

INTEREST ARBITRATION

OPINION AND AWARD

IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

POLICEMEN'S BENEVOLENT LABOR COMMITTEE
("Union" or "Bargaining Representative")

AND

COUNTY OF MACOUPIN and SHERIFF OF MACOUPIN COUNTY
("County", "Sheriff" or collectively "Joint Employers")

Case No. S-MA-09-065

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Arbitrator's Case No. 10/018

Before: Elliott H. Goldstein
Sole Arbitrator by Stipulation of the Parties

Appearances:

On Behalf of the Union:

Sean Smoot, PBPA Chief Legal Counsel
Shane M. Voyles; PBLC Staff Attorney (On Brief)
Eric Poertner, PBLC Labor Representative
Kasey Groenwold, PBLC Labor Representative
Julie Loftis, PBLC Office Manager
Quinn Reiher, Deputy Sheriff
Ryan Dixon, deputy Sheriff
James McLaughlin, Corrections MCSO

On Behalf of the Joint Employers:

Jack Knuppel. Special Assistant State's Attorney
Andrew Manar, County Board Chairman
Donald Albrecht, Sheriff

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I. PROCEDURAL BACKGROUND

This matter comes as an interest arbitration between the County of Macoupin (the "County") and the Sheriff of Macoupin County (the "Sheriff") (collectively the "Joint Employers") and the Police Benevolent Labor Committee (the "Union") pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (the "Act"). This dispute arises from the parties' impasse in negotiations for a successor to the Collective Bargaining Agreement in effect from September 1, 2004 through August 31, 2008. The parties each waived the tripartite arbitration panel and so I am appointed as the sole arbitrator to decide this matter.

The hearing before the undersigned Arbitrator was held on September 15, 2010, at the **County's offices** at 215 S. East St., Carlinville, Illinois, commencing at 10:00 a.m. The parties were afforded full opportunity to present their cases as to the impasse issues set out herein, which included both testimony and narrative presentation of exhibits. A 119-page stenographic transcript of the hearing was made, and thereafter the parties were invited to file written briefs that they deemed pertinent to their respective positions.

The hearing took place in tandem with two declaratory ruling petitions filed by the Union with the General Counsel of the Illinois Labor Relations Board, Case Nos. S-DR-10-012 and S-

DR-11-004, regarding two objections raised by the Union to certain waiver of bargaining language contained in the Joint Employers' respective proposals on the Hours of Work and Health Insurance issues, which the Union in each matter contended was not a mandatory subject of bargaining. Briefing here was delayed as the parties waited for the General Counsel's opinions. Post-hearing briefs were finally exchanged on January 31, 2012.

The Union submitted the General Counsel's declaratory rulings along with the Union's brief in this matter. In each case, the General Counsel agreed with the Union's contention that the relevant proposals contained non-mandatory elements. I thereupon remanded the matter to the parties for further negotiation and revision of final offers, if desired. Although no settlement was reached during the remand, the parties nevertheless agreed to allow submission of revised proposals on the relevant issues. The parties' final revised proposals were received on April 24, 2012, at which time the record was closed.

II. FACTUAL BACKGROUND

The County and Sheriff are each employers within the meaning of Section 3(o) of the Act. The Union is a labor organization within the meaning of Section 3(i) of the Act. The Union is the exclusive bargaining representative, within the meaning of Section 3(f) of the Act, for two bargaining units,

both of which were covered under a single collective bargaining agreement. Unit A is a mixed unit consisting of both sworn and civilian employees in the Sheriff's Office. The actual number of employees in Unit A is not stated in the record. Evidence submitted by the Union suggests that the number is somewhere between 35 and 40 employees. Approximately 40 percent of the unit is comprised of employees in the classification Road Deputy. The other classifications, all of which will be covered by this award, are Corrections Officer, Telecommunicator, Court Security Officer, Clerk, Janitor, Maintenance Engineer and Cook. Unit B includes Road Sergeants, Corrections Sergeants, Lieutenants and Captains. Unit B employees are also included in this award. The current Union is the successor to the Illinois Fraternal Order of Police Labor Council ("FOP"). This expiring agreement, between the Joint Employers and the predecessor FOP, had an effective term of September 1, 2004 through August 31, 2008 ("FOP Agreement").

III. STIPULATIONS OF THE PARTIES

The parties agreed that the instant Labor Contract should have a four-year term, beginning September 1, 2008, and that the following are the economic and non-economic issues in dispute:

Economic Issues:

1. Wages
2. Accumulation of Sick Leave

3. Health Insurance
4. Temporary Upgrade
5. Uniform Allowance
6. Field Training Pay

Non-Economic Issues:

1. Hours of Work
2. Working During Vacation

In addition to the foregoing, the parties entered into the following pre-hearing stipulations:

Pre-Hearing Stipulations

1. The Arbitrator in this matter is Elliott H. Goldstein. The parties agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the Joint Employers and Union.

2. The parties stipulated that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on the issues submitted. The parties further waived the requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act, requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment.

3. The Parties agreed that the Arbitrator has the authority to issue awards on all economic issues retroactive to September 1, 2008.¹

4. The parties agreed that the hearing would be transcribed by a court reporter whose attendance was to be secured for the duration of the hearing by agreement of the parties. Additionally, the cost of the reporter and the Arbitrator's copy of the transcript would be shared equally by the parties.

5. The parties further stipulated that I should base my findings and decision in this matter on the applicable factors set forth in Section 14(h) of the Act.

6. The parties agreed to the following 12 Illinois counties for purposes of external comparability under applicable statutory criteria: Clinton, Christian, Coles, Effingham, Fulton, Lee, Livingston, Logan, Marion, Monroe, Morgan and Montgomery.

¹ The Joint Employers suggested at one point in their post-hearing brief that they might withdraw from the stipulation as to my authority to issue a retroactive award of wages (Employer Brief, p. 14). The stipulation, however, is taken directly from the parties' ground rules, submitted as Joint Exhibit #3. The ground rules bear the signature of the Joint Employers' lead counsel, Mr. Knuppel. I consider the stipulation binding at this point.

IV. THE PARTIES' FINAL PROPOSALS

A. The Union's Final Proposals

Economic Issue #1 - Wages

The Union proposes the following wage increases:

Effective September 1, 2008:

- 2.00% across the board increase.

Effective September 1, 2009:

- 3.00% across the board increase.

Effective September 1, 2010:

- 4.00% across the board increase.

Effective September 1, 2011:

- 4.00% across the board increase.

Economic Issue #2 - Accumulation of Sick Leave

The Union proposes to maintain the status quo.

Economic Issue #3 - Health Insurance

The Union proposes to replace the existing insurance provisions with the following:

Article XVIII
Insurance

Effective May 2012 bargaining unit employees will begin paying 10% of the cost of the employee health and dental premium per month.

Retroactive to September 1, 2010, employees shall pay twenty-five dollars (\$25.00) of the individual basic health insurance premium. (This amount will be deducted from the retroactive wages of the arbitration award)

A Cost Containment Committee shall be formed made up of designated Employer representatives and up to two bargaining unit members from each union that elects to participate in the committee. Such committee members shall receive regular updates regarding insurance costs, coverages, and trends provided to them by the Employer as they become available. When meeting of the Cost Containment Committee are needed, such meetings are held during normal working hours and bargaining unit members shall suffer no loss of pay or benefits while attending such meetings. If such committee meetings are held after normal working hours, bargaining unit committee members shall receive the same stipend county board members receive for committee service.

If during the term of this agreement the employee's share of employee only medical premium exceeds \$58.00 per month or the Employer's cost per employee exceeds \$580.00 per month, either party may request to meet no later than 60 days prior to the end of the plan year to mutually agree to changes to the medical plan and/or carrier to mitigate the premium costs. If no mutual agreement is reached within 30 days of the first meeting of the Cost Containment Committee the parties shall submit the issue involving health and/or dental insurance to binding interest arbitration within seven (7) business days. The cost of such arbitration shall be split equally between the parties. Any and all subsequent instances where agreement cannot be reached will require the process of binding arbitration in the same manner.

If the Employer provides less expensive insurance premiums to any other group of county employees (union or non-union), the less expensive rate will be passed along to members of this bargaining unit.

Economic Issue #4 - Temporary Upgrade

The Union proposes to add the following provision:

Article XX

Wages

Section 3. Temporary Upgrade.

Whenever an employee is required to perform the duties of a higher ranking position, he shall receive the pay for the higher ranking position for all hours worked as such.

Economic Issue #5 - Uniform Allowance

The Union proposes to maintain the status quo.

Economic Issue #6 - Field Training Pay

The Union proposes to add the following provision:

Article XX

Wages

Section 4. Field Training.

While engaged in training of a new hire, employees shall receive one (1) hour at the overtime rate in cash or compensatory time, at the employee's choice, for each workday of training.

Non-Economic Issue #1 - Hours of Work

The Union proposes to amend the current contract language as follows:

Article XII

Hours of Work and Overtime

Section 1. Hours of Work.

~~Schedules will be implemented by the Sheriff with input from the Union. The Sheriff will meet and discuss any schedule changes with the Union prior to making any changes to schedules. The Union shall have the right to impact bargain over any significant changes to the schedules. Any impasse resulting from~~

~~such bargaining will be resolved in accordance with Section 14 of the IPLRA.~~

~~Employees will be given forty eight (48) hours notice of temporary shift changes, except in cases of emergency.~~

~~Nothing in the preceding paragraph or in this section shall preclude an employee from voluntarily agreeing to a temporary shift change with less than forty eight (48) hours notice. The Employer is not required to offer these hours as an overtime shift.~~

Full time road deputies shall work a twelve (12) hour schedule with seven (7) days off and seven (7) days on during the two (2) week pay period. Officers will work a schedule of 3 days work, 2 days off, 2 days work, 3 days off, 2 days work, 2 days off, in a two (2) week pay period. One work days during the two (2) week pay period shall be a "short" day of eight (8) hours. No employee working a twelve (12) hour shift on any given day will work a double shift. An additional four (4) hours may be worked, but the employee will not exceed a maximum of sixteen (16) hours in any one (1) day unless an emergency situation arises.

There shall be a power shift for the road deputy unit that consists of ten (10) hour schedule working four (4) consecutive days on with three (3) consecutive days off.

Road deputies assigned to investigations shall continue to work the schedule currently in place as of September 1, 2007.

Full time telecommunicators will work a ten (10) hour schedule with four (4) days work and three (3) days off during the calendar week.

Correctional officers shall continue to work the schedule currently in place as of September 1, 2007.

The Sheriff may deviate from the schedule in the case of an emergency (i.e. a natural or man-made disaster) for the duration of the emergency.

Non-Economic Issue #2 - Working During Vacation

The Union proposes to amend the current contract language as follows:

Article XIII Vacations

Section 3. Working During Vacation

Employees may elect to work while on vacation, if needed by the Employer. Employees shall not be ordered in during any week he/she is on vacation except during an emergency (i.e. a natural or man-made disaster). A week shall be from Sunday to Sunday.

B. The Joint Employers' Final Proposals

Economic Issue #1 - Wages

The Joint Employers propose the following wage increases:

Effective retroactively to 9/1/08 all deputies on payroll on 9/1/10 will receive a onetime payment of \$1,000 not added to steps. All other employees on payroll on 9/1/10 will receive a one-time payment of \$500 not added to steps.

Effective retroactively to 9/1/09 all deputies on payroll 9/1/10 will receive a two percent (2%) increase onto the 9/1/07 longevity steps. All other employees on payroll on 9/1/10 will receive a one Percent (1%) increase onto the 9/1/07 longevity steps.

Effective 9/1/10 all deputies on payroll 9/1/10 will receive a three percent (3%) increase onto the 9/1/09 longevity steps. All other employees on payroll on 9/1/10 will receive a one and one-half percent (1.5%) increase onto the 9/1/09 longevity steps.

Effective 9/1/11 all deputies will receive a four percent (4%) increase onto the 9/1/10 longevity steps. All other employees will receive a two percent (2%) increase onto the 9/1/10 longevity steps.

Economic Issue #2 - Accumulation of Sick Leave

The Joint Employers propose to amend the current contract language as follows:

Article XV
Sick Leave

Section 2. Accumulation

* * *

Employees will be allowed to accumulate up to two-thousand eighty (2080) hours of sick leave, of which fourteen-hundred and forty (1440) hours may be utilized for non-duty illness or injury. Upon separation from service, all accumulated sick leave may be converted to IMRF pension credit in accordance with IMRF guidelines, if the employee so elects. In addition, any employee hired prior to January 1, 2005 shall be eligible for sick leave buyback at separation of service, up to six-hundred forty (640) hours of accumulated time. Only those sick days accrued and unused prior to 8/30/08 are eligible for buyback.

Economic Issue #3 - Health Insurance

The Joint Employers propose to replace the existing insurance provisions with the following:

Article XVIII
Insurance

Effective May 2012 bargaining unit employees will begin paying 10% of the cost of the employee health and dental premium per month.

Retroactive to September 1, 2008, employees shall pay twenty-five dollars (\$25.00) of the individual basic health insurance premium. (This amount will be deducted from the retroactive wages of the arbitration award)

A Cost Containment Committee shall be formed made up of designated Employer representatives and up to two bargaining unit members from each union that elects to

participate in the committee. Such committee members shall receive regular updates regarding insurance costs, coverages, and trends provided to them by the Employer as they become available. When meeting of the Cost Containment Committee are needed, such meetings are held during normal working hours and bargaining unit members shall suffer no loss of pay or benefits while attending such meetings. If such committee meetings are held after normal working hours, bargaining unit committee members shall receive the same stipend county board members receive for committee service.

If during the term of this agreement the employee's share of employee only medical premium exceeds \$58.00 per month or the Employer's cost per employee exceeds \$580.00 per month, either party may request to meet no later than 60 days prior to the end of the plan year to mutually agree to changes to the medical plan and/or carrier to mitigate the premium costs. If no mutual agreement is reached within 30 days of the first meeting of the Cost Containment Committee the parties shall submit the issue involving health and/or dental insurance to binding interest arbitration within seven (7) business days. The cost of such arbitration shall be split equally between the parties. Any and all subsequent instances where agreement cannot be reached will require the process of binding arbitration in the same manner.

If the Employer provides less expensive insurance premiums to any other group of county employees (union or non-union), the less expensive rate will be passed along to members of this bargaining unit.

Economic Issue #4 - Temporary Upgrade

The Joint Employers propose to add the following provision:

Article XX
Wages

Section 3. Temporary Upgrade.

The Employer may temporarily assign an employee to perform the duties of another position classification or rank. If an employee is temporarily assigned to a

position or rank higher than the employee's normal position classification for a period of two (2) consecutive entire pay periods or longer, the employee shall be paid as if he or she had received a promotion into said higher position or rank retroactive to the first day of such assignment.

When an officer is required to assume the duties and responsibilities of a rank higher than that which he normally holds for any accumulated total of at least six months in a calendar year, he shall be paid the rate for the higher rank for his vacation period with any necessary adjustments to be made at the end of a calendar year.

Economic Issue #5 - Uniform Allowance

The Joint Employers propose to amend the existing contract language as follows:

Economic Issue #6 - Field Training Pay

The Joint Employers propose to maintain the status quo as to existing practice. They propose that no language to be included in the contract on this issue.

Non-Economic Issue #1 - Hours of Work

The Joint Employers propose to amend the current contract language as follows:

Article XII

Hours of Work and Overtime

Section 1. Hours of Work.

Deputies will remain on 8-hour shifts, but will begin rotating days off. (State Exhibit 2R attached). The work schedule in effect for each other classification April 1, 2012 will continue. Schedules will be implemented by the Sheriff with input from the Union. The Sheriff will meet and discuss any schedule changes with the Union prior to making any changes to schedules. The Union shall have the right to impact

bargain over any significant changes to the schedules. Any impasse resulting from such bargaining will be resolved in accordance with Section 14 of the IPLRA.

Employees will be given forty eight (48) hours notice of temporary shift changes, except in cases of emergency.

Nothing in the preceding paragraph or in this section shall preclude an employee from voluntarily agreeing to a temporary shift change with less than forty eight (48) hours notice. The Employer is not required to offer these hours as an overtime shift.

Part-time employees may be used to fill any shifts where all eligible full-time employees have refused the shift. If all part-time employees refuse the shift, the least senior full-time employee will be ordered to fill the shift.

Non-Economic Issue #2 - Working During Vacation

The Joint Employers propose to amend the current contract language as follows:

Article XIII Vacations

Section 3. Working During Vacation

Employees may elect to work while on vacation, if needed by the Employer. (a) The Sheriff shall first seek volunteers to fill manpower needs. If an employee agrees to return to work to perform services voluntarily, whether on vacation or not, the employee shall receive compensation at the straight time rate and reinstatement of the vacation day(s) if recalled from vacation voluntarily. (b) If the Sheriff is unable to obtain volunteer coverage, the Sheriff may order an employee on vacation to return from vacation to work. That employee shall be aid at the rate of one and one-half (1-1/2) times the regular rate of pay for the hours worked on forced return to work and have the vacation day(s) reinstated. This section will not apply to any vacation which is cancelled before it

begins based on the legitimate operational needs of the Employer.

V. RELEVANT STATUTORY LANGUAGE

Section 14 of the Act provides in relevant part:

5 ILCS 315/14(g)

On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute... the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

5 ILCS 315/14(h) - [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]

- (1) The lawful authority of the Joint Employers.
- (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.

VI. EXTERNAL COMPARABLES

The external comparables listed above are stipulated. I note however that the wage data available at the time of this hearing was substantially incomplete as to the last two years of the term of the proposed agreement - increases were shown for only six of the twelve comparable counties in fiscal year 2011 and only three of the counties for fiscal year 2012.² However, the data is sufficient to provide some basis for an analysis of the offers, I find. In aggregate, the data reveals average increases for deputies in the comparable counties of 3% for FY

² I use the term fiscal year for purposes of comparability as a matter of convenience. The County's fiscal year runs from September 1 through August 31. The proposed agreement here covers fiscal years 2009-2012. References to fiscal year may be shown as FY.

2009, 3.4% for FY2010, 3.6% for FY2011 and 2.7% for FY2012, the Union points out. Neither party provided wage increase averages for the other job classifications at issue here. My review of the data suggests that the dollar increases received in the comparable counties by these other classifications, i.e. correctional officers and court security officers, telecommunicators, maintenance and janitorial, and clericals, are lower overall than what the deputies received, but are nevertheless comparable in terms of percentage where these other classifications are included in the comparable communities labor contracts.

VII. INTERNAL COMPARABLES

The record reveals the following internal comparable bargaining units: AFSCME, Council 31, representing three separate units including the clerks in the Circuit Clerk's office (AFSCME #1), clerical employees in various other elected offices throughout the County (AFSCME #2) and various employees of the County Health Department (AFSCME #3); the Teamsters, representing service and clerical employees in the County Highway Department; and the FOP Labor Council, representing telecommunicators at the County's Emergency Telephone System Board. The average increases received by the employees in these other County units for the period covered by the proposed

agreement were 2% for FY2009, 3.8% for FY2010, 4% for FY2011 and 4% for FY2012. (Union Brief, p. 25; Union Exhibit 14). The data for FY2012 was limited to the Teamsters unit, the record finally reveals.

VIII. OTHER FINANCIAL CONSIDERATIONS

The Joint Employers do not claim that they are unable to pay the general wage increase proposed by the Union. Nevertheless, the Joint Employers tendered various exhibits showing declining revenue sources, due mainly to mine closures and declining consumer activity. Moreover, the Joint Employers suggested at the hearing that implementing the Union's wage proposal would consume 29% of the County's fiscal year 2010 budget.

The Union notes the absence of a demonstrated inability to pay and contends that the Joint Employers' suggestion of poverty is overblown. In fact, the Union points out, the County's ending balance in its General Fund in fiscal year 2008 (\$2.5M) was higher than the average year end balance for years since 2000 (\$2.1M). (Union Brief, p. 12). Although its ending fund balance for fiscal year 2009 was down slightly (\$2.3M), it was still relatively strong. There has been no showing of an actual inability to pay, just an unwillingness to pay, the Union finally urges. Unwillingness to pay does not satisfy the

inability to pay statutory defense represented by the words of Section 14(h)3, as interpreted by interest arbitrators and the courts. See City of Lebanon and Illinois Fraternal, Order of Police Labor Council, S-MA-08-137 (Murphy, 2009) (finding that City had difficulty paying proposed Union increases, but such a difficulty paying does not rise to the level of an inability to pay).

IX. DISCUSSION AND FINDINGS

A. Economic Issue #1 - Wages

The differences in the two proposals are substantial both in degree of increase and effect on existing pay structures, I note. Importantly in this case, the parties on the record at hearing agreed that the wages of the deputies in Unit A are in need of a "catch up" with respect to the external comparables. However, the parties sharply differ as to both the manner of addressing the catch up issue and the resources to be committed to the issue in the immediate labor contract. The Union proposes across-the-board increases totaling, without compounding, 13% over the four-year term. The Joint Employers propose significantly lower increases to all bargaining unit employees over the term of the instant labor contract and particularly so for employees other than Deputies, i.e., 9% for the deputies and 4.5% for all other classifications overall, with a stipend to be

paid in the first year.³ Each party claims that its proposal is supported by the external comparables, I note.

The Joint Employers remind me that they agreed only that the deputies deserved a catch up in wages. The employees in other unit positions are already "properly paid," as the Joint Employers see it. (Employer Brief, p. 11.) The Joint Employers add⁴:

The Employers' proposal for the deputies very nearly gives the Union what they're seeking. The parties are in agreement for a four percent increase for the deputies. The prior three years are simply structured differently to reduce the cumulative cost impact. The Employers' proposal for all the other employees provides them with cost of living adjustments supported by the consumer price index. It also helps establish the proper differentials between Patrol, Corrections and other classifications because they are already properly paid.

The Joint Employers further suggest that the Union's offer as to the non-Deputies will create a perverse pay structure where "jailers [would] be paid 94 percent of the deputy's average base pay and their bailiffs, court security officer, would be making 99 percent of the patrol deputy's average base pay."

The Union's chief complaint regarding the Joint Employers' proposal centers on internal comparability, ie., that the Joint Employers' proposal will break what the Union refers to as "a

³ \$1,000 for deputies and \$500 for all other affected bargaining unit employees.

⁴ Employer Brief, pp. 11-12

long-standing pattern of lockstep parity" in the wage increases received by the various classifications within the bargaining unit and compared with the other unionized bargaining units and non-union Employees within the County (Union Brief, p. 23). The Union submits that the two-tiered approach will create a class system of "haves" and "have nots." Arbitral precedent, the Union submits, suggests that such parity should not be disrupted unless it has worked to the disadvantage of a distinct group within the comparable internal Universe, which it has not in this case, the Union concludes.

The Union also emphasizes the fact that its own proposal is designed to minimize economic impact on the County. To the Union, its offer, by limiting increases in the first year to 2%, results in the overall difference between the parties' respective offers for the first year of \$27,000. I am then reminded by this Union that the Joint Employers are offering only a stipend which is not rolled into base pay going forward. Still, says the Union, the specific dollar cost difference for year one in the two proposals is not truly significant, the Union maintains. The difference in proposals increases to roughly \$32,000 in year three, the Union concedes. The overall cost differences are nevertheless "minute" when viewed in the perspective with the County's General Fund (Union Brief, p. 21), the Union stresses.

The Joint Employers respond that the Union's wage proposal analysis is misleading in at least three different ways. First, urge the Joint Employers, the Union's claimed "Costing" of the Bargaining Unit Employees other than the Deputies is conveniently absent or deemphasized by this Union, but the Union's wage offers in fact represent nearly doubling of the increases to the non-deputy Employees. Second, the Union's wage offers totally disregard the "great recession's" impact on the usefulness of external comparables for the specific years in question, namely FY 2008 through FY 2012⁵. Third, the attempt by the Union to use impact on the General Fund for the Joint Employers is voodoo economics. Put simply, argue the Joint Employers, the statutory standards in Section 14(h), set out above, articulate standards not directly focusing on the General Fund balance as a guiding baseline. See Stephan F. Befort, "The Constitutional Dimension of Unilateral change in Public Sector Collective Bargaining", ABA Journal of Labor & Employment Law, Vol. 27, No. 2 (Winter, 2012) at p. 165.

I understand that the Joint Employers have argued that external comparability is less important in these bad economic times, referencing arbitrators such as Edwin Benn who stated that because of the recession, there is a hiatus in the use of

⁵ See City of Chicago and FOP (Benn, 4/17/2010, Village of Skokie and Illinois FOP Labor Council (Briggs, 8/24/2010) at p. 17, and City of Rockford and Policemen's Benevolent Labor Committee (Yaffee, 5/13/2010).

the external comparability factor. "This is nonsense," responded Arbitrator Harvey H. Nathan. "If anything, comparability is more significant." Niles and MAP (Nathan, 8/24/2010).

I have offered a somewhat different point of view in City of Belleville and Illinois FOP Labor Council, S-MA-08-157 (8/26/2010). I reasoned that external comparability remains the principle factor in most cases, but I stressed that it must be "accurate comparability," and that "context is everything." I also drew a distinction between the external comparables settled before and after the 2009 sharp economic downturn, discounting the former and assigning greater weight to the latter. I wrote:

This neutral accordingly finds that much of the Union's reliance on the City's alleged fiscal liquidity is factually irrelevant to the resolution of this dispute. The issue is not a straight inability to pay contention by the City; it is much more, I realize. See the cited awards by Arbitrator Benn relied on by the City so strongly in this case. Despite these citations, I am unwilling to accept the premise that all statutory factors set out in Section 14(h) go by the wayside, because these are bad times. All factors must still be considered, because that is my job, I point out. The context of the discussion may have changed because times are hard. 3% to 4% increases each year are no longer common, as I understand it from my review of the published police and fire wage increase data. The rules of the game and the frame of analysis have not changed, in my view, and that makes the parties' posture in this case difficult, I frankly state.

As noted above, this Arbitrator is not authorized to interject himself into what are political questions of overall allocation of resources, and/or potential supplies of revenue. I cannot order the County to raise taxes, though in fact there

is some evidence that this has already "reluctantly" been attempted in response to budget shortfalls. This is simply not the function of an interest arbitration panel, as I understand it. Instead, economic data are evaluated solely with regard to the narrow issue of the propriety of each party's final offer, I emphasize. Thus, while the Union asserts that the Joint Employers are wrong in lacking a "desire" to allocate funds in a manner more favorable to their particular economic interests here, it is not within my statutory obligation, or jurisdiction for that matter, to direct the Joint Employers otherwise, I would finally suggest.

Important too, once again, I find, is the fact that other interest arbitrators have, in recent months, rightly recognized the volatile nature of the present economic landscape and its impact on the tenor of collective bargaining over economic issues in particular. Indeed, doing otherwise would manifestly ignore the specific context in which earlier bargaining and impasse occurred in the first place. Since we as interest arbitrators are constrained to award last best offers on economic issues which most closely align with what successful negotiations might have produced, context simply cannot be ignored no matter what the discrete statutory criteria reveal, I also realize.

As I have done so often before in this setting, I yet again still note that *accurate comparability* is indeed the "traditional yardstick" used in measuring the viability of last best offers, in that the relevant marketplace is closely examined for purposes of comparing what other similarly situated employee groups are receiving from their respective (and ostensibly analogous) Employers. However, the particular facts must always be reviewed in their appropriate context. (Village of Skokie and Skokie Firefighters Local 3033, I.A.F.F., S-MA-89-123 (Goldstein, 1990) at p. 35). That is the critical point here--context is everything, in my opinion.

In sum, then, as the Joint Employers have suggested, this is not a case where the wage issue exclusively centers on which party's offer is more appropriate given a set of comparable communities with labor contracts negotiated in similar economic times. Rather, the real issue is more complex, as I see it. The timing of the negotiation of the majority of the "comparable labor contracts" is not clear--whether pre- or post-recession, I stress. The internal comparables pay increases implemented from FY2009 forward have included 2%, 3%, 4% and 4%. The internal "comps" have no stipend for the first year, as offered by the Joint Employers in the instant case. Those facts are extremely significant in my analysis of which of the parties' final wage proposals more nearly complies with the applicable factors

prescribed in Section 14(h). Illinois FOP Labor Council and City of Belleville, Case No. S-MA-08-157 (Goldstein, August 2010)[emphasis added].

Turning to the case at bar, the external comparables in the instant case favor the Union's wage offers, I find. At the outset the data suggest that the Union's wage proposals will result in only modest gain, across-the-board, for deputies under this contract *vis-à-vis* their external counterparts. As to all other members in Unit A, the data is simply insufficient to make a determination as to precise comparability or impact. In fact, however the Union's proposals for both Units A & B will simply maintain the present real dollar gap between the wages received by its members and the wages received by comparable employees at the top of the comparables group, across the classification spectrum. Indeed, it is likely that there will be greater differences when the final wage settlements for the comparables for the final two years of the instant contract are made available⁶. The only way that would not be true if all the comparable communities negotiated wage freezes for fiscal years

⁶ The peculiar facts of this case caused a gap in time from the record's closing in September 2010, to the present. One result is the freezing of time, not wages, to a point where the "great recession" was still influencing negotiated deals as to pay increases in the external comparables, and, indeed, state-wide. The FY 2011 and 2012 time periods have loosened pay rate increases to at least some degree, however, I recognize. See my discussion in City of Belleville, supra. Consequently, the percentage comparisons for FY 2011 and 2012 actually available are inaccurately skewed in the Joint employer's favor, I hold.

2011 and 2012, which I strongly suspect would have been brought to my attention along with the revised final proposals presented in April 2012, I conclude.

Once again, I stress that the data for the last two years of the instant Labor Agreement are not sufficiently complete to allow a meaningful assessment of the overall effect of the Joint Employers' and Union wage offers on the bargaining unit employees overall ranking. However, the available data do show a continuing and dramatic increase in the real dollar gap in wages that at least the bargaining unit Deputies will receive during the instant Labor Agreement and that received by those "outside" deputies being paid at the higher end of the external comparables group. For example, the base annual wage for a Deputy in Macoupin County with 20 years service was roughly \$8,000 below that received by the highest paid deputy within the comparables universe in 2008. That gap will grow to roughly \$10,000 in 2012 under the Joint Employers' proposal, again with very little data on actual increases negotiated after the hearing in this case for FY2011 and FY2012.

This suggests that the tendency of the Joint Employers' final wage offer is to diminish the Unit A Deputies' standing among comparables in the final two years of the Parties' Labor Agreement, I rule. Moreover, I find that a "real dollar"

comparison is often a useful measure in cases where the need for a "catch up" is established. See County of Cook and Cook County Sheriff and Teamsters Local Union No. 714, L-MA-95-001 (Goldstein, 1995). Here, as to the Deputies in Unit A, the Joint Employer's claim that their offer "very nearly" gives the Union the "catch up" in wages that it seeks, is simply incorrect, I hold.

On the other hand, the downward slide of the bargaining unit Employees not in the deputy classification will be somewhat less pronounced, the data suggest, I conclude. However, these groups too will lose ground relative to the comparables, once the later year wage increases in the external comparables again for FY2011 and 2012, are factored in. Moreover, the loss of ground in real dollars for non-deputies cannot be ignored, I also emphasize. For example, under the Joint Employers' final proposal, the wage gap between clerks with 20 years of service in this unit as compared to similarly situated clerks at the top of the external comparables universe without data for FY2011 and FY2012 will go from roughly \$8,000 per year in FY2007 to more than \$12,000 per year in FY2012. Of course, the parties' stipulation as to "catch up" does not extend to the non-Deputy classifications, I understand. Nevertheless, the growth of the wage gap provides a relevant view of the effect of the Joint Employers' last and best wage offer, and it is a negative factor

as concerns deputies and non-deputies and how they would fare under the Joint Employers' final wage offer, I am convinced.

An even more critical problem with the Joint Employers' arguments as to their treatment of non-deputies is that the Joint Employers do not elaborate on any of the points they raised on internal comparability, I further note. The Joint Employers do not explain what they mean when they say that they seek to establish "proper differentials" between classifications, for example. That is critical in my analysis of the appropriateness of the Joint Employers contention that internal comparability favors its last and best final wage offers over the Union's proposals.

It is important to remember that the Union has emphasized internal wage comparability in the instant case as a critically significant consideration in its favor. Should the Arbitrator accept the Joint Employers' wage proposals, the Union states, the claimed "parity" of employees within Units A and B (more properly the pay rate differentials) and the other unionized county employees for purposes of basic compensation would be increased, when, on average, there is no established history of compression among the various County unionized groupings, at least as far as the evidence of record goes. Consequently, accepting the Joint Employers' final wage proposals will: (1) create changes in the members of Unit A and Unit B's

relationship to the other unionized employees as far as identity of percentage wage increases; (2) place the Union in a "catch up" position as regards the percentage wage increases for the other unionized employees; and (3) create instability in the bargaining relationship because the other unionized employees "got more" than these PBLC unit employees did.

I cannot decide in the abstract questions of whether differentials in pay between two groups of employees working for the Joint Employers are appropriate. I can only begin to address that question when it is framed in terms of a determined group of comparables within the bargaining unit, too. The Union's instant final wage proposal will not change the status quo within the unit as to percentage of increases granted. In other words, if bailiffs are to be paid at a rate that is 99% that of a deputy, it is because that ratio exists today. The Joint Employers propose to change these pay relationships but they give me no concrete reasons in this record for agreeing with them that such changes are needed beyond the claim that austerity and money savings are needed. Yet the internal comparables-AFSCME, the Teamsters and the FOP, got equal across the board raises for FY2008-2011, not differentiated percentages by job title.

Internal comparability provides no support for the Joint Employers' Wage proposals overall, and especially as they affect

the majority of the instant bargaining unit, I determine. The data in this record go back only one contract, to fiscal year 2005. Nevertheless, the data reveal that all employees in the internal comparables group received the same percentage increases for fiscal years 2005 through 2008. That changed somewhat in the ensuing three fiscal years, 2009 through 2011, but only as to the structuring of the increases. In fact, employees in each of the other County units received increases of roughly 9% over the fiscal years 2009 through 2011, precisely the percentage increase proposed by the instant Union for the same period in this case, I point out.

I agree with the Union that the increases among the internal comparables are "decisively" supportive of the Union's offer (Union Brief, p. 25). They are not only much greater, across the board, than that offer by the Joint Employers here. They are also relatively uniform, equaling in each case 9% over the first three years of this contract. None of the increases received by these other internal units, the Union adds, "reflect a pattern of disparate . . . wage increases, as the Employer proposes for this unit." (Id) I agree.

I also am not persuaded that Consumer Price Index (CPI) appreciably favors either party's offer, I also conclude. CPI is not a precise measurement of what particular employees are paying to live, but is a gauge of relative changes of an

artificial benchmark, I recognize. It is a measure of inflation (or deflation). The CPI establishes a context for the need to change terms and conditions of employment, to see how these particular bargaining unit employees will fare over time in terms of their specific buying power. See my discussion in City of Belleville, supra, at pp. 42-43. Here, I do not believe the "buying power" of the employees at issue will be much enhanced by selection of the Union's offer, or much reduced by my selecting the offer submitted by the Joint Employers.

I am thus really left with the Joint Employers' suggestion that their wage proposal is structured principally to reduce the "cumulative cost impact" (Id). The economic realities portrayed in the Joint Employers' diminished revenues evidence are indeed the context in which the internal and external comparables data must be viewed today, as I discussed in City of Belleville, supra. I am certainly aware of the complications brought to the bargaining process by the Great Recession. As I said in Belleville, consideration of "the interests and welfare of the public" has gone beyond the simple claim of ability or inability of public employers to pay for the respective offers. I have said, "The issue is not a straight inability to pay contention by the City; it is much more, I realize." City of Belleville, S-MA-08-157, at p. 41.

Indeed, the fiscal liquidity of the employer is nearly immaterial to the resolution of the dispute (Id). I have recognized that the increases of 3% to 4%, which had previously been the norm in this State, are no longer commonplace. But if those are the raises bargained with all other unionized bargaining units employees, as far as percentages go, then that range of increase is proper here, I find. Simply to say "the money is too much" is not something the Section 14(h) factors made controlling in the interest arbitration process, I hold.

Internal comparability certainly has taken on a new significance since 2008, as I said in the Belleville case. "[T]he internal comparables and Section 14(h)(3) and its 'general interest and welfare' standard do permit the import of overall economic considerations, at least to the extent that this Employer, as a public entity, is entitled to consider getting the most 'bang' for its 'taxpayer buck.'" City of Belleville, S-MA-08-157, at p. 45. The Joint Employers urge that both internal comparability and the public interest require that their wage proposals be considered to be more appropriate, given the times in which we now live and the reduction in revenue due to a mine closure in the County and the slowdown in overall economic activity. What this means, according to the Joint Employers, is that their wage offers are justifiable even though less than the Union's demands of 2%, 3%, 4%, and 4%

across the board. Basically, what the Joint Employers argue is that it is absurd to believe those numbers would be negotiated in arms-length bargaining for the instant contract, as opposed to earlier public sector negotiated agreements such as were common before the early 2008 general economic crash. The counter to that logic are the FOP, AFSCME and Teamster contracts. See Union Exhibit 15. That is the critical point of comparison for a proper resolution of the wage issue, I hold.

The evidence in this record is far from absolutely clear as to when the County negotiated its other contracts with AFSCME, the Teamsters and the FOP, covering other County units. It appears that at least two of them were executed in 2009, after the onset of the Great Recession, I however specifically note. None of the contracts covering the internal comparables include a wage freeze and one-time stipend for the year beginning September 1, 2008, nor do these internal comparables grant increases for the following year below 3%, or less than 4% for the next year, beginning September 1, 2010, as the Joint Employers propose here for both the Deputies and non-Deputies. Those facts stand out as markedly significant in my analysis of the reasonableness of the Joint Employers wage offers when considered against internal comparables and claims of public welfare responsibilities in the abstract, I hold.

Finally, I note the evidence of financial exigencies presented by the Joint Employers in its CD-Rom and in State's Group Exhibits 6(c) and 6(d) which analyze comparable cumulative averages for the entire universe of comparables. The Joint Employers' do not present discrete cumulative cost comparisons for each specific external comparable jurisdiction, I note. The Joint Employers exhibits thus do not have the detail for a comparison of the comparables one to another, as does the Union Evidence, I also stress. See Union Exhibits 13-99 and the Union's representation of the "internal comparables-parity history" contained in Union Exhibit 15 or external comparables in Union Exhibit 16.

Based on all these considerations, I hold that the Union's wages offer is most reasonable in light of the statutory criteria, and I so award.

B. Economic Issue No. 2 - Accumulation of Sick Leave

The parties have for some time provided for sick leave buyback at separation. Under the current language, employees may accumulate sick leave up to 2080 hours. The buyback program is capped at 640 hours, with any additional accumulated hours being eligible for conversion to IMRF pension credits, as allowed by IMRF guidelines. In the Parties' last Labor Agreement, the parties agreed to eliminate the buyback provision over time by

limiting eligibility to employees hired before January 1, 2005. The Joint Employers now seek to further restrict the program by modifying buyback eligibility to those sick leave hours accumulated prior to August 30, 2008, and unused at the time of separation. The Union proposes maintaining the status quo. Under both proposals, the right of employees to have up to the maximum 2080 hours of accumulated sick leave converted to pension credits at separation will remain unchanged. It is not clear in the record whether sick leave is used in the order it is accumulated, I however note.

The Joint Employers submit that their proposal is driven by cost. They further assert that the subject sick leave benefit is an unfunded liability that is currently averaging a \$22,000 annual drain on the Sheriff's budget (Employer Brief, p. 8). For this reason, the program was eliminated from the last AFSCME contract covering employees at the Circuit Clerk's office, I am told. This is not a breakthrough, the Joint Employers further suggest. The program has been capped for many years, it specifically points out.

At the outset, I note with approval the following discussion by Arbitrator Steve Briggs, in City of Carbondale and Illinois Fraternal Order of Police Labor Council, S-MA-04-152 (Briggs, 2005), at pp. 23-24, regarding proposals that change the status quo:

The status quo represents stability, and changes to it are more appropriately made by the parties themselves through the give and take of free collective bargaining than they are by third party neutrals in impasse resolution procedures. After all, the parties return to the bargaining table on a regular basis, giving them repeated opportunity to adjust various elements of the employment package as dictated by changing needs and circumstances. Interest arbitrators are reluctant to make drastic changes to the status quo, on the basis of evidence usually presented in just a few short hours, when the parties themselves can always revisit a troublesome issue during the next round of contract negotiations. The exception, of course, is when a party shows "compelling need" for change right away.

Whether I view the Joint Employers' proposal as embodying a breakthrough or simply a change in current benefits, it must be justified not simply as one would support a bargaining proposal at the bargaining table but, more than that, as something that I should impose here. Every employer desires to save money, I clearly recognize. However, to the Union, the Joint Employers' proposal accommodated the Joint Employers in that regard by limiting eligibility to employees hired prior to 2005 in just the last (FOP) and Joint Employers' labor contract. The record does not reveal a sufficient justification for further diminishing the accumulation of sick leave benefit in this current case, a benefit that the bargaining unit employees have earned and have a reasonable expectation that they will receive upon retirement, the Union contends.

Two points warrant discussion. First, I do not give much weight to the Joint Employers' claim that the average annual cost of the benefit to the Joint Employers is \$22,000.00. That number seems somewhat high given the size of the bargaining unit, which appears to be under 50 employees. Moreover, the Joint Employers have given no information as to the period over which the claimed "average cost" is calculated. Second, I also give little weight to the fact that a similar benefit was eliminated in the Circuit Clerk's AFSCME contract. I assume that whatever the benefit that was eliminated for the clerks was eliminated through bargaining. The record reveals nothing regarding the scope of the benefit eliminated in the AFSCME deal, other than the contract language itself. The AFSCME contract now merely says that there will be no buyback of accumulated leave. How longstanding the program was for the AFSCME unit or how many employees were affected by its elimination, I do not know.

Finally, I have long accepted that my role as an interest arbitrator is "as an extension of the bargaining process and not a replacement for it." City of Belleville, at p. 54 (citations omitted). The parties will soon be returning to the bargaining table, I understand. Drawing on the reasoning of Arbitrator Briggs' just-quoted discussion, I suggest that these parties have the ability to address this issue of sick leave buyback

anew when they get to the table for their next round of negotiations. Accordingly, I find there is insufficient basis to award the Joint Employers' proposal on Accumulation of Sick Leave. I find that the Union's proposal to maintain the status quo is most reasonable in light of the statutory factors, and I so award.

C. Economic Issue #3 - Health Insurance

After extensive give and take, and a "me, too" assist from AFSCME, the parties currently agree on the basic structure of their health insurance provision. The only remaining issue is whether the employees' contribution to premium will be made retroactive to September 1, 2008, as the Joint Employers propose, or to September 1, 2010, as proposed by the Union. The relevant internal comparables on this issue are the AFSCME units, which negotiated the language upon which the parties' agreement on health care is based, I note. It is also important to note that the parties to this interest arbitration agreed on the record at the hearing that in the event any of the other unionized bargaining units, AFSCME, Teamster, or FOP, negotiated health insurance provisions with terms more advantageous than the then-existing final health insurance proposals in this, by virtue of "me, too" logic, those contractual provisions would become the Joint Employers' final offer on health insurance

issue in the case at bar. The AFSCME agreement thus became the proposal on the table, but with the two differing retroactivity points not above.

The AFSCME agreement, which was reached just this year, I emphasize, contains no retroactivity on employee premiums, I also understand. Two points, however, lead me to conclude that the absence of retroactivity in the AFSCME agreement with the Joint Employers is not dispositive of the issue here. First, the AFSCME agreement was negotiated, a point I already found material in my immediately above discussion of the sick leave buyback issue. Second, both parties propose some retroactivity. The issue is a matter only of degree, I stress.

Second, the parties expressly contemplated in their ground rules that retroactivity to September 1, 2008, is within my authority to award not only with regard to wages, but also as to any other economic issues in play, as I read the ground rules referenced above. The Union offers no explanation for agreeing to retroactivity but then limiting it to September 1, 2010. The Joint Employers' rationale, on the other hand, is quite clear. They seek to save the taxpayers money, a consideration that I said before is legitimate, especially in today's economic climate. Accordingly, I find that the Joint Employers' proposal is more reasonable in light of the statutory factors, and I so award.

D. Economic Issue #4 - Temporary Upgrade

The Union truly seeks a breakthrough on this issue, because the record suggests that the bargaining unit employees at present do not receive any additional pay for "working up." The Union recognizes that the Joint Employers have presented unrefuted testimony that temporary upgrades are not common now, too, and that interest arbitrators uniformly (indeed, practically universally) have held that the interest arbitration process is conservative in nature and favors the status quo. However, attempting to apply those principles to every economic issue would have the effect of making incremental improvements virtually impossible, the Union insists. In essence, the Union also contends the Joint Employers counterproposal on "acting up" implicitly shows a need for reasonable compensation for increased work duties and responsibilities when Employees are temporarily upgraded. In addition, there is another piece to the Union's argument based on common sense. The Joint Employers proposed duration of the temporary upgrade assignment is so long it makes "temporary" actually mean semi-permanent, the Union submits.

The Joint Employers respond by offering some concessions on the issue, I note, but less than the Union seeks, obviously. The Union's proposal would grant employees working in a higher classification increased pay, retroactive to the first day of

the assignment, once the employee reaches a two-week threshold in the assignment. The Joint Employers' proposal also would require that the employee perform the higher classification work for two full pay periods, which I take to mean 28 days. The Joint Employers' proposal further includes a provision that "officers," which I take to mean sworn personnel, who perform the work of a higher rank employee for six months will also receive the higher pay for purposes of vacation.

The Union concedes that none of the contracts of the internal comparable bargaining units, AFSCME, FOP or the Teamsters, contain "working up" pay provisions. Additionally, the external comparables are inconclusive on the issue, I also find. After reviewing the evidence, I also note the general consideration of the bargaining process, that is, that what is to be approximated by interest arbitration is the give and take of arms-length bargaining.

There is perhaps no characteristic of collective bargaining that more typifies the process itself than "incremental gains," the notion of accepting small gains to get a foot in the door. The Joint Employers' offer does just that for the Union on this specific proposal. If the Union wants to improve the benefit henceforth, it should try to do so at the bargaining table. I therefore find that the Joint Employers'

proposal on Temporary Upgrades is more reasonable in light of the statutory factors, and I so award.

E. Economic Issue #5 - Uniform Allowance

The Joint Employers seek to change from an annual allowance, currently at \$400.00 for most employees, to a quartermaster system. The Joint Employers' proposal carves out officers assigned to investigation, for whom they propose an annual reimbursement of up to \$475.00. The Joint Employers suggest that their proposal is supported by external comparables, as nine of the twelve comparable units are now on a quartermaster system for uniforms. "This is another area where the Employer can save money," the Joint Employers also argue (Employer Brief, p. 15).

In contrast to the generalized claim of cost-savings presented by the Joint Employers, says the Union, little detail on what is involved in any of the quartermaster systems in the external comparable jurisdictions was proffered by the Joint Employers. The fact of a different system is evident in the Joint Employers offer. The "devil is in the details," the Union suggests, and for a change in the status quo, those details are critical to a reasoned comparison of the majority of comparable communities, it submits. I agree.

Indeed, the fact that the majority of the comparable counties use a quartermaster system is not alone sufficient basis for awarding the Joint Employers' proposal, I rule. The record in this case simply does not show the details of the systems employed at the comparable counties, e.g., what uniforms and equipment are provided, and therefore does not prove that the specific quartermaster system proposed here is truly comparable, as I see it. There is also a gap in the way the comparables have individually structured their quartermaster system.

Consequently, I find that the Joint Employers have not shown much basis for changing the status quo other than that there is perhaps money to be saved. They have provided no information as to the savings they will realize. The current stipend, in comparison to the benefit given the employees in the relevant comparables that have stipends is not particularly costly, I also note.⁷ Accordingly, I find that the Union's proposal to maintain the status quo is more reasonable in light of the statutory factors, and I so award.

⁷ Each of the other three counties where there is no quartermaster system, I note, provide a stipend that is significantly greater than the stipend given the Deputies here, ranging from \$525 to \$800 annually.

F. Economic Issue #6 - Field Training Pay

This is another new benefit sought by the Union. In contrast to the Union's proposal on Temporary Upgrade, the Joint Employers have not made any concession on this issue. Currently, the record reveals, the employees receive no additional pay for training new employees. Although the Union's proposal is not particularly munificent, granting employees just one hour of pay at their overtime rate for each day spent training new employees, it finds only spotty support among the external comparables and none among the internal groups. The Union offers no other grounds to support its proposal. Accordingly, I find that the Joint Employers' proposal to maintain the status quo is more reasonable in light of the statutory factors, and I so award.

G. Non-Economic Issue #1 - Hours of Work

This issue grows out of a change to the work schedules for Deputies implemented in 2008, by which the Deputies were moved from twelve-hour shifts to eight-hour shifts. According to the Union, a demand to bargain was made at the time and the Sheriff conceded he was required to engage in impact bargaining. The Sheriff did not wait for the impact bargaining process to conclude before he implemented the new schedules. As a result of the new schedules, according to affidavits of several employees

that were filed by the Union in this case, scheduling "has become more uncertain, employees have lost secondary jobs and time with their families, and one Deputy reported that he has not had a regularly scheduled weekend off" since the new schedule was implemented.

On the other hand, the Joint Employers claim that they have realized a reduction in overtime due to the schedule change. This savings stands unproven, the Union argues in response. In fact, there was no identifiable pattern of overtime usage that predates the change - there were periods of both relatively high overtime and low overtime. In addition, I also note that the Joint Employers failed to mention that since the schedule was changed, additional employees were hired. Had they been hired before the schedules changed, the Union argues, a comparable drop in overtime hours would have been realized under the twelve-hour shifts.

Also according to the Union, "Because the 8-hour shifts have caused more problems that they have solved, and because the Employer resisted attempts to negotiate any alternative to them, the Union's proposal returning the parties to the status quo ante to the July 2008 schedule changes should be adopted." (Union Brief, p. 35). The Joint Employers counter that scheduling is an inherent management right, absent some clear language of limitations, and there was no "12 hour shift status

quo." See Ford Motor Co., 19LA 237, 241-42 (Shulmand, 1952). See also Esso Standard Oil Co., 16 LA 73, 74 (W. McCoy, 1951).

The problem with the Union's concluding argument is that this is not grievance arbitration. It is not my function to restore the status quo ante. My job is to select among proposals to guide the parties' future transactions, according to the statutory factors. "I am one of the group of Arbitrators who believe that the statutory factors contained in Section 14(h) of the Act apply with equal force to economic and non-economic issues," I have previously written. City of Bellville, at p. 50. Those factors do not necessarily apply in the same way to non-economic offers as they do to economic offers, I however also note.

The Union's proposal is not simply to restore the twelve-hour shifts that were in place prior to July 2008. The Union also seeks to lock those shifts in place, along with the various shifts on which other unit employees desire to work, presumably. The external comparables do not support the Union's proposal, at least not to such an extent. Internal comparables provide the Union no support at all. The Union has not otherwise suggested any Section 14(h) factors that support its proposal.

I have previously noted my aversion to granting proposals in interest arbitration that "trench" too close to matters of important managerial prerogative. Jefferson County and Jefferson

County Sheriff and Illinois Fraternal Order of Police Labor Council, S-MA-97-21 (Goldstein, 1998), at p. 40. I have long recognized that scheduling is an important managerial function, even in the private sector. Cf North Baking Co., 117 LA 1788, 1794 (Goldstein 2002). In any event, I do not presume that the Sheriff would have agreed to the Union's proposal under any circumstances and while I sympathize with those employees whose lives were burdened by the change in schedule, which occurred nearly four years ago, I find that an insufficient basis for imposing the Union's proposal on the Sheriff's office.

The Joint Employers' proposal, as it was revised in response to the relevant declaratory ruling, addresses at least some of the Union's concerns. Whereas under the existing language, the Union's right to bargain was restricted to impact issues, the Union will now have the right to demand decisional bargaining over any changes to existing schedule. I do note that the Joint Employers' proposal contains one reference to "meet and discuss," which could be seen as creating ambiguity. Accordingly, I will award my own provision as set forth below.⁸

⁸ The Joint Employers' proposal also contains a provision on using part-time employees to fill shifts whenever volunteers among the full-time employees are not forthcoming. Neither party addressed the issue of utilizing part-time employees, either at the hearing or in their respective briefs. I note that the recognition clause of the FOP Agreement does not exclude part-timers from Unit A, the rank-in-file unit. For these reasons, I will leave the provision in the Joint Employers' proposal for purposes of my award.

G. Non-Economic Issue #2 - Working During Vacation

The parties have each proposed language that changes the language of the contract, which reads simply: "Employees may elect to work while on vacation, if needed by the Employer." Each party claims the other is seeking a breakthrough. Neither party has explained what prompted the dispute or what problem(s) will be addressed by an award of its respective proposal. Neither proposal finds any significant support in the comparables, external or internal. The Joint Employers claim that the last sentence of their proposal reflects current practice, but for reasons I need not discuss I find that this claim is either mistaken or insignificant. The parties stipulated in their ground rules that the issue is non-economic. I will exercise my authority to craft my own award, which is to maintain the status quo. The parties can address the issue again when they next reach the bargaining table.

X. AWARD

Using the authority vested in me by Section 14 of the Act:

(1) I select the Union's last offer on Economic Issue No 1 with respect to Wages as being, on balance, supported by convincing reasons and also as more fully complying with all the applicable Section 14 decisional factors.

(2) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Union's final offer on Economic Issue No. 2 with respect to Accumulation of Sick Leave because it represents the status quo and is most reasonable under the statutory criteria.

(3) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Joint Employers' final offer on Economic Issue No. 3 with respect to Health Insurance because it is most reasonable under the statutory criteria.

(4) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Joint Employers' final offer on Economic Issue No. 4 with respect to Temporary Upgrade because it represents an incremental improvement to the status quo for the employees and is most reasonable under the statutory criteria.

(5) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Union's final offer on Economic Issue No. 5 with respect to Uniform Allowance because it represents the status quo and is most reasonable under the statutory criteria.

(6) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award the Joint Employers' final offer on Economic Issue No. 6

with respect to Field Training Pay because it is most reasonable under the statutory criteria.

(7) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I award my own proposal on Non-Economic Issue No. 1 with respect to Hours of Work, as follows:

Article XII
Hours of Work and Overtime
Section 1. Hours of Work.

Deputies will remain on 8-hour shifts, but will begin rotating days off. (State Exhibit 2R attached). The work schedule in effect for each other classification April 1, 2012 will continue. The Sheriff will meet and, if requested to, bargain any schedule changes with the Union prior to making any changes to schedules. The Union shall have the right to bargain over any significant changes to the schedules. Any impasse resulting from such bargaining will be resolved in accordance with Section 14 of the IPLRA.

Employees will be given forty-eight (48) hours notice of temporary shift changes, except in cases of emergency.

Nothing in the preceding paragraph or in this section shall preclude an employee from voluntarily agreeing to a temporary shift change with less than forty-eight (48) hours notice. The Employer is not required to offer these hours as an overtime shift.

Part-time employees may be used to fill any shifts where all eligible full-time employees have refused the shift. If all part-time employees refuse the shift, the least senior full-time employee will be ordered to fill the shift.

(8) Upon the whole of this record and for reasons set forth above and incorporated herein as if fully rewritten, I

award my own proposal on Non-Economic Issue No. 2 with respect to Working During Vacation, which is to maintain the status quo. Thus, immediately below is the current language which should be maintained:

Article XIII
Vacations

Section 3. Working During Vacation

Employees may elect to work while on vacation, if needed by the Employer.

IT IS SO ORDERED.

Date: June 21, 2012

Elliott H. Goldstein
Arbitrator