

**ILLINOIS LABOR RELATIONS BOARD
INTEREST ARBITRATION BEFORE
ARBITRATOR STEPHEN B. GOLDBERG**

COUNTY OF MCHENRY and)
MC HENRY COUNTY)
CORONER)
Employer)
And)
LOCAL 73, SERVICE)
EMPLOYEES)
INTERNATIONAL UNION)
Union)

ILRB Case No. S-MA-10-103



Appearances:

County of McHenry and McHenry County Coroner: John H. Kelly, Attorney (Ottosen, Britz, Kelly, Cooper, Gilbert & DiNolfo, Ltd.)

Local 73, Service Employees International Union: Ryan A. Hagerty, Attorney; Joel D'Alba, Attorney (Asher, Gittler & D'Alba, Ltd.)

Arbitrator: Stephen B. Goldberg

I. Introduction

Local 73, Service Employees International Union was certified as the representative of the four deputy coroners and the secretary/deputy coroner in the McHenry County Coroner's Office on July 18, 2008. The parties held several bargaining sessions and two mediation sessions with a Federal Mediation and Conciliation Service mediator. On October 2, 2009, the second day of mediation, the County believed the parties were at impasse and no additional bargaining sessions were held.

On March 11, 2010, Local 73 filed a demand for interest arbitration with the Illinois Labor Relations Board. The basis of Local 73's claim for interest arbitration was the amendment to the Illinois Public Labor Relations Act, Public Act 096-0598, which provided interest arbitration for

all first contracts. The Employer opposed the application of P.A. 096-0598 on the grounds that this change in the law was not retroactive.

Ultimately, the Second District Appellate Court, in a Rule 23 Order, issued January 11, 2012, dismissed the County's appeal of the Illinois Labor Relations Board order which found that the terms of P.A. 096-0598 were applicable to these negotiations.

Meanwhile, in July 2010, the County unilaterally implemented a collective bargaining agreement.

The parties commenced this interest arbitration on October 5, 2011. During the initial proceedings, a list of approximately 22 topics was paved down to the ten issues which remain for ruling by the Arbitrator. Evidence was presented by both sides on January 19 and 20, and, following the March 26 filing of briefs, the case was taken under advisement by the Arbitrator.

The issues that the parties have agreed to submit for decision, and their agreed-upon classification of those issues as economic or non-economic, are as follows:

Section 11.2	Holiday Pay (economic)
Section 11.3	Personal Days (economic)
Article XIII	Sick Leave Payout Upon Suspension (economic)
Article XXV	Health Insurance and Other Benefits <ul style="list-style-type: none">• substantially the same: language (non-economic)• Opt-out provision (economic)• Employee cost (economic)
Article XVII	Workday and Workweek <ul style="list-style-type: none">• Section 17.1 and 17.3 Lunch period (economic)
New Article	Personal Protective Equipment (non-economic)
Article XXIII	Wages <ul style="list-style-type: none">• Annual wage increases 12/01/08 – 12/01/13 (economic)• Secretary wage rate reclassification (economic)

II. Relevant Statutory Provisions

Section 14(h) of the Illinois Public Labor Relations Act provides that in resolving those issues submitted to the arbitrator for decision, the arbitrator shall utilize the following factors:

- (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 reliability 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 statute does not assign any priority to these factors, instead leaving to the arbitrator's discretion the application and weight to be assigned to each.

III. Which Are The Comparable Communities?

One matter that must be resolved prior to turning to the substantive issues in dispute is that presented by Section 14(h) (4) of the Act. Which are the comparable communities to which the proposals of the parties relating to wages, hours, and terms and conditions of employment may appropriately be compared?

According to the Union, there are five such communities – Champaign, Lake, Peoria, Will, and Winnebago Counties. According to the Employer, none of these communities is sufficiently similar to McHenry County to be regarded as comparable for purposes of Section 14(h) (4).

In approaching this issue, I start with the observation, also made by other arbitrators, that the legislature has provided no guidance in determining comparability for Section 14(h) (4) purposes. One means of determining comparability, at least when the parties agree that some communities are comparable and disagree about others, is to start with the communities that the parties agree are comparable, examine their characteristics, and determine the extent to which the communities about which the parties disagree share the characteristics of the agreed-upon communities. Another means of determining comparables when the parties have reached no agreement is to treat as comparable those communities which the parties have agreed in prior negotiations to be comparable. Neither of these approaches is applicable in this case since the parties are engaged in their initial contract negotiations and have not agreed upon any comparables.¹

¹ The Union, in its post-hearing brief, states that:

The Employer agrees that Lake, Will, and Winnebago Counties are in fact comparable to McHenry County, but it contests the notion that Champaign and Peoria Counties are appropriate.

In support of its assertion that the Employer objects only to the comparability status of Champaign and Peoria Counties, the Union relies on the following statement made by Employer counsel when the Union sought to introduce an exhibit captioned, "Chart of Comparables". Mr. Kelly's response was:

I don't mind the introduction of the chart. I am not going to agree that Champaign and Peoria count necessarily as a comparable. But that's for argument, so that's fine. The chart is fine.

Many arbitrators, faced with this problem, have examined the differences between the community for which a contract is to be determined and allegedly comparable communities by taking a list, generated either by the parties or the arbitrator, of criteria for comparability, and examining the extent of the difference between the negotiating community and the asserted comparables on each of those criteria. If, on a particular criterion, the difference does not exceed a certain percentage - between 5% and 50% depending on the arbitrator² - the communities are deemed to be comparable on that criterion. Then, if the two communities are comparable on what the arbitrator deems a sufficient number of criteria, they are deemed comparable for purposes of Section 14(h) (4). In addition, all arbitrators agree that geographic proximity is important for comparability purposes, though how important it is varies from one arbitrator to the next.

While I, too, accept the importance of geographic proximity in determining whether two communities should be deemed comparable for purposes of considering whether the contract terms agreed upon by union and employer in one community should be relevant in fixing contract terms for the other, I am opposed to an approach which determines comparability by measuring the percentage difference between the two communities on a set of relevant criteria, deciding what percentage difference is sufficient to demonstrate comparability on each criterion, and then determining whether the two communities are comparable or not according to the number of criteria on which the percentage formula has been satisfied.

The reasons for my opposition are twofold. First, the percentages used to determine comparability on individual criteria do not rest upon any empirical basis, much less on a statutory command. Rather, each is plucked out of thin air and prior arbitral decisions in an effort to be objective and to present an appearance of precision. Second, I believe that the interest arbitrator's task under the IPLRA is to replicate, as near as possible, the collective bargaining agreement that would have been reached by reasonable negotiators acting in good faith. Since such an agreement may, to some extent, be influenced by the negotiators' views of the contract terms in comparable communities, the arbitrator should attempt to determine

The Union would have it that by singling out his possible objection to Champaign and Peoria Counties as comparable, Employer counsel admitted the comparability of the other counties relied upon by the Union - Lake, Will, and Winnebago. Although that is a plausible interpretation of Employer counsel's statement, I am not, on the basis of that statement, going to bar the Employer from arguing the incomparability of Lake, Will, and Winnebago Counties. To do so would impose far too significant consequences on a statement that I do not believe was intended to incur such consequences.

² See, e.g. County of Winnebago and Sheriff of Winnebago County and Illinois Fraternal Order of Police, S-MA-00-285 (Benn, 2002)(5%); Village of Elmwood Park, S-MA-10-192 (Hill, 2010)(25%); Village of River Forest, S-MA-07-106 (Cox, 2007)(50%); Village of Bensenville and MAP, Chapter 165, S-MA-97-182 (Briggs, 1998) (50%).

comparability as would reasonable, good faith negotiators. It is not my experience that such negotiators typically discuss whether other communities are comparable by applying predetermined percentages to various criteria. Rather, they are more likely to take a global approach, one which considers, in general terms, relevant aspects of the negotiating community and the allegedly comparable community, and determine whether, in total, those communities have enough in common that the contract(s) of one should be taken into account in determining contract terms of the other.

The first set of factors that appear relevant in this context are those that bear on the financial resources of the two communities. This does not relate to the Section 14(h) (3) financial ability of the negotiating community to meet the union's demands, but rather whether, in light of the community's financial resources, those demands appear reasonable. If two communities have roughly similar financial resources, and community #1 has entered into a contract providing for a certain level of wages and benefits, the negotiators in community #2 can reasonably argue that a similar contract should be entered into in that community. Among the factors that are relevant in determining a community's financial resources, starting with those discussed in the instant case, are property tax revenues, sales tax revenues, per capita income, median household income, and EAV. Of these, property tax revenues and sales tax revenues would appear to be most important since they indicate the community's actual financial strength, while income and EAV relate more to potential financial strength. Other relevant financial criteria might include, *inter alia*, state tax receipts and federal grants .

The geographical proximity of two communities is also relevant in determining their comparability. In part, this is because communities that are sufficiently close for employees to commute from one to the other form part of the same labor market. It is also because, as a practical matter, closer communities play a larger role in the thinking of the negotiators, so that comparisons between the negotiating community and a nearby community carry greater weight than does a comparison between the negotiating community and a community far removed. For some arbitrators, geographical proximity is a *sine qua non* to a determination of comparability. If an allegedly comparable community is not within reasonable commuting distance, it cannot be comparable.³ For other arbitrators, geographical proximity is relevant in determining comparability, but not decisive.⁴ Under the latter approach, one community may, based on the totality of circumstances, be comparable to another for collective bargaining purposes even if they are not part of the same labor market. I follow the latter approach since

³ See, e.g. Village of Bensenville and MAP, Chapter 165, S-MA-97-182 (Briggs, 1998).

⁴ See, e.g. County of Winnebago and Sheriff of Winnebago County and Illinois Fraternal Order of Police, S-MA-00-285 (Benn, 2002).

it is my experience that negotiators may consider communities beyond the local labor market as relevant, particularly if there are few or no local comparables.

A final group of factors that is sometimes used in determining comparability includes the environmental factors that bear upon the work force. Among these factors are population density, work load, and the total area covered by the community (e.g. square miles). For example, it may be said that Chicago is not comparable to Rantoul for purposes of police officer negotiations because, applying the above factors, the work of a Chicago police officer is very different from that of a Rantoul police officer. I agree that these environmental factors may be relevant, not because they bear upon the financial resources of the two communities, but because they may indicate, in the language of Section 14 (h) (4), that employees in the two communities, albeit possessed of the same titles, are not “performing similar services”, so that the communities are not comparable in that respect.

Turning to the instant case, the Union, in support of its contention that Champaign, Peoria, Lake, Will, and Winnebago Counties are comparable to McHenry County, introduced the following table:

	McHenry	Champaign	Lake	Peoria	Will	Winnebago
Number of Deputy coroners:	4	5	6	3	7	8
Number of County Employees:	1,364	852 FTE		918	2284	1558
Number employed by Coroner:	11	9	10	4	15	12
Total death scene calls:						
2008	1358	1408	3674	2171	2711	2973
2009	1240	1480	3737	2134	2600	2632
2010	1332	1466	3924	2134	2599	2917
Coroner's Fund Revenue:						
2008	\$12,405	\$25,568	\$68,702	\$32,786	\$39,315	\$0
2009	\$14,340	\$27,886	\$65,161	\$22,848	\$50,074	\$0
2010	\$9,000	\$14,396	\$38,518	\$50,580	\$53,101	\$47,381

	McHenry	Champaign	Lake	Peoria	Will	Winnebago
Coroner's Fund Expenses:						
2008	\$477,047	\$490,589	\$1,129,248	\$632,148	\$1,297,248	\$1,103,185
2009	\$480,914	\$468,940	\$1,149,845	\$668,041	\$1,388,477	\$1,002,676
2010	\$447,676	\$461,672	\$1,167,918	\$654,324	\$1,255,723	\$1,022,718
Property Tax Revenues:						
2008	\$28,756,610	\$29,587,491	\$33,385,199	\$25,510,045	\$49,319,818	\$36,885,213
2009	\$31,549,668	\$30,953,202	\$53,814,668	\$26,047,638	\$56,259,747	\$39,412,737
2010	\$33,861,808	\$31,654,398	\$51,201,528	\$26,406,427	\$60,930,615	\$39,803,691
Sales Tax Revenues:						
2008	\$9,139,101	\$10,756,269	\$43,119,136	\$12,145,316	\$22,277,506	\$29,624,659
2009	\$7,894,021	\$10,044,803	\$38,886,272	\$11,017,990	\$18,744,258	\$26,126,709
2010	\$8,998,845	\$10,226,160	\$38,520,000	\$16,099,567	\$19,165,979	\$26,300,997
Population	308,760	201,081	703,462	186,494	677,560	295,266
Per Capita Income	\$31,766	\$23,495	\$37,970	\$27,299	\$29,207	\$23,773
Median Household Income	\$74,669	\$42,101	\$76,336	\$47,330	\$72,478	\$44,390
Square Miles	603.51	996.18	443.67	619.52	836.94	513.74
Distance from Most Populous City to Woodstock In Miles	Woodstock-0	Champaign-152.2	Waukegon-31.0	Peoria-126.6	Joliet-57.7	Rockford-33.1
EAV	10.43	3.68	30.4	3.26	22.24	4.83

Proceeding from the assumption that the Employer had accepted Lake, Will, and Winnebago Counties as comparables (see n. 1), the Union presented argument only as to Champaign and Peoria Counties, asserting that with the exception of the EAV for both Champaign and Peoria, and the Peoria sales tax revenue for 2010, all crucial comparability factors fall within a range of +/- 50% of McHenry County and a majority fall within a +/- 25% range.

The Employer, as previously noted, asserts that none of these counties are comparable. Champaign and Peoria are not comparable because they are more than 125 miles away; the others are not comparable because, using a range of +/- 10%, none of them have more than

2/11 factors in common with McHenry County.⁵ According to the Employer, “With eleven factors being considered, two does not even approach a level that should justify consideration as a comparable”.

As I have indicated, my approach to determining comparability does not depend on counting the number of items on which two communities are comparable in light of a predetermined percentage range for each item, but is rather based on an overall view that takes into consideration the financial strength of the communities, their geographic proximity, and the similarity of the work performed by bargaining unit employees in each community.

Applying that approach to this case, and focusing on property tax revenues and sales tax revenues, the key indicators of financial resources as to which evidence was presented, it is apparent that there is a high degree of comparability between McHenry, Champaign, and Peoria. As shown in the table on pages 7-8, the total 2010 tax revenues – sales tax and property tax combined – were: McHenry, \$42.86M; Champaign, \$41.88M; Peoria, \$42.51M. Their total tax revenues for 2008 and 2009 were also similar. None of the other asserted comparables had 2010 total tax revenues similar to those of McHenry – for Lake the 2010 total was approximately \$89.72M, for Will \$80.1M, and for Winnebago \$66.1M.

The populations of McHenry (308,760), Champaign (201,081), and Peoria (186,494), while by no means the same, are also similar in that each is a mid-size, urban community. To be sure, Winnebago has a similar population size (295,266), but, as noted, substantially greater financial resources than McHenry, Champaign, and Peoria.

While these factors would indicate that Champaign and Peoria might be considered comparable to McHenry, there is one remaining factor that removes Peoria from the list of comparable – the nature of the work performed by deputy coroners in Peoria compared to those in McHenry and Champaign. As indicated in the table, the four McHenry deputy coroners had 1332 death scene calls in 2010, an average of 333 per deputy coroner. The comparable figures for Champaign were 1466 death scene calls for five deputy coroners, an average of 293 per deputy coroner, and for Peoria 2139 death scene calls for three deputy coroners, an average of 711 per deputy coroner. It is apparent that the work load of the Peoria deputy coroners is considerably greater than that of McHenry deputy coroners. Accordingly, I conclude that the deputy coroners in Peoria are not performing services similar in quantity to those in McHenry, so that the two communities are not comparable in that respect.

In sum, I conclude that only Champaign is comparable to McHenry in terms of financial resources, approximate population, and nature of the work performed by employees in the two

⁵ Winnebago is geographically proximate and has a population within the defined range; Will has per capita income and median household income within the defined range; Lake is geographically proximate and has median household income within the defined range.

bargaining units. To be sure, Champaign is geographically far removed from McHenry, so that if there were other comparables closer to McHenry, it is doubtful that I would consider Champaign to be a relevant comparable. Inasmuch, however, as there are no closer comparables, a lack of geographic proximity does not disqualify Champaign.

That being said, the value of a single comparable in determining appropriate contract terms for McHenry County is not great. The utility of comparables is that they enable the arbitrator to get a sense of the general manner in which issues that are disputed in the community under consideration are being dealt with elsewhere. One comparable is of little value in that respect. Hence, while arguments based upon agreements reached in Champaign are not irrelevant, agreements reached with other bargaining units within McHenry County – the “internal comparables”- are far more significant than those agreements reached in Champaign.

IV. Issues for Decision

A. Holiday Pay – Section 11.1

The Union has proposed that employees who work on a holiday which falls on a weekend (Saturday or Sunday) but is observed on a weekday should be paid holiday pay on both the actual holiday and the observed holiday if they work both days. The Employer’s proposal is that holiday pay be provided only for the actual calendar day of the holiday.

It is undisputed that the Union’s holiday pay proposal is consistent with the longstanding practice for holiday pay in the Coroner’s office. And, the Union asserts, citing a number of interest arbitration decisions, “It is well settled that the party who seeks to change the status quo bears the burden of persuading the neutral arbitrator that there is a need for its proposal.” The flaw in the Union argument, however, is that the decisions to which the Union refers deal with a status quo that has been established by collective bargaining, and rests upon the principle that a negotiated agreement ought not be easily disturbed. See, e.g. Village of Elmwood Park and Elmwood Park Firefighters Assn, S-MA-10-192 (Hill) (“There is a presumption that *what the parties did in the past regarding contractual language* should not be upset by an interest arbitrator, absent some compelling reason for so doing.”) In this case, the past practice was not negotiated between the Employer and the Union, but was unilaterally enacted by the Employer.

One of the Union’s core arguments is that the contract which the Employer unilaterally imposed in this case is not entitled to the deference paid to a negotiated contract. “The clear arbitral precedent”, the Union states, “is that a unilaterally imposed requirement, not the product of bilateral negotiations, does not constitute a status quo such that a party seeking a change bears a heavy burden of proof.” I accept that argument, but it cuts both ways. The Employer’s unilaterally imposed contract is not entitled to the deference awarded to a negotiated contract, but, by the same token, neither are the practices unilaterally imposed by the Employer entitled to the deference accorded to those practices which exist concurrently

with a collective bargaining contract, and are respected because they are regarded as an impliedly negotiated term of the contract. To be sure, the practice regarding holiday pay benefits the Union, but I am unaware of any principled basis on which the Union should be free to reject those past practices unilaterally imposed by the Employer that are unfavorable to it, while at the same time taking advantage of those unilaterally imposed practices that benefit it. Accordingly, I shall utilize the statutory criteria, unfettered by any deference owed a negotiated status quo, in determining which holiday pay proposal is more reasonable – that proposed by the Union or that proposed by the Employer.

The Union offered no evidence in support of its proposal other than the status quo argument which I have rejected. The Employer, however, points out that there is no support whatsoever for the Union’s proposal in any McHenry County collective bargaining contract. Nor is a similar provision found in the McHenry County Personnel Policy Manual. Under these circumstances, I shall award the Employer’s proposal.

B. Personal Days – Section 11.2

The Union’s proposal is that the number of personal days be fixed at three. The Employer proposal sets the minimum number of personal days at two, but also provides that if the County Board grants any additional personal days to the County’s non-union employees, those additional days would be extended also to the employees in this bargaining unit.

The internal comparables are equal, with three contracts supporting the Employer proposal and three consistent with the Union proposal. Champaign County grants personal days based on years of service, with employees having six or more years of service receiving three or four days.

In light of the lack of any clear pattern among the internal comparables, and the fact that the deputy coroners are no longer to receive holiday pay double time on both the actual holiday and the day on which the holiday is observed, the Union’s proposal to provide one more personal day per year than would the Employer appears one that would likely be granted by reasonable negotiators. Accordingly, the Union’s proposal on personal days will be awarded.

C. Sick Leave Pay on Separation – Section 13.1

Section 13.1 of the imposed contract provides:

An employee shall be allowed to accrue up to 240 sick days. Employees cannot begin a fiscal year with more than 240 days. Employees who have accrued more than 240 sick days as of December 1 of each year must determine if they wish to be credited for additional vacation days or to be paid for this unused sick leave. In either case, earned sick days in excess of the 240 maximum allowable may be converted at two (2) sick days in

exchange for one (1) regular day. However, no more than five (5) days (10 sick days ÷ 2 = 5 days) can be converted to pay.

The Union proposes adding the following provision:

Upon separation from employment, an employee shall be permitted to exchange his/her accumulated sick days for cash on the basis of two (2) sick days for one (1) day of pay.

The Employer opposes this addition and would retain the *status quo* with respect to payment for unused sick leave.

The Union's primary argument in support of its proposal is that it "would make the parties' agreement similar (underlining added) to the agreements the Employer already has in place with FOP Units I, II, and III". I emphasize the Union's use of the word "similar" because it is well chosen. While the FOP Units do indeed provide for a two-for-one payout of unused sick days on separation from employment, they limit that benefit to separation at the time the employee is eligible to receive his/her IMRF pension. The Union's proposal is considerably more generous, allowing for payout of unused sick leave days at the time of any separation from employment.

The Union asserts that its proposal is reasonable because employees who have foregone sick leave to which they are entitled should be rewarded for doing so, not only by the limited buy back provisions of the unilaterally implemented contract, but more fully. However reasonable that argument may be, I am unwilling to award a contract clause that finds no support in either the internal or external comparables.⁶ Accordingly, I find the Employer's proposal more reasonable and shall award that proposal.

D. Health Insurance: "Similar to" or "Substantially the Same as" Existing Coverage and Benefits – Section 15.1

The Union's proposal for health insurance benefits is:

The Employer will provide full-time employees with coverage under the Blue Cross/Blue Shield as amended from time to time; provided, however, the Employer reserves the right to change carriers, benefit levels or to self-insure as it deems appropriate, as long as the new basic coverage and benefit levels are substantially the same as those in effect when this agreement is implemented.

⁶ The only external community that the Union cited in support of its proposed sick day buy back proposal was Will County, which I have found not to be a comparable.

The Employer's proposal is:

The Employer will provide full-time employees with coverage under the Blue Cross/Blue Shield Plan as amended from time to time; provided, however, the Employer reserves the right to change carriers, benefit levels or to self-insure as it deems appropriate, as long as the new basic coverage and basic benefits are similar to those in effect when this agreement is implemented.

Both the Employer and the Union support their proposals by reference to the internal comparables. The Union points to the three FOP contracts, all of which contain the language it seeks; the Employer points to four non-FOP contracts, all of which contain the language it seeks.

The Union also points out that all County employees are covered by the same health plan with the same benefits, and that County Director of Human Resources Robert Ivetic testified that the County intends to maintain that commonality – “one plan for all employees, one PPO, one HMO”. The FOP contracts already require that any changes in the health plan basic coverage and benefit levels must leave those plans substantially the same as they were when the contracts were implemented. Hence, the Union asserts, including that same language in the instant contract would impose no additional substantive burden on the Employer. Doing so would, to be sure, make the Employer vulnerable to allegations of violation of that language under an additional contract, but that burden is not great. It is, in any event, insufficient to outweigh the benefit to both parties from the more precise “substantially the same” language proposed by the Union as compared to the “similar” language proposed by the Employer. The latter could easily be the subject of endless negotiations and a complex arbitration, the former less so.

I find the Union's argument to be persuasive, and will award the Union's proposed language.

E. Health Insurance: Opt-Out Pay – Section 15.1

The Union proposes that any employee who chooses to opt out of the County's health insurance plan should receive a payment of \$1,000 for each full year that/he she declines to participate in that plan. The Employer opposes any opt-out payment.

The Union makes a convincing argument that its proposal would be financially beneficial to both Employer and employees. Opt-out pay is not, however, provided for in the contracts of any of the other unions representing County employees. Nor is it available to non-union County employees. It is generally agreed that interest arbitration is a conservative process in which arbitrators are reluctant to award novel contract provisions. I follow that approach and will not award a provision that would be entirely new to McHenry County.

The Employer's proposal will be awarded.

F. Health Insurance: Death Benefits – Section 15.4

Death benefits under the McHenry County Personnel Policy are based on an employee's job classification. Law enforcement officers, elected officials, and department heads receive \$15,000; all other full-time county employees receive \$10,000. In the event of accidental death or dismemberment, these amounts are doubled to \$20,000 and \$30,000 respectively. McHenry County collective bargaining contracts are consistent with the Personnel Policy. Sheriff's deputies and correction officers represented by FOP receive the law enforcement officers' \$15,000/\$30,000 death benefits; all other unionized county employees receive death benefits of \$10,000/\$20,000.

The Union proposes that the deputy coroners receive a \$15,000/\$30,000 death benefit on the ground that they are law enforcement officers. The Employer, asserting that the deputy coroners are not law enforcement officers, proposes no change from the language of the unilaterally implemented contract, which provides, in relevant part, that:

The Employer will provide a death benefit in the amount of \$10,000 at no cost to the employee.⁷

Each party supports its position with respect to whether or not the deputy coroners are law enforcement officers by referring to Illinois statutory authority. The Employer cites the Illinois Police Training Act, 50 ILCS 705/1 which provides:

'Law enforcement officer' means (i) any police officer of a local governmental agency who is primarily responsible for prevention or detection of crime and the enforcement of the criminal code, traffic, or highway laws of this State or any political subdivision of this State or (ii) any member of a police force appointed and maintained as provided in Section 2 of the Railroad Police Act.

⁷ The Employer's proposal does not explicitly provide for an accidental death and dismemberment benefit of \$20,000, but such a payment is provided for by the McHenry County Personnel Policy. Thus, the Employer notes (Brief, pp. 12-13):

The County's policy . . . provides for 'double indemnity' in the event of an accidental death. The application of this language to the Local 73 employees would provide for a \$10,000 death benefit and a \$20,000 accidental death benefit. This is the same benefit provided to all other unionized County employees with the exception of Sheriff's deputies and corrections officers, who are law enforcement officers. . .

I thus interpret the Employer's proposal to be for a \$10,000 death benefit and a \$20,000 accidental death and dismemberment benefit.

According to the Employer, the deputy coroners are not law enforcement officers as defined in the Police Training Act, hence are not entitled to the benefits that the County Personnel Policy and the existing collective bargaining contracts provide for law enforcement officers.

The Union, for its part, relies on Section 3(k) of the Illinois Public Labor Relations Act, which defines a "peace officer" as follows:

k) "Peace officer" means, for the purposes of this Act only, any persons who have been or are hereafter appointed to a police force, department, or agency and sworn or commissioned to perform police duties, except that the following persons are not included: part-time police officers, special police officers, auxiliary police as defined by Section 3.1-30-20 of the Illinois Municipal Code, night watchmen, "merchant police", court security officers as defined by Section 3-6012.1 of the Counties Code, temporary employees, traffic guards or wardens, civilian parking meter and parking facilities personnel or other individuals specially appointed to aid or direct traffic at or near schools or public functions or to aid in civil defense or disaster, parking enforcement employees who are not commissioned as peace officers and who are not armed and who are not routinely expected to effect arrests, parking lot attendants, clerks and dispatchers or other civilian employees of a police department who are not routinely expected to effect arrests, or elected officials.

According to the Union:

Here, there is no dispute that the deputy coroners are not specifically excluded from the Act's definition of "peace officer". They are sworn in employees, they carry badges, and they are hired by and through the McHenry County Law and Justice Committee, which is the same committee that is responsible for hiring police officers in the McHenry County Sheriff's Department. The County's deputy coroners routinely perform investigations and carry out a crime deterrence and prevention function. These investigative functions and the circumstances under which they are performed are detailed in the Coroner's Act. See 55 ILCS 5/3-3013. Moreover, as agents of the Coroner, the deputy coroners are, as a matter of fact and law, conservators of the peace. See 55 ILCS 5/3-3007 (directing county coroners to be conservators of the peace). Deputy coroners perform an important peacekeeping

function, particularly when they are required to give notice of a decedent's death to one or more of the decedent's loved ones. The deputy coroners typically restore order by explaining who they are and what their responsibility is, by answering any questions the family members may have about how their loved one has died, by discouraging erratic and potentially aggressive or retaliatory behavior, and by giving all reasonable and necessary assurances concerning the protection of the decedent's body. Therefore, deputy coroners are "peace officers" under the law.

Initially, it is worth noting that while the deputy coroners are, as the Union points out, "sworn in employees", they are not, in the words of the Act, "sworn or commissioned to perform police duties". And, while they are hired by the same body that hires police officers, that does not, without more, make them police officers.

Most instructive in considering the Union's contention that the deputy coroners are peace officers within the meaning of the Act is the appellate court's decision in Fraternal Order of Police Lodge 109 v. Illinois Labor Relations Board, 189 Ill. App. 3d 914 (2nd Dist 1989). The question in that case was whether DuPage County bailiffs were peace officers under the Act. In responding to that question, the Court stated:

Section 3(k) defines peace officer as any person appointed to a police agency and "sworn or commissioned to perform police duties." In the present case, there is no question that the bailiffs are appointed to the sheriff's department and sworn in. The only issue which remains is whether they perform "police duties" as that term is used in the Act.

Generally, police duties encompass a wide variety of law enforcement and order-maintenance functions including arrest, crime prevention and deterrence, crowd control, investigation, providing aid, and creating and maintaining a feeling of security.

The record establishes that bailiffs are uniformed and wear badges awhile performing their job functions. The fact that they are uniformed and wear a badge indicates that they are performing a crime prevention and deterrence function. Uniformed, and sometimes armed, bailiffs, visibly present in

and around the courtrooms and hallways, certainly contribute to order maintenance. In fact, they are required to maintain the public order. The presence of the armed, uniformed bailiffs also contributes to a feeling of security, not only for witnesses, victims and courtroom personnel, but also for the general public who might be present. Additionally, the bailiffs do occasionally search various persons for weapons or contraband, which further contributes to a feeling of security and order maintenance.

The bailiffs also are authorized to and do make arrests in and around the court faculties. Bailiff Brechtel's unrebutted testimony establishes that in his capacity as bailiff, he has arrested hundreds of persons as a result of a judge's directive, on his own initiative, and when requested to do so by assistant State's Attorneys. It is clear that making arrests is an integral part of the bailiff's duties.

The differences between the bailiffs, whom the Court found to perform police duties, hence to be peace officers within the meaning of the Act, and the deputy coroners here involved, are manifest. While both wear badges, the bailiffs are uniformed, sometimes armed, and make arrests, none of which are true of the deputy coroners. And while the Union asserts that the deputy coroners carry out a crime deterrence and prevention function, they do so in the limited fashion of calming distraught family members, not by maintaining order in public places as do the bailiffs. Finally, while the Union asserts that the deputy coroners perform investigations, which the bailiffs do not, those investigations relate solely to the cause of death and do not extend (at least as far as the testimony indicated) to the determination of whether the cause of death was criminal, and if so, the identity of the responsible party.

For these reasons I conclude that the deputy coroners are not peace officers within the meaning of the Act, hence not law enforcement officers for purposes of the McHenry County Personnel Policy.⁸ As a result, they are not comparable to the law enforcement officers covered by the FOP contracts, but rather to those full-time County employees covered by the County's remaining collective bargaining contracts. Accordingly, I conclude that the Employer's proposal for the \$10,000/\$20,000 death benefit provided to full-time employees who are not law enforcement officers (see note 7, supra) is more reasonable and will be awarded.

⁸ The Union points out that under Illinois law (55 ILCS 5/3-3007) county coroners are "conservators of the peace". Whatever that may mean, it is insufficient to persuade me that a result other than that here set out is compelled.

G. Health Insurance: Premium and Co-insurance Payments to be Determined Now or In Subsequent Contract Reopener Negotiations – Section 15.1

The unilaterally imposed contract provides:

The Employer and the active employees shall share the cost of health, dental, and vision coverage as follows:

<u>PPO</u>	<u>Employer %</u>	<u>Employee %</u>
Single	90%	10%
EE + 1	80%	20%
EE + 2	80%	20%

<u>HMO - Managed Care</u>	<u>Employer %</u>	<u>Employee %</u>
Single	91 %	9%
EE + 1	88%	12%
EE + 2	87%	13%

The dollar amount of employee contributions will be adjusted on the renewal date (currently July 1) based upon the cost to the Employer and the cost sharing percentages set forth above.

The Union proposes no change in these cost-sharing provisions, but would reopen the contract to negotiate cost sharing provisions for the periods of July 1, 2013 – June 30, 2014, and July 1, 2014 – June 30, 2015. Its proposal is:

The parties shall reopen the contract for the limited purpose of engaging in good faith negotiations over the PPO and HMO premium payments to be paid by the employees for the periods of July 1, 2013, to June 30, 2014, and July 1, 2014, to June 30, 2015. This reopener shall be initiated at the Employer's request once the Employer's cost in providing health insurance benefits can be determined and any impasses in these negotiations shall be resolved pursuant to Section 14 of the IPLRA.

The Employer proposes determining at this time the cost-sharing provisions for Plan Years 2013 and 2014. Its proposal is:

Effective Group Insurance Plan Year July 1, 2013

PPO:

- Keep PPO percentages (%) the same (status quo).
- Increase co-insurance percentages from 90/10 to 85/15.
For reference: DeKalb, DuPage, Lake, and Winnebago are at 80/20.

HMO:

- Increase employee percentage for HMO:

	<u>Current mthly:</u>	<u>Propsd mthly:</u>	<u>Diff:</u>	<u>Pay Period</u>
• Single: from 9%-10%	\$49.90	\$54.89	\$4.00	\$2.50
• EE+1: from 12%-14%	\$127.76	\$140.54	\$12.78	\$6.39
• EE+2 or more: fm 13%-15%	\$178.80	\$196.70	\$18.80	\$9.00

The Employer supports its proposed increases on the basis of Mr. Ivetic's testimony that both PPO and HMO costs have been rising in recent years, that 90/10 PPO plans are today a rarity, and that the costs of providing health care will rise still further with the implementation of the Affordable Care Act. The Employer also points out that its proposed increases have been accepted in recently concluded bargaining for FOP Unit II, and are on the table in its current negotiations with FOP Unit I and with Local 150.

The Union, in opposing the proposed increases, asserts that the Employer is attempting to impose health insurance costs for Plan Years 2013-14 and 2014-15 at a time when it does not yet have data regarding its claims history for Plan Year 2012, much less Plan Year 2013. The Union also points out that the issue of health insurance rates for 2013 and 2014 was not the subject of negotiations between the parties and that the Employer presented its proposed changes for the first time in its Final Offer.⁹ Hence, the Union asserts, it has been denied the opportunity to negotiate about health insurance costs, a mandatory subject of bargaining under the Act.

On balance, I find the Union's arguments persuasive, particularly the fact that were I to award the Employer's proposal at this time, the Union would have been denied the opportunity to

⁹ The reason for the Employer's failure to make an earlier proposal regarding health insurance costs is that it originally took the position that the contract should terminate on November 30, 2011. Hence, there was no need for it to propose increasing insurance rates beginning on July 1, 2013. It was not until Final Offers were exchanged, and the Employer acceded to the Union's proposal for a contract extending through November 30, 2014, that the issue of health insurance increases in 2013 became relevant. At that time, the Employer proposed the 2013 and 2014 changes here at issue, but there was no opportunity for negotiation about those changes.

bargain about health insurance costs. Hence I shall award the Union's proposal that the contract be reopened for negotiations regarding health insurance costs for 2013-2014 and 2014-2015. In reaching this conclusion, I am also influenced by the fact that by the time the reopener negotiations take place, the parties should have the benefit of both the Employer's 2012 claims history and the outcome of the Employer's current negotiations with Local 150 and FOP (for Unit II). This information should aid the parties in successfully negotiating an agreement on health insurance costs, and if they are unable to reach agreement, will undoubtedly aid the interest arbitration panel in reaching a decision.

The Union's proposal shall be awarded. (It is unclear whether the Union's proposal seeks two separate reopeners – one for Plan Year 2013 and another for Plan Year 2014 – or one reopener to negotiate health insurance costs for both Plan Years. My award consists of the latter – a single reopener to negotiate health insurance costs for Plan Years 2013 and 2014. To be sure, this will require negotiating for Plan Year 2014 prior to the availability of claims history data for Plan Year 2013, but, at least in a situation in which the Union proposal is unclear, I am unwilling to interpret that proposal in a fashion that would require health insurance cost bargaining twice in the last two years of the contract. The availability of data is important, but so is repose.)

H. Lunch Period and Workweek – Sections 17.1 and 17.3

The parties' proposals concerning the issue of whether any portion of the deputy coroners' lunch period should be paid by the Employer affect two different provisions of the unilaterally implemented agreement - Section 17.3, which concerns lunch and rest periods, and Section 17.1, which pertains to the length of the workweek. The Union's proposal seeks to have the Employer pay for 30 minutes of the deputy coroners' 1-hour lunch period on a daily basis, which increases the deputies' weekly hours worked from 37.5 to 40 hours per week. The Employer's proposal is to pay for no portion of the 1-hour lunch period. Thus, the proposals concerning Sections 17.1 and 17.3 must be taken together.

The Union's Proposal Concerning Section 17.3 is:

A one (1) hour lunch period which must be taken between 11:00 a.m. and 2:00 p.m. Thirty (30) minutes of the lunch period shall be paid for by the Employer, and the remaining thirty (30) minutes of the lunch period shall be unpaid.

The Employer's Proposal Concerning Section 17.3 is:

A one (1) hour lunch period which must be taken between 11:00 a.m. and 2:00 p.m.

The Union asserts that the deputy coroners have been consistently required to work during their 1-hour lunch periods, hence are entitled to be paid for their lunch periods – at least for 30 minutes, which is what the Union here proposes. In support of its assertion regarding the amount of work performed by deputy coroners during their lunch periods, the Union relies primarily on the testimony of deputy coroner Kim Bostic and secretary/deputy coroner Debora Sosnowski.

Ms. Bostic has worked for the County for over twelve years as a deputy coroner/investigator. She testified that her lunch hour is almost always interrupted by the demands of her job. These interruptions are caused by such tasks as responding to phone calls and call-outs, handling walk-in traffic at the Coroner's office, coordinating transportation with various funeral directors, and assisting family members who wish to view their loved ones. Although Ms. Bostic is permitted to leave the building to have lunch, she must take her cell phone with her because she is required to respond should a call come in. While the deputy coroners attempt to coordinate their lunch hours to cover phone calls or walk-in traffic, Ms. Bostic estimated that 95% of the time, her lunch hour is interrupted. She characterized a lunch hour plagued with interruptions as "a normal workday."

Ms. Sosnowski has worked as the secretary/deputy coroner for the County since 2005. While there are no records that track interruptions in the deputies' lunch hours, she testified that her lunch hour is interrupted by work related duties approximately four out of five days per week. Those duties include answering phones, handling unscheduled walk-ins, and dealing with funeral directors and medical waste handlers. All telephone calls for the deputy coroners are normally routed through her. These interruptions typically require Ms. Sosnowski to spend between thirty and forty minutes of her lunch hour handling County business, rather than eating lunch. Thus, her typical lunch period is between twenty and thirty minutes long. Although she is allowed to leave the building during lunch, she almost never does so. Ms. Sosnowski must remain in the office to answer phone calls unless someone else is available to cover for her.

Ms. Sosnowski regularly observes the other deputy coroners when they are working in the office. She estimated that approximately eighty to eighty-five percent of the time, other deputies' lunch hours are interrupted by work-related duties, including taking telephone calls.

The testimony of Ms. Bostic and Ms. Sosnowski concerning the frequency with which they respond to telephone calls during their lunch period was corroborated by the response of Coroner Marlene Latz to a request from the Union for, "[a]ny and all policies concerning how quickly the deputy coroners must respond to calls." Coroner Latz responded:

We don't have a policy in writing, but each deputy was told from Day One that when they are called, they must respond IMMEDIATELY. This means if they are in bed, they get up, throw on their clothes, brush their teeth and out the door. *If they are eating, they get up and leave.* This is what they are trained to do, and are doing it. (Capitals in original, italics supplied.)

The Employer introduced no evidence directly contradicting the testimony of Ms. Bostic and Ms. Sosnowski. It noted, however, that Ms. Sosnowski testified that there are occasions when employees who do not get a lunch are allowed to leave early. In fact, Ms. Sosnowski testified this occurs "rarely". The Employer also suggested that the testimony of Ms. Bostic "seems to be at odds with Ms. Sosnowski on the issue of employees covering for each other during lunch". Ms. Bostic testified that at times there is somebody in the office to cover for her while she tries to take lunch, but that she is able to have a full lunch hour that is not interrupted by work, "maybe once a week". Ms. Bostic testified that she tries to coordinate with other employees regarding the timing of their lunch periods, but that 95% of the time her lunch hour is interrupted. I perceive little, if any difference between the testimony of Ms. Bostic and Ms. Sosnowski, and certainly nothing in the testimony of one that is at odds with the other.

Finally, the Employer points out that the McHenry County Coroner's Office handled 1332 death cases in 2010, an average of approximately 3.5 cases per day. "It is hard to imagine", according to the Employer, "that this case load would result in regular interference with the employees' lunch period". Ms. Bostic testified, however, that in addition to responding to death calls, she is required respond to other telephone calls, deal with members of the public who walk into the coroner's office, coordinate transportation with various funeral directors, and assist family members who wish to view their loved ones. Ms. Sosnowski testified that in addition to passing death calls on to the deputy coroners, she answers other phone calls, handles walk-ins, and deals with such people as funeral directors and medical waste handlers. In sum, whatever one might imagine concerning the workload of the deputy coroners and the secretary/deputy coroner, the record contains unrebutted testimony that their workload is such that they rarely get an uninterrupted hour within which to eat their lunch.

The evidence relating to the internal comparables is mixed. Three of them do not receive a paid lunch period (DOT, FMD, and MAP), three do receive a paid lunch period (FOP Unit I, FOP Unit II, and FOP Unit III – the latter under some circumstances, not others). In the absence of any record evidence concerning the nature and amount of the work performed (if any) during lunch period by employees in those bargaining units that do not receive a paid lunch period, the evidence that they do not is of little value.

In sum, the record evidence demonstrates that the Union's proposal for a 30-minute paid lunch period and a corresponding 40-hour work week is the more reasonable and will be awarded.¹⁰

I. PERSONAL PROTECTIVE EQUIPMENT – NEW ARTICLE

A. Union's Proposal

Deputy coroners shall be permitted, but not required, to carry and use personal protective gear for purposes of ensuring their safety while performing the duties of their jobs. Such personal protective gear can include pepper or O.C. spray, a Taser or stun gun, a baton or any one of the following service weapons: .38-caliber revolver, 9mm pistol, .357 Magnum, .40-caliber pistol. Deputy coroners who opt to carry one or more forms of such personal protective gear shall be required to supply the same. They shall also be required to present the Employer with reasonable proof that they have been certified to carry, handle and use all such forms of personal protective gear.

B. Employer's Proposal

The Coroner shall issue such personal protective equipment as the Coroner finds necessary based on the needs of the Coroner's office. Should any personal protective equipment be issued by the Coroner, each employee shall be required to obtain any necessary certifications or trainings required for the carrying and use of that specific piece of personal protective equipment.¹¹

The Employer's initial argument is that the Union's proposal that deputy coroners have the right to carry and use personal protective gear is not a mandatory subject of bargaining, hence the arbitrator is without jurisdiction to award the Union's proposal.¹²

In order to determine if a topic is a mandatory subject of bargaining, the Illinois Supreme Court has adopted a three part test, set out in Central City Education Association v. Illinois

¹⁰ The Employer suggests that awarding the Union's proposal for a 30-minute paid lunch period, which results in a 40-hour work week, amounts to awarding a 6.67% salary increase. I do not so view the Award. A salary increase consists of providing additional pay for the same amount of work. The result of the Award on this issue is not to provide additional pay for the same work, but rather to provide pay for work that has been performed, but for which the employees performing that work have not previously been paid.

¹¹ The Employer's proposal is contingent on the Arbitrator finding that the Union's proposal is a subject of mandatory bargaining.

¹² The Employer asserts (Brief, p. 18) that the Union has conceded that the right of the deputy coroners to carry personal protective gear is a permissive subject of bargaining, not a mandatory subject of bargaining. In the transcript excerpt to which the Employer refers, however, the Union states that all it is seeking is for the deputy coroners to have permission to carry personal protective gear if they wish, not to be required to do so. This is not at all the same as conceding that whether they will be allowed to carry protective gear is a permissive subject of bargaining.

Educational Labor Relations Board, 149 Ill. 2d 496, 599 N.E. 2d 892 (1992). The Court there stated (149 Ill. 2d at 523-524, 599 N.E. 2d at 905):

The first part of the test requires a determination of whether the matter is one of wages, hours and terms and conditions of employment. . . . If the answer to this question is no, the inquiry ends and the employer is under no duty to bargain.

If the answer to the first question is yes, then the second question is asked: Is the matter also one of inherent managerial authority? If the answer to the second question is no, then the analysis stops and the matter is a mandatory subject of bargaining. If the answer is yes, then the . . . [issue is one of balancing] the benefits that bargaining will have on the decision making process with the burdens that bargaining imposes on the employer's authority.

In the instant case, the Employer concedes that the question of whether the deputy coroners have the right to carry personal protective equipment is a term and condition of employment. It asserts, however, that the use of force and the ramifications of the use of force are matters of inherent managerial authority, hence that the Union has no right to bargain about whether the deputy coroners shall have the right to carry personal protective equipment.

Assuming, *arguendo*, the merits of the Employer's initial assertion – that when and under what circumstances force may be used is a matter of inherent managerial authority, not subject to collective bargaining – it does not follow that the question of whether employees may carry weapons is also a question of inherent managerial authority, not subject to bargaining. Even if employees carry weapons, the issue of when and under what circumstances they may use those weapons remains for management to decide. Hence it is my judgment that allowing bargaining on the issue of whether employees will be allowed to carry personal protective gear does not intrude on inherent managerial authority. Accordingly, that issue is a mandatory subject of collective bargaining and the arbitrator has the jurisdictional authority to decide which of the parties' proposals – or some variant of those proposals – should be adopted.

I turn next to the merits of the Union's proposal that the deputy coroners should be permitted, if they wish, to carry personal protective gear, including firearms. In support of its proposal the Union asserts that the safety of the deputy coroners can be jeopardized in the course of carrying out their job duties, hence that they should be free to carry protective gear. Deputy Coroner Kim Bostic testified that in two specific situations during her 12 years as a deputy coroner, she felt threatened or unsafe. On one of those occasions:

Well, there was a time in Crystal Lake where I had a death of – I think it was a 90 year old gentleman. When I first got there there was one police officer there and there was, I'd say, six family members and everything was okay.

And I was in the bedroom looking over the deceased. Next thing you know I hear doors banging, glass breaking, chaos, so I went out in the living room to see what was going on and there was about 15 kids, I guess, in their 20's or so, long trench coats on. They were refusing to let us take their grandpa. So they were, like I said, running around, slamming doors, telling us we weren't going to take his body ...

The funeral director that I called to pick the body up, he was assisting me, and I quickly got him out of the house. I told him "Get out of here, it's unsafe, get back to your vehicle." And then I got out of the house as well.

And in that case with the county dispatcher, she was riding along with the police officer, and she was in fear, too. So I took her in my car as well and then I called for backup ...

When I called for backup they said that they would get there when they could because they didn't have anybody available.

On another occasion, Ms. Bostic testified:

I went to a hospital call one time, the family members were not – they didn't want anything to do with the police, the coroner, anybody, and I had to again take possession of the body. They didn't want me to do that.

I got the inside family members calmed down. When I say inside, I mean the ones that were inside the hospital, but then when I walked out of the hospital to leave then there was about six of them outside with their whiskey bottles surrounding me.

Q How did you hand that situation?

A Very carefully because there was no way out. I just talked myself out of it. I did it.

In opposition to the Union's proposal, the Employer asserts that if deputy coroners are permitted to carry the items specified in that proposal, the County will incur the risk of liability resulting from the use of those items, leading to increased insurance and training costs. The Union's response is that the County already has insurance covering the use of weapons by hundreds of law enforcement officers, and that the cost of adding at most five deputy coroners

to that insurance policy would be minimal. As for increased training costs, the Union points out that under its proposal the deputy coroners would be responsible not only for supplying their own personal protective equipment, but also for obtaining appropriate training and certification at their own expense.

As I consider the competing arguments, I am struck by one consideration implicitly raised by the Employer’s liability concerns. If deputy coroners are free to carry personal protective gear, including firearms, there is an unquestioned risk that those firearms will be used, resulting in injuries and perhaps death to citizens of McHenry County.

I recognize, to be sure, that the purpose of allowing the deputy coroners to carry weapons is to protect them from the risk of injury or death resulting from the conduct of those same citizens. The deputy coroners, however, have a means of avoiding both risk to themselves and risk to citizens resulting from encounters between them. When confronted with resistance to the removal of a body, such as Ms. Bostic testified to, the deputy coroner can temporarily abandon his/her efforts to remove the body, withdraw from the scene, drive to a secure location, and call for police backup. If no backup is available, as Ms. Bostic testified sometimes occurs, the deputy coroner need not return to the death scene to remove the body until such time as sufficient backup is available.

Different from a peace officer, a deputy coroner does not have responsibility for keeping the peace, but only for removing bodies. Since carrying out that responsibility can be safely accomplished by unarmed deputy coroners without the increased risk to citizens that would result from allowing the deputy coroners to carry arms, I will not award the Union’s proposal. I will instead award the Employer’s proposal which allows the Coroner to decide what, if any, personal protective gear is to be issued to deputy coroners.

J. WAGES/COMPENSATION – ARTICLE XXIII

The parties’ wage proposals are:

	12/1/2008	12/1/2009	12/1/2010	12/1/2011	12/1/2012	12/1/2013
County	3%	2%	0%	3%	3%	3%
SEIU	3%	3.50%	3 %	3.25%	3.25%	3.25%

The wage data for the internal comparables show:

**McHenry County Bargaining Units
Percentage Wage Increases 2008-2013**

	2008	2009	2010	2011	2012	2013
FOP PEACE OFFICERS UNIT 1- SHERIFF'S DEPARTMENT	3.9%	5.9%				
FOP CORRECTIONS UNIT II – SHERIFF'S DEPT	4.6%	3.98%	4.77%	2.0%	2.75%	3.0%
FOP CLERICAL & OTHERS UNIT III – SHERIFF'S DEPT CUSTODIANS	3%	STEPS 1.25% 2.50% 3.75%	3%	3.25%		
PROCESS SERVER	3%	3%	3%	3.25%		
DISPATCHER	3%	3%	3%	3.25%		
AUTO TECH	3%	3%	3%	3.25%		
SECRETARY II	3%	3%	3%	3.25%		
CLERK II	STEP 1.25% 2.00%	3%	3%	3.25%		
CLERK III	STEP 1.5%	3%	3%	3.25%		
CT. SECURITY	3%	3%	0	3.25%		
L.150-IUOE COUNTY HIGHWAY DEPT.	3%	2.5%	2.75%			
MAP – CIRCUIT CT. CLERK'S OFFICE	3%	2.5%	0			
AVERAGE:	3.10%	3.30%	2.59%	3.11%	2.75%	
UNION'S OFFER:	3.0%	3.5%	3.0%	3.25%	3.25%	
EMPLOYER'S OFFER:	3.0%	2.0%	0%	3.0%	3.0%	

A number of points stand out in examining these data:

- The only years for which there are a sufficient number of internal comparable contracts to make a valid comparison between the Union's proposal and the Employer's proposal are 2008 – 2011, during which there were nine contracts. (There is only one contract – FOP Unit II – for which there are available wage data for 2008 – 2013.)
- In the four-year period from 2008-2011, the average total wage increase for the internal comparables was 12.26%. The Union's proposal for that period is a total wage increase of 12.75%; the Employer's proposal is 8.00%. No other unionized position received a total wage increase as low as 8% during that period.
- In the six-year period from 2008-2013, the Employer's offer is a total wage increase of 14% - an annual average of 2.33%. The total wage increase for FOP Unit II, the only comparable during that entire period, was 21.1% - an annual average of 3.52%. The Union seeks a total wage increase of 19.25% - an annual average of 3.21%.

The Employer asserts that "of the more than 40 interest arbitration awards issued in 2011 and the 9 issued so far this year, no arbitrator has awarded wage [increases] averaging 3.2%". Whatever the merit of that assertion, it carries little weight coming from an Employer that agreed with FOP Unit II to wage increases averaging 3.52%.

There can be little doubt that the Union's proposed wage increase of 12.75% for 2008-2011 and 19.25% over the term of the contract is far more consistent with the wage increases of the internal comparables than is the Employer's proposed increase of 8% for 2008-2011 and 14% for the contract term.

The Consumer Price Index during the period from December 1, 2007 – December 1, 2011, was 7.4%, a period for which, as noted above, the Union proposes a 12.75% wage increase, and the Employer proposes an 8% wage increase. The Employer argues that its wage increase proposal is more consistent with increases in the CPI than is the Union's wage proposal, hence should be adopted.

Under some circumstances, changes in the CPI are undoubtedly influential in determining whether an Employer's wage proposal is more or less reasonable than a Union's wage proposal. When, however, the Employer has agreed to provide internal comparables with wage increases that substantially exceed CPI increases – as the Employer did in this case by providing wage increases from 12/1/2008 – 12/1/2011 averaging 12.75% - the argument that a CPI increase of less than that amount justifies awarding a wage increase of only 8%, nearly five percentage points less than the average among the internal comparables, is of little force.

The Employer's final argument is that if one adds the Union's proposed average wage increase of 3.21% to the increased wages that the deputy coroners will receive as a result of the 30-minute paid lunch period here awarded – which the Employer calculates will increase wages by 6.67% - the deputy coroners will receive total wage increases between 9% and 10%, an increase wholly unjustified by the record evidence. As unreasonable as an average wage increase of 9-10% appears, the reality is far different. The wage increase awarded here is an average of 3.21% per year. As previously noted (n. 10), the additional pay that the deputy coroners will receive for working a portion of their lunch period is not a wage increase, but a recognition that they are entitled to be paid for time during which they have been working and will continue to work.

The Union's wage proposal is more reasonable and will be awarded.

K. EQUITY ADJUSTMENT FOR SECRETARY/DEPUTY CORONER – ARTICLE XXIII

The Employer proposes no change in the Secretary/Deputy Coroner wage scale.

The Union's proposal is:

Effective December 1, 2008, the Deputy coroner/Secretary shall receive an equity adjustment of an additional \$1.41 per hour.

Effective December 1, 2009, the Deputy coroner/Secretary shall receive an equity adjustment of an additional \$1.41 per hour.

Effective December 1, 2010, the Deputy coroner/Secretary shall receive an equity adjustment of an additional \$1.41 per hour.

Effective December 1, 2011, the Deputy coroner/Secretary shall receive an equity adjustment of an additional \$1.41 per hour.

The Deputy coroner/Secretary shall not be entitled to receive the annual percentage wage increases noted in Article XXII for the years beginning on December 1, 2008, December 1, 2009, December 1, 2010, and December 1, 2011. The Deputy coroner/Secretary shall be entitled to receive the annual percentage wage increases required by Article XXII for all other years covered by this contract.

The Union's proposal seeks to bring the wages of Debora Sosnowski, who is generally referred to as the Secretary/Deputy coroner, but whose job classification is Administrative Specialist I, in

line with the wages paid to the Administration Clerk III, a job title in the McHenry County Sheriff's Office that is covered by the FOP Unit III Agreement.¹³ As an Administrative Specialist I, Ms. Sosnowski, who has six years of service, currently earns \$12.99 per hour. An FOP Unit III Administration Clerk III with six years of service earns \$18.64 per hour.

According to Ms. Sosnowski, the duties listed in the job description for the Administrative Specialist I do not accurately reflect her current job duties. While she performs a majority of those duties, there are some that are not pertinent to the Coroner's Office. She does not receive written requests for maintenance service or generate work orders because the Coroner's Office does not perform maintenance service; she does not transcribe minutes from board and committee meetings because the Coroner's Office has no such meetings; and she does not take and transcribe dictation from dictating equipment or notes.

On the other hand, Ms. Sosnowski testified that she performs numerous additional duties that are not identified in the Administrative Specialist I job description. She maintains a hospice list, creates and issues death certificates and cremation permits, and records deaths reported to the Coroner's Office. She also enters statistical information on a spreadsheet, orders and maintains office supplies, files SR8 forms with the State of Illinois on all fatal accidents, handles the Coroner's Office payroll, and works on the annual year-end budget shortfall with the finance director. Occasionally, she schedules inquests, releases bodies to funeral homes, and enters funeral home information into the TDAW program. According to Ms. Sosnowski, the Coroner has stated on several occasions that she does more than her position previously entailed, and asked the County Finance Director if there was a process by which her position could be reclassified.

¹³ The Employer asserts that the Administration Clerk III in the Sheriff's Office is a non-union position, not covered by the FOP Unit III Agreement. To be sure, the Unit Description in Section 1.1 of the Unit III Agreement does not explicitly include the position of Administration Clerk III. It does, however, include the position of "Clerk III (e.g. Civil Process, Records, Warrants)". The Clerk III titles there listed are non-exclusive, and there is no apparent reason why the Clerk III positions in Civil Process, Records, and Warrants would be included in the bargaining unit and the Administration Clerk III would be excluded. To be sure, it is not uncommon that secretarial/administrative positions that encompass dealing with confidential information are excluded from the bargaining unit, and the Administrative Assistant is explicitly excluded from the FOP Unit III bargaining unit, but the Administration Clerk is not excluded. Hence, while the matter is not free from doubt, I conclude that the Administration Clerk III position in the Sheriff's Office is covered by the Unit III Agreement and that the wages for that position are determined by the Wages and Step Table for the Unit III – Clerk III.

The Position Description for the Administration Clerk III in the Sheriff's Office provides:

POSITION/TITLE ADDENDUM:

BUREAU: Administration

DIVISION: Business Office

TITLE: Administration Clerk III

DATE: 5/1/2010-Revised

EXAMPLES OF DUTIES:

The following duty statements are illustrative of the essential functions of the job and do not include other non-essential or marginal duties that may be required. In addition, the Sheriff of McHenry County reserves the right to change the duties and essential functions of this job at any time.

- Answers Department Switchboard, takes messages, and routes calls to proper person.
- Assists public by providing information about the Department's programs and answers questions.
- Serves as receptionist, receiving visitors, providing information, answering questions and making appointments.
- May assist public in filling out forms.
- May keep records of cash received.
- Assists Office Manager with payment of bills and invoices, attendance record keeping, and bank deposits.
- Assists the EEO Officer with tasks assigned.
- Maintains filing systems, retrieving and re-sorting files when necessary.
- Types correspondence, reports, records, memos, stencils and forms as needed.
- Opens and sorts incoming mail and mails outgoing correspondence, reports, etc.
- Performs related duties as required and assigned.
- Prepares County ID badges and maintains the county ID badge system.
- Maintains and controls distribution of the Sheriff's Office Organizational Chart.
- Maintains and controls database of employee's personnel pictures.
- Assists office manager with payroll and other assigned tasks.
- Prepares and distributes Sheriff's Office Newsletter.
- Coordinator for Community Relations Activities.
- Assist business manager with tasks assigned.
- Orders and maintains office supplies for all bureaus.
- Maintains and updates SharePoint.

PHYSICAL DEMANDS:

The following are some of the physical demands commonly associated with this position. They are included for informational purposes and are not all inclusive.

1. Constant use of automated office machinery and writing utensils.
2. Constantly involved in interpersonal communication, including automated devices such as the telephone, as well as personal interaction with the public.
3. Spends 80% of the time sitting, 10% standing, 10% walking while on the job.
4. Occasionally stoops, kneels, crouches and balances while filing or operating office machinery.
5. Ability to complete required office duties.
6. Occasionally lifts or carries up to 20 lbs. when moving office supplies or files.

According to Ms. Sosnowski, she performs twelve of the twenty duties listed on the Administration Clerk III Position Description. She serves as a receptionist, answers the department switchboard, and keeps records of cash receivables. In some instances her duties are similar to, albeit not exactly the same as those on the Administration Clerk III Position Description. She does not help the public fill out forms, but she assists funeral directors in doing so. She also assists the public with questions regarding Coroner's Office forms. She does not prepare County ID badges, but prepares cremation permits and death certificates. She does not coordinate community relations because that is not a Coroner's Office function, but she prepares reports for the public. She does not maintain SharePoint, but performs the similar duty of collecting and entering records into a spreadsheet that is placed on the County website.

There are some Administration Clerk III duties that Ms. Sosnowski does not perform because they are inapplicable to the Coroner's Office. She does not assist the EEO Officer because there is no EEO Officer in the Coroner's Office. As an employee of the Coroner's Office, she does not maintain an organizational chart of the Sheriff's Office.

Ms. Sosnowski also testified that her job functions include duties that extend beyond those listed for the Administration Clerk III. The Administration Clerk III assists the Office Manager with payment of bills and invoices, attendance, record keeping and bank deposits, and also assists the Office Manager with payroll. The Coroner's Office does not have an official office manager; as a result Ms. Sosnowski performs all the officer manager tasks as to which the Administration Clerk III provides only assistance.

Finally, Ms. Sosnowski testified that she meets or exceeds all the physical demands of the Administration Clerk III position. She uses automated office machinery; is involved in interpersonal communication; occasionally stoops, kneels, crouches, and balances while filing

or operating office machinery; and has the ability to complete required office duties. She not only lifts or carries up to 20 pounds, but exceeds that when she assists funeral directors with the intake or removal of bodies, which can weigh up to 300 pounds. She does not necessarily spend 80% of her time sitting because when the office is busy she may be standing or walking half the day.

The Employer introduced no evidence contradicting any portion of Ms. Sosnowski's testimony. Rather, the Employer presents various arguments as to why, even accepting that testimony, the Union's proposal that Ms. Sosnowski receive the wages currently paid to the Administration Clerk III in the Sheriff's Office should be rejected. First, the Employer asserts that the Administration Clerk III position in the Sheriff's Office is not covered by the FOP contract, an assertion that has already been rejected (see note 13).

Next, the Employer points out that the Administration Clerk III performs duties that Ms. Sosnowski does not perform – assisting the Equal Employment Officer, preparing county ID badges, maintaining the badge system, and maintaining and controlling the personnel picture file in the Sheriff's Office. That much is undoubtedly true, but for the most part when Ms. Sosnowski does not perform duties exactly the same as the Administration Clerk III, she performs similar duties of equal complexity. As previously noted, she does not help the public fill out forms, but she assists funeral directors in doing so, and assists the public with questions regarding Coroner's Office forms. She does not prepare County ID badges, but she prepares cremation permits and death certificates. She does not coordinate community relations, but she prepares reports for the public. She does not maintain SharePoint, but she collects and enters records into a spreadsheet that is placed on the County website. Furthermore, she exceeds the job demands of the Administration Clerk III to the extent that she does not assist the office manager in performing his/her functions, but as a *de facto* office manager she performs those functions herself.

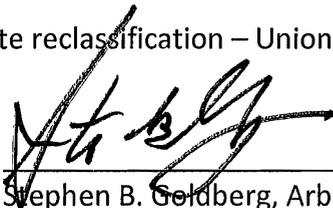
The Employer also raises a number of arguments that are without support in the record. These will be dealt with briefly: (1) The Sheriff's Office employees 400 people; the Coroner's Office six people. "The level of responsibility associated with the size of the organization alone makes the responsibility and workload greater than the secretary in an office of six." That assertion may or may not be accurate; there is no record evidence that supports it or demonstrates how it undercuts the Union's proposal. (2) There are three Clerk III positions in the Sheriff's Office: records, warrants, and civil process. A review of the position descriptions for those positions shows that Ms. Sosnowski's duties are not similar to theirs. Again, this may be accurate, but those position descriptions were not introduced into evidence, hence may not be considered. (3) McHenry County employs many people in the clerk/secretary position other than those in the Sheriff's Office. Ms. Sosnowski's job skills "are more properly compared with positions

other than the Clerk positions in the Sheriff's Office". Inasmuch, however, as no evidence was introduced concerning those other positions or the respects in which the job skills associated with those positions are closer to Ms. Sosnowski's job skills and duties than are the job skills associated with the Administration Clerk III position, the Employer's argument on this score cannot be taken into account.

The Union's proposal is the more reasonable and will be awarded.

V. Award Summary

- | | |
|---------------|--|
| Section 11.2 | Holiday Pay – Employer's Proposal |
| Section 11.3 | Personal Days – Union's Proposal |
| Article XIII | Sick Leave Payout Upon Suspension – Employer's Proposal |
| Article XXV | Health Insurance and Other Benefits <ul style="list-style-type: none">• substantially the same: language – Union's Proposal• Opt-out provision – Employer's Proposal• Employee cost – Union's Proposal |
| Article XVII | Workday and Workweek <ul style="list-style-type: none">• Section 17.1 and 17.3 Lunch period – Union's Proposal |
| New Article | Personal Protective Equipment – Employer's Proposal |
| Article XXIII | Wages <ul style="list-style-type: none">• Annual wage increases 12/01/08 – 12/01/13 – Union's Proposal• Secretary wage rate reclassification – Union's Proposal |



Stephen B. Goldberg, Arbitrator
May 8, 2012