

Interest Arbitration

Rock Island County Board and
the Rock Island State's Attorney,

Employer

and

The International Union of
Operating Engineers, Local 150,

Union

FMCS No. 93-00231
ISLRB No. S-MA-93-10
Arbitrator's File No. 92-104

Herbert M. Berman,
Arbitrator

August 2, 1993

Opinion and Award

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I. Statement of the Case

On January 2, 1992, the Illinois State Labor Relations Board certified the Union as the bargaining agent for "all full time and regular part time Assistant State's Attorneys employed by the Rock Island County State's Attorney's Office, excluding all other employees, division heads, supervisors and guards as defined by the Act" (Employer Exhibit 1).¹ After lengthy contract negotiations, the parties reached impasse.

Although the assistant state's attorneys are not security employees, peace officers, fire fighters or paramedics, the parties agreed to submit their dispute to interest arbitration in accordance with Section 14 of the Illinois Public Labor Relations and Section 1230.90 of the Rules and Regulations of the Illinois State Labor Relations Board (Tr. 24-5).² They have waived the tripartite panel otherwise required by Section 14(a) of the Act and have submitted their final offers solely to me for resolution (Tr. 4; 25).

¹In the remainder of this opinion and award, I shall cite Employer exhibits as "Emp. ____" and Union exhibits as "Un. ____." I shall cite the testimony by the name of the witness and appropriate page reference, for example, "Pentucic 26." I shall cite non-testimonial portions of the transcript as "Tr. ____."

²Section 14 of the Illinois Public Labor Relations Act (the "Act") and Section 1230.90 of the Rules and Regulations of the Illinois State Labor Relations Board (the "Rules") concern interest arbitration for bargaining units of public security employees, peace officers, fire fighters and paramedics.

II. The Final Offers

A. Economic Proposals Unrelated To Wages

1. Summer Scheduling

Union Proposal

Provide a section within the "Hours of Work and Overtime" Article that preserves the present practice and procedure of the State's Attorney's Office:

Section : Summer Scheduling

The Employer shall continue the present practice of giving approximately 2/3 of bargaining unit employees time off with pay on Wednesday afternoons on a rotating basis from April through September, subject to the office and each employee's requirement to complete assigned work.

Employer Proposal

Employer proposes that there be no Summer Scheduling Section included in the Agreement.

2A. License Fee

Union Proposal

Provide a Section guaranteeing annual reimbursement to attorneys for their professional license fees on an annual basis and tuition refund.

Section 21.1

The Employer shall compensate the employee for any educational licensing, or registration fees he is required to maintain either by law as a condition of professional practice, or by the County within 30 days of presentment of proof of payment by the employee. Such fees include, but are not limited to, the Illinois Attorney Registration & Disciplinary fee, or any others that become mandatory after this Agreement takes effect.

Employer Proposal

A. Professional License Fee Annual Reimbursement - STATUS QUO - Not a Current Benefit.

2B. Tuition Refund

Union Proposal

Section 21.2

An employee-requested course of study may qualify for tuition and other expense reimbursement from the County. The course must be determined by the Department Head to be job related, be approved in advance by him. Upon submission of paid bills, reim-

bursement will be made for tuition, books and fees, room and board. An employee may take up to two courses per semester.

In the event that mandatory continuing education is adopted, the County shall be reimburse bargaining unit employees for fees expended to comply with the requirement.

Employer Proposal

Tuition Refund - STATUS QUO - Not a Current Benefit.

3. Holiday/Weekend Court

Union Proposal

Provide a Section reimbursing bargaining unit employees required to work on holidays and/or weekends.

Section : Holiday/Weekend Court

The employer shall pay the employee the sum of \$100.00 per day for each day of week-end or holiday court duty assigned and performed, regardless of the number of hours of work required to satisfactorily complete the task. Extra non-essential duties shall not be assigned but such weekend or holiday court duty shall at least include appearance at the jail, securing and reviewing police reports of recently arrested inmates, drafting of appropriate criminal charges, consideration of bond or release for such inmates and reports regarding such duties.

Employer Proposal

Holiday/Weekend Court - STATUS QUO - Not a Current Benefit

4. On Call/Stand By Pay

Provide a Section mandating the employer pay bargaining unit employees for being assigned "on call" station:

Section : On Call/Stand By Pay

An employee is entitled to stand-by pay if he is scheduled by the State's Attorney to be on-call, that is to keep the appropriate authorities informed of his whereabouts during non-office hours and to be available for consultation or possible recall to the office or other necessary location during such hours. Any employee on scheduled stand-by time pursuant to this section shall be compensated for every seven-day period they are required to be on stand-by. The amount of such compensation for the seven-day period is the greater of \$125.00 or the regular salary of that employee working as computed on an hourly basis for actual number of hours worked during non-office hours. Failure to be able to reach such an assigned employee through diligent customary means (including telephone and paper) may result in a loss of stand-by pay to the employee. Any other employee who performs work during non-office hours due to failure to reach an assigned employee or due to recall of the assigned attorney on another matter shall be compensated at the regular salary of that employee as computed in hourly actual number of hours worked during non-office hours.

Employer Proposal

On-Call/Stand-by Pay - STATUS QUO - Not a Current Benefit

B. Wage Proposals

Union Proposal

A. Wage Schedule

Provide that the following "Wage Schedule" be effective December 1, 1992 through November 30, 1994, **INCLUSIVE OF OVERTIME AND OTHER FORMS OF PAID LEAVES OF ABSENCE**, to employees employed at the effective date therein and that no employee shall a experience a wage loss thereto:

Wage Schedule

	<u>12/1/91</u>	<u>12/1/91</u>	<u>12/1/93</u>
*Non-Attorney	\$16,000	\$17,000	\$18,000
0 mos - 1 yr	22,000	23,300	24,700
1 yr - 3 yrs	25,000	26,500	28,000
3 yrs - 6 yrs	28,000	29,700	31,500
6 yrs - 9 yrs	32,000	33,900	36,000
9 yrs - 12 yrs	35,500	37,600	39,900
12 yrs - 15 yrs	38,000	40,300	42,700
15 yrs & over	41,000	43,400	46,000

(*Upon passage of bar exam, the employee would be subject to the wage schedule commensurate with their seniority)

B. Former Employees

The above wage schedule, when applied 12/1/91, shall require payments to the following former employees, which listing is not exclusive and may include other employees the Union may not be so advised of:

<u>Former Employee</u>	<u>Start</u>	<u>Leave</u>	<u>Salary at Time</u>
Margaret Osborn	8/81	1/28/92	\$27,656.70
Rich Keys	3/8/91	12/31/91	19,863.00
Peggy Little	3/18/91	4/2/93	19,760.00
Sherry Nicholas	2/3/92	12/18/92	21,840.00
Jackie Westerfield	5/6/91	2/21/92	19,240.00
Chris Hunter (Non-Atty)	8/3/92	12/18/92	12,000.00

C. Signing Bonus Awards

The following employees shall be issued a "signing bonus" which shall not be a considered a part of their wage base:

Barker	\$ 1,000
Donald	1,000
Warhank	1,000
Clymer	1,500

Pentuic	1,500
Kalinak	1,500
Ishibashi	1,500
Senko	1,500
	<u>\$12,000</u>

Employer Proposal

Provide that the following "Wage Schedule" be effective December 1, 1991 through November 30, 1994. Wage Schedule shall be retroactive for employees who were employed on March 8, 1993 provided that no employee shall experience a wage loss as a result of the adoption of the schedule. Employees not employed on March 18, 1993 shall not be entitled to retroactive pay.

Wage Schedule

	<u>12/1/91</u>	<u>12/1/92</u>	<u>12/1/93</u>
*Non-Attorney	\$16,000	\$17,000	\$18,000
0 - 6 mos	22,500	23,625	24,806
6 mos - 1 yr	23,500	24,675	25,909
1 - 3 yrs	24,500	25,725	27,011
3 - 5 yrs	26,000	27,300	28,665
5 - 8 yrs	28,000	29,400	30,870
8 - 10 yrs	31,500	33,075	34,728
10 - 13 yrs	34,000	35,700	37,485
13 yrs & over	38,500	40,425	42,446

*Upon passage of bar exam, the employee would be subject to the wage schedule commensurate with their seniority.

III. Applicable Standards under the Illinois Public Labor Relations Act

Section 14(g) of the Act provides that "[a]s 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)." Section 14(h) of the Act sets out eight factors for 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.

The critical standards are contained in paragraphs 3 through 6. "The most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions.³ The employer's "ability to pay" the wages and benefits requested and the "cost of living" are other factors of primary significance.⁴

³Arvid Anderson & Loren Krause, "Interest Arbitration in the Public Sector: Standards and Procedures," *Labor and Employment Arbitration*, eds. Tim Bornstein & Ann Gosline (New York: Matthew Bender & Co., Inc., 1990), V. III, Ch. 63, §63.03[2], at 7.

⁴The 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.

IV. Discussion and Findings

A. Wages: Union Proposal 5; Employer Proposal 6⁵

1. Summary of the Relevant Evidence

(a) Comparison of the Final Wage Offers

The fiscal 1990 wage base for the State's Attorney's office was \$241,046 (Emp. 12). County exhibit 11 shows that the Union's final offer, factoring in the cost of the 4% wage increase given on December 1, 1991 and a \$12,000 signing bonus, would amount to a 40.7% increase over three years and cost \$117,548 (Emp. 11).

The Employer's final offer, which included the 4% increase of December 1, 1991, would increase wages by 31.5% over three years and cost \$71,099 (Emp. 11).

The annual percentage increases may also be compared (Emp. 13):

	Union	Employer
91/92	15.0%	15.0%
92/93	15.3	9.3
93/94	10.4	7.2
	40.7%	31.5%

(b) Comparability

The parties have agreed that state's attorneys' offices in Scott County, Iowa and Peoria, McLean, Champaign, Sangamon and Tazwell Counties, Illinois are comparable to the State's Attorney's office in Rock Island County, Illinois (Tr. 28).⁶

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, at 200.

⁵Initially, both parties submitted the proposal on "duration of labor agreement" as proposal 5. When the parties agreed that the agreement would be effective from December 1, 1991 through December 30, 1994, the Union changed proposal 6 to proposal 5; the Employer did not renumber its proposal 6.

⁶According to the 1990 census, Rock Island County has a population of 148,723. The six comparable counties range from a population 123,692 (Tazwell) to 182,827 (Peoria). All six have a population within $\pm 25\%$ of the population of Rock Island County (Emp. 2; Un. 1). The average population of the seven counties is 131,743.

(i) External Salary Comparisons

Union exhibit 1 compares salaries of Assistant State's Attorneys in Rock Island to salaries of Assistant State's Attorneys in comparable offices at various points of experience:

County	Start	after 2 years	after 5 years	after 8 years	after 10 years	after 12 years	after 15 years
Peoria	\$23,481 ^{4*}	\$25,111 ⁶	\$34,034 ³	\$38,210 ²	41,527 ²	\$45,970 ¹	n/a
McLean	23,900 ³	30,000 ¹	40,000 ¹	n/a	n/a	n/a	n/a
Champaign	25,545 ¹	27,748 ³	29,542 ⁵	34,424 ³	35,324 ⁴	n/a	38,298 ²
Sangamon	22,000 ⁵	24,542 ⁴	33,697 ⁴	n/a	53,000 ¹	n/a	n/a
Tazwell	22,000 ⁵	27,900 ²	40,000 ¹	40,416 ¹	n/a	n/a	52,355 ¹
Scott	24,993 ²	27,118 ⁵	29,542 ⁵	33,328 ⁴	36,615 ³	39,932 ²	43,275
Average	23,653	27,070	34,469	36,594	41,633	42,936	44,643
Rock Island	18,500 ⁷	21,000 ⁷	25,056 ⁷	30,225 ⁵	33,873 ⁵	33,873 ³	33,873 ³

*Superscript numbers indicate ranking.

The Union and Employer offers may also be compared (Emp. 11):

	Start	1 Yr	3 Yrs	6 Yrs	9 Yrs	12 Yrs	15 Yrs
Un Offer							
91	22,000	25,000	28,000	32,000	35,500	38,000	41,000
92	23,300	26,500	29,700	33,900	37,600	40,300	43,400
93	24,700	28,000	31,500	36,000	39,900	42,700	46,000

	Start	6 Mos	1 Yr	3 Yrs	5 Yrs	8 Yrs	10 Yrs	13 Yrs
Emp Offer								
91	22,500	23,500	24,500	26,000	28,000	31,500	34,000	38,500
92	23,625	24,675	25,725	27,300	29,400	33,075	35,700	40,425
93	24,806	25,909	27,011	28,665	30,870	34,728	37,485	42,446

Employer exhibit 4 compared the effect of the Employer's salary proposal on starting and top salaries to the starting and top salaries of states' attorneys in the comparable offices:

County	Starting	Top
Champaign	\$25,545	\$36,426
McLean	25,700	39,468
Peoria	23,481	43,586
Sangamon	22,000	34,691
Tazwell	22,000	43,833
Scott	24,993	33,815
All Counties Average	23,941	38,466

County Wage Proposal

23,625

40,425

The Union compared the salaries of Assistant State's Attorneys in the six comparable counties to the offers of the Union and the Employer (Un. 3):⁷

	12/1/91	12/1/92*	12/1/93
<u>Peoria</u>			
0- 1 yr	23,500	24,500-	25,500-
1-3 yrs	25,000+	26,000+	27,000+
3-6 yrs	34,000	35,000+	37,000-
6-9 yrs	38,000	40,000-	41,000
9-12 yrs	42,000-	43,000+	45,000
12-15 yrs	46,000	48,000-	50,000-
15+ yrs	n/a	n/a	n/a
<u>McLean</u>			
0-1 yr	24,000	25,000-	26,000-
1-3 yrs	30,000	31,000+	32,500
3-6 yrs	40,000	41,500	43,000+
6-9 yrs	n/a	n/a	n/a
9-12 yrs	n/a	n/a	n/a
12-15 yrs	n/a	n/a	n/a
15+ yrs	n/a	n/a	n/a
<u>Champ'gn</u>			
0-1 yr	25,500	26,500	27,500+
1-3 yrs	27,500+	29,000-	30,000
3-6 yrs	29,500	31,000-	32,000
6-9 yrs	34,000+	36,000-	37,000+
9-12 yrs	35,000+	37,000-	38,000+
12-15 yrs	n/a	n/a	n/a
15+ yrs	38,000+	40,000-	42,000-
<u>Sang'mn</u>			
0-1 yr	22,000	23,000-	24,000-
1-3 yrs	24,000	25,500	26,500
3-6 yrs	33,500	35,000	37,000-
6-9 yrs	n/a	n/a	n/a
9-12 yrs	53,000	55,000+	57,000+
12-15 yrs	n/a	n/a	n/a
15+ yrs	n/a	n/a	n/a
<u>T'well</u>			
0-1 yr	22,000	23,000-	24,000-
1-3 yrs	28,000	29,000	30,000+
3-6 yrs	40,000	41,500	43,000+
6-9 yrs	40,000+	42,000	44,000-
9-12 yrs	n/a	n/a	n/a
12-15 yrs	n/a	n/a	n/a
15+ yrs	52,000	55,000-	57,000-

⁷David Osborn, the author of Union exhibit 3, testified that he showed a 4% per annum increase" in 1992, 1993 and 1994 so that he could "compare 1993 dollars to 1993 dollars and 1994 dollars to 1994 dollars" (Osborn 83).

	12/1/91	12/1/92*	12/1/93
<u>Scott</u>			
0-1 yr	25,000	26,000	27,000
1-3 yrs	27,000+	28,000+	29,500-
3-6 yrs	29,500	31,000-	33,000
6-9 yrs	33,000+	35,000-	37,000
9-12 yrs	36,000+	38,000	41,000-
12-15 yrs	40,000	41,000+	43,000+
15+ yrs	44,000+	46,000	47,000-
<u>Average</u>			
0-1 yr	23,667	25,000+	26,000
1-3 yrs	27,000	28,000	29,500-
3-6 yrs	35,500	37,000-	38,000+
6-9 yrs	37,000+	39,000	39,000+
9-12 yrs	41,000+	43,000+	46,000
12-15 yrs	44,000	46,000-	46,000+
15+ yrs	45,000+	47,000+	48,000+
<u>Un Offer</u>			
0-1 yr	22,000	24,000-	25,000+
1-3 yrs	25,000	27,000	28,500
3-6 yrs	29,000	31,000-	32,500
6-9 yrs	33,000	35,000	37,000
9-12 yrs	35,000+	39,000-	41,000
12-15 yrs	39,000	41,000+	44,000-
15+ yrs	42,000	45,000-	47,000
<u>Emp Offer</u>			
0-1 yr	24,000	25,000+	25,500+
1-3 yrs	24,500	26,000+	27,000
3-6 yrs	27,000	28,000+	29,500
6-9 yrs	28,000	30,000+	32,000
9-12 yrs	32,000-	34,000	36,000-
12-15 yrs	35,000	37,000-	38,000+
15+ yrs	39,000+	40,000+	43,000-

*4% is added to each comparable in each cell in 1992 and 1993.

The Union also compared the lowest and average starting salary of employees in each comparable office, adding a 4% annual increase in each of the two succeeding years

(Un. 4):⁸

	Starting	1-3	3-6	6-9	9-12	12-15	15+
<u>Lowest Salary</u>	22,000	25,111	28,657	32,175	35,392	37,592	38,298
4% Increase	22,880	26,115	29,803	33,462	36,807	39,095	39,830
4% Increase	23,795	27,159	30,995	34,800	38,279	40,658	41,222

⁸Ed Pentuic, the author of Union exhibit 4, testified that Union exhibit 4 is a summary of "progressive salaries of surveyed counties based on CPI increases" (Pentuic 44). Pentuic "averaged the CPI from '84 to '92; the average increase over this period, Pentuic testified, was 4.5%, but Pentuic "used 4% just to knock it down a bit" (Pentuic 45).

	Starting	1-3	3-6	6-9	9-12	12-15	15+
Average Salary	23,653	27,069	33,523	35,086	39,996	38,747	44,642
4 % Increase	24,499	28,151	34,863	36,488	41,596	40,024	46,427
4% Increase	25,583	29,278	36,257	37,947	43,259	41,625	48,284

(ii) Internal Salary Comparisons

In April 1992, the Employer gave all employees in the County a 4% across-the-board raise, retroactive to December 1, 1991 (Pentuiic 42-3).⁹

AFSCME Local 2025 represents "all courthouse and office employees" with the exception of Assistant State's Attorneys (Douglas 109-10; Emp. 6); AFSCME Local 2371 represents nurses employed in Rock Island County Nursing Home (Tr. 15); Teamsters Local 371 represents Highway Department employees (Tr. 15); and the Fraternal Order of Police (FOP) Lodge 61 represents Rock Island County Deputy Sheriffs (Tr. 15).

The Employer and these unions have entered into collective bargaining agreements providing for the following percentage wage increases (Emp. 5):

	AFSCME 2025	AFSCME 2371	Teamsters 371	FOP 61
1990	3%	3.25%	2.02%	4%
1991	5.2%*	5%	1.98%	4%
1992	3%	5%	4%	4.5%
1993			3.5%	
1994			3%	

*On December 1, 1991, a wage schedule was introduced into the AFSCME 2025 agreement. The wage schedule has a final step increase at 12 years of employment.

The evidence did not establish the dollar level of wages or the amount of dollar wage increase given to employees in these units.

(c) Cost Of Living

The Urban Wage Earners and Clerical Works Consumer Price Index (CPI-W) rose 4.1% from December 1, 1990 to December 1, 1991, 2.9% from December 1, 1991 to December 1, 1992 and 3.1% from December 1, 1992 to March 1, 1993 (Emp. 3).

⁹The parties stipulated that Employer, but not the Union, added this 4% increase to payroll-cost estimates (Tr. 43-4). Thus, the Union will show an increase of 37% and the Employer an increase of 41%.

2. Positions of the Parties on Wages, Bonuses and Schedule

(a) The Union

The wage schedule proposed by the Union (Union proposal 5A) is inclusive of overtime, intended to cover all forms of paid leave and is to be retroactive to December 1, 1991 for all current and former employees (Tr. 9; 10). Implementation of the schedule should not result in the loss of wages for any employee (Tr. 9).¹⁰

(b) The Employer

1. While not pleading poverty or inability to pay, it is important to note that the County has increased taxes 14% for the coming fiscal year (Tr. 13).

2. The cost-of-living increases in 1991, 1992 and up to March 1993 are known, and were taken into consideration by the Employer (Tr. 14).

3. The Employer's proposal of 31.5% over a three-year period is "double the largest settlement ever made by the county of Rock Island with any of its unions" (Tr. 15; 16).

4. The Union "is relying strictly and simply on external comparabilities," and on Peoria in particular (Tr. 16). Unlike the parties in this case, Peoria and the Union have a "mature labor contract" (Tr. 16).

3. Discussion and Findings on Wages

Law is a learned profession. A fully competent lawyer combines the skills of scholar, logician, writer and orator. A lawyer's integrity must be unimpeachable, he must be persuasive and work well with others, and he must shoulder substantial responsibilities. And yet, while young and inexperienced lawyers employed by major firms in large cities may earn upwards of \$70,000 a year in addition to substantial fringe benefits, young lawyers on the public payroll generally command far less generous salaries.¹¹ The

¹⁰The Employer accepted this position (Tr. 9).

¹¹It is well-known, however, that many newly licensed lawyers consider public employment a form of post-graduate training and a springboard to more lucrative jobs. Six of the ten lawyers in the Rock Island County State's Attorney's office have been employed less than three and one-half years.

market is neither uniformly just nor equitable. But in a market-driven, supply-and-demand economy, the market cannot be disregarded.¹² Like the ancient gods, it must be propitiated.¹³

The comparable market does not include major Chicago and New York law firms. The comparisons are drawn from state's attorneys offices in six relatively small counties in Illinois and Iowa. As shown by Union exhibit 1, Rock Island County Assistant State's Attorneys rank last in average salaries at the hiring point, and at two, five, eight, ten, twelve and fifteen years of service. At these points, Rock Island County Assistant State's Attorneys are also below the average salaries of assistant state's attorneys in the six comparable offices. In comparison to other comparable employees, it cannot be doubted that Rock Island County Assistant State's Attorneys are underpaid. To some degree, both offers rectify past inequities, but neither offer eliminates them.

On the basis of comparability and cost-of-living, I am compelled to adopt the Employer's offer. In an era of modest inflation and cost-of-living increases averaging about 3% annually, a 31% increase over a three-year period is generous. In 1979, a 41% increase over three years might have been considered reasonable. In 1991-93, a 41% increase would be extraordinary. A wage increase more than 400% greater than the cost of living would have to be supported by substantial evidence on comparability and other relevant factors.

¹²The starting salary of garbage collectors in the city of Rock Island is \$23,200 (Pentuiic 86), substantially more than the starting salary of Rock Island County Assistant State's Attorneys. I shall not attempt, however, to draw comparisons between the social and economic value of different occupations. Among the factors that might be considered in analyzing the comparative economic value of different occupations are skill and training; degree of responsibility; working conditions, including hazardous, strenuous and undesirable conditions of work; intellectual effort; and physical effort. Each of these factors and others may be assigned a weight, and some rough comparisons can be drawn. I do not have sufficient information to draw these comparisons. I note that, while advanced education may not be a qualification of employment as a garbage collector, garbage collectors perform physically demanding work critical to public health and welfare.

¹³See, generally, Andrew Bard Schmookler, *The Illusion of Choice: How the Market Shapes Our Destiny* (Albany, NY: State University of New York Press, 1993), for an illuminating discussion on the constraints, realities and myths of a market economy.

The Employer's proposal would not propel employees to the top of the list of comparable employers, but it would raise the rank of Rock Island attorneys at each step. The evidence supports substantial improvement in pay, but not the extraordinary percentage increases sought by the Union.

It is also significant that the contract in issue will be the first contract between the parties. It may not be feasible to immediately correct long-standing inequities that have gradually built up over a significant period of time. The Employer's proposal raises the current starting salary from \$18,500 to \$23,625, \$28 below the six-county average, and fourth among the seven comparable counties.

Comparing the current effect of the Employer's offer to comparable salaries yields this information:

Emp. Offer 12/1/92	Start	6 Mos	1 Yr	3 Yrs	5 Yrs	8 Yrs	10 Yrs	13 Yrs
	23,625	24,675	25,725	27,300	29,400	33,075	35,700	40,425
6-Cnty Average	Start	2 Yrs	5 Yrs	8 Yrs	10 Yrs	12 Yrs	15 Yrs	
	23,653	27,070	34,469	36,594	41,633	42,936	44,643	
Ranking among 7 Counties* 12/1/92	4	5	7	4	5		2	

*As the data does not permit precise year-to-year ranking, I have compared the Employer's 3-year step to the 7-county ranking at 2 years and the Employer's 13-year step to the 7-County ranking at 15 years.

Although the Employer's offer substantially raises the salaries of long-term employees,¹⁴ it gives short-time employees higher proportionate increases. Under the Employer's proposal, however, the two employees hired in 1979 will immediately receive a raise of \$6,552, a 19% increase as well as a substantial retroactive wage increase. The one employee hired in 1984 will receive an immediate \$2,850 increase and a further step increases at the tenth anniversary of his employment in 1994. Under the Employer's proposal, all current employees will receive an average 27.5% wage increase over the term

¹⁴As examination of the comparability data shows, much of the pertinent information for employees with eight or more years of experience was unavailable. For example, two comparable salaries were available at the 12-year step and three at the 15-year step. These comparisons are necessarily less reliable than more complete comparisons.

of the agreement, exclusive of the 4% wage increase granted on December 1, 1991 (See Employer's Final Offer, p. 4).

It is difficult to justify the higher wage increase sought by the Union. It is also difficult to justify the \$1000 to \$1500 "signing bonus" requested by the Union. Generally, a salary schedule is the foundation for future salary negotiations; raises, if any, are negotiated as a percentage of the current salary schedule. A signing bonus provides a "one-time-only" salary increase without raising the foundation upon which future increases will be built. A signing bonus is often used to avoid inflation of the salary schedule and to rebut the argument that the evidence does not justify the percentage increases generated when the bonus is folded into the schedule. In this case, the increases proposed by the Employer are substantial, and little probative evidence was produced, either in terms of cost of living or comparability, to support this bonus.

Finally, while the Union's concern for former employees is understandable, it makes little economic or industrial relations sense to reward those whose financial interests now lie elsewhere. Money paid to former employees in the form of a windfall bonus might be more effectively spent on employees whose first (and presumably only) loyalty lies with their employer. Wages are exchanged for work. In a law office or factory, effort, skill and positive results are generally rewarded. Presumably, a raise is an incentive to work harder and more productively. Money paid to a former employee for past service, however, is unrelated to current levels of productivity. To the contrary, a windfall bonus to former employees may deplete funds that might otherwise be available to current employees. At times, equity may compel monetary consideration for former employees. In this case, the evidence did not establish any compelling equitable reason to reward former employees.

I adopt Employer proposal 6 entitled "Wages." I reject Union proposal 5 entitled "Wages/Bonuses/Schedule."

B. Other Issues

1. Summer Scheduling—Proposal 1

The Union proposes to maintain the present practice of giving approximately two-thirds of bargaining unit employees time off with pay on Wednesday afternoons from April through September on a rotating basis. The Employer proposes to eliminate this practice.

Neither party presented much evidence on this issue. On behalf of the Union, Pentuic testified that, to the best of his recollection, the Employer did not propose “to discontinue the summer scheduling prior practice and procedure in lieu of implementing a wage schedule” (Pentuic 31-2). State’s Attorney Douglas testified that “on a given Wednesday afternoon, two-thirds of our attorneys are free to go...and one-third will stay on duty” (Douglas 105). According to Douglas, “attorneys have very flexible hours.” The day officially starts at 8:30 in the morning, but some attorneys arrive earlier. Attorneys are allowed time off to attend to personal and family matters and attorneys who work overtime during a trial often take time off later to unwind (Douglas 99-100). Some attorneys work 60 hours a week; others “perform their duties in less than 40 hours; they fill in the rest of their time, and they go home; life goes on...” (Douglas 103-04).

Many years ago, arbitrator Clark Kerr wrote that he—

...considers past practice a primary factor. It is standard form to incorporate past conditions into collective bargaining contracts, whether these contracts are developed by negotiation or arbitration. The fact of unionization creates no basis for the withdrawal of conditions previously in effect. If they were justified before, they remain justified after the event of union affiliation. It is almost axiomatic that the existing conditions be perpetuated. Some contracts even blanket them in through a general “catch-all” clause.¹⁵

¹⁵ Luckenback SS., 6 LA 98, 101 (1946).

Thus, “[a]rbitrators may require ‘persuasive reason’ for the elimination of a clause which has been in past written agreements” and “they sometimes order the formalization of past practices by ordering that they be incorporated into the written agreement.”¹⁶

In this case, no persuasive evidence was produced to establish that working conditions had changed enough to warrant elimination of the Wednesday-afternoon-off practice. While State’s Attorney Douglas testified without contradiction that he was unaware that this practice existed in any other state’s attorney’s office, no detailed comparison between the scheduling practices in Rock Island County and other offices was offered, and it is impossible to ascertain how Rock Island County working hours compare to those of comparable offices in other counties. Professional employees are generally given some discretion to set schedules; results, not means and methods, are usually considered critical. For that reason, a supervisor may not care whether an employee works 40 or 60 hours a week, or whether—if he takes care of business—he does the laundry or plays golf one afternoon a week. In short, no adequate reason having been presented to abolish the Wednesday-afternoon-off practice, I must adopt it. I therefore adopt Union proposal 1 entitled “Summer Scheduling” and reject Employer proposal 1 entitled “Summer Scheduling.”

2. Professional License Fee & Tuition Refund—Proposals 2A and 2B

The Employer does not currently reimburse employees for the cost of professional license fees, school tuition or continuing legal education. The Employer pays for seminars and conferences Assistant State’s Attorneys are required to attend (Emp. 10).

Five of the six comparable counties do not reimburse attorneys for tuition costs (Emp. 9). Four of the six comparable counties compensate attorneys the cost of an educational, licensing or registration fee required as a condition of employment or licensure

¹⁶Frank Elkouri & Edna Asper Elkouri, *How Arbitration Works*, 4th ed. (Washington: BNA Books, 1985), 843.

(Emp. 10). The current annual cost of reimbursing license fees would come to \$1540. No other evidence was presented on these issues.

The parties did not devote much time or attention to these issues, and little evidence, either in support of or in opposition to, the Union's proposals on fee and tuition reimbursement, was produced. The only evidence presented related to comparability. Comparability data supported Union proposal 2A and undermined Union proposal 2B.

I adopt Union proposal 2A on professional license fee annual reimbursement and reject Employer proposal 2A on professional license fee annual reimbursement. I adopt Employer proposal 2B on tuition reimbursement and reject Union proposal 2B on tuition reimbursement.

3. Holiday/Weekend Court—Proposal 3

About two years ago, the United States Supreme Court ruled that a criminal defendant had to be brought before a judge for a meaningful hearing within 48 hours after his arrest (Douglas 96-7). As a result, Douglas set up a Saturday court, "which takes care of everybody arrested after one o'clock on Friday" and a Sunday court whenever a holiday falls on Monday (Douglas 97). Generally, an attorney is on duty in holiday court from about 8:00-8:30 AM to 10:00-10:30 AM (Douglas 97). As "every assistant...takes a rotational turn," each assistant serves on holiday court once every thirteen or fourteen weeks (Douglas 97). The Employer did not pay extra for this work because, Douglas suggested, "it is...part of our professional responsibility and factors into our annual salary" (Douglas 98).

It would cost the Employer about \$5200 a year to pay attorneys an additional \$100 for each session of holiday court (Emp. 7). Four comparable counties do not pay employees for holiday court (Emp. 7). Peoria pays \$100 for holiday court,¹⁷ and

¹⁷Pentuic testified that he believed this figure to be too low, that it reflected the practice in Peoria in 1991 (Pentuic 35).

Champaign provides employees with one hour of compensatory time for serving in holiday court (Emp. 7).

Comparability does not support the Union's proposal on holiday-court pay. And since lawyers are professionals who do not receive hourly wages (although many lawyers in private practice earn an hourly fee), there would seem less justification for paying lawyers, as opposed to manual workers, additional wages for additional hours of work. I adopt Employer proposal 3 on holiday/week end court and I reject Union proposal 3 on holiday/weekend court.

4. On-Call/Stand-By Pay—Proposal 4

Currently, two assistants per month are placed on stand-by on a rotating basis (Douglas 98). They are consulted by phone and may be called at home (Douglas 98). If a search warrant is required, they are contacted (Douglas 98). The Employer does not pay extra salary to lawyers on stand-by during non-office hours because, Douglas testified, this work is "part of the professional responsibility of an assistant state's attorney who is a licensed lawyer" (Douglas 99).

Five of the six comparable offices do not provide stand-by pay to their lawyers (Emp. 8). Peoria County provides \$125 in stand-by pay (Emp. 8). No substantial evidence or convincing rationale was provided to support the Union's proposal on stand-by pay. I adopt Employer proposal 4 on on-call/stand-by pay and I reject Union proposal 4 on on-call/stand-by pay.

V. Summary of Awards

In summary, I make the following awards on each proposal made by the parties.

1. Summer Scheduling

I adopt Union proposal 1 and reject Employer proposal 1.

2A. Professional License Fee

I adopt Union proposal 2A and reject Employer proposal 2A.

2B. Tuition Refund

I adopt Employer proposal 2B and reject Union proposal 2B.

3. Holiday/Weekend Court

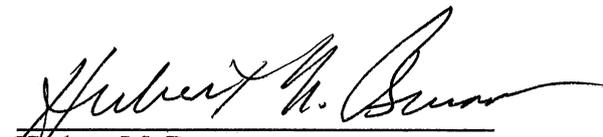
I adopt Employer proposal 3 and reject Union proposal 3.

4. On-Call/Stand-By Pay

I adopt Employer proposal 4 and reject Union proposal 4.

5. Wages

I adopt Employer proposal 6 and reject Union proposal 5.



Herbert M. Berman
Arbitrator

August 2, 1993