

ILRB

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BEFORE
ELIOTT H. GOLDSTEIN
ARBITRATOR

IN THE MATTER OF THE ARBITRATION

ISLRB Case No.:
S-MA-97-21

BETWEEN

JEFFERSON COUNTY AND JEFFERSON
COUNTY SHERIFF'S DEPARTMENT

ECON. ISSUES:

1. WAGES
2. TRAINING
3. PERSONAL LV.
4. SICK LV. BUY BACK
5. DISPATCHER HOL.
6. CLOTHING ALLOW.

AND

ILLINOIS FRATERNAL
ORDER OF POLICE
LABOR COUNCIL

NON-ECON. ISSUE

1. APPEAL OF DISC.

Arb. No. 97/124

OPINION AND AWARD

APPEARANCES:

FOR THE COUNTY:	DAVID A. HIBBEN
FOR THE UNION:	BECKY S. DRAGOO
PLACE OF HEARING:	MT. VERNON, IL
DATE OF HEARING:	APRIL 14, 1998

I. INTRODUCTION

This proceeding arises under Section 14 of the Illinois Public Labor Relations Act ("IPLRA" or the "Act")¹ to resolve six economic issues and one non-economic issue between the parties. The undersigned arbitrator was duly appointed to serve as the arbitrator to hear and decide the issues presented to him. A hearing was held on April 14, 1998 at the offices of the Jefferson County Courthouse, located at 100 South Tenth Street, in Mt. Vernon, Illinois, commencing at 10:00 am. At the hearing, the parties were afforded full opportunity to present evidence and argument as desired, including an examination and cross-examination of witnesses. A tape recording of the hearing was made. Both parties filed post-hearing briefs, the second of which (the County's) was received on July 7, 1998. The parties stipulated that the arbitrator must base his findings and decision upon the criteria set forth in Section 14(h) of the IPLRA and rules and regulations promulgated thereunder.

II. THE ISSUES

There are a total of seven issues in this interest arbitration. Six of the issues are economic:

1. Wages effective: December 1, 1996, December 1, 1997 and December 1, 1998
2. Training
3. Personal leave days
4. Payment of unused sick leave to employees on separation
5. Time off for holidays for Dispatcher

¹ 5 ILCS 315/14

6. Clothing allowance

In addition, there is one non-economic issue. That issue is

- The appeal of discipline

III. THE PARTIES' FINAL OFFERS

The final offers from both parties regarding economic issues were as follows:

ISSUE	COUNTY POSITION	UNION POSITION
Wages	12/1/96 \$1,100 increase to each step of the existing wage scale 12/1/97 \$900 increase to each step of the existing wage scale 12/1/98 \$750 increase to each step of the existing wage scale ²	The Union's position deviates from the County's as follows: The 12/1/97 and 12/1/98 increases are the same for the across the board increases. However, the differences are in the increases for 1996 as well as certain across-the-board increases. The 12/1/96 increases are as follows:

		Step	\$ Increase
		Prob 1	750
		Prob 2	1000
		Base	750
		2 nd	1000
		4 th	1250
		6 th	1500
		8 th	1750
		10 th	2000
		12 th	1750
		14 th	2000
		16 th	2250
		18 th	2250
		20 th	2250
		22 nd	2000
		24 th	1750
		26 th	1500
		28 th	1250
		30 th	1000
	In addition, the following amounts should be added or subtracted per year [No Change]	In addition, the following amounts should be added or subtracted per year:	
	Position Add/Sub	Position Add/Sub	
	Det. Capt. +2200/yr	Det. Capt. +2200/yr	
	Capt. +1200/yr	Capt. +1700/yr	
	Det. +1000/yr	Det. +1200/yr	
	Ct. Dep. - 1000/yr	Ct. Dep. - 1000/yr	
	Pro. Serv. -5000/yr	Pro. Serv. -2000/yr	

<p>TRAINING</p>	<p>No change to existing Contract – No Section regarding Training.</p>	<p>New Provision Re Training:</p> <p>Section 1. Mandatory and Voluntary Training</p> <p>The Union and the County agree that continued training is of the utmost importance in maintaining efficiency and professionalism among the officers of the Department. In order to insure equal training opportunities for all bargaining unit members, the County agrees:</p> <p>(a) All employees shall receive not less than forty (40) hours of training per fiscal year, which shall be considered mandatory.</p> <p>(b) All training must be approved by the County. Whenever training classes become available the County shall post a notice of the same with each employee who is interested given the opportunity to apply. Taking into consideration the bona fide needs of the Department,</p>
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		<p>the County agrees to fairly and objectively distribute training opportunities equally.</p> <p>(c) All hours of mandatory training that occur outside an officer's regularly scheduled shift shall be paid at the overtime rate. Officers' regularly scheduled hours of and days of work shall not be unilaterally adjusted to avoid the payment of overtime in connection with the mandatory forty (40) hours of training per year.</p> <p>(d) An officer's regularly scheduled hours and days of work may be adjusted by mutual agreement in order to accommodate voluntary training i.e. training for which officers volunteer or sign up.</p> <p>(e) Travel time in conjunction with training shall be paid in accordance with FLSA standards.</p>
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		Section 2. <u>Expenses</u> Employees who attend training shall have the costs of the training including the cost s of transportation, food and lodging paid by the County. In the event the employee is required to drive his or her own vehicle, he or she shall be reimbursed at the then current mileage rate as recognized by the IRS.
PERSONAL LEAVE	No Change to existing Article 21, Section 9. (three personal days)	Revised Article 21, Section 9 to provide four Personal Days each fiscal year.
SICK LEAVE BUY BACK	No Change To Article 22, Section 2 (No sick leave buy back)	Added language to Article 22, Section 2: Upon separation from service, an employee shall be paid for fifty percent (50%) of accumulated sick leave days up to forty (40) days, at the employee's final rate of pay. Any remaining days may be applied toward IMRF as time worked consistent with the provisions of 40 ILCS 5/7-101 <i>et. seq.</i>
CLOTHING ALLOWANCE	No change to Article 25, Section 1 (\$600 per year for clothing allowance with pro-ration for new employees.	Article 25, Section 1 will be revised as follows: Effective December 1, 1996, a clothing

	<p>No change to Article 25, Section 3 (an employee who is promoted or who changes classifications will receive additional uniforms, but no additional uniform allowance).</p>	<p>allowance in the amount of \$625.00 (\$650 effective 12/1/97; \$675 effective 12/1/98) to be used for the purchase of new uniforms and accessories shall be given to each employee each year except that a new employee hired during the year shall receive a prorated amount based on his date of hire.</p> <p>Additional Language to Article 25, Section 3:</p> <p>Any employee who is assigned to the Detective Division shall receive a one-time start-up clothing allowance of \$750. After the completion of one full year of service in the Detective Division, an employee is then eligible to receive the clothing allowance as described in Section 1 of this Article.</p>
<p>HOLAYS FOR DISPATCHERS</p>	<p>No change to the current Contract</p>	<p>A. Each fiscal year each dispatcher shall be allowed to take off two (2) holidays which he would otherwise have been required to work. Prior to November 1 of each</p>

		<p>year, the County will post the list of holidays for the upcoming year as set forth in Article 24, Section 1.</p> <p>B. The most senior dispatcher shall choose two holidays he wants to take off from the yearly holiday list. In descending order, the remaining dispatchers shall likewise choose two (2) holidays, provided that no more than one (1) dispatcher may be off on any one holiday.</p> <p>C. Dispatchers shall have fifteen calendar days from the date of posting to make their choice of holidays off. Failure to designate one's choice during this time period shall result in the dispatcher's name going to the bottom of the list.</p> <p>D. Dispatchers taking approved time off on a holiday shall receive holiday compensation consistent with</p>
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		<p>Article 24, Section 1 unless approved time off has been canceled and the dispatcher is required to work, at which time the dispatcher shall be paid in accordance with Article 24, Section 2.</p>
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NON - ECONOMIC ISSUE - APPEAL OF DISCIPLINE

The County has suggested that the language of the Contract remain unchanged for the appeal of discipline. The County has proposed that the current system of the using the Merit Commission remain unchanged. Conversely, the Union has proposed new language in which employees would have the *choice* of either using the Merit Commission or arbitration of all disciplinary matters.

The Union's proposal is as follows:

Section 1. Non-probationary employees shall be disciplined only for just cause consistent with this Agreement and the Merit Commission statutes, rules and regulations. The Sheriff agrees that disciplinary action shall be in a timely fashion.

Section 2. The parties agree with the tenants of progressive and corrective discipline. Once the measure of discipline is determined and imposed, the County shall not increase it because an employee exercises his rights contained in this agreement.

Section 3. Disciplinary action is limited to the following:

- oral warning
- written reprimand
- suspension
- discharge

Section 4. The County must initiate disciplinary action involving suspensions of more than three (3) days or discharge pursuant to Merit Commission Statutes, rules and regulations, and in all cases, the County bears the burden of proof.

Section 5. All discipline may be grieved. Grievances involving discipline shall be initiated at Step 2 of the grievance procedure (Article 10), within fifteen business days of the employee's or lodge's knowledge of the disciplinary action. In the case of discipline of more than three (3) days or discharge, the employee and the Lodge shall make an election between continuing through with the grievance procedure or continuing under the Merit Commission rules and regulations. This election of forum must be made in writing not later than the final date for referring any such grievance to binding arbitration under the provisions of Article 10. Once made, the election is irrevocable. The right to have a hearing before the Merit Commissioned the right to pursue disputes regarding discipline under the grievance procedure are mutually exclusive, and under no circumstances shall an employee or the Lodge have the right to hearing in both forums. It is agreed that the Lodge, and not the individual employee shall have the right to refer such grievances to arbitration, however, this shall not limit the right of the individual employee to pursue the matter before the Merit Commission, with or without Lodge approval.

Section 6. If the employee and/or Lodge fail to make their election of forum pursuant to Section 5 above, then the matter shall automatically be pursued through the Merit Commission.

Section 7. Except in cases involving discharge, no employee shall suffer a reduction in pay during any disciplinary proceeding. In instances where the Sheriff has filed a complaint with the Merit Commission seeking the discharge of an employee, the employee shall remain in full pay status for a period of six (60) days after the filing of the complaint. After the sixty (60) day period, the employee shall be placed in a no pay status pending final award or decision in the disciplinary procedure elected. If the discharge is not sustained, then the Merit Commission or arbitrator has the explicit authority to award back pay and any other relief which may be appropriate in order to make the employee whole.

The Merit Commission or arbitrator shall make its/his decision within thirty (30) days of the close of the hearing (in case of post-hearing briefs, thirty (30) days from receipt of briefs). The parties recognize that it may not be possible to have the matter heard and decided within a sixty (60) day period due to matters beyond control, but the parties agree not to act in a dilatory manner or engage in conduct that unreasonably delays the hearing and ruling within sixty (60) day period.

Section 8. The parties recognize that the Jefferson County Sheriff's Merit Commission has certain statutory authority over employees covered by this Agreement pursuant to the Sheriff's Merit System Act, as amended, and County resolutions adopting that statutory system. Nothing in this Agreement is intended in any way to change the statutory authority and jurisdiction of the Merit Commission.

The parties agree that those provisions contained within the discipline article of this Agreement concerning the right to process disciplinary grievances is intended to

create an alternative procedure which may be elected for resolving disciplinary matters which would otherwise fall under Merit Commission jurisdiction.

III. RELEVANT STATUTORY SECTIONS

5 ILCS 315/14(g)

On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute... the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive ... As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

5 ILCS 315/14 (h)

Pursuant to state statute, I must adopt the last offers on economic issues, which more nearly complies with the following factors, as applicable:

1. The lawful authority of the County;
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 involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services 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 employees, including direct wage compensation, vacations, holidays and other excused

6. The overall compensation presently received by 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.

IV. DISCUSSION

A. Background

The parties to this dispute are Jefferson County and the Jefferson County Sheriff's Department (the "County" or the "Employer") and the Illinois Fraternal Order of Police Labor Council (the "FOP" or the "Union"). The parties' prior Collective Bargaining Agreement (the "Contract") expired on November 30, 1996 (JX 2),² The parties were able to reach agreement for a successor Contract on many issues, but 10 issues³ proceeded to interest arbitration before me. Only 7 issues survived to be dealt with by this arbitrator.⁴

The bargaining unit in the instant case includes the following positions with the following number of employees:

Position	Sworn	Non-Sworn	Number of Employees
Captain	X		2
Deputy	X		11
Court Deputy	X		2
Process Server	X		1
Detective	X		2
Detective Captain	X		1
Dispatcher		X	4
Totals	6 Sworn	1 Non-Sworn	23 Total Employees

² The 1994 wages were resolved in interest arbitration by Arbitrator Steven Briggs on February 17, 1996 Union Book 1 UX 6. The 1995 wages were resolved by agreement of the parties and was filed with the Illinois State Labor Relations Board ("ISLRB") on June 6, 1996.

³ Of the ten issues, 8 were economic and 2 were non-economic (JX 1).

⁴ Of the ten issues raised initially by the parties, 3 were resolved by the parties prior to the hearing, leaving only 7 total issues, 6 economic and 1 non-economic. Further, the parties agreed that the retroactivity of this Award would be to May 1, 1997.

As can be seen from the above-mentioned chart,⁵ as of the date of the hearing, there were twenty-three bargaining unit members. The last collective bargaining agreement between the parties was effective from December 1, 1993 through November 30, 1996 (JX 2). The 1994 wages were resolved as a result of an interest arbitration award issued by Arbitrator Steven Briggs on February 17, 1996.⁶ The 1995 wages were resolved through negotiations.

In August 1996, the Union filed a Notice of Demand to Bargain that initiated negotiations for a successor contract. After that Notice, the parties engaged in numerous negotiation and mediation sessions. While there was progress on some issues, a number of issues remained open and were forwarded to interest arbitration.

B. Stipulations⁷

At the start of the instant hearing, the parties stipulated as follows:

1. The Arbitrator in ISLRB Case No. S-MA-97-21 shall be Arbitrator Elliott H. Goldstein. The parties stipulate that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on each of the impasse issues, including, but not limited to the express forms of compensation retroactive to December 1, 1996, December 1, 1997 and December 1, 1998. Each party expressly waives and agrees not to assert any defense, right or claim that the Arbitrator lacks jurisdiction and authority to make such a retroactive award; however, the parties do not intend by this Agreement to predetermine whether any award or increased wages or other forms of compensation should in fact be retroactive to December 1, 1996, December 1, 1997 and December 1, 1998.
2. The hearing in said case will be convened on April 14, 1997 [sic] at 10:00 am. The hearing will be held in the County Board meeting room in the Jefferson County Courthouse, Mt. Vernon, Illinois.

⁵ Union Book 1, UX 5

⁶ *Jefferson County, the Jefferson County Sheriff's Department and the Illinois Fraternal Order of Police, Lodge No. 241 S-MA-95-18* (Briggs, 1996) Union. Book 1, UX 6

⁷ JX 1

3. The parties agree that the following issues remain in dispute, that each is an economic issue, and that these issues may be submitted for resolution by the Arbitrator:
 - (a) What wages will be paid bargaining unit members:
Effective December 1, 1996
Effective December 1, 1997
Effective December 1, 1998
 - (b) The language of the agreement governing payment of unused sick leave to employees upon separation.
 - (c) The language of the agreement governing personal leave days.
 - (d) The language of the agreement governing holiday compensation.⁸
 - (e) The language of the agreement governing time off on holidays for dispatchers.
 - (f) The language of the agreement governing clothing allowance(s).
 - (g) The language of the agreement governing training.
 - (h) The language of the agreement governing officer safety.⁹
4. The parties further agree that the following non-economic issues remain in dispute and as such, the Arbitrator may adopt the final offer of either the Union, the County, or may fashion an award deemed appropriate.
 - (a) The language of the agreement governing the appeal of discipline.
 - (b) The language of the agreement referencing "County official" and health insurance carriers.¹⁰
5. The parties agree that the following exhibits and information shall be submitted by stipulation to the Arbitrator at the start of the hearing on April 14, 1998:

⁸ This was resolved prior to the start of the hearing.

⁹ The Union withdrew this issue prior to the start of the hearing.

¹⁰ This was resolved prior to the start of the hearing.

(a) The Pre-Hearing Stipulation of the Parties (JX 1)

(b) County/Jefferson County Sheriff's Department and the Illinois Fraternal Order of Police Labor Council (JX 2)

6. Final offers shall be exchanged at the start of the arbitration hearing on April 14, 1998. Thereafter such final offers may not be changed except by mutual agreement of the parties.
7. **STRUCK BY MUTUAL AGREEMENT OF PARTIES**
8. Each party shall be free to present its evidence in either the narrative or witness format. The Labor Council shall proceed first with the presentation of its case-in-chief. The County shall then proceed with its case-in-chief. Each party shall have the right to present rebuttal evidence.
9. Each party may submit a post-hearing brief. Post-hearing briefs shall be submitted to the Arbitrator, with a copy sent to opposing party's representative by the Arbitrator, no later than forty-five (45) days from the receipt of the full transcript of the hearing by the parties, or such further extensions as may be mutually agreed to by the parties. The post-marked date of mailing shall be considered to be the dates of submission of a brief.
10. The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois Public Labor Relations Act. The Arbitrator shall issue his award within sixty (60) days after submission of the post-hearing briefs or any agreed upon extension requested by the Arbitrator.
11. Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.
12. The parties represent and warrant to each other that the undersigned representatives are authorized to execute on behalf of and bind the respective parties they represent.

C. The Conservative Nature Of Interest Arbitration

Underlying this award, like any other interest arbitration award, are some very fundamental concepts. One of these is that at its core, interest arbitration is a conservative mechanism of dispute resolution. Interest arbitration is intended to

resolve an immediate impasse, but not to usurp the parties' traditional bargaining relationship. The traditional way of conceptualizing interest arbitration is that parties should not be able to attain in interest arbitration that which they could not get in a traditional collective bargaining situation. Otherwise, the point of bargaining would be destroyed and parties would rely on interest arbitration rather than pursue it as a last resort.

On this concept, one arbitrator stated:

If the process [interest arbitration] is to work, it must yield substantially different results than could be obtained by the parties through bargaining'. Accordingly, interest arbitration is essentially a conservative process. While, obviously value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor it is his function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining. *Will County Board and Sheriff of Will County* (Nathan, 1988) quoting *Arizona Public Service* 63 LA 1189, 1196 (Platt 1974); accord; *County of Aurora S-MA-95-44* at pp.18-19 (Kohn, 1995).

There should not be any substantial "breakthroughs" in the interest arbitration process. If the arbitrator awards either party a wage package which is significantly superior to anything it would likely have obtained through collective bargaining, that party is not likely to want to settle the terms of its next contract through good faith collective bargaining. It will always pursue the interest arbitration route *Village of Bartlett* FMCS Case No. 90-0389 (Kossoff, 1990).

The reason for the last-best-offer scheme in Illinois is well known. If the parties know that the Arbitrator cannot split the difference on wages, each party will

be forced to come as close as possible to the other party, for fear of losing the issue in dispute. This means that the parties must come in with realistic proposals in arbitration or run the almost certain risk of losing. Because the parties are forced to get realistic, they necessarily come close together on final offers, which leads to the following result: most wage negotiations are settled across the table, rather than in interest arbitration, because as the parties get closer and closer together (to protect themselves in interest arbitration) the parties see the wisdom of settling instead of arbitrating.

In other words, as I stated in *Kendall County*, Case No. S-MA-92-216 and S-MA-92-161, "Interest arbitration is not supposed to revolutionize the parties' collective bargaining relationship; the most dramatic changes are best accomplished through face-to-face negotiation".

However, it is also important to note that while it is difficult to obtain a major change in interest arbitration, it is not impossible. Otherwise, there would be no point to interest arbitration at all. In *Will County*, Arbitrator Harvey Nathan set forth a good test for the meeting the burden of obtaining a new benefit in interest arbitration. In order to obtain a change, the party seeking the change, must at a minimum, prove:

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

[I]t is the party seeking the change that must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process. *Will County Board and Sheriff of Will County and AFSCME, Local 2961 S-MA-88-9* (Nathan, 1988) pp. 52-53.

D. The Comparables

The arbitrator recognizes that, as in any interest arbitration case external comparability plays a crucial role. In fact, many commentators have indicated that comparability is indeed the most important factor in the usual interest arbitration case. Accurate comparables are the traditional yardstick of looking at what others are obtaining and in turn is of crucial significance in determining the reasonableness of each parties' respective final offer. Thus, the issue of external comparables rises to possibly the highest level of importance in interest arbitration.

Here, only the Union has offered external comparables. It has offered the following comparable counties:

Clinton

Effingham

Franklin

Marion

Randolph

The relevant data for the Union's comparables as well as the average for all the comparables are:

County	Population	1995 EAV \$ Value	1995 Total Revenues \$	1995 Total Expenditures \$
Clinton	33, 944	213,108,300	7,370,914	7,577,054
Effingham	31, 704	246,710,302	9,166,839	9,973,308
Franklin	40, 319	140,066,672	7,336,524	7,499,573
Marion	41, 561	161,236,926	6,783,828	6,938,254
Randolph	34,583	196,443,959	6,128,301	5,858,327
AVERAGE OF FIVE COUNTIES	36,422	191,513,232	7,357,281	7,569,303

This data contrasts with the information for Jefferson County :¹¹

Jefferson County	37,020	211,219,775	6,632,661	5,994,449
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Conversely, based on the record in this case, the County has only offered *internal* comparables. It has only offered the following collective bargaining agreements in support of its position:

AFSCME Local 3664

Laborers Union Local 529

Teamsters Union

The Economic Issues

As I indicated above, there are six economic issues and one non-economic issue that I must deal with:

¹¹ The issue of the selection of the appropriate comparables is dealt with below in the section on wages.

ISSUE	ECONOMIC	NON-ECONOMIC
WAGES	X	
PAYMENT OF UNUSED SICK LEAVE	X	
PERSONAL LEAVE DAYS	X	
TIME OFF FOR HOLIDAYS FOR DISPATCHERS	X	
CLOTHING ALLOWANCE	X	
TRAINING	X	
APPEAL OF DISCIPLINE		X

1. Wages

As stated above, the final offers by both parties do not differ dramatically.

With regard to the across-the-board increases effective December 1, 1997 and December 1, 1998, the parties are in complete agreement. Both parties agree that the wage increases effective on December 1, 1997 should be an across the board increase of \$900.00 per year and the wage increase effective on December 1, 1998 should be \$750.00 per year.

Where the parties differ follows:

PAY INCREASE EFFECTIVE DECEMBER 1, 1996

STEP IN PLAN	UNION'S PROPOSED INCREASE	COUNTY'S PROPOSED INCREASE
Prob 1	\$750	\$1100
Prob 2	\$1000	\$1100
Base	\$750	\$1100
2 ND	\$1000	\$1100
4 TH	\$1250	\$1100

6 TH	\$1500	\$1100
8 TH	\$1750	\$1100
10 TH	\$2000	\$1100
12 TH	\$1750	\$1100
14 TH	\$2000	\$1100
16 TH	\$2250	\$1100
18 TH	\$2250	\$1100
20 TH	\$2250	\$1100
22 ND	\$2000	\$1100
24 TH	\$1750	\$1100
26 TH	\$1500	\$1100
28 TH	\$1250	\$1100
30 TH	\$1000	\$1100

The parties also differ in regards to certain additions and subtractions to the standard wage scale.¹²

ADDITIONS/(SUBTRACTIONS) TO WAGE PLAN¹³

POSITION	ADDITION/(SUBTRACTION) PROPOSED BY UNION	ADDITION (SUBTRACTION) PROPOSED BY COUNTY
Detective Captain	\$2200	\$2200
Captain	\$1700	\$1200
Detective	\$1200	\$1000
Court Deputies	(\$1000)	(\$1000)
Dispatchers	(\$2000)	(\$5000)

¹² As noted above, the parties' employee a "standard" wage which is increased or decreased, depending upon the position. There are increases for Detective Captain, Captain and Detective. There are decreases from Court Deputies and Process Servers (JX 2).

¹³ In the table, the areas where the parties *differ* has been placed in bold.

The total cost for the Union's wage package is \$173,500 for the three-year period, while the entire cost for the County's wage package is \$159,750, a difference of \$13,750.¹⁴

As indicated above, I am presented with two similar wage packages that differ by a total of approximately \$14,000 over a three-year period. After much consideration, I have decided to accept the Union's offer.

A key issue in this case is whether I should accept the Union's offer of external comparables or the County's offer of internal comparables. The applicability and use of the comparison of the wage scales ("comparability data") required as a statutory factor under the Act as quoted above. As I have noted in other cases (*County of DeKalb*, ISLRB No. S-MA-86-26, (Goldstein, 1988) ; *Village of Skokie*, ISLRB No. S-MA-89-123, (Goldstein, 1990)), the parties' choice of comparables is critical to a proper assessment of the record in any interest arbitration case and a neutral examination of the basis for the selection by each and their use of comparability data is absolutely mandatory.

Many commentators have noted that external comparability is indeed the *most important factor* in the usual interest arbitration case. In fact, the statute specifically lists comparable communities for public and private employees. At no point does it explicitly mention internal comparables. As indicated above, thus far, the parties have not agreed on any comparables.

¹⁴ Factored into this amount is the cost of hiring four new officers in 1997. The difference between the parties for those four new officers is \$4350. When that amount is subtracted from the entire amount, the amount of differences in the parties' proposals is \$9400. (Source: Union and County cost-out of proposals - Exhibits 5 and 6 in Joint Exhibit Book.

As indicated above, the County has proposed that the analysis be based on the following collective bargaining units between Jefferson County and AFSCME, the Laborers and the Teamsters. The Union's comparable counties are: Clinton, Effingham, Franklin, Marion and Randolph.

There are a number of factors that interest arbitrators review in determining which comparables to accept. Generally speaking, population, size of the bargaining unit, geographic proximity and, where as in this case, most of the revenues come from local property taxes, property values and EAV are important *Bloomington Fire Protection District and IAFF S-MA-92-331* at p. 11-12 (Nathan, 1994). Further, geographical proximity is a well-established measure of comparability in interest arbitration, as are population, assessed value and sales tax. *Village of Arlington Heights and IAFF, S-MA-88-89* at p. 18 (Briggs, 1991)

After reviewing both sets of comparables, I accept the Union's comparables for purposes of this interest arbitration. There are a number of reasons for this decision. First, the Union's comparables are the same as those that were selected by Arbitrator Steven Briggs in his 1996 Wage Reopener Decision involving these same parties.¹⁵ Beyond the mere acceptance of this prior award, the Union had a much more ordered approach to the selection of comparables. It used reasonable parameters on a consistent basis for all possible comparables meeting those requirements. The Union identified its comparables based on the 1996 interest arbitration award from Arbitrator Briggs. In that case, it identified its comparables as follows:

¹⁵ *Jefferson County, Jefferson County Sheriff's Department and Illinois FOP Labor Council, Lodge No. 241, Case No. S-MA-95-18* (Briggs, 1996) Union Book 1 UX 6.

Using an initial population criteria of + or - 25% of Jefferson County's population, the Union has identified 20 counties across Illinois which, it argues, are comparable on the population size dimension. From that point, the Union reportedly juxtaposed relevant Jefferson County Statistics against those counties on the following criteria: median home value, per capita income, medial household income, equalized assessed valuation, total tax rate, square miles, and number of officers. On the basis of those analyses, the Union sets forth the following counties as comparable jurisdictions:

Clinton
Effingham
Franklin
Marion
Randolph¹⁶

Arbitrator Briggs accepted the Union's comparables in part because all the commuting distances were within a reasonable commuting distance, within fifty miles of Jefferson County.¹⁷ This was significant because Briggs held that this constituted communities within Jefferson County's labor pool. Further, Arbitrator Briggs held that the Union's comparables fell within several well-accepted benchmarks including population, median home value, per capita income, medial household income and square miles.¹⁸

The information, accepted by Arbitrator Briggs has remained basically unchanged for purposes of this proceeding. Obviously, the Union's comparables are still located in the same place they were when Arbitrator Briggs' award was issued. In addition, the population and demographic statistics for the relevant counties has remained unchanged for all intents and purposes because there has been no new

¹⁶ *Jefferson Count, Jefferson County Sheriff's Department and Illinois FOP Labor Council, Lodge No. 241, Case No. S-MA-95-18, at pp.4-5 (Briggs, 1996) Union Book 1 UX 6.*

¹⁷ *See Map attached to Letter from Union on July 6, 1998 and Discussion in Arbitrator Briggs' Award of February 17, 1996 Union Book 1 UX 6.*

¹⁸ *It is significant to note that in the Briggs Decision, the County agreed with the Union and accepted Clinton, Franklin, Marion and Randolph counties as appropriate for comparability purposes. Id. at 7.*

census since 1990.¹⁹ The other categories, for which there is new information remains proportional to the data available for when Arbitrator Briggs issued his decision. Those categories are:

- Equalized Assessed Valuation (EAV)
- Total Tax Rate
- Revenues
- Expenditures

These criteria selected by the Union and the order in which the criteria were selected makes rational sense. First, the use of population to initially select similar communities passes arbitral muster. It is a logical starting point. Next, the Union juxtaposed relevant Jefferson County statistics against those counties based on the following criteria:

- Median home value
- Per capita income
- Median household income
- Equalized assessed valuation
- Total tax rate
- Square miles
- Numbers of officers

These criteria have been identified in previous interest arbitrations as being the most important criteria for determining comparables. This is appropriate, as counties of this size are much more likely to have similar problems and circumstances.

Arbitrator Briggs held that this analysis provided a pool of comparable counties within

¹⁹ Union Book 1 - Exhibit 16

approximately 50 miles of Jefferson County. He found this to be an important factor.

I agree.

The resulting list produced five comparable counties. Each community meets the criteria established by case law as well as common sense. They are all relatively similar to Jefferson County and are still acceptable in this matter.

In contrast to the Union's list of comparables is the Counties [non]list. The County appears to argue that because it has agreed to the same increase with the other bargaining units - AFSCME, Teamsters and Laborers, that the Union representing this unit should do so as well. I suppose there is some argument to be made that internal comparability is a relevant factor. Obviously, in the public sector, it is important to have some degree of internal consistency. But, statute or common sense does not require it, I find. It is important to note that the issue of internal comparability is not precisely relevant to the "real" labor market for the County's sworn officers. Further, the issue of internal comparability often has not been found to be a compelling reason to accept an Employer County's proposal.²⁰ For example, Arbitrator Edwin Benn dealt with this same issue in *Logan County Board and Sheriff's Department and Teamsters Local 916*, Case No. S-MA-89-2 (Benn, 1989):

The final concern raised ... is the "ripple effect" that the Union's proposal may have on other employee groups, both represented and unrepresented. Assuming that argument to be a valid concern under this factor [interests and welfare of the public], I find that in this case such is insufficient to weight this factor favorable to the County. Again, at best, the concern expressed here is speculative ... Moreover, and most critical, there is no evidence of required patterns of parity for

²⁰ Based on the arguments of the parties, I understand that the Laborers have a "me too" clause in their contract which would require that their wages be increased if I were to rule in favor of the Union. However, that in and of itself, is not a reason to rule for the County. Otherwise, parties would agree to a "me too" clause as a necessary means of protection. This is not appropriate, I hold, as a central defense to a wage increase otherwise proved to be reasonable.

the various groups of employees or a requirement that all employees received precisely the same raises that would dictate and required a ripple through increase for other employee groups. *Logan County* at 11.

Based on the orderly, rational approach by the Union in its selection of external comparables and the approach by the County in its selection of only internal comparables, I believe that the Union's external comparables are a more appropriate set of comparables. Based on these comparables, I now must select which wage package to accept.

a. The Union's Wage Package Is Preferable To the County's Package

After considering both proposals, I have selected the Union's wage offer for December 1, 1996, 1997 and 1998.

Based on external comparability, the Union's package is far more reasonable. Jefferson County's bargaining unit ranks far behind the comparables in the relevant categories, the record shows. The exhibits provided showed that there was a vast disparity. For the patrol officers and court deputies, the Union provided exhibits which showed where those employees would stand versus their comparables with both proposals:

1996 COMPARISON OF COUNTY AND UNION PROPOSAL WITH AVERAGES OF COMPARABLES - PATROL

SALARY STEP	% DIFFERENCE WITH UNION PROPOSAL	% DIFFERENCE WITH COUNTY PROPOSAL
Prob.	-9.66	-7.98
Base	-10.61	-9.02
After 2	-13.05	-12.60
After 6	-10.41	-12.12
After 12	-4.98	-7.43
After 18	0.16	-3.75

After 20	1.41	-2.39
After 26	3.74	2.51
After 30	5.23	5.52

1996 COMPARISON OF COUNTY AND UNION PROPOSAL WITH AVERAGES OF COMPARABLES - COURT DEPUTIES

SALARY STEP	% DIFFERENCE WITH UNION PROPOSAL	% DIFFERENCE WITH COUNTY PROPOSAL
Prob.	-17.25	-15.37
Base	-9.60	-7.96
After 2	-17.93	-17.44
After 6	-13.07	-14.89
After 12	-6.76	-9.34
After 18	-2.27	-6.42
After 20	-1.46	-5.51
After 26	1.01	-0.29
After 30	2.60	2.91

For the remaining positions, the Union's Exhibits showed that the 1996 process server's wages lagged anywhere between a high of almost 34% to a "low" of 9.39%.²¹ 1998 Captain' wages lagged anywhere between a high of almost 55% and a low of almost 13%.²²

All the above mentioned data reflects that the County does not pay its bargaining unit members at anywhere near the mid-way point in comparison to all the available comparables. Based on wage data available, the Union's proposed increases, at least in small part, bridges the gap between the bargaining unit's pay and those of its comparables. Based on the comparables, I accept the Union's proposal.

Another criteria which the Act requires I review is "the average consumer prices for goods and services, commonly known as the cost of living" 5 ILCS

²¹ Union Book 1, UX 27.

²² Union Book 2, UX 1

315/14(h)(5). The data regarding the consumer price index confirms this position. The cost of living criterion has been construed to be consistent with the Consumer Price Index ("CPI") *Village of Skokie and IAFF*, S-MA-89-123 (Goldstein, 1990), *Village of Lombard and Local 89*, P.B. P.A. S-MA-89-153 (Fletcher, 1990.).

There are two approaches to reviewing the CPI. One is to look prospectively and one is to look retrospectively. The prospective approach is built on projections while the retrospective approach is based upon objective data. One approach to applying the cost-of-living criterion is to judge the parties' final offers on the basis of the increase in the CPI during the last year of the parties' most recent collective bargaining agreement.

One appropriate and the most common way to look at CPI data in terms of negotiations and interest arbitration is to use the year since the parties last negotiated over wages. These figures are geared to present a picture of what happened since the last pay raise for which the parties bargaining and agreed. I believe [that these figures] [are] more useful than figures which purport to show increase or projected increases in CPI for the period of time to be covered by the award. *County of Skokie and IAFF* S-MA-89-123(Goldstein, 1990)

Because this arbitration is effectively determining wages from 1996-1999, we have the advantage of the information for at least some of the years in question already being available. Both parties provided some information toward that end. The Union provided the following information as to the "loss of buying power".

December 1995-December 1996	3.22%
December 1996-December 1997	1.67%
December 1997-February 1998	0.37%
Total Loss of Buying Power 95-98	5.26% ²³

²³ Union Book 2 UX 6

The County provided information that cost of living rose 1.3% from December 1996 through December 1997 and 1.4% for the current period, a total of 2.7%, *without taking into account* the period of December 1995 through December 1996.

While the County's numbers seem to be less than the Union's, because of the large disparity in wages between the County and its comparables, I do not believe that this significantly impacts my final decision. The County's employees earn significantly less than their counterparts. The Union's final offer on wages is more apt to cover this shortfall and provide a meaningful salary increase rather than to simply just cover the rate of inflation than the County's offer.

Section 14(h) of the Act also provides that "[t]he interest and welfare of the public and the financial ability of the unit of government to meet those costs" is to be taken into account in interest arbitration proceedings. 5 ILCS 315/14(h)(3). There has been no evidence that the County lacks the ability to pay either offer. Indeed, it has admitted as much. However, having observed that the County has the ability to pay an increase does not mean that the County ought necessarily to pay that increase unless it is satisfied that there will be some public benefit from such expenditure.

County of Gresham and IAFF Local 1062 (Clark, 1984).

Of course, as a public entity, the County is entitled to get the most "bang" for its "taxpayer buck". The County has an interest in obtaining the most benefit to the public it can out of each and every taxpayer dollar it spends. In this case, there was evidence that employees were leaving the employ of the County on a regular basis to go to similar employment for more money. The County is losing employees on a regular basis because of its low wage scale. The Union presented compelling evidence of bargaining unit members leaving the bargaining unit for higher paying

positions elsewhere. Since November 1985, 7 officers have left to go to the Mount Vernon Police Department. While Mt. Vernon is ostensibly not comparable because it is a City and not a County, it still is significant because while the increase proposed by the Union may not rise to the level of wages in Mt. Vernon, it will close the gap somewhat, (hopefully) causing fewer employees to leave.²⁴

Based on all these considerations, I hold that the Union's offer is the most reasonable and I adopt it for the pay increases for 1996-97, 1997-98 and 1998-99.

2. Training

As indicated above, the County has proposed that there be no change in the Contract which does not currently provide for specific training opportunities. Conversely, the Union has proposed that a training provision be added:

²⁴ Union Book 2 UX 4,5

Section 1. Mandatory and Voluntary Training

The Union and the County agree that continued training is of the utmost importance in maintaining efficiency and professionalism among the officers of the Department. In order to insure equal training opportunities for all bargaining unit members, the County agrees:

- (f) All employees shall receive not less than forty (40) hours of training per fiscal year, which shall be considered mandatory.
- (g) The County must approve all training. Whenever training classes become available the County shall post a notice of the same with each employee who is interested given the opportunity to apply. Taking into consideration the bona fide needs of the Department, the County agrees to fairly and objectively distribute training opportunities equally.
- (h) All hours of mandatory training that occur outside an officer's regularly scheduled shift shall be paid at the overtime rate. Officers' regularly scheduled hours of and days of work shall not be unilaterally adjusted to avoid the payment of overtime in connection with the mandatory forty (40) hours of training per year.
- (i) An officer's regularly scheduled hours and days of work may be adjusted by mutual agreement in order to accommodate voluntary training i.e. training for which officers volunteer or sign up.
- (j) Travel time in conjunction with training shall be paid in accordance with FLSA standards.

Section 2. Expenses

Employees who attend training shall have the costs of the training including the costs of transportation, food and lodging paid by the County. In the event the employee is required to drive his or her own vehicle, he or she shall be reimbursed at the then current mileage rate as recognized by the IRS.

The Union has proposed an extensive training system. While I agree with the Union that the County would certainly benefit from a regimented training provision, I believe that the training system that is presented is a major change in the status quo. As discussed above, the proposal by the Union could be considered to be a "break through" not ordinarily obtained through interest arbitration. As stated above, any change to the status quo, which is attempted to be obtained in an interest arbitration, must be reviewed very seriously before adopting. Here, there is very little evidence as to why I should adopt this proposal. First, there is no evidence of any *quid pro quo* which was offered by management for the Union's proposal.

Beyond the concepts of *quid pro quo*, and "no breakthroughs" in interest arbitration, external comparability further supports the County's position that it is not necessary to have a training provision. None of the comparables that the Union has proposed has any training provisions in their collective bargaining agreements. Beyond that, Jefferson County already pays its officers double time while they are attending mandated training. Finally, while the welfare and interests of the public certainly does support a training provision, there simply has not been enough evidence presented to justify such a provision. I have not seen any hard evidence that either:

employees are not getting enough training; or
specific individual employees are being singled
out and not getting enough training opportunities.

Thus, in light of all of the above-mentioned evidence, I have no choice but to rule in favor of the County's proposal. I hold that there shall be no provision regarding training.

3. Personal Leave

This issue is fairly straightforward. The County proposes that there be no change to Article 21, §9 which currently provides for 3 personal days. Conversely, the Union proposes that the number of personal days be increased from 3 to 4. Here, I again rule in favor of the County.

This clearly is an attempt to obtain an increased economic benefit for its members. However, for many of the same reasons discussed above re Training, I cannot grant this benefit. On the issue of increased personal days, there has been no evidence of any difficulties with only three personal days. I have not been presented with any evidence of hardship on bargaining unit members because of having only three personal days. I have also seen no evidence of *quid pro quo* by the County. Further, in its own presentation of evidence ²⁵, of the 8 comparable bargaining units, 5 (62.5%) only offered 3 days while the remaining three offered four days. As stated above, the status quo should not be broken absent strong and compelling evidence. Here, there is no such strong and compelling evidence here. I find that the Union has not presented any compelling evidence indicating that there is any valid reason to change the status quo on personal leave days, I rule in favor of the County's proposal that the Contract remain unchanged.

4. Clothing Allowance

The County proposes that the clothing allowance remain where it currently is, at \$600 per year. The Union proposes an increase in the allowance as follows:

²⁵ Union Book 1 UX 19

Effective December 1, 1996, a clothing allowance in the amount of \$625.00 (\$650 effective 12/1/97; \$675 effective 12/1/98) to be used for the purchase of new uniforms and accessories shall be given to each employee each year except that a new employee hired during the year shall receive a prorated amount based on his date of hire.

Additional Language to Article 25, Section 3:

Any employee who is assigned to the Detective Division shall receive a one-time start-up clothing allowance of \$750. After the completion of one full year of service in the Detective Division, an employee is then eligible to receive the clothing allowance as described in Section 1 of this Article.

The Union has proposed that the clothing allowance be raised by an additional \$25 each year as well as a one time clothing allowance of \$750 for employees promoted to the position of detective. This is a substantial economic benefit for all bargaining unit members. Thus, the burden is on the Union to prove the necessity for this change. First, there has been no evidence of a *quid pro quo* from the County for such an increase. The Union has presented no substantive evidence that any officer has been disadvantaged because of the current clothing allowance. Next, turning to the comparables, which the Union has presented, and which I have accepted, this data does not justify such an increase. Of the 7 comparable bargaining units presented, 5, or 71% operate on a quartermaster system where the County provides clothing for the employee and there is no actual cost to the employee. The other two had clothing allowances of \$425 and \$500²⁶, substantially less than Jefferson County.

Further, the Union's evidence indicates that three counties give "Detective allowances" as follows:

²⁶ Marion and Franklin County, Respectively. Union Book 1 UX 21

County	Regular Allowance	Detective Allowance
Effingham	Quartermaster system	\$400
Franklin	\$500	\$500
Marion	\$425	\$425

This evidence is misleading. In fact, none of them provide for the "one-time" detective allowances that the Union is proposing. A review of the collective bargaining agreements indicate that in Effingham county, officers are provided with uniforms, but that they receive a \$500 annual allowance if they are in plainclothes. This is *in lieu* of the quartermaster system. In Franklin and Marion Counties, detectives receive the same allowance as all other officers. There is no special one-time "Detective Allowance" as the Union advocates here. Further, Jefferson County currently provides a uniform allowance significantly in excess of the comparables.

Based on the evidence and arguments presented, I cannot justify an increase the uniform allowance in any way, nor do I see the necessity to grant the detectives a one-time allowance. Thus, I rule in favor of the County's proposal and rule that the uniform provision shall remain unchanged.

5. Time Off For Holidays For Dispatchers

With regard to Holidays for employees in the title of Dispatcher, the County proposes that there be no change to the current Contract. Conversely, the Union proposes that dispatchers receive two holidays per year off under the following system:

Each fiscal year each dispatcher shall be allowed to take off two (2) holidays which he would otherwise have been required to work. Prior to November 1 of each year, the County will post the list of holidays for the upcoming year as set forth in Article 24, Section 1.

The most senior dispatcher shall choose two holidays he wants to take off from the yearly holiday list. In descending order, the remaining dispatchers shall likewise choose two (2) holidays, provided that no more than one (1) dispatcher may be off on any one holiday.

Dispatchers shall have fifteen calendar days from the date of posting to make their choice of holidays off. Failure to designate one's choice during this time period shall result in the dispatcher's name going to the bottom of the list.

Dispatchers taking approved time off on a holiday shall receive holiday compensation consistent with Article 24, Section 1 unless approved time off has been canceled and the dispatcher is required to work, at which time the dispatcher shall be paid in accordance with Article 24, Section 2.

The Union's proposal is not to obtain additional holidays. Rather, it is to obtain a guarantee that dispatchers will be allowed to take at least two of the recognized holidays off to spend with their friends and family. It appears that because of the need for twenty four-hour coverage, all dispatchers are required to work all the holidays. Here, I rule in favor of the County. The Union seeks to have its dispatchers off for at least two holidays each year. While this certainly is a reasonable request, the County counters that with only 4 full time dispatchers, it needs to have all dispatchers available for all holidays. This is a very compelling argument on behalf of the County, I find.

Absent compelling evidence from the Union, I cannot grant this benefit, I stress. While I sympathize with the Union's position on the issue of holidays for dispatchers, there has been no actual hard evidence of any difficulties with the current system as regards scheduling for coverage. I understand that the dispatchers may not get holidays off, which is significant to them, I understand. But I also understand

that countering that factual circumstance is the very real question of whether I can order, effectively, the Employer to hire more dispatchers or to bring in sworn officers -- police or fire -- from the field to perform dispatch duties so as to grant "actual" time off for the four dispatchers. On balance, I find the County's demand to maintain the status quo more reasonable.

I have also seen no evidence of an offer by the Union of a *quid pro quo*. Further, in its own presentation of evidence, the County is in line with the comparables in terms of number of holidays, I specifically note. However, the number of holidays is not the issue, it is the ability to take off for the holidays, I realize. The dispatchers are clearly paid in line with the external comparables, I note. Hence, the only resolution consistent with the Union demand would trench close to a real lessening of Management's rights to determine staffing and assignment of personnel. I so rule. I accept the Employer's proposal of no change or the more reasonable offer.

6. The Sick Leave Buy Back Proposal

The County's proposal regarding Article 22, §2 is that it should remain the same; that is, there should be no buy back of sick leave time at the time an employee leaves the Department. The Union has proposed the following change to the Sick Leave Provision:

Upon separation from service, an employee shall be paid for fifty percent (50%) of accumulated sick leave days up to forty (40) days, at the employee's final rate of pay. Any remaining days may be applied toward IMRF as time worked consistent with the provisions of 40 ILCS 5/7-101 *et. seq.*

This proposal admittedly would provide a significant economic benefit never before provided to Jefferson County employees. It would allow employees to obtain

up to 20 days (4 weeks) of pay for sick time accrued. This would provide a hefty bonus for an employee preparing to retire or seek other employment. While I believe that this proposal could constitute a "major breakthrough" that a party will have difficulty gaining through bargaining, it is not impossible to shoulder this burden.

While it is unusual to provide such a benefit in an interest arbitration, it can be done under the proper circumstances. Otherwise, there would be no point to interest arbitration:

... There are no perfect collective bargaining agreements but the ones that the parties themselves carve out are going to be a lot closer to what is best for them than those imposed by an outsider.

Obviously, there are exceptions. Were it otherwise, particularly under IPELRA where strikes by peace officers are prohibited, all of the bargaining power would be with the party that says no. Certainly, there are occasions when changes are justified and the party resisting change become obstinate or recalcitrant for no good equitable or operational reasons. In these situations interest arbitration is designed to remedy the impasse by providing a forum for the advocates of change. But it is the party seeking the change that must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process. *Will County Board and Sheriff of Will County and AFSCME Local 2961* (S-MA-88-9, Nathan 1988) at p. 53.

In the case of interest arbitration, when a party proposes a change, especially a major one, it bears the burden of providing evidence and arguments that support its contention. Once it meets that burden, the burden then shifts to the opposing party to prove that the reasons presented by the proponent is not valid. If the opposing party cannot justify its position, then the proponent may "win".

The proposal which the Union has made, to change the sick leave provision to require the County to buy back 50% of the sick days up to a maximum of 40 days at

the employees final rate of pay is such a major proposal. However, the Union has provided evidence that its proposal has evidence and arguments to back it up. Any further days accumulated would then be applied to the IMRF as provided by statute. Thus, the most sick days that an employee could "sell back" to the County would be 20 (½ of 40 days)

External comparability supports the Union's position. Of the 7 comparable bargaining units identified by the Union, 4 have buy back provisions which at least equal, or even exceed the Union's proposal. Of the remaining 3 bargaining units, 1 provide for some level of buy back, albeit less, but only for employees hired prior to December 1, 1992 and only 1 jurisdiction has no buy back. This is a fairly powerful argument in favor of the Union's position, in conjunction with the relatively low level of pay for comparable officers.

In response, the County argues that no other county employee receives sick leave buy back upon separation. However, as noted above, internal comparison is far less persuasive than external comparison. In light of the evidence presented, I rule in favor of the Union's proposal that up to 50% of sick leave days accumulated up to 40 days can be bought back at the time of separation.

F. THE NON-ECONOMIC ISSUE - THE APPEAL OF DISCIPLINE

The only remaining issue is the one non-economic issue. This deals with the appeal of disciplinary actions. The County proposes that the current language of the Contract remain. Under Article 9 of the Contract, the Bill of Rights, the Contract provides:

If the inquiry, investigation, or interrogation of a law enforcement employee results in the recommendation of some action, such as transfer, suspension, dismissal, loss of pay, reassignment, or similar action which would be considered a punitive measure, then, before taking such action, the County shall follow the procedures set forth in 50 ILCS 725/1 of the Illinois Compiled Statutes.

Conversely, the Union has proposed an extensive system by which all disciplinary actions may either be grieved or placed before the Merit Commission. That proposal is:

Section 1. Non-probationary employees shall be disciplined only for just cause consistent with this Agreement and the Merit Commission statutes, rules and regulations. The Sheriff agrees that disciplinary action shall be in a timely fashion.

Section 2. The parties agree with the tenants of progressive and corrective discipline. Once the measure of discipline is determined and imposed, the County shall not increase it because an employee exercises his rights contained in this agreement.

Section 3. Disciplinary action is limited to the following:

- e) oral warning
- f) written reprimand
- g) suspension
- h) discharge

Section 4. The County must initiate disciplinary action involving suspensions of more than three (3) days or discharge pursuant to Merit Commission Statutes, rules and regulations, and in all cases, the County bears the burden of proof.²⁷

Section 5. All discipline may be grieved. Grievances involving discipline shall be initiated at Step 2 of the grievance procedure (Article 10), within fifteen business days of the employee or lodge's knowledge of the disciplinary action. In the case of discipline of more than three (3) days or discharge, the employee and the Lodge shall make an election between continuing through with the grievance procedure or continuing under the Merit Commission rules and regulations. This election of forum must be made in writing not later than the final date for referring any such grievance to binding arbitration under the provisions of Article 10. Once made, the election is

²⁷ It appears that only discipline of three or more day suspensions may be appealed under the current system.

irrevocable. The right to have a hearing before the Merit Commission and the right to pursue disputes regarding discipline under the grievance procedure are mutually exclusive, and under no circumstances shall an employee or the Lodge have the right to hearing in both forums. It is agreed that the Lodge, and not the individual employee shall have the right to refer such grievances to arbitration, however, this shall not limit the right of the individual employee to pursue the matter before the Merit Commission, with or without Lodge approval.

Section 6. If the employee and/or Lodge fail to make their election of forum pursuant to Section 5 above, then the matter shall automatically be pursued through the Merit Commission.

Section 7. Except in cases involving discharge, no employee shall suffer a loss or reduction in pay during any disciplinary proceeding. In instances where the Sheriff has filed a complaint with the Merit Commission seeking the discharge of an employee, the employee shall remain in full pay status for a period of six (60) days after the filing of the complaint. After the sixty (60) day period, the employee shall be placed in a no pay status pending final award or decision in the disciplinary procedure elected. If the discharge is not sustained, then the Merit Commission or arbitrator has the explicit authority to award back pay and any other relief that may be appropriate in order to make the employee whole.

The Merit Commission or arbitrator shall make its/his decision within thirty (30) days of the close of the hearing (in case of post-hearing briefs, thirty (30) days from receipt of briefs). The parties recognize that it may not be possible to have the matter heard and decided within a sixty (60) day period due to matters beyond control, but the parties agree not to act in a dilatory manner or engage in conduct that unreasonably delays the hearing and ruling within sixty (60) day period.

Section 8. The parties recognize that the Jefferson County Sheriff's Merit Commission has certain statutory authority over employees covered by this Agreement pursuant to the Sheriff's Merit System Act, as amended, and County resolutions adopting that statutory system. Nothing in this Agreement is intended in any way to change the statutory authority and jurisdiction of the Merit Commission.

The parties agree that those provisions contained within the discipline article of this Agreement concerning the right to process disciplinary grievances is intended to create an alternative procedure which may be elected for resolving disciplinary matters which would otherwise fall under Merit Commission jurisdiction.

As stated above, in the case of interest arbitration, when a party proposes a change, especially a major one, such as this one, it bears the burden of providing evidence and arguments which support its contention. Once it meets that burden, the

burden then shifts to the opposing party to prove that the reasons presented by the proponent is not valid.

Here, as justification for its position, the Union has presented external comparables in which disciplinary actions are grieved. Of the 7 comparable jurisdictions, 4 allow their employees to grieve discipline, 1 (Marion County) gives employees a choice of accepting statutory remedies or the grievance procedure and 1 (Franklin County) gives non-sworn employees the right to grieve discipline, but sworn employees must take advantage of statutory remedies. This is powerful evidence that comparable employees are entitled to the benefit that the Union is seeking, but the County is rejecting.

It appears that the County' main argument on this issue is that because the question of whether it has the obligation to bargain over this matter is currently pending before the Fifth District of the Illinois Appellate Court, I should defer this matter until the Court has issued its decision. That case is *Williams County Sheriff's Commission et. al. v. American Federation of State, County and Municipal Employees, Council 31, Local No. 3369 and the Illinois State Labor Relations Board Case No. 5-97-1035 (5th District)*. The County argues that because it *may not* have an obligation to bargain over this issue, that I should not address it. It also argues, that there is no legal obligation to bargain over the issue of discipline. It argues, that if the Court does rule *in the future*, that the issue of grieving discipline for this bargaining unit is not a mandatory subject of bargaining, the County does not have the lawful authority to enter into an agreement with this provision. This is pure speculation.

The Union argues both the substantive point that there is an obligation to bargain over the question of discipline as well as the fact that the evidence supports its proposal that discipline should be appealed to either the Merit Commission or the grievance procedure.

I do not agree with the County that I should wait for the Fifth District's decision to be able to rule on the issue of discipline. At the same time, I am not making a finding that discipline is or is not a mandatory subject of bargaining. There was no issue presented to me that the matters were not arbitrable. My role as an interest arbitrator is to rule on the parties' proposals, not to deal with whether a matter is a mandatory subject of bargaining. My role is limited to reviewing the parties proposals based on the statutory criteria and determining if either proposal should be allowed. Further, as this is non-economic matter, I am not limited to accepting one party's proposal. The statute allows me to fashion a remedy which appropriately remedies the problem which led to this conflict in the first place.

Based on the evidence and arguments presented, I cannot grant or adopt either parties' proposals. Rather, I have fashioned a remedy that provides some measure of relief to both parties and attempts to provide some level of resolution to the underlying problems which led to this conflict. First, based on the comparables, I believe that some level of relief is entitled to the Union, because the ability to grieve some discipline is evident in the comparables. All the comparable jurisdictions have some level of grievance of disciplinary actions. However, were I to accept the Union's proposal, the employee and Union would have the complete control over

which actions go to the grievance procedure and which are brought before the Merit Commission.

I understand the significance of discipline in a law enforcement environment and the importance to have a government body involved in these decisions. Conversely, if I were to accept the County's proposal and leave the Contract as is, no employee would be entitled to use the grievance procedure for disciplinary actions. All matters would go before the Merit Commission, a body appointed by the County. The Union's argument that the Merit Commission is appointed by the County, even without independent corroboration or elucidation as to why that is considered by it to be a negative, does bear some measure of validity. Based on the evidence presented, I also believe that accepting the Union's proposal as a first provision on the subject would be an injustice to the County. There needs, it seems to me, to have room for further bargaining, if desired, on the topic, once the principle of grieving discipline has been incorporated in the labor contract.

Thus, in light of these considerations, I am accepting the Union's proposal, but with certain modifications. I will allow *some* discipline to be grieved, but not all discipline. Discipline ranging from a 3-day suspension up to and including 29-day suspensions may be grieved pursuant to the Union's proposal. For these penalties, the employee will have a choice to proceed to arbitration or the Merit Commission. However, any discipline beyond a 29-day suspension, including discipline must go only to the Merit Commission. I believe that this compromise provides some relief to both parties and is consistent with the theory of interest arbitration. It provides relief to the Union in that its employees can grieve the discipline of a shorter nature. By

grieving this discipline and bringing these actions before an arbitrator, the Union may be able to overturn unfair disciplinary actions so that they may not be used in an attempt to impose a longer suspension or in a discharge context. On the other hand, the County retains the right to have its own disciplinary system for more major disciplinary actions - suspensions of 30 days or more and discharge actions.

V. AWARD

In summary, I hold the following regarding each of the contested issues in this matter:

1. **Wages**

The Union's proposal is accepted.

2. **Training**

The County's proposal is accepted.

3. **Personal Leave**

The County's proposal is accepted.

4. **Clothing Allowance**

The County's proposal is accepted.

5. **Time Off For Holidays For Dispatchers**

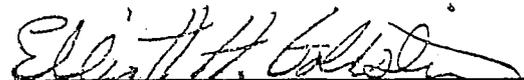
The County's proposal is accepted.

6. **Payment of Unused Sick Leave to Employees Upon Separation**

The Union's proposal is accepted.

7. **Appeal of Discipline**

The Union's proposal is accepted with the modification that only disciplinary actions ranging from a 3 day suspension up to and including 29-day suspensions may be grieved or taken to the Merit Commission. Any disciplinary action of 30 days or more including discharge shall be solely under the jurisdiction of the Merit Commission.


Elliott H. Goldstein, Arbitrator

September 14, 1998