

**ILLINOIS LABOR RELATIONS BOARD**  
**BEFORE**  
**BRIAN E. REYNOLDS**  
**ARBITRATOR**

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**In the matter of the Interest Arbitration  
between**

**COUNTY OF DeWITT and the  
DeWITT COUNTY SHERIFF,**

**Employer**

**and**

**ILLINOIS FRATERNAL ORDER OF  
POLICE LABOR COUNCIL,**

**Union**

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**ILRB Case No. S-MA-11-055**

**Hearing: March 1, 2012**

**Award: June 22, 2012**

**OPINION AND AWARD**

**APPEARANCES:**

**For the Union:**

James Daniels, Attorney  
IFOP Labor Council  
974 Clocktower Drive  
Springfield, IL 62704

**For the Employer:**

Nick A. Cetwinski  
Attorney at Law  
9032 Northfield Road  
Woodridge, IL 60517

**PROCEEDINGS**

This is an interest arbitration under Section 14 of the Illinois Public Relations Act (Act) to resolve a dispute arising under the terms of the collective bargaining agreements (Agreement) between the County of DeWitt and the DeWitt County Sheriff (Employer or DeWitt) and the Illinois Fraternal Order of Police Labor Council (FOP or Union) for the following bargaining units of the Employer's employees: Sworn Officers

(Unit A), and Corrections Unit (Unit C).<sup>1</sup> The two Agreements commenced on December 1, 2009 and expired on November 30, 2010. The current interest arbitration is the result of a bargaining impasse over contract provisions involving Wages, Sick Leave Buyback, and Holiday Payment Procedure.

The parties selected the undersigned to serve as the neutral arbitrator for the interest arbitration through the procedures administered by the Illinois Labor Relations Board (ILRB). The parties waived the requirement of a tri-partite panel and stipulated that the proceeding would be governed by the provisions of the Act.<sup>2</sup> A hearing was held on March 1, 2012 at the Employer's offices at which time the parties were afforded an opportunity to present testimony, exhibits, and other evidence relevant to the dispute. During the hearing, the parties submitted stipulations on the disputed issues. The parties timely filed briefs by April 30, 2012.

## **RELEVANT CONTRACTUAL PROVISIONS**

Section 12.8 of the Agreement provides the current Sick Leave Buyback procedure:

Covered employees shall be eligible to "cash-in" not more than forty-eight (48) hours of accumulated sick leave, which shall be deducted from their total sick leave accrual bank for the fiscal year, such option shall be available to the employee once each year, to be exercised during the first payroll period in December.

Section 10.4 of the Agreement provides the current Holiday Payment procedure:

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<sup>1</sup> Collectively, I will refer to both bargaining units as either "Units" or "Unit." This interest arbitration does not involve Unit B, the Telecommunications Unit.

<sup>2</sup> These and other stipulations are contained in a document signed by both parties, entitled: "Pre-Interest Arbitration Hearing Stipulation by the Parties." that was presented into evidence by both parties in Union Exhibit #1 and Employer Exhibit #1. I will refer to the document as "Stipulation By the Parties."

Employees not working on a holiday shall receive their regular rate of pay for that holiday. Employees working on a holiday shall receive their regular rate of pay for that holiday, in addition to their appropriate overtime rate of pay for hours actually worked on that holiday. Employees regularly scheduled off on the following holiday(s) shall be entitled to triple time their regular rate of pay (as opposed to their overtime rate plus regular rate of pay) for all hours actually worked on such holiday(s): Thanksgiving, Christmas eve and/or Christmas Day.

## **ISSUES & FINAL OFFERS**

The parties stipulated to the following issues and submitted the following final offers:

### **Issue No. 1: Sick Leave**

Provide for a minimum sick leave hours in employee's sick leave bank prior to allowing for annual "buy back"

**FOP Final Offer:** maintain status quo

**DeWitt Final Offer:** prior to exercising their 48 hour annual buyback, must maintain a minimum ninety-six hours (12 8-hours days) in sick leave bank

### **Issue No. 2: Holiday Payment**

Provide for an annual lump sum payment of "holidays"

**FOP Final Offer:** maintain status quo

**DeWitt Final Offer:** single lump sum payment for present 13 recognized Holidays (at 8 hour per day rate) with employee required to use time of record if scheduled to work Holiday and wishes to take off, as "tentatively agreed to" on May 9, 2011 between the parties.

### **Issue No. 3: Wages/Duration**

Provide for three (3) annual wage schedule increases over a three year period as opposed to five (5) wage schedule increases over a three (3) year period (every six months after first year)

**FOP Final Offer:** provide for a 2.0% wage schedule increase for Dec. 1, 2010 through November 30, 2011, followed by 1.5% wage increases every six months (**semi-annual**) starting Dec. 1, 2011 through Nov. 30, 2013, with June's commencing on the first payroll period of the month<sup>3</sup>

**DeWitt Final Offer:** provide for 1.5% increases **annually** over three (3) year duration: Dec. 1, 2010; Dec. 1, 2011; Dec. 1, 2012

## STATUTORY FACTORS

Section 14(h) of the Act sets forth the following factors upon which the Arbitrator is to base his findings, opinions and order:

Where there is no agreement between the parties, or where there is an agreement, but the parties have begun negotiations for a new agreement or amendment of the existing agreement, and wage rates other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinion and order upon the following factors, as applicable:

- (1) The lawful authority of the Employer;
- (2) Stipulations of the parties;
- (3) The interest 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 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.

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<sup>3</sup> The FOP originally had proposed the June raises to occur on June 1 of 2012 and June 1, 2013. At hearing, the FOP agreed to the Employer's suggestion that it adapt its offer to "the first payroll period in June." *Transcript, p.11*

- (5) The average consumer prices for goods and, 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 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 private employment.

Section 14(g) of the Act sets forth the standard for selection of offers made by the parties:

...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). The findings, opinions and order as to all other issues shall be based on the applicable factors presented in subsection (h).

In this case, the issues of Sick Leave, Holiday Pay and Wages are economic and, thus, I am restricted to adopting a final offer from one of the parties.

## **EXTERNAL COMPARABLES**

The parties stipulated to the following Illinois counties as the comparable communities: Ford, Mason, Menard, Moultrie and Piatt.

## **BACKGROUND**

The Union has represented the employees in both the Sworn Officers Unit and the Corrections Unit for over 20 years.<sup>4</sup> Currently there are 13 employees in the Sworn Officers Unit and 15 employees in the Corrections Unit

The parties stipulated to the following facts:

1. Throughout the history of collective bargaining between the parties, there has only been one Labor Agreement for both bargaining units involved herein that provided for a 1.5% wage increase every six months, that being the presently expired Labor Agreements: 1.5% retroactive to December 1, 2009 followed by another 1.5% increase effective June 1, 2010.
2. The Employer waives and does not take issue over the issue of "affordability."
3. The parties have reached "tentative agreement" to items listed as "Tentative Agreements (Corrections)" and "Tentative Agreements (Patrol)."<sup>5</sup>

## **POSITION OF THE PARTIES**

### **Union Position**

#### ***Sick Leave Buyback***

The Union wants to maintain the current language of Section 12.8 of the current Agreement that provides that employees shall be eligible to "cash-in" not more than

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<sup>4</sup> I will refer to the members of the Sworn Officers Unit as "deputies" and the members of the Corrections Unit as "COs."

<sup>5</sup> See "Stipulation By the Parties."

forty-eight (48) hours of accumulated sick leave, to be exercised once a year during the first payroll period in December.

The Employer would propose to change this provision so that Unit members would need a minimum of ninety-six hours in their sick bank leave. Traditionally, the party wanting to change the status quo must show a compelling need for the change, that the current system is broken, that the proposed change would correct it, and that the other party rejected a benefit of equal value in exchange for the breakthrough. None of these factors are present in this case.

All Unit members have plenty of sick time and none have used or sold all of his sick days. The Employer's only defense for its proposal is that they want to make sure employees have plenty of sick time available so they don't go without income during long periods of illness. Yet, there is no evidence that there is any problem - Unit members who cash in sick time may not be spending a lot and may even be investing their extra cash. The Employer's proposal is a solution in search of a problem. Additionally, the Employer has not even offered any quid pro quo for their breakthrough proposal. Thus, the Employer has not come close to meeting its high burden for this breakthrough.

### ***Holiday Payment***

Similarly, the Employer has not met its burden to support its request to change the status quo in holiday payment procedure. The Employer proposed a lump-sum payment of 104 straight time hours up front, at the beginning of the year. If employees

want to take holidays off, they then must use vacation time. If they leave service, they have to pay the proportional amount back to the Employer.

The Employer's proposal is not supported by the comparables since only one other county uses a lump sum holiday payment. The Employer has not provided support for this change in procedure; there is no claim that the existing system is dysfunctional or unduly burdensome, nor is there any quid pro quo offered. Also, the Employer's paternal explanation behind its sick-leave proposal, curbing employees' spendthrift ways, is absent here, where the proposal has the opposite effect.

While the COs did TA this proposal, they have since thought better of it in light of its unnecessary nature and complete lack of justification and the fact that the Deputies and COs should have the same holiday benefits. Since there is a complete lack of justification for the Employer's change, the arbitrator should affirm the status quo.

### ***Wages***

The Union maintains that its offer of biannual wage increases is consistent with past practice and tailored to benefit both members' and management's needs. While the parties have generally agreed to once-per-year annual wage increases, the last wage increase negotiated by the parties was a 1.5% December 2009 increase followed by a 1.5% June 2010 increase. Thus the past practice is mixed as to wage structure.

By bifurcating the annual 3% wage increase for the 2nd and 3rd year of the Agreement to 1.5% each December and June, the Unit member will see a full 3% increase in salary by the end of the fiscal year, while the Employer will actually only have to pay about 75% of this 3% increase each year. Thus the Union proposal protects

members' spending power by keeping their increases up to the cost of living, while preserving the Employer's finite resources.

The Union's wage proposal also is more consistent with the cost of living factors. From December 2010 through December 2011, the Unit members suffered a 2.88% loss to the cost of living. The latest CPI-U data from the Bureau of Labor Statistics show that the cost of living for the sixteen months between December 2010 and March 2012 was 4.6%. The Union's modest incremental wage increases are more reasonable considering the cost of living and also considering the external comparables' wage increases.

For FY12 through FY15, the comparable counties have given average annual wage increases of 2.3% for deputies and 2.75% for the CO's. The Union's offer, which averages 2.66% per year, is much closer to the comparables' average than 1.5%, especially considering that the Union's biannual wage structure would lessen the burden of that amount on the Employer. This is especially true considering that Piatt, Mason and Ford each have at least 24 seniority steps while the DeWitt Unit members have only 12 steps. Also, while Moultrie County members accepted a 0% increase in FY11, this was in exchange for getting 9 additional holidays off and other benefits.

The average annual increase for FY11 through FY13 in the comparables is 7.01% for deputies and 7.02% for deputies, The Union's proposal of about 8% for this period is closer to the comparables' average than the Employer's 4.5% increase.

Under the Employer's offer, the deputies' relative ranking in the comparables will decrease between 2% and 3.5%, while the COs will suffer a similar decrease. Also, the

DeWitt Unit members pay more for health insurance than the comparables, which should be factored in evaluating the Union's wage proposal.

The Employer points out that the Employer's Highway Department employees have accepted a similar wage offer. Such internal comparables are given scant consideration by other interest arbitrators unless "lockstep" historical parity has been demonstrated. No historical lockstep parity exists here.

The arbitrator should also give scant consideration to the Employer's reliance on the impact of seniority step increases in asserting the reasonableness of its wage offer. However, such an argument ignores the purpose of seniority step increase which are not to be cost of living increases, and also would punish the more senior Unit employees who have more step increases.

The Employer does not assert an inability to pay to support its low-ball proposal. This makes sense considering its ending fund balance is \$3.5 million or a 30% increase since 2006 and the equalized assessed value of County taxable property increased 44% in the same period. The Employer's main arguments for its low-ball proposal is that it can't explain such high raises to the County electorate and that the County should lower their relative rankings in the comparables by giving smaller raises. These are not legitimate reasons to withhold fair pay increases from employees who perform difficult work under dangerous conditions.

## **Employer Position**

### ***Sick Leave Buyback***

The Employer's proposal to require a minimum of 96 hours prior to cashing in sick leave is premised on a change of events. Originally, the sick leave cash in process was approved to give employees incentive to curb excessive sick leave abuse. The sick leave abuse and subsequent overtime costs are no longer a problem.

Currently, 47% of COs and 61% of deputies have used or cashed in 80% of their total accumulated sick leave. The current program has allowed employees to cash in sick leave without maintaining a minimum level of sick time to use in the event of an extended illness. As to comparables, the only comparable who has a cash in system requires a minimum of 120 days or 960 hours sick leave bank. Under the standards for making a change in the status quo, the Employer has shown that: the old system is not working in providing minimum protection should they experience an extended sick leave period; the old system works a hardship in that it presents the specter of employees on sick leave without economic protection; and the Union has resisted efforts to address this problem at the table.

### ***Holiday Payment***

The CO unit has already tentatively agreed to this change as two COs and FOP representative Jerry Lieb all initialed the agreement on May 9, 2011. These representatives had the apparent authority to negotiate so, under well established law, the FOP should be bound by the agreements reached at the table.

Two comparable counties, Mason and Moultrie, use some form of lump sum payment. In view of this and the fact the Employer's proposal does not reduce present economic benefits, the Employer's offer should prevail.

### ***Wages***

The parties' past history supports the Employer's proposal. In 26 years of negotiations, only once have the parties agreed to use semi-annual increases as proposed by the Union rather than annual increases, and that was only because they reached agreement on a one year contract six months into it.

Internally, The Telecommunications Unit employees received a single increase of 1.5% for FY2011, December 1, 2010 through November 30, 2011, not a biannual increase as proposed by the FOP. The Highway Department Unit agreed to annual increases of 1.5% for FY11, FY12 and FY13. These support the Employer's proposal.

None of the external comparables utilize semi-annual wage increases. The average wage increases for the comparables was 1.8% for FY11 and 2.25% for FY12.

There is no need for DeWitt to catch up to the other counties. DeWitt ranks 1st or second of the six comparable counties in 9 of the ten levels of its CO wage scale, and in the top 3 at all steps of its deputies' wage scale. Thus, there is no need for the County to catch up.

While the Employer is not claiming an inability to pay, its proposal is clearly the more 'sensible' of the two proposals. In this economic age, saving jobs is top priority. Wage increases while private sector neighbors are struggling to stay afloat and out of

foreclosure, should be a distant concern. By the end of the contract term, the Union's proposal would increase each wage step by 8.3% while the Employer's proposal increases each step 4.6%.

At the end of the proposed 3 year term, the County will be closer to the comparable averages under the County's proposal than the Union's. Under the Employer's proposal, the Unit's wages will still exceed the average by 3%-6% along the early steps and 9% and 10% at the 20 year and 25 year step. The FOP proposal would exceed the averages by 6%-9% along the early steps and 12.6% and 14.4% at the 20 year and 25 year steps.

The Employer realizes that a major factor in determining wage increases is the need to 'catch up' to maintain a rough average among the comparables. However, when faced with wages already at the top of the comparables, with both proposals maintaining this top standing, then the sensible approach is to adopt the least costly of the proposals.

## **DISCUSSION AND ANALYSIS**

### **Sick Leave Buyback**

Section 12.8 of the current Agreement provides the current sick-leave buyback:

Covered employees shall be eligible to "cash-in" not more than forty-eight (48) hours of accumulated sick leave, which shall be deducted from their total sick leave accrual bank for the fiscal year, such option shall be available to the employee once each year, to be exercised during the first payroll period in December.

In *Will County & AFSCME* (S-MA-88-9, 1998) Arbitrator Harvey Nathan developed a three test standard to apply when a party seeks to change an agreed to status quo through interest arbitration. Under Nathan's standard, the party seeking the change has the burden to demonstrate that:

- 1) The old system or procedure has not worked as anticipated when originally agreed to;
- 2) The existing system or procedure has created operational hardships for the employer (or equitable due process problems for the union); and
- 3) The party seeking to maintain the status quo has resisted attempts to address these problems.

Arbitrator Raymond McAlpin delineated a similar standard when evaluating a change to the status quo. In *County of Cook and FOP* (L-MA-96-009, 1998) McAlpin stated that a party desiring a change in the status quo has the extra burden of proof to show that:

- 1) There is a proven need for the change;
- 2) The proposal meets the identified need without imposing an undue hardship on the other party; and
- 3) There has been a quid pro quo offered to the other party of sufficient value to buy out the change or that comparable groups were able to achieve this provision.

I find the standards enunciated above to be sound and will utilize them in analyzing the two issues involving requests to change the status quo.

The Employer has not provided evidence that meets the requirements under either the Nathan or McAlpin standards. Under the Nathan standards, the employer must show that the procedure has not worked as anticipated and has caused operational hardships. Yet, the Employer admits it has worked. It asserts that the 'buyback' procedure was initiated to curb excessive sick leave abuse and subsequent overtime costs. The Employer states that this is no longer a problem. Yet the Employer

wants to change this procedure, which has been effective in meeting its goals, to remedy the alleged resulting problem of inadequate sick time banks for Unit employees.

However, the Employer has not provided evidence that shows a "proven need for the change" as required under the McAlpin standards. The Employer's only evidentiary support is the statistic that 47% of deputies and 61% of deputies have used or cashed in 80% of their accumulated sick leave. Standing alone, this statistic does not establish a problem. I don't know if this is an unusually small amount of accumulated sick leave for an unusually large number of employees. I also don't know if this is a result of having the sick leave buyback procedure without a minimum bank requirement. Is this worse than before the buyback procedure was initiated? I don't know. I do know that the Employer has not pointed out any instances where an employee was caught short of sick leave due to the cash-in of sick leave. In other words, there is no current problem, just a prospective problem.

The Employer's proposal of a minimum sick bank prior to cash-in is reasonable and consistent with comparables who also have a buy-back procedure. However, adding it now, after the procedure has been working and meeting its stated goals for years, can only be done in reaction to an identifiable problem. Since there is none, I find that the Union's proposal to retain the status quo is the more appropriate proposal.

### **Holiday Payment**

Similarly, the Union wishes to retain the current holiday payment procedure, while the Employer wishes to change to an annual up-front payment for all holidays. The Employer has not provided any evidence supporting any of the factors in the Nathan and McAlpin standards for making a change in the status quo. Its supporting

evidence is that two comparable counties use lump sum payment and its proposal does not reduce any economic benefits to the employees. While this evidence might be sufficient to find for the Employer if this were an initial proposal, it is insufficient evidence to support a change in a long standing procedure.<sup>6</sup>

However, the Employer has one strong argument in support of its proposal. The bargaining representatives for the Union's CO Unit tentatively agreed (TA) to the proposal at the parties' May 9, 2011 bargaining session. There is no question of the authority of the Union's signees. The Employer correctly points out that most precedent consider such tentative agreements to be binding. However, the Union's agents for the deputies' Unit negotiations have not tentatively agreed to any such provision.

Thus, I am faced with a dilemma. The parties have requested that I maintain the same benefits for both Units.<sup>7</sup> In order to accomplish this goal, I must either bind the deputies Unit to a TA that it was not part of, or release the CO unit from a TA it made. Neither is an attractive option.

As stated previously, the Employer's proposal does not meet any of the criteria necessary to demonstrate a need to change the status quo. I am extremely reluctant to impose on the deputies Unit a contract term that is not one that an interest arbitrator would impose. In my opinion, the lesser harm is to release the CO unit from its TA, and

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<sup>6</sup> The Employer states that its proposal involves "streamlining" the administration of holiday pay. However, there is no evidence of why the change is needed, how it is beneficial to the County, or even how it actually is a "streamlining."

<sup>7</sup> The Employer's attorney, when discussing the holiday payment proposal at hearing, stated: "all three labor agreements mirror each other... The only difference is in the wage schedule. Otherwise, other benefits are the same... So if I'm talking Corrections, you're also talking Patrol..." *Transcript, p. 49*

find that, for both Units, the Union's proposal to retain the status quo for holiday payment procedure is more appropriate.

### **Wages**

The parties have both proposed contracts of a 3 year term, from December 1, 2010 through November 30, 2013, referred to as FY11, FY12 and FY13. The Employer's proposal is a 1.5% annual increase in salary and salary level for each fiscal year of the contract. The Union's proposal of 2% for FY11 and with biannual increases of 1.5% in FY12 and FY13 results in an average annual increase of 2.67% in salary level. The biannual nature of the FY12 and FY13 proposal results in a 3.023% annual increase in the salary level and a 2.26% annual increase in actual salary expense for FY12 and FY13. Thus, the increase in actual salary under the Union's proposal averages 2.17%.

### ***External Comparables***

The average annual increase for the 3 year proposed contractual term of FY11 through FY13 in the comparables is 7.01% for deputies and 7.02% for COs. The Union's proposal of an 8.05% increase in salary levels for this period is closer to the comparables' average than the Employer's 4.5% increase. The difference is 1% more under the Union's proposal and 2.5% less under the Employer's proposal. The Union's proposal of a 6.52% salary increase expense for the contractual term is .5% below the salary increase expenses in the comparables and, thus, closer to the comparables than the Employer's proposal.

The Employer maintains that its proposal is more consistent with the external comparables because its lower proposal would bring the Employer's salaries closer to the mid-point of the comparables' salaries. Currently, DeWitt ranks above the average. While I agree with the Employer's concern that there is no need for the employees to advance compared with the comparables, I believe that a 2.5% loss to the comparables is excessive considering the Employer is not faced with any compelling financial constraints.

### ***Cost-of-Living***

In his decision in *County of Rock Island*, S-MA-09-072, April 7, 2010, Arbitrator Ed Benn summarized the approach he had utilized in several of his interest arbitration awards:

Instead of placing great weight on external comparability as in the past, to set wage and benefit levels during these uncertain times, I have focused more on the cost-of-living and inflation. *North Main, supra* at 13 ("[i]nstead of relying upon comparables, in *ISP* and *Boone County*, 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']").<sup>8</sup>

There is no longer as much certainty as when Benn made these comments, as more of the comparable agreements have been negotiated during these "uncertain times," I do, however, still believe that the cost of living data is of similar importance to external comparables.

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<sup>8</sup> at p.10

In this case, I have evidence of the cost of living for the 16 months of the proposed contractual terms. The Union presented evidence that the cost-of-living over the Agreement's first year increased at approximately 2.88%. It also provided evidence that the CPI-U increased 4.6% from December 2010 to March 2012. While there is no evidence as to any prospective cost-of-living increases, the cost-of living data so far in FY12 indicates a cost-of-living increase on par with the previous year.

For FY11, the Union's proposed increase of 2% is still below the cost-of-living increase in the evidentiary data. For the two subsequent years, under the Union's proposal, the Unit employees, though receiving a 3% increase in the salary level, will see only a 2.26% increase in actual income as compared to any anticipated cost-of living increase. The Employer's proposal for 3 years would be below the cost-of-living increase already experienced in the first year-and-a-half of the agreement.

Under the Union's proposal, the Unit members will see a loss of approximately .8% to the cost-of-living in the first year of the Agreement, and the increases in actual income of 2.26% for FY12 and FY13 would be less than the cost-of-living increases experienced in FY11. Based on the above, the Union's proposed wage proposal is more in keeping with the cost-of-living evidence than the Employer's proposal.

### ***Internal Comparables***

The City presented evidence and arguments concerning the wages of other City employees. The Telecommunications Unit employees received a 1.5% annual increase

on December 1, 2011 for FY11,<sup>9</sup> and the Highway Department employees unit received 1.5% increases for FY11, FY12 and FY13.<sup>10</sup> While the Employer's offer is more consistent with the internal comparable evidence presented at hearing, I would note that these increases involve non-protective services units. There is no evidence of any prior internal consistency between the wage increases of such units and the protective service units involved here.

### ***Ability to Pay***

The parties stipulated that "The Employer waives and does not take issue herein over the issue of affordability."<sup>11</sup> Ability to pay is not an issue.

### ***Wage Increase Structure***

The Employer emphasized that its proposal of 3 annual wage increases is more consistent with the past practice of the parties. Over the 26 years of contracts for these Units, there has been only one instance where the parties agreed to a biannual wage increase. However, that occurred in the most recent contract year, FY10, prior to the ones at issue here. The last agreement between the parties provided for a 1.5% increase on December 1, 2009, followed by another 1.5% increase on June 1, 2010. Thus, while annual increases are more the norm for the parties, the recent biannual wage increase certainly established a precedent for the Union's proposed wage

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<sup>9</sup> At hearing, the FOP's counsel stated that the parties had stipulated that the recent Telecommunications Unit contract was not to be used as a comparable. The Employer's counsel agreed; however, he submitted the agreement as evidence into the record. The Stipulation By the Parties does not reference this particular stipulation. However, even not using this as evidence, the Highway Department wage increase does support the Employer's proposal. *Transcript, pp.40,41*

<sup>10</sup> The Highway Department unit is represented by the American Federation of State County & Municipal Employees, Council 31

<sup>11</sup> See Stipulation By the Parties.

increase structure. If all other factors were equal, a single annual wage increase would be preferable to a biannual increase. However, the fact that the Union's proposal includes biannual wage increases in two of its years does not make it inappropriate, especially since the most recent annual wage increase was biannual.

### ***Conclusion***

The Employer's proposal is more consistent with the internal comparables and the parties' past wage increase structure. The Union's proposal is more consistent with the external comparables and the cost of living evidence.

I view the external comparables and cost of living as the more important statutory components in evaluating the appropriateness of wage increases. The evidence is that the Union's proposal, which averages an 8% increase in salary level, but only a 6.5% increase in actual salary, is more in line with the comparables 7% increase in salary than the Employer's 4.5% proposed increase.<sup>12</sup> While I understand the Employer's concern that the Union is already at the high end of the comparables and does not need to advance further, I believe that the Union's proposal of a 6.5% increase in actual salary, which is less than the salary increases in the comparables, alleviates some of that concern.<sup>13</sup> Additionally, the Employer's 4.5% proposed increase is already below the cost-of-living loss experienced by Unit members in the first half of the proposed

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<sup>12</sup> I agree with the Employer that there is no need for the Units to catch up to the comparables, but I don't believe wage increases as low as the Employer proposes as compared to the cost of living data are appropriate to lower DeWitt's rank to the middle of the comparables when there is no fiscal crisis.

<sup>13</sup> However, I do recognize that the relative salary level of the Units as to the comparables will increase by 1% even though the actual salary increase will be .5% less than the comparables. Perhaps this can be addressed in negotiations for a successor agreement when the salary levels rather than the actual salary increases for FY12 and FY13 will be of primary concern.

Agreement's term. The Union's proposed 6.5% increase in actual salary is close to what is expected to be needed to meet the cost-of-living in the Agreement's term.

Based on the above, I find the Union's proposed wage increase to be more appropriate.

## **AWARD**

I hereby find that on the issues in this matter:

***Sick Leave:*            The Union's final offer is adopted**

***Holiday Payment:* The Union's final offer is adopted**

***Wages:*                The Union's final offer is adopted**

These adopted offers are to be effective retroactively to December 1, 2010. I also order that the parties include these offers, along with the tentative agreements identified in the attachment to the Stipulation By the Parties, into the successor Agreement.

**Issued: June 22, 2012 at Springfield, Illinois**

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**Brian E. Reynolds,  
Arbitrator**