

AWARD OF ARBITRATOR

In the Matter of Interest
Arbitration

between the

County of Woodford/
Woodford County Sheriff

and the

Illinois Fraternal Order of
Police Labor Council

Opinion and Award
by
Arbitrator
Peter Feuille
in
ILRB No. S-MA-09-057

Date of Award: December 31, 2009

APPEARANCES

For the Employer:

Mr. Keith J. Braskich, Davis & Campbell LLC, Attorney
Mr. Tom Janssen, Board Member
Ms. Melissa Andrews, County Treasurer
Mr. Jim Pierceall, Sheriff

For the Union:

Mr. John R. Roche, Jr., Attorney
Ms. Becky Dragoo, Field Supervisor
Mr. Jerry Lieb, Field Representative
Mr. Robert McCabe, Attorney
Mr. Marshall Smith, Member
Mr. Jake Evans, Member
Mr. Brad Rebman, Member

INTRODUCTION AND BACKGROUND

The County of Woodford/Woodford County Sheriff ("Employer," "County") and the Illinois Fraternal Order of Police Labor Council ("Union") have been negotiating under their wage reopener provision in their current 2007-2010 collective bargaining agreement ("CBA," effective December 1, 2007 through November 30, 2010) for wage rates to be in effect during the County's 2009 and 2010 fiscal years (i.e., December 1, 2008 - November 30, 2009, and December 1, 2009 - November 30, 2010, respectively) covering what is called the "road deputies" bargaining unit (Union Exhibit 7 ("UX 7"), Employer Exhibit B ("EX B")). This unit includes the positions of lieutenants, sergeants, deputies, matron, and bailiff (UX 7), and is a 17-employee unit (UX 10).

During their negotiations the parties were not able to reach agreement on wage rates for the 2009 and 2010 fiscal years. Accordingly, they invoked the interest arbitration procedure specified in Section 14 of the Illinois Public Labor Relations Act ("Section 14," "Act") and referenced in Article 28 of their CBA (UX 7). 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 June 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.

By mutual agreement, the parties held an interest arbitration hearing August 19, 2009 in Eureka, IL. At this hearing the parties had the opportunity to present all of their evidence on the impasse item. This hearing was stenographically recorded and a transcript produced. With the Arbitrator's final receipt of the parties' post-hearing briefs and attachments on October 27, 2009 the record in this matter was closed. The parties generously and graciously agreed to an Award issuance deadline of January 15, 2010, and I am most grateful for their courtesy.

THE ISSUE

The parties stipulated that the sole issue presented for resolution is wages (Article 23 and Appendix A) for the 2009 and 2010 fiscal years (Transcript, page 9 ("Tr. 9")). The parties also stipulated that this is an economic issue within the meaning of Section 14(g) of the Act (Tr. 10-11), and the parties further stipulated that there are no health insurance issues to be decided in this proceeding (Tr. 9).

ANALYSIS, OPINION, AND FINDINGS OF FACT

Section 14(g) of the Act requires the Arbitrator to adopt the last offer of settlement on each economic issue which, in the Arbitrator's opinion, more nearly complies with the applicable factors specified in Section 14(h). This final offer arbitration

requirement requires the selection of either the Employer or Union final offer, without modification.

Section 14(h) of the Act requires that an interest arbitrator base his or her decision upon the following Section 14(h) criteria or "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 criteria or factors be applied to each unresolved item, only those that are "applicable." Similarly, the Act does not attach weights to these factors, and thus it is the Arbitrator's responsibility to decide how the applicable factors should be weighted.

Wages (Article 23 and Appendix A)

The parties negotiated a two percent increase for the 2008 fiscal year (effective December 1, 2007, the first year of their three-year CBA), and in Section 23.1 included a reopener provision to negotiate wage rates for the 2009 and 2010 fiscal years. At the instant hearing the parties stipulated that the fiscal 2009 awarded wage rates will be retroactive to December 1, 2008 (Tr. 11). Following the lead of the parties' stipulation regarding wage rate retroactivity for fiscal 2009, wage rates awarded, if any, for fiscal 2010 will be retroactive to December 1, 2009.

Position of the Union. The Union's final offer calls for a two percent wage increase effective December 1, 2008 and a 3.5 percent wage increase effective December 1, 2009. The Union supports its final offer with a variety of evidence and arguments.

Starting with bargaining history, the Union notes that the instant bargaining unit was formed in 1988 (UX 5). In 2008 this unit was clarified by removing the jailer/correctional officers from this unit and creating a separate unit for these employees, also represented by this Union (UX 6). The result is "Unit A" is the road deputies unit (or "police unit") and "Unit B" is the corrections unit (UX 6).

For the deputies unit, in July 2008 the parties agreed to a three-year CBA effective December 1, 2007 through November 30, 2010 (UX 7). The parties agreed upon a two percent increase for the first year (fiscal 2008) plus an employee-favorable change in the method by which overtime was calculated (Union Brief, page 6

("Un.Br. 6"). The Union says the parties valued the overtime change as the equivalent of a two percent wage increase (Un.Br. 6). As noted above, the parties also agreed to a wage reopener for the second and third years of their CBA (UX 7). In the meantime, in the newly formed corrections unit the parties negotiated a one-year CBA that provided a four percent increase for fiscal 2008 (UX 24).

On December 1, 2008 the parties negotiated a new three-year CBA for the corrections unit. The parties agreed to a wage increase of 0.75 percent effective December 1, 2008 and 0.75 percent effective June 1, 2009, with wage reopeners for the second and third contract/fiscal years, for the corrections employees. The Union says that the employees in the corrections unit also received the same employee-favorable overtime calculation concession received earlier by the road deputies, which was valued as the equivalent of a two percent wage increase (Un.Br. 8).

In 2008 the Employer, the Union, and AFSCME (which represents employees in a variety of County offices) formed the "Woodford County Health Care Committee" to address the health care issues that bedeviled all parties (Un.Br. 7-8). This Health Care Committee eventually formulated a different health insurance arrangement for all County bargaining units, implemented in September 2008, which resulted in reducing the premiums employees paid for individual coverage and reducing the deductibles (Un.Br. 8).

Turning to internal comparability, the Union argues that the most relevant internal comparable is the corrections unit. The

Union emphasizes that, for fiscal 2009, the corrections unit employees received a 1.5 percent wage increase (0.75 percent plus 0.75 percent) plus the equivalent of an additional two percent pay increase via the overtime calculation concession, for a total pay increase during that year of 3.5 percent. In contrast, the Union seeks only a two percent increase for the deputies unit for fiscal 2009. For fiscal 2010, the Union proposes a 3.5 percent increase, which is a back-loaded offer.

Looking at the bargaining stability dimension, the Union is very critical of the Employer's unwillingness to present any wage offer for the contract's third year (fiscal 2010) and its proposed wage reopener for that year. The Union emphasizes that the stipulated issue in this case is "what should the wage increases be for bargaining [unit] employees effective December 1, 2008 and December 1, 2009?" (Tr. 11; see also item C in UX 1). The Union says the selection of the Employer's offer would require the parties to return immediately to the bargaining table where they likely would find themselves at impasse, thereby needing to utilize interest arbitration again to determine wage rates for fiscal 2010. The Union argues that the Employer's offer is not reasonable.

Turning to external comparability, the Union points out that in a 2003 interest arbitration with the instant parties Arbitrator Byron Yaffe determined that the appropriate comparables were the counties of Bureau, Christian, Fulton, Lee, Livingston, Logan,

McDonough, and Morgan (UX 9).¹ In the instant matter the Union relies upon this approved group of comparables. In contrast, the Employer urges the use of only Bureau, Livingston, and Logan Counties as comparables, and the Employer offers no explanation for using this much smaller group. The Union notes that Illinois interest arbitrators generally prefer the use of larger rather than smaller comparable pools, and the Union's group of comparables meets that test.²

When looking at wage level comparisons with comparable employers, the Union says that the evidence shows that the majority of unit members tend to lag behind wage levels in the comparable jurisdictions, and this is true for the 2080-hour deputies with five or more years experience and it is particularly true for the unit members who work 2007 hours each year at all levels of experience (UX 12). When turning the focus to percentage wage increases for the years in question, the Union says the evidence shows for the four counties where wage increases have been negotiated for fiscal 2009 and 2010, percentage wage increases have been 4.25/4.25 percent in Christian County, 4.5/4.5 percent in Livingston County, 3.5/3.5 percent in Logan County, and 3.5/3.5 percent in Morgan County, with a fiscal 2009 increase of 3.0 percent in McDonough County (Bureau, Fulton, and Lee Counties

1. *Woodford County and Woodford County Sheriff and Illinois Fraternal Order of Police Labor Council* (Arbitrator Byron Yaffe, October 30, 2003 ("Yaffe Award")), p. 6.

2. *County of Lawrence and Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-96-31, (Arbitrator Harvey Nathan, September 9, 1996 ("Nathan Award")).

are in negotiations (UX 26; Un.Br. 14-15)). The Union emphasizes that all of these wage increases not only exceed the Employer's offer by substantial amounts, these increases elsewhere exceed the Union's offer by substantial amounts.

The Union emphasizes that its final offer does not propose to catch up to the higher wage levels paid in the comparable jurisdictions. The Union's offer seeks only to maintain its relative standing among the external comparables, and it is eminently reasonable for the Union to try and avoid losing ground to what comparable employers pay their deputies. In sum, the Union says that the external comparability evidence provides very strong support for its offer.

Turning to ability to pay, the Union does not dispute the negative status of our nation's economy. However, the Union vigorously notes that Illinois interest arbitrators generally have not allowed an ability to pay rationale to be used by labor organizations to justify awarding wage increases not supported by comparability evidence, nor have they allowed public employers to use an ability to pay rationale to shield themselves from expenditures they would prefer to avoid. More specifically, the Union cites several awards issued by Illinois interest arbitrators in support of this argument, with four awards addressing this factor in cases involving Jefferson County. The Union emphasizes that the arbitrators in these Jefferson County cases rejected the employer's argument of an inability or limited ability to pay and selected the labor organization's offer in these cases (Un.Br. 17-20).

In the instant matter the Employer has argued it has a very constrained ability to pay. The Union points to the County's financial data in the record and says that the County is in stronger financial shape than it has portrayed. Looking at the County's General Fund, which funds the operation of the Sheriff's Department, the Union notes that the ending General Fund Balance for each year during the 2002-2008 period was above \$2,000,000 and in some years above \$3,000,000 (UXs 14, 17); that the County cut its property tax rate for fiscal 2008, which is a self-inflicted financial wound that should not be used to deny reasonable pay increases to unit members; that General Fund records show that expenditures have exceeded revenues every year during the period 1997 through 2008, and this has occurred because every year the County transfers money from other special revenue funds into the General Fund to cover this shortfall (UXs 14, 20); and this longstanding pattern of General Fund indicators and activity show that the County is able to absorb any economic pressures that exist in 2009 and 2010.

Turning to an analysis of the relationship between the County's cash and investments and its liabilities, the Union notes that in every year during the 1997-2008 period the County has possessed cash and investments that enable it to fully pay off its current debt many times over. For 2008, the most recent year for which these data are available, the County's cash and investments total \$2,486,646 compared with current liabilities of \$310,346 (UX 16).

Looking at the 2009 budget data, the Union notes that the Employer's own data show (1) the restoration of the property tax levy and revenue to the General Fund, (2) substantial transfers into the General Fund from other funds, (3) a projected ending fund balance of \$2.1 million (EX H), (4) a mid-year analysis (in July 2009) that shows the County is continuing its historical practice of having actual expenditures be well under budgeted expenditures (EX K), and (5) the revenue into the General Fund as of July 31, 2009 did not include the second installment of property tax payments or the year-end transfers from the special revenue funds (EXs J, K). Further, the July 2009 analysis shows that the County's General Fund revenue as of July 31, 2009 was \$280,000 ahead of revenue at the same time period in 2008 (EX J).

The Union has not turned a deaf ear to the Employer's financially stressful situation. The Union agreed to a two percent increase for fiscal 2008, and it seeks only another two percent increase for fiscal 2009. However, the Union insists that the financial data in the record do not support the selection of the Employer's meager 2009 wage proposal and its nonexistent 2010 wage proposal.

The Union additionally notes that statutory decision factor 14(h)(3) requires that "the interests and welfare of the public" be considered with the Employer's ability to pay. In practice, this means that the citizens of Woodford County need to have well trained and highly motivated law enforcement employees to protect the safety of Woodford County. The Union says that the Employer should not be allowed to ride the coattails of the national

economic downturn at the expense of law enforcement employees and therefore of public safety.

Pulling these factors together, the Union argues that the evidence shows that its final offer is the most reasonable, and it should be selected to resolve this impasse.

Position of the Employer. The Employer's final offer calls for a 0.75 percent wage increase effective December 1, 2008 and a 0.75 percent wage increase effective June 1, 2009, and a wage reopener for the 2010 fiscal year (effective December 1, 2009). The Employer supports its final offer with a variety of evidence and arguments.

The Employer begins by emphasizing the well-known negative economic climate, which has adversely affected Woodford County (to be discussed in more detail below). The County's highly constrained financial situation means that its final offer is much more reasonable than the Union's final offer, which asks for overly generous pay increases.

Looking at internal comparables, the Employer notes that the correctional officers, in a bargaining unit represented by this Union, agreed to a fiscal 2009 wage increase of 0.75 percent on December 1, 2008 and 0.75 percent on June 1, 2009, and for fiscal 2010 wages the parties will be in reopener bargaining (UX 24). Additionally, the employees in the bargaining unit represented by AFSCME Local 2908 also received an increase of 0.75 percent on December 1, 2008 and 0.75 percent on June 1, 2009, and with the expiration of this one-year CBA on November 30, 2009 the parties will be bargaining for a fiscal 2010 wage increase (EX M). The

County's unrepresented employees had their wages frozen for fiscal 2009 (Tr. 93), and at the time of the hearing the 2010 budget had not been set.

These data from other County units and employees provides strong support for the County's offer of a pair of 0.75 percent increases for fiscal 2009 and a wage reopener for fiscal 2010. The selection of the Employer's final offer will place the deputies on an equal footing with other County employees. In particular, the adoption of the Employer's final offer will not disadvantage the Union in its quest for a 3.5 percent increase for fiscal 2010, for it will be free to pursue that salary increase objective in the third year wage reopener negotiations.

The Employer vigorously disagrees with the Union's interpretation of the bargaining history of the instant unit and the corrections unit. The Union claimed the overtime calculation concession is valued at the equivalent of a two percent wage increase. The Employer emphasizes that the Union submitted no evidence that this overtime concession had a value of two percent or that this concession was recognized as such by the Employer; the correctional unit received the same overtime concession; and the Union negotiated the contracts in both units. After agreeing to these outcomes in both units, the Union is now trying to undo them for the deputies unit via interest arbitration, and the Employer insists there is no merit to this Union reasoning.

Also under the heading of bargaining history, the Employer points out that the health insurance changes that were adopted in September 2008 resulted in substantial increases in take-home pay

for those employees taking health insurance as a result of the fact that the Employer paid higher premiums and employees paid lower premiums. As the Employer has calculated, the take-home pay for the employees in the instant unit taking health insurance increased by an average of 3.4 percent (EX C). This additional infusion of money into employees' pockets was achieved at the expense of an increased health insurance expenditure of \$34,339 per year by the Employer (EX C).

Looking at external comparability, the Employer argues that this factor deserves significantly lesser weight in this proceeding due to the harsh economic climate. Employer finances vary widely from county to county in this current economic environment, thereby making external comparisons quite difficult.

To the extent that external comparables need to be considered, the Employer submits that Bureau, Livingston, and Logan Counties are comparable to Woodford County. When reviewing the wage rates among these counties, the Employer says that the majority of unit members are earning more than employees with comparable seniority in the three comparison counties (EX 0, p. 9).

Turning to the Union's list of comparables, the Employer rejects the Union's claim the Yaffe Award in 2003 "set" or "determined" the same comparability group presented by the Union in the instant proceeding. All that Arbitrator Yaffe did six years ago was determine for him, at that time, that it was appropriate to consider more than three comparison jurisdictions.

More important, the Union has submitted no information about the financial condition of the additional counties it argues should be considered as comparable (Christian, Fulton, Lee, McDonough, and Morgan). In other words, the evidence in the record tells us absolutely nothing about the fiscal status of these other employers and their ability to agree to and absorb the costs associated with wage increases of different magnitudes. Further, the Union's wage data for 2008 indicates that Woodford County's wage schedule exceeds that of McDonough County during the first three years of employment, and exceeds that of Morgan County during the first ten years of employment (UX 12, p. 1). In short, even the Union's external comparables do not support the Union's final offer.

The Employer argues that the crux of this dispute is ability to pay. The data in the record show, without any ambiguity, that Woodford County's financial position has deteriorated markedly during the past two years and is continuing to deteriorate. For instance, during fiscal 2008, the year the parties agreed to a two percent wage increase and the Employer picking up a larger share of the health insurance premiums, County General Fund expenditures exceeded revenues by more than one million dollars, resulting in a deficit of \$615,816, which deficit was covered by a transfer from the County's cash reserve, which in turn reduced the County's cash reserve from \$3,048,095 to \$2,382,065 (CXs D, L).

Looking at fiscal 2009, the County reinstated the General Corporate property tax levy (EX E), directed each County department to reduce expenses by five percent (EX F), froze the

compensation of all non-bargaining unit employees (Tr. 93-94), froze all planned capital expenditures (Tr. 93-94), and did not replace the County Administrator who resigned in summer 2008, thereby saving his salary (Tr. 94). Even with these revenue-enhancing and cost-saving actions, the County projects that fiscal 2009 revenue will be \$200,000 less than budgeted (EX J, Tr. 93), even after receiving the second installment of property tax payments and the transfers from the special revenue funds. This revenue shortfall is based on significant drops in income and sales tax receipts resulting from the economic slowdown (Tr. 110, 115). As of July 31, 2009, County actual expenditures are \$2.6 million less than budgeted expenditures (EX K). The Employer is projecting a deficit of about \$1.0 million in the General Fund for 2009 (Tr. 100). This deficit is almost \$400,000 larger than existed at the fiscal 2008 yearend.

Looking at fiscal 2010, the parties agreed in Section 23.1 of their 2007-2010 CBA that a wage reopener was appropriate for 2010 (EX B, UX 7). The Union has offered no evidence to explain why this wage reopener to which it agreed in 2008 should now be abandoned and replaced with a 3.5 percent increase for fiscal 2010 mandated by an arbitrator. In other words, the Union now wants to walk away from a provision to which it agreed in the last round of negotiations, but it offers no explanation for this change. It is well settled in Illinois interest arbitration that the party proposing a change bears the burden of proof and persuasion, and the Union has not met that burden.

Further, the Employer's fiscal condition is worse now than when the Union agreed to the reopener language, and this fiscal condition certainly does not support a change from an agreed-upon reopener to a mandated 3.5 percent increase. Moreover, the Employer notes that there is no fiscal 2010 evidence in the record. As a result, the selection of the Union's final offer would mean mandating a 3.5 percent wage increase in the dark at a time when the County is struggling financially. The Employer argues that the imposition of such an increase is not warranted by any evidence in the record.

The Employer is particularly vexed by the Union's argument that the Employer can fund the Union's offer by using its cash reserves. The Employer argues that using cash reserve funds in this manner is unwarranted and fiscally irresponsible. The evidence shows that the County's cash reserve has shrunk from \$3,048,095 on November 30, 2007 to \$1,503,078 on July 31, 2009 (EX L; Employer Brief, p. 9 "Er.Br. 9"). The Employer projects that by November 30, 2009 the cash reserve will have shrunk by another \$1.0 million, which will leave an anticipated \$500,000 as a cash reserve at the start of the 2010 fiscal year (Tr. 100-101; Er.Br. 9). The County's auditor has advised the County that the cash reserve fund should not be below \$2,000,000 (Tr. 101, 110). When the parties agreed to a two percent increase for fiscal 2008, the cash reserve figure was \$2,382,065 (EX L). It has now shrunk well below that level. Yet the Union insists that the employees it represents be awarded another two percent increase and then a 3.5

percent increase on top of that. As these data indicate, the Union's cash reserve reasoning carries no water.

Pulling these factors together, the Employer insists that its offer is reasonable and the Union's offer is extravagant. In particular, the Union's request for a 3.5 percent increase for fiscal 2010 not only is not justified by any evidence in the record, the evidence of the County's negative fiscal situation argues strongly against the adoption of such an increase. In light of the modest difference between the parties' offers for fiscal 2009, the more reasonable outcome of this dispute is the selection of the Employer's proposal, which would allow the Union to continue to bargain for a 3.5 percent increase for 2010 via reopener negotiations.

Analysis. This is a case where I am faced with two unattractive final offers. The Union asks for too much in its offer, and the Employer offers too little in its offer. If I had the statutory authority under Section 14, I would not select either offer but instead would award wage rates different from those proposed in either party's offer. However, I do not have that authority. As a result, I will comply with the Act's Section 14(g) directive to "adopt the last offer of settlement which, in the opinion of [the Arbitrator], more nearly complies with the applicable factors prescribed in subsection (h)."

When considering the "applicable" decision factors in Section 14(h), we find some factors that are not applicable to a resolution of this matter. In particular, factor (1) "*the lawful authority of the employer,*" is not in play here. Neither party

has advanced any claim that Woodford County does not have the lawful authority to implement either of the final offers in the record. Factor (5) *"the average consumer prices for goods and services, commonly known as the cost of living,"* also is not pertinent to a resolution of this impasse. The Union submitted two cost of living/inflation exhibits (UXs 27, 28), but neither party referred to this factor at the hearing or in its post-hearing brief. I will give this factor the same non-attention. Factor (6) *"the overall compensation presently received by the employees, . . ."* has not been addressed by either party. There is no evidence in the record regarding the total compensation received by bargaining unit members or any other employees. Factor (8) *"such other factors, not confined to the foregoing, . . ."* also is not applicable here. Accordingly, the factors cited in this paragraph will not be considered further. We turn to the applicable decision factors.

Factor (2). Factor (2) refers to the *"stipulations of the parties."* The Union points to the parties' stipulation that the sole issue in this case is "What should the wage increases be for the bargaining unit employees effective December 1, 2008 and December 1, 2009?" (item C in UX 1; see also Tr. 10-11). The Union argues that this stipulation indicates that during this proceeding wage rates for fiscal 2009, effective December 1, 2008, and wage rates for fiscal 2010, effective December 1, 2009, will be adopted. This stipulation is consistent with the language in CBA Section 23.1 that states "Wages effective 12/1/08 and 12/1/09 shall be subject to re-opener negotiations" (UX 7, p. 14).

The Union's final offer proposes "wages effective 12/1/08 and 12/1/09." In contrast, the Union argues that the Employer's offer departs from the parties' arbitration stipulation, and the relevant CBA language in Section 23.1, by proposing to adopt yet another reopener provision for fiscal 2009. The Union concludes that the Employer's offer does not serve the parties' interests, does not effectuate the purposes of the Act, and is not reasonable.

I am not persuaded by the Union's reasoning. The relevant CBA language in Section 23.1 does not expressly require that wage rates for both the second and third contract years be adopted in the same round of reopener negotiations (UX 7). Similarly, the parties' arbitration stipulation does not prevent either party from including a reopener provision in its final offer (UX 1). In effect, the Employer's reopener provision says that wage rates effective December 1, 2009 will be "it depends," or more fully, "it depends on the wage rates the parties agree upon during the fiscal 2010 reopener negotiations or an interest arbitrator awards if those reopener negotiations do not produce an agreement."

I fully agree with the Union that the Employer's fiscal 2010 reopener proposal, if adopted, does not promote efficient bargaining and does not provide the parties with two years of bargaining stability and wage predictability. In effect, the Employer's proposal calls for almost non-stop bargaining during the life of the current three-year contract. However, there is nothing in the record to indicate that the Employer has somehow

violated this stipulation, so this factor will not be considered further.

We will skip over factor (3) and return to it below.

Factor (4). This is the "*comparability*" criterion. The record contains two kinds of comparability evidence - internal and external.

Looking first at *internal comparability*, both parties have presented internal comparison arguments. The Union's internal comparability argument focuses on the corrections unit and the four percent wage rate negotiated for that unit for fiscal 2008 compared with the two percent increase negotiated for the deputies unit for that same year. The Union argues that somehow the deputies now are entitled to "catch up" to that larger wage increase received by the correctional officers during 2008, particularly in light of the fact that the corrections employees subsequently received the overtime calculation concession negotiated by the deputies for 2008. This reasoning is not the least bit persuasive. Each of these two units negotiated for their own terms and conditions of employment, and each was represented by this Union. If the Union wanted wage increase uniformity across both units, they could have bargained for it. They did not. As a result, there is not a molecule of evidence in the record to show that the deputies have some sort of right to "catch up" to the larger wage increase received by the corrections officers on December 1, 2007.

For its part, the Employer argues that the members of the correctional officers unit, and the members in the unit

represented by AFSCME Local 2908, received fiscal 2009 increases of 0.75 percent on December 1, 2008 and 0.75 percent on June 1, 2009 (EX M, UX 24). As a result, the Employer argues that the members of the deputies unit should receive the same increase for fiscal 2009 that already is in place in the County's other two bargaining units.

The Employer's argument for cross-unit wage increase uniformity has a surface appeal. At the same time, it also deprives the members of the deputies unit from pursuing their own wage objectives in bargaining. Expressed another way, the Employer seeks to have a "them-too" wage outcome imposed on the deputies by insisting that I award the deputies the same fiscal 2009 wage increase negotiated in the other two County units. However, this evidence does not provide persuasive support for a conclusion that the Woodford County deputies should have imposed on them the same wage adjustment that was agreed to in two other bargaining units for employees performing different kinds of work.

In addition, the record shows that the Employer did not insist upon cross-unit wage increase uniformity in fiscal 2008. For that year, it agreed to a two percent increase for the deputies unit (UX 7), a four percent increase for the corrections unit (UX 29), and a 55 cents per hour increase for the employees in the AFSCME-represented unit (UX 24). Given the heterogeneity of the employees in the AFSCME unit (UX 24), this 55 cents per hour increase translated into a variety of percentage pay increases for those employees depending on what their fiscal 2007 wage rates were (which are not specified in their CBA, UX 24). In

other words, the Employer's willingness to agree to different wage increases across units for fiscal 2008 means that there is no special or persuasive reason to insist upon cross-unit wage increase uniformity for fiscal 2009.

Turning to *external comparability*, we need to first determine an appropriate group of comparable employers. The Employer submits Bureau, Livingston, and Logan Counties as comparable employers (EX 0). These three counties are located in central Illinois within about 75 miles of Woodford County, each has a population within 10,000 citizens of Woodford County's 2008 estimated population (EX 0), and each is a predominantly rural county (there are no large municipalities located in any of these three counties (EX 0)). The Employer used these same three counties as its comparables in the 2003 interest arbitration before Arbitrator Yaffe (UX 9).

In contrast, the Union submits Bureau, Christian, Fulton, Lee, Livingston, Logan, McDonough, and Morgan Counties as comparable employers (UXs 25, 26). In other words, the parties agree that Bureau, Livingston, and Logan Counties are comparable jurisdictions, and the Union additionally submits Christian, Fulton, Lee, McDonough, and Morgan as comparable jurisdictions. The Union's evidence indicates that all of its comparison counties are located in central Illinois within a radius of about 125 miles of Woodford County, each has a population within 5,000 citizens of Woodford County's 2000 census population, and each is a predominantly rural county (there are no large municipalities located in any of these eight counties ((UX 25)). Both parties'

comparison groups show that Woodford County has a higher median household income and higher median housing value than all of the comparison counties (EX 0; UX 25).

The Union argues that "Arbitrator Yaffe set the comparable pool." I agree with the Employer that Arbitrator Yaffe did no such thing. Instead, he decided to use the larger eight-county comparison group submitted by the Union rather than the three-county comparison group submitted by the Employer because (1) he found the additional counties submitted by the Union to be appropriate comparators with Woodford County, and (2) he found that a larger group of external comparables was preferable to a smaller group (*Yaffe Award*, pp. 2, 6).

I find that the Union's eight-county group of comparison counties is preferable to the Employer's three-county comparison group for similar reasons. The available data about all of the submitted counties indicates they are similar to Woodford County on the dimensions describe above (EX 0; UXs 25, 26). More important, I find that a three-county comparison group is too limited or restricted a group to provide reliable comparisons. Instead, I find that an eight-county group provides a significantly larger and hence much more reliable evidentiary base from which to make comparisons with Woodford County. In this regard, I agree with Arbitrator Nathan that "Provided the comparability group is large enough to be statistically meaningful, the marketplace of contract terms is a powerful tool

for demonstrating appropriateness."³ In the instant matter, a three-county comparison group does not provide a large enough amount of information to provide "statistically meaningful" comparisons, but an eight-county group does.

The Employer is highly critical of the Union's additional counties because the Union submitted no information about their financial condition (Er.Br. 12-13). The Employer is correct that the Union did not do this. As a result, we do not have in the record any evidence about how the financial condition of the comparison counties compares with the financial condition of Woodford County. At the same time, the record shows that the Employer did not submit any evidence about the financial condition of the Bureau, Livingston, and Logan County governments.⁴

We know that the recent and current depressed state of the nation's economy is widespread and is not confined to a limited area of the country or this state. As a result, there is no reason to believe that any of the comparison counties submitted by either party are somehow immune to the financial stresses faced by Woodford County. Accordingly, the absence of county budget data from all eight of the comparison counties will not result in their exclusion from the following analysis.

3. *Nathan Award*, p. 7. In that case, the employer (Lawrence County) argued that external comparability was irrelevant and the employer's financial condition was the only criterion that mattered (p. 7).

4. EX O presents "QuickFacts" from the U.S. Census Bureau website about Bureau, Livingston, Logan, and Woodford Counties. However informative the QuickFacts data are, they tell us nothing about the county government balance sheets, or the revenues and expenditures, in these four counties.

What does the external comparability evidence show? Looking first at wage levels (measured by annual salaries), the first page of UX 12 shows how Woodford deputy wages for fiscal 2009 (effective December 2008 with the Union's proposed two percent increase *included*) compare with deputies in the comparison counties at 11 points in the salary scale (starting salary, after 1 year, after 2 years, etc., up through top pay). I strongly agree with the Employer that we cannot make valid comparisons with jurisdictions whose 2009 salaries have not been established. As a result, when we exclude the three counties for which actual 2009 wage rates are not yet known and for which the Union assumed three percent wage increases (Bureau, Fulton, and Lee), we are left with the five counties of Christian, Livingston, Logan, McDonough, and Morgan as comparators for fiscal 2009 (UX 12, p. 1).

The second page of UX 12 shows how Woodford deputy wages for fiscal 2010 (effective December 2009 with the Union's proposed two percent and 3.5 percent increases *included*) compare with deputies in the comparison counties at 11 points in the salary scale (starting salary, after 1 year, after 2 years, etc., up through top pay). Again, I strongly agree with the Employer that we cannot make valid comparisons with jurisdictions whose 2010 salaries have not been established. As a result, when we exclude the four counties for which actual 2010 wage rates are not yet known and for which the Union assumed three percent wage increases (Bureau, Fulton, Lee, and McDonough), we are left with the four counties of Christian, Livingston, Logan, and Morgan as comparators for fiscal 2010 (UX 12, p. 2).

UX 12 shows that in both fiscal 2009 and fiscal 2010, the salaries of the ten unit members who work 2007-hour years trail their peers' salaries at all experience levels except at the two-year mark. Further, the more experience these Woodford deputies acquire, the larger the gap between their pay and the pay of their comparably experienced peers in other counties.

UX 12 shows that in both fiscal years, the seven unit members who work 2080-hour years are ahead of their peers during their first four years on the job. Starting in their fifth year and continuing through the remainder of their careers, they trail their comparably experienced peers elsewhere. As with the 2007-hour deputies, the more experience the Woodford deputies acquire, the larger the pay gap they face.

Table 1 presents, in summary form, some of the results from the fiscal 2010 salary comparisons using only the jurisdictions whose FY2009 and FY2010 salaries are known (UX 12, p. 2):

TABLE 1
FISCAL 2010 DEPUTY SALARIES WITH UNION'S FINAL OFFER (2%/3.5%)

Comparison County	Starting Salary	After 1 Year	After 3 Years	After 5 Years	After 10 Years	After 20 Years
Christian	\$47,487	\$47,487	\$47,487	\$48,237	\$48,437	\$48,637
Livingston	37,129	38,243	40,470	42,327	46,040	51,609
Logan	37,175	37,175	39,573	41,972	44,370	47,968
Morgan	31,524	38,031	39,499	40,549	42,648	47,075
AVERAGE	38,329	40,234	41,757	43,271	45,374	48,822
Woodford 2007-hour deputies	36,634 -1,695 -4.6%	38,753 -1,481 -3.8%	40,871 -886 -2.2%	40,871 -2,400 -5.9%	41,274 -4,100 -9.9%	42,524 -6,298 -14.8%
Woodford 2080-hour deputies	37,966 -363 -1.0%	40,162 -72 -0.2%	42,358 601 1.4%	42,358 -913 -2.2%	42,775 -2,599 -6.1%	44,071 -4,751 -10.8%

Note: There are ten 2007-hour deputies and eight 2080-hour deputies (Un.Br. 14; UX 10).

These Table 1 data do not exactly mimic the data in UX 12 due to the removal of those four counties whose fiscal 2010 salaries are not yet known. Nevertheless, the Table 1 data show that Woodford deputies' salary levels, at almost all salary levels, trail their peers in comparable counties. This is particularly true for all of the 2007-hour deputies, it is true for all deputies beyond the five-year experience level, and for the most experienced deputies the pay gap becomes substantial. Again, it is worth noting that the data in Table 1, and in UX 12, include Woodford deputy salaries assuming the Union's final offer has been adopted. The Woodford salaries would be lower, and the pay gap with their peers larger, if the Employer's offer had been adopted (this salary level analysis could only be done for fiscal 2009 in this situation).

These wage level comparisons show several things. First, using known salary data for the 2010 fiscal year from comparison counties (i.e., all "assumed" wage increase jurisdictions have been removed from the analysis), the seven Woodford 2080-hour deputies are paid very close to their peer salaries during their first three years of service. Second, starting at their fifth year of service, their pay trails the average pay of the peer deputies in these comparison counties. Third, the size of the Woodford deputy wage gap increases as Woodford deputies acquire more experience. Fourth, the ten Woodford 2007-hour deputies trail their peers throughout the experience levels in the salary schedule. Finally, the majority of unit members have five or more

years experience as of December 2009 (Un.Br. 14; UX 10), so the Employer's contention that most unit members are paid more than their peers in comparable jurisdictions is not accurate (Er.Br. 11-13).

It is possible that the comparison county average figures at various experience levels will change as salaries in additional counties are adopted and included in the computation. However, we cannot wait upon these other counties and their labor organizations to conclude their salary-setting processes. Based on the available data, the evidence clearly shows that Woodford deputy salaries trail their comparison peer salaries at almost all experience levels. As a result, this wage level external comparability analysis provides very strong support for the selection of the Union's offer.

Turning to *wage increases*, the CBAs from the comparison jurisdictions in UX 26 allow us to compare how deputy salaries for 2009 and 2010 have increased in those comparison counties that have adopted wage increases for at least one of those two years. Table 2 presents these wage increase percentages:

TABLE 2

Year	Christian County	Livingston County	Logan County	McDonough County	Morgan County
FY2009 (eff. 12-1-08)	4.25%	4.5%	3.5%	3.0%	3.5%
FY2010 (eff. 12-1-09)	4.25%	4.5%	3.5%	NA	3.5%

As Table 2 suggests, there are no wage increase data available for Bureau, Fulton, and Lee Counties (UX 26, see also Un.Br. 14-15).

These wage increase data from comparable jurisdictions show that five central Illinois counties of similar population and type to Woodford County have increased the wages of their deputies by 3.0 percent to 4.5 percent for each of the two years in question (except for fiscal 2010 in McDonough County). Table 2 shows that Morgan and Logan Counties agreed to a total wage increase of seven percent (omitting compounding) for the 2009 and 2010 years. Christian County agreed to a total wage increase of 8.5 percent for these same two years. Livingston County agreed to a total wage increase of 9.0 percent for these two years. In short, these four counties have agreed to wage increases for the two years in dispute that significantly exceed the increases sought by the Union in the instant unit.

The Employer will argue that, because we have no data in the record about the financial condition of these counties, these wage increases should not be considered. The Employer is correct that these wage increases could be more thoroughly and properly evaluated if we had data about the financial condition of the five counties in Table 2. At the same time, we can conclude that these five comparable employers are not immune to the economic stresses that have beset Woodford County. Expressed another way, it stretches credulity beyond the breaking point to conclude that the five employers in Table 2 have progressed into the 2009 and 2010 fiscal years in the same comfortable financial condition they experienced in the preceding years. Additionally, I note that Table 2 includes wage increase data from Livingston and Logan

Counties, which are two of the three jurisdictions the Employer presented as comparable.

Taken together, the analysis of dollar wage levels in comparison jurisdictions, and the analysis of percentage wage increases in comparison jurisdictions, which analyses have been limited to those employers whose wage rates have been determined, provides extremely strong support for the selection of the Union's offer and no support at all for the selection of the Employer's offer.

Factor (3). We turn to the final offer selection factor that lies at the heart of this dispute. Factor (3) is "*the interests and welfare of the public and the financial ability of the unit of government to meet those costs,*" generally known as "*ability to pay.*" The Employer insists that its financial condition has markedly deteriorated since 2007 and will continue to do so in 2010, and as a result it cannot afford to pay more than its 1.5 percent offer for fiscal 2009 and must have a reopener to return to the bargaining table to negotiate a wage increase for fiscal 2010. The Union does not dispute the existence of the negative economic forces that have affected the County's financial condition, but the Union insists that the financial data in the record "*demonstrate the County's long-standing ability to withstand economic changes including those that exist in 2009*" (Un.Br. 21).

The operation of the Sheriff's Department is paid for by General Fund ("Fund") monies. Therefore we will focus our attention on this Fund. The evidence shows that during FY2008 the Fund received total revenues that were exceeded by total expenditures such that the year end balance of the Fund fell by \$615,736 compared with FY2007 (EX D, p. 64). The FY2008 ending Fund balance of \$2,662,620 was the second lowest such balance during the 1997-2008 period (UX 14).

The hearing in this matter was held on August 19, 2009. At that time there was no yearend Fund data for FY2009. However, the Employer presented EX J, which is a look at County revenues and expenditures through July 31, 2009. In this exhibit, the County projects a \$200,000 revenue shortfall compared to budgeted revenue, due primarily to a fall in sales tax receipts (EX J, Tr. 98). In addition, the County projects a FY2009 Fund deficit of \$1,000,000 (Tr. 99-100). As of July 31, 2009, the Fund cash balance was \$1,053,078 (EX L). If this prediction is correct, the FY2009 yearend Fund balance would be close to zero.

However, County Board Member Tom Janssen, Chair of the County Board's Finance Committee, predicted that the Fund would receive about \$6 million rather than \$6.2 million in revenue during FY2009 (Tr. 116). The 2009 budget shows that the County anticipated spending \$6,684,034 in the Fund during FY2009 when its FY2009 budget was initially prepared (EX H, p. 2). However,

the County has been reducing expenditures, and as of July 31, 2009 the County had spent \$202,000 less from the Fund than it had as of the same date a year earlier (EX K). This is consistent with the County's lengthy history of actually spending less each year than the budgeted expenditures (Un.Br. 22-23). If the rate of spending signified in the \$4,081,744 that the County actually spent from the Fund as of July 31, 2009 (EX K) is projected at that same rate of spending for the remainder of FY2009 (August through November 2009), the County will spend about \$6.1 million from the Fund during FY2009. At that rate of spending, and with Mr. Janssen's prediction of the Fund receiving about \$6 million during FY2009 (Tr. 116), the yearend Fund balance would decline by about \$100,000. As a result, the data in these exhibits, coupled with Mr. Janssen's revenue prediction, provide absolutely no support for the \$1,000,000 deficit projected by the Employer (Tr. 100).

Mr. Janssen also explained that the County Board eliminated the General Corporate Levy for FY2008, that this levy was reinstated for FY2009 (see EX E), and the one-year absence of that levy cost the County about \$600,000 in foregone revenue (Tr. 112-113). Janssen's testimony supports a conclusion that the 2008 yearend Fund balance would have been above \$3 million if the County had continued to levy the general corporate property tax in 2008 as it had done during the several preceding years (EX H,

p. 1). The County Board's decision to eliminate the levy for fiscal 2008 coincided with the downturn in the economy and the resulting loss of County revenues from other sources, which resulted in a significant reduction in the Fund's yearend balance (Tr. 112-113). The Employer's use of the Fund's declining balance to argue against the Union offer, and in support of the Employer's offer, has the effect of asking members of the deputies unit to help pay for this decline in the yearend Fund balance by accepting a very modest wage increase.

Further, EX J shows that, as of July 31, 2009, actual Fund revenues are about \$270,000 ahead of Fund revenues on the same date a year earlier, and EX K shows that Fund expenditures as of July 31, 2009 are about \$202,000 less than on that same date a year earlier. In other words, these two Employer exhibits show that the Employer is doing a very effective job of collecting revenues and reducing costs. These two exhibits also are inconsistent with the Employer's projection of a million dollar deficit during FY2009.

There is no question that the County is in poorer financial condition during the pendency of this proceeding than it was in 2007. At the same time, the financial evidence discussed in the preceding paragraphs demonstrates that the Employer is not in the dire financial straits it has claimed or that its final offer is the only offer that can be selected.

More specifically, the ability to pay evidence does not meet the threshold of showing, in the words of another Illinois interest arbitrator, "that the Union's offer would place such a heavy burden on [the County's] finances that funds would have to be shifted from other [County] services to pay the Union's offer, resulting - and this is the important point - in the elimination or harmful diminution of essential [County] services, or extensive layoffs, or both."⁵ The Employer has not come close to showing that the County is in such a financially weakened condition.

When we pull together the ability to pay evidence in the record, it indicates that the Employer can pay for its own offer or the Union's offer. Specifically, this ability to pay evidence does not show that Woodford County is unable to pay the Union's offer, which calls for a total increase of 5.5 percent over the two years in dispute.

This last point is noteworthy. As we saw above in Table 2, four comparable employers have agreed to two-year wage increases ranging from 7.0 percent to 9.0 percent for their deputies for these same two years. In the instant matter, the Union is not seeking increases of this magnitude. Instead, the Union's offer calls for a two-year wage increase of 5.5 percent. The financial

5. *Jefferson County, The Jefferson County Sheriff's Department and The Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-95-18 (Arbitrator Steven Briggs, February 17, 1996), p. 11, quoting from *City of Granite City and Granite City Firefighters Association, Local 253, IAFF*, ILRB No. S-MA-93-196 (Arbitrator Milton Edelman), p. 11.

evidence just reviewed indicates that the County can afford to fund this offer.

Finding. Reviewing the applicable evidence, the internal comparability evidence provides very limited support for the selection of the Employer's offer. In contrast, the external comparability evidence provides overwhelming support for the selection of the Union's offer. Moreover, the external comparability evidence deserves much more weight than the internal comparability evidence, for the external comparisons compare wage rates paid to Woodford County deputies with wage rates paid to deputies doing the same work in comparable jurisdictions. The ability to pay evidence provides support for the selection of either the Employer's offer or the Union's offer. As this indicates, the ability to pay evidence does not come close to demonstrating that Woodford County is in such a dire financial condition that it can only fund its own offer. In addition, the evidence shows that the Union has submitted an offer that seeks a two-year wage increase that is reasonable in light of the Employer's financial condition.

Pulling these applicable factors together, I find that the Union's last offer of settlement on the wage issue more nearly complies with the applicable factors in Section 14(h) of the Act, and I select it to resolve this impasse.

This conclusion is reinforced by an analysis of two Illinois interest arbitration awards issued in early 2009 and submitted by the Employer with its post-hearing brief. In particular, the Employer quoted extensively from Arbitrator Benn's award in Boone

County in support of the use of economic item reopeners as a way to cope with a stressful and rapidly changing economy (Er.Br. 4-5).⁶ However, of much greater relevance than what Arbitrator Benn said in his award is what he did in his award. For our purposes, it is instructive to analyze Arbitrator Benn's selection decision on the wage item. After selecting a three-year contract term (the parties disputed the duration of the CBA), Benn found that the evidence warranted the selection of the county's wage offer. This offer called for wage increases of 3.5 percent for FY2008, 3.0 percent for FY2009, and 3.0 percent for FY2010 (the union had proposed 4.5 percent, 4.25 percent, and 4.25 percent, respectively, for those years). As this indicates, the county's offer that Benn selected provided a total wage increase of 9.5 percent over three years (omitting compounding) (*Benn Award*, p. 30).

Here, the Union seeks a total wage increase of 7.5 percent over three years (2.0 percent negotiated for FY2008, and then 2.0 percent for FY2009 and 3.5 percent for FY2010 in this arbitration proceeding). As this indicates, Boone County reached further and made a more reasonable wage offer than did the Employer in the instant matter, and it is not surprising that Arbitrator Benn selected the county's offer.

6. *County of Boone and Boone County Sheriff and Illinois Fraternal Order of Police*, ILRB No. S-MA-08-025 (Arbitrator Edwin Benn, March 23, 2009 ("*Benn Award*")).

The City also submitted another recent Illinois interest arbitration award in support of its position.⁷ In his award involving the City of Effingham, Arbitrator McAlpin was faced with a three-year contract term covering the city's 2007, 2008, and 2009 years (effective May 1, 2007 through April 30, 2008, May 1, 2008 through April 30, 2009, and May 1, 2009 through April 30, 2010). He found that the evidence warranted the selection of the city's offer, which called for wage increases of 3.0 percent, 3.25 percent, and 3.5 percent, respectively, for those three years (the union proposed 3.5 percent, 3.75 percent, and 3.75 percent, respectively, for those years; *McAlpin Award*, pp. 4 and 21). The city's wage increases totaled 9.75 percent over three years (omitting compounding). Again, this was an arbitration where the employer offered significantly larger wage increases than did the County here, and it is not surprising that Arbitrator McAlpin selected the city's offer.

The key point to be gleaned from these two awards, submitted by the Employer in support of its offer, is that they demonstrate that these two arbitrators selected employer final offers that provided for substantially larger wage increases than the Employer offered here - 1.5 percent for 2009 and a reopener for 2010. In other words, these other employer offers did not offer the type of meager - very meager - wage increase that the Employer offered

7. *City of Effingham and Illinois Fraternal Order of Police Labor Council*, ILRB No. S-MA-07-151 (Arbitrator Raymond McAlpin, February 28, 2009 ("*McAlpin Award*").

here, with the result that these other employers were successful in having their final offers selected.

AWARD

Under the authority granted to me by Section 14(g) of the Illinois Public Labor Relations Act, I find that the Union's last offer of settlement on the wage issue more nearly complies with the applicable factors in Section 14(h) of the Act, and I select the Union's final offer to resolve this impasse. It is so ordered.

Respectfully submitted,

Champaign, Illinois
December 31, 2009

Peter Feuille
Arbitrator