemployment rate has not been reflected in the Illinois data since, as of this writing, February 2009 data for Illinois have not yet been released by IDES — that information is not due out until March 24, 2009. See [http://lmi.ides.state.il.us/pdfs/data\\_release\\_2009.pdf](http://lmi.ides.state.il.us/pdfs/data_release_2009.pdf). Rate differences from the State and national figures compared to my award in *ISP* are due to seasonal adjustments made by BLS and IDES after issuance of that award.

ployment rate in Illinois since April 1993 when the unemployment rate was 7.9%<sup>17</sup>

And, from the information available from IDES, Boone County has been hit even harder than the national and State rates with a showing that at the end of 2008, Boone County had an unemployment rate of 9.8%.<sup>18</sup>

But the DJI, credit market lockups, layoffs and unemployment rates are not explicit statutory factors found in Section 14(h) of the Act. However, the cost of living is an explicit statutory factor — Section 14(h)(5) — “[t]he average consumer prices for goods and services, commonly known as the cost of living.”

The BLS publishes monthly news releases showing changes in the Consumer Price Index (“CPI”). The most recent release of data from the BLS on March 18, 2009 shows the following changes from preceding months:<sup>19</sup>

							<b>Compound Annual Rate 3- mos. Ended 2/09</b>	<b>Unadjusted 12-mos. Ended 2/09</b>
<b>8/08</b>	<b>9/08</b>	<b>10/08</b>	<b>11/08</b>	<b>12/08</b>	<b>1/09</b>	<b>2/09</b>		
.0	.0	-.8	-1.7	-.8	.3	.4	-.5	.2

Further data from the BLS on the CPI can be traced to show the yearly changes from the commencement of the prior contract in December 2004 through its expiration in November 2007 and then further through February 2009.<sup>20</sup>

<sup>17</sup> [http://lmi.ides.state.il.us/laus/illaus\\_seasadj.htm](http://lmi.ides.state.il.us/laus/illaus_seasadj.htm).

<sup>18</sup> <http://lmi.ides.state.il.us/laus/county2008.htm>.

<sup>19</sup> <http://www.bls.gov/news.release/cpi.nr0.htm> (March 18, 2009).

<sup>20</sup> See <http://data.bls.gov/cgi-bin/surveymost?cu>.

**CPI 12 Months Percentage Change**

<b>Year</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>	<b>Jul</b>	<b>Aug</b>	<b>Sep</b>	<b>Oct</b>	<b>Nov</b>	<b>Dec</b>	<b>Annual</b>
<b>2004</b>												3.3	2.7
<b>2005</b>	3.0	3.0	3.1	3.5	2.8	2.5	3.2	3.6	4.7	4.3	3.5	3.4	3.4
<b>2006</b>	4.0	3.6	3.4	3.5	4.2	4.3	4.1	3.8	2.1	1.3	2.0	2.5	3.2
<b>2007</b>	2.1	2.4	2.8	2.6	2.7	2.7	2.4	2.0	2.8	3.5	4.3	4.1	2.8
<b>2008</b>	4.3	4.0	4.0	3.9	4.2	5.0	5.6	5.4	4.9	3.7	1.1	0.1	3.8
<b>2009</b>	0.0	0.2											

The above BLS statistics lead to several observations concerning the CPI.

First, since my involvement in these proceedings commencing in August 2008, there were no increases in the CPI in August and September 2008 over the preceding months; which then declined during October through December 2008; and, in the first two months of 2009 began to creep up over prior months. With respect to yearly comparisons, during the life the prior Agreement (December 2004 - November 2007) there were steady increases in the CPI when compared to the same months in the previous years (ranging from 2.0 to 4.7) and further increases continued after the expiration of the Agreement which started to significantly move up in June through August 2008 (showing increases of 5.0, 5.6 and 5.4, respectively); only to nose dive as the economy crashed (going from 4.9 in September 2008 to 0.0 in January 2009) with a slight advance of 0.2 in February 2009).

Second, as shown by the dramatic swings in the CPI these are, unfortunately, very volatile and unpredictable times — a conclusion that is consistent with the general state of the declined economy at this moment.<sup>21</sup>

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<sup>21</sup> Even before the major slide which occurred after the hearing, the potential economic problem was not lost on County Administrator Kenneth Terrinoni, who testified (Tr. 69-71):

Q. ... Can you tell us where you see the County heading financially from 2007 and going forward?

A. This is strictly my opinion, but having lived through this in 2003/2004, I think we're heading for a repeat of that experience. By that I mean, a tremendous eco-

*[footnote continued]*

## **2. The Act And The Present State Of The Economy**

It should appear obvious that the interest arbitration provisions of the Act may not be that well-equipped to address establishment of economic provisions in collective bargaining agreements in these volatile, uncertain and unstable economic times.

The problem stems from Section 14(g) which requires interest arbitrators to select one of the economic offers with no discretion for modification, as exists with non-economic offers. Again, Section 14(g) provides that "... [a]s 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 prescribed in subsection (h)." With an economy in free-fall, unemployment marching steadily upward, credit markets frozen, businesses laying off or closing, revenue streams diminishing, government intervention programs of massive proportions seeking to prevent further harm and not knowing whether, when or to what degree those programs will succeed in stopping the blood-letting, how am I as an interest arbitrator rationally supposed to set the economic terms of a multi-year collective bargaining agreement which the parties unsuccessfully attempted to reach before the economy crashed with the added requirement that my hands are tied by Section 14(g) and I can only select one of the parties' economic offers? The task becomes particularly difficult for interest arbitrators when, in the past, heavy emphasis has been placed on economic settlements in comparable communities and in this transition pe-

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*[continuation of footnote]*

conomic drag on the economy which will cause a slow-down of revenues for this county, potentially operating deficits.

... [E]ven as late as the end of 2007, the trend lines and the data were pointing towards a serious economic problem in this country. ...

riod, comparisons end up being made to contracts which were negotiated before the current economic crisis.

From a bargaining standpoint, it would seem that a rational way for employers and unions to approach these uncertain times is something I discussed in my award in *ISP* at 21 [footnote omitted]:

Perhaps a cautious and practical way to approach negotiations and interest arbitrations in these uncertain and changing times is for parties to negotiate reopeners on economic items or to tie reopeners to triggers in the out years of agreements — *i.e.*, if changes in the cost-of-living or insurance costs occur, the parties have the option to reopen agreed upon provisions mid-term during the period of a contract. With negotiated reopeners, the parties can then assess the situation as the economy changes rather than project years out into the future with fixed obligations having no idea what the economic conditions will be. For now, final offer interest arbitration does not serve the parties well when flexibility is not built into the parties' offers. Until the economy settles, parties may also want to consider giving interest arbitrators the authority to impose reopeners along these lines or to not be bound by the final offer provisions of Section 14(g). The parties did not do that in this case — indeed, given the timing of events in this case, the parties could never have expected this to happen.

As in *ISP*, that also did not happen here — and again, it could not have happened. The serious downturn in the economy occurred after the hearing closed in this case.

But that is where this case now sits and given that this is a final offer interest arbitration, the Act must be followed with the ultimate selection of one of the two offers on each economic issue. However, it would be naïve to render this decision in a manner which ignores the economic realities which are swirling around the parties and this proceeding.

### **3. Selection Of The Offers**

#### **(a). Duration**

The FOP seeks a three year contract and the Employer seeks a four year contract.

In ordinary times, especially where, as here, the parties have engaged in extensive bargaining and ended up in interest arbitration, I have usually opted for longer contracts. The rationale behind that has been simple. First, by the time the interest award issues, a shorter contract would only have the parties back at the table — often in very short order — and the shorter contract only serves to perpetuate a failed experience at negotiating a contract which resulted in the impasse and interest arbitration. The parties typically need some breathing room. Second, the parties often negotiate operational changes (*e.g.*, changes in scheduling, selection procedures, hours of work, grievance procedures, etc.) and longer contracts allow those changes to be implemented and for the parties to see if the changes operate as they anticipated.

But here, the longer duration sought by the Employer will not work. The predecessor Agreement (2004-2007) was for three years. The establishment of a shorter contract as sought by the FOP is particularly warranted given the uncertainty of the current volatile economic conditions. It seems in this case to make more sense for the parties to get back to the bargaining table sooner rather than later so that they can address their constituents' needs which certainly cannot be predicted at this precarious time. While this may not explicitly be the reopener approach to deal with the current economic conditions I suggested in *ISP* at 21, the effect of terminating the Agreement in 2010 as urged by the FOP rather than 2011 as urged by the Employer may well have

the same effect. With a 2010 expiration, the parties will have to sit down next year and see where they and the economy are at. Therefore, as urged by the FOP, the Agreement shall be for three years for a term from December 1, 2007 through November 30, 2010.<sup>22</sup>

**(b). Wages**

For the FOP, the above described economic events come at a very bad time in its efforts to increase the economic benefits for the covered officers. As faced by the Teamsters in *ISP*, as the FOP methodically laid out its position in the proceedings before me on why pay should be increased through this process, the economic rug was pulled out from under it. And, Section 14(h) of the Act can be used to address such a situation. Section 14(h)(7) provides that interest arbitrators consider “[c]hanges in any of the foregoing circumstances during the pendency of the arbitration proceedings.” Given the crash of the economy described above which occurred while this case was being presented, to say that “[c]hanges ... during the pendency of the arbitration proceedings” occurred in this case is obvious.

Further, Section 14(h)(5) provides that the cost-of-living be considered. As set forth *supra* at III(B)(1), the cost-of-living numbers since my involvement with the parties and since the proceedings began which show the CPI flat-lining in August and September 2008; dropping into negative territory in October through December 2008; and with modest increases in January and February 2009, lead to the conclusion that the cost-of-living factor does not favor the higher wage rates sought by the FOP.

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<sup>22</sup> The FOP's arguments that the Employer tentatively agreed to a three year contract during negotiations (FOP Brief at 15-22) which should determine the outcome on this issue is therefore moot.



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**FOP'S OFFER - DEPUTIES**

<u>Effective</u>	<u>% Increase</u>										
12/1/07	4.50%										
12/1/08	4.25%										
12/1/09	4.25%										
<b><u>12/1/06 (Rate From Prior Agreement - Addendum 1)</u></b>											
<b><u>Rank</u></b>	<b><u>0</u></b>	<b><u>1</u></b>	<b><u>2-3</u></b>	<b><u>4-5</u></b>	<b><u>6-7</u></b>	<b><u>8-9</u></b>	<b><u>10-12</u></b>	<b><u>13-14</u></b>	<b><u>15-16</u></b>	<b><u>17-18</u></b>	<b><u>19+</u></b>
Deputy	18.43	20.15	21.29	22.94	24.60	25.20	25.79	26.76	27.14	27.54	27.92
Deputy-Det.	18.98	20.84	21.91	23.51	24.92	25.92	26.54	27.52	27.89	28.29	28.68
<b><u>12/1/07</u></b>											
<b><u>Rank</u></b>	<b><u>0</u></b>	<b><u>1</u></b>	<b><u>2-3</u></b>	<b><u>4-5</u></b>	<b><u>6-7</u></b>	<b><u>8-9</u></b>	<b><u>10-12</u></b>	<b><u>13-14</u></b>	<b><u>15-16</u></b>	<b><u>17-18</u></b>	<b><u>19+</u></b>
Deputy	19.26	21.06	22.25	23.97	25.71	26.33	26.95	27.96	28.36	28.78	29.18
Deputy-Det.	19.83	21.78	22.90	24.57	26.04	27.09	27.73	28.76	29.15	29.56	29.97
<b><u>12/1/08</u></b>											
<b><u>Rank</u></b>	<b><u>0</u></b>	<b><u>1</u></b>	<b><u>2-3</u></b>	<b><u>4-5</u></b>	<b><u>6-7</u></b>	<b><u>8-9</u></b>	<b><u>10-12</u></b>	<b><u>13-14</u></b>	<b><u>15-16</u></b>	<b><u>17-18</u></b>	<b><u>19+</u></b>
Deputy	20.08	21.95	23.19	24.99	26.80	27.45	28.10	29.15	29.57	30.00	30.42
Deputy-Det.	20.68	22.70	23.87	25.61	27.15	28.24	28.91	29.98	30.38	30.82	31.24
<b><u>12/1/09</u></b>											
<b><u>Rank</u></b>	<b><u>0</u></b>	<b><u>1</u></b>	<b><u>2-3</u></b>	<b><u>4-5</u></b>	<b><u>6-7</u></b>	<b><u>8-9</u></b>	<b><u>10-12</u></b>	<b><u>13-14</u></b>	<b><u>15-16</u></b>	<b><u>17-18</u></b>	<b><u>19+</u></b>
Deputy	20.93	22.88	24.18	26.05	27.94	28.62	29.29	30.39	30.82	31.28	31.71
Deputy-Det.	21.56	23.67	24.88	26.70	28.30	29.44	30.14	31.25	31.68	32.13	32.57
<b><u>Increase Over Life Of Agreement</u></b>											
<b><u>Rank</u></b>	<b><u>0</u></b>	<b><u>1</u></b>	<b><u>2-3</u></b>	<b><u>4-5</u></b>	<b><u>6-7</u></b>	<b><u>8-9</u></b>	<b><u>10-12</u></b>	<b><u>13-14</u></b>	<b><u>15-16</u></b>	<b><u>17-18</u></b>	<b><u>19+</u></b>
Deputy											
Total	2.50	2.73	2.89	3.11	3.34	3.42	3.50	3.63	3.68	3.74	3.79
%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%
Deputy-Det.											
Total	2.58	2.83	2.97	3.19	3.38	3.52	3.60	3.73	3.79	3.84	3.89
%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%	13.6%

A cursory examination of the manner in which the parties have established their salary tables shows that there are relatively quick step movements — 10 after the first year — with the Deputies topping out at 19 years of service. In order to assess the real impact of the parties' wage offers, with the mostly two year step movements for Deputies who are not at the entry level or who are not topped out at 19 years, at some point during the life of a three year contract, the Deputies will receive a step movement, thereby placing them into a

higher salary lane. As the Employer correctly points out, while the structure of the salary schedule with its step movements is not new money (*i.e.*, it has not been newly negotiated or imposed through this proceeding), the real impact of the parties' offers results in new money to the Deputies because they actually receive the benefit of the step movements over the life of the Agreement.<sup>23</sup>

Due to anniversary dates and years of service, the experience of individual Deputies will vary. But to assess the real impact of the parties' offers, I will look at a hypothetical Deputy and Deputy/Detective who move from the 17-18 year step to the 19 year step effective in the second year of the Agreement on December 1, 2008. The impact of the parties' offers on a one step movement hypothetically occurring on December 1, 2008 is as follows:

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<sup>23</sup> Employer Brief at 2.

**EMPLOYER'S OFFER - DEPUTIES (One Step Movement)**

<b><u>12/1/06 (Rate From Prior Agreement - Addendum 1)</u></b>	
<b><u>Rank</u></b>	<b><u>17-18</u></b>
Deputy	27.54
Deputy-Det.	28.29
<b><u>12/1/07</u></b>	
<b><u>Rank</u></b>	<b><u>17-18</u></b>
Deputy	28.50
Deputy-Det.	29.28
<b><u>12/1/08</u></b> (Step Movement)	
<b><u>Rank</u></b>	<b><u>19+</u></b>
Deputy	29.76
Deputy-Det.	30.57
<b><u>12/1/09</u></b>	
<b><u>Rank</u></b>	<b><u>19+</u></b>
Deputy	30.66
Deputy-Det.	31.49
<b><u>Increase Over Life Of Agreement</u></b>	
<b><u>Rank</u></b>	<b><u>17-18 to 19+</u></b>
Deputy	
Total	3.12
%	11.3%
Deputy-Det.	
Total	3.20
%	11.3%

**FOP'S OFFER - DEPUTIES (One Step Movement)**

<b><u>12/1/06 (Rate From Prior Agreement - Addendum 1)</u></b>	
<b><u>Rank</u></b>	<u>17-18</u>
Deputy	27.54
Deputy-Det.	28.29
<b><u>12/1/07</u></b>	
<b><u>Rank</u></b>	<u>17-18</u>
Deputy	28.78
Deputy-Det.	29.56
<b><u>12/1/08</u></b> (Step Movement)	
<b><u>Rank</u></b>	<u>19+</u>
Deputy	30.42
Deputy-Det.	31.24
<b><u>12/1/09</u></b>	
<b><u>Rank</u></b>	<u>19+</u>
Deputy	31.71
Deputy-Det.	32.57
<b><u>Increase Over Life Of Agreement</u></b>	
<b><u>Rank</u></b>	<u>17-18 to 19+</u>
Deputy	
Total	4.17
%	15.1%
Deputy-Det.	
Total	4.28
%	15.1%

Because of the mostly two year step movements, it is also possible for officers to experience two step movements during the life of the Agreement. Deputies who receive a step movement in the first year of the Agreement who do not move into the 10-12 lane (a three year commitment) will also get another step movement in the third year (also assuming that as a result of the first step movement they are not at or do not reach the top level before eligibility for the second step movement). For this example, assume a Deputy or Dep-

uty/Detective receives a step movement from 15-16 to 17-18 on December 1, 2007 and then moves to 19+ on December 1, 2009. The impact on the parties' offers for that scenario is as follows:

**EMPLOYER'S OFFER - DEPUTIES (Two Step Movements)**

<b><u>12/1/06 (Rate From Prior Agreement - Addendum 1)</u></b>	
<b><u>Rank</u></b>	<u>15-16</u>
Deputy	27.14
Deputy-Det.	27.89
 <b><u>12/1/07</u></b> (Step Movement)	
<b><u>Rank</u></b>	<u>17-18</u>
Deputy	28.50
Deputy-Det.	29.28
 <b><u>12/1/08</u></b>	
<b><u>Rank</u></b>	<u>17-18</u>
Deputy	29.36
Deputy-Det.	30.16
 <b><u>12/1/09</u></b> (Step Movement)	
<b><u>Rank</u></b>	<u>19+</u>
Deputy	30.66
Deputy-Det.	31.49
 <b><u>Increase Over Life Of Agree-</u></b>	
<b><u>ment</u></b>	
<b><u>Rank</u></b>	<u>15-16 to 19+</u>
Deputy	
Total	3.52
%	13.0%
Deputy-Det.	
Total	3.60
%	12.9%

**FOP'S OFFER - DEPUTIES (Two Step Movements)**

<b><u>12/1/06 (Rate From Prior Agreement - Addendum 1)</u></b>	
<b><u>Rank</u></b>	<u>15-16</u>
Deputy	27.14
Deputy-Det.	27.89
<b><u>12/1/07</u></b> (Step Movement)	
<b><u>Rank</u></b>	<u>17-18</u>
Deputy	28.78
Deputy-Det.	29.56
<b><u>12/1/08</u></b>	
<b><u>Rank</u></b>	<u>17-18</u>
Deputy	30.00
Deputy-Det.	30.82
<b><u>12/1/09</u></b> (Step Movement)	
<b><u>Rank</u></b>	<u>19+</u>
Deputy	31.71
Deputy-Det.	32.57
<b><u>Increase Over Life Of Agreement</u></b>	
<b><u>Rank</u></b>	<u>15-16 to 19+</u>
Deputy	
Total	4.57
%	16.8%
Deputy-Det.	
Total	4.68
%	16.8%

Summarizing the above tables, the offers break down as follows:

	<b>Employer</b>	<b>FOP</b>
Total percentage increase	9.5%	13.0%
Actual percentage increase over life of Agreement due to compounding	9.8%	13.6%
Range of increases	1.81 - 2.81	2.50 - 3.89
Example percentage increase with one step movement	11.3%	15.1%
Example percentage increase with two step movements	12.9%	16.8%

So what at first blush looks like a 9.5% offer by the Employer, in reality is 9.8% due to compounding; provides for a range of increases of \$1.81 to \$2.81, for Deputies who experience one step movement over the life of the Agreement, could amount to an 11.3% increase; and for Deputies who receive two step movements, could amount to a 12.9% increase. In ordinary times, the FOP's focus would naturally be upon the numeric total — 9.5% — and its scorn at such an offer would be more understandable. But in these uncertain and volatile economic times with an economy in free-fall, a wage increase which *actually* provides between 9.8% (through compounding) and 12.9% (if maximum step movements are achieved), is not one that can be so easily rejected. The actual impact of the Employer's offer is by no means a regressive one and it is not an insubstantial one.

Given the increases resulting from the Employer's offer, the FOP's offer, which, in the above analysis in real dollars shows much more significant increases, simply cannot be justified in this economy or under the applicable statutory factors found in Section 14(h) of the Act.

In this climate, the FOP's arguments concerning comparability cannot change the result. In the past, external comparability has been a factor given great weight by interest arbitrators, including this arbitrator. But the statute does not require that one factor always be given greater weight than another. Section 14(g) makes that clear — "... 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 prescribed in subsection (h)." In my opinion, in these uncertain and volatile economic times — at least for now in these transition cases where the economy crashed during the proceedings — cost-of-

living considerations and changes that have occurred are more “applicable” and must be given greater weight than comparability.

As in *ISP*, the short answer to the FOP’s reliance upon the jurisdictions it selected for comparison purposes is that even assuming those jurisdictions are valid comparables (an issue I need not decide), the picture created by contracts in other jurisdictions which were negotiated in better economic times than the present circumstances should not be given as much weight as they have in the past.<sup>24</sup> Given the current circumstances — again, for now in these transition cases — those comparisons are the proverbial “apples to oranges”. But in any event, on balance, given the extraordinary circumstances which are present in this transition case as a result of the current economic conditions, the comparability factor in Section 14(h)(4) must yield to the other factors cited above — specifically, the cost-of-living and changes factors specified in Sections 14(h)(5) and (7).

The FOP’s detailed analysis of the financial condition of the Employer also does not change the result.<sup>25</sup> Based on its analysis, the FOP concludes “[t]he County’s fiscal condition is healthy and on the rise.”<sup>26</sup> Contrast that conclusion with County Administrator Terrinoni’s testimony given before the big slide that, even then, the numbers relied upon by the FOP are misleading and that he sees “... a tremendous economic drag on the economy which will cause a slow-down of revenues for this county, potentially operating deficits” with the Employer concluding “... that the significant growth that has happened over the past four to five years will not be occurring in the future and

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<sup>24</sup> See *ISP*, *supra* at 20.

<sup>25</sup> Tr. 12-37; FOP Exh. Book 1; FOP Brief at 34-37.

<sup>26</sup> FOP Brief at 37.

that expenses will continue to rise.”<sup>27</sup> At the time of the hearing, no one knew what was going to happen after the hearing and we still don’t have a clue where this will all end up. But we do know now that the economy got much worse after the hearing and it continues to slide. There are just too many uncertainties. Putting aside the Employer’s different take on its financial condition, on balance, given the current state of the economy, the FOP’s positive assessment of the Employer’s past financial condition for periods prior to the hearing is insufficient to forecast what will happen over the life of the new Agreement which will expire next year so as to require the imposition of the higher wage offer the FOP seeks.

The Employer’s wage offer is therefore selected.

**(3). Insurance**

The parties’ insurance offers are summarized as follows:<sup>28</sup>

<b><u>MEDICAL</u></b>	<b>Effective Date</b>	<b>Single</b>	<b>Percent Increase Over Prior Agreement</b>	<b>Family</b>	<b>Percent Increase Over Prior Agreement</b>
Prior		118	-	210	-
Employer	8/1/09	133	12.7%	225	7.1%
	8/1/10	148	25.4%	240	14.3%
FOP	8/1/09	133	12.7%	225	7.1%
	8/1/10	133	12.7%	225	7.1%
<b><u>DENTAL</u></b>					
Prior		26	-	41	-
Employer	8/1/09	30	15.4%	45	9.7%
	8/1/10	30	15.4%	45	9.7%
FOP	8/1/09	26	0.0%	41	0.0%

<sup>27</sup> Tr. 70-74; Employer Brief at 3.

<sup>28</sup> Employer Exhs. 1, 2; FOP Exh. Book A at Issues and Offers; Employer Brief at 9-13; FOP Brief at 29-31. Because a three year Agreement has been found appropriate (see discussion *supra* at III(B)(3)(a) and note 5), the parties’ offers for a fourth year have not been considered. Prior contribution rates as of August 1, 2007 are found in the 2003-2007 Agreement at Article XXI.

Thus, for insurance, the parties are in agreement for the medical premium increase effective August 1, 2009; are in disagreement that a further increase is warranted for the medical premiums effective August 1, 2010; and are in disagreement that a dental increase should be imposed.

County Administrator Terrinoni testified about the foundation for the Employer's insurance offer:<sup>29</sup>

Q. Do you have any anticipation of what your Blue Cross Increase might be in the coming insurance year?

A. That's anybody's guess. I did ask our consultants to tell me based on like clients what is the average increase they're experiencing, and I was actually very surprised by this at how high it was. ... 17.8 percent is what other like governments or entities that are providing insurance are really experiencing. So we've got to be ready next year for that to happen. ...

\* \* \*

... [T]his whole insurance thing is a mess. We're in the eye of a hurricane. It's completely unusual to have two years in a row like we have of virtually, you know, minimal increases.

\* \* \*

Q. What did you do to determine -- What information did you use to determine the increase the County is seeking for 2010 ....?

A. There is no information out there to be had. You have to take an educated guess.

Because the parties are in agreement for medical premium increases beginning in August 2009, the focus must be on their differences commencing in August 2010. County Administrator Terrinoni's frank and candid testimony quoted above shows why the Employer's offer cannot be accepted.

A proposal based on "anybody's guess" with "no information out there to be had" with the acknowledgement that "[i]t's completely unusual to have two years in a row like we have of virtually, you know, minimal increases" cannot

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<sup>29</sup> Tr. 67-68, 78-79, 86.

be the basis for imposing further increases in 2010 which would have the impact of increasing the premium contributions over the prior payments in the 2003-2007 Agreement by 25.4% for single coverage and 14.3% for family coverage as the Employer seeks. The FOP has recognized that that some increases are necessary with its agreement to match the Employer's increase in medical premiums in 2009. But guessing as the Employer has done for 2010 with the resultant dramatic percentage increases simply cannot be the basis for further increases. Add to the guesswork involved that we have no idea where the economy will be in 2010, the Employer's proposed further premium increases in 2010 are really too speculative to select. Further, because the Agreement will expire on November 30, 2010, the parties should be in negotiations around the time the insurance year takes effect in August 2010 and they will be in a better position to assess the situation as it exists at that time and address the situation at the bargaining table. I therefore cannot impose further insurance increases in 2010 or change the dental contributions as the Employer seeks.

The FOP's offer on insurance is therefore accepted.

### **C. Caveats**

In *ISP*, I placed several caveats on the results in that case, one of which is relevant and applicable here:<sup>30</sup>

For the parties and interest arbitrators trying to formulate contracts, these are remarkably difficult times. This case is a prime example, where the economy crashed around the parties while the proceedings were in progress. The difficulty from my end as an interest arbitrator is that in these uncertain and volatile times, Section 14(g) of the Act ties my hands. This is final offer interest arbitration and I do not have the authority to impose an economic term different from the ones offered by the parties. Section 14(g) makes

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<sup>30</sup> *ISP*, *supra* at 20-22,

that clear — “[a]s 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 prescribed in subsection (h)” [emphasis added].

\* \* \*

My selection of the ISP's offer for the 2008-2012 Agreement is without prejudice to the Union's ability to make similar comparability arguments in future interest arbitration proceedings. I have not addressed the merits of the Union's comparability arguments in this case. I have neither rejected or accepted the Union's positions. I have only found that even assuming the Union's comparability arguments are strong, the other factors relied upon by me dictated by the economy outweigh the Union's arguments in this most extraordinary set of circumstances and uncertain economic times. The rank differential percentages imposed in this case are therefore not the *status quo* for future interest arbitration proceedings. Should the Union choose, it is free to make the same comparability arguments in some future proceeding and not have the fact that those arguments did not carry the day in this proceeding used against it in any fashion.

Thus, as in *ISP*, in the event the parties' next effort at reaching an Agreement results in impasse and an interest arbitration, the FOP (as will the Employer) shall be free to make the same comparability arguments made in this case. I simply have not ruled on comparables.

The Employer must understand the implications of that finding. If the FOP's comparability arguments have merit and should the covered officers find themselves in a disadvantageous position vis-à-vis other comparable jurisdictions and further assuming that the economic conditions which exist in this case no longer exist or have significantly changed for the better, next time around, the Employer may well find itself in the position of having to fight off an argument justifying very substantial wage increases for this bargaining unit if a catch up is called for.

**IV. CONCLUSION**

As the timing in this case demonstrated, possibly since the passage of the Act, there has never been a worse time for parties to find themselves in the interest arbitration process. In the midst of these proceedings, the economy went into free-fall and recovery is not yet within sight. Given that scenario and the current dire economic circumstances, placement of the parties' economic fate into the hands of a third party who is statutorily limited to only pick one of the two tendered offers on each economic issue is, to say the least, risky.

I recognize that parties other than those involved in this dispute read interest awards like this. These awards impact other jurisdictions as employers and unions in those other jurisdictions attempt to structure their collective bargaining agreements. The parties in this dispute and parties elsewhere should not read more into this award than what is intended. I emphasize that this is a transition case. In this case, the proceedings began; the parties made their final offers; and in the midst of the procedure, the economy crashed. Future disputes will have to be considered on a case-by-case basis with an eye on changes in the economic situation.

**V. AWARD**

The new Agreement shall have the following terms.:

1. Duration (FOP's offer):

Three years: December 1, 2007 - November 30, 2010.

2. Wages (Employer's offer):

Date	Amount
12/1/07	3.50%
12/1/08	3.00%
12/1/09	3.00%

3. Insurance (FOP's offer):

<b>Medical</b>	<u>08/01/09</u>	<u>08/01/10</u>
Single	\$133.00	\$133.00
Family	\$225.00	\$225.00
<b>Dental</b>	<u>08/01/09</u>	<u>08/01/10</u>
Single	[status quo]	
Family	[status quo]	

4. As provided in the Pre-Hearing Stipulations, “[a]ll tentative agreements reached in bargaining prior to the start of the hearing, if any, shall be incorporated in the Award for inclusion in the agreement.”

5. Retroactive checks for all hours paid shall be issued no later than 45 days from the date of this award.

6. With the consent of the parties, I will retain jurisdiction to resolve disputes, if any, concerning the drafting of language for inclusion in the new Agreement or other disputes which may arise from the implementation of this award.



Edwin H. Benn  
Arbitrator

Dated: March 23, 2009