

**BEFORE
EDWIN H. BENN
ARBITRATOR**

In the Matter of the Arbitration

between

**COUNTY OF MCHENRY AND MCHENRY
COUNTY SHERIFF**

and

**ILLINOIS FRATERNAL ORDER OF
POLICE LABOR COUNCIL**

CASE NOS.: S-MA-11-004
S-MA-11-131
Arb. Ref. 11,278
(Interest Arbitration
Peace Officers Unit #1)

OPINION AND AWARD

APPEARANCES:

For the County/Sheriff:

John H. Kelly, Esq.

For the FOP:

John R. Roche, Jr., Esq.
Becky Dragoo, Field Supervisor

Date of Award:

December 27, 2012

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I. BACKGROUND

This is an interest arbitration proceeding under Section 14 of the Illinois Public Labor Relations Act (“IPLRA”).

The Fraternal Order of Police Labor Council (“FOP” or “Union”) represents full-time sworn peace officers (patrol officers and detectives) employed by the County of McHenry and the McHenry County Sheriff’s Department (“Sheriff”, “County” or “Employers”) under a collective bargaining agreement (“Agreement”), the most recent of which expired November 30, 2010.¹ The parties refer to this bargaining unit as “Unit #1”.² The FOP also represents two other bargaining units under separate contracts — Unit #2 (corrections officers) and Unit #3 (civilian employees of the Sheriff’s Office).³

II. ISSUES IN DISPUTE

At the commencement of these proceedings, the following issues were in dispute:⁴

1. Wages
2. Insurance
3. Compensatory Time Use

III. THE STATUTORY FACTORS

Section 14(h) of the IPLRA lists the following factors for consideration in interest arbitrations:

¹ FOP Exhs. at Tab 6.

² *Id.*

³ Sheriff Brief at 1.

⁴ FOP Exhs. at Tab 2; FOP Brief at 5-8; County Exhs. at Tab 1; County Brief at 4-11.

(h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in 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.

IV. DISCUSSION

A. Wages

The parties' final offers are as follows:⁵

⁵ FOP Exhs. at Tab 2; County Exhs. at Tab 1.

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Effective	FOP	County
12/1/10	2.00%	
6/1/11		2.00%
12/1/11	2.75%	2.00%
12/1/12	3.00%	2.75%
12/1/13	3.00%	3.00%

Wages are obviously an economic issue. Therefore, under Section 14(g) of the IPLRA, only one party's offer can be chosen ("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)."). Because this is "final offer" interest arbitration, what that means is that given the length of the Agreement and the economic conditions that exist during the term of the Agreement, if an individual year is examined, an offer for that one year might favor one party while an offer in another year might favor the other party. However, the IPLRA does not give me that ability to pick and choose different offers in specific years. The parties' wage offers as package on the entire Agreement must be considered as the parties' respective final offers.

Under Section 14(h)(5) of the IPLRA, one of the factors interest arbitrators can consider is "[t]he average consumer prices for goods and services, commonly known as the cost of living." The Bureau of Labor Statistics ("BLS") defines the Consumer Price Index ("CPI") as "... a measure of the average change in prices over time of goods and services purchased by households."⁶

So what has happened to the CPI since the prior Agreement expired on November 30, 2010? According to the BLS, since December 2010 (when this

⁶ http://www.bls.gov/news.release/archives/cpi_11152012.pdf at p. 5.

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Agreement takes effect) up through the present, the changes in the CPI-U (not seasonally adjusted) are as follows:⁷

CPI From 12/1/10 To The Present

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2010												219.179
2011	220.223	221.309	223.467	224.906	225.964	225.722	225.922	226.545	226.889	226.421	226.230	225.672
2012	226.665	227.663	229.392	230.085	229.815	229.478	229.104	230.379	231.407	231.317	230.221	

That data gives a complete and accurate picture of the first two years of the new Agreement and allows for comparisons of the parties' final wage offers to the CPI for those periods:

Period	CPI	FOP	County
12/1/10 - 11/30/11	3.22% ⁸	2.00%	1.00% ⁹
12/1/11 - 11/30/12	2.01% ¹⁰	2.75%	2.00%

Given the actual data for the cost-of-living factor, on wages, the first two years of the Agreement are closer to the FOP's offer than the County's offer. The FOP's first year offer is 1.22% below the CPI for that period, but the County's offer is 2.22% below the CPI for that period. In the second year of the Agreement, the County hits the nail pretty much on the head (a 2.00% offer compared to a CPI increase of 2.01%) while the FOP is 0.74% above the CPI. But that closeness in the second year for the County does not make up for the

⁷ <http://data.bls.gov/cgi-bin/surveymost?cu>

By accessing that website for the BLS data bases, the latest CPI comparisons can be accessed through designation of year ranges for U.S. All items, 1982-84=100, retrieving the data and then, if further specificity is desired, by using the link to "more formatting options" and again retrieving the data.

⁸ $226.230 - 219.179 = 7.051$. $7.051/219.179 = .03217$ (3.22%).

⁹ The County offered 2.0% in the first year of the Agreement, but that was not to take effect until June 1, 2011 — therefore, an effective freeze for the first six months of the first year and a 1.0% increase overall for that year. County Exhs. at Tab 1.

¹⁰ $230.221 - 225.672 = 4.549$. $4.549/225.672 = .02015$ (2.01%).

large disparity in the County's offer compared to the CPI for the first year (2.22%). Therefore, the *actual* data for the first two years of the Agreement favor the FOP's offer.

What about the third and fourth years? For that, I can turn to the economic forecasters. According to the *Federal Reserve's Fourth Quarter 2012 Survey of Professional Forecasters* (November 9, 2012), 2013 and 2014 are looking at projected cost-of-living increases of 2.2% and 2.3% respectively (fourth quarter over fourth quarter).¹¹

Both offers for the last two years of the Agreement closely corresponding to the 2013 and 2014 periods covered by the current projections are above the forecasted CPI projections of 2.2% and 2.3% (with the County at 2.75% for 12/1/12 through 11/30/13 and with the FOP at 3.00% for that period) and both parties at 3.0% for the period 12/1/13 through 11/30/14). Remembering that the CPI projections for the out years of the Agreement are just that — projections subject to change — and given how close the parties are for the last two years of the Agreement (0.25% apart), the CPI projections for the last

¹¹ <http://www.phil.frb.org/research-and-data/real-time-center/survey-of-professional-forecasters/2012/survq412.cfm>

The measure used here is "Headline CPI" and not "Core CPI". "Headline" inflation data include more volatile indicators such as food and energy prices, while "Core" inflation data do not. See *Monetary Trends* (September 2007), "Measure for Measure: Headline Versus Core Inflation" ("... the 'core' measure — which excludes food and energy prices ... [while] the corresponding headline measure, which does not.").

<http://research.stlouisfed.org/publications/mt/20070901/cover.pdf>

For purposes of setting wage rates, I have found that "Headline" cost of living data to be a more reliable indicator for determining wage rates based on the cost of living. See *Cook County Sheriff & County of Cook and AFSCME Council 31, L-MA-09-003, 004, 005 and 006 (2010)* at 25:

With respect to the CPI, the [Federal Reserve Bank of Philadelphia's] Survey distinguishes between "Headline CPI" and "Core CPI" — the difference being that "Headline CPI" includes forecasts concerning prices in more volatile areas such as energy and food, while "Core CPI" does not. Because employees have to pay for energy and food, it appears that Headline CPI is more relevant for this discussion.

two years of the Agreement cannot, in my opinion, have a determinative impact.

But the County's problem here is the freeze for the six-month period after December 1, 2010 which the County attempted to put in place with its first year offer of 2% effective June 1, 2011 (which, in reality is a 1% increase for that contract year). In terms of the cost-of-living factor, that disparity — which places its first year offer 2.22% below the actual CPI for the first year of the Agreement — just drags the County's offer down for comparison purposes.

The cost-of-living factor therefore favors the FOP's wage offer.

In terms of external comparability, Section 14(h)(4)(B) looks to “[c]omparison 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”. And the parties discussed those comparisons.¹²

Prior to the Great Recession in 2008, external comparability was *the* driving factor under the IPLRA for setting contract terms for those classifications of public employees and I was a big proponent for the use of external comparables to resolve interest arbitration disputes under the IPLRA.¹³ However,

¹² FOP Brief at 10-11; County Brief at 9.

¹³ See Benn, “A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act,” Illinois Public Employee Relations Report, Vol. 15, No. 4 (Autumn 1998) at 6, note 4 [emphasis added]:

... The parties in these proceedings often choose to give comparability the most attention. See Peter Feuille, “Compulsory Interest Arbitration Comes to Illinois,” Illinois Public Employee Relations Report, Spring, 1986 at 2 (“Based on what has happened in other states, most of the parties' supporting evidence will fall under the comparability, ability to pay, and cost of living criteria. ... [o]f these three, comparability usually is the most important.”).

See also, my awards in *Village of Streamwood and Laborers International Union of North America*, S-MA-89-89 (1989); *City of Springfield and Policemen's Benevolent and Protective As-*
[footnote continued]

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with the shock to the economy inflicted by the Great Recession, after 2008 that approach had to change because it was no longer appropriate to compare public employers with contracts negotiated prior to the crash with those being settled after the crash. Nor did it make sense to make comparisons amongst public employers whose experiences in the Great Recession may have been completely different — some doing far worse than others. Until the economy recovered, external comparability, in my mind, no longer yielded “apples to apples” comparisons as it did before the crash and the focus for resolving these kinds of disputes turned more towards the state of the economy as better reflected by the cost-of-living.¹⁴

[continuation of footnote]

sociation, Unit No. 5, S-MA-89-74 (1990); City of Countryside and Illinois Fraternal Order of Police Labor Council, S-MA-92-155 (1994); City of Naperville and Illinois Fraternal Order of Police Labor Council, S-MA-92-98 (1994); Village of Libertyville and Illinois Fraternal Order of Police Labor Council, S-MA-93-148 (1995); Village of Algonquin and Metropolitan Alliance of Police, S-MA-95-85 (1996); County of Will/Will County Sheriff and MAP Chapter #123, S-MA-00-123 (2002) and County of Winnebago and Sheriff of Winnebago County and Illinois Fraternal Order of Police Labor Council, S-MA-00-285 (2002), where issues were decided by my placing heavy emphasis on comparable communities.

Interest arbitration awards under the IPLRA can be found at the Illinois Labor Relations Board's website:

<http://www.state.il.us/ilrb/subsections/arbitration/IntArbAwardSummary.htm>

¹⁴ See my award in *North Maine Fire Protection District and North Maine Firefighters Association* (September 8, 2009) at 12-13:

Citation is not necessary to observe that, in the public sector, the battered economy has caused loss of revenue streams to public employers resulting from loss of tax revenues as consumers cut back on spending or purchasing homes and there are layoffs, mid-term concession bargaining and give backs (such as unpaid furlough days which are effective wage decreases). But the point here is that it still just does not make sense at this time to make wage and benefit determinations in this economy by giving great weight to comparisons with collective bargaining agreements which were negotiated in other fire protection districts at a time when the economy was in much better condition than it is now. There is no doubt that comparability will regain its importance as other contracts are negotiated (or terms are imposed through the interest arbitration process) in the period after the drastic economic downturn again allowing for “apples to apples” comparisons. And it may well be that comparability will return with a vengeance as some public employers make it through this period with higher wage rates which push other employee groups further behind in the comparisons, leaving open the possibility of very high catch up wage and benefit increases down the line. But although the recovery will hopefully come sooner

[footnote continued]

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I acknowledge that some of my arbitrator colleagues differ with this approach, while others agree. Here, I am of the opinion that I just cannot consider comparable communities in this case. This Agreement dates back to December 1, 2010 — a time when the country was in the depths of the Great Recession. Communities fared differently during that period. Those who did better should not be compared to those who did not do as well. Further, as the County correctly points out about the Union's comparability evidence, "[b]ecause several of these jurisdictions have not determined wage increases for the years of the McHenry County Contract, it is difficult to truly compare these counties with McHenry County."¹⁵ The key word in Section 14(h) is that the factors are to be chosen for use "as applicable". Given the span of this Agreement and for this case, I do not find that comparing other communities to the County to be an "applicable" factor for use. I therefore can give that factor no weight.

Of late and until the economy sufficiently turns around where interest arbitrators and the parties can again make "apples to apples" comparisons for comparability purposes, my focus has been on the best indicator of how the economy is doing — *i.e.*, the cost-of-living factor. That factor drives this case:

[continuation of footnote]

than later, that time has not yet arrived. Therefore, at present, I just cannot give comparability the kind of weight that it has received in past years.

Instead of relying upon comparables, in *ISP [State of Illinois Department of Central Management Services (Illinois State Police) and IBT Local 726, S-MA-08-262 (2009)]* and *Boone County [County of Boone and Boone County Sheriff and Illinois Fraternal Order of Police Labor Council, S-MA-08-010 [025] (2009)]*, I focused on what I considered more relevant considerations reflective of the present state of the economy as allowed by Section 14(h) of the Act — specifically, the cost of living (Section 14(h)(5)) as shown by the Consumer Price Index ("CPI").

¹⁵ County Brief at 8. This Agreement will extend through November 30, 2014. The FOP submitted contracts from the Sheriffs offices in Winnebago, Will, Lake, Kane and DuPage Counties. FOP Exhs. CD. Only one of the contracts — DuPage County Sheriff and MAP — fully overlapped the last year of this Agreement (expiring November 30, 2015). For comparison purposes, there are just too many open gaps for the out years of the Agreement.

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Finally, while external comparability is, in my opinion, not a determining factor in this case, *internal* comparability can be looked at.

The parties have a contract in Unit #2 (corrections officers) covering the period December 1, 2011 through November 30, 2014.¹⁶ The wage schedule in that contract is as follows:¹⁷

Year 1 [effective 12/1/11]	2.00%
Year 2 [effective 12/1/12]	2.75%
Year 3 [effective 12/1/13]	3.00%

Those increases match the last three years of the County's wage offer in this case.

The fact that a sister Section 14 unit of the same employer represented by the same union received a pattern of wage increases matching the last three years of the County's offer in this case would, under ordinary circumstances, carry weight. But the present Unit #2 Contract does not cover the period December 1, 2010 through November 30, 2011. And as shown by the cost-of-living analysis for that period discussed *supra*, the County's offer of an effective 1% increase for the first year of the Agreement (2%, but not effective until June 1, 2011) puts the County's offer 2.22% below the CPI for that period while the FOP's first year offer is 1.22% below the CPI for that period. On balance, the disparity in that first year where the County sought an effective six month wage freeze just dragged its offer too far down even when the Unit #2 Contract is considered, which matches the County's offer in this case for the final three years of the Agreement.

¹⁶ FOP Exhs. at Tab 30.

¹⁷ *Id.* at Exhibit 1, p. 54.

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However, there is another reason to not give determinative weight to the wage schedule in the Unit #2 Contract. As the FOP points out, the predecessor Unit #2 Contract provided a substantial increase for the period December 1, 2010 through November 30, 2011 — which overlaps the first year of this Agreement.¹⁸ From the wage schedule provided in the predecessor Unit #2 Contract, the following percentage increases were granted effective December 1, 2010:¹⁹

	12/1/09	12/1/10	[Percentage Increase]
Start	20.33	21.30	4.77%
Year 1	21.09	21.99	4.27%
Year 2	21.57	22.49	4.26%
Year 3	22.32	23.27	4.26%
Year 4	23.05	24.03	4.25%
Year 5	23.85	24.86	4.23%
Year 6	24.57	25.74	4.76%
Year 7	25.17	26.36	4.73%
Year 8	27.14	28.42	4.72%
Year 9	29.34	30.73	4.74%
Year 10	34.44	35.90	4.24%

Start	42,286.51	44,295.12	4.75%
Year 10	71,626.73	74,670.86	4.25%

Thus, for the period December 1, 2010 through November 30, 2011, employees under the Unit #2 Contract in Corrections received well over 4% wage increases while for the same period, the County's offer to the employees in this case is effectively 1%. Granted, the predecessor Unit #2 Contract was signed in 2007, prior to the onset of the Great Recession — which really underscores my point about the need to temporarily tilt away from placing so much emphasis

¹⁸ FOP Brief at 14; Union Exhs. at Tab 29, p. 46.

¹⁹ Union Exhs. at Tab 29, p. 46.

on comparables (here, even for internal comparables) until the economy recovers. But for purposes of this case, for wages, I just cannot give determinative weight to the Unit #2 Contract to change the result where the County's offer in the first year is so far below the actual data for the cost-of-living and so far below what the employees under the Unit #2 Contract received for that same period.

The FOP's wage offer is therefore selected. Wages shall be retroactive to the commencement of the Agreement — *i.e.*, December 1, 2010.

B. Insurance

At the outset of the hearing, the parties identified insurance as a disputed issue.²⁰

At the hearing, the following exchange occurred:

ARBITRATOR BENN: So what is the real difference between the two insurance proposals from your perspective?

MR. KELLY: I don't think there is any. I think they're exactly the same. I think -- at least as I understand the FOP's argument -- their argument is that they're willing to give those changes, but *quid pro quo* for additional wages

In its brief, the County asserted “[t]he Union has essentially agreed to the changes as proposed by the Employer.”²¹ In its brief, the FOP states:²²

The Union accepts the Employers' final offer on Insurance which was a significant and valuable concession. The Union views this concession as a *quid pro quo* for its final offer on wages.

²⁰ See FOP Exhs. at Tab 2; County Exhs. at Tab 1.

²¹ County Brief at 4.

²² FOP Brief at 6, footnote 5.

As discussed *supra* at IV(A), I have adopted the FOP's final offer on wages. Whether the FOP's offer on insurance was a "*quid pro quo*" or something else is no longer relevant. The FOP has agreed with the County's offer on insurance. Insurance is no longer in dispute. The County's offer on insurance is therefore adopted.

C. Compensatory Time Use

In relevant part, Section 23.8 of the 2006-2010 Agreement provides:²³

Section 8. Compensatory Time Use

Compensatory time may be accrued to two hundred twenty (220) hours and carried over from year-to-year to a maximum of one hundred sixty (160) hours. ...

The County proposes to amend Section 23.8 as follows:²⁴

Section 8. Compensatory Time Use

Compensatory time may be accrued to two hundred twenty (220) hours and carried over from year-to-year to a maximum of one hundred ~~sixty~~ fifty (150) hours effective 12-1-2011, one hundred-forty (140) hours effective contract year beginning 12-1-2012 and one hundred-twenty (120) hours effective 12-1-2013.

Each year compensatory time balances must be reduced to a maximum of one hundred-fifty (150) hours effective 12-1-2011, one hundred-forty (140) hours effective contract year beginning 12-1-2012 and one hundred-twenty (120) hours effective 12-1-2013 and will be paid-out in November of each year (upon request compensatory time pay-out can be paid over the two (2) pay periods in November).

The FOP proposes to amend Section 23.8 as follows:²⁵

²³ FOP Exhs. at Tab 6.

²⁴ County Exhs. at Tab 1 [added language underscored, modified language stricken through].

²⁵ FOP Exhs. at Tab 2 [added language underscored].

Section 8. Compensatory Time Use

Compensatory time may be accrued to two hundred twenty (220) hours and carried over from year-to-year to a maximum of one hundred and sixty (160) hours. Effective December 1, 2012, the year-to-year maximum carry over will change from one hundred and sixty to one hundred and forty (140). Effective December 1, 2013, the year-to-year maximum carry over will change from one hundred and forty (140) to one hundred and thirty (130).

According to the County, the changes it seeks will not have a significant impact on the bargaining unit:²⁶

... [F]or the year ending November 30, 2010, twenty-two deputies or about 27% of the bargaining unit, had more than one hundred twenty-five (125) hours of compensatory time available for carryover as of November 30, 2010. The rest of the deputies, sixty (60) in number, had less than 125 hours. ... This clearly shows that the majority of the bargaining unit will not be affected by the Employer proposal to reduce the carryover limit to one hundred twenty (120) hours by the end of the contract.

Thus, the FOP is willing to reduce the carryover — but not quite to the extent sought by the County.

While internal comparability was not helpful for determining wages, it is helpful on the compensatory time use issue.

The FOP is not taking a position that there should be no change in the compensatory time use provisions of the Agreement. The FOP is agreeing to modify the provisions, but just not to the extent requested by the County.

²⁶ County Brief at 6. The County's rationale for needing the reduction "... is the accounting requirement that accrued compensatory time must be shown as a liability on the County's books." *Id.*

This is also an economic issue, which requires the selection of one party's final offer. That being the case, I have to choose which offer better fits the statutory factors.

Part of the answer comes from the best internal comparable available — the 2011-2014 Correctional Officers Unit #2 Contract. That Contract provides, in relevant part:²⁷

Section 23.8. Compensatory Time Use

Compensatory time may be accrued and carried over from year to year to a maximum of one hundred and eighty (180) hours and carried over from year to year to a maximum of one hundred and forty (140) hours effective December 1, 2012; and one hundred and twenty (120) hours effective December 1, 2013.

Each year compensatory time balances must be reduced to one hundred and forty (140) hours effective December 1, 2012; and one hundred and twenty (120) hours effective December 1, 2013 and will be paid-out in November of each year (upon request, compensatory time pay-out can be paid over the two (2) pay periods in November).

The end result for the reduction of the carryover in the Unit #2 Contract is the County's proposal in this case as well. Internal comparability therefore favors the County's proposal.

But there is another factor which also favors the County's proposal. Section 14(h)(6) looks to "[t]he 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."

²⁷ FOP Exhs. at Tab 30.

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For purposes of this case, this factor requires a look at what the employees will *actually* receive over the duration of the Agreement — *i.e.*, *real* money in their pockets as the FOP's achieved wage increases take effect. Examples will make the point.

In terms of simple percentage increases, the wage increases ordered under this award as sought by the FOP add up to 10.75%.²⁸ However, unless they begin working in the last year of the Agreement, no employees will get 10.75% — they will get more.

The FOP produced a wage schedule for deputies consistent with its wage offer which I have adopted:²⁹

	12/1/09	2% 12/1/10	2.75% 12/1/11	3% 12/1/12	3% 12/1/13
Start	24.64	25.13	25.82	26.60	27.40
Year 1	25.63	26.14	26.86	27.67	28.50
Year 2	26.65	27.18	27.93	28.77	29.63
Year 3	27.71	28.26	29.04	29.91	30.81
Year 4	28.82	29.40	30.20	31.11	32.04
Year 5	30.26	30.87	31.71	32.67	33.65
Year 6	31.77	32.41	33.30	34.30	35.32
Year 7	33.36	34.03	34.96	36.01	37.09
Year 8	35.03	35.73	36.71	37.81	38.95
Year 9	37.50	38.25	39.30	40.48	41.70

The first reason employees get more than the awarded 10.75% is because wage increases, like savings accounts, compound as the percentage increases for later years in the Agreement are added to wage rates which are themselves the product of percentage increases added to former rates.

Using the above schedule, for example, take an employee who is at the top step when the predecessor Agreement expired who earned \$37.50 per hour

²⁸ See discussion *supra* at IV(A) (2% + 2.75% + 3% + 3% = 10.75%)

²⁹ FOP Exhs. at Tab 15.

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as of 12/1/09 (the last increase under the predecessor Agreement). With the FOP's wage offer adopted in this case of 10.75%, that employee — who will make no step movements — moves from \$37.50 to \$41.70 over the life of this Agreement. That is an increase of 11.2% due to compounding.³⁰

The second reason that employees get more than the 10.75% is the operation of step movements over the life of the Agreement. Because this is a four-year Agreement with yearly step movements and depending where an employee starts on the wage schedule at the commencement of the Agreement, employees can make between 0 and 4 step movements over the life of the Agreement. Therefore, not only do the employees get the percentage increase each year, they get the increase attributed to any step movements — which the FOP states is 4.0%.³¹

In terms of *real* money to the employees, the result will look like this:

Step Movements 12/1/10 to 11/30/14	Number of Step Movements	Rate as of 11/30/10 (Predecessor Agreement)	Rate as of 11/30/14 (New Agreement)	Real Percentage Increase
Start - Year 4	4	24.64	32.04	30.03%
Year 1 - Year 5	4	25.63	33.65	31.29%
Year 2 - Year 6	4	26.65	35.32	32.53%
Year 3 - Year 7	4	27.71	37.09	33.85%
Year 4 - Year 8	4	28.82	38.95	35.15%
Year 5 - Year 9	4	30.26	41.70	37.80%
Year 6 - Year 9	3	31.77	41.70	31.25%
Year 7 - Year 9	2	33.36	41.70	25.00%
Year 8 - Year 9	1	35.03	41.70	19.04%
Year 9 - Year 9	0	37.50	41.70	11.20%

³⁰ $41.70 - 37.50 = 4.20$. $4.20/37.50 = 11.2\%$.

³¹ FOP Brief at 13 ("Here this is a nine step matrix separated by 4% between each step.").

Based upon the seniority list presented, a substantial number of employees will be eligible for multiple step movements over the duration of the Agreement.³²

The FOP argues that “[s]tep movement is not new money” these percentages have been previously negotiated.”³³ The FOP is correct. But the impact of the step movements is *not* being used here to justify a wage increase. The impact of the actual step movements on the bargaining unit is being used to decide the compensatory time use issue and more specifically, the application of Section 14(h)(6) which looks to “[t]he *overall* compensation presently received by the employees, including *direct* wage compensation ...” [emphasis added].

I have adopted the FOP’s wage proposal which: (1) yields a simple interest increase of 10.75% over four years; (2) which then compounds to 11.2% (if there are no step movements); and (3) if step movements are considered for “overall compensation ... including direct wage compensation”, *actually* increases employees’ salaries between 11.2% and 37.8% over the duration of the Agreement. That, coupled with the internal comparable in Unit #2 on compensatory time use, tips the scale in favor of the County’s offer.

The County’s offer on compensatory time use is therefore adopted.³⁴

V. AWARD

1. The FOP’s wage offer is adopted, retroactive to the commencement of the Agreement.

³² FOP Exhs. at Tab. 7. According to the FOP, “[o]ut of the 78 employees in this bargaining unit, 42 are through the steps.” FOP Brief at 13. That means 36 will receive at least one step movement and possibly up to four over the duration of the Agreement.

³³ FOP Brief at 12.

³⁴ Given that the target dates for reductions are not all in the future, the parties will have to work out any issues with respect to language and implementation. If disputes arise and with the consent of the parties, I will retain jurisdiction to resolve those disputes. See V(5), *infra*.

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2. The County's insurance offer is adopted.
3. The County's compensatory time use offer is adopted.
4. All prior tentative agreements are incorporated into this award.
5. The matter is remanded to the parties for the drafting of language consistent with the provisions of this award. With the consent of the parties, I will retain jurisdiction to resolve any disputes which may arise concerning the drafting of that language.



Edwin H. Benn
Arbitrator

Dated: December 27, 2012