

IN THE MATTER OF INTEREST)	
ARBITRATION)	
)	
Between)	Marvin Hill
)	Arbitrator
)	
COUNTY OF MCLEAN/MCLEAN)	Case S-MA-13-098 (2013)
COUNTY SHERIFF, EMPLOYER)	Hearing Date: September 13, 2013
)	
-- and --)	Bloomington, Illinois
)	
ILLINOIS FRATERNAL ORDER OF)	
POLICE LABOR COUNCIL, UNION)	
)	

Appearances:

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I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

This matter comes before the undersigned Arbitrator upon agreement of the parties, the McLean County & McLean County Sheriff (“Employer” or “Management”) and the Illinois FOP Labor Council (“Union”). The parties have reached a tentative agreement (two years, expiring on December 31, 2014) on all but one issue: Wages for the year 2013, effective January 1st of that year. Through the joint stipulation of the parties, both have waived the three-partied panel of arbitrators instead electing to use one neutral to render the award. The parties, through mediation by the undersigned Arbitrator, have agreed to the second-year wage increase for the bargaining unit at 2.875% with a \$500 adjustment made to the base of the sergeant’s pay *prior* to the percentage increase. Final offers were received on September 13 and 14, 2013 from

respective counsel. Through identification of the final offers, both parties have agreed to a \$1,000 adjustment in the first year of the bargaining agreement for the sergeants, the \$1,000 added to the base prior to the percentage increase to be given the bargaining-unit employees for the first year of the contract, effective January 1, 2013.

A mediation/arbitration session was held in Bloomington, Illinois on September 13, 2013. At the conclusion of the hearing the parties were still at impasse on wages and, accordingly, were requested to file briefs with the undersigned Arbitrator with respect to the wage issue. The Employer's *Brief* was received on September 27, 2013, while the Union's *Brief* was received one week later (an extension granted to the FOP). Briefs were exchanged through the offices of the Arbitrator and the record closed on that date.

At the request of the parties, all tentative agreements are attached to this award (listed in Appendix "A").¹

II. INTEREST CRITERIA

It was stipulated that the undersigned Arbitrator was to base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois Labor Relations Act which, in relevant part reads as follows:

- A. 5 ILCS 315/14(g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall . . . direct each of the parties to submit, within such time limit as the panel shall prescribe, to the arbitration panel and to each other its last offer of settlement on each economic issue.

- B. 5 ILCS 315/14(h) where there is no agreement between the parties, . . . the arbitration shall base its findings, opinions and order upon the following factors, as applicable:
 - (a) The lawful authority of the employer;
 - (b) Stipulations of the parties;

¹ At the September 13, 2013 hearing/mediation the following resolutions were reached:

Retroactivity to January 1, 2013;
Vacations: Article 26 increase 5th year to 15 days; increase 13th through 15 years to 17 days; and increase 16th through 17th years to 18 days;
Holidays: Add Christmas Eve as a "floating holiday";
Maintenance Allowance: Increase to \$50.00;
Parties agree to change "Lodge" to "Union" in collective bargaining agreement where appropriate. Parties to file a joint petition to ILRB to amend certification.

Other tentative agreements attached to this award Appendix "A."

- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs;
- (d) Comparison of the wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
- (e) In public employment in comparable communities.
In private employment in comparable communities.
- (f) The average consumer prices for goods and services, commonly known as cost of living;
- (g) 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 to her benefits received;
- (h) Changes in any of the foregoing circumstances during the pendency of the arbitration proceeding; and
- (i) 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.

Furthermore, “It is well settled that where one or the other of the parties seeks to obtain a substantial departure from the party’s *status quo*, an “extra burden” must be met before the arbitrator resorts to the criteria enumerated in Section 14(h).” Additionally, where one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations, the onus is on the party seeking the change.” *Village of Maryville and Illinois Fraternal Order of Police*, S-MA-10-228 (Hill, 2011).

Because the issue remaining is solely that of wages there are no “breakthrough” provisions that would require an extra burden to be met by one or the other parties. The parties merely seek to increase the existing wage schedule.

II. DISCUSSION

As noted, this dispute involves one *economic* issue (wages). The Act restricts an Arbitrator’s discretion in resolving economic issues to the adoption of the final offer of one of the parties. 5 ILCS 315/14. Thus, under the statute there is no Solomon-like “splitting of the child.”²

Although the Employer has not entered an inability-to-pay defense, there is no serious argument that ability-to-pay considerations in the public sector simply amount to governmental priorities. Is the Employer funding a new roof in the park pavilion or putting another half percent on the police or firefighters’ base? To this end Arbitrator Peter Myers, in a 2010 case, reflected on the weight that should be given to the current financial difficulties in the economy as follows:

The economic situation that now faces all employers, public and private, is one factor that “normally or traditionally” should be taken into account when considering wages, hours and conditions of employment, pursuant to Section 14(h)(8) of the Act. The financial difficulties facing the Village as a result of the ongoing economic downturn therefore must be given appropriate weight and considered here. *Village of Western Springs and Metropolitan Alliance of Police, Western Springs Police Chapter #456*, S-MA-09-019 (Myers, 7/30/2010).

Arbitrator Ed Benn devoted most of his opinion in *State of Illinois and International Brotherhood of Teamsters, Local 726*, S-MA-08-262 (1/27/2009, Benn) to an analysis of the “economic free-fall” which occurred in 2007, mentioning, in part, the sharp drop in the stock market, the freezing of credit markets and the worst unemployment rates in Illinois since June, 1993. Furthermore, as of this writing at least five arbitrators have awarded a zero percent wage increase in the context of a multi-year award. See, *City of Bellville and Illinois FOP Labor Council*, Case S-MA-08-157 (Goldstein, 2010); *City of Rockford and Police Benevolent Labor Committee* (Yaffe, 2910); *City of Evanston & IBT Local 700*, Case S-MA-09-086 (Goldberg, 2010); *Wabash County/Wabask County Sheriff & IL FOP Labor Council*, Case No. S-MA-09-020 (Feuille, 2010); *City of Highland Park & IAFF Local 822*, Case No. S-MA-10-282 (Benn, 2010)(stipulated award); *Board of Trustees of Univ of Illinois at Urbana-Champaign & FOP Labor Council*, Case No. S-MA-10-075 (Perkovich, 2010).

² Cf. 1 Kings 3, 24-27. “And the king said, ‘Bring me a sword.’ When they brought the king a sword, he gave this order, ‘Divide the child in two and give half to one, and half to the other.’ Then the woman whose son was alive said to the king out of pity for her son, ‘Oh, my lord, give her the living child but spare its life.’ The other woman, however, said, ‘It shall be neither mine nor yours. Divide it.’ Then the king spoke, ‘Give the living child to the first woman and spare its life. She is the mother.’”

Overall, the Employer's financial picture is arguably sound. It is simply not a major factor in this dispute.

A. Focus of an Arbitrator in an Interest Dispute

As I have pointed out in numerous interest decisions, arbitrators and advocates are unsure whether the object of the entire interest process is simply to achieve a decision rather than a strike, as is sometimes the case in grievance arbitration, or whether interest arbitration is really like mediation-arbitration, where, as noted by one practitioner, "what you do is to identify the range of expectations so that you will come up with a settlement that both sides can live with and where neither side is shocked at the result." See, Berkowitz, *Arbitration of Public-Sector Interest Disputes: Economics, Politics and Equity: Discussion*, in *Arbitration – 1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators* (B.D. Dennis & G.C. Somers, eds) 159, 186 (BNA Books, 1976).

A review of case law and the relevant literature indicates that arbitrators attempt to issue awards that reflect the position the parties would have reached if left to their own impasse devices. Recently, one Arbitrator/Mediator traced the genesis of this concept back to Arbitrator Whitley P. McCoy who, in the often-quoted *Twin City Rapid Transit Company* decision, 7 LA (BNA) 845, 848 (1947), stated the principle this way:

Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of the contract rights ought to be. In submitting . . . to arbitration, the parties have merely extended their negotiations, having agreed upon . . . [T]he fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to? . . . [The] endeavor is to decide the issues as, upon the evidence, we reasonable negotiators, regardless of their social or economic theories, might have decided them in the give and take process of bargaining.

See, *City of Galena, IL*, Case S-MA-09-164 (Callaway, 2010).

Similarly, Chicago Arbitrator Harvey Nathan, in *Sheriff of Will County and AFSCME Council 31, Local 2961*, Case S-MA-88-9 (1988), declared that the award must be a natural extension where the parties were at impasse:

[I]nterest arbitration is essentially a conservative process. While obviously value judgments are inherent, the neutral cannot impose upon the parties' contractual procedures he or she knows that parties themselves would never agree to. Nor is his function to embark upon new ground and to create some innovative procedural or benefits scheme which is unrelated to the parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The

award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining.” *Will County Board and Sheriff of Will County v. AFSCME Council 31, Local 2961* (Nathan, Chair, 1988), quoting *Arizona Public Service*, 63 LA (BNA) 1189, 1196 (Platt, 1974); *Accord, City of Aurora*, S-MA-95-44 at p.18-19 (Kohn, 1995).

. . . The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations is to place the onus on the party seeking the change . . . In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:

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

Without first examining these threshold questions, the Arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.

Sheriff of Will County at 51-52 (emphasis mine), as cited in *City of Danville*, S-MA-09-238 (Hill, 2010); See also, *Sheriff of Cook County II*, at 17 n.16, and at 19. See generally, Marvin Hill & A. V. Sinicropi, *Winning Arbitration Advocacy* (BNA Books, 1998)(Chapter 9)(discussing the focus of interest neutrals).

Chicago Arbitrator Elliott Goldstein had it right and said it best: “Interest arbitrators are essentially obligated to replicate the results of arm’s-length bargaining between the parties, and to do no more.” *Metropolitan Alliance of Police, Chapter 471*, FMCS 091103-0042-A (2009).³

³ See also, *City of East St. Louis & East St. Louis Firefighters Local No. 13*, S-MA-87-25 (Traynor, 1987), where the Arbitrator, back in 1987, recognized the task of determining where the parties would have landed had management been able to take a strike and the union able to withhold its services. In Arbitrator Traynor’s words:

Because of the Illinois law depriving the firefighters of the right to strike, the Union has been deprived of a most valuable economic weapon in negotiating a contract with the City. There seems to be little question that if the firefighters had been permitted to strike, and did so, insisting on increased wages, public pressure due to the lack of fire protection would have motivated the City Council to settle the strike by offering wage increases.

Id. at 11.

Management advocate and author R. Theodore Clark has argued that the interest arbitrator should not award more than the employees would have been able to obtain if they had the right to strike and management had the right to take a strike. R. Theodore Clark, Jr., *Interest Arbitration: Can The Public Sector Afford It? Developing Limitations on the Process II*. A

There is no question that arbitrators, operating under the mandates of the Illinois statute (mandating final offer arbitrator by impasse item), apply the same focus as articulated by Arbitrator Goldstein and others. Interest arbitration is not the place to dispense one's own sense of industrial justice similar to the former circuit riders in the United States, especially in the public sector.⁴ Careful attention is required regarding adherence to the evidence record put forth by the parties and, however difficult, coming up with an award that resembles where the parties would have placed themselves if left to their own devices. There is indeed a presumption that the bargains the parties reached in the past mean something and, thus, are to be respected.

B. Background: The Parties' Final Offer Wage Proposals

1. **Employer's Proposal:** For Year 1 - \$1,000.00 adjustment to the sergeant's wage scale and a 1.9% increase across the board to all bargaining-unit employees. The adjustment will be added to the sergeant's wage scale before the general wage increase. Wages are to be retroactive to January 1, 2013.

For Year 2 – A \$500.00 adjustment to the sergeant's wage scale and a 2.875% across the board to all bargaining unit employees. The adjustment will be added to the sergeant's wage scale before the general wage increase. The increases are to be effective January 1, 2014.

The Employer would apply the retroactivity only to those employees who are on the payroll as of the date of the Arbitrator's award.

2. **Union's Proposal:** For Year 1, a 2.875% increase across the board for all employees retroactive to January 1, 2013. Sergeants are to receive a \$1,000.00 equity adjustment for all steps before receiving the percentage increase.

For Year 2 effective January 1, 2014, a 2.875% increase across the board. A \$500.00 equity adjustment to each step of the sergeants will be applied to the scale before the percentage increase.

The Union has requested retroactivity checks payable within sixty (60) days of issuance of the Arbitrator's award. Any employee who is in the Union as of the effective date but left the

Management Perspective, in *Arbitration Issues for the 1980s*, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators (J.D. Stern & B.D. Dennis, eds) 248, 256 (BNA Books, 1982). Clark referenced another commentator's suggestion that interest neutrals "must be able to suggest or order settlements of wage issues that would conform in some measure to what the situation would be had the parties been allowed the right to strike and the right to take a strike." *Id.* Accord: *Des Moines Transit Co. v. Amalgamated Ass'n of Am. Div.*, 441, 38 LA (BNA) 666 (1962)(Flagler, Arb.)("It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to *either party* that which they could not have secured at the bargaining table." *Id.* at 671.

⁴ In the United States, the act, once undertaken by a judge, of traveling within a judicial district (or circuit) to facilitate the hearing of cases. The practice was largely abandoned with the establishment of permanent courthouses and laws requiring parties to appear before a sitting judge. Source: <http://www.answers.com/topic/circuit-riding>

employ of the Employer in good standing or was promoted shall receive a prorated amount of the retroactive pay.

C. Position of the Employer

Management initially asserts that the Department consists of forty-six (46) bargaining unit employees. It is the second smallest department of the seven comparable jurisdictions agreed upon by the parties including McLean County. By comparison, the population of McLean County is the fourth highest of the seven comparable jurisdictions yet their budget of \$8,868,109.01 is the smallest of all of the comparable counties (See Tab 2 of Employer's Exhibit Book). The reason for that is because McLean County has one of the smallest unincorporated populations of the seven comparables. Just 19,404 residents which means they get a much smaller percent of the income tax allocation to counties since the tax allocation is based on unincorporated population. McLean County's unincorporated population is only 11.26%, which is the lowest of all the comparable counties. As a result they only get \$1,820,248.00 in tax revenue from the State, the third lowest of the seven comparables (ER Tab 24).

McLean County also has the smallest percentage of general fund revenue used for the Sheriff's Department (28%). McLean County has no public safety tax that it can draw upon from for additional revenue unlike four other comparable jurisdictions and they are the third smallest department by comparison to the other jurisdictions (ER Tab 2) The McLean County Sheriff's Department pays a portion of the insurance premiums for health, dental and vision benefits as to all of the other comparable jurisdictions and neither party is seeking a change in the percentage of contribution made by the employees or the Employer for their various coverages (ER Tab 4). The holiday benefits given by the County of twelve days is very close to the average of the seven comparable counties (12.5% day average). Likewise, their vacations accrue in similar fashion to other counties starting with a ten day vacation after completing the first year of service and increasing to twenty-five days after twenty-five years of service. Likewise the sick days, clothing allowance, personal days, bereavement days are all very similar to the other contracts negotiated in the comparable counties (ER Tab 5).

Addressing internal comparability, management asserts there are three other collective bargaining units in McLean County. The McLean County Highway Department (which received a wage increase for 2013 of 3.0%), the McLean County MetCom unit and McLean County Corrections unit. Both MetCom and Corrections are currently in negotiations and have not reached agreement on a 2013 wage increase. However both the McLean County Highway Department and the MetCom Unit took wage freezes in 2010 (MetCom) and 2011 (Highway Department), management argues.

Management points out that the MetCom three-year wage increase is 6% compared to the Deputies 7.5% for the same period. The Highway Department contract over their three-year

Agreement is 5.4% and 5.2% for their two classifications (ER Tab 8). The increases received by the McLean County Corrections Department over the same period as the previous contract for the Deputies was only one tenth of a percent higher (ER Tab 8). The remaining employees of the County (non-union) received an average across the board percentage increase of 1.6% for 2013 (ER Tab 7).

The cost-of-living increases for January of 2013 were 1.6% (ER Tab 11) and reviewing it again in July of 2013 were 2% (ER Tab 9).

The bargaining-unit employees over the life of their last contract enjoyed wage increases of 7.5%. The cost-of-living index for the same period of time was 7.1%. Therefore, they gained four-tenths of a percent over the cost-of-living with the wage increases that they received. (ER Tab 10, 11 and 12). Over the same period of time (January 1, 2010 through December 31, 2012) the other six comparable counties enjoyed average increases of 2.5% each year which was the equivalent three year average for wage increases for the McLean County Deputies (ER Tab 14, 15, and 16).

Management submits that little information is known about all of the other six comparable counties for the 2013 and 2014 fiscal years. In 2013, Macon County, Peoria County and Tazewell County are still in negotiations. None of the other jurisdictions had contracts settled for the 2014 fiscal year except for Sangamon County who gave a 3.85% increase. However that amount is a little deceiving. Sangamon County was able to negotiate a two-tiered wage schedule for new hires effective immediately. The second tier of wages for new hired employees saves the County substantial money for not only the present contract but for upcoming years and as such were willing to pay a little bit more for this “breakthrough” item by giving a larger percentage wage increase. Sangamon County also negotiated a 50% reduction in retiree health costs which further added to the “breakthrough” cost reflected in their unusually high wage settlement of 3.85%. By comparison, with the new-hire tier Sangamon County goes from the highest pay scale to the lowest of all comparables for their deputy wage scale. Therefore, management argues it cannot be used as a solid comparable for the 2014 year.

Reviewing interest arbitration awards for police units for the fiscal years of 2013 and 2014 show that the average increase for awards given over those two years is 2.425% and the average for the Employer proposed increase is 2.3875%. They are almost identical. On the other hand, the Union’s requested wage increase of 2.875% each year would be over four tenths of a percent more than the average arbitration settlements for other counties and municipalities for the years 2013 and 2014 (ER Tab 20).

The Employer submits that McLean County has not raised an “inability-to-pay” argument. However, if the County has the ability to pay the increase it doesn’t necessarily mean that they ought to pay an increase unless it is satisfied that there will be some public benefit from such expenditure. See, *City of Gresham and IAFF 1062* (Clark, 1984)(“Having observed that the City has the ability to pay an increase does not mean that the City ought to pay an increase unless

it is satisfied that there will be some public benefit from such expenditure. The City exists for the service and benefit of its residents not for the benefit of its employees Residents need many services such as police, parks, street repairs, court, in addition to fire services. In our system the elected representatives of the people of Gresham make policy decisions on the apportionment of funds among a variety of public services based upon recommendations of its professional staff. The City must also consider the salary expectation of other employees besides firefighters and the reciprocal impacts from decisions relating to one classification of employee compared to another.”).

The same reasoning applies to McLean County. Although the census data shows that McLean County ranks fourth in comparison to all seven counties, the Sheriff’s budget from which it has to pay its employees is the smallest of all of the comparables. They also have the smallest percentage (28%) of general fund revenue used for the Sheriff’s Department. They do not have available a public safety tax to draw extra money from like four of the other comparables do which probably reflects why they have one of the smallest departments of all seven comparable counties. Citing outside auditors for cities and counties, management asserts there should be at least four months of carryover of the general fund balance at the end of the year to allow them to continue paying expenses while they wait for the largest revenue to come in, in the form of real estate property tax. McLean County only has 4.75 months of carryover for its fund. Therefore, although it may have the ability to pay increases (which is reflected in the fact that they have made a reasonable wage increase offer) it does not stand for the fact that they should succumb to the wishes of the Union which is asking for almost a full 1% more in wage increase the first year than the County is willing to pay.

To this end management submits that the arbitration process which is developed in the State of Illinois is a huge disadvantage for the Employer. Although they in earnest try at the table to strike a bargain with the Union, the Union knows that it can push the Employer as far as they possibly can and then ask for a little more with the realization that they have nothing to lose because they have gotten the best they can out of the Employer at the table and now they could pursue a larger payday through arbitration (*Brief* at 12).

Addressing external comparables, management acknowledges that a review of the comparables will show that McLean County is near the bottom of the group when it comes to pay for their deputies and sergeants. They are either dead last or second from last in the comparable steps; however, their relative position does not change with the new contract negotiations that they have had with the Union over the fiscal years 2013 and 2014. Furthermore, the Union is not asking for any huge equity adjustments for the deputies and the equity adjustment they are asking for the sergeants has been all but agreed to as part of the total wage package for the sergeants. There has been no evidence presented that there has been a large turnover or loss of employees because they are not paid well enough. This all makes one to believe that the employees are paid fairly and reasonably as part of the bargaining unit even though they may rank at the bottom of the comparable counties. Therefore, the fairest thing to do would be to make sure they keep pace with inflation so as not to lose any of their buying power with the wages that they are receiving. With the inflation numbers that we know now, the CPI in effect on January 1, 2013 at 1.6% is below the 1.9% that the Employer has offered.

No strong conclusion can be reached from contracts being negotiated by the comparable counties since only three of the seven counties have wage determinations for 2013 and none of the other counties have any wage determinations that we can rely upon for 2014. It is important to note, however, Champaign only gave 1.5% for 2013 and Rock Island gave 2% for 2013. Of the two reported counties the 1.9% for McLean is very much in line. Therefore, McLean exists in a vacuum for 2014.

Internal comparables show that the non-union employees received only 1.6% across the board increase on the average January 1, 2013 (ER Tab 7). Only one bargaining unit (the Highway Department) has a wage determination for 2013 and none of them have any wage determinations for 2014. MetCom has tentatively agreed to a 1.85% increase for 2013 which is very close to the 1.9% offered to the FOP bargaining unit. Therefore, in effect this arbitration will have a ripple effect on those contract negotiations. The review of the arbitration decisions for police for other cities and counties throughout the state shows that the Employer's two-year wage proposal is only slightly less than the two-year average for arbitration decisions covering the same period (ER Tab 20). The two-year average of the Employer proposal is 2.38% and the two year average for reported awards is 2.4%.

Much like the City of Gresham with Arbitrator Clark, the County has to be mindful of the fact that it needs to spread its revenue over services for not only the deputies, but the corrections department, county road repairs, needs of the circuit court as well as the expenses for its own administrative facilities, parks and recreation. The County Board has allocated the funds to the Sheriff's Department through its annual budget which in 2013 was the lowest budget of any of the other six comparable counties. This rather low budget by comparison is reflective of the fact that the County has several other resources that it needs to allocate its funds to even in spite of the fact that it has one of the highest equalized assessed valuations of all seven county comparables.

Management contends that it is well understood by most arbitrators that perhaps one of the most important factors to review when considering these cases is internal comparables. Since there has been no contracts negotiated for wage increases (other than the handful of employees in the Highway Department) for the 2013 and 2014 fiscal years, the best internal comparable is the raise that was given to all non-bargaining unit people in McLean County. Management points out that this group of over 520 employees only received a 1.6% increase on January 1, 2013 across the board, which is three-tenths of a percent less than what the County is offering the deputies for the fiscal year 2013 through this arbitration. The County feels it is important to keep the increase under 2% so as not to affect the morale of the majority of McLean County employees (513 in number) who have already received their wage increases on January 1st (ER Tab 7).

Addressing past contracts, the Employer asserts the last two contracts between the parties have been decided in interest arbitration however not in the traditional fashion where evidence is taken and briefs are filed by the parties. The first of the two awards was back in 2007 when Arbitrator Marvin Hill issued a stipulated award essentially agreed to between the parties at

arbitration and memorialized by the interest arbitration decision of the arbitrator. The same can be said before the second of the two most recent interest arbitrations rendered by Arbitrator Peter Feuille (See Joint Exhibit Booklet for the two awards issued October 5, 2007 and April 15, 2011) The relative position of the deputies and sergeants by comparison to these two awards have not changed. This can particularly be seen by a comparison of wages for the bargaining unit employees for the years 2010 through 2012 (ER Tab 14, 15 and 16). Neither the Union's proposal for wage increases nor the Employer's proposal for wage increases changes the relative position of the bargaining-unit employees as they existed in the years 2010 through 2012.

Management submits that one underlying issue has arisen as part of the wage increase. The Union has proposed that the retroactive pay adjustments be paid to all employees who were employed by the Employer on January 1, 2013 even though they may have left the employment of the Employer prior to the issue of this arbitration award. If employees have left the employment of the Employer, they are no longer covered nor do they have the right to be represented by the bargaining unit. Since they are not a part of the bargaining unit when the award is issued, they should not be able to enjoy the benefits of that award even though it may be granted retroactively since they are no longer an employee. They were paid the wages they were entitled to at the time they were working and no further obligation is required by the Employer to those employees who have been left.

When examining the factors required by Section 14(h) of the IBLRA the factors favor the Employer and its last best offer of 1.9% (A summary review of those factors are outlined in the Employer's *Brief* at 16-19). Significant is the following:

* * *

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 public service or in private employment. The fact that there are so few comparable county increases that can be used for 2013 and virtually none for 2014, it would help to look at the arbitration awards that have been issued for the same years for cities and counties throughout the State of Illinois. That comparison clearly shows that the two-year increase proposed by the Employer more closely resembles the average increases in 2013 (2.5%) and 2014 (2.5%) for the police bargaining units. The two-year average for the Employer's proposal of 2.3875% is much closer than the Union's 2.875%.

Furthermore, the cost of the \$1,000 and \$500 adjustments given to the sergeants before their wage increases are added to the base only increases the two-year average to above that calculated for the average of Champaign and Rock Island County, and the averages of decisions throughout the State of Illinois. The cost of the sergeants' \$1,000 adjustment in 2013 is .23% of the total bargaining unit cost. The cost of the \$500 adjustment in

year two for the sergeants' pay is .10% of the total bargaining unit compensation (ER Tab 23). **Therefore, the total bargaining-unit increase for 2013 including the 1.9% is 2.13% and the 2014 total package is 2.975%.**

Based upon the foregoing, the Employer asks that the Arbitrator find in favor of its final wage proposal for 2013 (1.9%) plus the \$1,000 adjustment that has already been agreed to between the parties for the sergeants to be paid retroactive to January 1, 2013 for all employees on the payroll as of the date of the Arbitrator's award.

D. Position of the Union

The position of the Union, as outlined in its opening statement and post-hearing *Brief*, is summarized as follows:

(1) Comparison of Wages and Conditions of Employment (External Criterion) Supports the Union's Final Offer; The Overwhelming Voluntary Settlements in McLean County's Comparable Jurisdictions, While Few in Number, Support the Union's Final Offer of a Wage Increase of 2.875% vs. the County's 1.9%

The Union first submits that in 1993, Arbitrator Peter Feuille issued a decision establishing six (6) counties as being appropriate for comparison to McLean, including Champaign, Macon, Peoria, Rock Island, Sangamon and Tazewell (JX 6). In adopting the Employer's salary increases, Arbitrator Feuille determined they "neither made McLean County the highest paid deputies in the seven county comparison group, but enabled McLean County deputies to improve their relative salary position." (*Brief for the Union* at 1). After the 1993 award, the parties were able to resolve their negotiations for several successor agreements through give and take negotiations. However, by 2007, McLean County salaries had once again fallen so far behind wages paid their counterparts in the county comparables, the Union sought equity adjustments for both the Deputies and Sergeants. Though the Employer agreed, the parties reached an impasse over the amount of equity as well as across-the-board increases. The impasse was ultimately resolved through the issuance of Arbitrator Marvin Hill's 2007 award and though McLean County deputies made strides towards bridging the gap between their salaries and those paid in the comparables, both positions were behind the average salaries paid in the comparable – the Sergeants significantly so (JX 7).

When the 2007-2009 agreement expired, the Union sought at a minimum to maintain its placement among the comparables for Deputies, as well as continue moving the Sergeants closer to the salaries paid in the six-county group. Citing recent economic considerations, the County wanted a respite from any further equity adjustments as well as a lower across the board increase in 2010. It is important to note, argues the Union, that though Arbitrator Feuille issued an award resulting in salary increases of 1.75%, 2.875% and 2.875% the Union had already tentatively

agreed to the increases in an effort to accommodate the Employer's request to tread water until the next contract. When other aspects of the tentative agreement began to unravel, the parties mutually agreed to ask Arbitrator Feuille to assist in the final resolution and ultimately, issue an award.

Though many neutral arbitrators have been reluctant to give external comparability the same weight it has been accorded in years prior to the national economic recession, it should be given special consideration in McLean County for several reasons. First, as evidenced by the bargaining and arbitral history in this unit, external comparability has been heavily relied upon both in the context of arm's-length bargaining and the arbitration process. Secondly, unlike many cases where settlements in external comparables were reached pre-recession, McLean County's comparable pool includes recent voluntary wage settlements against which the Arbitrator can compare the final offers in these proceedings.

The overwhelming voluntary settlements in McLean County's comparable jurisdictions support the Union's final offer of a wage increase of 2.875% vs. the County's 1.9%. Even excluding the increase for Sangamon County current employees, the negotiated increase among the comparables is at least 3% for each year of the two-year contract contemplated in McLean County.

The Union points out that the evidence also supports a finding for the Union under Section 14 (h) – the financial ability and interests and welfare of the public.

(2) The Interest and Welfare of the Public and Financial Ability of the Unit of Government to Meet those Costs Supports the Union's Final Offer

In 2008, with the national recession the ability-to-pay factor was pushed to the forefront in interest arbitration, and so began a new line of cases where faced with an undeniable decline in both the national and state economy, high unemployment rates, bankruptcy and foreclosures, many units of local government began to feel the impact as well. According to the FOP, pick up nearly any interest award issued from 2009 through 2011 involving economic issues and they are replete with the new buzz phrases -- "limited" ability to pay, "financial difficulties", "prudent management", "prevailing economic parameters", "cost-control measures", "prioritization" "today's market", etc.

The economy has changed, but the statutory framework has not. While there are public employers who are suffering greatly, particularly those dependent on the State of Illinois for a substantial source of funding, every employer is not broke. Every employer is not faced with a fiscal condition so egregious that it cannot pay an otherwise appropriate and reasonable increase in compensation. McLean County falls into this category. In a recent case involving the Sheriff's Deputies in Woodford County, where the County argued a "constrained financial

situation” as opposed to an inability to pay, Arbitrator Feuille rejected wage freezes, where although the Employer was not immune from local economic downturns, the evidence demonstrated it had the ability to not only maintain its financial condition, but to continue spending on the other priorities of the government. Arbitrator Feuille found that “there is no question that the County is in poorer financial condition during the pendency of this proceeding than it was in 2007. *Woodford County/Woodford County Sheriff and ILFOP Labor Council*, S-MA-09-057 (Feuille, 2009) at 34-35.

At the same time, the financial evidence discussed in the preceding paragraphs demonstrates that the Employer is not in the dire financial straits it has claimed or that its final offer is the only offer that can be selected. More specifically, the ability to pay evidence does not meet the threshold of showing, in the words of another Illinois interest arbitrator, “that the Union’s offer would place such a heavy burden on [the County’s] services to pay the Union’s offer, resulting in the elimination or harmful diminution of essential services, or extensive layoffs, or both.” The Employer has not come close to showing the County is in such a financially weakened condition.

The observations of the undersigned Arbitrator in *Winning Arbitration Advocacy*, cited in a recent case in Macoupin County, are also helpful in evaluating the McLean County’s ability to pay and interests and welfare of the public evidence in this case:

Arbitrators may question priorities in the budget (being careful, we hope, not to substitute their judgment for that of public management) by making inquires into such subjects as (1) management’s history of understating revenues and overstating expenses; (2) whether additional sources of revenue are in fact available, given constitutional or statutory debt limitations; (3) whether employees are being asked to bear an unreasonable burden in a financial crisis. Ability to pay, as opposed to willingness to pay, is a factual determination and a valid interest criterion. If arbitration is to continue to be a viable alternative to public sector strikes, financial considerations must be given prior weight by the arbitral community.

Macoupin County Health Dept. and AFSCME, S-MA-080103 (2008), citing Hill, Sinicropi & Evenson, *Winning Arbitration Advocacy* 452 (BNA Books, 1989).

Inquiry into McLean County’s history is set forth in Union exhibits 7, 8, 9, 10, 11 and 12 in greater detail, but summarized below:

Dating back to 1998, McLean County has maintained a positive ending General Fund balance. More recently, the ending balance exceeded \$10 million in 2010, \$12 million in 2011 and \$14 million in 2012.

According to the County’s Management Discussion and Analysis (MD & A) contained in the 2012 audit, of the \$14 million, \$13,059,044 was “unassigned” and amounted to over 32% of the General Fund expenditures. This was an increase over the 2011 unassigned fund balance of \$11,324,328.

The liquidity ratio -- or relationship between current cash and investments to current liabilities was 5.82.

The County’s General Fund revenues have increased from \$37.8 million in 2009 to \$42.5 million in 2012.

The County’s General Fund revenues have exceeded General Fund expenditures since 2010.

The County’s budgeting history demonstrates that for the last three audited fiscal years, the County has brought in slightly more revenue than anticipated and actually expended less than budgeted.

From 2001 through 2012, the County’s equalized assessed valuation has increased by \$884 million. And while there was decline in 2012 from 2011, during the national economic recession, McLean County’s EAV increased in 2007, 2008, 2009, 2010 and 2011.

In summary, McLean County has the ability to pay an award that is consistent with the bargaining history of looking to external comparables. To do otherwise will diminish the 2007 negotiations and award that finally began moving McLean County’s salaries closer to their counterparts. Both parties’ final offers exceed the cost of living. While undoubtedly the County will urge the Arbitrator to consider internal comparability – the only other law enforcement unit is Corrections, and they remain in negotiations for a successor agreement tackling a variety of issues not present in these negotiations. It makes little sense to the Union to propose equity adjustments for the Sergeants, while simultaneously seeking to diminish what was accomplished in 2007 for the Deputies.

* * * *

E. An Analysis of the Negotiated Percentage Increases in Comparable Counties Favors the Union’s Final Offer

Central to the resolution of this case is Union Exhibit 6, a table depicting the negotiated percentage increases in the comparable bench-mark counties. The data reveal the follows:

<u>Jurisdiction</u>	2010	2011	2012	2013	2014	2015
Champaign County	0.0%	1.0%	1.50%		negotiations	
Macon County (voluntary settlement concluded for four years)	2.5%	3.0%	2.75%	2.75%	2.75%	2.75%

Peoria County Deputies Recent Lieutenant Settlement	3.25%	4.0%	negotiations	3.5%	2.5%	2.5%	3.0% *
Rock Island County	3.5%	2.0%	2.0%	negotiations			
Sangamon County New Hire Scale 2013-2014	3.5%	3.53%	3.85%	3.85%	2.85%	negotiations	
				3.75%	3.75%	negotiations	
Tazewell County Deputies Recent Corrections Settlement	4.0%	3.5%	negotiations	3.25%	3.25%	3.25%	negotiations **
AVERAGE	2.79%	2.84%	2.81%	3.22%	3.22%	2.63%	
Average without Sangamon's 3.85%				3.06%	3.06%		
McLean County	2.875%	2.865%	2.875%			arbitration	
Union Deputy/Lead Process/Inv Sergeant				2.875%	2.875%	negotiations	
				1,000 equity	500 equity		

* The FOP points out that while the Peoria Deputies remain in negotiations for 2012 and beyond, the Lieutenants, represented by the FOP, signed an agreement calling for a 2.5% increase for the years beginning in January 2014. I credit the Union's argument that it is unlikely that the Deputies will conclude a contract for significantly less than that agreed to by the Lieutenants (there are no Sergeants).

** The FOP submits that the Corrections Officers, also represented by the FOP, recently negotiated salary increases of 3.25% for 2011, 2012 and 2013. There is reason to believe, argues the Union, that the Deputies and Sergeants, covered by a separate agreement, will conclude a contract with the same pattern.

To this end, the Union asserts it has a long-standing belief in this jurisdiction that it is imperative to take into consideration the labor-market influences of *Bloomington* and *Normal*. While the Union concedes that Arbitrator Feuille rejected this argument, there is no dispute that unit members work side by side with their counterparts in both Bloomington and Normal on a daily basis.

Arbitrator Steven Briggs, in *City of Mt. Vernon & IFOP*, S-MA-94-215 (1995) found geographic proximity and local labor markets as primary considerations in selecting comparables:

The selection of appropriate comparables for an interest arbitration proceeding is educated guesswork. No two cities or towns are mirror images of one another; thus, no two are absolutely comparable. The task is made much easier for interest arbitrators if, during the bargaining process, the parties have mutually adopted a set of benchmark communities for comparison purposes. But that is not the case here. In the present dispute each party has taken a different approach to identifying what it believes is an appropriate comparables pool.

It is axiomatic that communities used for comparability purposes in an interest arbitration proceeding should be located within the same local labor market as the community where the interest dispute exists. That principle has been upheld again and

again by interest arbitrators and there is no need to discuss it at length in these pages. Suffice it to say that in attracting and retaining qualified police officers, Mt. Vernon competes with communities lying within a reasonable commuting distance. The City has defined that distance as fifty miles, which is certainly not inordinately restrictive. *Briggs* at 10 (footnote omitted).

Significantly, Arbitrator Briggs found many of the comparables proposed by the Union as “just too far away to be meaningful for comparison purposes.” Briggs determined that Dixon, Macomb, and Jacksonville – more than 100 miles from Mt. Vernon – were inappropriate comparables. He likewise found Mattoon, at 75 miles from Mr. Vernon, “as being outside of the local labor market in which Mt. Vernon competes for police officers.” *Briggs* at 11. Like Arbitrator Feuille, Arbitrator Briggs found inappropriate bench-mark jurisdictions that were close enough to St. Louis to fall within its local labor market. *Id.*

Arbitrator Herbert Berman, in *City of Peru & IFOP*, S-MA-93-153 (1995), likewise provided an analysis of selecting comparables and declared:

Geographic proximity and comparable population are the primary factors used to determine comparability. But these factors only establish the baseline from which comparisons may be drawn. When dealing with a fairly small city like Peru, the proximity of cities of similar population is obviously important; but it is not the sole critical factor. An adjacent city may draw largely from the same general labor market, but the nature of the work performed by the alleged comparable employees as well as bench-mark economic considerations may preclude its consideration for purpose of comparison. At some point, distance may foreclose consideration. Where that point lies is conjectural and might require a detailed study of the labor market and other economic and demographic factors. Without an expert study of hard data derived from reasonable hypotheses, an arbitrator must rely on the limited data available, his experience and his ability to make reasonable inferences and reach reasonable conclusions. As I noted in *City of Springfield & IAFF, Local 37*, S-MA-18 (Berman, 1987), at 26, “[d]etermining comparability is not an exact science.” Or as Arbitrator Edwin Benn wrote in *Village of Streamwood & Laborers Int’l Union, Local 1002*, S-MA-89-89 (Benn, 1989), at 21-22:

The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more toward hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities.

In addition to population and proximity, critical factors are the number of bargaining-unit employees, tax base, tax burden, current and projected expenditures, and the financial condition of the community upon which the government must rely in order to raise taxes. *Berman* at 9-10.

Arbitrator Lisa Kohn, in *City of Aurora & Aurora Firefighters Union, Local 99, S-MA-95-44* (1995) summarized the thinking of the arbitral community on comparability as follows:

Thus, in selecting a comparability group, the arbitration panel should look to “those features which form a financial and geographic core from which a neutral can conclude that the terms and conditions of employment in the group having similar core features represent a measure of the marketplace.” The features often accepted are population of the community, size of the bargaining unit, geographic proximity, and similarity of revenue and its sources. *Kohn* at 7 (emphasis mine).

Adopting the above analysis, I note the percentage increases in both jurisdictions cited by the FOP (Bloomington and Normal) range from between 2.75% and 3% for the same time frame the McLean County wages are being contemplated in these proceedings, which favors the FOP’s final offer (*Brief for the Union* at 2).

Another table compares the McLean bargaining unit with the bench mark jurisdictions’ salary from starting pay to top pay (UX 2) and indicates the following disparity:

Jurisdiction	Start	1 year	5 years	10 years	15 years	20 years	Top Pay
(Bench-mark jurisdictions of Champaign, Macon, Peoria, Rock Island, Sangamon, and Tazewell Counties)							
* * *							
Average of bench-mark jurisdictions without including McLean County							
Deputies	44,572	48,189	54,767	59,011	61,852	65,505	67,730
McLean Deputies 01/01/2012	43,564	45,897	51,845	56,324	59,743	64,044	64,044
Dollar Difference	(1,008)	(2,292)	(2,922)	(2,687)	(2,109)	(1,461)	(3,686)
Percentage Difference from Average	-2.31%	-4.99%	-5.64%	-4.77%	-3.53%	-2.28%	-5.76%

Both tables favor the Union’s final offer, with the FOP’s final offer closing the gap on starting and 20-year salaries relative to management’s final offer for deputies.

County Proposal	Difference Among Comps Average	Percentage Difference	Union Proposal	Difference Among Comps	% Difference	
Start	44,392	(181)	-0.41%	44,816	244	0.54%
1 year	46,769	(1,420)	-3.04%	44,217	(973)	- 2.06%
5 years	52,830	(1,937)	-3.67%	53,336	(1,432)	- 2.68%
10 yrs	57,394	(1,616)	-2.82%	57,943	(1,067)	- 1.84%
15 yrs	60,878	(974)	-1.60%	61,461	(391)	- 0.64%
20 yrs	65,261	(244)	-0.37%	65,885	380	0.58%

Top	65,261	(2,470)	-3.78%	65,885	(1,845)	-2.80%
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Under the County’s final offer, the unit will experience a negative percentage differential at every salary level. Indeed, even under the Union’s final offer the unit will experience a negative percentage differential at all salary levels except starting (0.54%) and 20 year (0.58%). On the external statutory criterion the FOP makes the better case.

The numbers similarly favor the sergeants relative to the comparables for all of the salary steps (UX 3):

Jurisdiction	Start	1 year	5 years	10 years	15 years	20 years	Top Pay
* * *							
Salary Average without McLean County Sheriffs (from FOP’s data)	58,067	64,051	67,235	69,977	73,562	76,750	80,131
McLean County Sergeants 01/01/2012	52,031	54,645	58,694	63,668	67,582	72,379	72,379
Dollar Difference from Average	(6,036)	(9,406)	(8,541)	(6,309)	(5,980)	(4,371)	(7,752)
Percent Difference from Average	-11.60%	-17.21%	-14.55%	-9.91%	-8.85%	-6.04%	-10.71%

The above, in part, explains both parties’ desire to address the sergeants’ pay disparity *via* an equity adjustment. As noted, the Union is not asking for any equity adjustment for its deputies.

F. Internal Comparisons Favor the Administration’s Final Offer

While external criteria favor the FOP (even though only three of the seven counties have wage determinations for 2013), arguably the internals favor the Administration’s case. As pointed out by the Employer, non-union employees received a 1.6% across-the-board increase on the average January 1, 2013 (*Brief for the Employer* at 13; ER Tab 7). Only one bargaining unit (the Highway Department) has a wage determination for 2013 (3.0%) and none of them have any wage determinations for 2014.⁵ MetCom has tentatively agreed to a 1.85% increase for 2013, which is close to the 1.9% offered here to the FOP unit. However, the Highway Department and the MetCom unit took wage freezes in 2010 (MetCom) and 2011 (Highway Department). The MetCom three-year wage increase is 6.0% compared to the Deputies 7.5% for the same period.

⁵ Here the Administration points out that while the Highway Department received a higher increase than 1.9%, “it falls on the tails of the last year of its collective bargaining agreement which is currently under negotiations for the 2014 fiscal year. They also received a freeze the first year of their agreement, and their three-year average is only 1.8%. Furthermore, there are only a handful on employees in the Highway Department which is much smaller by comparison to the bargaining unit at issue here.” (*Brief for the Employer* at 18). The Employer’s point is well taken, at least when internal comparability is considered.

The Highway Department contract over their three-year collective bargaining agreement is 5.4% and 5.2% for their two classifications. The increases received by the McLean County Corrections Department over the same period was only one tenth of a percentage point higher.

G. Ability-to-Pay Considerations

The fact that the Employer did not enter an inability-to-pay argument (indeed, it concedes it has the resources to pay the Union's demand)(*Brief for the Employer* at 11) is not dispositive of anything, nor can it be under the Act. As correctly outlined by Arbitrator Edward Clark in *City of Gresham & IAFF 1062* (1984), the fact that public management is able to pay a specific wage proposal is not grounds for awarding it. In the Arbitrator's words:

Having observed that the City has the ability to pay an increase does not mean that the City ought to pay an increase unless it is satisfied that there will be some public benefit from such expenditure. The City exists for the service and benefit its residents not for the benefit of its employees. The careful management which characterizes the City of Gresham in matters such as this is confirmed by the high bond rating from Moody's, the widely respected financial rating service. Residents need many services such as police, parks, street repairs, court, in addition to fire services. In our system, the elected representatives of the people of Gresham make policy decisions on the apportionment of funds among a variety of public services based upon recommendations of its professional staff. The City must also consider the salary expectation of other employees besides firefighters and the reciprocal impacts from decisions relating to one classification of employee compared to another.

Arbitrator Clark's reasoning applies here also. Accord: *City of Southfield, 78 LA* (BNA) 153, 155 (Killingsworth, 1982)(holding that the employer's ability to pay may probably be taken into consideration only within the limits of a "zone of reasonableness" which "is determined by examining wage rates in other cities for similarly situated employees."). However deserving the FOP's position is on equitable criteria, the fact that the Employer has the ability to pay an average (and equitable) wage increase is not dependent on the absence of an inability to pay argument by the Administration.

H. The Effect of the Consumer Price Index

The Administration maintains that the fairest thing to do in this case is to make sure the bargaining unit keeps pace with inflation so as not to lose any of their bargaining power with wages they are now receiving. "With the inflation numbers that we know now, the CPI in effect on January 1, 2013 at 1.6% is below the 1.9% that the Employer has offered." (*Brief* at 13). The fact that the bargaining-unit employees received four tenths of a percent (0.04%) on the cost-of-living (CPI) index for years 2011 through 2012, and the fact that they are gaining three tenths of a percent (0.03%) over the CPI for 2013, speaks well in favor of the Employer's proposal of 1.9% (*Brief* at 17).

Although rarely, if ever, are changes in the CPI dispositive in a case, with respect to this statutory criterion, the Administration advances the better argument.

I. Conclusion

I am on record having observed that the hardest cases Arbitrators decide are where both parties are right or both are wrong. This may be such a case. Just one percent (1.0%) separates both parties' final offers, although the parties do not agree on who is eligible for a retroactive wage increase, the Employer asserting that retroactive pay increases should not be paid to employees who were employed by the Administration on January 1, 2013. In the Employer's view, employees who left the employment of McLean County are no longer covered nor do they have the right to be covered by the FOP. Thus, since they are not part of the bargaining unit they should not be able to enjoy the benefits of an award even though it may be granted retroactively (*Brief for the Employer* at 15). In management's words: "They were paid the wages they were entitled to at the time they were working and no further obligation is required by the Employer to those employees who left." (*Brief* at 15).

While *ability to pay* is not a major consideration (again, the Employer has not claimed inability to pay the Union's final offer), I can take judicial notice that effects of the 2008 recession still linger. Between 2000 and 2007, ahead of the Great Recession, the U.S. economy grew an average of 2.4 percent a year – a full percentage point below the 3.4 percent average of the 1980s and 1990s. From 2007 to 2012, annual growth amounted to just 0.8 percent. In Europe the situation was even worse. As pointed out by one commentator, "Both sides of the North Atlantic have already succumbed to a Japan-style "lost decade." See, Stephen D. King, "When Wealth Disappears," Monday, October 7, 2003, *New York Times* at A 23. The point is the U.S. may indeed be experiencing an "extended cyclical dip" and higher inflation and increased governmental borrowing is right around the corner. Bottom line is this: The Administration cannot be faulted for sounding the austerity alarm given where the overall economy is relative to 2008.

What is before me is a split in the statutory criteria, with the FOP clearly making the better argument on external considerations while the Administration arguably advances the better case (slightly) on internal criteria (at least with respect to the non-union employees)⁶ and trends in the overall cost-of-living index (as measured by the CPI). Management concedes that "a review of the comparables will show that McLean County is near the bottom of the group when it comes to pay for their deputies and sergeants. They are either dead last or second from the last in the comparable steps however their relative position does not change with the new contract negotiations that they have had with the Union over the fiscal years 2013 and 2014." (*Brief for the Employer* at 13). A side-by-side comparison of both final offers indicates that under the

⁶ Rarely are wage percentage increases given to non-unit employees comparable to what the bargaining unit receives, unless management is asserting austerity while at the same time giving themselves greater than market wage or increased fringe benefits. What happens to non-unit employees (internal considerations) is clearly more relevant when insurance contributions are at issue where uniformity is optional for an employer. Here, management is always advised to get its own house in order before asking the unit employees to contribute more for insurance.

Administration's offer, the unit experiences a negative difference at every step, from "start" to "top step." As noted, even under the FOP's final offer, the unit experiences a negative difference except for starting salary (0.54) and 20 year salary (0.58%). Given the external data, and the only other internal bargaining unit (Highway Department) receiving 3.0% for 2013, overall the above favors the following award:

V. AWARD

The Union's final offer on wages is awarded.

Dated this 16th day of October, 2013
at DeKalb, IL 60115



Marvin Hill,
Arbitrator

