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Interest Arbitration

Will County, Illinois and the
Will County, Illinois Sheriff,

Employer

and

Will County Sheriff's Deputies
Union, Local 2961, Council 31 of
the American Federation of State,
County and Municipal Employees
(AFSCME), AFL-CIO,

Union

ISLRB Case No. S-MA-90-85
Arbitrator's File No. 90-160

Herbert M. Berman,
Arbitrator

March 19, 1991

Opinion and Award

Award

I adopt the Union's Salary proposal. I adopt the Employer's proposals on Employee Development, Vacations, and Uniforms and Equipment (Bullet-Proof Vests).

Contents

	page
I. Background.....	1
II. The Union's Post-Hearing Objections; Employer's Response; and Ruling	2
III. The Final Offers of the Parties.....	5
A. Salary Offers.....	5
1. The Current Salary Structure	5
2. Employer Proposal	6
3. Union Proposal	9
B. Employee Development Proposal.....	9
C. Vacations	12
D. Bullet-Proof Vests	12
IV. Applicable Standards	12
A. The Illinois Public Labor Relations Act.....	12
B. Comparability.....	14
1. The Union's Position.....	14
2. The Employer's Position.....	16
C. Findings on Comparability	17
V. Discussion and Findings on Salaries	23
A. Employer's Position.....	23
B. Union's Position.....	26
1. Union's Criticism of the Employer's Proposal.....	26
2. Union's Justification of Its Proposal.....	29
C. Findings on Salary.....	31
VI. Discussion and Findings on Employee Development	38
VII. Discussion and Findings on Vacations	40
VIII. Discussion and Findings on Bullet-Proof Vests.....	42
IX. Award.....	43

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I. Background

The Union represents "all full-time Will County Deputy Sheriffs in a non-supervisory rank under the jurisdiction of the Will County Merit Commission" (Joint exhibit 1).¹ The Sheriff of Will County and Will County, acting through its Board and the Board's Office of Personnel, are joint employers.

The most recent collective bargaining agreement expired November 30, 1989. The parties did not reach a new agreement, and they invoked interest arbitration in accordance with Section 14 of the Illinois Public Labor Relations Act (the "Act") (Ill. Rev. Stat, ch. 48, § 1614) and Section 1230.70 of the Rules and Regulations of the Illinois State Labor Relations Board.

¹In the remainder of this decision, I shall cite joint exhibits as "Jt. _____," Union exhibits as "Un. _____," and Employer exhibits as "Emp. _____." I shall refer to the hearing transcript of September 26, 1990 as "Tr. I _____" and to the hearing transcript of October 10, 1990 as "Tr. II _____."

The hearing was opened on September 26, 1990. After the parties had presented their final offers, the hearing was continued to October 10, 1990. Between September 26th and October 10th the parties resolved all outstanding, non-economic issues, which were under the jurisdiction of the Sheriff. The parties did not resolve four economic issues under the jurisdiction of the County Board—salaries, employee development or tuition reimbursement, vacations and the Union's demand for bullet-proof vests. The parties submitted final offers covering these issues on October 10th.

II. The Union's Post-Hearing Objections; Employer's Response; and Ruling

After the parties had submitted post-hearing briefs, the Union filed written objections to the Employer's alleged "introduction of new information not previously placed into record at the hearing":

1. At page 11 of Employer's brief: The Union objected to the allegation that the Employer "has provided tuition reimbursement to Deputies and that Deputies have not been interested in the program" on the ground that the allegation was not substantiated by evidence set out in the record.
2. At page 23 of the Employer's brief: The Union objected to the allegation regarding the Regional County Average on the number of years required to reach the maximum wage on the ground that "this is a non-existent number that is not founded in any pre-existing data in the record."
3. At page 25 of the Employer's brief: The Union objected to "placing information into the record for the first time concerning the allegation that in 1987 longevity was 'folded into' the pay plan. No information in the record of the case substantiates this fact."
4. At page 31 of the Employer's brief: The Union objected to the allegation that the Merit Commission has not

had a shortage of applicants on the ground that this was new information and hearsay.

5. At page 33 of the Employer's brief: The Union objected to the allegation that the Sheriff did not testify truthfully on the ground that the Sheriff's testimony was unrefuted and the Sheriff was not cross-examined on the points presented.

I invited the Employer to respond to the Union's objections. The Employer contended that notes taken by counsel on September 26, 1990 indicated that he was "advised... that rebuttal matters may be addressed on the record, or in written brief, at the close of the hearing," and that "both Management and the Union reserved the right to do so." The Employer noted that it had "raised no new issues since the hearing, but [had] only responded to issues" raised by the Union, "which we have understood to be consistent with procedural guidelines."

The Employer responded to the Union's specific objections as follows:

1. Tuition Assistance: Information on tuition assistance was not available at the hearing, and was provided to rebut the Union's charge.
2. Regional County Average: This information was not new, but was contained in Enclosure 6 to Employer exhibit 7.
3. Longevity Pay: The statement about what happened to longevity pay was based on review of Union exhibits 5a-5f and "direct knowledge of what transpired as a negotiation participant."
4. Merit Commission: Comments on retention rates and random exit interviews were developed in response to the Sheriff's testimony, which was a surprise.
5. The Sheriff's Testimony: The Employer has not claimed that the Sheriff "did not testify truthfully," but this concession "does not make his statement accurate."

The record did not disclose, as alleged by the Employer, that I said that "rebuttal matters may be addressed, on the record, or in written brief, at the close of the hearing." As I do not consider factual claims unless offered at the hearing or offered thereafter by way of stipulation, it is unlikely that I suggested that the parties could unilaterally submit factual allegations after the hearing.

A post-hearing brief makes arguments based on facts and opinions adduced at the hearing. After the hearing, the parties may offer additional evidence by way of stipulation, or either party may move to reopen the hearing to present additional evidence. It is inappropriate to present new evidence---new allegations of fact--in a post-hearing brief. I shall disregard statements of fact not presented at the hearing.

With respect to the particular objections, I make the following rulings:

1. Tuition Reimbursement: I sustain the Union's objection to the Employer's claim that deputies have not been interested in the tuition reimbursement it has provided. The Employer's argument that this claim was offered to rebut the "Union's charge" is irrelevant. If the evidence had been available at the time of the hearing, it could, and should, have been offered then. If, as the Employer claims, this information became available after the hearing, the Employer could have asked the Union for permission to submit it by way of stipulation, asked my permission to offer it over the Union's objection, or asked to reopen the hearing. A post-hearing claim unsupported by testimony and not subject to cross-examination is inappropriate evidence.
2. Regional County Average: The Union's objection is overruled. The information objected to was listed in Enclosure 6 to Employer exhibit 7.
3. Longevity Pay: The Union's objection is sustained. Contrary to the Employer's contention, review of Union

exhibits 5a-f do not show whether the parties intended to fold longevity pay into the pay plan. Counsel's direct knowledge of what transpired is immaterial unless presented at the hearing and subjected to cross-examination.

4. Merit Commission: The Union's objection is sustained. Evidence based on "random exit interviews" and other information developed after the hearing was closed is inadmissible. If caught by surprise by the Sheriff's testimony, the Employer could have sought a continuance of the hearing or sought to introduce additional evidence through stipulation.
5. The Sheriff's Testimony: To the extent that the Union's objection has characterized the Employer's comments as a claim that the Sheriff was "untruthful," the Union's objection is overruled. The Employer is entitled to express an opinion about the Sheriff's veracity or the accuracy of his testimony. In the end, I must determine the weight to be given to the Sheriff's testimony. However, the Employer's claim, which was not supported by record evidence, that the Sheriff had been given copies of the County Board's pay proposal, is improper and will not be considered. In addition, it is immaterial to resolution of issues presented at this hearing whether the Sheriff was defeated or re-elected after the hearing was closed. At the hearing, the Employer had an opportunity to impeach the Sheriff's testimony by showing that he harbored a bias or prejudice that might have undermined the accuracy or objectivity of his testimony. If the Employer has not taken advantage of this opportunity, it cannot properly offer evidence meant to impeach the Sheriff's testimony after the hearing has been closed.

III. The Final Offers of the Parties

A. Salary Offers

1. The Current Salary Structure

The County's fiscal year begins on December 1st. Currently, deputies receive annual salary increases every year up to the 10th year of service. The salary schedule is set out in paragraph XIX of the expired Agreement:

Section 19.1 Deputies Hired On or Before 30 November 1987:

<u>Employee Service</u>	<u>FY 87-88 16 Feb 88</u>	<u>FY 88-89 1 Dec 88</u>
0 Years	22,000	COLA
1 Year	24,000	COLA
2 Years	25,500	COLA
3 Years	27,000	COLA
4 Years	29,000	COLA
5 Years	29,000	COLA
6 Years	30,000	COLA
7 Years	30,000	COLA
8 Years	32,000	COLA
9 Years	32,000	COLA
10+ Years	33,000	COLA

Section 19.2 Deputies Hired On or After 1 December 1987:

<u>Employee Service</u>	<u>FY 87-88 16 Feb 88</u>	<u>FY 88-89 1 Dec 88</u>
0 Years	21,000	COLA
1 Year	22,000	COLA
2 Years	23,000	COLA
3 Years	24,000	COLA
4 Years	25,000	COLA
5 Years	26,000	COLA
6 Years	27,000	COLA
7 Years	28,000	COLA
8 Years	29,000	COLA
9 Years	30,000	COLA
10+ Years	31,000	COLA

2. Employer Proposal

Proposing a three-year contract, the County made a two-year salary offer. For the third year, the County proposed to "reopen, in July, 1991, solely and exclusively to address the issue of wages, to be effective 1 December 1991" (Emp. 7).

The salary offer for fiscal year 1989-90 (effective December 1, 1989) increased the number of longevity steps and changed the timing of salary increases. This offer was expressed in terms of move-ups from one step to a higher step, rather than in terms of a per-

centage- or dollar-increase. The County summarized its proposal in these words (Emp. brief, 18):

(a) FY89-90: Current two-tiered pay schedule, generating an increase of 3.9% for the bargaining unit, more than FY88-89.

(b) FY 90-91: (1) Proceed to a single, integrated pay plan, effective 1 Dec 90, based on "Pay Grade Steps" rather than "Service Year Steps," generating 7.2% increase for the bargaining unit, more than FY 89-90. It has been the Employer's intent, throughout negotiations, to achieve a single integrated pay plan, within a multi-year contract time frame. (2) Only one pay raise per year and that to be effective on December 1st, annually. (3) Elimination of anniversary date increases, per se.

(c) FY91-92: Reopener.

The proposal for fiscal years 1989-90, which the County claims would generate an average salary increase of 3.9%, looks like this:

Service Years	FY1989-90 1 Dec 89	FY1989-90 Anniversary	FY 1990-91 1 Dec 90	Pay Grade
0	22,000	22,000	23,100	1
1	23,000	23,000	24,025	2
2	(24,000)	24,000	24,950	3
			25,875	4
2	26,500	(26,500)	26,800	5
3	28,000	28,000	27,725	6
4	30,000	30,000	28,650	7
5	30,500	30,500	29,575	8
6	31,000	31,000	30,500	9
7	32,000	32,000	31,425	10
8	33,000	33,000	32,350	11
9	33,500	33,500	33,275	12
10	<u>34,000</u>	<u>34,000</u>	34,200	13
11	34,500	34,500	35,125	14
12	35,000	35,000	36,050	15
		(35,000)	36,975	16
			37,900	17

The proposal for the second year, 1990-91, which the County claims will generate an average increase of 7.2%, looks like this:²

Grade	SY	30 Nov 90	1 Dec 90
1	(0)	22,000	23,100
2	(1)	23,000	24,025
3	(2)	<u>24,000</u>	24,950
4	(3)	28,000	25,875
5	(4)	30,000	26,800
6	(5)	30,500	27,725
7	(6)	31,000	28,650
8	(7)	32,000	29,575
9	(8)	33,000	30,500
10	(9)	33,500	31,425
11	(10)	34,000	32,350
12	(11)	34,500	33,275
13	(12)	<u>35,000</u>	34,200
14	(13)	35,000	35,125
15	(14)		36,050
16	(15)		36,975
17	(16)		37,900

²I have omitted data on the number of personnel and average dollar increase per employee per pay grade.

In effect, the County has proposed to combine the two-tiered salary schedule agreed to in 1987 into a single-tiered salary schedule, beginning December 1, 1990 (Tr. II, 79-80). Deputies would receive no increase during the first year of the contract, as "there is no change of present pay schedule" (Tr. II, 81). The County wage proposal set out in Employer exhibit 7 was not proposed during negotiations, but was introduced at the first day of this hearing on September 26, 1990 (Tr. II, 80).

3. Union Proposal

The Union proposed the following across-the-board salary increases: 12/1/89: 4%; 6/1/90: 2%; and 12/1/90: 5% (Jt. 2).

B. Employee Development Proposal

The model for several of the Union's proposals was the 1989-1992 agreement between AFSCME Local 1028 and various agencies of the Will County government covering a unit of clerks, technicians, mechanics and other non-supervisory employees employed by the State's Attorney, Coroner and Sheriff.³ The proposal on Employee Development (Un. 1) was taken from the Local 1028 contract:

³Owing to some uncertainty in the law at the time this contract was negotiated, it was unclear who the employers were. The preamble of the Local 1028 contract provides:

A controversy exists between AFSCME and certain Employers: It is the position of AFSCME that the Bargaining Unit includes Employees of the Coroner and State's Attorney. It is further the position of AFSCME that the County Board is a Joint Employer of this Bargaining Unit, and that the contract is binding on said Employers. It is the position of the State's Attorney and Coroner that their Employees are not in the Bargaining Unit and are not covered by this Agreement. It is further the position of the County Board that it is not a Joint Employer. This controversy is now before the Illinois State Labor Relations Board. This Agreement is entered into with the mutual understanding that it shall be without prejudice as to the positions of any party.

Employee Development

(a) General: The intent of this program is to expand the competence, knowledge, skills and abilities of Employees, in order to enhance their effectiveness and efficiency and, thereby, improve their present duty performance, as well as promote their potential and preparedness for organizational advancement.

(b) Basis of Participation

- (1) Must be job related.
- (2) Requested by the Employee, to be taken off-duty.
- (3) Restricted by established appropriation limitations, budgetary constraints, and operational considerations and requirements.
- (4) Must be approved, in advance, by the Employer.
- (5) Attendance must be verified.
- (6) Receipts are required for reimbursement, to the established maximum allowed.
- (7) Allowed for individual credit or non-credit courses and seminars, as well as degree completion programs.
- (8) Must not interfere with the performance of the Employee's assigned duties.
- (9) Authorized solely at the discretion of the Employer.
- (10) Employees shall be reimbursed, upon completion of each individual class, course or seminar, as certified by a grade, certificate or written notification by the program sponsor.

(c) Allowed Expense Reimbursement:

- (1) Tuition
- (2) Fees
- (3) Equipment
- (4) Books

(d) Percentage Reimbursement Basis:

<u>Amount</u>	<u>Grade/Eval</u>	=	<u>GPA/QPI</u>	<u>Pass/Fail</u>
100%	A/94-100		4	NA
75%	B/87-93		3	NA
50%	C/80-86		2	Pass
25%	D/73-79		1	NA

(e) Employees who fail to maintain the standard grade/evaluation and grade point average/quality point index indicated below, shall be ineligible to request further participation in this program until after they achieve such standard, entirely at their expense:

- (1) Undergraduate Programs:
 - (a) Grade/Evaluation: C/80-86
 - (b) GPA/QPI: 2
- (2) Graduate Programs
 - (a) Grade/Evaluation: B/87-93
 - (b) GPA/API: 3

(f) Employees participating in degree completion programs shall:

- (1) Only be eligible for expense reimbursement for those courses which the Employer deems to be job-related.
- (2) Incur a service obligation to the Employer upon receipt of the related degree, based on the extent of involvement:
 - (a) Reimbursed degree credits divided by total degree credits equals the extent of obligation percentage.
 - (b) Extent of obligation percentage multiplied by the following equals the service obligation incurred:
 - 1. Undergraduate degrees:
 - a. Associate's: 18 months
 - b. Associate's to Bachelor's: 18 months
 - c. Four (4) Year Bachelor's: 36 months
 - 2. Graduate (Master's) Degrees: 24 months
- (3) Be unable to advance to another degree-completion program until any existing service obligation has been fulfilled.
- (4) Be released from any incurred obligation in the event of termination or, if laid off, the obligation shall be suspended pending recall.
- (5) Be able to obtain release from the incurred service obligation, by repaying the Employer an amount equal to the total reimbursement received multiplied by the unfulfilled service obligation percentage.

Resting on "existing contract... provisions... applicable to the concerns raised by the Deputies" (Tr. II, 58), the Employer made no offer on employee development or tuition reimbursement.

C. Vacations

Vacation benefits are set out in Article X, Section 10.1 of the Agreement:

After 1 year of service — 1 week vacation with pay
 After 2 years of service — 2 weeks vacation with pay
 After 7 years of service — 3 weeks vacation with pay
 After 12 years of service — 4 weeks vacation with pay

The Union proposed a new vacation schedule:

After 1 year of service — 1 week vacation with pay
 After 2 years of service — 2 weeks vacation with pay
 After 5 years of service — 3 weeks vacation with pay
 After 10 years of service — 4 weeks vacation with pay

The Employer proposed that the vacation schedule remain the same.

D. Bullet-Proof Vests

The Union proposed that Article XIV, "Uniforms and Equipment," be amended by requiring the County to provide a free "Threat 3, Level A" bullet-proof vest to every deputy. The County proposed no change in Article XIV.

IV. Applicable Standards

A. The Illinois Public Labor Relations Act

Section 14(g) of the Illinois Public Labor Relations Act provides that "as to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in sub-

section (h)."⁴ Section 14(h) of the Act sets out eight factors to be utilized in evaluating economic proposals:

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

⁴Prior to the start of the hearing, the parties waived the arbitration panel and instructed me to reach a decision on each issue. I consider all issues presented to be "economic issues," as they all entail the direct expenditure of moneys to pay for benefits sought by the Union.

The most significant factors in economic interest arbitration are set out in paragraphs 3 through 6. "The most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions" and this standard is "generally regarded as the predominant criterion for determining wages in public sector interest arbitration."⁵ The employer's "ability to pay" the wages and benefits requested and the "cost of living" are other factors of primary significance.⁶

B. Comparability

1. The Union's Position

The Union suggests that the Will County Sheriff's Department should be considered "internally comparable" to the Local 1028 unit, and "externally comparable" with similar police departments. The police departments the Union considers comparable to the Will County Sheriff's Department are listed in Union exhibit 3:

⁵Arvid Anderson & Loren Krause, "Interest Arbitration in the Public Sector: Standards and Procedures," *Labor and Employment Arbitration*, eds. Tim Bornstein and Ann Gosline (New York: Matthew Bender & Co., Inc., 1990), V. III, Ch. 63, §63.03[2], p. 7. See also Richard Laner & Julia Manning, "Interest Arbitration: A New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees," 60 Chicago-Kent L.Rev. 838, 858 (1984).

⁶In this case, neither party has raised the issue of the Employer's "ability to pay" the salary increases proposed by the Union. The Employer has not claimed that it is unable to pay the proposed increases. As noted by arbitrator Edward Krinsky: "Arbitrators generally do not consider the ability to pay issue unless it is raised seriously. If a simple assertion is made about ability to pay and is not supported by detailed evidence, the arbitrator is not likely to consider the argument further except perhaps to mention it in the award so that a reviewing court or agency knows what was done with the issue and how it was presented and argued. Employers who seriously argue the issue of ability to pay realize the importance of documentation." Edward B. Krinsky, "Interest Arbitration and Ability to Pay," *Arbitration 1988: Emerging Issues for the 1990s*, Proceedings of the 41st Annual Meeting of the National Academy of Arbitrators, ed. Gladys W. Gruenberg (Washington: BNA Books, 1989), ch. 7, p. 200.

Police Dept.	Wage Plan	Minimum	Midpoint	Maximum
Bolingbrook	Yrs 1-6 step plan Yrs 8-9 longevity Extra monthly pay for college degrees; yearly COL adjustments	\$27,177 (starting)	\$34,279 (3 yrs)	\$37,624 (6 yrs)
DuPage Cnty	Yearly merit Yearly COL	\$24,401 (starting)	\$30,501 (merit)	\$36,601 (merit)
Cook Cnty	Yrs 1-6 step plan Yrs 10-30 longevity Yearly COL	\$27,157 (starting)	\$31,990 (4 years)	\$35,234 (6 years)
Ill. Police ⁷	Years 1-25 step plan Yearly COL	\$25,230 (starting)	\$34,849 (6½ years)	\$46,160 (25 years)
Joliet	Yrs 1-3 step plan Extra yearly pay for college degrees Yearly COL	\$26,192 (starting)	31,153 (2 years)	33,425 (3 years)
Lake Cnty	Yrs 1-5 step plan Yrs 10-20 longevity Yearly COL	\$24,507 (starting)	\$28,351 (3 years)	31,234 (5 years)
Naperville	Yrs 1-6 step plan Yearly COL	\$29,278 (starting)	\$32,934 (3 years)	\$37,046 (6 years)
Orland Park	Yrs 1-6 step plan Yearly COL	\$27,986 (starting)	\$32,745 (3 years)	\$37,504 (6 years)
Park Forest	Yrs 1-5 step plan Yearly COL	\$26,000 (starting)	\$31,000 (3 years)	\$36,000 (5 years)
Tinley Park	Yrs 1-5 step plan Yrs 6-19 longevity Extra pay for college hours & degrees Yearly COL	\$28,047 (starting)	\$33,302 (3 years)	\$37,346 (5 years)

⁷District 5 of the Illinois State Police is located in Joliet, Will County, Illinois (Tr. II, 13).

Police Dept.	Wage Plan	Minimum	Midpoint	Maximum	
Will County	Yrs 1-12 step plan Yearly COL	\$22,000 (starting hired after 12/1/87)	\$28,000 (6 years hired after 12/1/87)	\$34,000 (12 years hired after 12/1/87)	
		N/A (starting hired before 12/1/87)	\$31,000 (6 years hired before 12/1/87)	\$35,000 (12 years hired before 12/1/87)	
		<u>Proposed</u> Retroactive 12/1/89	\$22,880 (starting hired after 12/1/87)	\$29,120 (6 years hired after 12/1/87)	\$35,360 (12 years hired after 12/1/87)
			N/A (starting hired before 12/1/87)	\$32,240 (6 years hired before 12/1/87)	\$36,400 (12 years hired before 12/1/87)
		<u>Proposed</u> Retroactive 6/1/90	\$23,337 (starting hired after 12/1/87)	\$29,702 (6 years hired after 12/1/87)	\$36,067 (12 years hired after 12/1/87)
			N/A (starting hired after 12/1/87)	\$32,884 (6 years hired after 12/1/87)	\$37,128 (12 years hired after 12/1/87)
		<u>Proposed</u> Effective 12/1/90	\$24,503 (starting hired after 12/1/87)	\$31,187 (6 years hired after 12/1/87)	\$37,870 (12 years hired after 12/1/87)
			N/A (starting hired before 12/1/87)	\$34,528 (6 years hired before 12/1/87)	\$39,984 (12 years hired before 12/1/87)

2. The Employer's Position

The County maintains that the Will County sheriff's department is comparable to the sheriff's departments in the other five counties in the Chicago metropolitan area—Cook, DuPage, Kane, Lake

and McHenry. Attachment 6 to Employer exhibit 7 outlines the comparability data:

Fiscal Year 1989-1990 County (*)	Minimum	Midpoint	Maximum (including longevity considerations)	12/1/89 Av	Yrs to Max
Cook (417)	\$25,620	\$32,422	\$39,224	\$34,440	30 ⁸
DuPage (66) ⁹	24,400	30,500	36,600	29,652	Merit
Kane (57)	18,780	25,230	31,680	31,248	8
Lake (129)	24,504	30,258	36,012	27,024	20 ¹⁰
McHenry (31)	20,000	27,563	35,825	29,388	10
Average (140)	22,660	29,264	35,868	30,350	17
Will	22,000	28,500	35,000	26,822	12

Fiscal Year 1990-1991 Range Intervals and Increments:

Jurisdiction	Maximum	—	Minimum	=	Interval	÷	Years	=	Increment
Regional est.	\$37,088	—	\$23,480	=	\$13,658	÷	17	=	\$803.41
Will County	38,000	—	23,000	=	15,000	÷	16	=	937.50

C. Findings on Comparability

The police departments selected by the Union for the purpose of salary comparison are either in Will County or adjacent to Will County. The "Union asserts that this cross-section of communities provides an unbiased and representative sample of comparable communities upon which to base a comparison based on traditional factors such as labor market considerations, geographical proximity, population and economic similarities" (Un. brief, 12).

⁸Cook County Deputies reach a salary of \$35,234 after six years and reach the maximum salary of \$39,224 after 30 years (Tr. 83-5)

⁹The Union maintained that there were about 200 non-supervisory deputies employed by DuPage County (Tr. 67). At the close of the hearing, I said that I was concerned about this difference and asked the parties to "get that cleared up" and to advise me of the correct figures. No additional information on this matter was submitted.

¹⁰Director of Personnel Jack Gallagher testified that it "would appear" that the salaries of Lake County deputies are "very accelerated during the first five or six years and then ... stretch out dramatically" (Tr. 84).

The Employer maintains that Sheriff's Departments in the six-county Chicago metropolitan area are "the most direct and relevant basis of comparison" (Emp. brief, 6). The Employer suggests that this comparison is more appropriate because:

1. There are differences between the duties of municipal police officers and deputy sheriffs. Deputies are responsible for courtroom security and jail operations, duties not performed by municipal police officers. The Employer's comparison focuses on deputy sheriffs rather than police officers generally.
2. The comparison focuses on employees of agencies operating under the same statutes.

The Employer also points out that the Union's comparability arguments are "inconsistent"; the Union did not use the same departments in making salary comparisons that it used in making tuition-reimbursement and bullet-proof vest comparisons. The Employer also argues that if municipal police departments in Will County are a proper basis of comparison, "all 28... communities should be reported and evaluated" (Emp. brief, 7).

It is generally agreed that geographic proximity and a comparable population are not the only relevant comparability considerations. Thus, "the similarity in size of a jurisdiction being used for comparison purposes becomes less relevant when other data suggest that the jurisdiction has a dissimilar tax base, tax burden, current and projected mandated expenditures, or legal authority to raise revenue."¹¹ In *City of Farmington*, 85 LA 460 (Bonnanno 1985), the arbitrator compared communities in terms of population, total assessed tax valuation, assessed valuation per capita, top patrol-

¹¹Laner & Manning, *supra* n. 5, at 859.

person wages, mean patrolperson wages, and the number of fulltime-equivalent police. Commentators Arvid Andersen and Loren Krause suggest that the "most common factors used to establish comparability are: (1) nearby communities; (2) similar population size; (3) past practice; (4) parity relationships (e.g., police and firefighters); (5) extent of fire or crime problem; (6) extent of recruitment and retention problem; (7) comparable ability to pay, state equalized value, taxes levied; (8) distinctive characteristics of the locality; (9) comparable duties of the referenced group of employees; and (10) the peculiarities of the particular trade or profession, specifically the hazards of employment, physical qualifications, educational qualifications, mental qualifications and job training and skills."¹²

Neither party has produced evidence concerning most of the factors arbitrators generally consider relevant in determining comparability. The most basic considerations in comparability such as population and the ability to raise revenue have not been established. Nor has either party explained how its suggested comparable police or sheriffs' departments compare to the Will County Sheriff's Department—how, for example, Will County, a largely small-town, rural county, compares to Cook County, which includes Chicago and its nearby suburbs. With respect to the communities to which comparison is sought, neither party submitted evidence of such comparative demographic and economic factors as population, the physical size of the communities, the number of housing units, median income, per capita income, bond ratings, per capita assessed

¹²Anderson & Krause, *supra* n. 5, at 8.

valuation of property, tax rates, funds available, or other significant factors.

The difficulty of making accurate comparability findings is compounded by the fact that the Employer and the Union have not selected the same year for comparison. The Union has focused on fiscal year 1990 (Un. 3) and the Employer on fiscal year 1989 (Emp. 7, Encl. 6).

Both parties agree that DuPage, Cook and Lake Counties are comparable to Will County, even though other collar counties may be more comparable than Cook County with its larger and largely urban and suburban population. The Union does not consider Kane and McHenry Counties comparable to Will County, although, like Will County, Kane and McHenry Counties, are largely exurban and rural, and more distant from Chicago and less suburban in nature than Cook, DuPage or Lake Counties. Neither party included Lake County, Indiana, which, unlike Lake County, Illinois and McHenry County, is contiguous to Will County.

As the Employer pointed out, the Union offered no reason to include the communities it selected in Will, DuPage and Cook Counties instead of all 28 municipal departments in Will County. The Union considers police departments in Bolingbrook, Joliet, Naperville, Orland Park, Park Forest and Tinley Park comparable to the Will County Sheriff's Department. The Sheriff's Department is located in Joliet. Orland Park and Tinley Park are in Cook County. Naperville is in DuPage County. Park Forest is in Cook and Will Counties. Bolingbrook is in Will and DuPage Counties.

A number of town and village police departments are closer to the Joliet headquarters of the Will County Sheriff than Park Forest, the most distant village on the Union's list: Joliet itself; Lockport; Romeoville; West Haven; Oak Forest; Lemont; Aurora; Downers Grove; Lisle; Woodridge; Darien; Willowbrook; Clarendon Hills; Hinsdale; Westmont; Plainfield; Yorkville; Oswego; Warrenville; and others. Other towns and villages in the greater Chicago area are more comparable to Joliet in terms of population than some of the villages listed. Joliet's population is 78,000.¹³ With respect to the listed communities, the population ranges from 26,000 in Park Forest and Tinley Park to 49,000 in Naperville.¹⁴ Greater Chicago-area communities not listed with more comparable populations are Mount Prospect (53,000), Schaumburg (53,000), Des Plaines (55,000), Oak Park (55,000), Skokie (60,000), Oak Lawn (61,000), Waukegan (68,000), Evanston (74,000) and Aurora (81,000).¹⁵

The Union offered no economic or demographic reason to support its choice of comparable communities rather than communities closer in proximity and population to Joliet. I cannot determine whether the Union's allegedly comparable departments are in fact economically and demographically comparable to the Will County Sheriff's Department.

¹³All population figures cited in this opinion have been taken from the "Illinois Official Highway Map 1985-86" and have been rounded off to the nearest 1,000.

¹⁴I believe that the current population of Naperville is much greater.

¹⁵It is uncertain whether Joliet may reasonably be considered comparable to communities closer to Chicago. Joliet is 38 miles from Chicago, similar to such other "exurban" towns as Aurora, Elgin and Waukegan, towns to which Joliet might in fact seem more comparable.

Rejection of the Union's list of comparable communities does not imply approval of the Employer's list. The differences between Will and other nearby counties may be more profound than their similarities. With its population in the millions, its varied towns and villages ranging from perhaps the richest to the poorest and the most to the least industrialized in the United States, Cook County may have more in common with Wayne County (Detroit), Michigan or Los Angeles County, California than with largely rural and small-town Will County. In the absence of more significant and detailed demographic data, such as that described, it is difficult to make meaningful comparisons between Will and other nearby counties. Although geographic proximity is important, it is not decisive. Standing alone, proximity is a shaky foundation upon which to base comparisons.

Finally, neither party provided comparative work-force data—the average seniority of employees,¹⁶ the grades and ranks covered by collective bargaining agreements, and the latest salary increases in dollar and percentage terms.¹⁷

¹⁶If a salary schedule rewards longevity or if cost-of-living increases are provided, it is important to know whether the average seniority of employees is 25 years or 2 years.

¹⁷The most recent "average increases" of comparable employees of comparable communities may be as relevant as their average salaries. If the average wage increase of comparable employees has been 5%, a union's 10% demand and an employer's 2% offer must be examined with care to determine, for example, whether the base upon which the percentage is computed is higher or lower than the base of the comparable employees or whether the Union is playing "catch-up" or the Employer "get-even." Mode or median salary comparisons may be as significant as average salary comparisons. In this instance, none of these concepts has been developed.

As the parties have not produced the basic economic and demographic data needed to determine which, if any, of the proposed comparable communities are, in fact, comparable, I cannot follow the generally well-accepted principle that "the most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions."¹⁸ The comparability data produced is marginally useful, but it cannot be the principal, determining factor. It might help me set boundaries—to determine whether either offer was "unreasonable" or beyond the boundaries of salary schedules established for police officers and sheriffs' deputies in other departments.

V. Discussion and Findings on Salaries

Under Section 14(g) of the Act, "as to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)."

A. Employer's Position

The Employer argues that its salary proposal is appropriate for the following reasons (Emp. brief, 18):

(a) FY89-90 Current two-tiered pay schedule, generating an increase of 3.9% for the bargaining unit, more than FY88-89.

(b) FY90-91

1. Proceed to a single, integrated pay plan, effective 1 Dec 90, based on "Pay Grade Steps" rather than "Service Year Steps," generating 7.2% increase for the bargaining unit, more than FY 89-90. It has

¹⁸Anderson & Krause, *supra*, n. 5, at 7.

been the Employer's intent, throughout negotiations, to achieve a single, integrated pay play, within a multi-year contract time frame.

2. Only one pay raise per year and that to be effective on December 1st, annually.
3. Elimination of anniversary date increases, per se.

The Employer argues that the Union inaccurately claims that it seeks pay increases "exactly the same" as the increases granted to Local 1028, since "Deputies are paid on the basis of a 'step' plan, set within established ranges," but "all other employees are paid only within established ranges" (Emp. brief, 19). Thus, according to the Employer the increases sought by the Union are 4.1% higher than those given other employees in fiscal year 1989 and 3.9% higher than those given other employees in fiscal year 1990 (Emp. brief, 20). Over a three-year period, according to the Employer, this "8% differential, over two years, would... increase the Employer's offer for FY89-90 by \$984,300 for 12 months or prorating, based on anniversary dates, between \$500,000 - \$750,000 this year" (Emp. brief, 20). In FY90-91 the increase beyond the Employer's offer would be \$606,675 for 12 months, or between \$300,000 and \$500,000 on a prorated basis (Emp. brief, 20). The Employer projected the cost of the Union proposal, "beyond the Employer's offer," in the form of this chart (Emp. brief, 20):

Increase	FY1989-1990	FY1990-1991	FY1991-1992
FY89-90	\$625,000	\$984,300	\$984,300
FY90-91	NA	400,000	606,675
FY91-92	NA	NA	To Be Determined
Totals:	\$625,000	\$1,384,300	\$1,590,975 & TBD

The Employer also asserts that the Union's representation that "all area police agencies had yearly step plans" was not supported by accurate evidence (Emp. brief, 25). The Union has not provided data on all area communities; and DuPage County, a community compared to Will County by both parties, does not have a step plan (Emp. brief, 25). As all step plans are "based on longevity," all longevity aspects of a plan should be considered, including those applicable "after the step plan has maxed-out," as well as the length of time "necessary to achieve the true maximum pay, under the varying plans" (Emp. brief, 25).

According to the Employer, its "proposal, over a two year period, accomplishes what the Union" seeks (Emp. brief, 26):

1. A regionally comparable pay range and schedule—17 steps compared to the regional county average of 17 years or 18 steps.
2. Incorporation of cost-of-living considerations, as reflected in the steps, producing an average pay increase over two years of 11.1%.
3. Equity with the bargaining unit represented by AFSCME Local 1028.
4. Maintenance over the past seven years, and projected for the eighth year, average annual pay increases in excess of annual rate of inflation as measured by the Chicago Area Consumer Price Index for Hourly Wage Earners and Clerical Workers (CPI-W).

The Employer also suggests that, contrary to the Union's contention, steps are in fact "costed against annual increases," consistent with the practice of all the regional counties which "consider the effect... of... 'step' pay plans, when negotiating or otherwise pro-

posing changes" (Emp. brief, 27). An employer always considers steps "new money" (Emp. brief, 27).

In reviewing past plans, it becomes evident, according to the Employer, that no "uniform standard" has ever existed--the number of steps has changed, increments between steps have become irregular and the negotiators have variously included or excluded certain "pay aspects" (Emp. brief, 27). Cost of living adjustments were added to existing steps to allow some underpaid Deputies to catch up to other comparable communities in the region (Emp. brief, 27). Over the last four years, comparability "has been achieved, maintained and now exceeded" (Emp. brief, 27-8). After fiscal year 1990, the Employer's proposal would eliminate internal irregularities of the current step plan, resulting in "more uniform, individual, annual increases" (Emp. brief, 28). Increasing the number of steps merely continues a trend, and the proposed schedule would still have one step fewer than the regional county norm (Emp. brief, 28).

B. Union's Position

The Union has proposed a 4% increase on December 1, 1989, a 2% increase on June 1, 1989, and a 5% increase on December 1, 1990.

1. Union's Criticism of the Employer's Proposal

The Union is critical of the Employer's proposal for several reasons. Asserting that the Employer's proposal of no increase for the first year "represents a form of 'retarded wages' unduly delaying attainment of the "prevailing rate" for the classification, the Union contends that "[t]he appropriate rate measure of the prevailing rate is the maximum of the classification, not any of the intervening

steps" (Un. brief, 5). The "starting rate" attracts new employees, but the "prevailing rate" retains them (Un. brief, 5). In addition, the Union argues, it is—

... inappropriate, and against tradition, to cost increases on the step plan against the annual wage increases granted to Deputies. Such a costing mechanism would force Deputies to pay for their salary schedule every year. The Union does not argue that a bargaining unit should not have to pay for its salary schedule—rather we assert that the payment was already made when the salary schedule was initially adopted or subsequently modified through the addition of, or adjustment to, the steps. We should not have to pay every year...." (Un. brief, 6.)

The Union was also critical of the Employer's contention that retroactive wage increases "would be 'inconvenient' at this late date" (Un. brief, 5), suggesting that acceptance of this argument "would be tantamount to punishing the Union for inherent delays in the statutory arbitration process" (Un. brief, 6).

The Union noted that "the County's second year proposal is considerably more difficult to evaluate" (Un. brief, 7). Pointing out that the Employer's proposal would increase the time needed to reach the top step from 10 years to 17 years; and that, while "there are some increases in amounts for equivalent steps at the first three steps of the schedule," the current schedule thereafter "generates more money... much faster" (Un. brief, 7).

Stating that the "first time the Union had the chance to see [the Employer's] second year wage proposal was at the first arbitration hearing on September 26, 1990," the Union asserted (Un. brief, 8-9):

A party must not be allowed to bring a completely new proposal into the arbitration hearing and ask the Arbitrator to impose a decision that incorporates this new proposal into the collective bargaining agreement of the parties. An arbitrator should not impose an offer that the parties have not had an opportunity to discuss and negotiate in free collective bargaining.

Make no mistake, the arbitration hearing is not "free collective bargaining. There can be no exchange of proposals, or free discussion at the arbitration hearing. In order for the integrity of this process to work, parties must understand that bargaining belongs at the bargaining table and new proposals must be presented at the bargaining table. Neither party should be allowed to advance a brand new far-reaching proposal at the arbitration hearing and expect that proposal to be adopted. Such a process strikes a fatal blow to the collective bargaining system. Clearly, such a circumstance was not envisioned by the legislature when it created the arbitration sections of the Act.

Citing the testimony of then-Sheriff John Johnsen, the Union also asserted that "the County's second year plan would have a disastrous impact on the Department" (Un. brief, 9).¹⁹

The Union summed up its position on the Employer's second year proposal (Un. brief, 7):

The Union asserts that the County's second year proposal is absolutely unreasonable. The County argues that we should not receive an increase in the first year because the steps generate increases as employees advance toward the prevailing rate; now they want the arbitrator to adopt a schedule with more steps so they can screw us on annual wage increases for eighteen years instead of twelve years.

¹⁹Sheriff Johnsen's testimony is reviewed *infra*, p. 34-5.

2. Union's Justification of Its Proposal

The Union argues that its proposal is justified on the basis of internal comparability, the history of salary increases, external comparability, and cost of living.

1. Internal Comparability

The Union noted that Local Union President, Deputy Sheriff Richard Rodeghero, testified that the "wage proposal submitted by the Union... is identical in percentage terms to the increase agreed upon for the employees covered" by the Will County-Local 1028 agreement (Un. brief, 10). The Local 1028 increase is higher than the 4%/2%/5% increase sought by the Union, the Union asserts, because "the minimum cents per hour increase" of 33¢ will generate increases for employees at the lower end of the pay scale "in excess of 4% on 12/1/89, and increase the average increase... to an amount in excess of 4%" (Un. brief, 10). In this case, the Employer has "failed to give any reason that would justify" a departure "from the wage increase it granted to all other employees" (Un. brief, 11). Although these employees do not receive step increases from year to year, they are entitled to "performance" or "workload" increases in addition to negotiated annual cost of living increases. Performance or Workload increases are "merely a less formal method of step increases" (Un. brief, 12).

2. History of Salary Increases

Although the deputies' step plan has changed in the last 23 years with respect to the number of steps and the length of time between steps, "Deputies [have] always received annual cost of living

raises similar to or identical with those given to other employees of the County" (Un. brief, 11). The Employer's proposal "improperly depart[s] from the historical relationship between the Deputies and Local 1028 County employees, in that they (the deputies) would be penalized for their 'formal' schedule vis-a-vis the informal schedule of the other County union employees" (Un. brief, 12).

3. External Comparability

According to the Union, its comparable communities provide "an unbiased and representative sample of comparable communities upon which to base a comparison based on traditional factors such as labor market considerations, geographical proximity, population and economic similarities" (Un. brief, 12). The Union makes these comparisons (Un. brief, 13-14):

1. Among the six municipal police departments, Will County ranks last in starting rates and midpoint rates, and fifth in maximum rates.
2. It takes Will County Deputies 12 years to reach maximum, but police officers in the comparable municipal departments take three to six years to reach maximum.
3. Among the three comparable Sheriffs' Departments, Will County ranks last in starting rates. Although Will County ranks first in midpoint and maximum rates, in Cook and Lake County deputies reach the maximum in five and six years respectively.
4. Will County ranks behind the Illinois State Police in starting, midpoint and maximum rates.

4. Cost of Living

The Consumer Price Index for all Urban Consumers (CPI-U) rose 4.8% from December 1988 to December 1989 and rose 6.6% through September 1990 (Un. brief, 15).

C. Findings on Salary

All authorities agree that "the most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions."²⁰ As I have suggested, however, the evidence produced on comparability is of limited value. Indeed, it is almost useless. To the extent that the evidence with respect to comparability is useful, it is useful only to help establish boundaries to determine whether either final offer was unreasonable or beyond the bounds of the salary schedules in "comparable" departments.

On the basis of the evidence produced, I select the Union's salary proposal. This decision is based on the following considerations:

1. Internal Comparability. Although the actual dollar increases were not computed, the Union's wage proposal was identical in percentage terms to the increase agreed upon by Will County and AFSCME Local 1028.

The Employer argues that the percentage increases proposed by the Union would be greater than those granted to Local 1028 because deputies' salaries escalate step by step on the salary schedule, but Local 1028 salaries are stable within established ranges (Emp. brief, 19). According to the Employer, the increases requested by the Union are 4.1% higher than those of Local 1028 employees in fiscal year 1989 and 3.9% higher in fiscal year 1990 (Emp. brief, 19-20). The Employer supported this conclusion with a mathematical analysis of the Union's proposal (Emp. brief, 21-4), but it did not provide data on Local 1028 salaries. I have no reason to question the Employer's good

²⁰Anderson & Krause, *supra* n. 5, at 7.

faith, but I cannot determine how it reached the conclusion that the same percentage increases in both units would generate wages 8% (4.1% + 3.9%) higher in the Deputies' unit. The Union argues that the informal "performance" or "workload" increases routinely given to Local 1028 employees are "merely a less formal method of step increases built into the Deputy pay plan" (Un. brief, 11-12).

While the municipal employees of Will County do not perform the same work or have the same responsibilities and while the same percentage increases may in fact generate higher dollar raises for deputies, it cannot be denied that both units are comparable in that they are employed by, and paid from funds provided by, the same governmental unit—the Will County Board. Internal wage patterns represented by increases expressed in percentage terms are not dispositive or even necessarily of great weight, particularly if more compelling material evidence has been produced; but these patterns are entitled to a degree of consideration in making a determination.

2. Cost of Living.

The Employer suggests that its proposal will generate an 11.1% (3.9% + 7.2%) increase for fiscal years 1989 and 1990. (Emp. brief, 18) and that the Union's proposal would generate a 19.1% increase (10.2%+8.9%) for the same period (Emp. brief, 22; 24; 30).

Percentage increases are compounded over time and added to annual step increases. In three years, the Union's proposed 4%/2%/5% increase would generate an increase greater than 11%. Cost-of-living statistics are also expressed in straight percentage terms; if applied to a particular wage base from year to year, cost-of-living increases

would also be compounded over time, and generate wage increases greater than the sum of their parts.

From December 1989 through August 1990, the CPI-U went up 5.1% and the CPI-W went up 5.2% on an annualized basis (Emp. 7). From December 1989 through November 1990, the CPI-U went up 5.2% and the CPI-W went up 5.3% on an annualized basis. The Union notes that the CPI-U rose 4.8% from December 1988 to December 1989 and 6.6% through September 1990 (Un. brief, 15).

In this case, cost-of-living statistics favor the Union's position. In straight percentage terms, since the bargaining unit "is starting out with a 4.8% decrease in purchasing power due to the increased cost of living" (Un. brief, 15), employees are playing catch-up for the first year of the contract. In the remaining years, the Union proposal is consistent with the rise in the cost of living. The Union's proposed percentage increases, when added to the step increases built into the salary schedule, will clearly generate substantial increases—increases beyond those expressed in the proposed percentage increases. However, it is difficult to justify the Employer's salary proposal. The Employer offers no appreciable change in the first year and a salary reopener in the third year. It proposes a major and drastic change in the second year—a new salary structure that will provide some salary increases in the early steps of the schedule at the cost of substantially elongating the time needed to reach the top step.

In essence, the Employer's three-year proposal amounts to a one-time-only change in the second year of the contract. The pro-

posed change in the second year, if not modified in the future,²¹ would have a far-reaching impact on every employee in the bargaining unit for the remainder of his or her career at Will County. Changing the salary schedule from a 10-step to a 17-step schedule is not analogous, for example, to a salary offer of 3% instead of 5%; it is a material and profound change in the method of calculating salaries.

3. Other Factors. Paragraph 8 of Section 14(h) of the Act permits an arbitrator to consider "such other factors, not confined to the foregoing, which are normally and traditionally taken into consideration...." Inclusion of this "general 'catchall' standard suggests that the arbitrator may rely upon the criteria that he deems most important in a particular cases, as long as regard is paid in the opinion to the other statutory standards."²²

In this case, since the evidence on comparability was scant, the "other criteria" are more important. The other criteria I have considered are former Sheriff Johnsen's testimony and the Employer's failure to propose a restructured salary schedule prior to the hearing.

In Johnsen's opinion, the new salary schedule proposed by the Employer "would cause a mass exodus from the ranks of the Sheriff's Deputies to creating a situation where I would be unable to fulfill my statutory responsibilities" (Tr. II, 109). Johnsen reached

²¹Obviously, a percentage increase also carries into the future. A 5% increase creates a higher base than a 3% increase upon which to build future salaries. It would seem easier, however, for future negotiators to correct an unreasonably high or unreasonably low salary increase than to restructure a complex salary plan.

²²Anderson & Krause, *supra*, n. 5, at 13.

this conclusion "because the plan essentially is a plan where a person would reach a certain point after 13 years now and would not reach that point until after 15 years, and the people after 13 years essentially would be making almost \$3,000 less than they are making now" (Tr. II, 109).

I am not bound by former Sheriff Johnsen's opinion. Since, however, no attempt was made to impeach Johnsen's testimony as biased or the product of ulterior motives or influences, I must accept it at face value and give it serious consideration. As the Union suggests, the fact that the "County's own Department Head, Sheriff Johnsen, is against the County's proposal" (Un. brief, 10), ought to have substantial weight.

In the absence of material countervailing considerations, an arbitrator should not, as the Union suggests, "impose an offer that the parties have not had an opportunity to discuss and negotiate in free collective bargaining" (Un. brief, 8). While Section 14(g) the Act permits either party to present its "last offer of settlement on each economic issue" at or before the conclusion of the hearing, a proposal wholly dissimilar in structure, purpose and consequence from any proposal discussed or even alluded to during negotiations is inappropriate.

Permitting either party to present its last offer at the close of the hearing may "tend to tip the scale away from encouraging settlement in the negotiations process and instead, appear to give the parties greater flexibility to use the process to their best advantage.

in arbitration."²³ Under the Act, it is appropriate for the parties to narrow their differences in the course of the hearing. An offer that seems compelling at the start of a hearing may seem weak and vulnerable at its close. In the course of a hearing, the shortcomings of an offer may be disclosed by the inability to present substantial, supporting evidence or to counteract evidence produced by the other party. If these pressures cause reduction of a 10% demand to 8% and increase of a 5% offer to 7%, the possibility of settlement is enhanced. On the other hand, if the Union's final offer of a 10% raise is met by a final offer to substitute a new and different salary schedule for the current salary schedule, the positions of the parties are confused and the possibility of settlement is diminished. Even if settlement does not occur, an award derived from responsive counter-proposals will more likely reflect labor-market realities.

The Employer's proposal was unresponsive to the Union's proposal and unrelated to the negotiations that preceded this hearing. It exists in a vacuum. In the private sector, a radically new wage proposal offered just in advance of a strike deadline would undoubtedly produce that which it presumably sought to avoid; it might even be considered bad faith. In short, the Employer's proposal was unresponsive to the Union's proposal and unrelated to prior offers or to the bargaining process--a process in which interest arbitration, or at least the threat of interest arbitration, is an integral part.

²³Laner & Manning, *supra*, n. 5, at 851.

In *City of Springfield, Illinois and IAFF, Local No. 37, S-MA-18* (1987), I rejected the Union's proposal, introduced at the hearing, that all firefighters awarded a Firefighter-3 certificate receive a 2% increase in base salary:

...I agree with the City that this issue was "thrown in" at the last minute. Although a monetary incentive for completing an apprenticeship was proposed and then withdrawn by the Union, the specific proposal in dispute was never discussed during negotiations. Neither the long-term interests of the parties nor the statutory objective of "an alternate (sic), expeditious, equitable and effective procedure for the resolution of labor disputes"²⁴ would be served by adopting an item not considered in negotiations. Conventional interest arbitration on non-economic items and issue-by-issue, final-offer arbitration on economic items were designed "to encourage voluntary settlement and discourage the resort to arbitration."²⁵ Commentators Joyce Najita and Helen Tanimoto point out that "the final-offer process works to increase the incentive to bargain by posing the possibility of an unfavorable arbitrator's decision."²⁶ Arbitral consideration of an issue not considered during negotiations would discourage meaningful bargaining and distort the arbitration process. Not only would it permit a negotiator to avoid the risk of concession or compromise inherent in bargaining, it would encourage him to "get a little extra" in arbitration. It holds out hope that through arbitration a party might secure a concession it was unwilling to propose during negotiations.

The cautions expressed in *City of Springfield* apply even more pointedly to this case. In *City of Springfield* the union's offer was a minor, perhaps a "make-weight" or last-minute "throw-in," meant to counter the employer's offers; it had little impact on the overall bargaining position of either party. In this case, however, the

²⁴From Section 2, paragraph 3 of the Act

²⁵Laner & Manning, *supra* n. 5, at 842.

²⁶Najito & Tanimoto, *Interest Disputes Resolution: Final-Offer Arbitration*, Industrial Relations Center, U. of Hawaii (January 1975).

Employer's proposal is critical; it changes the entire salary structure. A proposal to radically modify the salary structure is best addressed at the bargaining table. At the very least, the parties should have a full opportunity to negotiate over such a proposal.

It would seem clear that the Act contemplated that at a hearing the parties should be free to propose a change in the magnitude of a salary offer, and to respond intelligently to counter-proposals. It would seem less likely that the Act contemplated introduction of a totally new proposal unrelated to any previously discussed proposal. I am compelled to conclude that the appropriate place and time for either party to seek to change the basic foundation upon which salaries rest is the bargaining table before the start of interest arbitration.

To the extent that the comparability data submitted by the parties is relevant, this data would suggest that the Union's proposal is not unreasonable. While incomplete demographic and economic data make meaningful comparisons difficult, the evidence did not disclose that the Union's proposal would increase the salaries of Will County Deputies to incomparable or unreasonable levels.

VI. Discussion and Findings on Employee Development

The Union's arguments rests primarily on the fact that the Will County-Local 1028 contract contains "a clause identical to that which is being proposed" (Un. brief, 16). Citing Union exhibit 6, the Union also argues that 18 comparable departments reimburse police officers' tuition costs (Un. brief, 19). Finally, the Union suggests that some degree of advancement is based on educational requirements,

that on January 1, 1993, for example, a Deputy will be precluded from applying for a Sergeant position without at least 30 college-level credit hours in police-related course work (Un. brief, 17).

While the principle of providing incentives for advanced training and education is sound, I agree with the Employer that the "Union has not demonstrated that the current contractual provisions are inadequate to their stated needs and, therefore, ought to be changed" (Emp. brief, 10). The Union's complex and detailed proposal is more well suited to the give-and-take of bargaining than to interest arbitration. Absent the informal exchange of ideas and the sometimes slow and painful development of accommodations and compromises that characterize good-faith bargaining, it is difficult to understand whether the complex and highly evolved proposal of the Union suits the peculiar needs of the employer and these employees. There are obviously differences between the largely clerical work force subject to the Local 1028 agreement and the deputies in question. These differences, which might justify different contract provisions, have not been explored at this hearing.

Finally, evidence that 18 police departments (which may or not be comparable to the unit in question) provide some form of "tuition reimbursement" is insufficient to merit adoption of the complex plan proposed by the Union.

I adopt the Employer's proposal on Employee Development or tuition reimbursement.

VII. Discussion and Findings on Vacations

The Union requests that employees be eligible for the third week of vacation after 5 years instead of 7 years of service and for the fourth week of vacation after 10 years instead of 12 years of service. The Employer proposes no change in the current vacation schedule.

The Union's argument is based primarily on "internal comparability" with the Local 1028 unit. The most recent agreement between Will County and Local 1028 permitted employees to take two weeks' vacation, instead of one week's vacation, after one year of service. Suggesting that it is better to provide a benefit to senior employees instead of new employees, the union argues, at page 22 of its brief, that—

Frankly speaking, had the County proposed the exact same vacation as it had negotiated in the Local 1028 Contract, the Union's internal comparability argument would not have carried the same weight. However, by not proposing any change in vacation, the County is saying that the Arbitrator should short-change the Deputies vis-a-vis other County employees. That is simply unfair.

Citing Union exhibit 7, an "informal" list of 13 departments the Union considers comparable, the Union also argues that "three weeks vacation after five years, and four weeks vacation after ten years, is a common and accepted practice within the industry" (Un. brief, 23).

The Employer argues that the Union did not establish that the communities it chose were comparable to Will County and that after December 1, 1989 the "Union data is not comparable... for purposes of retroactivity consideration" (Emp. brief, 13). The Employer also points out that adoption of the Union's proposal would require the

Employer either to schedule or carry over 16 additional weeks of vacation covering fiscal year 1989 and 28 weeks for fiscal year 1990 (Emp. brief, 13). The Employer also notes that its total staffing and hiring needs take the impact of lost-time benefits into consideration. These benefits include "total weeks of vacation eligibility," 13 holidays and 3 personal-leave days, absences owing to illness, injury disability, worker's compensation leave and emergency absences. Nor, the Employer argues, did the Union's proposal factor in the need to fill critical positions during vacations on an overtime basis (Emp. brief, 14).

I adopt the Employer's proposal. The Union did not justify the need to compress the vacation schedule on the basis of internal or external comparability. First, I cannot determine whether the communities listed by the Union are comparable to Will County. Second, compression of the vacation schedule for the more senior employees in the unit is not justified by the fact that Local 1028 employees now receive a two-week vacation, instead of a one-week vacation, after their first year of service. Although the argument that "we should get what they got" may be entitled to consideration, the argument that "we want something because they got something" is less persuasive. While the Union may hope to maintain a degree of wage and benefit parity between the two Will County bargaining units, it is improbable that parity may be maintained in all matters and under all circumstances.

Finally, it may not be enough merely to compare benefits. Cost comparisons may also be significant. If all the factors impinging on the cost of a benefit are considered in interest arbitration, two bargaining units in the same county may reasonably be compared.

However, comparisons are difficult without information comparing the estimated cost of the vacation proposal to Local 1028's vacation schedule as well as information comparing the total cost of the Local 1028 contract to the proposed contract.

VIII. Discussion and Findings on Bullet-Proof Vests

The Union proposes that the Employer be required to purchase a "Threat 3, Level A" bullet-proof vest for each Deputy. The Employer proposes no change in the current Agreement.

Article XIV, Section 14.3 of the Agreement provides:

- a. The Employer and the Union shall establish a Uniform Committee, to meet and discuss, as required, matters pertaining to this Article.
- b. Prior to the implementation of any changes to the current list of basic issue uniform and equipment items, the Uniform Committee shall meet to review and discuss such matters.

Pointing out at pages 63 and 64 of the second transcript that "this matter has not been reviewed and discussed by the Uniform Committee, prior to advancing to the negotiation stage, much less that of arbitration," the Employer argues that "this issue needs to be placed on the Uniform Committee agenda, for discussion and agreement between the parties, with regard to such matters as:

- "(1) Are such vests either necessary and/or appropriate?
- "(2) The type or types of vests to be authorized.
- "(3) Whether, if authorized, vest wear is to be optional or mandatory.
- "(4) The item cost of vest type or types and total items.

"(5) The manner of vest procurement, for example, by individual Deputies or through competitive bidding.

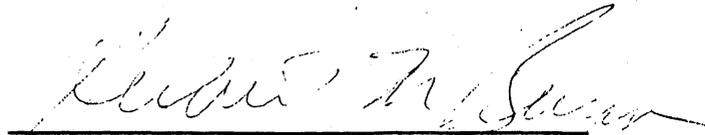
"(6) The degree of financial participation, in vest purchases, by Deputies and/or the County."

The County's representative testified that the County "is inclined to accept a cost-sharing arrangement, with Deputies desiring such, for the purchase of individual bullet proof vests, for example, 50 per cent of the cost, not to exceed a specific amount" (Tr. 64). The representative also testified that, if Deputies are issued body armor, they should be required to wear it (Tr. 64).

I adopt the Employer's proposal. Body armor or bullet-proof vests are important. However, as the Employer points out, Section 14.3 of the Agreement provides the means for the parties to work out an agreement on body armor. It strengthens collective bargaining to require the parties to negotiate according to the terms of their contract.

IX. Award

I adopt the Union's Salary proposal. I adopt the Employer's proposals on Employee Development, Vacations, and Uniforms and Equipment (Bullet-Proof Vests).


Herbert M. Berman
Arbitrator

Deerfield, Illinois
March 19, 1991

