

#428

**ILLINOIS LABOR RELATIONS BOARD**

**PETER R. MEYERS, ARBITRATOR**

In the Matter of the Interest  
Arbitration between:

**COUNTY OF TAZEWELL AND  
TAZEWELL COUNTY SHERIFF,**

Employer,

And

**ILLINOIS FOP LABOR  
COUNCIL,**

Union.

Case No. **S-MA-09-054**

**DECISION AND AWARD**

**Appearances on behalf of the Union**

Thomas F. Sonneborn—General Counsel  
Becky Dragoo—Field Supervisor

**Appearances on behalf of the Employer**

Bruce C. Beal—Attorney  
Earl Helm—Jail Administrator  
Robert Huston—Sheriff  
David Jones—County Administrator

This matter came to be heard before Arbitrator Peter R. Meyers initially for mediation on August 4, 2009, and for interest arbitration on August 25, 2009, at the Tazewell County Justice Center's Committee Room, 101 South Capitol Street, Pekin, Illinois 61554. Mr. Thomas F. Sonneborn presented on behalf of the Union, and Mr. Bruce C. Beal presented on behalf of the Employer.

## **Introduction**

Tazewell County, Illinois, the Tazewell County Sheriff (hereinafter collectively “the Employer”), and the Illinois FOP Labor Council (hereinafter “the Union”), representing correctional officers working for the Tazewell County Sheriff’s Department (hereinafter “the Department”), entered into collective bargaining negotiations in an effort to reach a mutual agreement on a successor collective bargaining agreement to replace the parties’ contract that was scheduled to expire on November 30, 2008. The parties largely were successful during their negotiations and during a mediation session conducted by this Arbitrator, reaching agreement on the vast majority of their new contract’s provisions, but they were unable to resolve certain of the issues between them.

The parties agreed to submit this matter to mediation and Compulsory Interest Arbitration with the Illinois Labor Relations Board. Pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.*, this matter came to be heard before Neutral Arbitrator Peter R. Meyers on August 25, 2009, in Pekin, Illinois.

## **Impasse Issues in Dispute**

The remaining economic issues in dispute between the parties are as follows:

- a. Length of Agreement and Wages for Corrections Officers;
- b. Length of Agreement and Wages for Corrections Sergeants;
- c. Article 27.7 – Classification Officer Pay;
- d. Article 27.5 – Field Training Officer Pay; and
- e. Article 28.11 – Sworn Officer Status.

**Relevant Statutory Provisions**

**ILLINOIS PUBLIC LABOR RELATIONS ACT  
5 ILCS 315/1 et seq.**

**Section 14(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) Comparisons 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.

### **Fact Summary**

The parties to this matter are the County of Tazewell, Illinois, the Tazewell County Sheriff (hereinafter collectively "the Employer"), and the Illinois FOP Labor Council (hereinafter "the Union"). The evidentiary record reveals that the Union represents a bargaining unit comprised of all corrections officers below the rank of Jail Superintendent within the Sheriff's Department. The record further reveals that the Employer's Justice Center serves as a central hub location for federal prisoners moving between various federal facilities and facilities in a number of different locations in Illinois, including Rock Island County, Henry County, Sangamon County, Mercer County, Fulton County, Macon County, and Peoria County. The Tazewell County Justice Center's operations are based on a concept known as "direct supervision," which consists of assigning one unarmed corrections officer to directly supervise a "pod," or housing unit, of up to seventy-two prisoners; there are no barriers or separations created by bars, glass, or walls within these pods.

In May 2003, these same parties were involved in a previous interest arbitration proceeding before this Arbitrator. Prior to the hearing in that earlier proceeding, the parties successfully reached agreement on the issues then outstanding between them, and this Arbitrator issued a Decision and Award that formalized the parties' resolution of the outstanding issues and incorporated them into their collective bargaining agreement.

In considering the impasse issues that remain in dispute between the parties, this Arbitrator carefully has considered all of the evidence and arguments that the parties

presented during the hearing in this matter in support of their opposing positions, including the parties' final offers on these remaining issues. The factors set forth in Section 14(g) of the Illinois Public Labor Relations Act, 5 ILCS 315/14(h) (hereinafter "the Act") serve as the framework for determining the appropriate resolution of the outstanding issues between the parties. All of the issues presented here are economic in nature pursuant to Section 14(g) of the Act, so this Arbitrator is without authority to fashion an award different from the parties' final offers as to the economic issues. Accordingly, this Arbitrator shall select either the Employer's or the Union's final offer on each of the issues presented in this matter.

Section 14(h) of the Act sets forth eight factors that an arbitrator is to consider in analyzing competing proposals in an interest arbitration. As evidenced by the express language of Section 14(h), however, not all of the eight listed factors will apply in each case, or with equal weight. It therefore is necessary to determine which of the statutory factors are relevant and applicable to the instant proceeding.

One statutory factor that often plays an important role in interest arbitrations, and does so here, is the comparison of employment data from this bargaining unit to employment data from comparable external communities, as well as a similar comparison with internal comparables in the form of other bargaining units of County employees. The selection of appropriate comparable external communities obviously is critical. In this particular case, the parties engaged in a mediation session with this Arbitrator during which they reached agreement on the following as comparable external communities: Champaign County, Kankakee County, LaSalle County, Macon County, McLean County,

Peoria County, Sangamon County, and Woodford County, all within the State of Illinois.

The basic demographic data on Tazewell County and the identified comparable external communities demonstrate why these communities are appropriate comparables. The evidentiary record contains a variety of demographic data on these eight counties, including information on population, median family income, per capita income, number of housing units, and median home values, as well as Fiscal Year 2007 Annual Financial Reports from each of these counties. In terms of demographics and financial data, Tazewell County falls within the range generated by the data collected from the comparable external communities.

It must be noted that the Employer included one additional county, Mason County, in the documentary evidence that it offered into the record relating to demographic, financial, and contractual data from external communities. Mason County is included in the Employer's proffered evidence even though the Employer, in its brief, expressly confirmed the parties' stipulated list of eight external comparable communities does not include Mason County. It may be that mere oversight accounts for the Employer's inclusion of Mason County within its evidentiary offerings, but the fact remains that Mason County is not one of the communities that the parties agreed upon as external comparable communities for purposes of this interest arbitration proceeding, so the demographic, financial, and contractual data relating to Mason County, and any Employer arguments based solely thereon, shall not be part of this Arbitrator's analysis and resolution of the impasse issues remaining in dispute between the parties.

With regard to internal comparables, the evidentiary record contains collective

bargaining agreements between Tazewell County and unions representing collective bargaining units covering probation officers; employees and non-judicial employees working in the Tazewell County Auditor's, Coroner's, Clerk's, Recorder's, Sheriff's, and Treasurer's Offices; Sheriff's deputies; employees within the Tenth Judicial Circuit and the office of the Circuit Clerk of Tazewell County; and Highway Department maintenance workers. The record also contains a collective bargaining agreement covering employees of the Tazewell/Pekin Consolidated Communications Center (TPCCC), which is a not-for-profit corporation. There are differences in nature of duties, extent of training, and other factors that undermine the relevance, for comparison purposes, of some of these agreements, but they nevertheless provide valuable information regarding the general range of wages, benefits, and working conditions that are earned by employees of Tazewell County.

As for the other statutory factors set forth in Section 14(h) of the Act, the Employer's lawful authority does not appear to be at issue here, and the parties' stipulations, apart from their stipulation on external comparable communities, relate more to procedural matters than to the substantive merits of the issues remaining in dispute. The cost of living obviously must be considered in connection with the impasse issues presented here, which are economic in nature, and the evidentiary record does contain relevant consumer price index data. Continuity and stability of employment, as well as a consideration of overall compensation and benefits, also contribute to the framework that shall guide this Arbitrator's consideration of the impasse issues in dispute. As for the Employer's ability to pay, it is important to note that the Employer has not expressly

claimed an inability to pay wages and offer benefits at the higher levels sought by the Union, but the Employer has asserted that fiscal prudence is critical because of the current state of the economy in general and the current declining trend for revenues, including the impact of Tazewell County being a PTELL jurisdiction. It is appropriate to consider prevailing revenue and economic conditions in connection with the economic issues in dispute here, even if the Employer has not specifically asserted an "inability to pay." These matters must be considered in connection with the projected impact of the parties' respective final offers on the remaining economic issues, particularly given the backdrop of current economic conditions on revenues at the local, state, and national levels. The final statutory factor listed in Section 14(h) of the Act, the public's interest and welfare, obviously cannot be left out of any analysis of the issues to be resolved in this proceeding.

It is evident that there are competing concerns and considerations that must be balanced in the resolution of the economic issues remaining in dispute between the parties. These competing concerns include the County's need to attract and retain high-quality personnel within its Sheriff's Department so that the Department will continue to function at the highest operational levels, the County's need to remain within reasonable and necessary budgetary constraints, the employees' expectation of a competitive compensation and benefit structure, and the employees' need for terms and conditions of employment that reasonably accommodate the concerns and issues in their daily lives. The public, of course, has a very real interest in the Department's being able to maintain the high quality level of its personnel.

This Arbitrator now moves on to a focused analysis of each of the remaining impasse issues in dispute, in light of the relevant statutory factors, the evidence in the record, and the parties' arguments in support of their respective proposals.

**1. Length of Agreement and Wages for Correctional Officers**

The Union's final offer on the impasse issue of length of agreement and wages for correctional officers is as follows:

FY 08-09	Effective 12/1/08	Increase 3%
	Effective 06/1/09	Increase 1%
FY 09-10	Effective 12/1/09	Increase 3%
	Effective 06/1/10	Increase 1%
FY 09-10	Effective 12/1/10	Increase 3%
	Effective 06/1/11	Increase 1%

The Employer's final offer on the impasse issue of length of agreement and wages for correctional officers is as follows:

FY 08-09	Effective 12/1/08	Increase 3%
FY 09-10	Effective 12/1/09	Increase 2%
FY 09-10	Effective 12/1/10	Increase 2.5%
FY 11-12	Wage reopener	

Effective 12/1/09, the increase would not be applied to starting pay.

Wages often are the key issue in an interest arbitration proceeding, and that certainly is true in this case. An appropriate solution on the question of wages often helps to resolve many of the other issues in dispute, be they economic or non-economic in nature.

Before embarking on a discussion of the factors and evidence that are relevant to the proper resolution of this particular impasse issue, it is necessary to address certain matters that shall not play any significant role here. There can be little question that an employer's ability to pay can, when claimed as relevant, be of great significance in determining the proper resolution of various economic issues. In the instant case, it is necessary to reiterate that the Employer has not claimed that it is unable to pay for any of the economic proposals advanced by the Union, including the Union's wage proposals. Instead, the Employer has discussed the importance of its "prudent" approach to economic and budgetary matters.

This Arbitrator certainly cannot question or criticize the Employer's desire to maintain a "prudent" approach to matters of wages and other economic issues. If it ever were acceptable for a government entity to depart from prudent handling of taxpayer dollars, it certainly is not acceptable under the current economic conditions. Every dollar counts and must be spent wisely. In addition, the fact that Tazewell County is a PTELL jurisdiction does mean that it is more difficult for the Employer to raise property taxes. Even in light of these issues, the record shows that Tazewell County's prudent financial management has paid off. The evidentiary record shows that the Employer has been able to maintain a relatively sound financial condition, despite the current economic challenges. The record shows that the Employer cannot effectively claim an inability to afford any of the proposals at issue in this proceeding.

Important as the desire to be prudent in handling finances may be, moreover, this is not one of the factors expressly listed in Section 14(h) of the Act. The Employer's

arguments in favor of continued prudence simply do not, and cannot, carry the same weight as arguments derived from the factors expressly set forth in Section 14(h). A need for prudence is not the same as a claimed inability to pay, and the Employer's arguments in favor of continued prudence cannot be accepted as tipping the scales in favor of its proposals on this issue or the rest of the issues addressed in this proceeding, although the need for continued prudence nevertheless may be considered as part of the Employer's larger arguments in favor of its proposals here.

In this proceeding, both of the parties have relied heavily on data from the comparable external communities in making arguments in favor of their final wage proposals. Although there are differences, some significant, in the data estimates and projections submitted by the two parties, it nevertheless is possible to develop a coherent picture of precisely where Tazewell County's wage structure stands in comparison to the wage scales in the agreed-upon external communities. The parties both offered wage estimates and projections that were based, to a significant degree, on assumptions and conjecture as to what might happen during future contract negotiations in the various comparable external communities. Such estimates and projections always will be somewhat unreliable because there is no way to accurately predict the outcome of future collective bargaining negotiations and there is no sound way to predict the state of the economy in future years.

To avoid the problem of unreliable projections and estimates, this Arbitrator shall, as far as possible, look to the most relevant hard numbers – the actual wages that have been paid to corrections officers working in Tazewell County and in the agreed-upon

external comparable communities.

Focusing on the wage data from 2008 to illustrate the position of Tazewell County relative to the external comparables, one important thing to be taken from this evidence is that the parties do not completely agree as to what wages were paid to corrections officers working in these communities. Although not all of the numbers are different, there is some significant disparity in what each party reports as wages paid at different steps of the wage scale in the comparable communities. For example, the Employer's documents indicate that the first-year wage in Macon County was \$25,040.08 for 2008, while the Union's documents indicate that the 2008 first-year wage in Macon County was \$29,958.00. Similar differences show up in the parties' data for wages in various counties at the first-year step, the five-year step, the ten-year step, and so on.

Some of these differences are unavoidable. The fact is that the collective bargaining agreements in certain of the external comparable communities expired before or during 2008, and negotiations still are in progress as to replacement contracts in some of these communities. Under these circumstances, no one yet can know what wage rates might apply retroactively to 2008 in these jurisdictions. The parties have offered different estimates, based on past wage scales, and these estimates are helpful in illustrating the parameters of the different possible outcomes.

Although these data issues add another layer of complexity to this process, an overall view of this evidence nevertheless shows that the wages paid to corrections officers in Tazewell County at the different reported steps of the wage scale for 2008 generally were below the average wages paid to corrections officers at corresponding

steps across the external comparables. Although Tazewell County's starting wages are very close to, or even a bit higher than, the average starting wages paid to new corrections officers, Tazewell County's wage scale lags behind the external comparables' average pay level at the higher steps. With this evidence as the backdrop, the resolution of the instant wage dispute therefore requires finding a balance between the Union's interest in bringing and keeping Tazewell County's wages in line with those paid in the external comparables and the Employer's interest in attracting and retaining high-quality and skilled personnel while maintaining its fiscally responsible approach to managing its employees and its operations.

Before proceeding further, it is important to re-emphasize that, as this Arbitrator previously discussed, the Employer erroneously included Mason County in its documents setting forth data from external comparable communities; the inclusion of Mason County's wage numbers in these documents served to artificially depress the wage averages computed from the Employer's overall wage data. Removal of Mason County's data from the Employer's calculations yields higher average wage figures at virtually every step of the scale and puts Tazewell County around or below these averages.

Returning to a consideration of the wage data, the wage evidence suggests that of all the agreed upon external comparables, only Woodford County's wage scale is significantly lower than the Employer's at each step. The data further demonstrate that a couple of the external comparables, such as McLean County, stay within a few hundred dollars of the wages paid by the Employer at most of the various steps of the wage scale, while certain other communities, such as Macon and Sangamon Counties, offer lower

wages at the start of employment but then offer similar or even higher wages at the middle and higher steps. As for the rest of the external comparables, wide differentials exist between their wage scales and that of the Employer. Although the Employer's data estimates are more conservative than those offered by the Union, it is clear from all of these numbers that Tazewell County's wage scale for its corrections officers does lag somewhat behind the wage scales in most of the external comparable communities.

Adoption of the Employer's proposal on wages would serve to cement Tazewell County's position below the average of wages paid in the external comparable communities. There is no sound reason or evidence that supports a result that would put the Employer's corrections officers further behind their counterparts in these other jurisdictions. The Union's proposal seeks modest, sensible increases that may, at least incrementally, help to put the Employer's corrections officers in a more competitive position relative to their colleagues elsewhere. Accordingly, the data from the comparable external communities must be seen as supporting the Union's proposal for a higher wage increase than that which was proposed by the Employer.

Turning to internal comparables, the Employer has wage agreements in place with certain of its other bargaining units that offer guidance on what increases the Employer will be paying these other units going forward. Specifically, the Employer's current contract with its probation officers calls for wage increases of 3.75% in 2008, 3.00% in 2009, 4.00% in 2010, and 4.00% in 2011. The Employer's current contract with TPCCC, the not-for-profit corporation that operates the communications center, calls for wage increases of 3.75 percent in 2008 and 4.00% in 2009. The Union's wage proposal for

corrections officers falls well within the range of these numbers, while the Employer's proposal calls for smaller percentage increases. This information from the internal comparables therefore also must be accepted as supporting the Union's wage proposal.

The impact of the cost of living definitely is an important consideration in assessing the parties' wage proposals. The consumer price data reveal that the cost of living generally has been rising, although the data from more recent months shows a slight decline in consumer prices. Even with the recent, and quite unusual, small decline in the consumer price index, the evidence in the record shows that consumer prices are higher now than they were at the start of the parties' last collective bargaining agreement.

It is a bit tricky to predict exactly what will happen to the consumer price index over the next few years, but the likelihood is that consumer prices will be higher still by the time the parties' new collective bargaining agreement expires. Wages have to increase at least as fast as the cost of living in order to allow employees to maintain their economic status quo. The wage increases proposed by the Employer, if adopted, may be sufficient to help the employees keep pace with the cost of living going forward, but probably not much more than that. In light of the fact that the Employer's corrections officers already earn wages that are below the average of wages earned in the external comparable communities, more or less keeping pace with consumer price increases fails to address that wage inequity. The Union's wage proposal is not extravagant, but it offers a better chance of addressing that pay differential while also accounting for the impact of increasing consumer prices. The cost of living therefore supports the adoption of the Union's wage proposal over that of the Employer.

As for the remaining statutory factors, overall compensation and the interests and welfare of the public have some relevance to and impact on this analysis. The corrections officers' overall compensation, including the value of their various benefits, does tend to favor the Union's wage proposal. The various collective bargaining agreements in the record show that Tazewell County's corrections officers receive some benefits that are more advantageous than the average level among the external comparables, while other benefits are slightly less advantageous than what is available, on average, among the external comparables. The record shows that the nature and value of the benefits paid to Tazewell County's corrections officers remain competitive with those offered by the external comparables, but these benefits are not enough to overcome the established wage disparities.

The interests and welfare of the public is a more expansive and fluid factor, with arguments that can cut both ways. Obviously, the public has an interest in holding the line on the costs associated with their government's operations, but the public's interests and welfare also are impacted positively when their government provides high-quality services. Moreover, it is in the interest of the public to have a stable workforce where corrections officers are not leaving on a regular basis for higher paying jobs in other counties. This particular factor, although necessary to consider, does not offer much in the way of definitive support for either party's wage proposal, and it does not overcome the impact of the other relevant factors on the analysis here.

From this analysis of the relevant statutory factors, this Arbitrator finds that the Union's proposal is more appropriate under the circumstances established by the

evidentiary record. The Union's proposed schedule of wage increases serves to bring and maintain wages for Tazewell County corrections officers in line with those of their colleagues in the external comparable communities. The manner in which the Union's proposal structures those increases carries the benefit of helping the Employer to simultaneously maintain a prudent budgetary posture. The Union's proposal does not seek extravagant increases, and it spreads out the effective dates of those increases so as to temper the financial impact on the Employer.

The Union's proposal on the length of the parties' new collective bargaining agreement must be accepted as part of the package that sets forth its wage proposal. Because of the way that the Union's wage proposal is structured, it is not possible for this Arbitrator, under the constraints imposed by the Act in resolving economic issues, to accept one party's wage proposal, and then the other party's proposal on contract length. These two issues are irrevocably joined in each party's proposal, so the acceptance of the Union's proposed wage schedule necessarily requires acceptance of its proposal on the duration of the new contract. Moreover, the Employer's proposal calls for a wage re-opener for the fourth year; so, in reality, neither party is really being hurt by the three-year collective bargaining agreement being ordered here. This finding on length of contract, of course, also applies to the corrections sergeants.

In light of the relevant evidence and statutory factors, this Arbitrator finds that the Union's proposal on the issue of wages and length of contract is more appropriate. Accordingly, the Union's proposal on this issue shall be adopted, and it is set forth in the Appendix attached hereto.

## **2. Length of Agreement and Wages for Corrections Sergeants**

The Union's final offer on the impasse issue of length of agreement and wages for corrections sergeants is as follows:

The corrections sergeants' pay differential would be increased to 15% effective 12/1/08.

The Employer's final offer on the impasse issue of length of agreement and wages for corrections sergeants is as follows:

The corrections sergeants' pay differential shall remain at 12%, maintaining the status quo.

Much of the analysis set forth above with regard to the wage proposals for corrections officers also applies to this issue involving wages for the Employer's current team of six corrections sergeants. Except for somewhat limited additional comment, there is no need to repeat that analysis here. The wage data for corrections sergeants, like that for corrections officers, show that the Employer's wage scale is below the average wage level across the external communities at most steps. Although the corrections sergeants' wages may not be significantly below that average, there nevertheless is a differential that should be addressed. The impact of the internal and external comparable data, the corrections sergeants' overall compensation package, the cost of living, and the other relevant statutory factors all favor adoption of the Union's proposed increase in the corrections sergeants' pay differential from the current 12% to 15%.

During the hearing in this matter, the Sheriff testified that much of the reason for his own opposition to the Union's proposed increase for the corrections sergeants is based on his view of job performance issues among the corrections sergeants. The

Employer's response to job performance issues legitimately may include such measures as retraining and tighter supervision. A refusal to increase wages, however, is not really an appropriate or useful response to such issues. The Employer's streamlined command structure, pursuant to which corrections sergeants often are the highest ranking officers present in the facility, may contribute to the performance issues that the Sheriff described during his testimony, in that there appears to be little oversight of the corrections sergeants during those many hours when the Jail Administrator is not on duty.

The record also fails to show that these perceived performance issues relate to all of the corrections sergeants. To the extent that the cited performance issues are problems associated with individual corrections sergeants, and not relating to the group as a whole, these issues are more effectively addressed on an individual basis with discipline and retraining, rather than as part of collective bargaining over wages. Moreover, it should be noted that Section 14(h) of the Act does not include questions relating to the quality of job performance among the factors to be considered in resolving a wage dispute.

Whether or not each of the collective bargaining agreements from the external comparables refers to a differential for corrections sergeants, there is no question that corrections sergeants are paid at a higher rate than corrections officers in each of the external comparables and in Tazewell County. The percentage difference between these two wage scales is subject to a significant degree of variance among the external comparables. In some of the external jurisdictions, such as Champaign and McLean Counties, the pay differential between corrections sergeants and corrections officers stands at a significant double-digit percentage, well above either the existing 12% or the

Union's proposed 15% figure for Tazewell County. Data from other external jurisdictions reflect a pay differential that hovers in the high single or low double digits on a percentage basis.

Looking at these pay differentials on a percentage basis, however, does not give a truly accurate picture of where the Employer's corrections sergeants stand in comparison to their colleagues in the external comparable communities. A review of all of the wage data from 2008, for example, demonstrates that the Tazewell County corrections sergeants were paid at a level below the average across the external communities. At some steps of the wage scale, the difference amounted to thousands of dollars. Under these circumstances, this Arbitrator finds that maintaining the status quo on the wage differential paid to the Employer's corrections sergeants simply is not an adequate response to such realities.

In light of the relevant evidence and statutory factors, as discussed both in this section and in the above section on the parties' wage proposals for corrections officers, this Arbitrator finds that the Union's proposal on the issue of wages and length of contract is more appropriate. Accordingly, the Union's proposal on this issue shall be adopted, and it is set forth in the Appendix attached hereto.

### **3. Classification Officer Pay**

The Union's final offer on the impasse issue of classification officer pay is as follows:

The classification officer pay differential would increase from 7.5% to 10%.

The Employer's final offer on the impasse issue of wages for classification officer

pay is as follows:

The classification officer pay differential shall remain at 7.5%, maintaining the status quo.

In analyzing the parties' opposing proposals on this particular issue, it must be noted that the Union, as the party seeking a change in the status quo, bears the burden of establishing a sound basis for making its proposed change to the existing contractual provision.

The record in this matter indicates that, at present, there are two individuals within the bargaining unit who hold the position of Classification Officer. The duties handled by Classification Officers include questioning new prisoners and conducting research on new prisoners, using a variety of sources, in order to determine the appropriate placement for them within the facility, whether minimum, medium, or maximum security. Classification Officers also determine whether a new prisoner has any special medical needs.

The evidentiary record further shows that the provision calling for the current 7.5% pay differential over base salary that is paid to the Classification Officers first was negotiated and included within the parties' previous collective bargaining agreement. The Jail Administrator acknowledged that the additional duties performed by the Classification Officers do justify extra pay, but the Employer has argued that no more duties have been assigned to the Classification Officers since the implementation of the 7.5% differential, so there is no justification for any further increase in the differential compensation paid to the Classification Officers for their extra duties.

The Union counters this by pointing out that there have been significant changes in the Classification Officers' duties because the Employer's facility now houses federal prisoners. The Union maintains that this has resulted in a marked change in the type of inmate being housed and the logistics of handling inmates. The Union also has pointed to the high percentage of felons and medium security risk prisoners that now are part of the facility's inmate population. The Union emphasizes the critical nature of the Classification Officers' duties, particularly in light of the fact that the Employer's facility is a direct-supervision facility in which employees are forced to work within the population.

A careful review of the evidentiary record leaves no doubt that the Classification Officers working within the Employer's facility perform critical duties that have an important impact upon the overall operation of that facility. Quite simply, the management of the inmate population on the direct-supervision model could not proceed without the work of the Classification Officers. As the Jail Administrator acknowledged, the differential paid to these individuals is fully justified by the essential duties that they perform.

The Union may be correct in asserting that there are some new twists and operational complications associated with the fact that the Employer's facility now houses a significant percentage of federal prisoners among its total inmate population. The evidentiary record as a whole, however, does not support altering the status quo on this issue by adopting a significant increase in the pay differential for the Classification Officers. Whatever additional concerns and complications that are associated with

federal prisoners, and that do not also arise in connection with all of the other inmates, does not constitute sufficient grounds for increasing the already-significant percentage used to calculate the pay differential for Classification Officers.

The fact is that the Classification Officers will be receiving an increase in the form of the base wage increase that will be included within the parties' new collective bargaining agreement. It is important to note that the Classification Officers will be receiving a further increase in another form, even if there is no change in the differential percentage. Because of the increase in base pay, the dollar value of the differential will proportionally increase; 7.5% of one hundred dollars, for example, is a larger amount of money than is 7.5% of ninety dollars.

As for the statutory factors, comparison with the externally comparable communities is particularly important here. A review of the collective bargaining agreements from the comparable external communities reveals that a pay differential for Classification Officers is hardly a common provision. The record shows that only one of these collective bargaining agreements, from Peoria County, even addresses Classification Officers. In the Peoria County agreement, a Classification Officer receives a flat \$1,500.00 payment over and above the annual base salary that the employee would receive as a jail officer. The collective bargaining agreements from all of the other comparable external communities do not even address the matter of Classification Officers. Clearly, the over-riding trend among the external comparables is that there are no contractual provisions identifying Classification Officers as a position separate from corrections officers, and there is no trend toward the inclusion of provisions in these

many contracts requiring that specific additional payments be made to Classification Officers.

With regard to any argument that the differential paid to Classification Officers should be increased because the base wages currently paid by the Employer are below the average of base wages currently paid in the comparable communities, this is not an appropriate reason for adopting an increase that would apply to only two members of the bargaining unit.

As for the Employer's ability to pay and the impact of the cost of living, two more of the statutory factors that often are most relevant to economic issues, these two factors do not have a significant degree of impact on the analysis of this particular issue. For the reasons discussed above in connection with the wage issues, the Employer's ability to pay, or inability to pay, is not truly at issue in this proceeding. As for the cost of living, the nature of the pay differential, as opposed to base pay, negates the relevance of this statutory factor. The pay differential in question is only one small part of the Classification Officers' total package of pay and benefits, consideration of which constitutes another of the statutory factors. The pay differential specifically is designed to account for the fact that Classification Officers are handling certain critical responsibilities that the other Corrections Officers are not handling. As is true of other benefits that are part of the employees' total compensation package, and that are in addition to the employees' base pay, the cost of living does not have an actual connection to the pay differential paid to Classification Officers. Moreover, an increase that applies to such a small part of the bargaining unit also cannot properly be used to address any

cost-of-living impact.

The differential paid to the Employer's Classification Officers constitutes a significant increase in pay compared to the Employer's Corrections Officers, while it appears that there is no differential paid to any Classification Officers working in all but one of the external comparable communities. This Arbitrator finds that the evidentiary record does not support altering the status quo by increasing an already advantageous benefit to the Employer's Classification Officers.

Under the circumstances established by the competent and credible evidence in the record, and in light of the relevant statutory factors, this Arbitrator finds that the Employer's proposal on the issue of Classification Officer Pay is more appropriate. Accordingly, the Employer's proposal on this issue shall be adopted, and the section of the parties' collective bargaining agreement dealing with Classification Officer Pay shall remain unchanged.

#### **4. Field Training Officer Pay**

The Union's final offer on the impasse issue of field training officer pay is as follows:

Each field training officer will receive an additional 5% of base to be paid as part of regular payroll throughout the year, effective 12/1/08.

The Employer's final offer on the impasse issue of wages for field training officer pay is as follows:

Field training officers shall receive three (3) hours of overtime per week while training a recruit.

The fact that both parties are proposing an increase in the rate of pay for Field

Training Officers (FTOs) demonstrates the importance of the work performed by them. At present, eight of the Employer's corrections officers are qualified as FTOs. The record shows that a training officer stays with a new hire throughout the entire training period, which usually extends for nine or ten weeks. During the training period, the FTO must prepare daily observation reports that document the trainee's progress. After the initial training period has ended, the FTO evaluates the trainee once a month for the rest of the trainee's one-year probationary period. The Employer has suggested that such training may occur as infrequently as once every six months. The record indicates that these basic duties have remained unchanged for about ten years.

As the Union has suggested, the FTO position must be viewed in the context of the fact that the Employer has no established command structure between Jail Sergeant and Jail Superintendent. The FTO position therefore takes on added significance in terms of the minimized layers of supervisory oversight, as well as in connection with protecting the Employer from liability on possible claims of inadequate training.

The current contract language provides for additional compensation to the FTOs in the form of two hours of overtime pay each week during the training period. This type of pay structure takes into account the fact that an FTO will not be actively involved in training activities every week throughout the year. A reading of the parties' proposals on this issue reveals that the Union is suggesting a complete departure from the established method of compensating FTOs for their training work. Not only is the Union seeking higher additional pay for the FTOs, but it is proposing that FTOs receive this additional pay throughout the entire calendar year, including those periods when they are not

actually training new hires.

The Employer's proposal also contemplates an increase for the FTOs, but this proposal is more modest and adheres to the existing structure for calculating the extra pay due to FTOs. Under the Employer's proposal, FTOs would receive three, instead of two, hours of overtime pay for each week that they are involved in training a new hire.

There is nothing in the record that explains why FTOs might deserve to receive additional pay whether or not they are involved in actual training duties. There has been no appreciable change in the duties and expectations associated with the FTO position, and the FTOs continue to perform their long-standing duties under the same basic conditions that have existed for years. In its arguments in support of the increase that it is seeking, the Union has stressed the importance of the FTO position and its responsibilities, but the fact is that this importance already is acknowledged through the additional pay that FTOs have received for years.

The data from the external comparable communities does not offer any support for the Union's more sweeping proposal. In four of the comparable communities, the collective bargaining agreements do not provide for any additional pay for those individuals who are involved in training. In the four comparable communities that do provide for some form of additional payment for FTOs, the payments are limited to those time and/or pay periods when the FTOs are actually involved in training activities. None of the comparable communities make additional payments to FTOs during those time periods when they are not conducting training.

It also must be emphasized that, as is true in connection with the Classification

Officer differential, it is inappropriate to adopt an increase that would apply to only eight members of the bargaining unit based on an argument that the additional pay earned by FTOs should be increased because the base wages currently paid by the Employer are below the average of base wages currently paid in the comparable communities. Moreover, an increase that applies to such a small part of the bargaining unit also cannot properly be used to address any cost-of-living impact.

The Union has suggested that favoritism might prompt the Employer to abuse the FTO system by using one particular FTO to train any and all new recruits, thereby shutting out other FTOs from performing these duties and receiving extra compensation. The Union asserts that by requiring the Employer to make additional payments to FTOs throughout the year, whether or not they actively are involved in training, this potential problem will be eliminated. There is no competent, credible evidence that any such favoritism has marred the FTO system to this point, so the Union's proposal appears to be a sweeping response to a non-existent problem. If any such favoritism occurs, there are less expensive and less onerous ways to deal with it. Among other possibilities, the Union could seek, through negotiations, a system in which the FTOs rotate training responsibilities, in a manner akin to how some employers rotate available overtime among eligible employees.

Under the circumstances established by the competent and credible evidence in the record, and in light of the relevant statutory factors, this Arbitrator finds that the Employer's proposal on the issue of Field Training Officer Pay is more appropriate. Accordingly, the Employer's proposal on this issue shall be adopted, and Article 27,

Section 5, of the parties' new collective bargaining agreement shall include the Employer's proposed language, as set forth in the Appendix attached hereto.

#### **5. Sworn Officer Status**

The Union's final offer on the impasse issue of sworn officer status is as follows:

All corrections officers and corrections sergeants receive sworn status.

The Employer's final offer on the impasse issue of sworn officer status is as follows:

The status quo shall be maintained with some bargaining unit members remaining sworn and the rest not being sworn.

In considering the parties' positions on the issue of whether corrections officers and corrections sergeants should receive sworn status, it is critical to note that the Union apparently is proposing breakthrough language, which would involve not only a change in the status quo, but would require the development of contractual language in a substantive area that the parties have not considered in prior contract negotiations and have not previously included in their collective bargaining agreements. This is a very different thing than a proposal to change the status quo represented by negotiated contractual language. In general, breakthroughs are not normally granted in interest arbitration proceedings, based on the rationale that demands for new and/or unusual types of contract provisions preferably should be negotiated. If interest arbitration is to serve its proper function as a method of settling labor-management disputes, proposed breakthrough language should not be automatically rejected simply because it is new. To adequately support the adoption of breakthrough language, however, the party proposing

it must meet a more stringent standard than is applied to a proposal to change existing contractual language.

As noted above, when a party proposes a change to existing contractual language, that party must demonstrate that there is a sound basis for its proposed change to the status quo. When a party proposes breakthrough language, however, that party must present strong evidence establishing the reasonableness and soundness of the proposal. As the Employer also has argued, some arbitrators have found that a party proposing breakthrough language also must provide evidence that the parties have engaged in arms' length negotiations on the issue prior to the interest arbitration proceeding.

The Union's arguments on this issue make clear that the underlying reason for its proposal is an effort to position corrections officers and corrections sergeants to be able to take advantage of other pension plans that are available to sworn law enforcement officers. The problem is that the question of whether these employees, even if they are granted sworn status, will qualify for certain of these pension plans apparently cannot be fully answered through collective bargaining. The Employer has pointed out, as one example, that qualification for participation in the Sheriff's Law Enforcement Employee Pension Plan (SLEP) is determined by the administrative application of statutory factors, not through bargaining.

The Union's arguments relating to real or perceived "second-class" status for unsworn corrections officers when compared with sworn law enforcement officers, although generally plausible, simply do not establish a sufficient foundation for adoption of its proposed breakthrough language. Currently, some members of the bargaining unit

are sworn, while the rest are not. The evidentiary record does not support a finding that the unsworn corrections officers are treated differently than those who are sworn.

Moreover, even if the corrections officers and corrections sergeants were to be granted sworn status, this would not necessarily mean that these professionals, capable and skilled as they are, would generally be considered as on a par with sworn law enforcement officers in terms of training, testing, and certification. This factor seriously undercuts the Union's arguments relating to how its proposed breakthrough language will address the supposed "second-class" status of unsworn corrections officers.

The record in this matter also shows that the Union has not offered sufficient evidence that it proposed specific concessions in exchange for this breakthrough language or otherwise promoted arms' length bargaining on this issue during the parties' negotiations. Without evidence of such bargaining between the parties, it is difficult to justify the inclusion of language in the parties' collective bargaining agreement that governs an issue that the parties never addressed in any of their previous contracts.

With regard to the statutory factors, an analysis of this issue as it is treated in the comparable external communities is relevant. A review of the comparable external communities is significant in that it reveals that there is no prevailing trend for or against bestowing sworn status upon corrections officers and corrections sergeants. In four of these communities, corrections officers are not sworn, while some or all are sworn in the other four communities. This statutory factor therefore does not support adoption of the Union's proposed breakthrough language. The remaining statutory factors do not provide any further noteworthy insight into the issue of whether the Employer's corrections

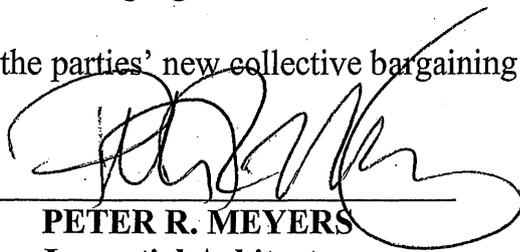
officers and corrections sergeants should receive sworn status.

In connection with this particular issue, the Union has not successfully articulated a sound and reasonable explanation for why such a breakthrough provision should be included in the parties' new collective bargaining agreement. It does not necessarily follow that bestowing sworn status upon all of the Employer's corrections officers will lead to any meaningful improvement in their working environment or provide any foreseeable, tangible benefit to them. The Sheriff raised concerns about whether the corrections officers would be able to meet the qualification standards that apply to sworn deputy sheriffs. Even if the corrections officers do so qualify, this would not guarantee that they also would qualify for a pension plan such as SLEP, particularly because of the existing statutory requirements that determine who qualifies for such pension plans. The somewhat vague possibility that sworn status someday may allow these employees to qualify for a more generous pension plan like SLEP simply is not a solid enough foundation for the adoption of this breakthrough language. Also, I find that the additional expense to the Employer if those newly sworn officers are eventually placed into the superior pension plan is not justified by this evidentiary record.

Under the circumstances established by the competent and credible evidence in the record, and in light of the relevant statutory factors, this Arbitrator finds that the Employer's proposal on the issue of Sworn Officer Status is more appropriate. Accordingly, the Employer's proposal on this issue shall be adopted, and no language relating to whether corrections officers and corrections sergeants shall or shall not be sworn shall be included in the parties' collective bargaining agreement.

**Award**

This Arbitrator finds that the language set forth in the attached Appendix shall be adopted and incorporated into the parties' new collective bargaining agreement.



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**PETER R. MEYERS**  
**Impartial Arbitrator**

**Dated this 9<sup>th</sup> day of December 2009**  
**at Chicago, Illinois.**

## APPENDIX

### **Corrections Officers Wages**

The following wage increase schedule for corrections officers shall be incorporated in the collective bargaining agreement:

FY 08-09	Effective 12/1/08	Increase 3%
	Effective 06/1/09	Increase 1%
FY 09-10	Effective 12/1/09	Increase 3%
	Effective 06/1/10	Increase 1%
FY 09-10	Effective 12/1/10	Increase 3%
	Effective 06/1/11	Increase 1%

In addition, the duration of the parties' collective bargaining shall be for the corresponding three fiscal years.

### **Corrections Sergeants Wages**

The corrections sergeants' pay differential shall be increased to 15% effective 12/1/08.

### **Article 27 – Wages Section 5 – Upgrade Pay**

Any Correctional Officer assigned as Field Training Officer shall receive three (3) hours of overtime per week while training a recruit.