

INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL NO. 3

and

THE COUNTY OF MCHENRY
BOARD OF HEALTH, DIVISION OF VETERINARY PUBLIC HEALTH
ANIMAL CONTROL

ILRB No. S-MA-12-001

OPINION AND AWARD

of

John C. Fletcher, Arbitrator

June 10, 2013

I. Procedural Background:

This matter comes as an interest arbitration between the County of McHenry (“the Employer” or “the County”) and Local 73, Service Employees International Union (“SEIU” or “the Union”) pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (“the Act”). The record in this case establishes that the bargaining unit includes seven full-time and part-time employees in the classification Animal Control Officer (“ACO”), and four full-time and part-time Kennel Technicians (“Kennel Tech”) – including one Lead Kennel Technician (“Lead Kennel Tech”).

The bargaining unit was organized under an original certification issued in September 2009. None of the employees in the unit are considered protective service employees, i.e. peace officers, firefighters and security employees, with regular access to interest arbitration under Section 14 of the Act. However, the

instant proceeding is convened under recent amendments to Section 7 of the Act, which gives non-protective service employees, in units of 35 or fewer members organized under an original certification, access to Section 14 mandatory interest arbitration for purposes of settling a first labor agreement.

The parties in this case met on several occasions following the issuance of the certification, including mediation, but failed to reach a final settlement on all issues for their first collective bargaining agreement, which the parties agree will have a term of December 1, 2008 through November 30, 2014. On March 11, 2010, the Union filed a demand for interest arbitration with the Illinois Labor Relations Board.

At hearing before the undersigned, as the sole arbitrator, on December 6 and 7, 2012¹, the Union was represented by:

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200 W. Jackson Blvd., Suite 1900
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Counsel for the County was:

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Post-hearing briefs were exchanged by the Arbitrator on March 27, 2013.

¹ The Employer challenged the application of the aforementioned amendment to Section 7 of the Act, before the Illinois Labor Relations Board and the Illinois Appellate Court, specifically the provisions making interest arbitration compulsory as to non-protective service units, in proceedings involving another bargaining unit of County employees organized by SEIU in 2009. The proceedings in this case were delayed pending resolution of that dispute.

² In its Reply Brief, the Union takes issue with the County's suggestion that it considered Boone

Reply briefs were then allowed, which were exchanged on April 13, 2013. The record was closed on that date, even though Counsel sought to file “answers” to the reply briefs, which the Arbitrator rejected.

II. Factual Background

The County is located in northeastern Illinois. It is bordered to the east by Lake County, to the west by Boone County and to the south by Kane County. Its northern border abuts the State of Wisconsin. According to the Union’s evidence, which the County did not dispute, McHenry County has a population of 308,760. It covers approximately 600 square miles. In 2009, the County’s median household income was \$74,669; Equalized Assessed Valuation was \$10.43 billion; and overall annual revenues for the County totaled \$785 million, including \$31.5 million in property tax and \$7.8 million in sales tax. The total number of County employees is 1,364.

The ACOs respond to calls of stray domestic animals, sick or injured wildlife, and reports of animal cruelty or neglect. They wear uniforms, drive County-provided vehicles, and work primarily in the field. They have authority to enforce the County’s animal control ordinance and issue notices of violation to suspected offenders. According to the Union, and factoring in a 3% increase as of December 1, 2008, which each party proposes, the starting pay for ACOs will be \$12.91 per hour. The incumbent ACOs at that point will receive \$13.09 per hour. The County’s figures put the two highest paid ACOs at that point at \$13.25 per

hour.

Kennel Techs/Lead Kennel Techs work primarily within the confines of the County's animal shelter. They provide feeding and care to the animals housed there. Like the ACOs, the full-timers work eight and one-half hour shifts with a one-hour unpaid lunch. Factoring in a 3% increase as of December 1, 2008, which each party proposes, the starting rate for a Kennel tech will be \$9.35 per hour, and the starting rate for a Lead Kennel Tech will be \$11.60 per hour.

All of the employees in the unit, both full-time and part-time, work on shifts of eight and one-half hours, which includes a one-hour unpaid lunch and two fifteen-minute breaks. The full-time workweek is 37.5 hours. Employees are entitled to overtime pay after 40 hours in the workweek.

The Union called two witnesses, both ACOs, to testify regarding work interruptions of employee lunch periods. In sum, these witnesses testified that interruptions of the lunch hour occur for ACOs and Kennel Techs alike, at least several times each week. All employees remain on call during the lunch period and frequently receive calls from the office for service, to which they must respond under pain of discipline. Frequently, too, ACOs are approached by members of the public, in restaurants and such, with questions and requests for assistance. There is no claim by the County, the Arbitrator notes, that ACOs are relieved of any obligation to take calls from the office or to respond to inquiries from the public during lunch.

The Union's witnesses established that although they may theoretically be entitled to get paid for these interruptions, in practice that is not feasible. The County's computerized time-keeping system does not allow for multiple entries for lunch, i.e. punching in and out repeatedly. In addition, it is often impractical for an ACO to take the time to document interruptions, either because they are too brief, or because in the witnesses' view it would be discourteous to ask a member of the public to wait while the ACO records his or her time. Also, ACO Kiley Gardner testified that on at least one occasion she requested additional lunch time from a supervisor after her lunch was interrupted for work and that her request was denied.

Although the testimony at hearing centered in the main on the ACOs, Kiley also testified that during her several years as a Kennel Tech with the County, her lunch breaks were frequently, two or three times per week, interrupted by events requiring her to attend to the animals' needs.

III. The Parties' Bargaining History.

The Union was certified as the exclusive bargaining representative for all of the County's full-time and part-time ACOs, Lead Kennel Techs and Kennel Techs on September 30, 2009. According to the Union, the parties thereafter met "on a limited number of occasions before the County began declaring impasse." (Union Brief, p.2). According to the County, the parties "had numerous bargaining sessions and reached tentative agreement on almost all contract provisions."

(County Brief, p.1). Putting aside these characterizations, the record establishes that the parties did in fact engage in what appears to have been good faith negotiations, which included mediation, for their first collective bargaining agreement and that they in fact reached agreement on nearly all terms for the agreement, save for the three issues that are currently before the Arbitrator here.

As was mentioned above, these proceedings are convened under the authority of an amendment to Section 7 of the Labor Act, which provides for mandatory interest arbitration, conducted in accordance with Section 14 of the Labor Act, for initial collective bargaining agreements covering bargaining units containing 35 or fewer employees that are organized under an “original certification” (Public Act 096-0598). The Arbitrator notes, for purposes of providing additional context for the discussion that follows, that these same parties recently completed a similar proceeding before Arbitrator Stephen Goldberg concerning a newly-organized unit of the County’s deputy coroners, County of McHenry and Local 73, SEIU, S-MA-10-103 (Goldberg, 2012).

IV. Statutory Authority and the Nature of Interest Arbitration

The relevant statutory provisions governing the issues in this case are found in Section 14 of the Labor Act. In relevant part, they state:

5 ILCS 315/14(g)

On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute... the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic

shall be conclusive... As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

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

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Arbitrator finds that the issues submitted for resolution here are economic in nature and that his job, therefore, is to select that parties' offer on each issue that most nearly "complies" with the above factors. As has been so

often explained in the nearly three decades since the Act's adoption, the Act itself provides almost no guidance to the arbitrator in deciding which factors apply in any given circumstance or in giving them an appropriate weight. Arbitrators have over the years established external comparability, how the terms and conditions of employment of these employees stack up against the terms and conditions of employment of employees who perform similar duties in comparable communities, as the single most important factor in choosing between competing proposals on wages and other economic issues. Other important factors include changes in the Consumer Price Index ("CPI") and the employer's ability to pay. The Arbitrator raises these points at this time for the specific purpose of establishing the primary context for his subsequent findings in this case.

As a matter of some note, the Arbitrator finds the parties' respective offers on each of the three economic issues submitted herein to be reasonable in light of the parties' particular priorities, and thus there is no indication in this record that the interest arbitration process under the Act, which was intended to offer relief from genuine impasse and not to subvert bargaining. In other words, the Arbitrator is convinced that this County and this Union, unlike many that have gone before them, have not endeavored to bypass good faith negotiations in hopes that interest arbitration will produce something one or the other could not, or would not, have achieved at the bargaining table. This appears to the Arbitrator to be an exceptionally important point in the context of this case, given that

compulsory interest arbitration for this unit is a one-shot deal.

V. THE PARTIES' STIPULATIONS

The parties stipulate only that the procedural prerequisites for convening the hearing have been met and that Arbitrator John C. Fletcher has jurisdiction and authority to rule in his capacity as the sole arbitrator on the impasse issue set forth below as authorized by the Act.

VI. OUTSTANDING ISSUES

Issue #1

Article XXIV, Section 24.1 (Wages) – Wage Increases effective December 1, 2008 through November 30, 2009; December 1, 2009 through November 30, 2010; December 1, 2010 through November 30, 2011; December 1, 2011 through November 30, 2012; December 1, 2012 through November 30, 2013; and December 1, 2013 through November 30, 2014;

Issue #2

Article XXIV, Section 24.2 (Equity Adjustment) – Equity Adjustment effective December 1, 2008 through November 30, 2009; December 1, 2009 through November 30, 2010; December 1, 2010 through November 30, 2011; December 1, 2011 through November 30, 2012; December 1, 2012 through November 30, 2013; and December 1, 2013 through November 30, 2014;

Issue #3

Article XVII (Workday and Workweek) – Lunch and Break Periods, and Travel Time.

VII – EXTERNAL COMPARABLES

As mentioned above, external comparability is of primary importance in the

analysis of the parties' respective proposals. Indeed, neither party in this case has argued otherwise. The Union proposed the following list of comparable counties:

Champaign County
DeKalb County
Will County
Winnebago County

The Union arrived at the above list of comparables by starting with counties either adjacent to McHenry County, which includes the counties of Boone, Cook, DeKalb, Kane and Will, and counties located in an area that the Union called "once removed" from McHenry County, which includes the counties of DuPage, Kendall, LaSalle, Lee, Ogle and Winnebago. The Union then eliminated Cook County as obviously not comparable and all other counties among the identified groups lacking unionized animal control employees. The resulting list includes only DeKalb, Will and Winnebago. The Union then added Champaign County to its list of comparables, arguing that despite its distance from McHenry County, it lies more than 150 miles from Woodstock, the County's seat, it compares well with McHenry County in most of the eight traditionally relevant demographics, i.e. the number of comparable employees and total size of the county workforce, population and size, EAV, per capita and median household income level, total county revenues, as well as revenues from sales tax and real estate taxes. In fact, the Union contends that as to these particular categories, the majority of the demographics for each of its proposed comparable communities fall within a range

of plus/minus 25% this County's numbers. The notable exceptions are EAV for Champaign and Winnebago, and Winnebago's sales tax revenues, each of come within a range of plus/minus 50% of McHenry County.

For its part, the County objects to the inclusion of Champaign County solely on the ground of its distance from this County, which the County suggests removes it from any reasonable configuration of the local labor market. It is not comparable to this County simply because the commute alone would be prohibitive for any County employee who might look for employment outside McHenry County. Regarding the remainder of the Union's proposed comparables, the County suggests that they simply do not, in the main, match up well with this County in the traditional categories, those used by the Union itself, when measured according to a range of plus/minus 5%, as Arbitrator Edwin H. Benn ruled was an appropriate range for analysis, see County of Winnebago and Sheriff of Winnebago County and Illinois Fraternal Order of Police Labor Council, S-MA-00285 (Benn, 2002), and even if the range is doubled to plus/minus 10%. The County concludes by its analysis that of the Union's proposed comparables, only Will County has a sufficient number of points of commonalty to be used as an external comparable for purposes of this award. The County adds that Boone County, which the Union excluded solely on the mistaken belief that its animal control officers are not organized, should also be included as a comparable.

The County, however, offered no support for the inclusion of Boone other

than its insistence that the Union excluded it for the wrong reason. This Arbitrator has before noted that without demographic data supporting a party's proposed external comparables, the task of determining whether it is truly comparable is nearly impossible, Lake County and Sheriff of Lake County and Teamsters Local 700, S-MA-11-203 (Fletcher, 2012), at p.5. The fact that the Union may have been mistaken in claiming the Boone County animal control employees to be unorganized does not *ipso facto* make Boone County comparable². The Arbitrator therefore does not accept Boone County as a comparable. As a result, accepting the County's remaining objections to the Union's proposed comparables would leave the Arbitrator to consider the parties' respective economic offers on the basis of a single external comparable, which, ironically, is probably the county that is the least comparable to McHenry County among those so far considered.

Of course, the notion of comparability begins to lose vigor as the range of acceptable deviation increases. Nevertheless, the Union's comparisons at the plus/minus 25% range finds substantial support among arbitrators, see Village of Elmwood Park, S-MA-10-192 (Hill, 2010); City of Peru, S-MA-93-153 (Berman, 1993), and seems to this Arbitrator to be a reasonable range in light of the circumstances here and in order to garner a list of comparables counties sufficient for a meaningful analysis. On this point, the Arbitrator notes that he does not read

² In its Reply Brief, the Union takes issue with the County's suggestion that it considered Boone County to be comparable but for the fact that its animal control employees were not organized. The Union asserts that its counsel commented that the Union simply did not know enough about Boone County to take a position on the issue and it objects to Boone County's inclusion as a comparable.

Arbitrator Benn's analysis in Winnebago County, supra, as particularly useful principally because he did not explain his reasoning in selecting such a narrow range. Moreover, the result he reached limited the list of comparable counties in that case to a single county, which happened to be McHenry County. This Arbitrator believes that such a narrow list of comparables would not suit the parties' needs here. With the exception of Will County, which is accepted as a comparable by agreement, each of the Union's proposed comparables fall comfortably within range of McHenry County on most of the eight listed demographics, and therefore should be considered.

In any event, the County's objections to all of the Union's proposed comparables, save Will County, suggest to the Arbitrator that it is cherry picking. Will County's statistics in the eight factors largely fall outside a comparison with McHenry County even at the plus/minus 50% range of comparison, but the County has itself proposed Will County as a comparable. In fact, having reviewed the Union's unchallenged data on the various factors, the Arbitrator concludes that the County's suggestion that Will County is an appropriate comparable for this County while excluding all the others is unsupportable. Of all the proposed comparables, Will County is by far the most populous, having a population double that of any the others in the group, with much greater revenues than any of the others counties considered here. The Arbitrator therefore includes it among the comparables only because the parties agree that it should be so.

For all the foregoing reasons, then, the Arbitrator will consider the following counties for purposes of external comparison:

Champaign County
 DeKalb County
 Will County
 Winnebago County

VIII – INTERNAL COMPARABLES

The County currently has bargaining relationships with four different unions representing eight bargaining units, including the present. They are, excluding the present bargaining unit:

SEIU: Deputy Investigators, Deputy Coroners, Secretaries and Clericals in the County Coroner’s Office - Current contract term December 1, 2008-November 30, 2014.

IUOE #1: Highway Maintenance Workers and Mechanics – Current contract term July 1, 2011-June 30, 2014.

IUOE #2: Maintenance Technicians in Facilities Management – Latest contract term December 1, 2008-June 30, 2012.

FOP #1: Patrol Officers and Detectives – Current contract term April 1, 2010 – March 30, 2013.

FOP #2: Correctional Officers – Current contract term December 1, 2011-November 30, 2014.

FOP #3: Sheriff’s Office Non-Sworn – Latest contract term December 1, 2008-November 30, 2012.

MAP: Circuit Court Clericals - Current contract term December 1, 2011-November 30, 2014.

Consistent with his long-standing approach to interest arbitration, the Arbitrator does not consider the Counties unrepresented employees in the instant

analysis, the reasons for which have been fully explained in this Arbitrator's prior decisions and need not be revisited here. The Arbitrator also agrees with the Union that the County's sworn officers should not be excluded in the comparison, but does so with the understanding that any comparisons of the respective duties for the employees at issue here with those of the County's sworn officers is markedly different from the comparisons with other non-sworn personnel. In any case, the record presents no suggestion of any parity relationships between these unit employees and any internally comparable groups. Accordingly, internal comparability carries significantly less weight here than does external comparability.

IX – OTHER STATUTORY CRITERIA

Regarding the factor "interests and welfare of the public," the Arbitrator notes, as a matter of importance, that the County has not raised the issue of its ability to pay any aspect of the Union's proposals in this case. The Union, for its part, argues that the interests and welfare of the public are well served by both its general wage increase proposal and its proposal for wage equity adjustments in each year of this Agreement. In particular, the Union submits that this bargaining unit has been experiencing very high turnover in recent years, which it attributes to low wages. According to the Union's data, only three of the eight incumbent ACOs, from 2008, and only two of the five incumbent Kennel Techs, from that same year, remain on their positions today. The County responds that the Union's

assertions are misleading and that the majority of the ACOs have overall seniority of six years or more.

The Arbitrator, having reviewed the record, is not persuaded that the Union has shown that high turnover in unit personnel is a real and ongoing problem. The Arbitrator cannot reasonably conclude from an assessment of a single five-year period that low wages are driving employees from the County's animal control ranks. On the other hand, each of the parties has seen fit to propose some level of equity adjustment for all positions within the unit. This fact, along with the data presented as to the wages paid to animal control employees in the external comparables, suggests to the Arbitrator that the parties each see the need for the unit employees here to "catch up" to their counterparts in wages.

Regarding cost of living, or CPI, the parties agree that each party's offer exceeds actual or projected calculations for the relevant time frames. The Union asserts that CPI is of little guidance to the Arbitrator for this reason. The County asserts that its proposal is closer to CPI overall and is therefore supported by it.

The Arbitrator adds, under the rubric of other factors traditionally considered by arbitrators, the fact that this is a first contract. Moreover, it is perhaps the last time that the parties will be settling their differences through interest arbitration, unless it is accomplished by mutual agreement or the stature is further amended in the future. The Arbitrator will consider that he must provide an effective dispute resolution mechanism presently, but should always take care not

to scorch the earth for future negotiations.

X. THE ISSUES

Article XXIV, Section 24.1 - Wages

The Union's Final Proposal

The Union proposes general wage increases as follows:

1. Effective December 1, 2008, hourly wage rates covered by this agreement will be increased by 3%, with retro pay.
2. Effective December 1, 2009, hourly wage rates covered by this agreement shall be increased by 3.5%, with retro pay.
3. Effective December 1, 2010, hourly wage rates covered by this agreement shall be increased by 3%, with retro pay.
4. Effective December 1, 2011, hourly wage rates covered by this agreement shall be increased by 3.25%, with retro pay.
5. Effective December 1, 2012, hourly wage rates covered by this agreement shall be increased by 3.25%, with retro pay.
6. Effective December 1, 2013, hourly wage rates covered by this agreement shall be increased by 3.25%, with retro pay.

The County's Final Proposal

The County proposes general wage increases as follows:

1. Effective December 1, 2008, hourly wage rates covered by this agreement will be increased by 3%, with retro pay.
2. Effective December 1, 2009, hourly wage rates covered by this agreement shall be increased by 2.75%, with retro pay.
3. Effective December 1, 2010, hourly wage rates covered by this agreement shall be increased by 2.5%, with retro pay.
4. Effective December 1, 2011, hourly wage rates covered by this agreement shall be increased by 3%, with retro pay.

5. Effective December 1, 2012, hourly wage rates covered by this agreement shall be increased by 2.75%, with retro pay.

6. Effective December 1, 2013, hourly wage rates covered by this agreement shall be increased by 3%, with retro pay.

Both parties propose that the stated increases will apply to both the starting rates and the rates paid to incumbent employees. The starting rates effective December 1, 2008, under either party's proposal, will be: ACO \$12.91/hr., Lead Kennel Tech \$11.60/hr., Kennel Tech \$9.35/hr.

The Position of the Union:

The Union's position starts with a percentage-to-percentage comparison of the parties' respective offers with available wage data for the County's other bargaining units. The Union suggests that the total of all increases under its proposal amounts to 19.25%³, while the County's proposal comes to 17%. The Union concedes that its proposal exceeds the cumulative average increases for all of the County's other bargaining units over the course of this Agreement, which available data showed to be 17.76%. The Union concedes that the County's proposal, "at first glance . . . appears to be closer to the total average . . ." than does the Union's. (Union Brief, p. 22)

However, the Union adds, the duties of the animal control employees at issue here align most closely with those of the County's Patrol Officers and Detectives, Correctional Officers and Deputy Coroners, in that ACOs perform a

³ The parties' respective calculations do not include compounding.

law enforcement function, including issuing citations, perform investigations, and respond to citizen complaints and calls for assistance. ACOs work with fire and police personnel and maintain public safety, putting them in harm's way. Accordingly, the County's "public safety" units, including Deputy Coroners, Patrol Officers and Detectives, and Correctional Officers, should be considered as closely comparable. The Union submits that the cumulative average of increases for the units just described over the relevant time period is 20.5%, which more clearly supports the Union's proposal.

External comparability is a somewhat more difficult issue, the Union suggests. The cumulative average for comparable employees in the external group for the period at issue is 12.5%, lower than either party's proposal. However, when the 3% increase for this unit that each party proposes effective December 1, 2008 is factored in, the average hourly wage for comparable animal control officers in the external communities in 2008, is still \$2.34 above that of the ACOs in this unit – over the course of the first five years of this Agreement the average difference will be \$1.86 per hour even under the Union's proposal. The Union's proposal merely ensures that the County's ACOs will keep pace with the wages that will be paid their counterparts in the external counties. The real "catch up" in wages will only begin with the equity adjustment.

As mentioned previously, the Union also suggests that its wage proposal is intended to address a problem of high turnover in this unit, and therefore serves

the interest and welfare of the public. The Union also suggests that CPI is largely immaterial as each party's proposal greatly exceeds actual and projected figures for the time period covered by the Agreement.

The Position of the County:

The County concedes that the employees in this unit are paid substantially less than their counterparts in the Union's proposed external comparables. Its own data shows that their wages are what the county termed at "below market rate." Their wages will remain below market rate under either party's proposal. There is little rationale, therefore, for selecting the Union's proposal over the County's based on the external comparables data.

The County reiterates that the majority of the Union's proposed comparables should be excluded from comparison. When the list of comparables includes only the counties of Will and Boone, the disparity in wages effectively disappears, especially when the comparison accounts for years of service of actual employees. The County illustrates its point using Will County as an example, asserting that if the County's proposal for wage increases and equity adjustment are considered, an employee hired as an ACO in 2007 will, during the last year of the Agreement, earn just \$.04 per hour less than he or she would under the Will County contract. The Union's proposal, on the other hand, would pay that same employee, during the same period, \$.56 per hour more than he or she would earn under the Will County contract.

The County also looks to Winnebago County for comparison as to the proposed wage increases and equity adjustments for the Kennel Techs. The County asserts that the starting hourly rate for a Kennel Tech in Winnebago during the year December 1, 2011 through November 30, 2012, was \$10.20. Under the County's wage and equity adjustment proposals the starting hourly rate for Kennel Techs in this County will be \$9.85, a separation of a mere \$.16 per hour in contract year 2008. (County br. p. 28.) The same comparison holds true for the Lead Kennel Tech position.

The County also argues that CPI comparisons are much more favorable to its proposal than to the Union's proposals. Each party's wage proposal substantially exceeds CPI. The differential between the two, in that regard, is not very meaningful. However, the disparities grow dramatically when the respective equity adjustments are considered as well. The annual CPI average for the first five years of this Agreement is projected at 1.86%. The County's wage and equity adjustments during that period will average 3.27% per year. The Union's, in comparison, will average 4.47% per year.

Discussion:

As stated previously, the Arbitrator views both wage proposals as overall reasonable. Nevertheless, the Arbitrator is charged with selecting that offer which is most reasonable in light of the statutory factors previously identified. External comparability carries the greatest weight in this case, especially in light of the fact

that the County does not raise its ability to pay and both parties appear to recognize some need for a “catch up” in wages. The Arbitrator agrees with the Union that the County’s proposals overall show some agreement on the County’s part that a “catch up” in wages is appropriate. The evidence shows that the wages paid to the ACOs and Kennel Techs in this unit are well below that paid to their counterparts in the comparable counties, in excess of 10% below the composite average, as the County concedes in part. Given the circumstances, the Arbitrator is not much concerned with the fact that the Union’s proposed increases are, viewed in a percentage-to-percentage comparison, substantially greater than the percentage increases received by employees in the comparable counties. Arbitrator Elliott Goldstein pointed out some years back that it is frequently the case in circumstances calling for a “catch up” in wages that a dollar-to-dollar comparison is a more appropriate means for assessing the respective offers. County of Cook and Sheriff of Cook County and Teamsters Local Union No. 714, L-MA-95-01 (Goldstein, 1995). The Union’s wage proposal will have the effect of only a slight closing of the present dollar gap between the employees in this unit and those in the external comparables. Under the County’s wage proposal, the employees in this unit will continue to lose ground, and substantially so.

In sum, the Arbitrator finds that the Union’s evidence and arguments regarding external comparability are more extensive and persuasive than those presented by the County. The County’s arguments regarding the external

comparables suffer from two glaring deficiencies. First, the County is clearly cherry picking the external comparables that it uses for its analysis, selecting the lowest paid among the group⁴. Second, the County's analysis combines the parties' proposals for a general wage increase with the proposals for equity adjustment as if they were a single issue⁵. It may at times be appropriate to raise arguments as to the combined effect of two separate economic issues on overall compensation, as the Labor Act clearly contemplates. However, such arguments are not helpful standing alone. A meaningful analysis must at some point focus on the effect of each separate issue, as such. As this record stands, the Arbitrator may agree with the County that an award of the Union's proposals on both wages and equity adjustment would have the effect of raising the wages of this County's animal control employees above those of at least some of the comparables, but the County has provided no basis, or even suggestion, that an award of only the Union's wage proposal would have a similar effect.

As to internal comparability, the Arbitrator notes first that he does not find persuasive the Union's arguments that ACOs are closely comparable to the County's sworn officers, which does not include the Deputy Coroners. Rather, the

⁴ The Arbitrator notes that although the County objected to the inclusion of Winnebago County as a comparable, it nevertheless cited the wages for Winnebago County animal control employees in its analysis. On the other hand, the County continued to exclude the counties of Champaign and DeKalb from its analysis.

⁵ The County argues in its Reply Brief, for the first time, that "an equity adjustment cannot be separated from wage increases when calculating the impact on actual total wages." (County Reply, p.4). The issues can in fact be separated for purposes of costing. Moreover, the parties each submitted their proposals on wages and equity adjustments as separate proposals and the County stated in its initial Brief that three issues were submitted for resolution.

Arbitrator agrees with the reasoning of Arbitrator Goldberg, in the case of the County's Deputy Coroners, County of McHenry and Local 73, SEIU, S-MA-10-103, at p. 17, when he suggested that merely characterizing the function of an employee as a matter of law enforcement does not make the employee a sworn peace officers. In addition here, although the ACOs, and even the Kennel Techs, may face some physical risks in the performance of the duties does not make those duties comparable to the duties of a peace officer. The jobs entail much different training, skills and risks. As Arbitrator Goldberg suggested with regard to the Deputy Coroners, this Arbitrator here finds that the employees in this unit are more closely comparable to other organized non-sworn County employees than they are to the Patrol Officers and Correctional Officers. Nevertheless, this Arbitrator does not believe that the County's sworn employees should be excluded entirely from consideration here. As stated previously, there are no claims or suggestion that a parity relationship exists between the employees in this unit and any other of the County's organized employees. The purpose served by the internal comparables, therefore, is to provide context, a broader picture of how the employer deals with its organized employees, in which to assess the parties' respective offers. That being said, it remains that the core of that context is to be found here among the County's non-sworn bargaining units.

The Arbitrator finds that internal comparison does not strongly support either proposal. The record shows that as against the non-sworn County bargaining

units, the County's proposal is decidedly middle of the road, more than was received for the six years of this Agreement by the MAP unit (14.25%) and IUOE highway unit (14.75%), but decidedly less than was received by the Deputy Coroners (19.25%) and the IUOE facilities management unit (19.5%). The Union's proposal, being the same as that awarded by Arbitrator Goldberg to the Deputy Coroners (19.25%), also falls within the range of increases received by other County units. Putting the sworn units into the mix, Correctional Officers (21%) and Patrol (13.98% over the first four years), tilts the scale toward the Union's proposal, but only slightly. In sum, the Arbitrator finds that the factor of internal comparability does not weigh heavily in either direction and does not have as significant an impact on this award as does the demonstrated need for "catch up" *vis-à-vis* the external comparables.

For this same reason, CPI is not a significant factor here. Each party's proposal far exceeds projected and actual CPI, even before the parties' respective equity adjustment proposals are factored in. That the County's proposal exceeds CPI by less than does the Union's proposal, is not a matter of great concern to the Arbitrator. It is not sufficient to tilt the tables in the County's favor on this issue.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the Union's final proposal to be more reasonable than the County's with respect to the issue of wage increases. Accordingly, the Union's final offer is

hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal with respect to Article XXIV, Section 24.1 – Wages is adopted. It is so ordered.

Article XXIV, Section 24.2 – Equity Adjustment

The Union's Final Proposal

The Union proposes equity adjustment increases as follows:

1. Effective December 1, 2008, all bargaining unit employees shall receive an equity adjustment of sixteen cents (\$.16) per hour. This shall not be retroactive.
2. Effective December 1, 2009, all bargaining unit employees shall receive an equity adjustment of sixteen cents (\$.16) per hour. This shall not be retroactive.
3. Effective December 1, 2010, all bargaining unit employees shall receive an equity adjustment of sixteen cents (\$.16) per hour. This shall be retroactive.
4. Effective December 1, 2011, all bargaining unit employees shall receive an equity adjustment of sixteen cents (\$.16) per hour. This shall be retroactive.
5. Effective December 1, 2012, all bargaining unit employees shall receive an equity adjustment of sixteen cents (\$.16) per hour. This shall be retroactive.
6. Effective December 1, 2013, all bargaining unit employees shall receive an equity adjustment of sixteen cents (\$.16) per hour.

The County's Final Proposal

The County proposes equity adjustment increases as follows:

1. Effective December 1, 2010, all bargaining unit employees shall receive an equity adjustment of ten cents (\$.10) per hour. This will be retroactive included in retro pay calculations.
2. Effective December 1, 2011, all bargaining unit employees shall receive an equity adjustment of ten cents (\$.10) per hour. This will be retroactive included in retro pay calculations.
3. Effective December 1, 2012, all bargaining unit employees shall receive an equity adjustment of ten cents (\$.10) per hour. This will be retroactive included in retro pay calculations.

Each Party's proposal calls for compounding of the equity adjustment increases.

Position of the Union:

The Union's arguments in support of its equity adjustment proposal fairly track those it offered in support of its proposal on wages. The Union reiterates that the significant hourly wage gap exists *vis-à-vis* the external comparables for both the ACO and Kennel Tech positions will remain essentially unchanged, on a dollar-to-dollar comparison, even after the Union's proposed wage increases are applied. The Union's proposed equity adjustment is intended to start the process of truly closing the gap.

The Union turns again to the evidence of a high turnover rate for this bargaining unit. It points out that since 2008, the County lost 62% of its ACOs and 60% of its Kennel Techs. The County has incurred significant costs in retraining, and the public has lost the services of experienced, trained and dedicated animal

control employees, which affects public safety. The Union's proposal therefore better serves the interests and welfare of the public.

Position of the County:

The County did not raise any additional arguments with respect to the issue of equity adjustment. Its arguments were fully set out in the section on wages.

Discussion:

At this point the Arbitrator considers, as is appropriate, the changes in the employees' wages during the course of this proceeding, specifically the wage increases that were just awarded to them herein. In today's climate, those wage increases are substantial and, while perhaps not enough to significantly close the wage gap with the external groups on an actual dollar basis, they will begin to close the gap when viewed in terms of percentage. Moreover, the County is not proposing zero here. Its proposal amounts to as much as an additional 2% for ACOs and near 3% for Kennel Techs over the wage increases that the employees will receive. It is a sign of good faith and a willingness to address the issue.

The Arbitrator previously noted that he has in mind here that this is a first contract, and also that the parties will in the future need to settle their disputes at the bargaining table. The interest arbitration process is a conservative one, Village of Romeoville and MAP, S-MA-10-064 (Fletcher, 2010), aiming always to coexist with the bargaining process and avoid efforts to supplant it. Village of Western Springs and MAP, FMCS Case No. 10-02482-A (Fletcher, 2011) at pp. 10-11

(“[This] Arbitrator has stated on numerous prior occasions, it is worth mentioning that interest arbitration in general is intended to achieve resolution to immediate and *bona fide* impasse, but no to usurp, or be exercised in place of, traditional bargaining. . . [The] function of interest arbitration, as opposed to . . . grievance arbitration, [is] actual avoidance of any gain on the part of either party that could not have been achieved through the normal course of collective bargaining.”). The Arbitrator notes that the Union did not rebut the County’s arguments that an award of the Union’s proposals on both the wage increase and the equity adjustment would have the effect of moving these unit employees ahead of at least some of their external counterparts in overall pay. If that result is to occur, it should occur through the natural course of collective bargaining.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the County’s final proposal to be more reasonable than the Union’s with respect to the issue of equity adjustment increases. Accordingly, the County’s final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the County’s proposal with respect to Article XXIV, Section 24.2 – Equity Adjustment is adopted. It is so ordered.

Article XVII (Workday and Workweek)

The parties have each submitted plenary proposals for an Article XVII to be included in their Agreement, containing all of what will be its sections. The respective proposals mirror one another in many of the sections and will not be set out in full here. Rather, each party's position will be set out as regards the points of actual contention.

The Union's Final Proposal

The Union proposes the following:

SECTION 17.1: ANIMAL CONTROL OFFICERS

1. Full-Time Animal Control Officer

The normal workweek for full-time Animal Control Officers is forty (40) hours, and the normal workweek consists of five (5) consecutive days, normally Monday through Friday.

The normal workweek schedule will consist of four (4) shifts of 8:00 a.m. to 4:00 p.m. and one (1) shift of 12:00 p.m. to 8:00 p.m. The employee staffing the 12:00 p.m. to 8:00 p.m. shift will remain on-call for the period of 8:00 p.m. to 8:00 a.m.

2. Part-Time Animal Control Officer

Normally, part-time Animal Control Officers provide coverage on Saturday and Sunday for the Division of Veterinary Public Health.

The normal weekend schedule will consist of one (1) shift of 7:00 a.m. to 5:00 p.m. on both Saturday and Sunday, and one (1) shift of 12:00 p.m. to 8:00 p.m. on both Saturday and Sunday. The employee staffing the 12:00 p.m. to 8:00 p.m. shift will remain on call for the period of 8:00 p.m. to 8:00 a.m.

With respect to 17.1.1 and 17.1.2 above, the Employer will not arbitrarily adjust/assign an employee to a different schedule/shift, however, the Employer reserves the right to adjust/assign an employee to a different schedule/shift for operational needs.

SECTION 17.2: ANIMAL CONTROL OFFICER: LUNCH/REST PERIOD

Employees scheduled for the normal workday of 8:00 a.m. to 4:00 p.m., 12:00 p.m. to 8:00 p.m. or 7:00 a.m. to 5:00 p.m. will be granted the following:

1. Two (2) fifteen minute paid breaks, one (1) during the first half of the workday and one (1) during the second half of the workday. Breaks will be scheduled by the Division Manager or designee.
2. A thirty (30) minute paid lunch period that is to be taken at the employee's discretion. This shall be retroactive to December 1, 2008.
3. Reasonable travel time shall not be included in any break or lunch period.

SECTION 17.3: ANIMAL CONTROL OFFICER ON-CALL DUTY

Employees scheduled to work a 12:00 p.m. to 8:00 p.m. shift will remain on-call for the period of 8:00 p.m. to 8:00 a.m.

Employees (Section 17.1.1) are expected to be on-call one (1) time per week or more in accordance with the needs of the Division. On-call duty will be equally distributed and is rotated every two (2) months. Example: An employee scheduled for the late shift/on-call for Monday, two (2) months later would be assigned to Tuesday. And the employee scheduled for Tuesday would rotate to Wednesday, etc.

Employees will receive a stipend for each 8:00 p.m. to 8:00 a.m. on-call duty assignment, per article XXIV Wages/Compensation.

SECTION 17.4: KENNEL TECHNICIANS

1. Full-Time Kennel Technicians

The normal workweek for full-time Kennel Technicians (normally Sunday through Saturday) is forty (40) hours, and the normal workweek consists of five (5) work days, in the period of Sunday through Saturday.

2. Part-Time Kennel Technicians

The normal workweek for part-time Kennel Technicians (normally Sunday through Saturday) cannot exceed thirty (30) hours but must be a minimum of twelve (12) hours.

With respect to Section 17.4.1 and 17.4.2 above, the Employer will not arbitrarily adjust/assign an employee to a different schedule; however, the Employer reserves the right to adjust/assign an employee to a different schedule for legitimate and genuine operational purposes.

SECTION 17.5: KENNEL TECHNICIANS: LUNCH/REST PERIOD

Employees scheduled for a workday shift 8:00 a.m. to 4:00 p.m. or a shift of the same duration will be granted the following:

1. Two (2) fifteen minute paid breaks, one (1) during the first half of the workday and one (1) during the second half of the workday. Breaks will be scheduled by the Division Manager or designee.
2. A thirty (30) minute paid lunch period, scheduled by the Division Manager or designee. However, the scheduled lunch period, with the approval of the Division Manager, may change depending upon the nature of the work being performed at the time.
3. Travel time shall be included in any break or lunch period.

Employees scheduled for a workday shift of four (4) hours in duration will be granted one (1) fifteen minute paid break, which will be scheduled as close to the midpoint of the shift as is practicable. Breaks will be scheduled by the Division Manager or designee.

SECTION 17.7: OVERTIME

1. Employees will be paid at their regular hourly rate for work up to and including forty (40) hours in a seven (7) day workweek.
2. Employees will be paid at the rate of one and one half (1 ½) times their regular hourly rate for work in excess of forty (40) hours in a seven (7) day workweek.
3. For the purpose of calculating overtime, vacation hours, holidays, personal days, and compensatory time shall be counted as time worked.

The County's Final Proposal

The County proposes the following:

SECTION 17.1: ANIMAL CONTROL OFFICERS

1. Full-Time Animal Control Officer

The normal workweek for full-time Animal Control Officers is thirty-seven and one half (37.5) hours, and the normal workweek consists of five (5) consecutive days, normally Monday through Friday.

The normal workweek schedule will consist of four (4) shifts of 8:00 a.m. to 4:30 p.m. and one (1) shift of 12:00 p.m. to 8:30 p.m. The employee staffing the 12:00 p.m. to 8:30 p.m. will remain on-call for the period of 8:30 p.m. to 8:00 a.m.

2. Part-Time Animal Control Officer

Normally, part-time Animal Control Officers provide coverage on Saturday and Sunday for the Division of Veterinary Public Health.

The normal weekend schedule will consist of one (1) shift of 8:00 a.m. to 4:30 p.m. on both Saturday and Sunday, and one (1) shift of 12:00 p.m. to 8:30 p.m. on both Saturday and Sunday. The employee staffing the 12:00 p.m. to 8:30 p.m. shift will remain on call for the period of 8:30 p.m. to 8:00 a.m. As required, part time Animal Control Officers shall be present at the Monday morning roll call.

With respect to 17.1.1 and 17.1.2 above, the Employer will not arbitrarily adjust/assign an employee to a different schedule/shift, however the Employer reserves the right to adjust/assign an employee to a different schedule/shift for operational needs.

17.2 ANIMAL CONTROL OFFICER: LUNCH/REST PERIOD

Employees scheduled for the normal workday of 8:00 a.m. to 4:30 p.m., 12:00 p.m. to 8:30 p.m. or 7:00 a.m. to 5:30 p.m. will be granted the following:

1. Two (2) fifteen minute paid breaks, one (1) during the first half of the workday and one (1) during the second half of the workday. Breaks will be scheduled by the Division Manager or designee.
2. A one (1) hour unpaid lunch period, scheduled by the Division Manager or designee. However, the scheduled lunch period, with the approval of the Division Manager, may change depending upon the nature of the work being performed at the time.
3. Travel time is included in any break or lunch period.

SECTION 17.3: ANIMAL CONTROL OFFICER ON-CALL DUTY

Employees scheduled to work a 12:00 p.m. to 8:30 p.m. shift will remain on-call for the period of 8:30 p.m. to 8:00 a.m.

Employees (Section 17.1, 1) are expected to be on-call one (1) time per week or more in accordance with the needs of the Division. On-call duty will be equally distributed and is rotated every two (2) months. Example: An employee scheduled for the late shift/on-call for Monday, two (2) months later would be assigned to Tuesday. And the employee scheduled for Tuesday would rotate to Wednesday, etc.

Employees will receive a stipend for each 8:30 p.m. to 8:00 a.m. on-call duty assignment, per article XXIV Wages/Compensation.

SECTION 17.4: KENNEL TECHNICIANS

1. Full-Time Kennel Technicians

The normal workweek for full-time Kennel Technicians (normally Sunday through Saturday) is thirty-seven and one half (37.5) hours, and the normal workweek consists of five (5) work days, in the period of Sunday through Saturday.

2. Part-Time Kennel Technicians

The normal workweek for part-time Kennel Technicians (normally Sunday through Saturday) cannot exceed thirty (30) hours but must be a minimum of twelve (12) hours.

With respect to 17.4.1 and 17.4.2 above, the Employer will not arbitrarily adjust/assign an employee to a different schedule, however the Employer reserves the right to adjust/assign an employee to a different schedule for operational needs.

SECTION 17.5: KENNEL TECHNICIANS: LUNCH/REST PERIOD

Employees scheduled for a workday shift 8:00 a.m. to 4:30 p.m. or a shift of the same duration will be granted the following:

1. Two (2) fifteen minute paid breaks, one (1) during the first half of the workday and one (1) during the second half of the workday. Breaks will be scheduled by the Division Manager or designee.
2. A one (1) hour unpaid lunch period, scheduled by the Division Manager or designee. However, the scheduled lunch period, with the approval of the Division Manager, may change depending upon the nature of the work being performed at the time.
3. Employees scheduled for a workday shift of four (4) hours up to seven (7) hours in duration will be granted the following:

A. One (1) fifteen minute paid break, which will be scheduled as close to the midpoint of the shift as is practicable. Breaks will be scheduled by the Division Manager or designee.

4. Travel time is included in any break or lunch period.

SECTION 17.7: OVERTIME

1. Employees will be paid at their regular hourly rate for work in excess of thirty seven and one half (37.5) hours per week but less than forty (40) hours in a seven (7) day workweek.

2. Employees will be paid at the rate of one and one half (1 ½) times their regular hourly rate for work in excess of forty (40) hours in a seven (7) day workweek.

3. For the purpose of calculating overtime, vacation hours, holidays, personal days, and compensatory time shall be counted as time worked.

Position of the Union:

The Union proposes to change the status quo on scheduling with a primary focus on replacing employees' current one-hour unpaid lunch period with a 30-minute paid lunch, plus reasonable travel time to be excluded from the calculation of lunch and break times. The Union also seeks to shorten full-time employees' workdays from its current eight and one-half hours to eight hours. The Union insists that it is not seeking any breakthroughs in its offer. Rather, it is simply seeking pay for employees for the work they regularly perform while ostensibly on lunch.

The Union supports its proposal with internal comparability data showing that of the seven other organized units in the County, five enjoy 30-minute paid lunches. The Union also urges the Arbitrator to look closest at the units of Patrol

Officers, Correctional Officers and Deputy Coroners, to whom these unit employees most closely compare, which all enjoy paid lunches.

The Union suggests that the requirements of the Fair Labor Standards Act (“FLSA”) apply and should be considered here. It reminds the Arbitrator that the first listed factor in Section 14(h) of this Labor Act is the “lawful authority of the employer.” In fact, Arbitrator Goldberg considered the requirements of FLSA in awarding this Union’s proposal for paid lunches to the County’s Deputy Coroners. The Union adds that under the FLSA, and also the regulations adopted pursuant to it, a *bona fide* meal period, which may be considered as time not worked, must be such that the employee is “completely relieved from duty for the purpose of eating regular meals.” (Union Brief, pp. 42-43)(citing 29 C.F.R. §785.19(a)). “The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating.” (Id). The Union cites various court decisions suggesting that lunch periods are compensable whenever employees are required to remain on call, respond to calls or actually perform work-related tasks during the lunch break.

The Union points to the unrebutted testimony from its witnesses establishing that ACOs are on call throughout their lunch and are required to respond to calls as they come in. ACOs are subject to discipline if they do not respond to calls even when they come in during lunch. Additionally, ACOs are often approached during lunch by members of the public. The Union’s witnesses

testified that there is an expectation among management that the ACOs will respond to the public when so confronted. In fact, the Union's witnesses testified, they are effectively open targets when out in public, in uniform and driving marked vehicles. One Union witness testified that she rarely eats in restaurants because of the frequency of interruptions from the public. Another Union witness testified that he has been approached even when eating at his home, because of the markings on his County vehicle.

According to one Union witness, interruptions of her lunch due to calls from the office numbered three to four per week. Another Union witness, a steward, testified that he receives complaints from ACOs weekly regarding interruptions of the lunch period. He testified that the complaints have come from each of the ACOs he represents.

It is practically impossible for ACOs to account for the interruptions using the County's time system, according to the witnesses. The computer system doesn't allow for multiple entries for lunch breaks. In addition, clocking in and out is often impractical, especially when members of the public are involved.

Regarding travel time, the Union submits that the current practice is that travel time is not counted as part of the lunch or break period. Accordingly, the Union argues, the County's proposal, which seeks to include travel time as part of these break times, is a breakthrough, and one which the County has not shown is

warranted. For example, the County offered no evidence that employees have abused their right to travel time for lunches or breaks.

Position of the County:

The County suggests that comparables, internal and external, are of little use in examining a proposal such as one calling for paid lunch and a change in employees' work schedules. Each workplace is a unique environment in which the workday is structured. The County also disputes that Union's data on the internal comparables, and submits that of the four other non-sworn County bargaining units, only the deputy Coroners have paid lunch time and in their case the other half hour remains unpaid. Additionally, no other County unit has paid travel time to and from break.

Because the Union seeks to change an existing system, resort to the Labor Act's factors is not a sufficient means of assessment. Rather, the arbitrator should apply a breakthrough analysis before Section 14(h) factors are considered. City of Burbank and ILFOPLC, S-MA-97-056 (Goldstein, 1998). The County suggests Arbitrator Harvey Nathan's three part analysis, cited by this Arbitrator in Village of Posen and IFOPLC, S-MA-09-182 (Fletcher, 2011), which places a burden on the party seeking to change existing systems to show:

- 1) there is a proven need for change;
- 2) the proposal meets the identified need without imposing 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 other comparable groups were able to achieve this provision.

The County charges that the Union's complaints of interruptions of employees' lunches are overblown. The County points to the lack of any specifics in the testimony of the Union's witnesses – and the fact that only two of nine employees testified. On the other hand, the change is burdensome to the County not only monetarily, adding two and one-half paid hours to each employee's workweek, but also in terms of operations.

The County adds that it would never have given up its managerial right to schedule its workforce absent a “dramatic concession” from the Union. (County Brief, p. 30). The Union offered no such concession.

Discussion:

The County is correct on the applicable test on this issue. The Union seeks a change in the *status quo*, a departure from established practice. This Arbitrator has consistently followed the rule that the party seeking such change has the burden of showing that there is a proven need for the change; and, that the proposed change meets the identified need without imposing an undue hardship or burden on the other party. See, Lake County Sheriff, S-MA-11-203, at p. 14. The Union has failed to meet its burden here.

The Union offered no proof of a genuine need for a paid lunch. The Union's evidence that employees are currently interrupted in their unpaid lunches is superficial, at best. The Arbitrator simply cannot find from the few, arguably sketchy, accounts of occasional interruptions to the lunch hour that a problem exists in the current system that is so pervasive that the underlying notion that the employees are off the clock for an hour each shift is a fallacy and the only real remedy is to mandate that they be paid. Rather, it appears from the evidence as a whole that the employees are entitled to pay for the time that their lunch hours are interrupted by work and that, perhaps, a revision in the time keeping system is in order.

A central problem with the Union's arguments is that its statutory arguments, specifically with respect to the FLSA, are not properly raised in this proceeding. Section 14 of the Act does not, as far as this Arbitrator is aware, grant an arbitrator authority to rule on the legality of an employer's current practices. These are issues appropriately left to the courts to decide. Whether the current lunch hour policies and practices, under which the ACOs apparently remain on call when punched out, meet the requirement for unpaid meal times under FLSA is not an issue that this Arbitrator will address. This record does not show that the ACOs will not in fact be paid for any time that they in fact perform work. Instead, it shows only that some of the ACOs choose not to request the pay, perhaps because the County has not made it convenient for them to do so.

The Union's proposal also places significant burdens on the County. Most notable, the Union's proposal, in its entirety, shortens the employees' workday, while increasing employees' pay, whether or not they perform work during lunch, and establishes a travel time allowance that would be nearly beyond policing for the County, as will be the County's provision that travel time be included in an employee's lunch or break time.

The internal support for the Union's proposal seems mixed at best. The Arbitrator agrees with the County's suggestion that comparability on this type of issue is of limited utility. The Arbitrator has little information, other than Arbitrator Goldberg's award, telling him how the provisions governing lunches in other units came about or what adjustments the parties have made to accommodate them. Given the absence of any demonstrated need for the provision of a paid lunch and the likely burden that would fall to the County by its implementation, this Arbitrator is unwilling to award the Union's proposal based what appears to be ambiguous internal support.

The Arbitrator notes as a matter of dicta that at the point the current lunch hour becomes a matter of contractual right the Union and employees will have recourse to the contractual grievance procedure to address any infringements of that right occasioned by the County's practices, including any failure to pay employees for time that they work. On balance, it is best to leave the parties to further address this issue as part of their conventional collective bargaining.

Thus, for all the foregoing reasons and in light of the evidence as it has been examined in the strict context of established statutory criteria, the Arbitrator finds the County's final proposal to be more reasonable than the Union's with respect to the issue of the workday and workweek. Accordingly, the County's final offer is hereby adopted. The following Order so states.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the County's proposal with respect to Article XVII – Workday and Workweek is adopted. It is so ordered.

XI. CONCLUSION AND AWARD

The foregoing Orders represent the final and binding determination of the Neutral Arbitrator in this matter, and it is therefore directed that the parties' Collective Bargaining Agreement be amended to incorporate previously agreed upon modifications along with the specific determinations made above.

/s/ John C. Fletcher

John C. Fletcher, Arbitrator

Poplar Grove, Illinois – June 10, 2013