

ILRB
#159

ILLINOIS STATE LABOR RELATIONS BOARD

INTEREST ARBITRATION

| | | |
|----------------------------------|---|----------------------|
| In the Matter of the Arbitration |) | Before |
| |) | |
| between |) | HARVEY A. NATHAN, |
| |) | Sole Arbitrator |
| COUNTY OF BUREAU and |) | |
| SHERIFF OF BUREAU COUNTY |) | |
| |) | |
| and |) | ISLRB No. S-MA-96-14 |
| |) | |
| ILLINOIS FRATERNAL ORDER |) | |
| OF POLICE LABOR COUNCIL |) | |

Hearing Held: February 12, 1997

Briefs Exchanged: May 19, 1997

For the Employer: Steven D. Rittenmeyer, of
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Police Labor Council

O P I N I O N A N D A W A R D

I. INTRODUCTION

This is an interest arbitration proceeding held pursuant to Section 14 of the Illinois Public Labor Relations Act (5 ILL 315/14), hereinafter referred to as the "Act," and the Rules and Regulations of the Illinois State Labor Relations Board ("Board"). The parties are the County of Bureau and the Sheriff of Bureau County, as joint employers, hereinafter the "Employer," and the Illinois Fraternal Order of Police Labor Council, hereinafter the "Union."

Bureau County encompasses a rural area located in north central Illinois. The county seat is Princeton. Although there is some industry in the county, the primary products produced are from farming. With more than 868 square miles, Bureau County is among the larger counties in Illinois. Its population in 1990 was 35,688 and its 1994 EAV was about \$344,161,000, which puts it about one-third down the list of Illinois counties.¹ Per capita income in 1994 was about \$12,000.

The Bureau County Fraternal Order of Police, Lodge #222 was certified on September 23, 1988, as the collective bargaining agent for a unit of sworn personnel in the ranks of Deputy Patrol, Sergeants, Investigator, Lieutenant, Radio Dispatchers and Jailers. As of the date of the hearing, the unit consisted of 2 Lieutenants, 2 Sergeants, and 9 Patrol Deputies in the patrol division and one

¹ In terms of EAV the County is slightly ahead of more than two-thirds of the counties in Illinois, while in population it is slightly below the one-third mark.

Dispatch Sergeant, 6 Dispatchers, one Correctional Sergeant and 5 Correctional Officers in the corrections and telecommunications division. The unit is relatively young. Eleven employees, or one-third of the complement, were hired in the year preceding the hearing (in 1996 and January, 1997). Half of the unit has 4 years or less of service, and about three-quarters of the employees have less than 10 years of service.

The Union served a Notice of Demand to Bargain upon the Employer on July 6, 1995. The parties had bargaining sessions October 11, November 15 and November 29, 1995. The prior Agreement expired on November 30th and the parties secured a mediator for assistance on February 7 and May 29, 1996. On August 19, 1996, the Union filed a Demand for Compulsory Interest Arbitration. As of the date of the hearing, the parties were at impasse on 6 economic issues and one non-economic, or "language," issue. Two economic issues were resolved just prior to the start of the hearing.

II. Stipulations

On the date of the hearing, February 12, 1997, the parties entered into "Ground Rules and Pre-hearing Stipulations of the Parties." The Stipulations may be summarized as follows:

1. The case is properly before the Arbitrator and he has authority to rule on all of the issues, including retroactivity on all forms of compensation.
2. *** [Pertains to the location, date and time of the hearing.]
3. *** [Pertains to the transcription of the record.]

4. The following economic issues are properly before the Arbitrator for resolution under the Act:

(a) What increases in wages shall employees receive effective December 1, 1995 and December 1, 1996?

(b) What are the respective premium payment obligations of the parties for health insurance?

(c) What are the terms for mid-contract modification of health insurance benefits and/or premiums?

(d) What are the provisions for compensatory time?
[SETTLED]

(e) What are the provisions for sick leave?

(f) What are the provisions for holidays?
[SETTLED]

"The parties further agree that the following non-economic issue remains in dispute, and as such, the Arbitrator has the authority to adopt the Union's final offer, the Employer's final offer, or to fashion an award deemed appropriate by the Arbitrator:

(a) The language of the Agreement governing drug testing."

5. [DELETED]

6. The most recent agreement and these stipulations shall be submitted to the Arbitrator at the start of the hearing.

7. [DELETED]

8. Final offers are to be exchanged at the commencement of the hearing.

9. Evidence may be presented in testimonial or narrative form. The Union shall proceed first.

10. *** [Pertains to post hearing briefs.]

11. The decision of the Arbitrator shall be based upon the statutory standards and the Award shall be issued 45 days after the filing of briefs, or in accordance with an agreed upon extension.

12. The parties may continue to negotiate and may

settle the terms of the Agreement at any time before during and after the arbitration proceedings.

13. The Act and the Board's rules govern this case.

14. The parties authorize their representatives to sign these Stipulations.

III. STATUTORY REQUIREMENTS

The statutory standards, as contained in Section 14(h) of the Act, to be followed by the Arbitrator in reaching decisions are as follows:

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

"(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, and 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 private employment."

IV. FINANCES

Among the standards for decision as contained in Section 14 of the Act are "the interests and welfare of the public and the financial ability of the unit of government to meet those costs." Inasmuch as the costs of operating the Sheriff's Department are paid from the County's General Fund and the General Fund is substantially supported from property taxes, an examination of the equalized assessed valuation, or "EAV," against which property taxes are levied, is appropriate. Additionally, increasing EAV is sometimes seen as a rough indicator of the financial well-being of a community. From 1992, the commencement year of the recently expired Agreement, through 1996, the final full year of the Agreement here under consideration, the EAV has grown by 38.75%, from \$275.3 million to approximately \$382 million. Total tax rates have gone down in a corresponding fashion, although not in the same proportion, so that total tax levies have increased modestly over the last few years.² On the other hand, the General Fund has seesawed during this period of time. In some years the ending fund

² The total tax rate in 1991 was .94882. The rate in 1995 was .81304, a decrease of 16.7%

balance was a positive number while in alternate years it showed a deficit. Except for 1995, the County expended more from the General Fund than it appropriated. While the County has prudently anticipated greater expenditures than it actually had, for unexplained reasons it has generally overestimated revenues for the General Fund. The result has been an erratic history of fund balances. The Union, however, makes much of the County's "Investment Fund," in which cash balances are deposited for investment purposes (i.e. to earn interest). The Union argues that the negative balances for the General Fund are deceptive because of the existence of the Investment Fund. However, the history of the Investment Fund over the last five years shows that its balance has either been relatively stable or somewhat decreased, depending upon one's point of view. According to the Union's numbers, the balances for this fund have been as follows:

| | |
|------|-------------|
| 1991 | \$2,904,231 |
| 1992 | 2,084,319 |
| 1993 | 1,970,517 |
| 1994 | 2,118,083 |
| 1995 | 2,262,791 |

These numbers show that contrary to the Union's argument, the County has not been squirreling away money and creating an artificially low General Fund balance.³

The Employer is not arguing an inability to pay. Rather, its position may be called "imprudent to pay." It argues that the

³ In any event, a non-recurring or no growth fund balance cannot be used to pay for recurring costs, such as salaries.

costs of operating the Sheriff's Department has far outstripped growth in revenues. Estimated disbursements for 1994 were \$769,000. In 1995, this increased to almost \$822,000, and the appropriation for 1996 was \$847,000. While much of this growth is attributable to the employment of many new deputies, and although at least two of the new positions are currently funded by federal grants, there has not been any substantial increase in revenues to offset these additional costs.⁴ Moreover, regardless of the reason for the increase in the costs of operating the Sheriff's Department, it is still money which ultimately comes from the public coffers. The Union is not arguing that the Employer is carelessly spending money which might otherwise be used to augment the salaries and benefits of the employees at issue.⁵

V. Cost of Living

The "cost of living" as measured by the Bureau of Labor Statistics' Consumer Price Index, has been in a slow growth mode for several years. The CPI for all urban consumers ("CPI-U") has averaged a 2.7% increase from 1992 through 1995. The "all item" increase for 1996 was 3.3%. However, this index is subject to some

⁴ Some of the new deputies were hired because of state requirements in the corrections division.

⁵ No one is arguing that the Department is over staffed and that costs might decreased by a reduction in the size of the Department.

question in a largely rural county. For example, a major element in the index is the cost of housing which includes the costs of ownership as well as rental housing. Some question the applicability of this measurement in an area where families do not move as frequently as in urban areas. So, too, increases in medical expenses are an important factor in the index. But, here as in most impasse cases, the true cost of medical care is seen in the increases in medical insurance premiums.

Generally speaking the CPI should not be used as a true measurement of the cost of living, but as a general gauge of inflation. Increases of 3% and below may be considered low to moderate. Translated into terms relevant to this case, inflation is not a measurable factor requiring special consideration for salary increases for 1995 and 1996 beyond what is otherwise appropriate.⁶

VI. Bargaining History

The parties' first contract ran from 1988 to 1990. The second Agreement covered 1990 through 1992. Although its salary provisions were retroactive, the Agreement was not signed until November, 1992. An addendum was entered into in September, 1994, retroactive to December, 1992. In May, 1995, the parties signed a new contract which contained provisions retroactive to December

⁶ Interestingly, this is borne out by the BLS Employment Cost Index for 1996 which shows that the cost of compensation in state and local government for the year ending December, 1996, was 2.6%. This includes a measurement of a basket of fringe benefits as well as salaries.

1, 1993. The contract under consideration will be effective as of the date of this Award, but the final offers of both parties provide for retroactivity. In other words, the process has been so drawn out that negotiations have been an ongoing process and benefits, if any, have always been retroactive. Indeed, when the parties receive this Award almost the entire period of its coverage will over.

The inability of the employees to enjoy salaries and benefits to which they are entitled until well after the date they were earned dilutes the value of their package and must be a consideration in this case. The employees have been deprived of the purchasing power of some of what they have earned and the Employer has had the benefit of retaining some of the employees' earnings for its own purposes and benefit. Stated another way, if the CPI has increased 6% from December, 1994, the value of the employees' salaries earned but not received has been theoretically weakened by a similar percentage.

The parties' 1993 Agreement shows a starting salary for Deputies of \$20,652, effective December 1, 1993, and \$21,484, effective December 1, 1994, an increase of about 4%. The starting salaries for Corrections/Telecommunications was \$19,592 and \$20,424, for those years, respectively., an increase of about 4.25% for the second year. The salary schedules have annual step increases through the 12th year, step increases at the 16th and 20th year, and a provision for Sergeants to be paid an additional

\$1,000 and Lieutenants, \$1,500.⁷

As indicated above, the parties had three bargaining sessions across the table and two with a mediator. During those encounters their respective positions showed little movement, although the Union decreased its salary demands. The first true movement by either party was in their final offers. As a result, the parties were able to resolve Union demands for compensatory time and holiday pay.

VII. External Comparability Groups

The Act requires that arbitrators consider the wages, hours and conditions of employment of employees performing similar services and with other employees generally in comparable communities. Particularly where there is no inability to pay argument, the wages and benefits paid to similarly situated employees is considered a very important factor in impasse cases. While every community and employee unit has its unique characteristics and bargaining history, the features and patterns of what is paid in a statistically meaningful group of comparable jurisdictions is a good indicator of what is appropriate in the subject jurisdiction. In the sometimes rarified atmosphere of collective bargaining it may be difficult to determine what is appropriate to ask for and to pay. The relevancy or suitability of some benefits are not inherent, but become appropriate as a result of tradition and patterns in the industry in question.

⁷ Step increases vary from between 2.1% to 2.9%. The largest increase comes after the first year. The top steps are both 2.1%.

substantial similarity for statistical measurement than a too small group whose factors mirror the county in question in all respects.⁹

In the present case, the parties have devised different comparability groups. The Union has formulated a state-wide group of seven counties which are similar in population, home values, median household income and assessed valuation to Bureau County. The group is as follows:

| <u>Jurisdic</u> | <u>Populat</u> | <u>Med. Home Val</u> | <u>Med. House. Inc.</u> | <u>Full-time Ees*</u> |
|-----------------|----------------|----------------------|-------------------------|-----------------------|
| Christian | 34,418 | \$37,400 | \$24,506 | 15 |
| Effingham | 31,704 | 54,400 | 27,245 | 14 |
| Iroquois | 30,787 | 40,100 | 25,435 | 17 |
| Lee | 34,392 | 46,600 | 28,284 | 25 |
| Livingston | 39,301 | 46,700 | 29,848 | 26 |
| Logan | 30,798 | 48,700 | 27,528 | 20 |
| Morgan | 36,397 | 47,700 | 26,403 | 17 |
| Average | 33,971 | \$45,943 | \$27,036 | 19 |
| Bureau | 35,688 | 41,800 | 26,248 | 26** |

* Includes non-bargaining unit employees.

** Does not include recent expansion of employees.

Of this group, only Lee, Livingston and, possibly, Iroquois Counties are within a meaningful distance from Bureau County.

⁹ It is this arbitrator's opinion that geographic proximity is the most crucial factor in the measurement of comparability for county-wide jurisdictions. Counties compete with their neighbors in the job market. Employees are less likely to travel great distances for a better paying job than they are to move to the next county. It is far more significant what the counties which surround Bureau are paying their deputies than what a similar sized county in southern Illinois offers. I would have rather been given the terms and conditions of employment in Henry, LaSalle and Whiteside Counties than Randolph, Clinton and Montgomery Counties. The arbitrator, however, is limited to the information provided to him. If the parties provide insufficient data, the arbitrator can only discount the significance of this factor in the overall assessment of the respective final offers.

While the arbitrator should never lose sight of the unique relationship of these parties, in a marketplace economy what other parties as a statistical group have determined to be suitable is very relevant.⁸

The key is in selecting a large enough group to be statistically meaningful and with members whose common characteristics are relevant for the purposes of the case. As a general rule, most arbitrators consider the population of the jurisdiction, the size of the bargaining unit, the location of the jurisdiction and its relative financial status (as measured by EAV, tax rates, income of the residents, home values, or a combination thereof) as the relevant factors to be considered in defining an appropriate comparability group. Particular members of the group may not have every characteristic in common with the rest of the group, but if the group is large enough the occasional deviation in one factor should not skew the results where the offending group member has other cogent characteristics in common with the jurisdiction in question. Thus, an adjoining but much more populated county might have more in common with its smaller neighbor where land values are the same, the size of the department is relative to the population and they both compete in the same job market, than a similar sized county located at the other end of the state. It is more important to have a large enough group with

⁸ While it is true that this approach stifles innovation, impasse arbitration is not intended to encourage innovation. Breakthroughs should at occur at the table, and not at the arbitrator's desk.

The Employer has selected a state-wide group of eight counties whose similarities with Bureau include 1995 estimated population, EAV, per capita income and tax rate. The group is as follows:

| <u>Jurisdic</u> | <u>Populat 1995</u> | <u>EAV 1994</u> | <u>Per Cap Inc.</u> | <u>Tax Rate 1994</u> | |
|-----------------|---------------------|-----------------|---------------------|----------------------|----|
| Christian | 34,940 | \$285,353,000 | \$20,028 | \$7.07 | * |
| Clinton | 35,285 | 229,294,000 | 20,060 | 6.69 | + |
| Kendall | 45,398 | 634,868,000 | 22,174 | 7.42 | ^ |
| Livingston | 40,404 | 348,715,000 | 20,192 | 8.14 | ^* |
| Logan | 31,267 | 278,772,000 | 17,920 | 7.91 | * |
| McDonough | 35,519 | 210,161,000 | 15,373 | 9.36 | + |
| Montgomery | 30,994 | 226,534,000 | 17,312 | 7.97 | + |
| Randolph | 34,296 | 204,599,000 | 15,559 | 6.53 | + |
| Average | 36,012 | 302,287,000 | 18,577 | 7.63 | |
| Bureau | 36,049 | 344,161,000 | 19,458 | 7.69 | |

* Included on Union's list

^ Within a reasonable distance of Bureau County

+ Originally included on Union's list but eliminated based upon the Union's assessment of demographics

VIII. Internal Comparability

Bureau County has three other bargaining units. AFSCME Local 2079 represents a unit of Highway Equipment Operators and Highway Maintainers working under a collective bargaining agreement with the Highway Department which expires on November 30, 1998. These employees received a 2% increase on December 1, 1996 and are scheduled for a 2% increase on December 1, 1997.¹⁰ Teamsters Local 722 represents a clerical unit of courthouse employees operating under an agreement with the County, the County Clerk and the County Treasurer which expires on November 30, 1997. These employees received a 2% increase plus an additional .5% added to the

¹⁰ The agreement does not indicate the increase in salaries effective December 1, 1995, if any. The employees did receive a longevity schedule effective December 1, 1994.

longevity schedule. On November 12, 1996, the County agreed to increase the minimum salaries for this unit from \$10,000 to \$12,000 a year.¹¹ Local 722 also represents a unit of non-professional employees employed by the County and Prairie View Home. Their agreement was last amended in September, 1996. It provided a 2.5% increase for employees not eligible for a step increase¹², a .5% increase in the steps (longevity system), new provisions for pay on call, and shift differentials retroactive to March 1, 1996.¹³

The County has provided similar benefits of 2% salary increases and a \$12,000 minimum salaries to its non-represented employees.

IX. Discussion of the Issues

A. Salaries

The Union is proposing retroactive increases of 3-1/2% on each step for 1995 and 1996.¹⁴ The Employer proposes two \$200 off-

¹¹ Based upon Employer Exhibit 12, it appears that eight of eighteen employees were affected by this increase.

¹² The Employer, in its brief, has characterized the salary increase as a 3% boost..

¹³ The Union argues that longevity schedules in these other bargaining units expire with the contracts. Therefore the agreement to put them in new agreements is actually a benefit. However, the Union points out, the longevity schedule in the deputies' contract is a permanent fixture and part of the salary schedule which the parties do not bargain over with each new agreement.

¹⁴ The Union also proposes that employees no longer employed, except those separated for just cause, shall receive pro rata payments. It seeks compensation for all hours paid, with payment to be made by separate checks within 45 days of the Award. The Union also dropped a prior proposal for two additional steps at the 14th and 18th years.

schedule stipends as of December 1, 1995 and December 1, 1996, for each bargaining unit member then employed. The gist of both parties' arguments is comparability.

The Employer makes snapshot comparisons of what actual employees earned on November 15, 1995, just prior to the effective date of the contract under consideration, and on January 15, 1997, just prior to the hearing in this case. The Employer's analysis shows that without the benefit of any new increases at all, the average salary has increased by 3%. There are 18 current employees who were employed on both dates. All but four of them received step increases. The essence of the Employer's argument is that the longevity schedule already provides ample salary increases for employees, and when the \$400 stipends are added, these 18 employees will be paid at least as much as other County employees, and in some cases, much more.¹⁵ According to the Employer, under its proposal, the median increase for these employees would be \$976.00, approximately 4%.¹⁶

The Union, on the other hand, argues that the step increases are the fruits of prior agreements and cannot be counted as part of the negotiated increases. The Union argues that the Arbitrator should only consider additional increases over what the employees were already entitled to. They should not have to pay for their

¹⁵ The \$400 for these 18 employees provides almost 1.6% average increase for the period from November 15, 1995 to January 15, 1997.

¹⁶ The Employer argues that this outstrips the CPI, but it errs here because the increases are for a period of more than one year and the 3% CPI increase the Employer relies upon.

longevity schedule with each new collective bargaining agreement. The Union argues that other County employees also have step systems and yet they were given either 2% or 3% increases or enrichment of their step systems.

Of course, the parties are both right. It is their perspectives which differ. The Employer views the situation in terms of what new money the package will cost. The Union sees it in terms of the new benefits the employees will receive. The Union does not want to pay for the schedule over and over again. The Employer counters that bargain or not, the step increases cost real money which must be considered in determining appropriate salary levels.

The Employer does not emphasize external comparables. It notes that Bureau County pays competitive salaries and that it is third in the rankings for Patrol Deputy and Telecommunicator/Corrections base, and for the top Tele/Corr salary. Its top salary for Patrol is 5th in the group. The Employer also argues, however, that salaries should not be considered in a vacuum and that when holiday pay and insurance premium adjustments are added to the mix, these employees will all receive total increases ranging from 5.5% to 7.7%, with an average of 6.2% over the life of the contract.

Among the Union's comparables, the average starting pay for late 1995 was \$22,508. When 3.5% is added to Bureau's current starting Patrol salary the base for December 1, 1995, would be \$22,236, 5th among 8 counties. For 1996, 5 of the 7 other counties

in the Union's group will have a starting salary averaging \$23,246. Adding the second proposed 3.5% increase to Bureau's base would yield \$23,014.¹⁷ The salaries at other levels remain just above average through the entire schedule including top salary. For 1996 (without Lee and Iroquois), the pattern remains the same. One can conclude that for these deputies the twin 3.5% increases plus the steps leave Bureau's salary schedule about where it has been among the comparables. On the other hand, the Employer's \$400 off-the-schedule proposal would have a major impact on the salary ratings. Bureau would move from a slightly above average schedule to one measurably below average.

For the Tele/Correction Deputies, the 3.5% increase for 1995 would yield a starting salary of \$21,139.¹⁸ The average among the 7 Union comparable counties was \$19,456. In 1996, Bureau would be paying these deputies \$21,139 to start against a comparable average of \$20,187. The relationship would remain the same at higher steps. In other words, when it comes to Tele/Corr Deputies, the Employer is already paying among the top salaries. Even with the Employer's \$400 proposal, the salaries for these officers would remain competitive.

As indicated above, these calculations must be analyzed with some degree of skepticism because of the geographic location of

¹⁷ of the two counties for whom the 1996 salaries are unknown, Iroquois and Lee were both slightly higher than Bureau for 1995 (after the 3.5% is factored in for 1995).

¹⁸ In making computations for the Tele/comm Deputies, I did not rely upon the Union's brief because the chart on page 26 is incorrect.

many of the comparable jurisdictions. However, based upon all of the information provided, the conclusion must be that the Employer now pays its Patrol Deputies competitive salaries which would be seriously impacted if the Employer's proposal were accepted, but that the reverse is true regarding the Tele/Corr Deputies. The internal comparables favor neither party: The Union's proposal is for increases far beyond what other County employees are getting, while the Employer's off-the-schedule cash stipends do not match that given to other employees unless movement on the schedule is considered.

Likewise the other factors do not strongly support either party. The CPI increases have been low and most employees will be receiving step increases which will nearly meet these increases. On the other hand, the Employer has had the benefit of the money at issue for almost the entire length of the contract. The County's financial state is respectable but certainly not excessive. It is technically able to pay either proposal, but the combination of the new additional deputies and the Union's proposed increase will undoubtedly put a strain on the budget and impact other worthy needs of the County. On the other hand, in this period of increasing awareness of public safety and the additional demands placed upon correctional as well as patrol personnel, the Employer cannot risk the effect on morale that a two year schedule freeze might have on its employees. While it is true that salaries themselves are not frozen as long as there are steps to climb, the employees will perceive the freeze as a settlement below what other

County employees gotten and something less than deputies in comparable counties have received. It appears to the Arbitrator that the County's financial concerns relate more to the expansion of the unit than to the actual pay levels its deputies are receiving. Historically, these employees have received base increases. What is different this time is the increase in the size of the unit and a total budget far in excess of what the County has previously allotted. However, it is not appropriate in impasse arbitration to place a substantial part of the financial burden resulting from the hiring of new employees on the older employees rather than on the public as a whole. This is particularly true in an expanding economy. The public interest is not served by freezing the salary schedules of the deputies.

It would be remiss of the Arbitrator to not note that the Union's proposal is too high, that none of the statutory factors require this level of increases. But, impasse arbitration is sometimes seen as the selection of the least offensive proposal. When neither proposal is "good," how can the arbitrator select the "better" or "best" proposal? The arbitrator is left with selecting that which is least offensive to the Act. In this case the Employer's proposal is seriously flawed in its off-the schedule characteristic. What this means is that the Union cannot count on these amounts when it goes into the next negotiations. Although employees will normally expect at least a little more, the Union is put in the position of having to first bargain for the status quo. Salary schedules have the effect of giving stability to labor

relations. The Employer's proposal works outside the structure the parties themselves established for rates of pay. Finally, I have considered the rest of the package of benefits before me and the impact on the unit would be too severe if the Employer's salary proposal were accepted. The award of the Union's salary proposal has influenced the selection of other proposals in this case.

B. Health Insurance

The parties have two issues regarding health insurance. The first has to do with a provision in Article 23 governing the impact of premium increases during the life of the Agreement. The other relates to that portion of Appendix B providing for rebates for increases in health insurance which have already occurred. These issues are really two ends of the same problem, but the parties have stipulated that they are to be considered separately.¹⁰

In order to get the full measure of the factors involved with these two issues, bargaining history must be discussed in detail. Article 23 provides as follows:

The Employer agrees to make every effort to continue the current health insurance benefits for the duration of this Agreement. Full-time employees may participate in the County Health Insurance Plan according to the terms set out in Appendix B ***. In the event the current health insurance benefits are modified in any way during the term of this Agreement, the Employer agrees to:

(a) bear the economic burden of any modifications for the duration of this

¹⁰ Although they will be discussed together in this portion of the Decision, the Arbitrator has considered them individually.

Agreement; or,

(b) reopen the contract and bargain in good faith with the Lodge over any economic impact resulting from the modifications.

The parties further agree that any unresolved differences, arising out of negotiations between the parties, shall be resolved according to the provisions *** [of the Act].

*** [Limits to the Employer's responsibilities in the event of failure to pay claims by insurance carrier.]

*** [Eligibility after 30 days of employment for full-time employees, as defined. Provisions for physical examinations.]

***[Reimbursement for non-medical leaves of absence.]

*** [Effect of layoff or termination.]

Eligible dependents and employee family members may participate in the Bureau County at their own expense and according to the terms of the plan. A bargaining unit member may add family coverage at his/her expense and according to the terms of the plan.

Appendix B as presently written was as follows:

Effective December 1, 1994, the Employer cap for single and dependent coverage shall be raised from \$165.00 to \$180.00.

Each employee of the bargaining unit shall receive a cash settlement of \$75.00 for premiums paid in excess of \$165.00 from 7/1/84 until 12/1/94.

Historically, Bureau County has provided health insurance for its employees on a shared cost basis.²⁰ Over the years the cost of

²⁰ Dependent coverage is available, but the cost is charged to the employees. Because almost all of the bargaining unit has only single coverage, my discussion will address only those premiums. The cost of dependent coverage is very expensive and the effect of the Union's proposal on impact bargaining would be

insurance has greatly fluctuated. According to the Employer, the parties negotiated the language of Article 23 in 1993 at a time when the County changed carriers. In so doing, the Union was aware that premium costs would continue to increase. Because the insurance policy anniversary date is in the middle of each contract year, the parties provided that the Employer would make "every effort" to maintain benefits. In the event the current health insurance benefits (a concept which apparently includes premiums) were modified in any way during the term of the Agreement, the Employer agreed to absorb the additional costs or re-open the contract for additional negotiations on the impact of the changes. The parties have not had a set formula for sharing increased costs. Thus, each time costs go up, the parties have to negotiate how the increases are to be apportioned. However, because changes in premium rates have occurred during the parties' historically protracted negotiations, the impact bargaining simply became part of the overall negotiations.

The two issues in arbitration are the Union's proposal to modify the impact bargaining language to require the Employer to assume the costs of the increases until bargaining over the increases is concluded, and, second, the Union's impact bargaining proposal for the last premium increase. The Employer wants no change in the language of Article 23 and proposes no payment to employees as reimbursement for the last increase in premiums.

of great assistance to these few employees who have such coverage. Nonetheless, their plight is really not determinative of the issues.

From August, 1993, until June 30, 1994, an employee's share of the premium costs for single employee coverage was \$180 a year. On July 1, 1994 the employee's share tripled to a rate of \$540 a year. This lasted until January 1, 1995, when the rate decreased to \$360. This rate lasted a full year to July 1, 1995. In the meantime, the parties negotiated a new Employer cap of \$180 and employees would be reimbursed \$75 for their extra premium payments from July 1 to December 1, 1994. On July 1, 1995, employee contributions increased to an annual rate of \$684. Then, on July 1, 1996, the rate decreased to a cost of \$336 for employees. Also on July 1st the County began offering an HMO option the employee cost for which would be \$2.00 per month for single coverage.

The Union proposes the following addition to Article 23, subparagraph (b):

"If the Employer elects (b), to bargain the impact resulting from such modifications, no changes in the premium levels shall occur until the negotiation process is complete."

The Union proposes the following provision for premium reimbursement which would be substituted for the reimbursement language now contained in Appendix B:

"Each bargaining unit employee shall be paid the sum of Twenty-Seven Dollars (\$27.00) per month for each month they participated in the health insurance program between the dates July 1, 1995 and June 30, 1996, to a maximum of Three Hundred and Twenty-Four Dollars (\$324.00), as reimbursement for excess premium payments made."²¹

²¹ The Union withdrew an earlier proposal to increase the Employer's contribution rate.

The Employer makes the following proposals for these issues:

Article 23 - No change in language.

Appendix B:

"As of 7-1-96: PPO Option: Single \$208.00
Member + 1 433.00
Member + 2 530.00

HMO Option: Single \$182.00
Member + 1 355.00
Member + 2 453.00

"Employer contribution at \$180.00 for either option."

These two issues are unique to the parties. What other jurisdictions pay toward their health insurance has not been raised as an issue and the Union has dropped its proposal for an increase in the Employer's contribution. Almost all of the counties in the two comparability groups either guarantee fully paid single insurance or have a reopener. A few provide for fixed percentages of the cost so that there is nothing to negotiate if the rates go up.

Most other County employees receive the same health insurance benefits or have "most favored nation" provisions in their contracts regarding insurance benefits. Only the Union has a provision permitting it to negotiate contributions for interim premium increases.

The two issues here are purely economic. The Union complains that it is unfair to make employees bear the entire burden of premium increases, subject to impact bargaining, which for these parties gets swallowed up with the negotiations for a new

agreement. The Employer maintains that the system works, that employees have been given rebates and there is no reason why it should bear the burden after it has negotiated a cap on its contributions.

With regard to the rebate, the Union argues that making employees pay \$684 for an entire year cuts into their increases and represents a sizeable chunk of their pay. It therefore seeks some partial rebate for the period of the high premiums. The Employer argues that there is no basis to give the rebates because rates have gone down again and the employees will enjoy future savings.

With regard to the language of Article 23, I agree with the Union that there is a problem. The problem is not so much in the language itself, but in how it has operated. Unless the parties are able to complete the impact bargaining in a relatively short period of time, the purpose of the language is lost as the interim negotiations get swallowed up with the larger proceedings. In effect, the Union is bargaining against itself because whatever it obtains as an "interim" benefit it must pay for as part of the entire package for a new agreement. The sense of the language of Article 23 read as a whole is that the parties had some expectation that there would be some adjustment in contributions in the event of large and unexpected increases, as has occurred to them on several occasions in the past. If these adjustments, be they large or small, are not considered outside the context of a new agreement for the future, there is really no way for the Employer to

intellectually distinguish what it must pay as an adjustment under the old contract and what it is prepared to pay under the new one. However, the Union's proposal is no answer at all. It merely shifts the unfairness of the system from it to the Employer. It is no less unfair when the Employer is left holding the bag. The answer is to either agree to a formula for sharing future unexpected increases or to leave the contribution rates as they are until the next contract when any interim increases can be used by the Union as a bargaining tool and any decreases can be used likewise by the Employer. In the meantime, I cannot adopt the Union's proposed language.

Whether the employees should be given the Union's proposed rebate of \$324 for most of the employees (a few new employees would get less), is a more difficult question. Having just stated that there was an expectation that the employees should be given some relief, it should follow that the Arbitrator award the Union's final offer on this item. Moreover, I have already indicated my concern about negotiations which last for the entire length of the contract and its impact on employees' expectations as well as their purchasing power. However, I have previously found that the Union's salary offer was too high, but was less offensive than the Employer's offer. This being so, there is no economic need for awarding the \$324. There is an ample cushion in the package for attribution for insurance. Stated another way, the 3.5% and 3.5% increases should now be considered as including a partial reimbursement for the high insurance premiums for the period of

July 1, 1995 through June 30, 1996.

D. Sick Leave

Article 22 of the expired contract reads as follows:

Sick Leave is defined as personal illness or physical incapacity resulting from causes beyond the employee's control, or forced quarantine of the employee in accordance with community health regulations. An employee may use sick leave to tend to emergency illness or physical incapacity of an immediate household family member.

Employees shall accumulate one (1) day of sick leave for each two (2) months of continuous service.

Employees may accumulate and carry over from year to year up to twenty-five (25) days of sick leave. Effective December 1, 1993, employees who have accumulated twenty-five (25) days of sick leave will receive pay for two (2) days, at their normal salary rate, and will drop back to twenty (20) days of accrued leave.

The Union is seeking a change in the sick day accumulation formula so that employees may accumulate 30 days of sick leave and all days in excess of 30 shall be paid for by the Employer at the employee's regular rate, at which time the number of accumulated days shall drop back to thirty.

The Employer opposes any change in this article. The Union is not seeking a change in the rate of accumulation.

As might be expected considering the relative youth of the unit, only a half dozen employees had accumulated 20 or more days of sick leave as of a date just prior to this hearing. Assuming that most of these employees would accumulate 12 days during the

two year term of this contract, the Union's proposal provides these employees with two days' pay in the second year of the contract. They would not get any payment in the first year because none would exceed 30 days until the following year, if at all. These employees would lose the buy back in the first year of the contract because they started with 20 days and the new contract allows them to bank 30 days. The remaining two days from the 12 accumulated during the two year period of this contract would be purchased by the Employer. The net result would be that these 6 or so employees would get cash for two days, instead of the 4 they get now, but would have a bank for future disabilities of 10 more days.²²

The Union's strongest selling point for this issue is that no other County in either comparability group allows as few days of accumulation; no other is without any retirement credit for accumulated days; and no other grants only 6 days per year.

On the other hand, the Union has not shown any real need for the change. Just because everyone has a richer formula is not in and of itself a sufficient basis for awarding the Union's proposal. In this case, most of the unit is not even close to accruing 20 days. Why worry about 30? The Union has not shown any evidence that the inability to accumulate more than 25 days has hurt any of the senior employees. Indeed, there has been no showing that any employee has suffered a long term non-work related disability requiring the use of numerous accumulated sick days.

²² Employees cannot cash in their bank at the time of retirement.

Accordingly, this request by the Union must be denied.

B. Drug Testing

The parties agree that a drug testing provision is appropriate in their Agreement. They strongly disagree as to the terms of this provision. They have proposed very different articles, and the Employer has presented an alternative proposal, that the Arbitrator remand the issue to the parties for resolution at a labor-management conference.²³ The parties positions can be diagrammed as follows:

| U N I O N | : | E M P L O Y E R |
|------------------------------------|---|-----------------|
| <u>Statement of Policy:</u> | : | |
| Employees shall be free | : | None |
| from the effects of drugs and fit: | : | |
| for duty. | : | |

²³ The Union objected to the Employer's presentation of alternate proposals for the same issue as violative of the last and final offer concept of impasse arbitration under Article 14 of the Act. At the hearing, the Arbitrator denied the Union's objection stating that the alternative was harmless because he was not bound by either proposal and could craft his own anyway. Therefore, as a practical matter, either party could amend their arguments at the hearing in an effort to assist the Arbitrator in crafting the most appropriate language. Upon reflection, I think it was an error to allow the alternate proposal. In the first instance the Act does not contemplate alternate proposals be they for economic or language issues. Second, alternate offers send confusing messages to the Arbitrator and undercut the integrity of the Employer's position. Where there are marked differences in the alternates, the proposing party's position comes out sounding like "we will accept anything but the other side's proposal." When faced with alternate proposals the Arbitrator should require the party to select one or the other. In this case, the Employer's alternate was merely to remand the issue to the parties, which the Arbitrator is otherwise permitted to do under the remand procedures of Article 14. For the purposes of this case, I shall consider the Employer's substantive proposal as the one it intended and did argue in its Brief.

| | | |
|---|---|----------------------------------|
| <u>Prohibitions</u> | : | |
| No possession or consumption: | : | Same |
| of drugs or alcohol while on duty: | : | More detailed provision for |
| and requirement to report side | : | use of medication. |
| effects of medication. No selling | : | |
| purchasing or delivering. | : | |
| | : | |
| <u>Right to Test</u> | : | |
| Right to test upon reasonable | : | Testing any time employee |
| suspicion except random testing of | : | is on the clock or operat- |
| employees undergoing rehabilitat- | : | ing a County vehicle with a |
| ion and new hires. | : | limit of two per year. |
| | : | |
| <u>Methodology</u> | : | |
| Tests at licensed and accred | : | Tests at licensed and acc. |
| labs. Chain of custody procedure: | : | labs. Initial screen con- |
| Sample sufficient for employee's | : | firmated by gas chroma/mass |
| test. Privacy in sample collect.: | : | spect methods. Blood may |
| Initial screen confirmed by gas | : | subst for urine in certain |
| chroma & mass spect., or better | : | cases. |
| methods. | : | |
| | : | |
| <u>Employee Protect. & Union Involve.</u> | : | |
| Order for test to contain | : | None specifically provided. |
| reasons for test. Employee has 1: | : | |
| hour to consult with Un. rep. be- | : | |
| fore being questioned. Privacy | : | |
| safeguards in relay info from lab. | : | |
| Right to file grievance over | : | |
| procedures. | : | |
| | : | |
| <u>Positive Test Result</u> | : | |
| Any detection of illegal drug | : | Same for drugs |
| Alcohol concentration of .05: | : | .05 for ethyl alcohol or |
| | : | less if determined that it |
| | : | was .05 during prohib period. |
| | : | |
| <u>Penalties</u> | : | |
| Use of drugs, consumption of: | : | Possession, sale or use during |
| alcohol or being under its influ-: | : | prohib period, refusal to test |
| ence while on duty is basis for | : | and tampering with test is basis |
| discipline including discharge. | : | for discharge. |
| | : | |
| Employer agrees that addict- | : | No provisions for treatment |
| ion is a disease and shall consid- | : | |
| er this in disc. Employee may | : | |
| raise need for treatment as a def- | : | |
| ense and where appropriate and | : | |
| when assistance is sought before | : | |
| Employer detection, treatment | : | |
| shall be provided. Details of | : | |
| treatment and after-care provided: | : | |

The Employer argues that its authority, the interests and welfare of the public and a comparison with other County employees are the statutory factors which favor its position on this issue. The Employer argues that the Arbitrator should defer to its proposal because drug policies are within the purview of management rights. It should not have to negotiate on a subject so intimately connected with its governmental mission. The Employer points out that its Highway Department negotiated a drug and alcohol testing program with its unionized workers which was effective December, 1995. The County has an extensive and very detailed Substance Abuse and Contraband Policy which provides protections for employees and to which the Highway employees (AFSCME) have agreed to be bound. Relying U.S. Supreme Court decisions, the Employer argues that the public interest lies with random testing and public employees in sensitive positions have no constitutional rights to the contrary.

The Employer strongly criticizes the Union's proposal as a "maze of procedural punji pits designed to effectively thwart administration of any testing program." It objects to the time limitations on when the policy applies, that the employee receives written notice of reasons for the test, that there is a one hour waiting period, that the employee cannot be questioned before he sees his Union rep., that the employee can grieve every step of the process and a requirement to provide treatment which allows the employee to escape testing.

The Union has equally strong arguments against the Employer's

proposal and in favor of its own. The Union argues that random testing is an intrusion into the lives of employees and there is no basis for this draconian procedure because there is no evidence that any employee has a drug problem. It argues that the Employer has become caught up in the maelstrom of hysteria over the use of drugs. The Union argues that it certainly is not in favor of drug and alcohol abuse, but the need to protect the public should not justify the demise of constitutional rights when there is no evidence that there is a problem in the first place. The Union argues that the Employer's proposal contains no safeguards for proper testing, or for the custody of the samples, or for employees who might develop an addiction and need medical assistance. The Union argues that it is "almost inconceivable" that the Employer does not want to provide the reasons for an individual test when the Agreement already provides that reasons be given for any discipline. The Union argues that random testing without any notice and without any opportunity to consult with a Union representative is completely contrary to the concept of "just cause." The Union quotes from an Award by Arbitrator Milton Edelman, in City of Granite City and Granite City Firefighters Assoc, Local 253, IAFF, S-MA-93-196, 7/7/94, p.23:

Reasonable suspicion testing, on the other hand, takes place only after an employee does something - or fails to do something - that indicates drug influence, with a strong presumption that these actions or lack of actions show impairment. Reasonable suspicion testing, therefore, is more in line with the parties' own standard that discipline must depend on just cause.

Finally, the Union points out that every County in both comparability groups that has a drug testing policy has one which contains the same fundamentals as the Union is here proposing. Not a single county allows for random testing and almost all have the same or similar protections against abuse as are contained in the Union's proposal.

The key question here is the random testing. The Employer acknowledges that random testing is not required in any of the comparable jurisdictions. It argues instead that this is acceptable because random testing is the best way to catch drug abusers and the risk to the public is so great if deputies were drug abusers that their rights against search and seizure without cause must be tempered. The Employer puts the most emphasis on the drug policy and contract provisions it has for Highway Department employees. It argues, in effect, that what is acceptable for truck drivers should be suitable for law enforcement personnel. But the provisions relied upon by the Employer were initiated pursuant to the Omnibus Transportation Act of 1991. No similar statutory requirement exists for law enforcement employees. Even the State of Illinois, when unilaterally implementing a drug testing program for its Correctional Officers, put in a reasonable suspicion standard.

First and Fourth Amendment cases are often a measure of society and the values of the time. Restrictions which were considered reasonable at one time are not so today, whereas other restrictions unthinkable in the past are now common. Nonetheless,

our system remains one where the rights of most of us are not sacrificed in order to catch the few miscreants in our midst. The issue is not whether the County will allow a drunk Deputy to escape detection, but whether public employees' rights to be free from a very intrusive invasion will be upheld, when there is no basis to suspect the employee is impaired.

The reasonable suspicion test is not an onerous one. All the Employer needs is some objective basis arrived at in good faith to believe that an employee might be impaired. Reasonable suspicion to test is not the same as just cause to discharge. Just cause is more like a probable cause test, with procedural safeguards, where the Employer must demonstrate by a preponderance of the evidence that misconduct occurred and that it warranted discharge. Reasonable suspicion need not be proven as in a discipline case but must merely be shown as based on honest beliefs fairly arrived at.

What is most significant here is the absence of any evidence by the Employer that anywhere in the State of Illinois law enforcement officers are subject to random testing without any cause to suspect that drug or alcohol abuse may be present. In this instance comparability in support of a reasonable suspicion test is overwhelming.

I agree with the Employer that some of the Union's procedural safeguards are poorly drafted and would create more problems than they are designed to prevent. On the other hand, there is no reason to deny grievances challenging the process and the results. As long as the parties understand that the right to test for

reasonable suspicion gives the Employer a lot of leeway, there is no reason why employees cannot be protected from abuse, from sloppy testing procedures, carelessness and the like. Indeed a perusal of the Highway Department 39 page policy indicates that the County is prepared to provide substantial and detailed procedures to insure the integrity of the process.

I also do not agree with the Employer's notion that every violation of the drug policy requires automatic discharge. Some cases, if there are any, will demand discharge. But in others there may be circumstances or an obvious need for treatment which requires another approach. A long time employee who makes a mistake should not always be thrown away. Experienced employees have an investment in their jobs and the Employer has a investment in them. Every case must be examined on its own merits before the degree of discipline is given.

The drug testing provisions here recited contain language which attempts to meet the respective needs of both parties.

ALCOHOL AND DRUG TESTING

Section 1. Statement of Policy

a) It is the policy of Bureau County and the Sheriff of Bureau County that the public has the absolute right to expect persons employed in this bargaining unit to be free from the effects drugs and alcohol. Bureau County and the Sheriff of Bureau County, as the employers, have the right to expect their employees to report to work fit and able for duty and to set a positive example for the jurisdiction they serve. The purposes of this policy shall be achieved in such manner as not to violate any established constitutional rights of employees.

b) For the purposes of this Article, "drugs" or "illegal drugs" shall mean any controlled substance as defined in the Illinois Controlled Substances Act or the Illinois Cannabis Control Act.

Section 2. Prohibitions

Employees shall be prohibited from:

- a) Abusing prescribed medication, or consuming or possessing alcohol at any time or just prior to the beginning of the work day or anywhere on any of the Employer's premises or job sites, including the Employer's buildings, vehicles or the employees' own vehicles while engaged in Employer business, except as may be necessary in the performance of job duties.
- b) Possessing, using, selling, purchasing or delivering any illegal drug at any time and at any place, except as may be deemed necessary in the performance of job duties.
- c) Failure to notify the Employer, on a form to be supplied by the Employer, of any prescribed or non-prescription medication being taken by the employee which has known adverse side effects which might impair the employee's ability to perform his/her job duties.

Section 3. Testing

Where the Employer has reasonable suspicion to believe that (a) an employee is being affected by the use of alcohol; or (b) has abused prescribed medication; or (c) has used illegal drugs, the Employer shall have the right to require the employee to submit to alcohol or drug testing as set forth in this Article. The foregoing shall not limit the right of the Employer to conduct any tests it may deem appropriate for persons seeking employment prior to their date of hire, or upon promotion to another position with the Employer.

Section 4. The Order to Submit

- a) The failure or refusal to submit to testing authorized by this Article will subject an employee to discipline up to and including discharge. The taking of an authorized test shall not be construed as a waiver of any objection or rights an employee may have to taking the test.
- b) Intentionally tampering with, causing another person to tamper with, substituting for, or causing another person to substitute for a urine and/or blood specimen, whether the employee's own specimen or that of another employee, shall subject an employee to discipline up to and including discharge.
- c) An employee's physical inability to provide a urine specimen shall not be considered to be a refusal to provide a specimen but such employee will be required to provide a blood sample for laboratory testing.

d) Within seventy-two (72) hours of the time an employee is ordered to testing authorized by this Article, the Employer shall provide the employee with a written notice setting forth the facts and inferences which form the basis of the order to test.

Section 5. Testing Methodology

In conducting the testing authorized in this Article, the Employer shall:

a) Use only a clinical laboratory or hospital that is licensed pursuant to the Illinois Clinical Laboratory Act and that has the capability of being accredited by the National Institute of Drug Abuse (NIDA). The facility selected must conform to all NIDA standards.

b) Establish a chain of custody procedure for both sample collection and testing that will insure the integrity of the identity of each sample and test result. No employee covered by this Agreement shall be permitted at any time to become part of such chain of custody.

c) Collect a sufficient sample of the same bodily fluid or material from an employee to allow for initial screening, a confirmatory test and a sufficient amount to be set aside reserved for later testing if requested by the employee.

d) Collect samples in such a manner as to preserve the individual employee's right to privacy while insuring a high degree of security for the sample and its freedom from adulteration. Employees shall not be witnessed by anyone while submitting a sample except in circumstances where the laboratory or facility does not have a "clean room" for submitting samples or where there is reasonable suspicion that the employee may attempt to compromise the accuracy of the testing procedure.

e) Confirm any sample that tests positive in initial screening for drugs by testing the second portion of the same sample by gas chromatography/mass spectrometry (GC/MS) or an equivalent or better scientifically accurate and accepted method that provides quantitative data about the detected drug or drug metabolites.

f) Provide the employee tested with an opportunity to have the additional sample tested by a clinical laboratory or hospital of the employee's choosing, at the employee's expense, provided the employee notifies the Employer within seventy-two (72) hours of receiving the results of the test that he desires to have the additional sample tested.

g) Require that the laboratory or hospital facility report to the Employer that a blood or urine sample is positive only if both the initial screening and confirmation test are positive for a particular drug. Each employee tested shall be provided with a copy of all information and reports sent to the Employer. The parties agree that should any information concerning such testing or the results thereof be (e.g., billing for testing that reveal the nature or number of test administered), the Employer will not use such information in any manner or form adverse to the Employee's interest.

h) Require that with regard to alcohol testing, for the purposes of determining whether the employee is under the influence of alcohol, test results showing an alcohol concentration of .50 or more based upon grams of alcohol per 100 milliliters of blood shall be considered a positive test result.

i) No adverse action may be taken against an employee prior to the receipt of the test results by the Employer and employee, except that the Employer may suspend the employee with full pay and benefits during the pendency of the testing.

Section 6. Discipline

The Employer shall have the right to discipline employees, or recommend discipline against employees, as may be appropriate, for any violations of this Article. Such discipline, or recommendations for such, may include discharge provided, however, that a first time offender under Section 2(a), above, who voluntarily seeks medical treatment for his/her substance abuse problem shall not be discharged so long as:

a) The employee agrees to appropriate treatment as determined by a physician.

b) The employee successfully completes the course of treatment prescribed, including an "after care" group for a period of no less than twelve (12) months.

c) The employee agrees to submit to random testing for a period of two (2) years, from the date of discipline provided that the employee is not randomly checked more than twice a year. Nothing contained herein shall prevent additional tests pursuant to Section 3, above.

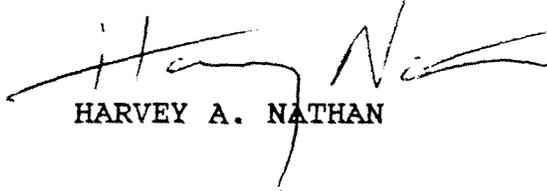
Section 7. Right to Contest

The Union or an affected employee shall have the right to file a grievance concerning any testing permitted by this Article contesting the basis for the order to submit to the test, the right to test, the administration of the tests, the significance or accuracy of the tests or the results, and any other violation of this Article. The right to pursue remedies under this Agreement for violations of this Article shall not be deemed to be an employee's exclusive recourse. Employees may pursue whatever rights they have at law for any action of the Employer with regard to the testing provisions of this Article.

A W A R D

1. The Union's proposal for salaries is selected.
2. The Employer's proposal for the language change in the Insurance Article is selected.
3. The Employer's proposal for insurance premium rebate is selected.
4. The Employer's proposal for sick leave is selected.
5. The language of the new drug testing article shall be as recited above.

Respectfully submitted,



HARVEY A. NATHAN

June 30, 1997

