

**ILLINOIS LABOR RELATIONS BOARD  
INTEREST ARBITRATION  
BEFORE ARBITRATOR MICHAEL JAY JEDEL**

**In the Matter of an  
Interest Arbitration between**

<b>COUNTY OF LAKE</b>	)	
<b>LAKE COUNTY CORONER'S OFFICE</b>	)	
<b>Joint Employers,</b>	)	
	)	
<b>and</b>	)	
	)	<b>S-MA-12-141</b>
<b>AFSCME COUNCIL 31</b>	)	
<b>LOCAL 2452</b>	)	
<b>Union.</b>	)	

**INTEREST ARBITRATION OPINION AND AWARD**

A hearing was held in Waukegan, Illinois on May 15, 2012 before Arbitrator Michael Jay Jedel, who was jointly selected to serve as interest arbitrator and as Chairman of an interest arbitration panel by the County of Lake/Lake County Coroner's Office ("Joint Employers") and AFSCME Council 31, Local 2452 ("Union"). The Joint Employers were represented by their counsel, A. Lynn Himes and Paul Ciastko, Scariano, Himes and Petrarca, Chtd., and the Union was represented by Scott D. Miller, Legal Counsel, AFSCME Council 31. At the hearing the parties stipulated and agreed that this arbitrator would be the sole arbitrator in this matter. The parties presented their evidence through testimony and extensive exhibits. For the Union, testimony was provided by Matthew Lapierre and Michael Reid, and for the Joint Employers, testimony was offered by Gary Gordon and Rodney Marion. By mutual agreement, the parties filed timely post-hearing briefs. They were received on August 11, 2012. As per the pre-hearing stipulation of the parties, the Arbitrator was to render his decision within sixty (60) days thereafter, absent any agreed upon extension. The Arbitrator also was to retain jurisdiction for purposes of implementing the Award.

STATEMENT OF THE ISSUES

The parties agreed at the arbitration hearing to have the arbitrator identify the issues in dispute in this interest arbitration matter, based on the entire record put forward. Accordingly, I find the issues presented for resolution are as follows:

1. Wages
2. Compensatory Time
3. Length of Contract
4. "Tentative Agreements"
5. Replacement of Personal Property/EvidenceTool Kit & Uniforms
6. Hours of Work

## General

Section 14(h) of the Illinois Public Labor Relations Act provides that in resolving those issues submitted to the arbitrator for decision, the arbitrator shall utilize the following factors, as applicable:

1. the lawful authority of the employer;
2. any stipulations of the parties;
3. the interests and welfare of the public and the financial ability of the employer to meet those costs;
4. external comparability in public and private employment;
5. the cost of living;
6. the employees present overall compensation;
7. changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;
8. such factors not confined to the foregoing, which are normally or traditionally taken into consideration in the resolution of interests and disputes.

The statute does not assign any priority or ranking to these factors in terms of their significance. Instead, it leaves to the arbitrator's discretion the application and weight to be assigned to each. Thus it is for the arbitrator to make the determination as to which factors bear most heavily in any particular dispute. In reaching my conclusions set forth below I have considered all of the above mentioned factors.

## BACKGROUND

Lake County is the third largest county in Illinois. It is located in the extreme northeast corner of the State, bordering on Lake Michigan. Its population consists of over 700,000 residents, and it has the second highest per capita income among Illinois Counties, and is among the 100 highest in the United States. The County is composed of approximately 443 square miles (land only), and has a median household income of approximately \$ 78,000, and per capita income of about \$38,000. Since 2009, and in response to economic conditions in the County (and nationally), the County aggressively reduced employee headcount through accelerated retirement options, departmental consolidations, and not filling vacant positions. As the economic downturn appeared to stabilize, the County continued to seek improvements in sources of revenue. Its unemployment rate has dropped over the succeeding years, and most recently returned to a level below what it had been for 2009. At 9.4%, it also was 0.4% below the State of Illinois as a whole. In their 2011 Annual Report, Lake County's Board indicated they were committed to fiscal responsibility and would make decisions on long-term impacts to maintain sound and prudent financial operations.

This is the second Agreement between the parties. Their first Collective Bargaining Agreement was successfully negotiated and ran from December 1, 2007 through November 30, 2010. The bargaining unit consists of approximately ten (10) people who work in the Coroner's Office. The majority are Deputy Coroners (6), of whom one is a Senior Deputy Coroner. There had been a total of ten (10) Deputy Coroners in calendar year 2011. Other bargaining unit members in this office include a

senior clerk, an executive secretary, and a part-time laboratory technician. The position of forensic laboratory manager is vacant.

Negotiations began in January, 2011 and continued sporadically into the summer. Four mediation sessions were held during the period of summer, 2011 through December, 2011. By then, the Union concluded that impasse had been reached, and they filed a Demand for Compulsory Interest Arbitration with the Illinois Labor Relations Board. This arbitrator was notified of his appointment in late January, 2012, and immediately contacted the parties. Pursuant to authority granted to the parties under the Illinois Public Labor Relations Act (IPLRA), the parties agreed to some alterations from the IPLRA's interest arbitration procedures and timetable, and those alterations were memorialized in a set of pre-hearing stipulations. At the interest arbitration hearing, the parties presented their evidence. Thereafter, and based on subsequent jointly agreed upon time extensions, they filed post hearing briefs.

The period of negotiations which led to the impasse included extenuating circumstances. In addition to the economic recession from which the County was emerging, there was forced turnover at the level of Coroner. When negotiations began in January, the Union Negotiating Team also met separately with the Coroner to discuss various issues. While he indicated he lacked the authority to reach an agreement on some of their proposals, as the Chief Negotiator for Lake County was the HR Director, a number of "non-economic" matters were discussed, and the Coroner and Chief Union Negotiator did date and initial about six (6) such matters. The Union viewed these as "tentative agreements," and believed the Coroner had indicated he had such authority.

Negotiations intended for February, 2011 did not occur after the Coroner abruptly resigned his office due to certain matters that had come to light which did not directly involve the Coroner's Office or his work there. In late February, the County Sheriff was appointed to temporarily fill the duties of Coroner. In March, he sought certain changes in work schedules, and the Union spent the next period of time responding to that initiative. HR Director Marion subsequently drafted a Memorandum of Understanding (MOU) seeking to capture the changes the Sheriff desired, but it was never signed. As noted later in this Award, bargaining unit members did work under these unilaterally directed modifications for a year, until March, 2012, when they returned to the working conditions specified in the 2007-2010 Agreement.

Meanwhile, Lake County appointed an interim Coroner in April, 2011, and the parties resumed collective bargaining negotiations on June 14, 2011. At that time, the Union was informed by the Joint Employers Chief Negotiator that he was totally unaware of the "tentative agreements" the former Coroner had initialed with the Union, and further indicated that the Coroner lacked the authority to have approved any contractual changes. The responsibility was his, not the Coroner's, the HR director indicated. Following some additional discussions, the parties continued with the assistance of a mediator, until impasse was declared in December.

## THE ISSUES

### THE COMPARABLE COMMUNITIES

I considered the following counties for comparability: Boone, DeKalb, DuPage, Kane, LaSalle, McHenry, Will, and Winnebago, and concluded that, while no county is perfectly comparable, the most

comparability is found with DuPage, Kane, and McHenry. Amongst the criteria I reviewed were the population, size and population density of each county, the per capita and median household income, property and sales tax revenues, and the distance from the most populous city in each county to Waukegan, as well as the distance from the county seat in each location to the county seat in Lake County. (In a few of the counties, but not most, the city with the largest population also was the county seat). In terms of population, income, and relative lack of proximity, the Counties of Boone, DeKalb, LaSalle, and Winnebago are less comparable. The Counties of DuPage, Kane, McHenry and, to a lesser extent, Will, are more closely comparable. Per capita incomes (ranging from above \$29,000 in Will County to more than \$38,000 in DuPage County, compare reasonably well to that of Lake (approximately \$38,000) as do median household incomes. The figures in each of the other four counties are decidedly lower. Geographical proximity, especially with regard to DuPage and McHenry Counties argues in favor of their inclusion as well. With respect to Kane County, the approximately 33 miles from Aurora, its most populous city, to Waukegan, in Lake County is the shortest distance of any two cities examined, thus making the case for its inclusion as a reasonably alternative commute for potential employment. Thus, in terms of the financial strength of various surrounding counties within the State of Illinois,<sup>1</sup> and the consideration of which counties are most comparable to Lake County, I find DuPage, Kane, McHenry, and Will the closest, albeit imperfect, matches.

## WAGES

The Union requests a 2.5% wage increase, plus knowledge/skills based level increases for senior/deputy coroners, effective December 1, 2010, an additional 2.75% wage increase plus knowledge/skills based level increases for senior/deputy coroners, effective December 1, 2011, and an additional 3.0% wage increase plus knowledge/skills based level increases for senior/deputy coroners, effective December 1, 2012.

In support of their position, the Union argues that these increases are justified (a) to maintain the wage differential of the bargaining unit employees when compared to external comparables; (b) because they are lower than the increases and/or wages of the internal comparables; and (c) in light of the fact that they fall below the wage increases of the three (3) prior years and the rate of inflation for most, if not all, of the years under consideration for this second Agreement.

For external comparables, the Union chose the counties of DeKalb, DuPage, Kane, LaSalle, McHenry, Will, and Winnebago, and argues that this set is appropriate based on various criteria, including shared proximity, population, median incomes, Equalized Assessed Value (EAV) and residential property values. They also contend that an analysis of the workload of the respective coroners' offices demonstrates that the employees in the Lake County Coroner's office work significantly more and do so with fewer employees. Their analysis of pay levels results in their conclusion that the Lake County employees earn only slightly more than their counterparts in the neighboring counties yet perform

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<sup>1</sup> The statute does not indicate whether "external comparability in public and private employment" is to be limited to jurisdictions solely in the State of Illinois, or if in this instance data for the State of Wisconsin also should be considered. Since neither party presented any data for Wisconsin, and my review of a significant sample of recent interest arbitration awards did not show any where Wisconsin information was included, I have chosen not to consider the financial well being or alternative employment prospects that might impact Lake County based on its obvious proximity to the State of Wisconsin.

considerably more work. This leads to their conclusion that the wage increases they have proposed are justified to maintain the wage differentials. Lastly, they note that McHenry County Coroner’s office bargaining unit members received an interest arbitration award of 3.25%, 3.25%, and 3.25% for the same three years.

The Union also claims internal comparables support their position. They cite the significantly higher wages paid the investigators for the State’s Attorney’s/Public Defenders, and they also note that in an Agreement between Lake County and the International Union of Operating Engineers, Local 150, covering Department of Transportation employees, wage increases were agreed upon of 3.5% for 2009 and again for 2010, and 3.75% for 2011.

In their post hearing brief the Union also asserts that their final offer on wages is supported by data concerning the rate of inflation during the period in question, as measured by the Consumer Price Index (CPI). They cite CPI data for the Midwest as follows:

Dates	Dec. 2008 –Dec. 2009	Dec. 2009 –Dec. 2010	Dec. 2010 –Dec. 2011	Recent 12 Months of Mar. 2011 – Mar. 2012	Dec. 2011– Jan. 2012	Jan. 2012 –Feb. 2012	Feb. 2012 –Mar. 2012
Midwest CPI	3.0	1.8	2.8	2.8	0.6	0.2	1.0

The Union contends that the wage increases they seek in their final offer are below the 2.8% rate of inflation for the full year periods shown above.

Finally, the Union challenges the contention of the Joint Employers concerning ability to pay. They argue that the wage increases granted the Local 150 bargaining unit employees are proof that the Joint Employers are *unwilling*, rather than unable, to pay the wage increases the Union requests. In addition, they claim that the arbitral testimony of Lake County officials and the County’s financial reports indicate that the County is financially stable, seeing improvements in revenue, and fares well in comparison with external comparables in EAV.

For all these reasons, the Union urges adoption of its final offer on wages.

The Joint Employers final offer on wage increases calls for a 0% wage increase for FY 2011, which began December 1, 2010, a 2.5% wage increase effective December 1, 2011, and a 2.0% wage increase effective December 1, 2012.<sup>2</sup> As with the Union, the Joint Employers also cite evidence from external comparables, internal comparables, cost of living data, and ability to pay as the basis for their final offer, and request that it be adopted.

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<sup>2</sup> The Joint Employers post hearing brief makes no mention of “knowledge/skills based level increases” for senior/deputy coroners. However, as that did appear in the last offer included in the Joint Employers list of exhibits proffered at the hearing, and there is no indication the Joint Employers subsequently changed their proposal so as to exclude these level increases, this discussion makes what I believe to be the reasonable assumption that the level increases remained part of the Joint Employers final offer, despite their not having been mentioned in the post hearing brief.

For external comparables, the Joint Employers have identified the deputy coroner and senior deputy coroner wages for Kane, McHenry, DuPage, and Will Counties.<sup>3</sup> They point out that the minimum and maximum rates for these positions in Lake County are higher than the corresponding rates for each of the other four (4) counties. In addition, the Joint Employers assert that the differential will be maintained with the adoption of their proposed 2.5% wage increase effective December 1, 2011.

In the testimony provided by witnesses for the Joint Employers at the interest arbitration hearing, as well as in their extensive set of accompanying exhibits, and in their post hearing brief, the Joint Employers expended considerable time and effort in furthering their argument that internal comparables and the entire budgetary process of the County for all County employees, justifies and requires the finding that their wage proposal is the proper one to adopt for this successor Agreement. They state that none of the County's non-union employees received a raise for either FY 2010 or FY 2011, and that their raise was 2.5% for FY 2012. The continuation of a poor economy required such results. With respect to bargaining unit employees, the Joint Employers contend that the wage increase negotiated with the IUOE, Local 150, for Department of Transportation employees, was achieved because the Union agreed to delay an increase in the effectiveness of the FY 2010 increase by eight (8) months, and accepted six (6) furlough days per person for bargaining unit members in 2011, in return for wage increases effective in April, 2011. The Joint Employers cite these other internal results to buttress their position<sup>4</sup>:

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<sup>3</sup> On September 17, 2012, counsel for the Joint Employers submitted an interest arbitration award rendered August 29, 2012 involving Boone County. Although I have had a longstanding practice for more than thirty-five (35) years in grievance arbitration cases of virtually always refusing to consider additional evidence once post hearing briefs had been received (absent extremely unusual factors), I asked counsel for the Union to respond. They indicated that the late submissions should not be considered. However, counsel for the Joint Employers responded, arguing that the additional interest arbitration award should be considered for two principal reasons: (1) "[the] situation [was] analogous to advising a court that a new case has just been decided while a motion is under advisement[;]" and (2) there is nothing to preclude this Arbitrator from reviewing and relying on other interest arbitration awards not cited by the parties . . . ." As I had intended to review a number of other recent interest arbitration awards, I found this latter reason persuasive and, as a result, did review the *Boone County* interest arbitration award. *County of Boone and Boone County Sheriff and Illinois FOP, S-MA-11-029* (Arbitrator M. Hill). Ultimately however, and as indicated more fully in the reasoning provided for my ultimate decision on this issue, I rejected the relevance of this Award. Fundamentally, the Joint Employers had not identified Boone County as an external comparable before (nor had the Union, for that matter), and seemingly introduced this recent decision primarily, if not solely, because the Arbitrator's finding on the wage issue was to their liking. I was unwilling to dismiss the relevance of a Boone County decision on that basis alone however, so I took the additional steps, as discussed earlier in this Award, of examining key indicators for Boone County and how they compared to those in Lake County. I found Boone County inappropriate as an external comparable. I also found in the body of that Award that the external comparables agreed upon by the parties and used in that case were the counties of Lee, Ogle, Stephenson, and Whiteside. Lake County was not cited by either party, and none of those cited counties were suggested as external comparables in the instant case. Accordingly, Boone County is not subsequently included in the discussion of external comparables.

<sup>4</sup> Counsel for the Joint Employers also indicates, in a footnote to their post hearing brief, that five other bargaining units (all involving the Sheriff's Office) currently are at interest arbitration. In each instance, the Joint Employers (the County and the Office of the Sheriff) have offered a three year package identical to that presented here: 0%, 2.5%, and 2%.

- Wage freeze for FY 2010 and 2011 and 2.5% increase in FY 2012 for 2 other Local 150 units;
- Wage freeze for FY 2010 for a third Local 150 unit but no agreement yet for FYs 2011 and 2012;
- Inability to reach agreement with AFSCME for the full period for two units at Winchester House, and a County decision to privatize the entire operation.

As other bargaining units presently also are at interest arbitration<sup>5</sup>, the Joint Employers note that any additional wage increase this Arbitrator provides to maintain the external differential will expand the differential on internal comparables.

Finally on the relevance of certain internal comparables, the Joint Employers urge complete rejection of any comparison between the bargaining unit positions and the County investigators, on the basis that the educational requirements for the two (2) sets of jobs are substantially different, as are the quantity of essential functions performed by each group. The jobs of deputy coroner/senior deputy coroner and investigators in the State's Attorney's and Public Defender's offices are not even remotely comparably, the Joint Employers contend.

The Joint Employers dismiss significant reliance on CPI analysis, viz.: “. . . the CPI does not really appreciably favor either party's offer to the extent that it would outweigh the key factors of external and internal comparability” [Brief, p. 17]. They further explain that budgetary analyses are made “looking forward . . . not looking backwards at what occurred [and the County needs] to make decisions about what [they] believe is going to occur forward . . . .” [Ibid., p. 18]. In addition, they state that CPI does not accurately measure living costs for these particular employees and, in the context of County revenues and property taxes, does not serve a very useful purpose in these considerations.

Lastly, with respect to “ability to pay,” the Joint Employers contend that their financial condition is the result of fiscally responsible budgeting, and should not now be used against it. Granting the Union's position would create internal inequities. Alternatively, had the County consented to provide all employees the 2.5% increase for FY 2010 that the Union had demanded for its bargaining unit employees, and continues to seek, the County would have had to pay out an amount it could not have afforded. The Joint Employers also reject EAV as a measure of “ability to pay.” They argue that U.S. census information demonstrates that there are no close external comparables to Lake County, with the possible exception of DuPage County, and EAV does not link to their budgeting process anyway. EAV has dropped substantially in recent years and continues to decline.

For all of these reasons, the Joint Employers urge adoption of their final offer on wages.

In reaching my decision on the proper final offer to select, I have been guided by an examination of a large number of interest award arbitrations for the recent past that are available for review online, including especially some of the reasoning and decision criteria these fellow arbitrators have utilized, with respect to the various weights they accorded each of the criteria mentioned herein that have been cited by the parties to the instant dispute. However, and as contemplated by the language of the governing statute, I have considered each of the factors specified (and cited *infra*), and have assessed these statutory factors as they apply to this case, ultimately utilizing my own judgment on the matter.

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<sup>5</sup> See note 3 *supra*.

As has repeatedly been noted elsewhere,<sup>6</sup> the governing statute does not specify the priorities or weights an Arbitrator is to utilize in the consideration and application of the significance of these various factors, leaving instead the ultimate judgment to the arbitrator to carefully consider the various factors, and then make her or his decision, as deemed appropriate in the particular case at bay. I have done this in the instant case.

I begin by considering the result of each final offer. A wage increase of 2.5% for the first year, then 2.75% for the second year, then 3.0% for the third year, would actually result in an 8.5% increase over the three years, while an increase of 0% followed by 2.5%, and then 2%, would amount to an increase over the three year period of 4.55%<sup>7</sup> As a number of the actual increases in externally comparable counties (e.g. DuPage Sheriffs, Kane Police, DuPage Deputies and Sheriffs) appeared to be at the level of 2% per year, I computed the effective increase over the three year period of an increase of 2%, 2%, and 2%, and found this three year increase would result in an overall increase of 6.12%.

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<sup>6</sup> For example *City of Decatur*, S-MA-29 (Eglit, 1986), cited approvingly in *County of Carroll and the Sheriff of Carroll County*, S-MA-10-041 & S-MA-10-042 (Perkovich, 2011).

<sup>7</sup> A dollar increased by 2.5%, and then that new amount increased by 2.75%, and then the total amount increased by 3.0%, results in a three year increase somewhat greater than merely the sum of the three increases, 8.25%. Similarly, in the latter example, the true increase would not merely be 4.5%, but with the compounding would elevate to the indicated amount of 4.55%.

Comparing the final offers of the Joint Employers and Union to this 6.12%, the difference is very small. The Joint Employers proposal would represent 98.5% of that 6.12% increase, whereas the Union's final offer would constitute 102.2% of that 6.12% increase. On this initial basis, the Joint Employers proposal is closer, albeit by a small margin. Data from two other counties helped tip the balance. In McHenry County, the three year wage increases for the Coroner's Office awarded at interest arbitration were 3.25%, 3.25%, and 3.25% for the identical fiscal years of 2011, 2012, and 2013. These wage increases were determined while the Award also included wage increases for FY 2009 and 2010 of 3.0% and 3.5% respectively, and 3.25% for FY 2014.<sup>8</sup> The only other wage increase data for an externally comparable county that I was able to uncover was for Will County's Sergeants and Lieutenants, where wage increases were only available for 2011 and 2012, and were 2.5% and 2.5% per year. No data could be found for this unit for FY 2013, although the evidence in the several counties appears to indicate improving economic conditions will result in an increase at least comparable, if not higher, than that of these past two years. Comparing the 2.5% per year for FYs 2011 and 2012 with the two final offers before me: 0% and 2.5% or 2.5% and 2.75%, it is clear that the Union's final offer is decidedly closer to the result in Will County. Thus, while one could not with any degree of certainty compute what could be said to be an actual weighted average of wage increases in the external environment with which the two final offers here in Lake County could absolutely be compared, it is my conclusion that the Union's final offer is closer to what the pattern appears to present.

Additional analysis follows. The Joint Employers presented minimum and maximum wage data for four counties besides Lake: Kane, McHenry, DuPage, and Will. I have analyzed these data, as well as considering the relative workload of deputy/senior deputy coroners, as a further measure of external comparability. I find the unrefuted analysis of the Union compelling, that the Lake County Coroner's Office has a substantially higher case load than that of the external comparables. This is especially true when the total death investigation visits are considered, and the reduced staffing level as of 2011 is taken into account. The Lake County Coroner's office employees do perform significantly more work than the comparable counties' coroner's officers.

Because the Statute limits the Arbitrator's authority in deciding this issue to the selection of one or the other of these final offers, and to no other salary figure, it is not essential to determine with any degree of precision just what the proper salary should be. Nor is it required for all assumptions and calculations to be absolutely and totally correct. Instead, in final offer arbitration, what is required is to determine which of the two offers is closer to being "accurate," even if one is really very low, or the other is especially high.<sup>9</sup> The Illinois Legislature might have structured this process differently, and in truth might at some future time decide to do so. For now, however, all of us are left with the existing process and requirements. Perhaps there was the intention with this mechanism to encourage each side to be ever more reasonable, lest the arbitrator select the other parties' position. Whatever the rationale, we are left with the final offer requirement, and therefore this arbitrator "simply" has to determine which offer, by whatever narrow amount, is closer to what the outcome ought to be. As numerous other arbitrators have suggested, the notion of "accurate" or "what the outcome ought to

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<sup>8</sup> See *Goldberg*, fn. 2, *infra*.

<sup>9</sup> This is immediately analogous to final offer salary arbitration in professional baseball, where it often has been noted that what the arbitrator is determining is which of the two final positions is even \$1 closer to the proper outcome, irrespective of what that "proper" outcome might have been.

be” refers essentially to replicating in interest arbitration, as nearly as possible, the result that would have occurred where reasonable negotiators acting in good faith were able to bargain to finality, given all the circumstances present. In this case, my examination of external comparables leads me to conclude that the more accurate of the two final offers is that of the Union. Unless their offer is adopted, the bargaining unit employees will lose ground in their relative standing in the external comparable communities.

In my consideration of internal comparables, I share the view of many arbitrators that it is not terribly helpful to compare unionized employees with those who are not organized. The evidence available to me in this instant arbitration further confirms that observation. A good faith collective bargaining negotiation to determine “wages, hours, and other terms and conditions of employment” has little in common with the process by which these terms customarily are determined in the nonunion sector, and the very thoughtful testimony offered by witnesses for Lake County in this hearing as well as the extensive set of data they provided as to the budgeting process confirms the great differences in roles, inputs, and decision-making. I give the data for the nonunionized employees considerably less weight than the external comparables. It also is noteworthy that there is not a single pattern for the unionized employees within Lake County, despite the apparent suggestion that the Coroner’s Office needs to be treated in virtually the same manner as everyone else, to assure consistency. When the unionized employee groups are considered, I note that a number of other units are in interest arbitration at this very time, not having accepted the Joint Employers offer, and the Agreement with the IUOE Local 150 for Department of Transportation employees shows a very different outcome than that for non-union employees in the County. These facts, alone, demonstrate that there are not meaningful internal comparables, and the determination for the Coroner’s Office must be made in terms of its specific circumstances. The differing pattern for the few unionized groups for which current data are available, and the evident difference in the results, especially in the years since 2009, justifies my conclusion that the internals provide little guidance as to what a full and fairly negotiated agreement would produce with respect to the wage change for this bargaining unit.

I have reviewed the cost of living data provided, and share the view of the Joint Employers that it also provides very limited guidance in this case. To the extent it is a somewhat limited indicator of the relative purchasing power of the Lake County Coroner’s Office employees, or the costs of doing business for the County, it appears that it impacted the external comparable counties in about the same manner. Therefore the external comparable analysis appears a stronger reflection on which final offer is more appropriate to choose.

Finally, I turn to the “ability to pay” consideration, that is the financial ability of the County to meet these wage increases. From my review of the considerable budgetary data and commentary of County officials, and the arguments put forward in support of the Joint Employers position, I am convinced that there is no serious argument about ability to pay. Rather, there is the matter of County priorities. Just what amount of money is and should be provided for this particular unit is a question of priority. The funds are there, as they have been in the external comparable communities. It is understood and appreciated that the County seeks to take a prudent, careful, long-term view of its finances. They also have expressed a desire to look at the impact of change in one unit such as the Coroner’s office on the entire County work force. I have considered and evaluated their concerns and weighed them against various data indicating where the wage scale for these bargaining unit employees would most likely wind up, under the full collective bargaining scheme envisioned under State law. I conclude that, between the two offers, which represent the absolute limit of my discretion in this

matter, the final offer of the Union is more reflective of that outcome than is the final offer of the Joint Employers. Therefore, I decide in favor of the Union on this issue.

Thus, I adopt the Union's final offer.

#### COMPENSATORY TIME

In the 2007-2010 Agreement, it was stated that "[e]mployees may accrue up to 75 hours of compensatory time off each year by mutual agreement of the parties."

The Union's final offer is to increase the number of hours of compensatory time off that bargaining unit employees would be entitled to accrue each year, from 75 to 240. They claim all non-union employees are entitled to that number of hours so that their position is one of "parity." In addition, they state that other non-law enforcement bargaining unit members, such as those at the now privatized Winchester House, Peace Officer unit employees, and Correctional Sergeant unit employees, all are entitled to accrue 240 hours of compensatory time off per year.

In response, the Joint Employers present two (2) arguments: (1) the Union only cites parity with respect to internal comparables such as that of the non-union employees when it is beneficial to its members; and (2) the Union did not provide any evidence that the existing maximum hours of accrual has created any "due process" issues which have not been addressed by the Joint Employers.

In their voluminous packets of exhibits, the parties provided a number of Agreements involving other County employees. I have examined each of these Agreements, and found the following, with respect to yearly accrual of compensatory time:

1. IUOE Local 150, Facility Operations Division: references Lake County's Personnel Policies and Procedures Ordinance
2. IUOE Local 150, Public Works Department: 80 hours
3. IUOE Local 150, Mechanics, Operators, Laborers: no language found
4. Teamsters Local # 714, Correctional Sergeants: 240 hours
5. FOP, Peace Officers Unit: 480 hours for Law Enforcement Personnel and 240 hours for Law Enforcement Support Personnel
6. FOP Labor Council Correctional Division, Correctional Personnel: 480 hours
7. Teamsters Local # 714, Law Enforcement Division, Sergeants and Lieutenants: 480 hours
8. IUOE Local 150, Health Maintenance Employees 15 hours

It also was the case, as the Union indicated, that in the two (2) Winchester House Agreements, both of which expired at the end of FY 2010, the maximum accrual was 240 hours of compensatory time off per year. However, as the parties indicated at the arbitration hearing that those operations had been privatized, the value of the terms in those prior Agreements with respect to comparability with other County Agreements, is decidedly less than would have been the case otherwise. Looking at the above Agreements therefore, it is apparent that no language was found in one, County practice was referenced in a second, and in two (2) others the maximum number of hours was lower than at issue here, 15 hours in one Agreement and 80 in the other. In the remaining four (4) Agreements, the maximum number of hours of accrual is 240 or higher. The Joint Employers have not challenged the Union's assertion that 240 hours is the norm for the non-unionized employees (thus suggesting that 5 of

the above Agreements have 240 hours of accrual or more provided). Nor have the Joint Employers argued that this requested modification in the Agreement would cause undue hardship of a financial or other nature for them. Instead, and as noted, their argument rests on the propositions that the Union's call for "even status" is not uniformly made, and that the Union has failed to prove the adjustment is justified.

Neither party has provided any information concerning external comparables. I have looked at interest arbitration awards over the past several years and found a variety of results evident, with little substantive information on the counties comparable to Lake. Therefore, comparability is limited to the evidence already presented. Financial implications are also of consideration. The language of the section indicates that there is virtually no financial impact on the Joint Employers with respect to the employees who choose to accumulate compensatory time. Employees who work overtime can elect either the pay or the equivalent time off. All unused compensatory time, whether at a maximum accrual of 75 hours or at the Union's requested 240 hours is to be paid out by the close of the fiscal year, thus there is no issue of time off earned that is subsequently paid out at a higher rate in succeeding years, if the employee's salary has increased.

Therefore, the only apparent detriment to the Joint Employers of the Union's position is the need to have the positions staffed. If a bargaining unit employee elects to take compensatory time as opposed to receiving the pay, the Joint Employers "save" the payout to the employee but *may* have to staff that position at the same time. This staffing need *might* result in a conclusion that an additional hire was needed, in which case there would be a financial outcome for the Joint Employers. I reject this basis for denying the Union's final offer on two grounds: (1) the Joint Employers have not raised this concern; and (2) the Agreement clearly states that the usage of the compensatory time requires advance notice and supervisory approval. Thus Management has some control over the timing and frequency of the utilization of the compensatory time. It is understood that the nature of the work in this department is such that unforeseen and emergency needs arise all the time. Nevertheless, in the absence of any evidence that the requested change would present such an undue staffing burden, or financial detriment to the Joint Employers, I am not persuaded this theoretical concern is actual. When, and if, subsequent experience dictates that the adoption of the Union's final offer has had a deleterious effect on the operation of the department, the Joint Employers can take that position in subsequent contract negotiations. In this interest arbitration, there is no such evidence present.

A frequently cited criterion in deciding issues such as this one is to choose the final offer that it may reasonably be concluded would have been the ultimate outcome, had the parties negotiated the issue to finality. In this instance, having considered the positions of each side and the evidence provided, and having taken into consideration the applicable factors under the governing law, I conclude that the Union's position is the superior one. Their position does not constitute a "breakthrough." It is not a new benefit, as the benefit already exists in the Agreement. The change does not call for a different way of administering the accrual of compensatory time, or a change in the calculation formula, and payout of unused time still will be required by the end of the fiscal year.

I therefore adopt the Union's final offer.

LENGTH OF CONTRACT

The Union in its final offer seeks to have the Labor Agreement extended to a fourth year, with a wage increase of 3.0% for all bargaining unit members, plus knowledge/skills based level increases for senior/deputy coroners. In support of their position, they argue that this proposal does not constitute a substantial breakthrough, is reasonable in its financials as it is in line with the internal and external comparables, and makes sense because otherwise there will be very little time left after the present impasse is resolved and new negotiations would need to be begin for the next contract.

The Joint Employers reject the addition of a fourth year to this Agreement on several grounds. They argue that the proposal was first made the day before the interest arbitration hearing began, thus they had no time to evaluate the effect of this request, or to bargain about it. It also is their position that it would constitute a substantial breakthrough for which there is no support in the record, and the adoption of the Union's final offer would constitute an inappropriate bypass of the negotiation process.

I find the Joint Employer position compelling on this issue. The parties successfully negotiated their first Agreement, and it was for a three (3) year period. Throughout this negotiation for a second contract, the period under consideration always had been another three (3) year period. There is no evidence the parties themselves, if left to their own devices, were jointly contemplating a fourth year for this second agreement. In addition, it is at best speculative just what wage increase, if any, the parties would have adopted for a fourth year, and it is their own efforts for which the statutory scheme is intended. While the first Agreement was concluded by the parties themselves, this second negotiation has occurred during a period of considerable upheaval and uncertainty, not only in the external environment but within the Coroner's Office as well. During the negotiations which led to this impasse, the previously elected Coroner resigned, and there have been interim replacements. The current Coroner was defeated by an opponent in the primary election in February, 2012, and there will be a new Coroner elected by the voters in the November, 2012 General Election. The Joint Employer deserves the opportunity to assemble its new team for the next contract negotiations. No clear reason has been advance to prospectively determine wages for a year not part of the negotiations that had been occurring in the period that led to the impasse. Lastly, it might be noted that the Union did not provide its first proposal for the first bargaining session until January 18, 2011, a date after the first contract already had expired. The Union has made no claim that the late start of these negotiations for the successor Agreement was due to any action or inactivity of the Joint Employer. Therefore, the argument rings rather hollow that there will be insufficient time after the adoption of this second Agreement to begin negotiations for the third Agreement, unless the proposal is adopted to add a fourth year to this Agreement.

There is no basis in this record to conclude that, if left to themselves at the negotiating table, these parties would have agreed to a four (4) year Agreement rather than a three (3) year Agreement. As a result, I must reject the final offer of the Union and find for the Joint Employer.

I therefore adopt the final offer of the Joint Employer.

#### TENTATIVE AGREEMENTS

As discussed earlier, in January, 2011, Matt LaPierre, the Union's Chief Negotiator, met with the former Coroner, Dr. Richard Keller, and discussed a number of changes in the Agreement. On January 25, 2011, they each dated and initialed these potential modifications to the Agreement. There were six (6) "tentative agreements" in total. They included (a) modifications in the language of Article 13, Paid

Holidays, Sections 1 and 2, regarding the current distinction between “Fixed” and “Floating” Holidays; (b) additional language in Article 15, Records and Forms, Section 2 with regard to access to public records; (c) Article 16, Seniority, Section 3, concerning the length of layoff after which seniority is interrupted; (d) additional language in Article 19, Leave of Absence, Section 5, concerning Sick Leave Use; (e) Article 23, Contracting Out, regarding the general policy and certain procedural notifications and negotiations; and (f) Article 25, Wages and Other Pay Provisions, the language for Knowledge/Skill Based Level Increase and additional language for achieving Senior Deputy Coroner Status as well as inclusion of several of the County’s policies and procedures manuals and resolution of conflicts between those policies and the language of the Agreement.

The Union maintains in its final offer that these “tentative agreements” should be included in the new Labor Agreement. They contend that there was a “meeting of the minds” of the parties’ designated representatives. It is their position that the Coroner was one of the people appointed to negotiate the Agreement. He was on the Joint Employers’ bargaining team for the first contract, as well as at the beginning of the negotiations for this second Agreement. In testimony at the interest arbitration hearing, their witnesses also stated that the County’s Chief Negotiator, HR Director Rodney Marion, had said repeatedly that the Coroner could work out noneconomic issues with the Union. Accordingly, the Union in its final offer seeks the incorporation of these six tentative agreements into this next Labor Agreement.

The Joint Employer asks that these “tentative agreements” not be included in the final Agreement, and offer a number of arguments in support of their final offer on this issue. It is their position that these “tentative agreements” are not binding because Coroner Keller lacked the authority to reach any agreements with the Union. It is a Joint Employer, they contend, and the Coroner acted without the permission or knowledge of their chief negotiator, Marion. They further assert that Marion serves as the chief negotiator for all of the County’s negotiations, and has done so for seven (7) years. As he testified at the interest arbitration hearing, he has never allowed others to tentatively agree to proposed contract language, did not do so in this instance, and was unaware of these “tentative agreements” until the resumption of the parties’ collective bargaining negotiations, in June, 2011, after the resignation of Coroner Keller, and the appointment of the new Coroner in mid-April. More specifically, Chief Negotiator Marion testified that any tentative agreements would have occurred at negotiations in which he was present, and had signed off himself. Since in negotiations with this Union involving two (2) other units (the previously represented Winchester House employees), the meetings were rescheduled if Marion could not be present, the Joint Employers take the position that the Union ought to have known that Keller did not have the authority to enter into such “tentative agreements.”

In addition, the Joint Employer offers several other reasons for the adoption by this arbitrator of their final offer, rather than that of the Union. They indicate that even if the tentative agreements were validly reached, they lacked the full force of a binding nature unless and until agreement was reached on all issues. Since that did not occur in this case, they should not now be imposed by the arbitrator in the new Agreement. Additionally, the Joint Employer contends that even under the Union’s claim, at least two of the tentative agreements should be rejected. The Union had claimed that Coroner Keller pointed out that he had no authority to agree on economic issues, and two of the “tentative agreements” (those involving Articles 13 and 23) did involve economic issues. Lastly, the Joint Employer urges rejection of the Union’s final offer on these tentative agreements because no evidence was put forward to support these changes. Therefore the status quo should be maintained.

I find the Joint Employer's final offer to be the clearly persuasive one in this instance. No first-hand evidence has been provided by the Union that authority to enter into such agreements had been delegated to then Coroner Keller. At best, there are assertions of verbal statements attributed to Dr. Keller or to Mr. Marion. There is nothing in writing to indicate the Joint Employers had entrusted this responsibility to Dr. Keller, and Mr. Marion pointedly has contradicted the claim. It is further noted that Dr. Keller was not produced at the hearing to support the Union's assertions. (Research into public records revealed that Dr. Keller had resigned due to felonies unrelated to his position as Coroner. Under the terms of his guilty plea, *inter alia* he surrendered his position as Coroner, agreed to serve a 2 year term of probation, paid a fine, consented to perform community service, and was not allowed to leave the State of Illinois without permission from his probation officer. Therefore, absent evidence otherwise, it is reasonable to conclude that he was physically available and, if need be, could have been subpoenaed to testify in this matter. Alternatively, the Union could have buttressed its case somewhat by producing evidence they had tried unsuccessfully to produce Dr. Keller as a witness).

The Joint Employers also have argued, and provided supportive testimony, to the effect that their chief negotiator was unaware of these "tentative agreements." No counter argument to this position was put forward by the Union, nor did the Union provide evidence to contradict the claim that Chief Negotiator Marion always was present at bargaining sessions with the other units, and no agreements could be made in his absence.

I also find of great significance the absence of any clear indication, and certainly of any meeting of the minds, as to what was meant by "tentative agreements." That term could have meant subject to agreement being reached on all other terms, as the Joint Employers indicate might have been one interpretation. Or such language could mean subject to ratification by another level on one or both sides—e.g. a Union Negotiating Committee, or full membership, or the Joint Employers Chief Negotiator. Whatever the meaning of "tentative," the record makes clear that whatever condition precedent to these "agreements" being recognized as "final" was not met. At best, they were not permanent in nature.

Finally, I must conclude that the Union has not established a convincing case for why these modifications which they desired should be part of the new Agreement, nor have they allowed me to conclude that the parties, if they had negotiated to finality, would jointly have agreed to these terms. It might have been that other changes sought by the Joint Employers would have been a prerequisite to their agreement on these terms, especially when the Chief Negotiator considered the impact of these terms on other agreements in the County. That is not known. What is compelling to this arbitrator is the conclusion that the Union has not justified why their final offer on this position should be adopted, beyond their assertion, highly questionable, that a duly empowered representative of the Joint Employers already had unconditionally agreed to these terms. If these language changes are important, the Union will have the opportunity in the next set of negotiations, which are likely to commence in fairly short order after this Agreement has been adopted, to pursue these matters through the collective bargaining process. For now, their position cannot be selected on this matter.

For the reasons indicated, I adopt the final offer of the Joint Employer.

## MISCELLANEOUS PROCEDURES: REPLACEMENT OF PERSONAL PROPERTY/EVIDENCE TOOL KIT & UNIFORMS

The Union asserts in its post-hearing brief that the Joint Employer has sought in its final offer to change the language of Article 24, Miscellaneous Procedures, Section 4, Replacement of Personal Property/Evidence Tool Kit, and reduce the amount of coverage for damaged personal clothing or other items from \$ 600 to \$ 300 per fiscal year. They also claim the Joint Employer demanded new language requiring employees to wear uniforms supplied by the Coroner. It is the Union's position that no evidence was provided in support of these proposals, nor was there any information showing that the status quo provisions had not worked satisfactorily, or had created any issues for the Joint Employer. The Union urges adoption of their final offer, maintenance of the status quo on Article 24.

The Joint Employer did make these counterproposals, in a document dated June 14, 2011, however I can find no supportive evidence or argument put forward by the Joint Employer in the interest arbitration hearing, in their accompanying exhibits, or in their post-hearing brief, justifying this demand, the reasons for it, the evidence the modifications were needed, any similarly situated employee group either within the County or in comparable counties where similar language has been adopted, and/or any resistance having been shown by the Union during the negotiations which gave rise to the instant impasse and interest arbitration procedure.

Accordingly, it is not clear to me from the entire record in this case if the Joint Employer continued to include in its final offer the adoption of these modifications of the Agreement. If they did, they have not substantiated the need for these changes in any way, shape, or manner suitable for their position to be adopted. The record lacks any basis for the conclusion that this subject was negotiated, and therefore precludes the conclusion that, if bargained to finality, these proposals offered at least at one time by the Joint Employer, would have found their way into the new Agreement. Surely, if the subject is of import, the next set of negotiations will enable the Joint Employer to avail itself of the opportunity to seek to make the case, in the collective bargaining process, that their position should be adopted. However, at this juncture, the record does not allow for the arbitrator to dictate that these changes should find themselves into the new Agreement.

I adopt the final offer of the Union.

## HOURS OF WORK

The Joint Employer proposes a couple of significant changes in the language of Article 14, Hours of Work, and specifically Section 1, Work Day and Work Week, and Section 2, On Call Shift and Back-up Shift—Deputy/Senior Deputy Coroner:

1. Changing the specification that the Senior Deputy Coroner and Deputy Coroner have a normal work day of Monday through Friday 8:00 am to 5:00 pm to language which indicated that their normal work day was eight (8) hours.
2. Changing the language of Article 14, Section 2.

In the 2007-2010 Labor Agreement, it read as follows:

Section 2.      On Call shift and Back-up Shift-Deputy/Senior Deputy Coroner

**There shall be an on-call shift Monday through Friday. On-call shift hours shall be as follows:**

1:00 pm to 5:00 pm	4 hours in office	at straight time pay
5:00 pm to 8:00 am	4 hours on call pay	at straight time pay

**Saturday and Sunday on-call shift hours shall be as follows:**

8:00 am Saturday to 8:00 am Sunday	8 hours on call pay	at straight time pay
8:00 am Sunday to 8:00 am Monday	8 hours on call pay	at straight time pay

**Holiday on-call shift hours shall be as follows:**

8:00 am (day of holiday) to 12:30 pm (day of holiday)	4 hours	at straight time pay
12:30 pm (day of holiday) to 8:00 am (day after holiday)	12 hours	at straight time pay

In addition to the above, when an on call employee is actually called out to a site she or he shall receive pay at time and one half for all hours worked with a minimum of 2 hours at time and one half for each call out.

**Back up Deputy Shift**

While serving as a back up on call Deputy an employee shall receive compensation on the following basis:

<b>Monday through Friday</b>	5:00 pm to 8:00 am	1 hour at straight time pay
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**Saturday and Sunday**

8:00 am Saturday to 8:00 am Sunday	2 hours on call pay	at straight time pay
8:00 am Sunday to 8:00 am Monday	2 hours on call pay	at straight time pay

**Holidays**

8:00 am (day of holiday) to 12:30 pm (day of holiday)	1 hour	at straight time pay
12:30 pm (day of holiday) to 8:00 am (day after holiday)	2 hours	at straight time pay

In addition to the above, when an on call employee is actually called out to a site she or he shall receive pay at time and one half for all hours worked with a minimum of 2 hours at time and one half for each call out.

The Joint Employer has proposed that the **new language** read as follows:

Section 2. On Call Shift and Back-up Coverage and Pay for Deputy/Senior Deputy Coroner<sup>10</sup>

**The Employer shall assign employees to be on call for any shift or period of four (4) hours or more that is not scheduled with at least one employee. Employees shall be required to accept any reasonable on call assignment.**

**Employees shall be paid in the following manner while On-Call:**

**Employees who are designated as Primary On-Call shall receive two (2) hours pay at straight time for each work day on call, two (2) hour minimum pay at time and one-half each day the employee is called in, and employees shall be paid time and one-half their hourly rate of pay for hours worked during a call-in.**

**Employees who are designated as a Back-up On Call shall receive one (1) hour pay at straight time for each work day on call, two (2) hour minimum pay at time and one-half each day the employee is called in, and employees shall be paid time and one-half their hourly rate of pay for hours worked during a call-in.**

In support of their proposed change, the Joint Employer argues that the old system did not work properly and created operational hardships, while the Union resisted attempts to address these problems.

To support their position, they point out that the Interim Coroner, Sheriff Curran, wrote the Union on March 1, 2011 that he was implementing a schedule change to become effective on March 7, to implement needed cost saving initiatives. He cited overtime expenditures in excess of the budget in FY 2009 and 2010 which, he stated, totaled approximately \$ 55,000.

The Sheriff and HR Director Marion then met with the Union to discuss this letter, and another letter from the Interim Coroner was issued on March 8. There, he noted that the Union had made some counterproposals, which he rejected, and explained that his schedule change would be adopted. Subsequently a Memorandum of Understanding (MOU) was drafted, which called for a modification of Article 14 to conform to the changes put forward by the Interim Coroner, until a successor agreement was ratified. The Senior Deputy Coroner and Deputy Coroners then worked under that schedule until March 2, 2012, when Matthew LaPierre, the Union's Chief Negotiator, wrote Coroner Yancey (appointed Coroner to replace the Interim position of the Sheriff), that the bargaining unit employees affected would return to the schedules in the 2007-2010 expired Agreement. Three (3) days thereafter, HR Manager Marion informed the Union that they were required to maintain the schedule under which they had worked for almost the past year, until a successor agreement was ratified.

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<sup>10</sup> In their post-hearing brief, the Joint Employer labeled this proposed new Section 2 "On Call Shift and Back-up Assignment – Deputy/Senior Deputy Coroner." However after including the proposed text, they cited "Employer Ex. 2." The language shown above is the exact language of Employer Ex. 2, therefore I have used it in the body of this Award. It appears that the discrepancies between the language above and that shown here from the Joint Employers post-hearing brief are relatively minor, and represent a distinction rather than a difference, especially since the language in the proposed section itself is identical in the exhibit proffered at the hearing, and in the post-hearing brief.

The Joint Employers contend that the change in schedule was permitted under the Management Rights clause of the parties' Agreement, Article 2. It is their position that there was no basis for preventing Management from continuing to maintain the right to set the work day schedule, as they had done, in a manner that is consistent with the goals of the Joint Employers.

They also contend that there was no "real" status quo, since the language in the expired Agreement was merely the parties' *first* Agreement, and changes had already occurred in the year prior to its expiration. Lastly, it is the claim of the Joint Employers that the language of the expired Agreement did not work, created hardships because the Coroner's office wound up over budget in call-ins/outs and overtime, and that the final language used from March, 2011 to March, 2012 did attempt to incorporate suggestions made by the Union. For all of these reasons, the Joint Employers urge adoption of their final offer with respect to the language changes in Article 14, Sections 1 and 2.

The Union urges rejection of the Joint Employers final offer. They argue that they negotiated with the Sheriff/Interim Coroner in March, 2011, rather than fight over the schedule change, and then never signed the MOU that HR Director Marion had drafted. It was unilaterally implemented by Management during the period the Sheriff served in the Coroner's Office. Under its terms, the on-call and back-up deputies no longer automatically received a minimum of two hours at time and one-half if they were called out to a site, but instead received only time and one-half for hours actually worked in excess of eight hours in any one day. Since March 2, 2012, bargaining unit members ceased to accept the terms of the MOU and instead returned to working under the schedule from the 2007-2010 Agreement, they say.

It is the position of the Union that the Joint Employers have not established the conditions necessary for their final offer to be adopted. Firstly, they maintain that the work day/work week and on-call schedules specified in the 2007-2010 Agreement worked in practice precisely as called forth in that Agreement. Bargaining unit employees worked the indicated hours, and the on-call and back-up shift schedules operated as per the Agreement as well.

Nor have the Joint Employers demonstrated operational hardship. Instead, concerns were raised about the overtime expenditures in the Coroner's Office, but those concerns were due to a lack of understanding of the difference between call-out pay and overtime. Although Coroner Keller sought at a Lake County Board Meeting to explain that call-out pay was being improperly labeled as overtime, thus creating the incorrect impression that the overtime budget had been exceeded, it appears, the Union suggests, that the issue was not resolved satisfactorily for either the Coroner or for the Union. However on-call work is a necessary condition for the nature of the work of the senior/deputy coroners. The real issue according to the Union is that the County simply has failed to fund the on-call schedule at a level appropriate to operate the office in accordance with the language of the jointly negotiated contract. That is the sole basis for the proposed change sought by the Joint Employers.

Finally, the Union asks that the Joint Employers final offer be rejected on the basis that the Union did not resist attempts to negotiate the issue. They suggest that they attempted on at least four (4) occasions starting in January, 2011 to bargain with the Joint Employers concerning the work schedule of the senior/deputy coroners. It is their contention they had reached a tentative agreement with then Coroner Keller, and also had agreed upon an MOU to establish a schedule. When Sheriff Curran came in as Interim Coroner, and unilaterally elected to implement a new schedule, they chose to negotiate further, they contend. Throughout the mediation process that extended several months from the summer of 2011 through December of last year, they also exchanged proposals, until it was apparent that impasse had been reached. Ultimately, the employees reverted back to the work schedules of the 2007-2010 Agreement.

The Union concludes that adopting the final offer of the Joint Employers would present Management with a significant breakthrough, one for which they have failed to meet the well accepted arbitral requirements. Accordingly, the Union requests that the Joint Employers final offer be rejected, and that instead the Union's position be adopted, that the status quo be maintained, by providing for the language in the parties' 2007-2010 Labor Agreement to be that included in the successor contract.

I find the arguments put forth in support of the Joint Employers final offer unconvincing. Their claim that they are supported by Article 2, the Management Rights clause, must be rejected. Section 1 of that article begins with the recognition that the Employer's retained rights are not unlimited, as it states "except as amended, changed or modified by this Agreement . . . ." The language of Article 14 in the Agreement constitutes clear limitations on the unfettered exercise of those rights, as it spells out in considerable detail the jointly negotiated and agreed upon terms for the normal work day and work week, and the timing, duration, and pay requirements for on-call and back-up shifts for the deputy/senior deputy coroners. Similarly, lest it be suggested that the Joint Employers were under some statutory responsibility that necessitated the unilateral changes sought by the Joint Employers, Section 2 of the Management Rights clause clearly indicates "the exercise of [the Employer's] rights and furtherance of such statutory obligations shall not be in conflict with the provisions of this agreement."

The claim that there was no prior status quo also is rejected. During the reign of Sheriff Curran as Interim Coroner, a unilateral change was put into effect. An attempt to memorialize those modifications in an MOU was unsuccessful. It is uncontroverted that the MOU was never signed by the Union. While bargaining unit members worked under its provisions for approximately a year, from March, 2011 to March, 2012, no new language was agreed upon by the parties, and the Union did follow through with its statement that the bargaining unit members would return to working under the expired contract language. The status quo that represented the terms of the first Agreement were the status quo, and the unilateral attempt by interim management, along with acceptance for a period by the covered employees, does not represent a joint agreement by the parties to this collective bargaining agreement to a modification of the terms of Article 14, Sections 1 and 2.

Lastly, I address the three pronged analysis suggested by the parties. I do not find any evidence that the procedures in the Agreement were not operating as negotiated, nor does

this record support the assertion that the Union was unwilling to address the issues in an effort to work out jointly acceptable modifications. The record amply demonstrates a number of negotiating sessions throughout the period. That the parties failed to reach a new agreement is not equivalent to a showing that the Union resisted any and all attempts to address what the Joint Employers viewed as problems with the existing language of the first Agreement.

The nub of the Joint Employers desire to change the language of Article 14, Sections 1 and 2, and to have their final offer adopted in this instance, is their claim that the existing language constituted “operational hardships.”<sup>11</sup> As became evident from a review of their evidence and argument, by “operational hardships” they really were referring to what they claim were budget overruns, especially concerning overtime payout.

Such a circumstance *could* justify a finding in their favor. But the record of this case does not allow me to reach that conclusion. The Joint Employers have not convincingly presented evidence that the overtime payout was all due to the operation of the contractual language, and not at least partly errors in understanding the on-call pay provisions, as the Union suggests. In addition, no evidence was provided to indicate that these results, even if recorded accurately, compared unfavorably with other units in this County, or with comparable units in other jurisdictions. The Joint Employers negotiated certain language in the first Agreement, and it might simply be that the budget allocation process failed to properly allocate sufficient funds for the needs of the Coroner’s Office, not that the amount of overtime paid out was improper. Even if savings could be realized, the record does not allow the conclusion that Management recognized its need under a Collective Bargaining Agreement (including one which had expired, where its terms and conditions are expected to continue until replaced by a successor agreement) to work with the Union to alleviate the problem. Instead, as has been noted, there was a unilateral effort to change the status quo, and an MOU written that was never executed. IF the record provided evidence that appropriate efforts had been attempted but had failed, to address a problem that was real and ongoing, then the relief sought by the Joint Employers by adopting their final offer might be justified. However, in the circumstances of this case, I do not find that a genuine “operational hardship” has been established, which can only be corrected by my imposing this unilateral position on the parties in their new Agreement.

The parties soon will commence negotiations for a third agreement. A new record will be created. If they are unable to jointly negotiate changes sought by one or the other party in the language of Article 14, Sections 1 and 2, then perhaps the party seeking that change will be able to assemble evidence of sufficient probative value to allow for their position to

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<sup>11</sup> I am aware, and note with passing, that testimony at the interest arbitration hearing also referenced potential “liability” and worker compensation issues arising from bargaining unit employees working at home, or having accidents while driving, due to the need to answer the telephone, and with family members aboard. This testimony also was cited in the Joint Employers post hearing brief, but no further argument was offered in support of these assertions, nor was any evidence provided that such issues had arisen either in comparable communities or in other units within Lake County. Furthermore, the Union addressed and forcefully rebutted these unsubstantiated concerns. As a result, I find no probative value in this alleged issue, and therefore do not address it in the main body of this Award.

be adopted, should interest arbitration again be required. At this time, I do not find that to be the case.

I adopt the final offer of the Union.

AWARD

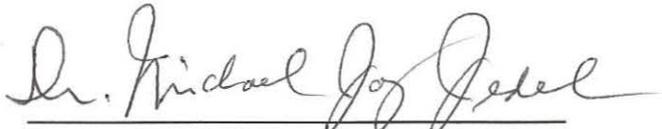
I therefore award as follows:

1. That the Union's final offer on Wages is adopted.
2. That the Union's final offer on Compensatory Time is adopted.
3. That the Joint Employer's final offer on Length of Contract is adopted.
4. That the Joint Employer's final offer on "Tentative Agreements" is adopted.
5. That the Union's final offer on Replacement of Personal Property/Evidence Tool Kit & Uniforms is adopted.
6. That the Union's final offer on Hours of Work is adopted.

No other modifications by either party are adopted and the status quo is to be maintained with respect to all other provisions of the 2007-2010 Agreement.

As stipulated by the parties at the arbitration hearing, the arbitrator shall retain jurisdiction in this matter for purposes of implementing the Award.

**DATED: October 10, 2012**

  
**Dr. Michael Jay Jedel, Arbitrator**