In The Matter of the Arbitration Between)
)
Illinois Fraternal Order of Police Labor Council)
)
and)
)
County of Will and Sheriff of Will County)
)
Interest Arbitration)
)
ILRB No. S-MA-12-083)

OPINION AND AWARD

The hearing in the above captioned matter was held on September 6, 2013, at the Will County Building in Joliet, Illinois, before Martin H. Malin, serving as the sole impartial arbitrator by selection of the parties. The Union was represented by Ms. Tamara Cummings, its general counsel. The Employers were represented by Mr. Mark Bennett, their attorney. The hearing was held pursuant to Section 14 of the Illinois Public Labor Relations Act (IPLRA). The parties agreed to waive their delegates to the arbitration panel and stipulated that they would be bound by my award as sole arbitrator. The parties also waived the IPLRA's requirement that the hearing commence within fifteen days following the arbitrator's appointment.

At the hearing, both parties were afforded full opportunity to call, examine and cross-examine witnesses, introduce documentary evidence and present arguments. A verbatim record of the hearing was maintained and a transcript was produced. Both parties filed post-hearing briefs.

The Issues

The parties stipulated that the following issues before me are economic as that term is used in Section 14 of the IPLRA. They further stipulated that the issues before me are wages and health insurance. However, they disagreed over whether their dispute over health insurance encompasses one issue or three. At the hearing and in their brief, the Employers took the position that health insurance is one economic issue while the Union maintained that it encompasses three separate issues.

The parties' Ground Rules and Stipulations provided, in paragraph 4:

> 4. The parties agree that the following issues remain in dispute and that these issues may be submitted for resolution by the Arbitrator:

ECONOMIC ISSUES

(A) Article XXI <u>Wages</u>
(B) Section 13.1.2 <u>Group Insurance – Plan</u>
(C) Section 13.1.5 <u>Group Insurance – Cost Sharing of Monthly Premium</u>
(D) Section 31.1.7 <u>Group Sharing – Deductibles</u>

. . . . .

The Employers' Final Offer submitted July 22, 2013, listed the issued as follows:

ECONOMIC ISSUE NO. 1 – ARTICLE XXI – WAGES

. . . . .

ECONOMIC ISSUE NO. 2 – ARTICLE XIII – INSURANCE, SECTION 13.1.2

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ECONOMIC ISSUE NO. 3 – ARTICLE XIII – INSURANCE, SECTION 13.1.5

. . . . .

ECONOMIC ISSUE NO. 4 – ARTICLE XIII – INSURANCE, SECTION 13.1.7, DEDUCTIBLES

. . . . .

. Thus, the Employers submitted their final offers delineating health insurance as three separate issues in accordance with the parties' stipulations and ground rules. The Employers' recharacterization at the hearing and its their brief of health insurance as a single issue is inconsistent with the parties' stipulations and ground rules. I will follow the parties' stipulations and ground rules and will treat health insurance as encompassing three separate economic issues. Accordingly, the issues before me, all of which are economic, are:

1. Article XIII, Section 13.1.2, Group Insurance – Plan
2. Article XIII, Section 13.1.5, Group Insurance – Cost Sharing of Monthly Premiums
3. Article XIII, Section 13.1.7, Group Insurance – Deductibles
4. Article XXI, Wages

The Statutory Factors

Section 14(h) of the IPLRA provides for the arbitrator to base his findings on the following factors, as applicable:

(1) The lawful authority of the parties.

(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 with other employers 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.

Background

On December 5, 2003, the Illinois Labor Relations Board certified the Union as the exclusive representative of "[a]ll full-time Will County Deputy Sheriffs in a non-supervisory rank, under the jurisdiction of the Will County Merit Commission." Prior to December 5, 2003, apparently dating to before the IPLRA covered deputy sheriffs in 1986, the bargaining unit was represented by AFSCME. The parties' most recent collective bargaining agreement was effective December 1, 2009 – November 30, 2011.

Will County is part of the metropolitan Chicago area. Its population in 2012 was 677,560, an increase of about 35% from 2000. In FY 2012, it had a budget of $175,656,024. The parties stipulated that the following communities are comparable to Will County for purposes of this proceeding: Lake County, DuPage County, Kane County and Winnebago County.

Issues in Dispute

Article XIII, Group Insurance

It is clear that the primary driver of the dispute over Article XIII is the dispute over Section 13.1.5. Therefore, I shall address that section first.

Article XIII, Section 13.1.5, Group Insurance – Cost Sharing of Monthly Premiums

Union's Final Offer: Effective FY 2012 (Dec. 1, 2011) and FY 2013 (Dec. 1, 2012) - maintain the status quo - employees contribute 1% of base pay for single coverage and 2% of base pay for family coverage
Effective FY 2014 (Dec. 1, 2013) - employees contribute 2% of base pay for single coverage and 3% of base pay for family coverage.
Effective FY 2015 (Dec. 1, 2014) - employees contribute 3% of base pay for single coverage and 4% of base pay for family coverage

Employer's Final Offer: Effective December 1, 2011 through December 1, 2013, maintain the status quo. Effective January 1, 2014 employees earning less than \$30,000 pay 4.7% of premium for PPO coverage and 5.4% if premiums for HMO coverage; employees earning more than \$30,000 but less than \$50,000 pay 7.6% for PPO and 8.3% for HMO; employees earning more than \$50,000 pay 13.3% for PPO and 13.8% for HMO coverage.

Union's Position

The Union argues that the Employers' proposal constitutes a significant breakthrough and, as such, the Employers have a heavy burden of proving justification for the breakthrough and that, as the party seeking the breakthrough, they made reasonable efforts to secure the change in bargaining. The Union traces the current method for determining employee contributions to premiums to an interest arbitration award issued in 1995. The Union maintains that the Employers have failed to make reasonable efforts to bargain the change, alleging that the Employers did not present the current offer until May 28, 2013, on "the eve of arbitration." Furthermore, the Union contends, the Employers have not demonstrated a compelling justification for, what the Union characterizes, as a radical change in the method of determining employee premium contributions.

The Union recognizes that health insurance costs continue to increase and, accordingly, has offered to increase the percentage of base pay that employees will contribute toward premiums. The Union maintains that for certain coverages, employees will be paying more in contributions under its proposal than under the Employers' proposal. The Union disputes the Employers' reliance on the impact of the Affordable Care Act as speculative, noting that the mopst significant impact of the ACA, the excise tax on health plans valued above a certain amount, does not take effect until 2018.

The Union urges that the internal comparability data support its final offer. The Union maintains that the Employers' reliance on its decision to implement the percentage of premium method for calculating premium contributions for non-represented employees is not entitled to any weight. The Union contends that every represented unit determines premium contributions as a percentage of base pay. The Union disputes testimony from the Employers that the AFSCME Local 1028 unit has agreed to change to a percentage of premium approach by pointing to a newspaper article reporting that Local 1028 was preparing to strike over, among other things, health insurance premiums.

The Union urges that external comparables are of less probative value in assessing the parties' final offers on health insurance. Although the stipulated comparable communities all base employee premium contributions on a percentage of premium, the Union maintains that none of them use salary bands as the Employers have proposed. Furthermore, the Union discounts the usefulness of the external comparables because they vary considerably in benefits and costs.

Employers' Position:

The Employers' contend that their final offer is not a breakthrough. Rather, the Employers argue, it maintains the basic concept that premium contribution varies based on salary with the higher-paid employees subsidizing the lower-paid employees. However, the Employers argue, that even if the arbitrator considers the offer a breakthrough, the Employers have met their burden and the arbitrator should award their final offer.

The Employers contend that when the percentage of base pay method of calculating premium contributions was adopted, employees were, on average, paying 10% of the costs of premiums. The Employers maintain that over the years, health insurance costs have skyrocketed and employee premium contributions have not kept pace to the point where employees are now paying 5.5% of premium costs. Moreover, the Employers aver, their final offer is necessary to contain costs, particularly increased costs resulting from the ACA, The Employers point to the ACA requirements that plans may no longer require a co-pay for certain preventative care, must pay new fees, may no longer deny coverage based on pre-existing conditions and must count co-pays for emergency room visits and prescription drugs toward employee out of pocket maximums. Furthermore, the Employers point to the excise tax that takes effect in 2018 and urge that their final offer is necessary to ensure that the plan will not be subject to the tax.

The Employers maintain that not only do the stipulated external comparables all base premium contributions on a percentage of premium, the Employers' expert consultant testified that in her 24 years of health care industry experience she has never seen a plan comparable to the current plan that the Union proposes to retain. The Employers maintain that they are moving to implement their final offer for all County employees. The Employers dispute the Union's claim that they first introduced their offer in May 2013, maintaining that they first raised the issue in April 2012. Furthermore, the Employers argue, all non-represented employees will be covered under the plan contained in its final offer as of January 1, 2014 and AFSCME agreed to move to a percentage of premium approach to premium contributions. The Employers point to the award in *City of Aurora and Association of Professional Police Officers*, ILRB No. S-MA-11-121 (Hill 2011) in which Arbitrator Marvin Hill awarded the employer's offer which moved from a percentage of base pay to a percentage of premium method for determining health insurance premium contributions and urges that I do the same.

Discussion

The arbitrator has considered his notes and the transcript of the hearing, the exhibits, the parties' briefs and arguments and all authority relied on therein. Interest arbitration represents the breakdown of the parties' collective bargaining process. The arbitrator's function is to determine what contract terms the parties most likely would have agreed to if the collective bargaining process had not broken down. The weight to be given each factor listed in Section 14(h) is to be assessed in light of its value in making such a determination. Clearly, some of the factors have more significance than others in a specific case.

Section 14(h)(8) provides for consideration of "other factors . . . 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." One such factor is whether a party's offer constitutes a breakthrough. Interest arbitrators generally agree that a party advocating a breakthrough bears the burden of justifying the departure from the status quo. That is because, absent evidence to the contrary, the manner in which the parties have resolved a matter in the past provides strong evidence of how they would have resolved it in the current round of negotiations had their negotiating process not broken down. The more significant the change, the greater the burden of justification.

The Employers' final offer is clearly a breakthrough. It makes a significant change to the parties' long-standing method of computing employee contributions to health insurance premiums. The current system of basing contributions on a percentage of base pay has been in effect since it was awarded by Arbitrator George Fleischli in an interest award issued June 26, 1996, between the Employers and AFSCME, the predecessor exclusive representative of the employees. Notably, in that proceeding, both parties advocated basing employee premium contributions on a percentage of base pay, with the primary difference between the parties being AFSCME's final offer provided for no employee contribution to the cost of single coverage. The 1% of base pay for single coverage and 2% of base pay for family coverage has been the agreed-on employee contribution to health insurance premiums ever since.

The key difference between basing premium contributions on a percentage of base pay versus a percentage of premiums is in how they allocate the risk of premium increases. Under the Employers' final offer, on average the employees assume 10% of the risk of all premium increases. I note, however, that even under the Employers' final offer on wages, the starting salary for a new hire in the bargaining unit effective December 1, 2013, is $50,842. Thus all members of the bargaining unit are in the highest wage band under the Employers' final offer on premium contributions and will be paying 13.3% of premiums for PPO coverage and 13.8% for HMO coverage. In contrast under the status quo continued in the Union's final offer, the risk of health insurance premiums increasing less than the increase in base pay rests on the employees and the risk of health insurance premiums increasing more than the increase in base pay rests on the Employers.

The status quo in terms of allocation of risk of increasing health insurance premiums has been maintained since 1996 in the face of steady increases in health care costs that have far outstripped the increases in base pay. When the percentage of base pay method of calculating contributions to insurance premiums began, the employees were contributing on average 10% of the costs of their insurance. Currently, they contribute about 5.5% of those costs. Presumably the steady increases in the percentage of health insurance premiums paid by the Employers were known to the parties when they negotiated their prior contracts and affected the negotiations over wages and other fringe benefits. That the Employers now seek relief from this arrangement is understandable but the Employers have offered nothing by way of a quid pro quo for such relief. On the contrary, the Employers have offered a wage scale freeze in the first two years of the contract and increased deductibles and co-pays in the other sections in health insurance that are in dispute. Furthermore, the Union's final offer does offer relief to the Employers by increasing the percentage of base pay to be contributed toward premiums in each of the last two years of the contract. The Employers' insurance consultant testified that on average under the Employers' offer, employees would pay 3.2 - 3.3% of salaries in insurance premium contributions. The Union's final offer which increases the percentage of base pay employees contribute toward premiums is not much different from that figure. The absence of any quid pro quo and the offer of some relief by the Union mitigate against the Employers' final offer.[1]

Balanced against the above analysis, the Employers rely on the external comparables. There is no question that Will County is an outlier in terms of how it calculates employee contributions to health insurance premiums. All of the comparable communities base premium contributions on a percentage of premiums. But there is no evidence in the record that Will County has ever been anything but an outlier in this regard since 1996. There is no evidence that the comparable communities have moved in recent years from a percentage of base pay to a percentage of premiums in calculating employee premium contributions. Accordingly, on this issue, the practices of comparable communities are not entitled to much weight.

The Employers also rely on internal comparables. Here the evidence is quite weak. The County Board adopted a resolution imposing the percentage of premium contributions calculation on non-represented employees. The resolution showing what the County is unilaterally imposing on those employees who do not engage in collective bargaining is, at best, very weak evidence of what the parties before me would have agreed to had their bargaining process not broken down. The only other group of employees referenced in the record are the AFSCME Local 1028 Executive Branch Unit. The Employers represented at the hearing that Local 1028 had agreed to

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[1]I do not agree with the Union that the Employers sprung their proposal to move to a percentage of premiums for calculating employee contributions at the last minute. The record reflects that the Employers proposed the percentage of premium contributions method on April 18, 2012.

shift to a percentage of premium calculation while the Union offered a newspaper report that the parties were preparing for a strike with one of the open issues being health insurance. Subsequent to the hearing, the media reported that Local 1028 did go out on strike and the parties resolved the strike by agreeing on the terms of their new contract. However, neither party has offered the Local 1028 contract to supplement the record even though Section 14(h)(7) of the IPLRA allows for consideration of changes in the statutory factors during the pendency of the arbitration proceedings. Without knowing what the parties ultimately agreed to in the Local 1028 contract, it is difficult to afford any significant weight to the Local 1028 negotiations as a proxy for what the parties before me would have agreed to had their process not broken down. I conclude that the evidence of internal comparables is insufficient to meet the Employers' burden to justify the significant breakthough that the proposal to move from percent of base pay to percent of premium entails.

I have given very serious consideration to Arbitrator Hill's award in *City of Aurora, supra.* Arbitrator Hill's award was based on the record before him, a record that differs from the record before me in significant ways. For example, in *Aurora,* the union offered to maintain the status quo with employees continuing to pay 2.5% of their base pay toward health insurance premiums. In the instant case, the Union's offer substantially increases the percentage of base pay that the employees will pay. In *Aurora,* employees paid the same percentage of base pay regardless of whether they elected individual or family coverage. This played a major role in Arbitrator Hill's decision to award the employer's final offer moving to a percentage of premium approach. Arbitrator Hill considered the status quo as "creat[ing] a tremendous inequity," that he characterized as "indefensible from a financial point of view."[2] The status quo in Will County and the Union's financial offer do not suffer from this indefensible inequity as those who elect family coverage pay a greater percentage of their base pay than those who elect single coverage. The award in *Aurora* does not persuade me to award the Employers' offer. Accordingly, I shall award the Union's final offer.

Article XIII, Section 13.1.2, Group Insurance – Plan

<u>Union's Final Offer:</u>	Status quo
<u>Employers' Final Offer:</u>	Effective December 1, 2011 through December 31, 2013, the coverage conditions provided by the Employer's Group Insurance Program shall be set forth in the County Health Plan that was in effect under the prior Agreement. Effective January 1, 2014 through the life of this Agreement, the coverage conditions provided by the Employer's Group Insurance Program, which shall include a wellness program, shall be as set forth in Appendix ___.

[2]*City of Aurora* at 26.

The Appendix increases out of pocket maximums for the HMO plan and for in network in the PPO plan from $1,500 for individuals and $3,000 for families to $2,000 for individuals and $4,000 for families. For out of network in the PPO plan, the maximum would increase from $3,500 for individuals and $7,000 for families to $5,000 for individuals and $10,000 for families. Under the PPO and HMO plans, the emergency room co-pay would increase from $50 to $125. In the PPO plan, while the co-pay for generic drugs would remain at $10, the co-pays for brand formulary drugs and brand non-formulary drugs would increase from $20 amd $35 to $25 and $45. The cost of a 90-day supply by mail order would increase from the retail co-pay to two times the retail co-pay. The maximum amount that could be filled per prescription would decrease from 34 days to 30 days. In the HMO plan, the co-pay for in-patient hospital services would increase from $100 to $125 and for the first time, employees would pay a co-pay of $100 for out-patient surgery and hospital coinsurance. Prescription drug co-pays would go from $7 (generic), $15 (brand formulary), $30 (brand non-formulary) to $10, $25 and $45. The cost of a 90-day supply by mail order would increase from the retail co-pay to two times the retail co-pay. The maximum amount that could be filled per prescription would decrease from 34 days to 30 days.

The wellness program in 2014 requires employees to designate a pirmary care physician and requires employees and their spouses/partners to complete a health risk questionnaire and screening or pay an additional $50 if the employee fails to complete the screening and $25 if the spouse/partner fails to do so. Employees in the normal range receive an annual incentive of $100 while those outside the normal range must complete one of a list of health improvement programs to earn the $100 incentive. In 2015, the charge for failing to complete the screening increases to $100, the incentive for results in the normal range or for completing a health improvement program increases to $150 and the employee and spouse/partner must both be in the normal range and/or complete a wellness improvement program to earn the incentive.

Union's Position

The Union maintains that the Employers are proposing a breakthrough and bear a heavy burden of justification. The Union urges that the internal comparables are inconclusive or support the status quo and that the provisions of the health insurance plans of the external comparables are so varied as to not provide meaningful guidance. The Union disputes the Employers' reliance on the ACA, contending that the effects of the ACA are too speculative to serve as a basis for an award.

Employers' Position

The Employers argue that their final offer is necessary to contain the rising costs of health insurance. Primarily due to the wellness program, the Employers' insurance consultant estimated that under the Employers' offer costs would increase 3.7% due largely to the wellness component and under the Union's offer costs will increase 6.8%. Furthermore, the Employers contend, their offer should be selected because it responds to increased costs resulting from the ACA and will slow the growth in the value of the plan to keep it under the threshold to avoid the ACA excise tax when that tax takes effect in 2018. The Employers maintain that their final offer is supported by the internal and external comparables.

Discussion

The Employers' proposed wellness program is a breakthrough. Although it is not as substantial a breakthrough as the proposal to convert from a percentage of base pay to a percentage of premium for calculating employee premium contributions, it is a change in the structure of health insurance benefits. The record does not contain evidence to enable me to determine what the external comparable communities do in this regard and, as discussed above, the evidence with respect to internal comparables is weak. However, I find on the record presented, the Employers have carried their burden to justify this breakthrough.

The record establishes without contradiction that, primarily because of the wellness program, the Employers' final offer results in projected increased health insurance costs of 3.7% as opposed to the Union's final offer which results in projected increased health insurance costs of 6.8%. To achieve this savings, very little is asked from employees and their spouses/partners – only that they complete a health risk questionnaire screening. Such screening is likely to be considered preventative care and, therefore, likely not to cost employees any co-pay or deductible. Upon completion of the screening(s), the employee avoids having to pay the additional premium contribution. Employees (and in 2015 spouses/partners) who complete the screening and fall in the normal range qualify for an incentive award of $100 in 2014 and $150 in 2015 without taking any further action. Those who fall outside the normal range have the option of doing nothing or completing a health improvement program and qualifying for the incentive award. The balance of the minimal effect on employees against the substantial cost savings justifies the relatively minor breakthrough. Indeed, I find it notable that the Union has offered no specific arguments against the proposed wellness program. The inclusion of the wellness program leans in favor of the Employers' final offer on Section 13.1.2.

The Employers' blanket reliance on the ACA must be unpacked. The excise tax does not take effect until 2018 and, although it is the current state of the law, there has been considerable speculation that it may be changed before it ever goes into effect. If the excise tax continues in its current form, there will be plenty of time to account for it in negotiation of the successor to the contract that is the subject of the instant arbitration. At this time, the possible impact of the excise tax is too remote and speculative to be a major factor in evaluating the final offers.

The ACA does introduce many elements that add to the costs of health insurance that take effect on January 1, 2014. Some, such as the requirement that preventative care be covered without co-pays or deductibles do not appear relevant to the instant arbitration because under the existing health plan preventative care is already provided without co-pays or deductibles. On the other hand, one particular change to which the Employers' health insurance consultant testified does have a direct impact on the issues in dispute.

Effective January 1, 2014, the co-pays for drugs and emergency room treatment must be included in calculating the out-of-pocket maximum. Prior to January 1, 2014, they were not included. The Employers' health insurance consultant testified that she analyzed the data concerning actual prescription drug purchases and emergency room visits for employees to gauge the impact of including them in calculating the out-of-pocket maximums and recommended the increases in the Employers' final offer as essentially neutral. That is, the increases in the out-of-pocket maximums can be expected to not have a real effect on the employees because of the way in which out-of-pocket maximums will be calculated under the ACA. This testimony was unrebutted by the Union and I credit it. I find that the changes to out-of-pocket maximums proposed by the Employers effectively maintain the status quo once the ACA is taken into account. This leans toward adopting the Employers' final offer on Section 13.1.2

The record with respect to the other changes to Section 13.1.2 proposed by the Employers is far less compelling. The Employers justify the proposed increase in emergency room co-pays on the ground that it will deter abuses of emergency room visits. But, the Employers offered no evidence that any employees in the bargaining unit or in the County (apart from their consultant's fleeting reference to one "frequent flyer" who had nine emergency room visits) are actually abusing the emergency room. The proposed changes to prescription drug co-pays are relatively minor and, for employees in the PPO plan who rely exclusively on generic drugs there is no increase in co-pays. I recognize that there are many drugs for which there are no generic equivalents but the parties offered no specific evidence as to the history of the bargaining unit or County employees generally in purchasing non-generic medications. The cost of ordering medications by mail will double but for those ordering generic drugs that amounts to an increase of only $40 per medication per year (purchasing 90 days' supply four times at $10 each time versus at $20 each time). Again, no specific data concerning the history of bargaining unit or County employees' use of mail order medication purchases was presented. The Employers presented no specific justification for imposing co-pays for out-patient hospital surgery or increasing the co-pay for in-patient hospital services under the HMO plan.

Section 14 of the IPLRA requires that I select the final offer of one of the parties when making an award on an economic issue. The compelling case made for the Employers' final offer with respect to the wellness program and out-of-pocket maximums predominates over the less compelling evidence with respect to the other aspects of the Employers' final offer. Accordingly, I award the Employers' final offer with respect to Section 13.1.2.

Article XIII, Section 13.1.7, Group Insurance – Deductibles

Union's Final Offer:	Maintain the status quo of deductibles of $250 single/ $500 family (income <$25,000), $300/$600 (income between $25,000 and $40,000) and $350/$700 (income >$40,000).
Employers' Final Offer:	Increase deductibles to $350/$700, $400/$800, and $450/$900.

Union's Position

The Union maintains with respect to deductibles, as it did with respect to the other sections dealing with health insurance, that the impact of the ACA is too speculative to support any change, that the internal comparables do not support any change and that the external comparables are too varied to provide any useful guidance.

Employers' Position

The Employers maintain with respect to deductibles, as they did with respect to the other sections dealing with health insurance, that their offer is necessary to stem increasing health insurance costs brought on by the ACA, and that it is supported by the internal and external comparables. With respect to external comparables, the Employers maintain that even with their proposed increases in deductibles, the employees have deducitbles that are equal to or lower than the deductibles in the comparable communities and the employees pay less in premiums than their counterparts in the comparable communities.

Discussion

Initially, I observe that the only relevant part of the proposals is the highest income band as all bargaining unit employees earn more than $40,000. One factor cognizable under Section 14(h)(8) is bargaining history. The record reflects that in prior rounds of contract bargaining the parties have negotiated increases in deductibles, although they have not done so in quite some time. Thus, the Employers' proposed increases are in keeping with prior bargaining history.

The ACA has minimal impact on my decision with respect to deductibles. Higher deductibles should result in somewhat lower overall premium costs (the Employers have not quantified how much) and might be thought of as helping to head off a trend that could place the premium costs above the thresholds when the excise tax kicks in. But, as discussed earlier, the excise tax does not apply until 2018, long after the expiration date of the contract that is the subject of the instant proceeding, and is too remote to be a significant factor in this arbitration.

As discussed previously, the evidence of internal comparability is weak. Although the recently concluded contract with AFSCME Local 1028 which ended the strike might have provided some guidance, neither party has submitted it into the record before me.

The external comparables support the Employers' offer. I will focus on in-network deductibles for the PPO plan, relying on the Employers' consultant's undisputed testimony that 98% of all charges are in-network. (The HMO plan has no deductibles.) The comparison to the comparable communities is summarized below.

	Union offer	Employers Offer	DuPage	Lake	Winnebago	Kane
Single	$350	$450	$750	$450	$500	$600
Family	$700	$900	0	$900	$1,000	$1,800

* Information on DuPage family deductibles was not provided. The Employers' consultant's exhibit states "none," but it is highly unlikely that DuPage has a $0 deductible for families. Rather, it is likely that the family deductible is at least two times the single deductible.

Under the Employers' offer, the deductibles paid by the employees are equal to those paid by employees in Lake County and lower than those paid by employees in the other three comparable communities. An additional statutory factor that I find relevant is Section 14(h)(6), the overall compensation package. As discussed above, I have awarded the Union's final offer with respect to Section 13.1.5. Thus, the Employers will continue to bear 100% of the risk of premium increases in excess of the increases in wages. Under such circumstances, the Employers' proposed modest increases in deductibles which may mitigate that risk somewhat and which is supported by the external comparables is reasonable and I shall award it.

Article XXI, Wages

<u>Union's Final Offer</u>: 2.5% across the board increase effective December 1, 2011, 2012, 2013 and 2014.

<u>Employers' Final Offer</u>: 0% across the board increase effective December 1, 2011 and 2012, 1.75% effective December 1, 2013 and 2.0% effective December 1, 2014.

<u>Union's Position</u>

The Union contends that the Employers have failed to prove that they are unable to pay the Union's proposed wage increases. The Union characterizes the Employers' showing as a mere desire not to pay rather than an inability to pay. The Union maintains that it is in the public interest to have and retain experienced law enforcement officers.

The Union maintains that the Employers' offer of a wage freeze for the first two years of the contract is acceptable only if the Employers are able to prove an inability to afford any wage increases. The Union argues that the County is in good fiscal shape and has failed to prove its inability to pay.

The Union argues that the cost of living favors its offer. The Union avers that using the CPI-U index and converting employee salaries to constant dollars, one finds that the employees experienced a 2.88% loss in buying power from December 2010 to December 2011. The following year they experienced a 1,71% loss in buying power and from December 2012 through August 2013 they experienced a 1.71% loss in buying power. The cumulative loss in buring power of 6.17%, the Union avers, is much closer to the Union's offer of 2.5% annual raises than to the Employers' offer of no increases in the first two years followed by a 1.75% increase in the third year.

The Union maintains that the external comparables support its final offer. The Union observes that as of December 2010, the employees were below the average of the comparable communities at most steps and with no wage increase in the first two years of the contract, they will fall even further behind. The Union urges that the average increase among the comparables was 2.36% in December 2011 and 2.38% in December 2012, much closer to the Union's offer of 2.5% each year than the Employers' offer of 0%.

The Union contends that the internal comparables support its offer because most of the other bargaining units received across the board increases in 2011. The Union also discounts the probative value of most of the internal comparables because they do not involve public safety personnel.

The Union disputes the Employers' reliance on step movement as compensating for the absence of across the board increases in the first two years of the contract. The Union urges that across the board increases are designed to compensate for increases in the cost of living while step increases are designed to reward employees for their years of service and loyalty to the Employers.

<u>Employers' Position</u>

The Employers argue that the Union's offer disrupts the Employers' financial plan and, accordingly, is not in the public interest. The Employers rely on testimony from their finance director that it is essential to maintain 25% to 33% of yearly operating expenses in cash to cover the first five months of the year until the County receives its first large infusion of property tax payments. The cash on hand is also necessary because the State has become delinquent in payments due the County. The Employers emphasize that the Union's offer would cost $3.4 million more that the Employers' offer and would not be in the fiscal interests of the County.

The Employers contend that the internal comparables should be given more weight than external comparables and urge that the internal comparables support their offer. The Employers aver that in comparing wage rates and increases, one must take into account the role of step increases. The Employers urge that the average step increase in this bargaining unit is 4.79%, considerably higher than any other internal comprable. Other bargaining units received 0% across the board increases in 2012 and although the sergeants and lieutenants unit represented by the Metropolitan Alliance of Police received a 2.5% across the board increase, its average step increases were only 2.5%; in the Employers' view, the MAP increases totaled 5% which is not much less than the 4.79% step increase the employees in the instant bargaining unit have already received.

The Employers maintain that the external comparables support its offer. The Employers contend that it gives a more accurate picture to view the comparables side-by-side rather than rely on averages. The Employers urge that under their offer there is minimal impact on the relative standing of the employees vis-a-vis the comparable communities at each stage of a deputy's career.

Discussion

It is important to note at the outset that the Employers are not claiming an inability to pay. Rather, their claim is that the increases provided for in the Union's final offer would disrupt their financial plan. The Employers' concern is understandable but it is not persuasive. Whenever a union's offer calls for increases that are greater than the employer assumed in its financial plan, the union's offer will be disruptive to that plan. That is not a reason to adopt the employer's offer if the union's offer finds greater support in the other statutory factors. To accept the claim of disruption to a financial plan that the Employers set unilaterally, would come close to allowing them to set wage rates unilaterally.

The Employer's reliance on step increases is not persuasive. Under the pay plan, employees advance one step on their anniversaries through their eleventh year. They receive no further advancement until their twentieth year when they move one more step to top pay. Consequently, employees who are at the eleventh step but have fewer than 19 years of service receive no step increase and employees already at top pay receive no step increase. Under the Employers' offer, a significant number of employees will have their wages frozen in the first two years of the contract and will see their real wages eroded by inflation. I note that in most of the other units that received zero across the board increases, employees at the top step who therefore would not receive step increases, received lump sum payments which ameliorated the effects of inflation on their otherwise frozen wage rates. I also note that the correctional sergeants and lieutenants and the sheriff's deputy sergeants and lieutenants received 2.5% across the board increases for FY 2012 (effective December 1, 2011) in addition to step increases. Although their average step increases were lower than those provided for in the instant bargaining unit, employees in those units at top pay or otherwise not eligible for step increases nonetheless received 2.5% increases in wages whereas under the Employers' offer employees in this bargaining unit in comparable positions receive nothing.

The change in the CPI-U, *see* ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt, was 3.0% from December 2010 to December 2011 and 1.7% from December 2011 to December 2012. These increases in the cost of living provide more support for the first two years of the Union's final offer than for the Employers' final offer.

During the depths of the Great Recession, several arbitrators opined that internal comparability data provided more appropriate guidance with respect to wages than external comparability data. A key rationale was that much of the external comparability data came from agreements negotiated before the economy collapsed.

In Illinois, most bargaining units have the right to strike. Interest arbitration serves as a substitute for the right to strike for employees governed by section 14 of the IPLRA because of the dangers that strikes by those employees would pose to public health and safety. During the depths of the Great Recession, strikes by Illinois public employees with the right to strike decreased markedly as did notices of intent to strike. In other words, unions with the right to strike were not even threatening to strike during negotiations. *See* Malin, Two Models of Interest Arbitration, 28 *Ohio St. J. Dispute Resolution* 145, 151-52 (2013). A similar phenomenon was observed among bargaining units with the right to strike in Ohio. *Id.* at 153-54. This reflects the prudent judgment that during such very stressed economic times, a strike or even a threat to strike posed a major risk of backfiring politically. In contrast, resort to interest arbitration by Section 14 employees in Illinois increased markedly. *Id.* at 154. In such circumstances, internal comparability data may provide a more accurate gauge to the likely product of successful free collective bargaining than external comparability data.

As the economy and employer tax revenues have rebounded, the probative value of external comparability has also rebounded. The external comparability data relevant to the instant proceeding may be summarized in the following table:

	Employers Offer	Union Offer	DuPage	Lake	Kane	Winnebago
FY 2012	0	2.5%	2%	2.5%	2%	3%
FY 2013	0	2.5%	2%	2.5%	2%	3%
FY2014	1.75%	2.5%	2%			
FY 2015	2%	2.5%	2%			

The comparable communities provide the following average step increases: DuPage 3.38%, Kane 7.83%, Lake 5.0% and Winnebago 4.57%. The Employers' average step increases of 4.79% are less than those in Kane and Lake Counties, and just slightly more than in Winnebago County. The only comparable community where average step increases are significantly lower is DuPage County.

For the first two years of the contract, the external comparability data markedly favors the Union's final offer. Of course, this is due to the Employers' offering zero across the board wage increases. For the third and fourth years, the external data is less useful because it is available only for DuPage County. Comparing the final offers to the across the board increases in DuPage County, the Employers' offer is slightly more in line than the Union's offer but the significance of this must be discounted because there is no data for the other three communities and two of them, Lake and Winnabego, were higher than DuPage in the first two years and supported the Union's final offer. The marked support of the external comparables for the Union's final offer for the first two years of the contract drives my analysis and conclusion that the external comparables support the Union's final offer as a whole.

The internal comparability data before me provides very limited guidance. It is available only for the first year of the contract.[3] Otherwise, the data is a mixed bag, with two law enforcement units receiving across the board 2.5% increases (in addition to their step increases) and other units receiving no across the board increases.

To recap, the external comparability data supports the Union's final offer as does the cost of living data. The internal comparability data provides very limited guidance and does not clearly support either final offer. Considering the record as a whole, I connclude that the Union's final offer finds greater support in the statutory factors than the Employers' and I shall award it.

The parties stipulated that I include their tentative agreements with respect to other issues in the award. I shall do so.

AWARD

Based on all of the factors provided in Section 14(h) of the Illinois Public Employees Labor Relations Act, and for the reasons set forth in the opinion above, I award as follows:

1. The Employers final offer with respect to Article XIII, Section 13.1.2, Group Insurance – Plan;'

2. The Union's final offer with respect to Article XIII, Section 13.1.5, Group Insurance – Cost Sharing of Monthly Premiums;

3. The Employers' final offer with respect to Article XIII, Section 13.1.7, Group Insurance – Deductibles;

4. The Union's final offer with respect to Article XXI, Wages;

5 The following tentative agreements reached by the parties:

[3] I again note that neither party proffered the AFSCME Local 1028 contract that resolved the recent strike.

Section 2.2 Union Membership Cost Payroll Deduction Revise Section as follows (redlined to show changes made):

a. The Employer agrees to withhold from the compensation of any Employees, the initiation fees, monthly membership dues, ~~**P.E.O.P.L.E. deductions**~~ and special assessments, of such Employees which are payable to the Union, pursuant to written authorization of the Employees, and submitted to the Employer by the tenth (10th) of the month, in which dues first are to be withheld.

Section 7.2 Overtime Revise Section as follows (redlined to show changes made):

7.2.2 When the Employer determines, more than twenty-four (24) hours prior to the shift to be filled, that overtime is needed, for the position of Deputy permanently assigned within the Patrol Bureau ~~**or Detention Division**~~, for shift work (assignments which regularly work more than 2 shifts), it shall be posted as soon as practicable and be offered for volunteers within each respective Bureau/Division, using the following priority procedure:

* * *

7.2.2.6 The priority for volunteer selection shall be as follows:

* * *

~~**Detention Division – General Overtime**~~

~~**Except as otherwise provided in this section, when general overtime is initiated by the Employer the following order of priority shall apply:**~~

~~**Priority 1 – The most senior deputy permanently assigned to the detention division on the shift where the overtime occurs.**~~

~~**Priority 2 – The most senior deputy permanently assigned to the detention division on shifts other than the one where the overtime occurs.**~~

Section 7.5 Work Schedule Posting Revise Section as follows (redlined to show changes made):

a. Work schedules shall be posted no less than ten (10) calendar days, prior to the starting date of the schedule.

b. Such schedules may be changed, from time to time, to suit varying conditions. However, indiscriminate or unnecessary changes shall not be made in such schedules, and changes deemed necessary shall be made known to the Employees not less than ten (10) calendar days prior to such change, excluding emergency situations, as defined by the Employer. ***Schedules may be changed in non-emergency situations with less than ten (10) days' notice by mutual agreement between the Employer and the Union.***

<u>**Section 7.6 Schedule Change Compensation**</u> Revise Section as follows (redlined to show changes made):

If Employees' duty hours or days off are changed unnecessarily, indiscriminately, or without the required ten (10) calendar days' notice ***(unless by mutual agreement as set forth in Section 7.5.b. above)***, they shall be paid one and one-half (1.5) times their regular straight time hourly rate, for all such time worked different than their scheduled duty hour or days, excluding emergency situations, as defined by the Employer.

Chicago, Illinois

December 20, 2013

Martin H. Malin, Arbitrator