

AWARD OF ARBITRATOR

In the Matter of Interest
Arbitration

between

County of Wabash/Wabash County
Sheriff

and the

Illinois Fraternal Order of
Police Labor Council

Opinion and Analysis,
Findings of Fact,
and Award

by
Arbitrator
Peter Feuille
in

ILRB No. S-MA-09-020

Date of Award: July 21, 2010

APPEARANCES

For the Employer:

Ms. Cassandra A. Goldman, Wabash County State's Attorney
Mr. Joe Keeling, Sheriff of Wabash County
Mr. Charles K. Saunders, Wabash County Board Chairman
Mr. Larry L. Briggs, Wabash County Treasurer

For the Union:

Ms. Becky S. Dragoo, Field Supervisor
Mr. D-Ray Etzkorn, Deputy Sheriff
Mr. J. Derek Morgan, Deputy Sheriff and Steward
Ms. Connie B. Clark, Corrections Officer

INTRODUCTION AND BACKGROUND

The County of Wabash/Wabash County Sheriff ("Employer") and the Illinois Fraternal Order of Police Labor Council ("Union") negotiated to generate a successor collective bargaining agreement ("CBA") to succeed the 2006-08 CBA covering the bargaining unit of deputy sheriffs and correctional officers that expired on November

30, 2008 (Union Exhibit 2 ("UX 2")).¹ During their negotiations the parties reached agreement on many issues, but were not able to reach agreement on all issues. Accordingly, they invoked the interest arbitration procedure specified in Section 14 of the Illinois Public Labor Relations Act ("Section 14," "Act"). The parties selected the undersigned as Arbitrator, waived the tripartite arbitration panel format and agreed that I would serve as the individual Arbitrator, and in December 2009 the Illinois Labor Relations Board ("Board") appointed me as the interest arbitrator in this matter. Additionally, the parties waived the Act's requirement in Section 14(d) that the hearing in this matter must commence within 15 days of the Arbitrator's appointment, and the parties agreed to extend Section 14(d)'s hearing and other timelines to accommodate the scheduling needs of the participants in this matter. In particular, the parties agreed I would have up to 60 days from the close of the record to issue the instant Award (Transcript, page 187 ("Tr. 187")). I am most grateful for the parties' willingness to waive/modify the arbitration process timelines contained in Section 14.

By mutual agreement, the parties held an interest arbitration hearing on April 7, 2010, in Mt. Carmel, IL. The parties agreed to exchange, and did exchange, their final offers on each unresolved issue with each other prior to the hearing. The

1. The Union represents the deputy sheriffs in "Unit A," and the correctional officers in "Unit B" (UXs 2, 6). However, the parties have negotiated one CBA to cover both occupational groups (UXs 2, 20), and this combined group is referred to in this Award as "the bargaining unit."

parties also agreed that, once exchanged, their final offers could not be unilaterally modified (UX 1). The April 7 hearing was stenographically recorded and a transcript produced. The parties subsequently submitted post-hearing briefs. With the Arbitrator's final receipt of these briefs on June 10, 2010 the record in this matter was closed.

THE ISSUES

The parties stipulated that the following three unresolved issues are on the arbitral agenda:

1. Voluntary overtime/turn sheet (Article 19, Section 8)
2. Wages (Article 20 and Appendix C)
3. Contract duration (Article 29)

The parties also stipulated that all three of these issues are "economic issues" within the meaning of Section 14(g) of the Act (Tr. 8).

Additionally, the parties further agreed and stipulated, pursuant to their "alternative form of impasse resolution" authority under Section 14(p) of the Act, that I would have the authority or discretion of a conventional arbitrator on the wage and contract duration issues, meaning that I have been given the discretion to issue a ruling on each of those two issues that is not limited to selecting one or the other of the parties' final offers (Tr. 188-189).

STATUTORY DECISION CRITERIA

Section 14(g) of the Act mandates that interest arbitrators "shall adopt the last offer of settlement [on each economic issue] which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 14(h) contains several criteria that arbitrators must use when making decisions on each of the issues submitted to them for resolution in arbitration disputes. These criteria, in their entirety, are:

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

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (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 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."

The Act does not require that all of these factors or criteria be applied to each unresolved item; instead, only those that are "applicable." In addition, the Act does not attach weights to these decision factors, and therefore it is the Arbitrator's responsibility to decide how each of these criteria should be weighed. We will use the applicable criteria to make decisions on the issues presented in this proceeding.

As will be seen below, Section 14(h) factors (1), (5), and (6) (the Employer's lawful authority, inflation, and the overall compensation received by unit members) are not applicable to the resolution of any of the three issues on the arbitral agenda. As a result, these three factors will not be considered further.

ANALYSIS, OPINION, AND FINDINGS OF FACT

Comparability

As noted above, the Section 14(h)(4) decision factor or criterion states that arbitrators may use comparisons of the employment terms of unit members with employment terms of similar employees in comparable communities. This criterion is customarily referred to as the "comparability" factor. Consistent with the vast majority of Section 14 interest arbitrations, both parties have submitted external comparability evidence into the record. As will be seen later in this Award, this comparability evidence was submitted and extensively relied upon in support of the parties' offers on the wage issue.

For its part, the Union has used nine adjacent or nearby counties - Clark, Clay, Crawford, Cumberland, Jasper, Lawrence, Richland, Wayne, and White Counties (UX 8). All of these counties are located in southeast Illinois, all have small populations, and all have per capita income, median family income, and median home values that are similar to Wabash County (UX 9). The Union has not included Edwards County, Wabash County's next-door neighbor, as a comparable jurisdiction because its employees are not represented (UX 8). As we will see, the Union has used its nine-county comparison group primarily to show that unit member wages trail the average wages these nine other counties pay to their deputies and correctional officers.

The Employer compares itself with Clay, Richland, Wayne, and White Counties (EX 20). In contrast to the Union's focus on wage

rates paid by comparison counties, the Employer emphasizes that its comparable counties have substantially larger revenue streams into their general funds than does Wabash County.

I note that both parties have used comparisons with Clay, Richland, Wayne, and White Counties. I find that both parties' comparison groups provide evidence that is relevant and useful, particularly on the wage issue. As a result, I will use the comparability evidence from both parties' comparison groups as appropriate in resolving the arbitral issues.

1. Voluntary Overtime/Turn Sheet (Article 19, Section 8)

In the parties' expired CBA, Section 19.8 addresses voluntary overtime, says that when such extra duty hours are offered, "such overtime shall be offered to bargaining unit members by use of a turn sheet," specifies that the turn sheet shall be used to fill absences of three days or less that result from the use of sick leave or vacation, and specifies the circumstances under which the turn sheet will not be used (UX 2).

Position of the Union. The Union proposes that the following language be added to the end of the first paragraph in Section 19.8: "In the event the Employer fails to follow the turn sheet mechanism as set forth above for filling vacancies and an arbitrator subsequently determines the failure to do so was a

violation of the parties' contract, the bargaining unit member to whom the overtime should have been offered shall be compensated at the rate of two and one half times the member's wage for one complete shift" (UX 3).

The Union offers the following rationale in support of its proposal. The Union notes that the first sentence of Section 19.8 mandates that voluntary overtime "shall be offered" to unit members. However, the Union says the Sheriff repeatedly has ignored this contractual requirement, and instead has offered this overtime to non-bargaining unit members. The Union has filed grievances over this issue, the Employer and the Union have discussed this practice and reached agreements that it would be discontinued, only to have the Sheriff disregard these settlements and resume having extra duty work performed by non-unit personnel. The Union says at the instant pre-hearing meeting between the Union and the Employer, the Sheriff acknowledged that it was cheaper for him to fill these temporary vacancies with the court security officer, and the only way he was going to stop this practice is if he was taken to arbitration. In other words, the Sheriff's practice of violating the turn sheet provision is ongoing and will continue until it becomes too expensive for the Sheriff to continue the practice.

The Union's proposal does not seek to change how the turn sheet mechanism operates. Instead, the Union's proposal seeks to

make the Sheriff's use of non-unit personnel too expensive to continue by requiring the Employer to pay double time and one-half to affected unit member(s) if an arbitrator finds that the Employer has violated Section 19.8. The Union's proposal only calls for this level of payment if an arbitrator rules in the Union's favor. In light of the Sheriff's steadfast and open refusal to abide by the existing language in Section 19.8, the Union argues that this double time and one-half penalty language is the only practical way to get the Sheriff's attention and require that he use the turn sheet mechanism in the manner called for in the CBA.

Position of the Employer. The Employer proposes that no modifications be adopted in Section 19.8 and that the existing language continue unchanged into the successor contract. The Employer says that when problems have emerged with the operation of Section 19.8, the parties have met and discussed them and reached a "meeting of the minds" on this provision (Tr. 182).

The Employer also points out that unit members have the right to file grievances whenever they believe the Employer has violated this section, and via their Union to take these grievances to arbitration to obtain redress if they cannot obtain such redress directly from the Employer. The Employer says there is no evidence that unit members have ever taken a turn sheet grievance to arbitration.

The Employer argues that the Union's proposed change to Section 19.8 is deliberately punitive, and that it gives unit members a financial incentive to file grievances for potential financial gain. The Employer notes that there is no evidence to support any remedy above the standard make whole remedy if a contract violation is found to have occurred. The Employer further notes that none of the nine counties used by the Union as comparable counties have CBAs containing any such punitive language as proposed by the Union.

Analysis. The Section 14 decision criteria applicable to this issue are Section 14(h)(4) dealing with comparability and a Section 14(h)(8) "other" factor often used in interest arbitration - past practice.

According to the Union, the Sheriff frequently uses non-unit personnel to perform extra duty work, often prisoner transport details, to avoid paying overtime to unit members. The Employer did not refute the Union's claim that the Employer often has violated Section 19.8 in this manner.

However, when we examine the record under Section 14(h)(8) for specific evidence about the Sheriff's practice of not complying with Section 19.8, the record contains no specific evidence regarding the particulars of this practice - how extensive is this practice, how often it occurs, what kinds of work the Sheriff assigns to non-unit personnel to perform, how

much unit work is performed by non-unit personnel, and so on. In other words, the Union has presented no specific instances or examples of alleged turn sheet violations to support its claim that the Sheriff often violates Section 19.8. In addition, the Union presented no actual unit member grievances over these alleged violations, and stated only that unit members have filed grievances over the turn sheet issue. The Union says the parties have "reached a variety of verbal and other settlements resolving the issue and righting the wrong" (Union Brief, page 38 ("U.Br. 38")), only to have the Sheriff continue to violate the turn sheet requirement. Without specific evidence regarding the particulars of these turn sheet violations, it is extremely difficult to justify adding the Union's proposed remedy to Section 19.8. I understand that the unit members are upset at the Sheriff's practice, but their distress at the Sheriff's behavior does not constitute the type of evidence that I can use to justify selecting the Union's offer.

Further, the Union notes that when unit members have filed turn sheet grievances, these grievances have been settled by the parties (Un.Br. 38). One of those parties is the Union. If the Union has correctly described the Sheriff's continuing practice of committing turn sheet violations, it is not at all clear why the Union continues to tolerate these violations by settling their turn sheet grievances, knowing the Sheriff will again

violate Section 19.8 in the future. In other words, the Union has not availed itself of its already existing contractual mechanism in the Article 12 grievance procedure to take one or more of these grievances to grievance arbitration and obtain a remedy designed to correct this turn sheet problem.

In addition, when we apply Section 14(h)(4), the Employer says that no similar punitive remedy language appears in the relevant CBAs in the nine nearby counties the Union has submitted as comparables. I note that the Union did not submit any comparability evidence in support of its offer on this turn sheet issue.

In sum, the evidence on this issue consists of (1) the Union's strongly stated distress at the manner in which the Sheriff allegedly does not comply with the turn sheet requirements in Section 19.8 when extra duty is to be performed; (2) the complete absence of specific evidence showing the frequency and the manner of how the Sheriff has allegedly not followed Section 19.8's requirements; (3) the fact that the Union has tolerated the recurring nature of the turn sheet problem by settling its turn sheet grievances with the Employer instead of taking one or more of these grievances to arbitration and seeking a grievance arbitrator's award directing the Sheriff to comply with Section 19.8, and (4) the absence of any evidence from other

jurisdictions showing that similar provisions have been adopted into CBAs covering Illinois law enforcement personnel.

As noted above, the Union has not used the existing contractual grievance procedure to seek a grievance arbitration ruling in its favor on the turn sheet issue. In light of that fact and the other evidence discussed above, there is no persuasive evidentiary basis to support the selection of the Union's offer. This conclusion very likely would be different if the Union had obtained one or more grievance arbitration awards from arbitrators who ruled the Sheriff had violated Section 19.8, awarded traditional "make whole" remedies, and the evidence showed that the Sheriff nevertheless continued to commit turn sheet violations. However, there is no such evidence. As a result, I believe that the language in Section 19.8 should continue unchanged.

Finding. For the reasons expressed above, I find that the evidence provides significantly more support for the selection of the Employer's final offer on the turn sheet issue than for the selection of the Union's final offer.

2. Contract Duration (Article 29)

The expired CBA covered the period December 1, 2006 through November 30, 2008 (UX 2). The parties disagree about the duration of the successor CBA, as explained below.

Position of the Union. The Union proposes a three-year contract duration covering the period December 1, 2008 through November 30, 2011 (UX 3). The Union supports its final offer by pointing to the fact that the parties have been engaged in virtually non-stop bargaining since 2006. Specifically, the parties negotiated their 2006-08 CBA starting in 2006 and concluding in February 2008 (UX 2, p. 31). Then, in July 2008 the Union submitted its formal notice of demand to bargain to the Employer (UX 7), and the parties have been engaged in negotiation and impasse resolution processes for a full two years since then. The Union emphasizes that if the Employer's two-year contract term is adopted, that CBA will expire on November 30, 2010, which means that the process of bargaining the successor CBA must begin immediately.

The Union argues that a three-year CBA term provides both parties with more stability in their relationship, and provides both parties with a respite from the bargaining and impasse resolution processes to which they both have devoted so much time and energy during the past four years.

Position of the Employer. The Employer proposes a two-year contract duration covering the period December 1, 2008 through November 30, 2010 (UX 4).

The Employer supports its contract duration offer by noting that the issues of wages and contract duration are inextricably

linked, that it proposes a two-year wage freeze in its final wage offer, and accordingly it seeks a two-year contract duration.

In addition, the Employer notes that the County's financial future is in a state of flux, and that long-range forecasts can be hazardous. As a result, the Employer argues that it makes more sense to award a two-year contract duration in the instant proceeding, and then allow the parties the opportunity to address future pay and benefit issues in their bargaining for a successor contract.

Analysis. One of the factors that interest arbitrators "normally or traditionally" consider under Section 14(h)(8)'s "other factors" is the parties' bargaining history. The evidence shows that the parties have negotiated a series of two-year and three-year CBAs since this bargaining unit was certified by the ILRB in 1995 (UXs 6, 20). I believe that the parties' recent (2006-10) bargaining and impasse resolution history deserves the most weight during this 15-year period.

As the Union has noted, the parties have been engaged in bargaining and impasse resolution processes almost non-stop since 2006. They started bargaining for the 2006-08 CBA in 2006, and did not sign their 2006-08 CBA until February 2008 (UX 2). Then in July 2008 they resumed bargaining with the intent of negotiating a successor CBA (UX 6). Those negotiations were partly successful, in that the parties agreed upon many issues

(UXs 4, 5), including some issues that were resolved shortly prior to the arbitration hearing. However, some issues eluded resolution, so the parties engaged in the Section 14 impasse resolution process (UX 7). After engaging in mediation, the parties have been involved in the instant interest arbitration process since November 2009 when the Union submitted its demand for interest arbitration to the Illinois Labor Relations Board (UX 7).

This recent history strongly supports the creation of a respite period during which the parties and especially their representatives can catch their breath and step away from the demands of the bargaining and impasse resolution process. The only realistic way this can be accomplished is via a three-year duration with a CBA expiration date of November 30, 2011. The parties can and should use this respite period to examine the operational impact of the decisions they have made at the negotiating table and I have made in this Award. Such examination will enable them to negotiate, starting at an appropriate time in 2011, a successor CBA based on a much more informed basis than would be possible if only a two-year contract term were awarded.

In contrast, the award of a two-year contract duration, resulting in a CBA expiring on November 30, 2010, would require the parties to almost immediately return to the bargaining table

to resume bargaining for the contract that would follow the instant CBA that will result from this arbitration. It is difficult to believe that the almost-immediate renewal of the bargaining process on the heels of the past four years of almost non-stop bargaining and impasse resolution would serve any purpose other than creating "bargaining fatigue" on both sides of the negotiating table. Instead, a three-year contract term will provide both parties with some much-needed relationship stability and employment term predictability until late 2011.

Finding. For the reasons expressed above, I find that the evidence provides significantly more support for the Union's final offer of a three-year contract duration than for the Employer's final offer of a two-year contract term, and therefore I select the Union's final offer to resolve the contract duration issue. This means that the dates in the first sentence in Section 1 of Article 29 shall be changed to be consistent with the Union's final offer, and the remainder of Article 29 will continue unchanged.

3. Wages (Article 20 and Appendix C)

Article 20 in the parties' CBA specifies the specific percentage wage increases to be received by unit members during the life of the CBA as well as the dates on which these increases will take effect (UX 2). Appendix C specifies the actual wages

in the form of annual salaries to be paid to unit members at the various experience-based steps in the two Appendix C salary schedules, one for correctional officers and one for deputies (UX 2).

Position of the Union. The Union proposes that each of the existing wage rates specified in the Appendix C salary schedules be adjusted by the following amounts at the following times: a three percent increase effective December 1, 2008; a three percent increase effective December 1, 2009; and a three percent increase effective December 1, 2010 during a proposed three-year contract (UX 3). The Union also seeks to have the retroactive amounts due employees paid to them via separate checks no later than 90 days after the instant Award is issued (UX 3).

The Union calculates the cost of its final offer as \$22,898 for the unit members who were on the payroll as of December 1, 2008 (UX 24). This excludes one correctional officer (D. Hopper) who was hired on November 17, 2009 and whose salary the Union argues should not be charged against the cost of the wage increases it has proposed (Tr. 56-59).

The Union supports its final offer with evidence designed to show that unit members are paid substantially less than their counterparts working for comparable employers, and with evidence designed to show that the Employer can afford to pay for the Union's final offer.

Looking first at the comparability evidence, the Union points to nine adjacent or nearby counties - Clark, Clay, Crawford, Cumberland, Jasper, Lawrence, Richland, Wayne, and White Counties (UX 8). All of these counties are located in southeast Illinois, all have small populations, all have per capita income, median family income, and median home values that are similar to Wabash County (UX 9). The Union has not included Edwards County, Wabash County's next-door neighbor, as a comparable jurisdiction because its employees are not represented (UX 8).

After comparing deputy salaries and correctional salaries with the salaries these nine comparable counties pay to their deputies and correctional officers, the Union emphasizes that the comparability evidence is overwhelming, as in overwhelmingly bad for this Employer's unit members. During the 2008 year (i.e., for salaries that took effect in December 2008), unit deputies lagged behind the nine-county average deputy salary by anywhere from one percent to 16 percent depending on years of experience (UX 13); lagged behind the five-county average during the 2009 year (salaries that took effect in December 2009), which salaries were available for only five of the nine counties, by one to 23 percent depending on years of experience (UX 14); and will lag behind the four-county average during the 2010 year (2010 salary data were available for only four of the nine counties) by six to

23 percent depending on years of experience (UX 15). Only at the time of hire during the 2008 and 2009 years were unit deputies paid a salary that was comparable to the average deputy salary paid in its comparability group (UXs 13, 14).

The Union says a similar dismal picture emerges when unit correctional officers' pay is compared with the pay of corrections personnel in comparable counties. During the 2008 year, unit correctional officers were paid anywhere from two to 17 percent less than the corrections nine-county average, depending on years of experience (UX 16); during the 2009 year unit correctional officers were paid anywhere from eight to 27 percent less than the five-county average, depending on years of experience (UX 17); and during the 2010 year unit correctional officers will be paid anywhere from 12 to 30 percent less than the four-county average, depending on experience (UX 18).

For both groups of unit members, these percentage gaps translate into thousands of salary dollars per year. For 2008 salaries, deputies with 12 years' experience trail their nine-county peers by an average of \$3,894 per year, and for 2010 salaries the 12-year deputies trail their four-county peers by an average of \$5,632 per year (UXs 13, 15). Similar size dollar gaps exist among 12-year correctional officers (UXs 16, 18).

For both groups of unit members, the salary gap with comparable jurisdictions grows as unit members acquire more years

of service, so that the most experienced unit members are the furthest behind their equally experienced peers in neighboring counties (UXs 13-18). For instance, for 2008 salaries, deputies with 15 years experience lag the nine-county average by 13 percent, while deputies with three years experience lag this average by four percent (UX 13).

The Union notes that unit members also trail their nine-county peers on the longevity step increase dimension. During the course of their careers with the Employer, experienced unit members receive several thousand dollars less per year in longevity pay increments compared to their peers in nearby counties (UX 19). In fact, the longevity pay gap is so large that the Union proposed in bargaining to modify the unit longevity pay plan. However, the Union withdrew this longevity pay proposal in order to concentrate on increasing salaries generally throughout the salary schedules (Un.Br. 33).

The Union emphasizes that the comparability evidence supporting the need for pay increases for unit members is irrefutable. In light of this evidence, the Union is highly vexed at the Employer's final offer of a two-year wage freeze for the 2008-09 and 2009-10 years. The adoption of the Employer's wage offer would cause unit members to fall behind their peers even farther than they already are, and would constitute a huge inequity to employees who agreed to 1.5 percent average annual

salary increases during the life of the 2006-08 CBA (UX 2). The Union agreed to those modest wage increases in response to the Employer's fiscal difficulties. What is their reward from the Employer? A proposal for a two-year wage freeze.

Turning from comparability to the Employer's ability to pay, the Union notes that the Employer's final offers rest upon a rationale of inability to pay. The Union says it is more accurate to describe the Employer's rationale as a lack of desire to pay instead of a true inability to pay. The Union emphasizes that the ability to pay decision criterion in Section 14(h)(3) contains two parts - the interests and welfare of the public, and the ability of the unit of government to meet those costs. It is in the interest of the public to retain experienced and competent law enforcement officers to protect the safety of the public. The Union says that Section 14 interest arbitrators have concluded for almost 25 years that public safety services are essential to the welfare of the public and must be maintained at a reasonable quality level. In turn, these arbitrators have held public employers pleading poverty to a very high standard to prove a genuine inability to pay, and most of these employers have failed to meet this standard of proof. In the instant case, the Union insists that Wabash County has not presented sufficient evidence to establish a true inability to pay.

The Union notes that the County's General Fund is the fund from which the Sheriff's Department expenses are paid, so the Union has analyzed General Fund revenues and expenditures for the period 2004 through 2010, with the 2009 and 2010 figures being estimates. The Union notes that during the 2004, 2005, and 2006 years, the General Fund had a negative ending fund balance at the end of each fiscal year (UX 25). However, during 2007 and 2008 the General Fund had a positive ending fund balance, and the Union has forecasted that the General Fund also will have positive ending fund balances for the 2009 and 2010 years (UX 25). These ending fund balances in the General Fund show a county whose finances are improving, not a county that is starved for funds as claimed by the Employer.

Additionally, the Union notes that the Employer's cash and investments situation has been improving since 2005, as has its liquidity ratio (UX 27). Further, the Employer's own data show that its end-of-the-fiscal-year cash in the bank across all of its funds has steadily increased from \$3.4 million in 2006 to \$4.3 million in 2009 (Employer Exhibit 9 ("EX 9"); Tr. 164-165). Moreover, the assessed valuation of the County's property has increased during the 2001-07 period (UX 28).

When all of the Employer's financial data are examined, the picture that emerges is that of an employer that may not be flush with money, but it certainly has enough revenue that it can

afford to fund the modest three percent annual pay increases during the 2008, 2009, and 2010 years proposed here.

The Union emphasizes that it is not trying to increase unit members' salaries to the nine-county average during the three-year contract duration period it has proposed. Instead, the Union is trying only to "tread water" and prevent unit members from falling even further behind their peers in comparable jurisdictions (Un.Br. 32). In light of the overwhelming evidence documenting the substantial salary gaps with their peers, these unit members are long overdue for pay increases for the three years in question in this impasse. As a result, the Union asks that its wage offer be selected.

Position of the Employer. The Employer's final offer calls for a wage freeze for the 2008 and 2009 years as part of a proposed two-year contract (UX 4).

The Employer says it is in such stringent financial condition that it cannot afford to provide pay increases to unit members. Under the Section 14(h)(3) decision criterion, the Employer does not have the financial ability to meet its existing costs of operating the Sheriff's Department, let alone any additional costs generated by pay raises to unit members. Specifically, the Sheriff's Department is funded by the County's General Fund. For fiscal 2008-09, the Sheriff's Department budget was set at \$480,688.40, but the Department's actual

expenditures that year were \$568,849.73, resulting in a substantial revenue deficit for that Department (EX 19). Expressed another way, the Department's actual expenditures were 18.34 percent more than the amount budgeted (EX 9). The Sheriff's Department budget is set at the same \$480,688.40 for the current 2009-2010 year. Any pay raises awarded to unit members will result in an even larger revenue deficit for the Sheriff's Department than occurred in 2008-09, especially in light of the fact that no other revenue sources are available.

Each year the Employer's budget is audited, with the most recent audited budget year being 2007-2008 (EX 2). The audit for that year shows the Employer spent \$383,961 more in its General Fund than it collected in revenues (EX 2). Similarly, the County's General Fund shows substantial negative ending cash balances every fiscal year from 2006 through 2009 (EX 9).

The Employer also points out that any pay increases will have a much larger total impact on the County's budget than projected by the Union (UX 24). The Union's salary increase cost projections, based on its proposed three percent pay raises, do not include the increased cost of overtime pay that are generated by salary increases. Several unit members receive significant overtime pay, as seen in their W-2 statements for 2009 (EX 11). This overtime pay is an additional cost that the Employer will be required to pay if any salary increase is awarded.

In addition to the County's own revenues and expenditures, the County relies heavily upon reimbursements from the State of Illinois. At the time of the hearing in this matter, the Employer had not received much of the reimbursement it was owed for the 2008-09 and 2009-10 years from the State, particularly for the salaries of the State's Attorney, Public Defender, and Assessor. State reimbursements to the Employer comprise 38 percent of the Employer's overall General Fund revenue (Tr. 98-99).

The Employer notes that the State paid the Employer ten months of overdue salary reimbursements in May 2010, but even with that \$124,135 additional income the State continues to be delinquent in four months of income taxes that total \$107,043 (UX 56). The Employer emphasizes that the State continues to have its own financial difficulties, it continues to be behind schedule in its distribution of funds to local governments, and the substantially delayed timing of State reimbursements to the Employer are not within the Employer's control.

Taken together, the financial data in the record show that Wabash County is in a bleak financial condition. In particular, its General Fund runs a deficit each year, and the Sheriff's Department is the largest contributor to that deficit. As the Employer struggles to cut costs, Employer revenues and State reimbursements continue to lag behind expenditures. As will be

discussed in more detail below, one highly visible sign of the Employer's fiscal condition is that almost all County employees outside of this bargaining unit are now in their third consecutive year of a pay freeze. As a result, any pay raises awarded in the instant arbitration will only exacerbate the Employer's already tenuous financial condition.

Looking at external comparisons, the Employer compares itself with Clay, Richland, Wayne, and White Counties (EX 20). The Employer emphasizes that all four of these comparable counties have substantially larger revenue streams into their general funds than does Wabash County. Wayne County's 2009 budgeted tax revenue for its general fund is \$2,707,627; Richland's 2010 budgeted tax revenue for its general fund is \$2,002,047; Clay's budgeted 2009 general fund tax revenue is \$1,858,656; and White's budgeted 2009 general fund tax revenue is \$1,639,285 (EX 20). Compare these amounts with Wabash County's much smaller 2009 budgeted general fund tax revenue of \$1,127,271 (EX 20). As these general fund tax revenue figures indicate, these four comparable counties can afford to spend much more on the operations of their sheriff's departments, including the pay and benefits provided to their deputy sheriffs and correctional officers, than can Wabash County.

In addition, the Employer notes that three of its four comparison counties levy a public safety tax - Clay, Richland,

and Wayne (EX 20). In contrast, Wabash County does not levy a public safety tax, which is one of the reasons it ranks a distant fifth on the general fund revenue scale in this five-county group (EX 20).

In response to the Union's emphasis on the higher salaries paid in its nine-county comparison group, the Employer argues that it is equally important to emphasize that Wabash County ranks last in these county revenue comparisons (EXs 14-17). In turn, this means that Wabash County's ability to pay salary increases also ranks last among these comparable counties.

Looking at internal pay comparisons, the Employer points out that Wabash County elected officials and non-represented employees have not received pay increases for the past three years (EX 10). The elected County Treasurer, County Clerk, and Circuit Clerk are each paid \$35,050.08 per year. The three County Commissioners have received the same salary for each of the past three years (EX 10). During 2007 and 2008 members of this unit received 1.5 percent pay increases each year (UX 2). No other County employees received these salary increases. In sum, the Employer has not authorized any employee pay increases for the past three years, except for the two 1.5 percent raises just noted for this unit. As a result, the Employer's wage final offer of no increases during 2008-09 and 2009-10 is fully consistent with the Employer's practice of holding down costs by

not authorizing pay increases for County employees. Expressed another way, the Employer is not singling out unit members for invidious treatment on the wage dimension. Instead, it seeks only to treat unit members as it has treated other County employees.

In sum, the Employer says that the evidence demonstrating its inability to pay, including revenue comparisons with comparable counties, and the evidence demonstrating that other County employees have not received pay increases for the years in question in this impasse, indicate that the Employer's final offer on wages should be selected.

Analysis. Looking first at the comparability evidence under Section 14(h)(4), the totality of the wage comparability evidence supports the following conclusions. First, the external wage comparison evidence indicates that pay of unit members lags substantially behind the pay paid to their peers doing similar work in comparable counties (UXs 13-19; see also Un.Br. 32-37). When we apply the Section 14(h)(4) comparability factor to this evidence, it very strongly supports granting unit members a pay increase during the contract period at issue in this impasse. As the wage comparison evidence indicates, a wage freeze for the entire new contract period will result in unit members falling even further behind the average pay of their comparable peers

(UXs 13-19). As a result, such a freeze would be highly inconsistent with the Section 14(h)(4) comparability factor.

In addition, I note that Section 14(h)(4) gives primary emphasis to wage comparisons "of the employees involved in the arbitration proceeding with . . . other employees performing similar services . . . in comparable communities." As a practical matter, this means that the external wage comparisons involving unit members with their occupational peers in comparable counties deserves significantly more weight than the internal comparisons of unit members with other County employees performing dissimilar services.

This conclusion does not mean that the pay status of other County employees should be completely ignored. After all, Section 14(h)(4) calls for wage comparisons "of the employees involved in the arbitration proceeding . . . with other employees performing similar services and with other employees generally . . ." Certainly other County employees are included within the meaning of "other employees generally." However, the pay comparisons with other County employees certainly deserves less weight than the pay comparisons with unit members and their peers doing similar work in comparable counties.

As a result, the wage comparability evidence indicates that the Employer's final offer on wages should not be selected.

Second, looking next at the ability to pay evidence under Section 14(h)(3), this evidence indicates that the Employer's financial condition has been and continues to be stressed as a result of declining revenues and of expenditures that have exceeded revenues (EXs 2, 8, 9). One indication of this stress is that during the 2006-09 period, the General Fund was the only County fund that showed a negative or deficit cash in hand status at the November 30 end of those fiscal years (2006, 2007, 2008, and 2009) (EX 9). A second indication of this stress is that the Sheriff's Department generates higher expenses from the General Fund than any other County department, and during the 2008-09 year the Sheriff's Department overspent its budget by \$88,000 (EXs 9, 19). A third indication of this stress is that the County Board approved the transfer of \$300,000 from the County's Municipal Retirement Fund to the County's General Fund on March 22, 2010 to enable the General Fund to have "sufficient money to meet all ordinary and necessary disbursements for salary and other purposes" (EX 8).

This financial evidence indicates that the Employer's budget would be severely stressed if the Employer was required to fund the Union's nine percent wage offer, with the first two years' of wage increases retroactive to December 1, 2008 and December 1, 2009, respectively. The Union has calculated that the cost of its three-year wage offer is about \$23,000 (UX 24). In light of

the Employer's already existing 2008-09 deficit spending in the Sheriff's Department (EXs 9, 19), I find that the Employer's budget and particularly the Sheriff's Department budget would be unduly burdened if it was required to absorb the full cost of the Union's three-year wage offer. As a result, the Union's final offer on wages will not be selected.

Third, the comparability evidence under Section 14(h)(4) and the ability to pay evidence under Section 14(h)(3) indicates that pay increases less than the Union has proposed and more than the Employer has proposed are the most reasonable outcome on the wage issue. The external wage comparison evidence suggests that wage increases totaling about six percent during the life of the new contract should enable unit members to avoid falling further behind their comparable peers. In addition, the Employer's General Fund currently is in stronger shape now in 2010 than it was during the 2007-08 and 2008-09 years (UXs 25, 56).

Specifically, UX 25 shows that the actual and audited ending fund balance in the General Fund was \$411,691 in 2007, and was \$139,670 in 2008 (UX 25) - a significant decline. The Union's evidence also shows that the actual but not audited ending fund balance in the General Fund was \$234,840 in 2009, and is estimated to be \$226,947 in 2010 (UX 25, all of these dollar figures are as of November 30 during the stated years). These ending fund balance amounts, particularly for 2009 and 2010,

paint a much healthier portrait of the existing condition of the General Fund than do the cash on hand amounts contained in EX 9.

As noted above, the Employer cited delayed reimbursements from the State of Illinois as a factor that significantly contributed to the Employer's financial woes (Employer Brief, pages 4-5 ("Er.Br. 4-5")). On June 9, 2010, the Union submitted to me a "Motion to Supplement Record," to which motion the Employer had no objection. Accordingly, the Union's motion was approved and admitted into the record as UX 56. UX 56 consists of an article dated May 18, 2010 in the *Daily Republican Register* reporting that the Employer just received \$124,135 in overdue State payments to the County. In turn, this article reported that these State payments resulted in the County's General Fund balance increasing to \$288,062 (UX 56). This article does *not* show that the County is now in good financial shape as a result of this May 2010 payment by the State, nor do I interpret UX 56 in such a manner. Nevertheless, this significant infusion of State money to the County indicates an improvement in the County's financial condition.

In addition, this May 2010 infusion of delayed State payments to the County certainly qualifies as a noteworthy "change in [the Employer's ability to pay] circumstances during the pendency of the arbitration proceedings" pursuant to the Section 14(h)(7) decision factor.

Accordingly, using the conventional arbitrator's discretion the parties have provided to me pursuant to their Section 14(p) authority (Tr. 188-189), I find that the following elements are the appropriate outcome on the wage issue:

- (1) The existing 2007-08 salaries in both Appendix C salary schedules shall continue unchanged effective December 1, 2008;
- (2) The existing 2007-08 salaries in both Appendix C salary schedules shall be increased by three (3.0) percent effective December 1, 2009;
- (3) The 2009-10 salaries resulting from the pay increase called for in item (2) shall be increased by three and one-half (3.5) percent effective December 1, 2010;
- (4) The pay increase language in the first sentence in the first paragraph of Article 20 shall be changed to be consistent with the wage increases and their effective dates just specified in items (2)-(3) above, and the retroactivity language in the second and third sentences shall be changed to read as follows: "The wage increase effective on December 1, 2009 shall be included in employee paychecks no later than August 15, 2010. The Employer will provide employees, via separate paychecks, with their retroactive pay for the period starting

December 1, 2009 to this paycheck implementation date no later than October 15, 2010.”; and

- (5) The salary dollar amounts specified in the Appendix C salary schedules similarly will be modified to reflect the wage increases and their effective dates just specified in items (2)-(3).

I estimate that the total new money cost increase of these three wage increases will be about \$14,000 during the period December 1, 2009 through November 30, 2011. This estimate does not include the cost of any longevity pay step increases eligible unit members will receive, so this new money cost estimate somewhat understates the total cost of these two wage increases. In light of the improved condition of the Employer's General Fund during 2010 (UXs 25, 56), I find that the Employer can afford to fund these two wage increases.

In addition, I note that unit members have not caused the deficit spending in the Employer's General Fund and specifically in the Sheriff's Department. However, the Employer's pay freeze proposal seeks to place a large share of the responsibility for coping with these deficits on the paychecks of unit members (and on County employee paychecks generally). There is no persuasive evidence in the record to support treating unit members in this harsh manner.

Going forward, the most noteworthy aspect of this wage award is that effective December 1, 2010, unit member salaries will be 6.5 percent higher than they have been since November 30, 2008 (to be precise, 6.6 percent with compounding). This 6.5 percent wage award almost certainly will not move unit members closer to the average salaries paid in the Union's nine-county comparison group, but I estimate that it should prevent unit members from falling further behind their peers in these comparable jurisdictions.

In summary, this wage ruling calls for two back-loaded pay increases to occur during the final 24 months of the three-year period encompassed in this decision. I realize that unit members will be unhappy with the decision made here to award no increases for the first 12 months of this three-year period (December 2008 through November 2009). I also realize that the Employer will be unhappy with a total of 6.5 percent salary increases it will be required to pay during the final 24 months of this period (December 2009 through November 2011), which increases will create invidious comparisons with other County employees who face a continuing pay freeze.

In short, this wage issue ruling contains something that everyone involved in this proceeding will dislike. However, given the two key circumstances present in this impasse - the substantial lag in unit member wages behind the average wage

earned by their peers performing similar work in comparable counties, and the Employer's difficult financial condition - and the subsequent wage final offers generated by these circumstances, any equitable and balanced resolution of the wage issue will generate disappointment on both sides of the Union-Employer relationship.

Finding. For the reasons expressed above, I find that the evidence provides significantly more support for the award of the two wage increases I presented above than it does for the selection of either the Union's final offer or the Employer's final offer.

4. The Parties' Agreement on Other Issues

During their negotiations for a successor CBA, the parties agreed upon many issues (UXs 4, 5). These tentative agreements ("TAs") have been included in the evidence submitted into the record in this proceeding (UXs 4, 5), and the parties asked that these TAs be incorporated by reference into the instant Award. Pursuant to Section 14(h)(2), I am pleased to grant their request, and it is so ordered.

To prevent any misunderstanding from arising later, this incorporation by reference also includes the provisions in the 2006-08 CBA that are being carried forward unchanged into the 2008-11 CBA.

AWARD

Under the authority granted to me by Section 14(g) of the Illinois Public Labor Relations Act, including the authority granted to me by the parties pursuant to Section 14(p) of the Act, I find that the following outcomes more nearly comply with the applicable factors prescribed in Section 14(h) of the Act. Accordingly, I select and award these outcomes on the three issues on the arbitral agenda.

1. Voluntary Overtime/Turn Sheet (Article 19, Section 8)

The Employer's final offer is selected.

2. Contract Duration (Article 29)

The Union's final offer is selected.

3. Wages (Article 20 and Appendix C)

Neither the Employer's final offer nor the Union's final offer is selected. Instead, the wage increases and their effective dates specified on pages 35-36 of this Award are selected.

As noted above, the parties' tentative agreements on all of the other issues resolved during their negotiations for their successor CBA are incorporated into this Award by reference.

It is so ordered.

Respectfully submitted,

Champaign, IL
July 20, 2010

Peter Feuille
Arbitrator