BEFORE
EDWIN H. BENN
ARBITRATOR

In the Matter of the Arbitration **between** **STATE OF ILLINOIS, DEPARTMENT OF CENTRAL MANAGEMENT SERVICES** **and** **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 726**	**CASE NOS.:** S-MA-08-262 Arb. Ref. 08.208 (State Police - Master Sergeants Interest Arbitration)

OPINION AND AWARD

APPEARANCES**:**

For the State Police:	James Daniels, Esq.
For the Union:	Marvin Gittler, Esq. Margaret Angelucci, Esq.

Date of Award: January 27, 2009

CONTENTS

I. BACKGROUND

This is an interest arbitration under authority of Section 14 of the Illinois Public Labor Relations Act ("Act").[1] The employees involved in this dispute are the Master Sergeants of the Illinois State Police ("ISP").

After petition filed March 22, 2007, election held July 6, 2007 and by certification issued July 25, 2007, Teamsters Local 726 ("Union") was certified as the collective bargaining representative for the Master Sergeants.[2] Contract negotiations commenced September 7, 2007. After six months and many meetings (including mediation efforts by the Federal Mediation and Conciliation Service), seven issues remained unresolved.[3] Interest arbitration was invoked and proceedings commenced before me on August 5, 2008. After opening of the hearing and then mediation with me on that date, two issues remained — rank differential and duration. The hearing was completed on September 5, 2008. Post hearing briefs have been filed and considered.

II. THE PARTIES' FINAL OFFERS

The parties' final offers for the disputed issues are as follows:

A. Rank Differential

For rank differential (a pay differential between the Master Sergeants and the Sergeants under the Troopers contract between the ISP and Troopers Lodge 41 of the Fraternal Order of Police), the parties' final offers are:[4]

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1 5 ILCS 315/14.

2 ISP Exh. AA.

3 Tr. 6; ISP Brief at 1.

4 ISP Brief at 2; Union Brief at 3-4. The 6.95% rank differential under the ISP's position existed as of January 1, 2008.

Effective	ISP	Union
1/1/08	6.95%	8.50%
7/1/08	7.00%	8.50%
7/1/09	7.30%	9.50%
7/1/10	7.40%	10.50%
7/1/11	7.50%	10.50%

B. Duration

For duration, the parties' final offers are:[5]

ISP: July 1, 2008 - June 30, 2012

Union: January 1, 2008 - June 30, 2012

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.

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5 *Id*.

> (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 two 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 ISP's or the Union's 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.[6]

B. The Organizational Structure Of The ISP And The Basic Salary Structure

The ISP has ranks of Troopers, Special Agents, Inspectors, Sergeants, Master Sergeants, Lieutenants and Captains.[7] All ranks are organized.[8]

Basic cost-of-living wage increases are set by negotiations between the State of Illinois and AFSCME in a master contract which covers the largest bargaining unit of State of Illinois employees.[9] In 2008, negotiations between

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6 *See also*, Tr. 63 (where I confirmed to the parties "[s]o I have to pick one [offer] or the other.").

7 ISP Exh. Q. There are approximately 266 Master Sergeants in the unit with years of service ranging from 8 to 25 years. *Id*.

8 The Troopers, Special Agents, Inspectors and Sergeants are represented under an agreement with Troopers Lodge 41. ISP Exhs. A-C. Lieutenants and Captains are also represented by Troopers Lodge 41 under a separate agreement. ISP Exh. D.

9 Tr. 111; ISP Brief at 5. For the period prior to the one covered by this Agreement (July 1, 2004 - June 30, 2008), employees under the Troopers contract received base increases of 2.75% effective January 1, 2005; 2.0% effective July 1, 2005; 3.75% effective January 1, 2006; 3.0% effective July 1, 2006; 1.0% effective January 1, 2007; 3.0% effective July 1, 2007; and 3.0% effective January 1, 2008. ISP Exh. A at Article 20. Those are the same percentage in-
[footnote continued]

AFSCME and the State of Illinois concluded on August 16, 2008, with the contract ratification process by the AFSCME membership completed by September 5, 2008.[10]

For the period July 1, 2008 through June 30, 2012, the percentage increase negotiated by AFSCME and the State was 15.25% distributed as follows:[11]

Effective	Increase
1/1/09	1.50%
7/1/09	2.50%`
1/1/10	2.00%
7/1/10	2.00%
1/1/11	2.00%
7/1/11	4.00%
1/1/12	1.25%

Those percentage increases are therefore passed on to the ISP bargaining units, including the Sergeants represented the under the Troopers contract.[12]

C. Resolution Of The Disputed Issues

1. Rank Differential

In addition to the 15.25% applied to the base pay of the Sergeants under the Troopers contract, the parties are in agreement that Master Sergeants are

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[continuation of footnote]
creases negotiated by AFSCME with the State of Illinois in its master contract found in Article XXXII, Section 6 (of which I take notice). The same percentage increases negotiated by AFSCME and the State are reflected in the Troopers contract for the period 2000-2004. ISP Exh. B at Article 20 and Article XXXII, Section 6 of the AFSCME-State contract (again, of which I take notice). With some minor variation, the same patterns held for the period 1997-2000. ISP Exh. C at Article 20 and Article XXXII, Section 6 of the AFSCME-State contract.

The record indicates that the ISP Lieutenants and Captains were certified to be represented by Troopers Lodge 41 in approximately May 2008. Tr. 6; ISP Exh. D.

10 The following websites document the AFSCME-State contract negotiations: www.sj-r.com/news/x1570388516/State-AFSCME-reach-contract-agreement? and www.afscme31.org/printable.asp?objectID=1296.

11 ISP Brief at 5. *See also*. Article XXXII, Section 6 of the AFSCME-State contract.

12 Those percentage increases have now been passed on to the employees under the new Troopers contract. ISP Brief at 18.

to receive a rank differential over and above the pay received by the Sergeants, but differ as to that amounts as set forth *supra* at II(A).

a. The Present Economic Climate

At the time the disputed issues in this case were heard on August 5 and September 5, 2008 and as subsequently briefed by the parties, the Union focused on comparability arguments while the ISP focused on the statutory factors found in Section 14(h) of the Act, but mainly sought to counter the Union's comparability arguments.[13]

That was then. This is now. During the pendency of the arbitration proceedings before me which commenced August 5, 2008 with a second day of hearing on September 5, 2008, the economy went into free-fall after the second day of hearing.

First, on the initial day of hearing on August 5, 2008, the Dow Jones Industrial Average ("DJI") was at 11,616.[14] On the second day of hearing on September 5, 2008, the DJI was at 11,221. On November 20, 2008 — approximately one and one-half months after the second day of hearing — the DJI hit a low of 7553, down 35% from the commencement of the proceedings on August 5, 2008. On January 26, 2009 — the trading day before the issuance of this award — the DJI stood at 8116, still 30% down from the commencement of these proceedings on August 5, 2008.

Second, contemporaneous with the dramatic fall in the stock market and since the close of the hearing on September 5, 2008, credit markets have frozen up, companies have gone out of business or cut back operations, massive

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[13] *See* parties' briefs.

[14] The DJI historical values cited in this award can be found at http://finance.yahoo.com/q?s=%5EDJI.

layoffs have occurred and government bailouts of staggering proportions have been announced in an effort to get the economy moving. The new administration has announced plans for economic stimulus packages in further efforts to jump start the stagnant economy. The results of those efforts are yet to be seen. And the news just keeps getting worse. On the date this award issued, the New York Times reported:[15]

> ... A year into this recession, companies across the board are resorting to mass job cuts.
>
> Home Depot, Caterpillar, Sprint Nextel and at least eight other companies announced on Monday they would cut more than 75,000 jobs in the United States and around the world — a gloomy start to the workweek for employees anxious about holding their own as the economy sinks. Caterpillar, the maker of heavy equipment, is slashing its payrolls by 16 percent. Texas Instruments said late in the day that it would eliminate 3,400 jobs, or 12 percent of its work force.
>
> Jobs began disappearing in home building and mortgage operations early in the recession, then across finance and banking more generally. Now the ax is falling across large swaths of manufacturing, retailing and information technology, taking out workers from New York to Seattle. Just last week, Microsoft announced its first significant job cuts ever. ...

Third, during the pendency of these proceedings, that national unemployment rate has dramatically increased. According to the Bureau of Labor Statistics ("BLS"), in August 2008 the unemployment rate was at 6.2%, remained the same in September; moved to 6.6% in October; higher yet to 6.8% in November and then, in December, jumped from 6.8% to 7.2%, with 11.1 million unemployed.[16] With the December 2008 unemployment rates, unemployment is now at its highest rate since January 1993.[17] Forecasts are for the

[15] N.Y. Times, Jan. 27, 2009 at A1; http://www.nytimes.com/2009/01/27/business/economy/27layoffs.html?_r=1&hp.

[16] http://www.bls.gov/news.release/empsit.nr0.htm. In January 2008, the unemployment rate was at 4.9%, therefore showing an increase of 2.3% in 2008. *Id*.

[17] http://data.bls.gov/PDQ/servlet/SurveyOutputServlet.

unemployment rates to continue to increase in 2009, going from 7.2% in December 2008 to 8.6% in December 2009.[18]

As bad as the national unemployment rate is, the State's unemployment picture is worse. According to the Illinois Department of Employment Security ("IDES"), during the pendency of these proceedings commencing in August 2008, the State and national unemployment rates compared as follows:[19]

MONTH	STATE	NATIONAL
Aug.	7.3	6.2
Sept.	6.9	6.2
Oct.	7.3	6.6
Nov.	7.3	6.8
Dec.	7.6	7.2

These are the worst unemployment rates in Illinois since June 1993 when the unemployment rate was at 7.7%.[20]

Third, the benchmark underpinning the Master Sergeants' pay rate is the framework established by the AFSCME-State contract, which was finalized August 16, 2008 and ratified by September 5, 2008 — just weeks prior to the economy's free-fall.[21] Again, the AFSCME-State contract resulted in a 15.25% wage increase over four years which was passed on to the employees covered by the Troopers contract (including Sergeants).[22]

At the time the AFSCME-State contract was negotiated, compelling reasons justifying that kind of wage increase were common sense realizations con-

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18 http://online.wsj.com/public/resources/documents/info-flash08.html?project=EFORECAST07.

19 http://lmi.ides.state.il.us/laus/illaus_seasadj.htm.
See also, http://lmi.ides.state.il.us/laus/lausmenu.htm. State unemployment rates are taken from IDES publications. *Id*. National unemployment levels are taken from BLS statistics cited at note 16 *supra*.

20 http://lmi.ides.state.il.us/laus/illaus_seasadj.htm.

21 *See* note 10, *supra*.

22 *Id*. *See also*, ISP Brief at 18.

cerning the cost-of-living as it existed in August 2008 when that contract was finalized. For example, according to the Energy Information Administration of the U.S. Department of Energy, when the predecessor July 1, 2004 - June 30, 2008 AFSCME-State contract expired, the average price of a gallon of regular gasoline rose from $1.92 to $4.20 over the life of that contract.[23] In simple terms then, over the life of that 2004-2008 AFSCME-State contract, the cost of just getting to work more than doubled for those who drove, thereby serving, in part, to justify the wage increases achieved in that contract. When this proceeding began in early August 2008, the average cost of a gallon of regular gasoline was $4.02; which then dropped to $3.91 in early September 2008; hit a low of $1.65 in early December 2008; and, as of January 26, 2009 was at $1.95.[24] Therefore, during the pendency of these proceedings, with respect to the price of gasoline, the exact *opposite* experience existed from that which occurred during the four year period of the predecessor AFSCME-State contract — *i.e.*, during that contract, the cost of gasoline more than doubled, while during the pendency of these proceedings, the cost of gasoline fell by approximately 50%.

But "the economy" and fluctuations in gasoline prices are not specific statutory factors found in Section 14(h) of the Act. However, "[t]he average consumer prices for goods and services, commonly known as the cost of living" is a specific factor — Section 14(h)(5). The economy and gasoline prices just discussed are reflected in cost-of-living numbers.

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23 http://tonto.eia.doe.gov/dnav/pet/hist/mg_rt_c2w.htm. These are Chicago-based statistics. *Id*.

24 *Id*.

Each month, the BLS publishes news releases showing changes in the Consumer Price Index ("CPI"). A compilation of those news releases for July 2008 through January 2009 shows the following:[25]

CPI MONTH-BY-MONTH

PERIOD	CHANGES FROM PRECEDING MONTH (ALL ITEMS)
12/07	.4
01/08	.4
02/08	.0
03/08	.3
04/08	.2
05/08	.6
06/08	1.1
07/08	.8
08/08	-.1
09/08	.0
10/08	-1.0
11/08	-1.7
12/08	-.7

As shown by the above CPI month-by-month table, prior to the start of these proceedings in August 2008, the CPI changes were on the increasing side (*i.e.*, June (1.1 over May) and July (.8 over June)). Indeed, as shown in the above month-by-month table, prior to August 2008 and going back to December 2007, with the exception of February 2008, although not in large amounts, the CPI was increasing — a factor that would be favorable to the Union because, as in the AFSCME-State negotiations, the Union could still argue that prices were on the rise. However, as shown by the month-by-month table, commencing in August 2008, the changes in the CPI began to fall and went to

[25] http://www.bls.gov/news.release/archives/cpi_07162008.htm; http://www.bls.gov/news.release/archives/cpi_08142008.htm; http://www.bls.gov/news.release/archives/cpi_09162008.htm; http://www.bls.gov/news.release/archives/cpi_10162008.htm; http://www.bls.gov/news.release/archives/cpi_11192008.htm; http://www.bls.gov/news.release/archives/cpi_12162008.htm; http://www.bls.gov/news.release/archives/cpi_01162009.htm.

zero or slipped into the negative range — a factor not favorable to the Union because costs of goods began to decrease.

The BLS also compares the CPI for preceding three month periods and for the year preceding a particular month. Those comparisons show:[26]

CPI PERIODIC

Month	Compound Annual Rate 3-Mos. Ended	Unadjusted 12-Mos. Ended
06/08	7.9	5.0
07/08	10.6	5.6
08/08	7.2	5.4
09/08	2.6	4.9
10/08	-4.4	3.7
11/08	-10.2	1.1
12/08	-12.7	.1

Changes in the CPI as they existed as of December 2008 were best summed up in the BLS January 16, 2009 News Release:[27]

> The Consumer Price Index for All Urban Consumers (CPI-U) decreased 1.0 percent in December .... The December level ... was 0.1 percent higher than in December 2007.
>
> * * *
>
> For the 12 month period ending December 2008, the CPI-U rose 0.1 percent. This was the smallest calendar year increase since 0.7 percent decline in 1954 and compares with a 4.1 percent increase for the 12 months ended December 2007. ...

The changes in the CPI reflect the experience faced by the State and AFSCME in their negotiations. Into August 2008, the CPI was still increasing justifying the 15.25% increase obtained in those negotiations. However, after August 2008 when these proceedings began, the CPI dropped dramatically — a

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[26] *Id*.

[27] http://www.bls.gov/news.release/archives/cpi_01162009.htm.

result consistent with the above discussion concerning the dramatic downturn in the economy.

And with respect to costs of goods, it is not inflation related to increases in the CPI that we have to worry about (which would support the Union's position). Our current worry is "deflation":[28]

> As dozens of countries slip deeper into financial distress, a new threat may be gathering force within the American economy — the prospect that goods will pile up waiting for buyers and prices will fall, suffocating fresh investment and worsening joblessness for months or even years. The word for this is deflation, or declining prices, a term that gives economists chills. ...

In short, during the pendency of these proceedings, the economy simply tanked. The BLS summed it up best in its January 16, 2009 News Release quoted above — "[t]his was the smallest calendar year increase since ... 1954."[29] Recovery from this recession will not be something that occurs in the short term.[30] Indeed, according to President Obama's inaugural address on January 20, 2009:[31]

* * *

> That we are in the midst of crisis is now well understood. ... Our economy is badly weakened .... Homes have been lost; jobs shed; businesses shuttered. ...
>
> Today I say to you that the challenges we face are real. They are serious and they are many. The will not be met easily or in a short span of time. ...

* * *

The current economic crisis will not soon be over.

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[28] http://www.nytimes.com/2008/11/01/business/economy/01deflation.html.

[29] http://www.bls.gov/news.release/archives/cpi_01162009.htm.

[30] *See e.g.*, N.Y. Times, Jan. 21, 2009, (Business Day) at B1 ("Bank Crises Deepens No Quick Fix Likely From Obama Team"); http://www.nytimes.com/2009/01/21/business/economy/21bailout.html?scp=1&sq=Bank%20Crisis%20Deepens%20No%20Quick%20Fix%20Likely%20From%20Obama%20Team&st=cse.

[31] http://news.yahoo.com/s/ap/20090120/ap_on_go_pr_wh/inauguration_obama_text/print;_ylt=AlF8R7j_k8W7xUFz6Xsbg6EGw_IE.

b. Selection Of The Offers

For the Union, the above described economic events could not have come at a worse time in its efforts to increase the rank differential for the Master Sergeants. As the Union methodically laid out its position in the proceedings before me on why a higher rank differential than that offered by the ISP should be imposed through this process, the economic rug was pulled out from under it. And, Section 14(h) of the Act addresses 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 would be an understatement.

Further, Section 14(h)(5) provides that cost-of-living be considered. As set forth *supra* at III(C)(1(a), given the declining cost-of-living numbers, that factor does not favor the higher rank differential sought by the Union.

Also, Section 14(h)(6) provides that "[t]he overall compensation presently received by the employees ..." be considered. As noted earlier, the salaries of the Master Sergeants are formulated by applying the cost-of-living increases negotiated in the AFSCME-State contract; applying those to the Sergeants under the Troopers contract; and then projecting the rank differential upward to determine the Master Sergeants' salary. Therefore, as an example, given the 15.25% cost-of-living negotiated in the AFSCME-State contract, under the ISP's offer, a Master Sergeant with 10 years of service would receive a salary computed as follows:[32]

ISP OFFER
10 Years Of Service

	1/1/08	7/1/08	1/1/09	7/1/09	1/1/10
	0% COL 6.95% RD	0% COL 7.0% RD	1.5% COL 7.0% RD	2.5% COL 7.3% RD	2.0% COL 7.3% RD
SGT	81588	81588	82812	84888	86580
M/SGT	87264	87300	88608	91080	92904

	7/1/10	1/1/11	7/1/11	1/1/12
	2.0% COL 7.4% RD	2.0% COL 7.4% RD	4.0% COL 7.5% RD	1.25% COL 7.5% RD
SGT	88308	90072	93672	94848
M/SGT	94848	96732	100692	101964

Taking that structure and spreading it through all of the step lanes populated by Master Sergeants, the ISP offer for increases within the step lanes is a follows:[33]

EFFECT OF THE ISP OFFER ON STEP LANES

	8 yr	10 yr	12.5 yr	15 yr	17.5 yr	20 yr	22.5 yr	25 yr
Begin	82956	87264	91704	95520	99492	103752	108108	112752
End	96948	101964	107172	111636	116256	121236	126324	131748
Increase	13992	14700	15468	16116	16764	17484	18216	18996
% Inc.	16.9%	16.8%	16.9%	16.9%	16.8%	16.8%	16.8%	16.8%

The effect of the Union's offer on the step lanes is as follows:[34]

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[32] Appendix B of the 2004-2008 Troopers contract shows that as of July 1, 2007, Sergeants with 10 years of service received $79,212. *See* ISP Exh. A at Appendix B. According to Article 20 of the 2004-2008 Troopers contract, the last wage increase under that contract was 3.0% effective January 1, 2008. That 3% increase brought Sergeants with 10 years of service to $81,588 at the expiration of the Troopers 2004-2008 contract on June 30, 2008, which is the Sergeants' salary used by the ISP as the starting point in its spreadsheets for comparison of the offers. *See* ISP Exhs. CC and DD.

[33] ISP Exh. DD at 5-6. According to the ISP's records, some step lanes were not populated by employees. Those have been omitted. *Id*. *See also*, ISP Exh. Q.

[34] ISP Exh. CC at 4-5.

EFFECT OF THE UNION OFFER ON STEP LANES

	8 yr	10 yr	12.5 yr	15 yr	17.5 yr	20 yr	22.5 yr	25 yr
Begin	82956	87264	91704	95520	99492	103752	108108	112752
End	99648	104808	110160	114756	119496	124620	129852	135420
Increase	16692	17544	18456	19236	20004	20868	21744	22668
% Inc.	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%	20.1%

Just looking at the step lanes — which means no movements due to longevity steps — the ISP's offer on rank differential provides increases to the step lanes of between $13,992 to $18,996 over the life of the Agreement (16.8% to 16.9%). And again, this is *without* movement in the step lanes as a result of longevity. The Union's offer increases those lanes from $16,692 to $22,668 (20.1%).

But with the exception of employees at the highest step lane at 25 years, employees *will* move into higher step lanes during the life of the Agreement due to longevity step movements. After 8 years, the next step lane movement is at 10 years and then every 2.5 years thereafter. Thus, because the movements occur at 2 - 2.5 year intervals, over the life of a four year Agreement (except for Master Sergeants at the topped out 25 year level), employees will move to a higher step lane at least once and, depending on their years of service and placement on the salary schedule, perhaps even twice.[35]

The effect of a one step movement with the ISP offer is as follows:

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[35] Tr. 78-79.

EFFECT OF THE ISP'S OFFER WITH ONE LONGEVITY STEP MOVEMENT

	8 to 10 yr	10 to 12.5 yr	12.5 to 15 yr	15 to 17.5 yr	17.5 to 20 yr	20 to 22.5 yr	22.5 to 25 yr	25 yr
Begin 7/1/08	82956	87264	91704	95520	99492	103752	108108	112752
End 6/30/12	101964	107172	111636	116256	121236	126324	131748	131748
Increase 7/1/08 - 6/30/12	19008	19908	19932	20736	21744	22572	23640	18996
Total % Increase	22.9%	22.8%	21.7%	21.7%	21.8%	21.7%	21.9%	16.8%

The effect of a one step movement with the Union's offer is as follows:

EFFECT OF THE UNION'S OFFER WITH ONE LONGEVITY STEP MOVEMENT

	8 to 10 yr	10 to 12.5 yr	12.5 to 15 yr	15 to 17.5 yr	17.5 to 20 yr	20 to 22.5 yr	22.5 to 25 yr	25 yr
Begin 7/1/08	82956	87264	91704	95520	99492	103752	108108	112752
End 6/30/12	104808	110160	114756	119496	124620	129852	135420	135420
Increase 7/1/08 - 6/30/12	21852	22896	23052	23976	25128	26100	27312	22668
Total % Increase	26.3%	26.2%	25.1%	25.1%	25.2%	25.2%	25.3%	20.1%

And, as stated by the ISP, based on individual placements on the salary schedule, it is possible that employees could experience two step movements over the life of the Agreement.[36] For example, take a Master Sergeant who has 14 years of service on July 1, 2008 and begins his 15th year on August 1, 2008. That employee starts the contract on July 1, 2008 in the 12.5 years step

[36] Tr. 78-79:

MR. THOMAS: Actually there are some people during that term of the contract that will move up one step on the salary schedule because of the step increases and there are others that will move up two. No one moves more than two. No one moves less than one [except at 25 years].

* * *

... [T]he sworn officers, will move up a minimum of one step during the term of this contract depending on where you are at on the salary schedule, some will move two because there are some that are close together.

See also, Tr. 83-85.

lane. Effective August 1, 2008 with the beginning of his 15th year, that employee moves to the 15 years of service step lane. Two and one-half years later — while the Agreement is still in effect — that employee gets another step movement to the 17.5 years of service step lane. That employee therefore experiences two step movements during the life of the Agreement — starting in the 12.5 years step lane; moving to the 15 years step lane; and then completing the Agreement in the 17.5 years step lane.

Applying the parties' offers, that type of movement translates as follows:[37]

EFFECT OF THE ISP'S OFFER WITH TWO LONGEVITY STEP MOVEMENTS

	8 to 12.5 yr	**10 to 15 yr**	**12.5 to 17.5 yr**	**15 to 20 yr**	**17.5 to 22.5 yr**	**20 to 25 yr**	**22.5 to 25 yr**	**25 yr**
Begin 7/1/08	82956	87264	91704	95520	99492	103752	108108	112752
End 6/30/12	107172	111636	116256	121236	126324	131748	131748	131748
Increase 7/1/08 - 6/30/12	24216	24372	24552	25716	26832	27996	23640	18996
Total % Increase	29.2%	27.9%	26.8%	26.9%	27.0%	27.0%	21.9%	16.8%

The effect of a two step movement with the Union's offer is as follows:

[37] With the two step movements, only one step movement can be made at 22.5 years because of the top out at 25 years. And because the salary schedule tops out at 25 years, there are no step movements at that point.

EFFECT OF THE UNION'S OFFER WITH TWO LONGEVITY STEP MOVEMENTS

	8 to 12.5 yr	**10 to 15 yr**	**12.5 to 17.5 yr**	**15 to 20 yr**	**17.5 to 22.5 yr**	**20 to 25 yr**	**22.5 to 25 yr**	**25 yr**
Begin 7/1/08	82956	87264	91704	95520	99492	103752	108108	112752
End 6/30/12	110160	114756	119496	124620	129852	135420	135420	135420
Increase 7/1/08 - 6/30/12	27204	27492	27792	29100	30360	31668	27312	22668
Total % Increase	32.8%	31.5%	30.3%	30.5%	30.5%	30.5%	25.3%	20.1%

Summarizing all of the above with respect to the overall package of the wage offers, the parties offers' do the following:

The ISP's offer increases the step lanes in amounts from $13,992 to $18.996 (percentages varying between 16.8% and 16.9%); employees receiving one step movement will get increases in their salary varying between $19,008 and $23,640 with percentage increases of 21.7% to 22.9%; and employees receiving two step movements will get increases in their salary varying between $24,216 and $27,996 with percentage increases of 27.0% to 29.2%.

The Union's offer increases the step lanes in amounts from $16,692 to $22,668 (percentage increase of 20.1%); employees receiving one step movement will get increases in their salary varying between $21,852 and $27,312 with percentage increases of 25.1% to 26.3%; and employees receiving two step movements will get increases in their salary varying between $27,204 and $31,668 with percentage increases of 30.3% to 32.8%.

The Union's offer is certainly substantial. But so is the ISP's.

While the rank differential percentage change in the ISP offer may seem low (going from 6.95% in effect January 1, 2008 to 7.5% at the end of the Agreement), when coupled with the 15.25% increase given to the Sergeants upon which the rank differential is then applied and then considering increases in the step lane movements due to longevity, the *actual* wage increases for the Master Sergeants under the ISP's offer are quite significant — both in real dollars and percentages.

The bottom line here is that the ISP's rank differential offer is by no stretch of the imagination regressive. On the contrary, the ISP's offer will result in significant monetary and percentage increases for the Master Sergeants. In the economic climate now facing the parties, those kinds of significant increases must be given great weight. Given the significant increases resulting from the ISP's offer, the Union's offer, which, in real dollars shows very significant increases, simply cannot be justified in this economy or under the statutory factors found in Section 14(h) of the Act.

When weighed against the above, the Union's arguments concerning comparability do not change the result. The short answer to the Union's reliance upon the jurisdictions it selected for comparison purposes is that even assuming those jurisdictions are valid comparables, those contracts were not negotiated under the economic circumstances that have existed since these proceedings began in August 2008. But in any event, on balance, given the extraordinary circumstances which presented in this case since August 2008, the comparability factor in Section 14(h)(4) must yield to the other factors cited above.

The ISP's offer on rank differential is therefore selected.

c. Caveats

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 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].

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.[38] 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.

But there are two caveats to my selection of the ISP's offer on rank differential that the parties should be aware of.

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[38] That is precisely what happened in the AFSCME-State contract discussed *infra* where the parties to that contract agreed to reopener provisions.

First, an obvious one. 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.

Second, a not so obvious caveat. The wage rates for the Master Sergeants may not be settled for the duration of this Agreement. The 2008-2012 AFSCME-State contract is the benchmark for the Sergeants' pay under the Troopers contract, which then serves as the floor for the application of the rank differential for the Master Sergeants under this Agreement. But the new AFSCME-State contract now has an optional reopener provision which allows for higher wages in the event the State reopens in the out years on healthcare. Appendix A, Section 7 of the 2008-2012 AFSCME-State Agreement provides:

> **Section 7. Joint Labor/Management Advisory Committee on Insurance Benefits**
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> * * *
>
> > C. Effective July 1, 2008, the Joint Labor/Management Advisory Committee on health care benefits shall be restructured to provide for the development and introduction of value-based benefit design changes for all health plans, with the goal of improving the health care of the covered population.

* * *

> In the event that the Committee has not reached an agreement on changes to the plan by December 1, 2010, the State shall have the right to re-open the Agreement on the issue of the healthcare plan only by serving the Union with written notice not later than December 15, 2010. In the event that the State exercises its right to re-open the Agreement as provided herein, the Union shall have the right to re-open the Agreement limited to the issue of higher wages only, by serving the State with written notice not later than December 31, 2010.
>
> Thereafter, the parties shall convene expedited negotiations not later than January 15, 2011, on the issue(s) subject to the re-opener. If no agreement is reached by February 15, 2011, either side may invoke interest arbitration and the parties shall select a mutually agreed upon arbitrator who shall have full authority to resolve all re-opened issues by a final and binding award. The interest arbitration shall be based upon the framework provided in Section 14 of the Illinois Public Labor Relations Act.

Therefore, in the event the State reopens healthcare and AFSCME in response reopens wages and achieves higher wage rates either through bargaining or the agreed upon interest arbitration process, the question of whether those higher wage rates are to be passed on to Sergeants under the Troopers contract and then the Master Sergeants under this Agreement will have to be sorted out and, if not agreed to, resolved through the grievance/arbitration process.

2. Duration

The Union seeks a January 1, 2008 - June 30, 2012 term for the Agreement, while the ISP agrees with the termination date, but seeks July 1, 2008 as the effective date.[39]

For purposes of this proceeding, the obvious consequence of the parties' different effective dates is the retroactivity of the wage increases. The reasons underlying the selection of the ISP's offer on rank differential discussed *supra* at III(C)(1) govern this issue as well. Notwithstanding the economy, the ISP's

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[39] Union Brief at 3-4; ISP Brief at 2.

offer on rank differential provides a substantial wage increase to the Master Sergeants over the life of the Agreement. In these circumstances and in these times, given the strength of the ISP's offer on rank differential even with a July 1, 2008 effective date, there is no reason to impose an effective date earlier than the one sought by the ISP. The ISP's offer on duration is therefore selected.

IV. CONCLUSION

When the parties commenced the proceedings before me in this matter, there were a substantial number of unresolved issues between them. All but two were resolved. But as the timing in this case demonstrated — and certainly through no fault of the Union — possibly since the passage of the Act there has never been a worse time for a union to find itself in the interest arbitration process. In the midst of these proceedings on the two remaining economic issues and with the Union making strong efforts to increase the wages for those it represents, the economy went into free-fall and recovery is not within sight. Given that scenario and particularly given the ISP's offers which notwithstanding the dire economic circumstances amount to significant wage increases for the Master Sergeants, the Union simply cannot prevail in this case.

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. In this case, the proceedings began; the parties made their final offers; and in the midst of the procedure, the economy crashed. But in the end and notwithstanding the dra-

dramatic change of circumstances after the proceedings began, the Employer - ISP's offer still resulted in significant gains for the employees in terms of real dollars and percentage increases over the life of the Agreement. These disputes are considered on a case-by-case basis. This award is *not* to be read to mean that the current economy requires awards which have a regressive impact on employees. Here, the ISP made a significant offer — even without the adverse changes in the economy which emerged.

Notwithstanding the strong efforts by the Union on behalf of the Master Sergeants, the ISP's offers must be chosen. The ISP's offers on rank differential and duration date are selected.

V. AWARD

As qualified in III(C)(1)(c) of this opinion, the Employer - Illinois State Police's offers on rank differential and duration are selected.

First, Master Sergeants shall receive a rank differential over Sergeants covered by the Troopers contract as follows:

Effective Date	Rank Differential
7/1/08	7.00%
7/1/09	7.30%
7/1/10	7.40%
7/1/11	7.50%

Second, the term of the parties' Agreement shall be from July 1, 2008 to June 30, 2012.

Edwin H. Benn
Arbitrator

Dated: January 27, 2009