

ILLINOIS STATE LABOR RELATIONS BOARD

INTEREST ARBITRATION

In the Matter of the Arbitration

Before

between

HARVEY A. NATHAN,
Sole Arbitrator

FRANKLIN COUNTY, IL. and
FRANKLIN COUNTY SHERIFF

AND

ISLRB No. S-MA-99-46

ILLINOIS FRATERNAL ORDER OF
POLICE LABOR COUNCIL

Hearing Held: May 16 - 17, 2000

Final Offers Exchanged: August 2, 2000

Briefs Exchanged: September 14, 2000
October 11, 2000

For the Employer: Gilbert, Kimmel, Huffman, Prosser
& Hewson, Ltd., Attorneys
By: John W. Huffman

For the Union: Becky S. Dragoo,
Legal Assistant

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 Franklin County, IL and the Sheriff of Franklin County ("Employer" or "Sheriff's Department") and the Illinois Fraternal Order of Police Labor Council ("Union").

Franklin County is located in southern Illinois. It is about 125 miles south of Springfield, less than 100 miles southeast of St. Louis and about 65 miles north of Paducah. Its 1990 census was 40,319. The county seat is Benton, with a population under 7,500. The largest city in Franklin County is West Frankfort, with a population of about 8,500. As will be discussed below, with the disappearance of the coal industry Franklin County has been struggling with high unemployment and a stagnant, if not decreasing, tax base.

The Union represents two bargaining units of County employees. The first unit includes all sworn personnel below the rank of Lieutenant in the rank of Deputy, Correctional Officer, and Telecommunicator. For the purposes of this case, this will be referred to as the "Deputies unit." The number of employees in this unit fluctuates, but the parties agreed to use a document

which showed 13 deputies, 15 corrections officers and 3 dispatchers.¹ The second unit consists of 2 courtroom security officers, a records clerk, a process clerk and a cook.² This second unit shall be referred to as the "courtroom/clerk" unit. Each unit has a separate collective bargaining agreement with the Employer, and each has gone to impasse for a new agreement commencing December 1, 1998 and expiring November 30, 2001. The demands for impasse arbitration pursuant to the Act were joined for the purposes of litigation, but the terms and conditions of employment for each unit present separate issues for the arbitrator.³

II. Bargaining History

The Union was certified in 1986 as the exclusive representative of the two bargaining units. Since that time the parties have negotiated four agreements. Bargaining in both units has historically been concurrent. Negotiations have been contentious and the parties previously went to impasse twice although final resolution was achieved without the necessity of an

¹ See Joint Exhibit 4.

² The cook works with three part time employees who are excluded from the unit.

³ Tr. I, p. 94.

arbitration hearing. The last agreements expired on November 30, 1998.

On August 21, 1998, the Union served the Employer with a formal notice to bargain new agreements. Bargaining commenced in November of that year but was delayed thereafter because of changes in the Employer's bargaining representatives. After present counsel assumed responsibility for the Employer the parties were able to reach agreement on many issues and had informal understandings on all issues except for health insurance. When the parties were unable to agree on the health insurance issue the informal understandings unraveled and the parties found themselves in arbitration.

A demand for interest arbitration was filed by the Union on April 7, 1999. The undersigned was appointed as the neutral arbitrator by letter dated April 29, 1999. Thereafter, the parties sought additional time to resolve this matter. Hearing dates in October and November, 1999, were postponed and this matter finally went hearing on May 16, 2000, in the Franklin County Courthouse. Subsequently there were delays in submitting final offers and in the submission of briefs as the parties continued attempts at resolving this matter. Briefs were filed on September 14, 2000. On September 21, 2000, the Employer sent the arbitrator its Annual Financial Report for the fiscal year ending November, 1999, and a Fund Balance Reconciliation. On September 28th the arbitrator granted the Employer's request to file supplemental briefs. The Employer's Supplement was received on October 10th and the Union's was

received on October 11th.⁴ On that date the arbitrator declared the record closed.

III. STATUTORY REQUIREMENTS

Section 14(h) of the Act provides that 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.

⁴ The Union's request to file its Supplement one day late is granted.

"(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. THE ISSUES

The parties have been unable to narrow the issues in any meaningful way during the many months that this matter has been at impasse. As agreed to by the parties, the issues are as follows:

A. Deputies Unit

Economic Issues

- | | |
|--------------|-----------------------------------|
| 1. Wages | 4. Health Insurance Coverage |
| 2. Longevity | 5. Health Insurance Contributions |
| 3. Holidays | 6. Retroactivity |
| | 7. Transfers |

Non-economic Issues

8. Shift Bidding
9. Training
10. Layoffs
11. Sick Leave Pool

B. Courtroom/Clerk Unit

Economic Issues

- | | |
|-----------------------------|-----------------------------------|
| 1. Wages | 4. Health Insurance Coverage |
| 2. Wages for Court Security | 5. Health Insurance Contributions |

3. Longevity

6. Retroactivity

7. Transfers

Non-economic Issues

8. Training

9. Layoffs

10. Sick Leave Pool

V. Stipulations of the Parties

The parties submitted the following stipulations to the Arbitrator at the outset of the hearing:⁵

1. The Arbitrator in ISLRB Case No. S-MA-99-46 shall be Arbitrator Harvey A. Nathan. 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 those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, but not limited the express authority and jurisdiction to award increases in wages and all other forms of compensation retroactive to December 1, 1998 and December 1, 1999. Each party expressly waives and agrees not to assert any defense, right or claim that the Arbitrator lacks jurisdiction and authority to make such retroactive award; however, the parties do not intend by this Agreement to predetermine whether any award of increased wages or other forms of compensation in fact should be retroactive.

2. The hearing in said case will be convened on May 16, 2000 at 9:30 a.m. The requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment, has been waived by the parties. The hearing will be held in the County Board Room, at the Franklin

⁵ Stipulations relating to matters no longer at issue have been deleted.

County Courthouse in Benton, Illinois.

3. The parties have agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the employer and exclusive representative.

* * *

8. At the direction of the neutral Arbitrator, the parties shall submit final offers as to each issue in dispute pursuant to 5 ILSC 315/14(g). Thereafter, such final offers may not be changed except by mutual agreement of the parties.

* * *

10. Post-hearing briefs shall be submitted to the Arbitrator, with a copy sent to the 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 the mailing shall be considered to be the date of a brief.

11. The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator shall issue his award within sixty (60) days after the submission of the post-hearing briefs or any agreed upon extension requested by the arbitrator.

* * *

VI. COMPARABILITY

The parties appear to be in agreement as to an appropriate comparability group for Franklin County. While the Employer has argued that each county must be viewed in terms of its own characteristics, the Employer has offered exhibits addressing the terms and conditions of employment in neighboring counties. The arbitrator recognizes that no two employing entities have the same characteristics. Each is unique and each has its own strengths and

special features. Arbitration awards are not the result of some automatic relativity scale. Rather, the arbitrator will gauge the merits of each proposal based upon all of the statutory factors relevant to the issue. However, it should be understood that the precise merits of one proposal over another can best be judged in relation to the collective wisdom of similar parties in demographically and geographically similar communities. The marketplace of collectively bargained terms and conditions of employment is a powerful tool for demonstrating the appropriateness of one proposal over another.

The Union has selected a comparability group of 8 neighboring counties. Five of these counties abut Franklin County. The other three are about 50 miles from Franklin County. The counties, in order of size, are:

Jackson	Jefferson
Williamson	Randolph
Marion	Saline
Franklin	Perry
	Fayette

Different arbitrators apply different gauges to assess the appropriateness of proposed comparability groups. As I stated in *Bloomington Fire Protection District*, S-MA-92-231 at pg 12: "the better view is to find those features which form a financial and geographic core from which the neutral can conclude that terms and conditions of employment in the group having these similar core features represent a measure of the marketplace." Generally speaking, geographic proximity (local labor market), size and financial similarities are

the key features.⁶ The Union's proposed list meets these standards. The counties in this group are all essentially rural counties in the far south section of Illinois, where the economies lag and the largest employers tend to be in the public sector. I have chosen from the Union's several tables the following data to demonstrate the appropriateness of this group.⁷

	Population ⁸	EAV ⁹	Revenue ¹⁰	Unit: Sworn	Unsworn ¹¹
Jackson	62,400	\$340,616 <i>383,284</i>	\$ 11,134	22	13
Williamson	60,000	420,376 <i>463,430</i>	13,580	30	27
Marion	41,100	199,307 <i>222,470</i>	6,561	15	**
Franklin	40,100	158,942 <i>206,360</i>	7,675	18	21
Jefferson	38,700	265,966 <i>323,263</i>	7,036	21	15
Randolph	34,300	225,017 <i>249,498</i>	7,291	11	8
Saline	26,500	144,388 <i>155,360</i>	7,329	10	17
Perry	22,200	118,905 <i>127,705</i>	6,365	11	22

⁶ See, Mt. Vernon and ILFOP Labor Council, S-MA-94-215, p. 10 (Arb. Steven Briggs).

⁷ All the data recited is from Union exhibits.

⁸ The population was taken from the Rand McNally Atlas (2000).

⁹ Based upon 1996 numbers, expressed in thousands. The second set of numbers (*italicized*) are from the Employer's Exhibit 5, showing EAVs for 1998.

¹⁰ Based on 1996 data, expressed in thousands. More recent data for Franklin County was supplied, but not for the comparables.

¹¹ Based on 1998 data. Marion has no unsworn bargaining unit.

Fayette	21,000	125,518	7,175	10	12
		141,692			
Average (w/o Franklin)	38,275	230,012	8,309	16	14
1998 Average		258,337			
Franklin +/- Av.	1,825	(71,070)	(634)	2	7
		(51,977)			

Jurisdiction	Expenditures	Public Safe Exp	Pub Safe as % of Expenditures
Jackson	\$ 10,574,259	\$ 2,918,206	28%
Williamson	13,236,184	2,105,039	16%
Marion	5,675,260	1,513,945	27%
Franklin	7,790,266	2,478,480	32%
Jefferson	6,760,807	2,187,492	32%
Randolph	8,254,976	1,198,074	15%
Saline	7,245,780	1,796,623	25%
Perry	6,661,611	1,426,913	21%
Fayette	6,669,566	843,836	13%
Average (w/o Franklin)	\$ 8,134,805	\$ 1,748,766	22%
Franklin +/- aver	(\$ 344,539)	\$ 729,714	45% higher than average ratio

VII. FINANCIAL DATA AND ABILITY TO PAY

The parties sharply disagree as to Employer's financial condition and its ability to pay higher wages and benefits. The Employer takes the position that Franklin County's expenditures exceed its revenue, that it has been reducing

its fund balances each year and it simply cannot afford the increases in wages and benefits sought by the Union. The Union argues that the Employer is in sufficiently good financial shape to pay competitive wages and benefits, that its tax base is rising and that it makes choices in expenditures and has simply chosen to not spend the necessary revenues to improve the terms and conditions of employment as the Union deems appropriate. There is some merit to both positions.

At the outset, the Union correctly argues that a public employer's "ability to pay" in these impasse proceedings should not be an analysis of whether the systems used for obtaining revenues are being utilized to the maximum advantage. As Arbitrator Elliott Goldstein opined in *City of DeKalb and DeKalb Professional Firefighters Association, Local 1235, IAFF (1988)*,¹² it is not appropriate for an arbitration panel in these cases to make political judgments such as whether the employer can increase taxes or has other sources of revenue from which the amounts at issue can be paid. According to Goldstein "ability to pay" is little more than an examination of the desirability of "expending funds in a certain manner."

Because one set of proposals limits the choices an employer might make in expending money for other needs does not mean there is an inability to pay.

¹² The reference is taken from the Union's Brief at p. 40. The correct citation for the Goldstein award was not supplied.

There may be an understandable unwillingness by the Employer to pay for the demands of the Union because of the impact such increases would have on other departments and programs, but this is not an "inability to pay." Unless there is a fiscal impossibility of paying the demands, it cannot be said that a choice which impacts other government programs demonstrates that a public employer has an inability to pay.

On the other hand, the arbitrator cannot ignore evidence if an employer has a decreasing tax base, or that if it has unusual expenditures or distinct features which burden its ability to obtain the revenues it needs to operate.

So, too, the arbitrator must look at trends such as whether fund balances have been increasing or decreasing, whether budgets accurately reflect the items described, and the impact the increased sums needed to fund the proposals will have on the employer's ability to meet other fiscal demands.

A disproportionate demand on limited resources may not be in the public interest and this evidence must be considered along with the other statutory factors. A decision from an arbitrator must be based on an analysis of all of the factors stipulated in the Act.

The Employer presented two expert witnesses who testified that the County's true financial picture is reflected by the cash in the General Fund balance at the end of the fiscal year. The problem with this statement, while not inaccurate, is that it begs the question of what is the purpose for the "true picture." It is this arbitrator's opinion that in an on-going governmental tax

and revenue unit, such as a county, cash is simply a measurement of relative liquidity as compared with liquidity at the same precise time in another year.

It might be a valid yardstick if the County were an enterprise and the arbitrator was making an assessment as to a good purchase price for it. But where the issue is revenue flow, expenditures and basic economic forecasts as a measurement of appropriate wages for some employees, a more accurate measurement is an analysis of modified accrual accounting statements over a period of time and an assessment of the economic growth for the governmental unit in question. Moreover, in this regard the arbitrator must look at total revenue available for the governmental department(s) which are the subject of the case. Where the available revenues for Franklin County as a whole are adequate to support either proposal, even though it might mean decreases for other departments, the arbitrator cannot say there is an inability to pay, although he may question the wisdom and public interest in spending a disproportionate amount for one or some department(s) at the expense of others.

The arbitrator recognizes that Franklin County has lost any measure of prosperity with the closing of the coal industry and a failure to attract new businesses into the area.¹³ This is reflected in part by the low per capita EAV

¹³ According to the County's expert witness, among similarly sized counties nation-wide, Franklin County's growth rate is among the lowest. Notwithstanding low unemployment rates across the country, the rate in Franklin County is in double digits.

for this county as compared to others in the comparability group. Although 4th in size out of 9 counties, it is 6th in EAV(for 1996) and its per capita EAV is substantially lower than all of the other 8 counties. Stated another way, the taxpayers of Franklin County have to pay more taxes on less property than similarly situated taxpayers in the other 8 comparable counties. On the other hand, the EAV for Franklin County went up in 1998 (over 1996) by 30%. This was greater than any other county in the group.

Additionally, although Franklin County has a decreasing General Fund balance over time, its revenues in 1996 were proportional to its expenditures in relation to the other counties. It was third lowest in revenue per capita and also was third lowest in expenditures per capita. On the other hand it was tied for the highest proportion of expenditures for public safety, 32%. The County has made a political decision to spend more on public safety than is spent in almost all the comparable counties. This decision is beyond the arbitrator's jurisdiction. However, as a reflection of the public interest, the arbitrator notes that Franklin County values its public safety programs to the extent that, although it argues in this case that funds are limited, it has historically chosen to spend substantial available funds for public safety.

Finally, despite the generally poor economic climate among the populace of Franklin County, the County government has managed to increase its investments and substantially maintain its cash balance while reducing tax rates for the General Fund. The County's audited financial statement for the

fiscal year ending November 30, 1999, shows that the Sheriff's Department (pp. 60 and 61 of the audit) spent \$118,506 less than what was budgeted, a difference of 7.3%. In fact, the Sheriff spent 5.3% less for salaries than the County Board had budgeted. Thus, while the Employer claims that it has decreasing revenues in the face of increasing expenditures which will eventually deplete all reserves, in just the Sheriff's Department, expenditures are below budget.

VIII. DISCUSSION OF THE ISSUES

A. Economic Issues for Deputy Unit

1. Wages

The Deputies, Correctional Officers and Telecommunicators have a step schedules which may be shown as follows:

<u>Deputy Sheriff</u>		<u>Correctional Officers and Telecommunicators</u>	
Start	\$22,900	Start	\$17,900
One Year	25,850	One Year	19,400
Two Years	26,850	Two Years	20,400
Three Years	27,150	Three Years	21,650
Five Years	27,450	Four Years	22,150
Nine Years	28,050	Six Years	22,450
Eleven Years	28,350	Eight Years	22,750
Thirteen Years	28,650	Ten Years	23,050
Fifteen Years	28,950	Twelve Years	23,350
Seventeen Years	29,250	Fourteen Years	23,650
Nineteen Years	29,550	Sixteen Years	23,950
		Eighteen Years	24,250
		Twenty Years	24,550

The Union has proposed an increase of \$1,000 for each step for each classification for each of the three years of the Agreement under consideration.

The Union considers this to be a catch-up proposal which means that it is somewhat higher than what might otherwise be justified because the salaries in this unit are far behind that of employees in the comparable units. Under this proposal every employee would receive at least a \$1,000 increase each year plus any step increases if the employee was in a year where step increases occurred.

The Employer has made a final proposal of a \$.33 per hour increase for all employees in the first year of the contract, a \$.35 per hour increase in the second year of the contract, and another \$.35 an hour in the final year of the contract. Assuming a 2080 hour work year, this computes to about \$686 per employee in the first year and \$728 in each of the next two years.

The mean for the number of years of experience for the Deputies is 10 years.¹⁴ The annual base wage for a ten year Deputy is currently \$28,050. Increases of \$686, \$728 and \$728 (the Employer's proposal) would average out to be about a 2.5% increase for each of the three years. The average years of service for the Correctional Officers and the Telecommunicators is also about 10 years. The annual wage is for a 10 year employee is now about \$23,050. For these employees, the Employer's proposal would yield about a

¹⁴ I do not use the average here because the long tenure of two of the deputies skews the average.

3% increase for each of the three years.¹⁵

The Union's \$1,000 annual increases would provide the ten year Deputy with about a 3.6% increase. The Correctional Officer and Telecommunicator with ten years of service would realize about a 4.4% increase each year.

¹⁵ Because the proposals are expressed in terms of one amount for all levels of experience, obviously the increase will yield a higher percentage for starting employees and a smaller one for the most senior employees.

The thrust of the Union's argument is that the Deputies and Correctional Officers are substantially below the average for wages among the comparable counties. According to the Union's exhibits, the Franklin Deputies earn less than the deputies in other counties at every benchmark on the pay scale. However, the disparity gets very pronounced for the more senior Deputies.¹⁶

The disparity is more pronounced with the Correctional Officers and the Telecommunicators. After ten years the difference between Franklin employees (after the Union's proposed \$1,000 a year increase) and the average among the comparables ranges from 10% to 20%. In other words, even with the Union's proposal, Franklin employees would be well below the average among the comparable counties.

Additionally, the County's proposal is below the CPI's rate of increase for most of the employees. While the CPI is an artificial standard whose usefulness is as a measurement of broad trends, its greatest failing is that it is a less accurate measurement for narrow geographic areas such as Franklin County.

The arbitrator cannot gauge appropriate rates of increase by merely looking at the CPI. However, if the rates are generally higher, or lower, than they were

¹⁶ At the ten year mark, even with the Union's proposal, it would be \$1,200 a year below average. This would increase to \$1,700 at the 15 year point and more than \$2,000 at 20 years.

in past negotiations, this could have an effect on choosing a final offer in a close case. For this case, the arbitrator notes that the CPI has been relatively low for the period covered by the first two years of this contract. Thus, larger than traditional increases are not necessary to keep up with inflation, but only as a "catch-up" in terms of the average wage of employees in the comparability group.

There is no question that the employees in this Deputies unit are paid less than other employees performing the same work in neighboring counties. The marketplace in southern Illinois among similarly situated counties provides far better salaries for its employees than is the case in Franklin County. If comparability were the sole test there would be no question that the Union's proposal is the more appropriate. However, as the parties are aware, the arbitrator is bound to select the most appropriate offer considering all of the statutory guidelines.

The arbitrator finds that the most appropriate proposal for increases in this unit is the Employer's. There are several reasons for this. Perhaps the most significant is the arbitrator's need to balance the interests of both parties and provide changes where they are most needed. While the Union expressed the fear during the hearing that the arbitrator would compromise just for the sake of balance, the better explanation is simply that the employees' needs are such, and the Employer's resources are such, that there is simply insufficient revenue to pay for all of what the Union can justifiably make an argument.

The arbitrator must select the proposals of one side or the other which, taken as a whole, provide an equitable and affordable package. If the employees are far behind other bargaining units this did not come about just in the last contract. In a situation, as here, where employees are significantly behind comparable units it is usually the result of the bargains made over an extended period of time. The arbitrator notes that in Franklin County all of the wage settlements in the past were voluntarily entered into. It cannot be suggested that the employees suddenly woke up and realized that others in their job categories were earning 10% to 20% more than they are. These are the wage levels the parties freely agreed to.

Some catch-up in wages may be appropriate for this bargaining unit, but it cannot occur in these negotiations where there are so many other needs.

In denying the Union's not unreasonable proposal it is not compromise for its own sake but a realization that the economy in this county cannot sustain all of the Union's demands however attractive they may appear in a vacuum.

2. Longevity

The Union proposes the addition of three steps, one per year, to the salary schedules for all employees in this bargaining unit. The Employer opposes the addition of any new steps to the salary schedules. The Union's proposal is as follows:

	<u>Deputies</u>	<u>Corrections and Telecomm.</u>
Year 1	At 21 st year - \$300	At 22 nd year - \$300
Year 2	At 23 rd year - \$300	At 24 th year - \$300
Year 3	At 25 th year - \$300	At 26 th year - \$300

As the Union argued in connection with its base wage proposal, the most significant gap in the wage comparisons is among the most senior employees.

Unquestionably, senior employees in this bargaining unit earn substantially less than similarly situated employees in the comparable units. Factoring in the newly awarded increases to the Franklin employees, in fiscal year 98-99 Deputies earn about \$2,000 per year less than average after 20 years and about \$3,500 less after 30 years. Indeed, at the 20 year mark, Franklin Deputies are more than \$1,000 below the next lowest paying county in the comparability group.

The disparity for Correctional Officers is even greater. After 20 years the average Correctional Officer in the comparables has a base salary for 1998-99 of \$28,838. After the increase of \$680 for 1998-99, the 20 year Franklin Correctional Officer would earn \$25,130. This is a \$3,600 difference from the average. The differences grow substantially at the 25 and 30 year marks.

Granting the Union's proposal would have almost no impact on the budget because there are only two employees who have enough years of service to be effected by the new steps. Moreover, because the increases in base wages were in whole dollars, rather than percentages, the increase for the more senior employees is proportionately smaller. Based upon all of the factors, there is simply no valid reason not to select the Union's proposal.

3. Holidays

The Union is seeking two additional holidays for employees in the Deputies unit. These employees now have 13 paid holidays while the employees in the Courtroom/Clerk unit have 15 holidays, including the two sought by the Deputies.¹⁷

The days now celebrated and the ones sought (in italics) are as follows:

New Year's Day	Columbus Day
M.L. King's Birthday	<i>General Election Day</i>
Lincoln's Birthday	Veteran's Day
Washington's Birthday	Thanksgiving
Good Friday	Day after Thanksgiving
Memorial Day	<i>Christmas Eve Afternoon</i>
Independence Day	Christmas Day
Labor Day	

The Employer points out that because of the continuous 365 day schedule of the Sheriff's Department, employees do not actually celebrate holidays with time off. Instead, it is simply an overtime opportunity. Paid holidays for the Sheriff's Department is straight cost item. According to the Sheriff the costs of two extra days' pay for the thirty or so employees in the Department would cost several thousand dollars. The Employer also notes that

¹⁷ Although the wording of the final offer, as well as the facts underlying this proposal, make it appear that the issue of additional holidays is for the Deputy unit only, the Union in its brief refers to two additional holidays for both units. The arbitrator considers this to be a clerical error. There is no offer of additional holidays for the Courtroom/Clerk unit in arbitration.

the courtroom employees' schedule is determined by the Chief Judge, and it was from that authority that those employees obtained the two additional days.

The Union argues that a majority of the comparable counties allow their deputies the holidays in question, and that Franklin County gives its Deputies slightly less than the average number of holidays given in the comparable counties.

The Employer's proposal is awarded. The Union's only showing of need for the additional holidays is in its argument that the employees need more opportunities to earn money. While in some cases on a record as appears here the additional days might seem appropriate, choices have to be made in this case. Holiday pay affects all employees equally whereas the greatest need in this case is for the more senior employees. In the face of limited resources and because of the costs of other items in this case, the arbitrator believes it would be best to deny the additional holidays.

4. Health Insurance Coverage

The Union suggests that health insurance is the issue which brought the parties to arbitration. Coverage for the employees has been a source of contention between the parties for some time. The Employer has changed the health insurance plan and the insurance carrier on numerous occasions over the last several contracts. In the 1987-1989 and the 1989-1992 Contracts the parties agreed that if the current coverage were canceled through no fault of

the Employer, the Employer would provide at least the same premium for the successor insurance. In the 1992 Agreement the language changed so that if the current coverage were canceled the Employer would provide the same premium payment and the same coverage for the replacement insurance. However, in this Agreement the Employer's contribution was capped at \$170 per month. While the Union believed that the intent of the premium agreement was for full coverage, when rates went up the employees had to make greater contributions toward the total premiums. No changes were available until the next negotiations.

During the negotiations for the 1995-1998 Agreement, the Union saw coverage and rates change dramatically. It was concerned that it needed some mid-term relief if rates and coverage continued to change.¹⁸ In a sense, the Union believed that it was negotiating a moving target and it was concerned that no sooner would negotiations be over than the rates and coverage would change again. The parties agreed in the 1995 Contract that if there were "substantial" changes in benefit levels or premiums during the term of the Agreement there would be mid-term bargaining to negotiate new terms for the employees' coverage. Of course, what the Union failed to realize was that it already had bargaining on almost a continuous basis. The history

¹⁸ It might be noted that the 1992 Contract was not signed until April, 1994, and that the 1995 Contract was not signed until October, 1997.

for these parties was that negotiations would last for substantially the entire term of the Agreement being negotiated. In a sense, it already had *de facto* mid-term bargaining. The problem for the Union was that while bargaining was going on the insurance coverage continued to change. Thus, when coverage changed after the 1995 Agreement was finally implemented in October, 1997, the mid-term bargaining was simply subsumed into bargaining for the next contract. In effect, the Union asserts, the Employer made changes to the coverage unilaterally and then the Union was in the position of negotiating after the fact.

For example, in this current year the Employer changed carriers although the parties had been in negotiations regarding the issue of health insurance for more than a year. As a result of the latest changes the employees found that single coverage was now \$263.64 while the Employer was making contributions of \$170.00 a month.

In response, the Union proposes the following additional language(in italics):

* * *

The Employer may change insurance providers providing the replacement policy provides substantially the same benefit levels.

If benefit levels must be substantially reduced or if single or family premiums must be substantially increased, the parties agree to reopen the contract to negotiate the terms of this Article mid-term.¹⁹

¹⁹ This was the language added in the 1995 Agreement.

Pending the outcome of such negotiations, the current premiums shall remain in effect. Any impasse in these mid-term negotiations shall be resolved through Section 14 impasse resolution proceedings.

The Employer acknowledges that medical insurance has been a difficult issue. According to the Employer's insurance agent, bidding for the County's insurance coverage typically starts several months in advance. The agent testified that securing coverage for the County has not been easy because of the County's high loss experience. The Employer has attempted to be fair on the issue and has set up an insurance committee consisting of employees from the different departments. Although not contained in its final offer as contract language, The Employer suggests a willingness for the insurance committee to meet quarterly and to prepare written recommendations for the County Board at least ninety days prior to the expiration of the current insurance plan. Further, the County suggests in its brief, "mid-term negotiations regarding insurance would be applied retroactively to the first date of the changes, unless the parties otherwise agreed." The Employer's final offer is a retention of the language from the previous contract except that the last sentence would not limit mid-term bargaining on premiums only when there are substantial increases. The last sentence of the Employer's proposal for coverage would read as follows (italicized word is to be deleted):

If benefit levels must be substantially reduced or if single or family premiums must be *substantially* increased, the parties agree to reopen the contract to negotiate the terms of this Article mid-term.

The effect of this language would be to allow mid-term bargaining even where the changes in premiums were small. Additionally, the Employer argues that the Union's proposal has an internal contradiction in that it seeks full single coverage without a cost limitation while its proposal for "coverage" permits binding arbitration if premiums are increased. The Employer suggests that the Union wants a solution "both ways." If, the Employer asks, the Union is guaranteed the cost of the full premium, why does it need a re-opener at all?

The arbitrator is very reluctant to select a final offer which requires additional interest arbitration. There is an implied suggestion that collective bargaining cannot work, which, of course, is contrary to the intentions of the bargaining statute. The parties should be encouraged to negotiate and not encouraged to avoid hard bargaining by rushing to an outsider to determine the terms and conditions of employment. More to the point, the Union complains throughout these proceedings that the Employer has unnecessarily protracted negotiations so that with the last several contracts bargaining for a new contract did not end until the period of that new contract was close to expiration. The Union complains that it has traditionally bargained for time periods already past.

The Union's proposal will not resolve its dilemma. It only inserts yet another procedure to delay the ultimate result. Interest arbitration is itself a

lengthy and time-consuming process. Indeed, a mid-term interest arbitration could well delay serious bargaining for the next contract. Moreover, the Employer may need to make adjustments, as the Agreement allows it to, while the parties are litigating the last mid-term alteration. The parties could find themselves in a morass of litigation when they should be at the bargaining table. The parties should be encouraged to bury the hatchet in places other than in their respective skulls.²⁰

5. Health Insurance Contributions

This issue is closely related to the prior one. But for the parties agreement to treat them separately health insurance is usually regarded as one issue.

The parties have a long and involved history concerning insurance premiums and contributions, as was somewhat discussed above. Among the difficulties is that the County has one plan for all employees. What it negotiates for one group is the plan for all groups. It is not clear which group,

²⁰ In rejecting the Union's proposal the arbitrator does not agree that it is inconsistent with the Union's proposal for full single coverage. Not only can the parties seek to negotiate about family coverage, but the Union's proposed language would allow the Employer to seek arbitration in the event that full single coverage became too onerous a burden.

if any, has been the driving force. However, the County argues that a consideration for the arbitrator is that if he awards more than the Employer's final proposal, the Employer may be in a position where it has to make adjustments for other groups of employees. In other words, additional costs for the FOP bargaining units will be more costly than what might appear at first glance.

Until the 1992 - 1995 Agreement the Employer paid for full single coverage for all employees. There is no record that it ever contributed toward the cost of family or dependent coverage. In the 1992 Agreement, not effective until April, 1994, the parties agreed to cap the Employer's contribution for single coverage to \$170 per month per employee. At the time that amount covered the full cost of a single premium and the Union apparently did not expect this to change mid-term. Bearing in mind that the 1995-1998 Agreement was not signed until October, 1997, and the present proceedings are for an Agreement which covers a period two years old, and has just one more year left, the following is a summary of the changes in coverage and premiums.²¹ According to the Union, while there has been input from an independent employee group, these changes were not negotiated with the

²¹ Dependent coverage was as follows:

	<u>Single+Children</u>	<u>Single+Spouse</u>	<u>Family</u>
1996	\$286.40	\$384.24	\$448.80
1997	\$697.33; \$372.93 (HMO)	\$525.72; \$351.21 (HMO)	\$810.48; \$537.20 (HMO)
1998	\$437.05; \$391.21 (HMO)	\$437.05; \$368.73 (HMO)	\$537.05; \$564.41 (HMO)
1999	\$390.55	\$432.14	\$594.71
2000	\$602.85	\$602.85	\$602.85

Union.

Effective Date	Single Premium	Insurance Carrier
January 1, 1996	\$177.80	Pekin PPO
April 1, 1997	\$315.81 (PPO) 167.82 (HMO)	Blue Cross/Blue Shield
April 1, 1998	\$215.63 (PPO) 175.98 (HMO)	Blue Cross/Blue Shield
April 1, 1999	\$206.67 (HMO)	GHP
April 1, 2000	\$263.64	Blue Crs/Blue Shield CPO

The Union proposes that the language of the Agreement providing that the Employer pay \$170 per month for health insurance be changed so that the Employer is required to “pay 100% of the single premium cost.” The language of the Union’s proposal also contains the following statement: “The Union proposes this provision take effect immediately upon the issuance of the Arbitrator’s Award.”

The Employer proposes that its contribution be increased from \$170 to \$207 per month, “and that the same be retroactive to April 1, 2000.”

The Union argues that the with the Employer’s proposed contribution employees would still have to pay \$56 a month toward their health insurance. This is a substantial increase over the \$5.98 a month the employees paid under the last contract. According to the Union, the County has unilaterally established the rate it will pay for employees, and if the costs are higher it just passes them on to the employees. According to the Union, this system, which

has occurred every year despite the parties' three year contracts, operates as a disincentive for the Employer to secure the best policy for the money. This failure to seriously address the issues has cost employees who take dependent coverage a substantial amount of any wage increases they have received under the last Agreement.

The Union argues that every county in the comparability group pays 100% of single employee health coverage, except for Marion County, which provides 95% of single coverage.

The Union argues that its proposal is for no more than what had been the traditional arrangement for the parties. The Employer took a single concession by the Union in one year (to make a small contribution) and has used it as a wedge to substantially remove the benefit employees formerly had. According to the Union, increased costs in insurance traceable to that one year when concessions were made has resulted in insurance costs consuming substantial portions of whatever wage increases can be negotiated. The Union also argues that by making the changes effective on the date this Award is issued, it has lessened the financial burden upon the Employer.

The Employer argues that on a county-wide basis insurance is very costly. About \$220,000 was spent from the General Fund in the last two years for insurance benefits. The Employer argues that to make it responsible for all costs in the heated medical insurance market is "unconscionable and irresponsible."

According to the Employer, when the County insurance committee met to discuss a new plan everyone agreed to the new plan even though the committee knew of the increased costs. The Employer argues that its proposed contribution of \$207 a month is fair, and that only if employees take responsibility for their insurance will costs be moderated. According to the Employer the increase for the Employer from \$170 to \$207 a month will cost the Sheriff an additional \$1,500.00 a month. Because the County finds it appropriate to make equal payments for all of its employees, the change to \$207 a month per employee will actually cost the County an additional \$3,700.00 per month.

This issue may be seen as requiring the arbitrator to choose the least worst proposal. Neither proposal is without problems, but after much consideration the decision is that the factors favor the Union's proposal more than the Employer's. Stated another way, while medical insurance is a hardship for everyone, it is less of a hardship for the Employer than it will be for the employees. Taking into consideration that the employees will be getting the smaller wage offer of the Employer, and considering that the Union is not seeking retroactivity for its proposal, the Employer is in a better position to absorb these costs than the employees.

Perhaps more significantly for this issue than for others, the arbitrator is persuaded by the practice of the comparable counties. They all pay full single coverage except for one which pays all but a token amount. Certainly

there is no reason to believe that these other southern Illinois counties have better insurance ratings than Franklin County and that insurance is not as much a problem for them as it is for the Employer in this case. In fact, according to the Union's exhibits, the single premium for Franklin County's insurance is about the average for the other counties. What comes through here is that the custom and practice in the public sector in this part of the state (as it is elsewhere in Illinois) is to pay for the medical insurance of its employees. Indeed, single coverage paid for by employers has become a standard in the American workplace. Only a very strong bargaining history against such coverage or an unusually destitute employer could be grounds for denying this benefit. Neither condition is present in this case.

6. Retroactivity

The parties agree in substance that there shall be retroactivity for the payment of wages to the contract anniversary dates of December 1, 1998, 1999 and 2000. They use different language to express their proposals. They read:

UNION

As its final offer on the impasse issue of retroactivity, the Union Retroactive checks shall be issued to bargaining unit employees, by separate check, within forty-five (45) days of the issuance of the Arbitrator's Award. Employees who were employed after December 1, 1998, but who have left the

proposes that all wage increases be fully retroactive to December 1st of each year on all hours paid.

employment of the County shall receive a pro-rata share of any retroactive amounts due under the Arbitrator's Award.

EMPLOYER

\$.35, be retroactive as follows:

Franklin County/Franklin County Sheriff's Department proposes that its hourly wage increase proposals for both contracts of \$.33, \$.35, and	December 1, 1998	\$.33 an hour
	December 1, 1999	\$.35 an hour
	December 1, 2000	\$.35 an hour

The Employer's proposal also refers to retroactivity for insurance, but that was part of the insurance issue and has already been addressed.

The Union has expressed concern that the Employer intends to pay retroactive wages for only regular hours, and deny it for overtime, holiday pay, vacation pay and other hours worked. But the Employer's final offer on this issue says no such thing. Because no limitation is contained in the language of the Employer's final offer, the arbitrator understands that retroactivity for rates of pay applies to pay in whatever form it takes: holidays, overtime and the like. All holidays and vacations, overtime and the like must be separately re-computed for each employee. The arbitrator's conclusion here is central to the selection of the Employer's wage proposal.

A problem with the Union's proposal is that it requires the Employer to re-compute all employees' hours for the last two years within 45 days of the arbitrator's award. The arbitrator is doubtful that this allows enough time for the Employer inasmuch as the Employer has to vote acceptance of the award.

The Union has not offered any evidence that this can be done in the time left without unreasonable expense for the Employer. The arbitrator selects the Employer's proposal for wage retroactivity and expects that the employees will be issued checks for their back pay within a reasonable period of time.

7. Intra-Department Transfers

The Union has proposed new language which protects an employee's salary standing when he/she transfers within the Sheriff's Department. The idea is that a transferring employee would not suffer a wage decrease as he/she moves from one division to another. The proposal also addresses seniority.

The Union states, and the record supports, that this proposal essentially captures the Sheriff's current practice. Employees move from one division to another, usually up the ladder from Telecommunications/Corrections to Road Deputy. Apparently, they have been treated fairly in the process. The Employer makes that point in its argument. It argues that absent any evidence of problems there is no basis to agree to this new language. The Union suggests that there are open questions regarding the priority to be given a long-time transferee for the purposes of shift selection or vacations. However, it has supplied no examples where problems arose which were not resolved by the Sheriff in a satisfactory manner.

Generally, arbitrators are reluctant to award new contract language in the absence of problems with the old language or with the past practice (in the absence of language). Where there is a need, and the parties have been unable to agree notwithstanding their best good faith efforts, the arbitrator

may have to step in to resolve what the parties could not agree themselves.

But such moves by the arbitrator should be somewhat of a last resort. With this issue, the Union has not shown any problems, let alone that such problems could not be resolved fairly.

B. Non-Economic Issues for the Deputies Unit

8. Shift Bidding

All employees in the Sheriff's Department (Deputies Unit) work four 10 hour days followed by three days off. There are three shifts. The first is from 7:00 a.m. until 5:00 p.m. The second is from 5:00 p.m. to 3:00 a.m. The third shift runs from 9:00 p.m. until 7:00 a.m. Under the current contract language employees are permitted to bid for shifts but the final decision rests with the Sheriff. Shift assignments are exempt from the grievance procedure.

The current language is as follows:

All full time staff shall have the opportunity to submit a bid (written statement) of their preferences of shifts and days to be worked when the employer is developing an annual schedule. All employee requests will be given equal consideration. Bids for schedules that conflict with those of other employees will be resolved on the basis of the employer's determination of the department's needed efficiency, effectiveness, safe operation, and desire to treat all employees in a fair manner.

Schedules will be issued every three months, but are subject to change. Disputes regarding changes in posted schedules shall be subject to administrative review by the Sheriff after written attempts have been made with the appropriate Lieutenant. The Sheriff's resolution of the matter shall be final and not subject to the grievance procedure of Article 9.

Probationary employee, detectives, or other employees whose special assignments require specific workdays and or work times

shall be excluded from the bidding process.

The Union stated at the hearing that it has tried in past negotiations to secure a change which would require schedules to be awarded by seniority.

The Union representative stated at the hearing:

The employees have experienced some difficulty with the current language. There are employees in, specifically, the correctional division where it has occurred that the most senior employees are denied their shift preference for a shift they wanted that perhaps a junior officer was given, with no mechanism of relief.

The Union has proposed the following language for shift bidding:

Employees covered by this agreement shall select their work shifts and days off within their division and rank on the basis of seniority. Specialty assignments, such as detective or DARE officer will be exempt from the bidding process. Probationary employees shall also be exempt from the bidding process. Such bidding shall be done thirty days prior to the shift change, and the shift change shall only occur on the first day of the first full payroll period in January, May, and September, and shall not result in any overtime exposure. (Tr. I, p. 86-87.)

The Employer opposes any changes in the contract language. Sheriff

Bill Wilson testified that shift bidding by seniority results in the most experienced employees working together, leaving the least experienced without the guidance and support of senior employees. Wilson testified that there is considerable on-the-job training which might not be accomplished if employees were bunched together on the basis of their seniority. Wilson testified that he tries to accommodate employees but that it is not always

possible to do so. However, Wilson testified, when there are special problems he will work with employees. There was a particular employee, he recalled, who needed weekends off to address family problems. He was able to accommodate her, although not immediately, by hiring a part-time employee to fill in the gaps.

The Employer argues that shift assignments are a very important part of the Sheriff's authority and that the Union has failed to show any problems with the manner in which the Sheriff has exercised his authority.

The arbitrator finds merit in the Employer's argument. The recitation by the Union that there have been problems is insufficient to support a change in language which has been in the Agreement for some time. The Union needs to put on specific evidence that particular employee needs have not been addressed or that the Sheriff has abused his authority and acted arbitrarily or with caprice if it wants an outside third part to impose a new operational system upon the Sheriff. The award for the Employer on this issue should not be read as implying that the arbitrator has taken a position on the subject of shift bidding by seniority.

9. Training

According to the Union, and the Employer did not offer contrary evidence, the Sheriff posts training that is available. Employees sign up for the training and the Sheriff determines who will get the training. The Sheriff

generally assigns the training requested. There is no indication that he has acted arbitrarily or unfairly. There is no indication in the record that the Sheriff intends to alter this practice.

Initially the Union was seeking a guaranteed minimum number of hours of training for each employee. It has modified this proposal so that it is seeking only a written confirmation of the current practice. There is no language in the expired contract addressing this issue. The Employer opposes any contract language, but offers alternatives in the event that the arbitrator finds that some language is appropriate. Only a few of the comparable counties have training provisions in their agreements . The competing proposals are as follows:

Union

The Employer shall make reasonable efforts to equally distribute and offer training opportunities to all bargaining unit personnel. Such training may be conducted during on-duty time and may include state-mandate and firearms training. The Sheriff may adjust work schedules to accommodate training needs to minimize overtime liability.

Employer

A. *The Sheriff proposes no new language.*

B. *Alternatively:*

The Sheriff's Department will make reasonable efforts to offer appropriate training opportunities first to bargaining unit employees who have shown a need for additional training, and then to the other bargaining unit members.

C. *Alternatively:*

Employer shall make reasonable efforts to equally distribute and offer training opportunities to all

bargaining unit personnel.

The Employer argues that nothing needs to be added to the Agreement because there is no real issue. As the Employer suggests, "Again, one should not try to fix something when it's not broken." (Er. Brf., p. 54.) The arbitrator agrees. But here the Union is not seeking to change anything, but only to reduce to writing what is already the procedure. This is not unreasonable where two of the three Employer proposals on this issue would modify past practice, albeit slightly. If the Employer truly believes that no language is appropriate when none exists in the current contract, and the party seeking the language wants only to maintain the *status quo*, the Employer should be consistent and stay with its "no language" proposal and not alternatively offer different language. The latter position dilutes the persuasiveness of the former.

10. Layoffs

In the old agreement, employees are laid off within classifications by seniority, except that probationary, temporary and part-time employees are to be laid off first. The Union is seeking new language which permits a laid off employee in one "division" to bump a less senior employee in another division provided that the bumping employee has the present skills and abilities to do the job. The Employer opposes this proposal as unfair and unnecessary.

It is not clear whether the new language proposed by the Union is to be appended to the current language or whether it is to replace some of the old language. Although the arbitrator has the ability to alter a non-economic

proposal, and can make the language internally consistent, it is not clear whether the Union wants the cited section replaced or simply amended. This may be substantively meaningful because the old language refers to layoffs within particular job classifications, and there is no mention of "divisions." It is not clear whether divisions in the deputy unit are different from the classifications in that unit. Thus, it is not clear whether some of the specialized jobs performed by deputies are separate classifications for the purposes of the old language. If not, then classifications and divisions are the same. It is also not clear where part time employees fit into this scheme. Does a part-time employee with experience in another division have the same bumping rights as a full-time employee?

The Union also failed to disclose the number of employees previously affected by layoffs and whether bumping rights who have saved their employment. Finally, the comparables do not support the Union's position. The arbitrator expresses no opinion on the substantive merits of the Union's proposal, but only that the record is incomplete.

11. Sick Leave Pool

The Union has proposed the implementation of a sick leave pool available to employees who have had catastrophic illness or injury. These employees may receive a transfer of sick leave days from other bargaining unit members on a voluntary basis. During collective bargaining the Union at first

proposed a provision limited to contributions of one sick day per year. At the arbitration hearing the Union representative explained that the previously proposed language was unclear as to when the one day could be contributed and that the old proposal did not meet the need of a seriously injured or ill employee who has run out of sick days. There is no comparability support for this proposal.

The Employer has made a final offer of the Union's original sick leave proposal. The respective proposals are as follows:

Union	Employer
Upon written notification to the Employer, bargaining unit members may donate a specified number of sick days to another bargaining unit member. Such donation shall be limited only to those instances where a bargaining unit member has suffered a catastrophic non-duty related illness or injury, and shall not be donated as a matter of routine. Donation of sick days shall be strictly voluntary, and not subject to the grievance provisions of this Agreement.	Bargaining unit members shall be permitted (but not required) to contribute one sick day per year to a pool of sick days, which may be used by bargaining unit members on an as-needed if their sick leave accrual has been depleted. The Union shall administer such sick day allocation, and no grievances shall be filed as a result of such allocation of sick days. Within twenty-four (24) hours prior to use of any pooled sick leave, the Union must notify the Sheriff's office and provide the name of the employee using the same.

Although there are obvious similarities, the proposals are structurally very different. The Union's plan does not call for the creation of a pool, but rather a system where one or more employees can give some of their accrued sick leave to another employee in need (as defined). There is no existing residue of donated days to be used by contributing members at will. The

Employer's plan, on the other hand, would create a pool whose stock would consist of one donated day per year of accumulated leave by participating employees. The pool can be drawn upon by employees who have depleted their own sick leave.

The Employer's proposal appears to have greater potential for problems because it institutionalizes an idea and creates a more or less permanent entity. There are no guidelines on when an employee can draw upon the pool (other than after using up his own sick leave), and no guidelines about whether an employee who has not contributed or who had once contributed but does so no more may draw from the pool. There is no guidance on what happens if the pool is depleted and an employee who had previously contributed now has a need. In short, as drafted, the Employer's proposal could be an administrative nightmare.

The Union's proposal on the other hand creates no permanent body. Cause to implement it might never arise. When it does, it becomes a private matter between two or more employees with no long term continuity requirements. In a sense, once an agreement is struck by the donors and the donee, and the Employer is so notified so that it can make its bookkeeping adjustments, the matter is at an end.

However, there is no sense in removing access to the grievance procedure from this provision. Mistakes can be made. An employee who thought he was giving so many days may find his personal bank much lower

than he expected. Another employee who may have been promised days may find the Employer claiming ignorance of the deal. While the structure of the Union's proposal minimizes exposure for the Employer, it is unwise to think that the Employer is not connected with the system. It is, and if errors are made, individual employees should have a right of recourse.

C. Economic Issues for Courtroom/Clerk Unit

12. Wages

The wage proposals for this unit are the same as for the Deputy unit. The Union seeks \$1,000 per employee per year, and the Employer offers \$.33. \$.35 and \$.35 an hour for each year, respectively. Of course, the same considerations of the Employer's financial state are present here as was discussed for the Deputy unit. However, the similarities end here. The five employees (actually four employees as of the hearing, with an opening for a court security officer) in this bargaining unit are not on a pay schedule, but each have individual wage rates. They do have uniform longevity (or steps) which provides a flat \$156.00 for every two years of service.

According to the Employer, these employees are currently earning the following annual wages:²²

Records Clerk (19 years of service)	\$21,756
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²² Information taken from Employer Exh. 15 after subtracting \$686 from each wage rate listed for 12/1/98. The increases proposed by the Employer amount to \$686, \$728 and \$728 for each year, respectively.

Process Clerk (12 years of service)	20,824
Court Security (4 years of service)	21,650
Cook (6 years of service)	16,378

The Employer has presented evidence that these rates are in line with other white collar jobs in Franklin County, both in the public and private sectors. The Union points out that among those comparable counties with similar positions, the employees in this bargaining unit are substantially below average. While this may be true in principle, few counties in the comparability group have employees organized in these positions where there are wage levels with which to compare. External comparability for this bargaining unit is not a significant factor.

I find the Employer's proposal for wages to be more appropriate. As of December 1, 2000, the employees here would be enjoying wage increases of more than 10% (not including longevity). The cook would realize a 13% increase before longevity. Considering, further, the discussion above regarding insurance which will be applied to these employees as well, the Employer's wage proposal is more appropriate.

13. Wages for Court Security

For the position of Court Security Officer the Sheriff's Department uses employees who have received training at the Police Training Institute. In terms of training, these employees are fully qualified to be sworn and deputized. In at least one case, the Court Security Officer was administered

the oath as a Deputy Sheriff. Although these employees are authorized to carry weapons in the course of their assignments in courtrooms, they do not otherwise act as or perform the duties of a Deputy Sheriff. They are not hired to be Deputies.

The Union is seeking to have Court Security Officers paid the same rate as Deputy Sheriffs (in the other bargaining unit) based solely on their training and sworn status. Without belaboring the point, the Union's theory is simply flawed. Employees are paid for the jobs for which they are hired, not for the jobs for which they might be qualified. In certain cases employees classified for one position but performing the work in another may be entitled to redress.

That is not the situation here. If the Court Security Clerks want to be Deputies they should apply for that position.

14. Longevity

The Union is seeking an increase in longevity stipends from \$156 every two years to \$300 for every two years of service. The Employer proposes no increases. The Union's proposal is equal to an additional \$144 for every two years of service for each employee. For a 20 year employee this represents an increase of \$1,440 per year. It can be argued that this represents a windfall because the same employee will only be getting regular wage increases of \$686, \$728 and \$728 per year, respectively. The longevity computation for these employees under the Union's proposal will result in

nearly twice as much additional pay as yielded by the wage increases.

The problem here is that the Employer has offered nothing by way of an adjustment, nor has it supplied any reason why the longevity for these employees is so much lower than the scale for the other bargaining unit.²³ Considering the package of wages and benefits as a whole for this bargaining unit, and the other statutory factors, the Union's proposal, of what amounts to an additional \$.07 an hour every two years, represents a more appropriate award than no change at all. The arbitrator also notes that, as with the Deputies, only a few employees (currently four) are affected by this change.

- 15. Health Insurance Coverage)
- 16. Health Insurance Contributions)
- 17. Retroactivity)

The arbitrator has carefully considered these issues for this bargaining unit in light of the examination and discussion of the same issues for the Deputy unit. There are no distinguishing features here which call for a conclusion other than what was articulated above for the Deputy unit.

18. Transfers

The Union's final offer for this issue states that it is proposing "the following section be added to the parties' collective bargaining

²³ \$156 is equal to \$.075 an hour.

agreements."(emphasis added) Thereafter the proposal refers to adding a Section 9 to Article 12, Seniority. However, the seniority article in the Courtroom/Clerk contract is Article 11. The error/omission is repeated in the brief, where the Union refers specifically to Article 12, but requests the changes be made in both contracts. The arbitrator considers this to be a matter of clerical oversight. The Union's intent to amend each contract by adding the text supplied is clear. What is unclear, however, is the relevance of this proposal for the Courtroom/Clerk unit. There was no testimony or other evidence in support of this proposal. There is nothing to lead the arbitrator to believe that employees in the classifications (division?) in this unit want to transfer to other positions within this bargaining unit. Because of a lack of factual support for this issue as well as the problems the language presents (as discussed above for the Deputy unit), these amendments will not be awarded.

D. Non-Economic Issues for the Courtroom/Clerk Unit

19. Training

The Union proposes the same training language for the Clerks, Courtroom Security and Cook as it proposed for the Deputy unit. However, it failed to make a record that training for this unit was ongoing and, if so, what the practice was. The arbitrator notes that the Court Security Officer may be in need of additional training from time to time, but there is no certainty as to what training opportunities have been offered to these employees in the past.

To add this language to the Agreement for this unit might be taken as an implication that training not otherwise available should now be made available.

Without an adequate record, this proposal cannot be awarded.

- 21. Layoffs)
- 22. Sick Leave Pool)

The arbitrator has carefully considered these issues for this bargaining unit in light of the examination and discussion of the same issues for the Deputy unit. There are no distinguishing features here which call for a conclusion other than what was articulated above for the Deputy unit.

A W A R D

1. The Employer's proposal for Deputy unit Wages is awarded.
2. The Union's proposal for Deputy unit Longevity is awarded.

3. The Employer's proposal for Deputy unit Holidays is awarded.
4. The Employer's proposal for Deputy unit Insurance Coverage is awarded.
5. The Union's proposal for Deputy unit Insurance Contributions is awarded.
6. The Employer's proposal for Deputy unit Retroactivity is awarded.
7. The Employer's proposal for Deputy unit Transfers is awarded.
8. The Employer's proposal for Deputy unit Shift Bidding is awarded.
9. The Union's proposal for Deputy unit Training is awarded.
10. The Employer's proposal for Deputy unit Layoffs is awarded.
11. The Employer's proposal for Deputy unit Sick Leave Pool is awarded with modifications
12. The Employer's proposal for Courtroom/Clerk Wages is awarded.
13. The Employer's proposal for Court Security Wages is awarded.
14. The Union's proposal for Courtroom/Clerk Longevity is awarded.
15. The Employer's proposal for Courtroom/Clerk Insurance Coverage is awarded.
16. The Union's proposal for Courtroom/Clerk Insurance

Contributions is awarded.

17. The Employer's proposal for Courtroom/Clerk Retroactivity is awarded.
18. The Employer's proposal for Courtroom/Clerk Transfers is awarded.
19. The Employer's proposal for Courtroom/Clerk Training is awarded.
20. The Employer's proposal for Courtroom/Clerk Layoffs is awarded.
21. The Employer's proposal for Courtroom/Clerk Sick Leave Pool is awarded with modifications.

Respectfully submitted,

HARVEY A. NATHAN

November 3, 2000