

ILLINOIS LABOR RELATIONS BOARD
BEFORE
BRIAN E. REYNOLDS
ARBITRATOR

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

**COUNTY OF MADISON and the
MADISON COUNTY SHERIFF,**

Employer

and

**POLICEMEN'S BENEVOLENT
LABOR COMMITTEE,**

Union

ILRB Case # S-MA-12-093

Hearing: May 21, 2013

Briefs: July 16, 2013

Award: September 14, 2013

OPINION AND AWARD

APPEARANCES:

For the Union:

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For the Employer:

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BACKGROUND

This is an interest arbitration under Section 14 of the Illinois Public Relations Act (Act) to resolve a dispute arising over the terms of the collective bargaining agreement (Agreement) between the County of Madison and the Madison County Sheriff (Employer or Madison) and the Policemen's Benevolent Labor Committee (PBLC or Union) for the following bargaining unit of the Employer's deputies, communication officers and jail employees (Unit):

All Probationary Deputies, Deputy Sheriff I, Deputy Sheriff II, Sergeant, Lieutenant, Captain, Probationary Communication Officer, Communication Officer I, Communication Officer II, Jail Technician I, Jail Technician II, Probationary Jailer, Jailer I, Jailer II, Sergeant (jailors), Lieutenant (jailors), Captain (jailors)

Madison County is an Illinois county in the Metro-East area of the St. Louis, Missouri Metro Area, bordering the Mississippi River. Its population is approximately 270,000 and its county seat is Edwardsville, home of Southern Illinois University at Edwardsville.

The PBLC is the exclusive bargaining representative of the Unit employees. The parties' prior Agreement commenced on December 1, 2008 and expired on November 30, 2011. The parties negotiated over the terms of a successor Agreement, reaching tentative agreement to many items which they stipulated are to be incorporated into this Award. The current interest arbitration is the result of a bargaining impasse over contract provisions involving four issues: Wages, Vacation Leave, Rotating Shift Premium, and Disciplinary Grievance Procedure.

The parties selected the undersigned to serve as the neutral arbitrator for the interest arbitration through the procedures administered by the Illinois Labor Relations Board (ILRB). The parties waived the requirement of a tri-partite panel and stipulated that the proceeding would be governed by the provisions of the Act.¹ A hearing was held on May 21, 2013 at the Employer's offices at which time the parties were afforded an opportunity to present testimony, exhibits, and other evidence relevant to the dispute. The parties timely filed briefs on July 16, 2013.

¹ The parties agreed, as allowed in section 14(p) of the Act, to utilize an alternative form of impasse resolution procedure, consistent with the Act's procedures, except for not creating a transcript as described in Section 14(d) of the Act.

ISSUES

The parties stipulated to the following issues:

1. Wages
2. Shift Premium
3. Vacation Leave
4. Disciplinary Grievance Procedure

FINAL OFFERS

The parties submitted the following final offers:

WAGES

Union Final Offer:

12/1/11: 2.5%

12/1/12: 2.5%

12/1/13: 2.5%

Employer Final Offer:

12/1/11: 0%

12/1/12: 2%

12/1/13: 2.5%

SHIFT PREMIUM

Union Final Offer. Increase the hourly shift premium for "Rotating Shifts" from 23 cents per hour to 35 cents per hour; Amends Article 10 of the Agreement as follows:²

Article 10 Wages

A. The base hourly rates in effect during the duration of this contract are shown in Appendix A.

B. Shift Premium/Rotating Shifts

A shift premium of ~~twenty-three (\$0.23)~~ **thirty-five (\$0.35)** cents per hour will be added to the base wage rates for all employees permanently assigned to work rotating shifts, including the first shift (11:00 P.M. - 7:00 A.M.), the second shift (7:00 A.M. - 3:00 P.M.) and the third shift (3:00 P.M. - 11:00 P.M.)

² For the Union's proposals, removed language is crossed-out and added language is bolded and underlined

C. Shift Premium/Straight Shifts

The following shift premiums will be added to the base for all employees permanently assigned to work the following shifts. Said premiums will also be added to the base wage rates for those employees temporarily assigned to the said shifts for the period of time they are working the shifts.

First Shift - (11:00 P.M. - 7:00 A.M.) Forty cents (\$0.40) per hour.

Third Shift - (3:00 P.M. - 11:00 P.M.) Thirty cents (\$0.30) per hour.

Employer Final Offer: Maintain status quo

VACATION LEAVE

Union Final Offer: Accelerate time in service required to achieve five weeks of vacation from 20 years to 15 years, and add a sixth week of vacation for employees with 25 or more years of service: Amends Section 14 of the Agreement as follows:

Section 14. Eligibility and Allowance

Employees shall be granted an annual paid vacation for the period specified below based upon the following service requirements:

| <u>Service Requirements</u> | <u>Vacation Period</u> |
|--|---|
| after one (1) year of employment (anniversary date) | Eighty (80) hours |
| after five (5) years of employment (anniversary date) | One hundred twenty (120) hours |
| after ten (10) years of employment (anniversary date) | One hundred sixty (160) hours |
| after twenty (20) fifteen (15) years of employment (anniversary date) | Two hundred (200) hours |
| <u>after twenty-five (25) years of employment (anniversary date)</u> | <u>Two hundred forty (240) hours</u> |

Employer Final Offer: Maintain status quo.

DISCIPLINARY GRIEVANCE PROCEDURE

Union Final Offer: The Union proposes the following changes to sections of Articles 4 and 6 of the Agreement to allow grievants to choose to arbitrate certain disciplinary actions previously pursued only through the Sheriff's Merit Commission:

Section 4.1. Definition

It is mutually desirable and hereby agreed that all grievances shall be handled in accordance with the following steps: For the purpose of this Agreement a grievance shall be defined as any dispute or difference of opinion raised by an employee against the County involving the meaning, interpretation, or application of the provisions of this Agreement, ~~except for~~ **including** actions involving demotion, suspension and termination, which are appealable under Article 6.

* * *

Section 4.2. Procedure. Steps and Time Limits

Step 1 Status Quo

Step 2

If the grievance remains unsettled at Step 1, the employee (with or without representation) may appeal the grievance to the Sheriff or his designee, within ten (10) business days of the Step 1 response, or the date the Step 1 response was due. **All grievances challenging just cause to discipline shall be filed at Step 2.** The Sheriff or his designee shall attempt: to adjust the matter and shall respond to the employee within ten (10) business days with a solution or a response. Either party may request, in writing, a meeting to attempt to resolve the grievance. If no meeting is requested the Sheriff or his designee shall respond to the appeal within ten (10) business days. If a meeting is requested and the grievance is not resolved at said meeting the Sheriff or his designee shall respond to the Union within ten (10) days after the conclusion of the meeting.

Section 6.2. Grievance of Discipline

Employees who are the subject of disciplinary action, except for reprimands, shall have the right to appeal such disciplinary action to the Sheriff's Merit Commission. ~~Reprimands~~ **All disciplinary actions specified at §6.1 B above** may be grieved under Article 4. Employees may appeal to the Sheriff's Merit Commission demotions, suspension and terminations, including suspension not exceeding a cumulative thirty (30) days in any twelve (12) month period imposed by the Sheriff and for demotion, suspension, or removal pursuant to 55 ILCS 5/3-8014. Reprimands, reassignments and transfers shall not be appealable **to the Merit Commission. An employee shall not have the option of pursuing both an appeal through the Merit Commission and pursuing a contractual grievance, and the written election of one of these mutually exclusive options waives any right to pursue the other.**

Employer Final Offer: maintain status quo

STATUTORY FACTORS

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

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

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

the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or private employment.

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

...As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based on the applicable factors presented in subsection (h).

In this case, the issues of Wages, Shift Premium and Vacation Leave are economic and, thus, I am restricted to adopting a final offer from one of the parties. The issue of the Disciplinary Grievance Procedure is non-economic so I am not restricted to adopting one of the final offers.

EXTERNAL COMPARABLES

The parties stipulated to the following Illinois counties as comparable communities: Champaign, McLean, Peoria, Sangamon and St. Clair. The Employer also introduced evidence concerning Missouri communities that are also in the metro-St. Louis area. The Union objected to the use of the Missouri comparables. I find there to be insufficient evidence in the record on the appropriateness of the use of these comparables and, thus, I will not consider this evidence as probative. The five counties stipulated to by the parties provide a sufficient amount of comparables to use in this proceeding.

POSITION OF THE PARTIES

Union Position

Wages

The Union's proposed annual wage increases of 2.5% is more reasonable than the Employer's proposal, which is similar except for a wage freeze in the first year. The Employer has not presented any evidence that it will be unable to pay the Union's proposed wage increases or needs a one year wage freeze. At the time of hearing, the Employer had in excess of six months of operating expenses in its general fund which is more than adequate under the Employer's fiscal policy.

The County's revenues have exceeded expenses by over \$20 million for the period of FY04 through FY11, with revenues falling below expenditures only in the three year period coinciding with the Great Recession. However, the Employer, during this time, generated an extra 3 million by a temporary increase in property taxes which expired in FY13.

Thus the Employer does not have an inability to pay and, as admitted by Joe Parente, could afford to pay over \$300,000 per year more than the Employer's proposal. The Union's proposal averages only \$250,000 more. The Employer appears to be arguing that it is entitled to have a one year wage freeze because it was the norm during the Great Recession. However, wage freezes were not the norm then and are not necessary for the Employer to meet its expenses.

The Union's proposal is also more consistent with the internal comparables. Three unions, other than this bargaining unit, have contracts with Madison County: AFSCME, PBPA Coroners and the Teamsters. With respect to annual general wage increases paid to the Employer's unionized employees, the evidence shows:

| <u>Fiscal Year</u> | <u>AFSCME (x 3)</u> | <u>PBPA Coroners</u> | <u>Teamsters</u> |
|--------------------|---------------------|----------------------|------------------|
| 2008 | 3.0% | 3.0% | 3.0% |
| 2009 | 3.0% | 3.0% | 3.0% |
| 2010 | 3.0% | 3.0% | 3.0% |
| 2011 | 3.0% | 3.0% | 3.0% |
| 2012 | 3.0% | 3.0% | 0.0% |
| 2013 | open | open | 2.0% |
| 2014 | open ³ | open | 2.5% |

In this proceeding, the County has offered the same general wage increase that the Teamsters have received. The average wage increase for FY12 was 2.4%, nearer the Union's proposed 2.5% than the Employer's 0%. The cumulative average for the internal comparables for the 3 years are 2.4%, 2.0% and 2.5% for a total of 6.9% for the 3 years, far closer to the Union's 7.5% proposal than the Employer's 4.5% proposal.

The external comparables also favor the Union's proposal. None of the law enforcement employees in the external comparables experienced a wage freeze, but instead experienced the following average increases: 2011 - 2.59%, 2012 - 2.19%, 2013 - 2.25% which is closer to the Union's proposal than the Employer's proposal.⁴

³ As I discuss later in this Opinion and Award, on September 12, 2013, the Employer reported that it had reached agreement with AFSCME on a 4 year contract for the 3 units.

⁴ In referring to calendar years, 2011, 2012 and 2013, the Union was actually referring to FY 2012, FY2013 and FY2014, respectively. Wage increases given in the calendar year were given on December 1st of the calendar year to November 30th of the following calendar year.

The County relied on arguing that the Unit employees simply made too much as compared to the external comparables. This wage rank evidence is not revealing in this situation where adoption of the Union's proposal neither allows the Unit employees to leapfrog the comparable counties or unduly gain ground among the comparables. The fact that the Unit employees have been well paid in the past does not justify a wage freeze but rather evidence that they should remain well paid in the future.

The cost of living data also supports the Union's proposal. Except for 2009, the cost of living has risen each year. The cost of living was not flat or negative in 2011, when the Employer proposes a wage freeze. The 3.2% rise in the cost of living for 2011 instead favor's the union's wage offer.

In summary the statutory factors all favor the Union's proposal. Internally, while one bargaining unit agreed to a wage freeze in 2011, the other four contracts did not have a freeze in 2011. The Employer has the financial ability to pay the Union's wage proposal, which is supported by the internal and external comparables. The cost of living data, while not highly probative, also supports the Union's proposal.

Shift Premium

Four out of the five Employer bargaining units have employees that are paid a shift premium ranging from 23 cents per hour to 45 cents per hour. Internally, the comparables show that the swing-shift employees in this Unit, with a 23 cents per hour differential, have the lowest shift premiums of any of these employees. The average hourly shift premium paid in other units is 32 cents for evening workers and 42 cents for overnight. The Union's

proposed increase of 12 cents will merely bring the swing-shift premium more in line with the premium paid other County and Unit employees.

While most comparable counties don't pay shift premiums, those that do pay a premium twice what the Union seeks to improve here. McLean County telecommunicators are paid a 50 cent per hour premium for working the evening or overnight shifts.

Vacation Leave

The Unit employees do not earn an increase in vacation between 10 and 20 years of service. Employees in the AFSCME Circuit Clerk and judicial units earn their 5th week of vacation at 15 and 16 years, respectively. Thus the Union's request to accelerate the time Unit employees receive their 5th vacation week to the 15th year is consistent with the internal comparables. The Union's proposal to reduce the time frame between earning the 4th and 5th vacation week from 10 to 5 years is also consistent with the external comparables, which average 6.8 years for this time frame.

Finally, the incremental increase in vacation and shift premiums sought by the Union are not "breakthroughs" subject to the stringent breakthrough analysis. Breakthrough items are those which change the structure or nature of a benefit program, not those seeking an incremental increase in the benefit itself.

Disciplinary Grievance Procedure

Prior to 2008, bargaining over law enforcement unit disciplinary procedures was a prohibited subject of bargaining. In 2008, the Act was amended so that discipline for peace officers became a mandatory subject of bargaining.

The Agreement has always had a disciplinary procedure with a just cause standard. Section 8 of the Act provides that contracts shall contain a grievance procedure that provides for final and binding arbitration of disputes unless *mutually agreed otherwise*. The Unit employees no longer agree to waive their statutory right to arbitrate disciplinary disputes, thus the Employer's proposal to retain it is permissive, and imposing such a waiver on the Union in interest arbitration is unlawful.

Additionally, even if the breakthrough standard were to be applied, the Union could meet the standard. First, the Union has a legitimate interest in having an independent arbitrators rather than a Commission of Sheriff appointees deciding on the propriety of discipline. Second, the change would not impact management as the Union proposal does not change the standards for discipline, but merely the means to challenge the discipline. The Union only wants to allow an employee the option of an arbitrator rather than the Merit Commission review his grievance. Since the arbitration procedure is currently used for all other contractual grievances, any impact on the Employer's legal representatives will be minimal. The union's proposal will also be more consistent with the internal comparables, as all other Employer bargaining units can grieve discipline, and the external comparables.

Finally, the Union's proposal provides a quid pro quo since it will eliminate any future litigation over which disputes are within the scope of the contractual waiver and will simplify the grievance procedure by often eliminating the Merit Commission as a party to discipline.

Employer Position

The Employer's position on all 4 issues should be maintained because the Unit employees currently enjoy a superior position to all the comparables, external and internal, when you look at the totality of their terms and conditions of employment.

Wages

The Unit deputies are paid more per year than any of their comparables, earning 114% above the average of the comparables after 2 years, 112% above after 5 years, and 106% above after 15 years. Even after the County's proposed 0% wage increase in the first contract year, the Unit employees would still be earning 113% more after 2 years, 111% more after 5 years, and 106% more after 16 years.

The same applies to jail officers who earn 131% above the comparables' average after 2 years, 130% above after 5 years, and 124% above after 15 years. Even with the proposed first year increase, the jailors would earn \$12,219 more than the comparables' average after 2 years. Thus, under the Employer's proposal, the Unit employees would retain their superior position toward the external comparables. The Employer's proposal will cost it \$932,869 while the Union's proposal will cost an additional \$759,361.

The Employer's proposal is also more consistent with the internal comparables. The 3% increases for the AFSCME units in FY11 and FY12 were carryovers from a contract negotiated in 2008. In the only currently negotiated contract, the Teamster's, who represent Highway and Animal Control employees, agreed to the exact offer made here. All non-union employees also have received a 0% increase for FY12.

Shift Premium

The Union's proposed 54% increase of \$.12 in the shift premium paid rotating shift employees, has not been supported by any evidence. The County has presented evidence that these employees pay is already superior to the comparables. Further, none of the external comparables provides a shift differential for its employees, indicating that the status quo should be maintained.

Vacation Leave

The Union's proposed change in vacation leave is a breakthrough proposal and thus must meet the breakthrough criteria which require that the Union show a compelling need for the change, that the current system is broken, that the proposed change would correct it and that the other party rejected a benefit of equal value for the breakthrough. The Union has not shown proof that any of these criteria were met.

Although the AFSCME Circuit Clerk unit may have a better vacation benefit, the vast majority of Employer's employees enjoy the same benefits as the Unit employees. The Circuit Clerk employees also make a lot less money and do not participate in the SLEP retirement program as the Unit employees do. Also, none of the external comparables provide for as generous a vacation benefit as proposed by the Union.

Disciplinary Grievance Procedure

The Union's proposal on the grievance procedure is also a breakthrough proposal and also must meet the stringent breakthrough criteria. Under the standards for

breakthrough proposals enunciated by Harvey Nathan,⁵ the Union has not presented sufficient evidence that the old system did not work. It only cites one case, the Nunn case, where it contends the current system did not work. However, this one case will be decided by the Illinois Appellate Court and afterwards there will no longer be an issue.

The Union has also not presented evidence of any hardships on the parties. While the Union again cites the litigation over Nunn, this is only one case, and it will be resolved. The County has also worked with the Union to bring the case before the Appellate Court and has not resisted addressing the problem. In any event, a single case is not a sufficient basis to support adoption of a breakthrough proposal.

The Union has also not satisfied the standards set by Arbitrator McAlpin for a change in the status quo.⁶ The Union has provided no compelling need for the change, there is no undue hardship caused by the current procedure, and there has been no sufficient quid pro quo offered by the Union.

Conclusion

The Employer has provided evidence of its revenue issues. Since 2006, the Employer has had a decline in revenue and spending, reducing its workforce by 172 employees in this period. The assessed property evaluation has declined in Madison County, which limits the ability to raise property taxes to pay for wage increases. It also has had a \$400,000 increase per year in SLEP retirement costs.

⁵ *Will County*, S-MA-88-9 (1998)

⁶ *Cook County*, L-MA-96-009 (1989)

The Employer's Fund balance should not be used to pay for salary increases, but instead used for paying expenses caused by uneven revenue cash flows, capital projects and as a reserve for financial and other emergencies. Keeping a healthy fund balance helps the Employer keep a good bond rating to allow borrowing of money at a lower rate, which it will need to do for upcoming jail improvements.

The Arbitrator should give little weight to the decisions cited by the Union that deal with non-counties. Also, the Union's vacation proposal could result in staff shortages and increased overtime.

While the Union points to a surplus in FY11, this was due to a temporary property tax increase imposed to shore up a fund balance that had been reduced by revenues the previous years. This, along with budget cuts and a spike in court filing fees, also resulted in a surplus of \$4.3 million in FY12. This will not continue into the current fiscal year.

Finally, in FY09 through FY11, the Employer transferred \$3.5 million from the capital project fund to shore up the fund balance until budget cuts could be made. The Employer returned the funds to the capital project fund in FY12.

DISCUSSION AND ANALYSIS

Wages

The parties have both proposed contracts of a 3 year term, from December 1, 2011 through November 30, 2014, referred to as FY12, FY13 and FY14. The Employer's proposal is a 0% increase in FY12, a 2% increase in FY13 followed by a 2.5% increase in FY14. The Union's proposal is a 2.5% increase for each of the 3 fiscal years.

External Comparables

This Unit consists of deputies, communication officers and jailors, while the agreed comparables separate these employees into 2 or 3 units. Thus, there are 13 units in the 5 comparable counties that are used in compiling the comparable data. The average annual increase for the 3 year proposed contractual term of FY12 through FY14 in these comparable units is 2.59% in FY12, 2.19% in FY13 and 2.25% in FY14, for a 7.03% overall increase.

The Union's proposal of a 7.5% total increase in salary levels for this period is closer to the comparables' average than the Employer's 4.5% increase. The difference is .47% more under the Union's proposal and 2.53% less under the Employer's proposal.

Cost-of-Living

While cost-of-living data is an important factor, there are limitations in relying on it. One limitation is that the parties can submit data that, depending on the index used, may give varying results of the cost-of-living of the employees involved.⁷ Another limitation, as the case is here, is that some of the cost-of living data must be based on forecasted and not actual data.

In this case, there is actual evidence of the cost of living for the first 18 months of the proposed contractual terms. The Union presented evidence that the CPI-U increased 3.25% in calendar year 2011 and 2.1% in calendar year 2012. This would only cover the

⁷ In previous cases, the cost-of-living evidence presented by a party has not always been consistent with the CPI-U evidence presented in other interest arbitration cases I have analyzed.

first 13 months of the successor Agreement, as the contract term only covers 1 month of calendar year 2011.

According to data from the Bureau of Labor Statistics, the U.S. City CPI-U changed 1.74% for FY12 and 2.96% for the first 6 months of FY13, or an approximately 2.14% annual rate for that 18 month period. The Bureau of Labor Statistics also keeps a semi-annual average for the St. Louis MO-IL area.⁸ From the 2nd half average of 2011 until the 1st half average of 2013, the CPI-U for that area increased at an average 2.037% annual rate. This time period corresponds to the first half of the proposed Agreement's term.

While there is no record evidence as to any prospective cost-of-living increases, cost-of living data so far in FY13 indicates a cost-of-living increase of approximately 2.2% in FY14.⁹

In looking at all 3 years of the wage proposals, the expected cost-of living increase during that period ranges from 5.8% to 6.48%, depending on which index and forecast is used. Both proposals are outside the range for the expected cost-of-living increase. The Union's proposed 7.5% increase is slightly closer to the range of any expected CPI-U increase than the Employer's 4.5% proposed salary increase.

Internal Comparables

Both parties presented evidence and arguments concerning the wages of other County employees. The Employer has imposed a wage freeze for FY12 for all non-union

⁸ There is also a Midwest City CPI-U. On August 19, 2013, in his decision in *City of Collinsville and IFOPLC*, S-MA-12-032 (2013) Arbitrator Daniel Nielsen identified this index as providing for a 1.8% increase in calendar year 2012 and 1.8% for the first six months of 2013.

⁹ In *City of Rock Island*, Benn cited economic forecasts from February 2013 showing expected increases in the CPI-U of 2.0% in 2013 and 2.2% in 2014.

employees and negotiated the wage freeze with the Teamsters unit, the only unionized bargaining unit it has reached agreement with. The three AFSCME units received a 3% increase for FY12.

The agreements for all of the Employer's bargaining units commenced on December 1, 2008 or FY09. All the Agreements provided for 3% annual increases in each contract year. The PBPA units and the Teamsters units were 3 year agreements ending with FY11 while the 3 AFSCME units were 4 year agreements ending with FY12. As these agreements expire, the Employer is seeking the one-year wage freeze, already agreed to by the Teamsters for FY12.

The Employer contends that the AFSCME raises for FY12 should be ignored as they were negotiated before the Great Recession. While I do not know when the AFSCME contracts were negotiated, they were all signed on April, 2009, right in the midst of the economic downturn which had commenced in the fall of 2008. I would surmise that these contracts, as all the contracts that commenced on December 1, 2008, were being negotiated coincident with the first part of the Great Recession.

The Union points out that, considering the increases in all 4 bargaining units with FY12 increases, the average is 2.4%, much closer to the Union's proposal. Technically, though, the County is not an employer for 2 of the AFSCME units: the Circuit Clerk and the Chief Judge are legally the sole employers for their employees. If I restrict the AFSCME comparable to the general unit, then the internal comparables for FY12 are one 3%

increase agreed to early in 2009 and one 0% increase recently agreed to, for a 1.5% average increase in FY12, with non-union employees also receiving a 0% increase.¹⁰

These increases all involve non-protective services units, which are normally given less weight by arbitrators than wage increases in other protective service units. However, in the most recent collective bargaining agreements described above, there was evidence of an internal consistency between the wage increases of such units and the protective service unit involved here. This internal consistency has been broken, though, by the decision to turn to 4 year agreements for the AFSCME units while retaining 3 year terms for the other contracts. Thus, with the ratification of new agreements, the AFSCME units will be set on its wage increases in a contract from FY13 through FY16 while the PBPA and Teamster units will only be settled from FY12 through FY14.

By giving more weight to the more recently bargained agreements, I find that there is a slight advantage to the Union proposal when evaluating the internal comparable factor.

Public Interest and Welfare/Ability to Pay

While the Employer does not claim an inability to pay, it presented testimony and written evidence of its restricted financial situation. Since FY06, The County has reduced

¹⁰ On September 12, 2013, the Employer informed the Union and me via e-mail that it had reached agreement with AFSCME for a 4 year contract for all 3 units. The agreements provide for raises of 0%, 2%, 2.5% and 2.5%, presumably with the wage freeze occurring in FY13. The employees in these 3 units will also receive a one-time \$450 payment, an approximately 1% payment that partially offsets the 0% first year increase

At this time, I presume the agreements are still subject to ratification, so I am unsure what weight can be given to this information. However, utilizing this information, but only the AFSCME general unit contract, the internal comparables would average a 1.5% increase in FY12, a 1% increase in FY13, and a 2.25% increase in FY14, resulting in a 5% average salary increase in the internal comparables for the Unit's proposed contract term. There is also the additional approximate 1% bonus for the AFSCME unit upon ratification, that is not being offered to this Unit. Absent the bonus, the AFSCME contract averages a 1.75% annual increase over its contract term compared to the 1.5% annual increase proposed for the Unit's contract term.

This information does not change my ultimate finding on the internal comparable evidence.

its overall spending each year, ending with a 1% spending decrease from FY11 to FY12. This was the result of a corresponding revenue decrease experienced in those years, with the exception of a slight increase in FY10 and FY11 due to a temporary property tax increase. While the assessed valuation has also declined on property in Madison County, that seems to be only in the past fiscal year.

The Union counters that the Employer has a surplus the past two fiscal years and has a Fund Balance sufficient to finance their wage proposal. However, I agree with the Employer that its Fund Balance is not meant to finance annual wage increases and that the surplus in FY11 and FY12 was a temporary result of the property tax increase the Employer levied to prevent a drastic shortfall in its revenues

I agree that the Employer is limited in its ability to increase revenue through property taxes, and also believe it should not be punished for managing its budget well and imposing the temporary property tax increase in reaction to the recessionary drop in revenues. However, I am not convinced that either of the wage proposals would have a drastic impact of the Employer's financial condition.

Arbitrators also cite the public interest in the Employer's ability to attract and retain staff as well as having contented public workers as support for an adequate wage increase for the Unit. I find that the Employer's proposed wage increase, keeping it at the top of the comparables, is still sufficient to avoid dramatically affecting retention, recruitment or staff morale. I find the interest and welfare of the public to be a non-factor in evaluating the two wage proposals.

Conclusion

The question then is what weight to give the evidence on each of the statutory factors. In his most recent decision from March of this year, *City of Rock Island and IFOPLC*, S-MA-11-183 (2013) Arbitrator Ed Benn stated his current position on the use of external comparables and cost of living data:

I am still not satisfied that the economy has sufficiently recovered to return to a time when one municipality's fate should be determined by the outcome of interest arbitration proceedings or negotiations in other communities...I find that in this case that the external comparability factor is not an "applicable" factor under Section 14(h) and give it no weight.¹¹

Many arbitrators have disagreed with Benn's approach and have continued to utilize external comparables as an applicable factor, usually as the most important factor. In his July 13, 2013 decision in *County of Clinton and IFOPLC*, S-MA-12-030 (2013) Arbitrator Raymond McAlpin stated that he:

has joined other arbitrators in finding that the cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. (at p. 22)

While I would not, as McAlpin does, rely on external comparables rather than the CPI-U as cost of living evidence, neither would I, as Benn does, ignore the external comparable evidence. Instead, I would reiterate my comment from my decision in *County of DeWitt*, S-MA-11-055 (2012):

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

¹¹ *City of Rock Island*, at p.18

Unfortunately, in this case, the cost of living data does not assist much in differentiating the proposals from one another. The Union's proposal is only slightly closer to the range of the cost of living increase expected during the contractual term. It is possible that, ultimately, the Employer's proposal will end up being closer to the actual cost of living increase experienced during the Agreement's term.

In fact, in evaluating the cost of living, internal comparables and public welfare evidence together, I find almost a complete balance between the two proposals, with only slight advantages to any proposal under an evaluation of each of these factors. However, this balance gets weighed toward the Union's proposal when considering the external comparable evidence.

None of the external comparable had a wage freeze in FY12 as proposed here. The Union's proposal, which averages a 7.5% increase in salary, is more in line with the external comparables 7.03% increase than the Employer's 4.5% proposed increase. The Employer maintains that its proposal is more consistent with the external comparables because its lower proposal would bring the Employer's salaries closer to the range of the comparables' salaries. Currently, Madison County ranks at the top of the comparables and the Employer's proposal would still keep it there. While I agree with the Employer that there is no need for the employees to advance compared with the comparables, I believe that a 2.53% loss to the comparables is an excessive decrease considering the Employer is not faced with any serious financial constraints differentiating it from its comparables.

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

Shift Premium

The Union has proposed a \$12 per hour increase in the shift premium paid for the rotating shift employees. Currently, the Employer pays the following shift premiums:

| | |
|--|-----------------|
| <i>First Shift (11:00 p.m. to 7:00 a.m.)</i> | <i>40 cents</i> |
| <i>Third Shift (3:00 p.m. to 11:00 p.m.)</i> | <i>35 cents</i> |
| <i>Rotating Shift</i> | <i>23 cents</i> |

The Union bases its argument on the fact that other employees in other bargaining units receive shift premiums of between 30 cents and 43 cents and that an increase to 35 cents would put the rotating shift employees more in line with the internal comparables. However, the shift premiums in the other units only apply to the evening and night shifts. No other internal unit seems to offer a rotating shift. Thus the internal comparables are of limited help.

The external comparable do not favor the Union's proposal as only one unit of the comparables offers a shift premium of any kind. Granted, McLean County does offer a high shift premium, 50 cents an hour, for its telecommunicators who work the evening or night shift, however this does not counterbalance the fact that all the other comparables' units receive no shift premium.

The cost of living data also does not support the Union's proposal as a 0% increase in shift premium is far closer to the cost of living change than the 54% increase sought by the Union.

The Union has not proposed any increase for those working the First Shift or the Third Shift. It may be that it has proposed the increase in the shift premium only for the rotating shift employees because it believes those employees deserve more because of the nature of their shift; or maybe the rotating shift needs a higher premium to be more attractive to employees. However, there have been no arguments or evidence of any operational need for rotating shift employees to warrant such a large increase in their shift premium.

Under the Act's standards, I find that the Employer's proposal to retain the status quo of a 23 cent shift premium for rotating shift employees is the more reasonable proposal.

Vacation Leave

The Union's proposal is to accelerate the time to reach 5 weeks of vacation from 20 years to 15 years, and to add a sixth week of vacation for employees with 25 or more years of service. The Employer proposes to keep the status quo and categorizes the Union's proposal as a 'breakthrough proposal' requiring it to meet the standards set by Arbitrators Nathan and McAlpin that I have cited with approval in previous interest arbitrations.¹²

¹² In *Will County & AFSCME* (S-MA-88-9, 1998) Arbitrator Harvey Nathan held that the party seeking the breakthrough change has the burden to demonstrate that:

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

However, I do not categorize the Union's proposal as a breakthrough proposal, but merely as an increase in a previously agreed upon employee benefit. Even so, I do not believe the Union's proposal satisfies an analysis even under the Act's general standards applied to interest arbitration proposals.

The Union offered the following chart to support its claim that the internal and external comparables support its vacation leave proposal:

(External Comparables)

| <u>County</u> | <u>Time in service to 4 weeks</u> | <u>Time to 5 weeks</u> | <u>Difference</u> |
|------------------|-----------------------------------|------------------------|-------------------|
| Champaign County | 10 years | 20 years | 10 |
| McLean County | 18 years | 25 years | 7 |
| Peoria County | 15 years | 20 years | 5 |
| Sangamon County | 11 years | 16 years | 5 |
| St. Clair County | 13 years | 20 years | 7 |

(Internal Comparables)

| <u>Bargaining Unit</u> | <u># of employees</u> | <u>Time to 4 weeks</u> | <u>Time to 5 weeks</u> |
|------------------------|-----------------------|------------------------|------------------------|
| AFSCME (General) | 192 | 10 years | 20 years |
| AFSCME (Cir. Clerk) | 70 | 10 years | 15 years |
| AFSCME (Judicial) | 72 | 11 years | 16 years |
| PBPA Coroners | 5 | 11 years | 20 years |
| Teamsters | 35 | 10 years | 20 years |

The Union claims support for the acceleration proposal under the external comparables by citing an average of 6.8 years between earning the 4th and 5th week of vacation compared to the 10 years for the Unit employees. It claims support under the internal comparables since the AFSCME Circuit Clerk and Judicial units reach 5 weeks' vacation in 15 years and 16 years, respectively.

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

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

Internally, the majority of the Employer's bargaining units and its non-union employees receive 5 weeks' vacation at 20 years with the average being 18.2 years. Externally, while the Union points to the time difference it takes for an employee to get from 4 weeks to 5 weeks of vacation, this is largely a result of the fact that the majority of the comparables take a longer period of time for employees to reach 4 weeks' vacation. I don't believe the comparative time lag between earning amounts of vacation offers much guidance in this case.

The evidence is that only 1 of the 5 comparables offers 5 weeks of vacation to employees with less than 20 years of service, with the external comparables averaging 20.2 years of service. None of the bargaining units in either the internal or external comparables receive 6 weeks of vacation after any period of service. The internal and external comparables clearly support the Employer's status quo proposal over the Union's proposal.

Based on the above arguments and evidence, I find that the Employer's proposal is more appropriate under the Act's standards.

Disciplinary Grievance Procedure

The Employer proposes retention of the current disciplinary grievance procedure which provides for disciplinary grievances above a written reprimand to be brought before the Merit Commission. The Union's proposal would allow an employee the option of pursuing such grievances either through the Merit Commission or the contractual grievance arbitration procedure.

The Employer claims that the Union's proposal involves a breakthrough proposal mandating the application of the stringent breakthrough standards discussed in the vacation leave proposal. I find that the Illinois legislature has made the application of the breakthrough doctrine moot.

Prior to 2008, when the original disciplinary grievance procedure was agreed to, the law prohibited bargaining over disciplinary grievance procedures for the Unit. This changed when the Illinois legislature amended the county code in 2008 to provide as follows:

However, on and after June 1, 2007, in any sheriff's office with a collective bargaining agreement covering the employment of department personnel, such disciplinary measures and the method of review of those measures shall be subject to mandatory bargaining, including, but not limited to, the use of impartial arbitration as an alternative or supplemental form of due process and any of the procedures laid out in this Section.

Consequently, bargaining over the discipline imposed on county peace officers is now a mandatory subject of bargaining.

While the contract for the Unit employees has always incorporated a disciplinary procedure which requires the traditional "just cause" standard, it has prohibited grievance arbitration by employees who were discharged, demoted or suspended. This is contrary to Section 8 of the Act, which provides:

The collective bargaining agreement negotiated between the employer and the exclusive representative shall contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement *unless mutually agreed otherwise.*" 5 ILCS 315/8;

In his recent decision in *City of Rock Island and IFOPLC*, Arbitrator Edwin Benn faced a similar decision on the application of section 8, although involving a City Police Commission. Benn cited many previous decisions, finding that:

Because the parties are presently in disagreement over the extent of inclusion of arbitration of discipline, they have not "... mutually agreed otherwise" as required in Section 8 of the IPLRA so as to exclude arbitration provisions from being inserted into the Agreement. And there is nothing in the IPLRA permitting a parsing of that statutory entitlement to arbitration of disciplinary matters through the agreement-forming interest arbitration process leaving certain minor disciplinary actions such as suspensions of five days or less under the authority of the BFPC or providing for options for an employee to choose between a BFPC or the arbitration process for protests over disciplinary actions.

In this case, the Union has proposed the choice option proposed by the Employer in Rock Island. However, Benn's analysis is still applicable to the proposals here. I cannot legally adopt a proposal that excludes a matter from grievance arbitration without mutual agreement. Thus I am precluded from adopting the Employer's proposal.

Since the matter is a non-economic issue, I am free to either adopt the Union's proposal or craft my own procedure that is within the Act's legal mandates on grievance procedures. The Union's proposal does not mandate arbitration of a disciplinary grievance, but instead allows an employee the choice of pursuing his appeal through either the arbitration of Commission procedures. While Benn held that such an option was not allowed under Section 8 of the Act, I find that, by its own proposal, the Employer implicitly agreed to any procedure that would allow a grievance to possibly go through the status quo procedure to the Merit Commission. The Union's proposal in this case, though allowing the bypassing of arbitration procedures, complies with the mandates of section 8 of the Act by allowing the grievant to always have the option of taking his grievance through the grievance procedure.

I find the Union proposal to be more appropriate under the Act and adopt its language as the Agreement's language for the disciplinary grievance procedure.

AWARD

I hereby find that on the issues in this matter:

| | |
|---|--|
| <i>Wages:</i> | The Union's final offer is adopted |
| <i>Shift Premium:</i> | The Employer's final offer is adopted |
| <i>Vacation Leave:</i> | The Employer's final offer is adopted |
| <i>Disciplinary Grievance Procedure:</i> | The Union's final offer is adopted |

These adopted offers are to be effective retroactively to December 1, 2011. I also order that the parties include these offers, along with their tentative agreements into the successor Agreement.

Issued: September 14, 2013 at Springfield, Illinois

Brian E. Reynolds
Arbitrator