



In the Matter of the Interest Arbitration Between

_____ :
St. Clair County and St. Clair County Sheriff :
 :
-- and -- : **AWARD AND**
 : **OPINION**
 :
Illinois Fraternal Order of Police :
Labor Council :
 :
Case No. S-MA-99-60 :
_____ :

Before Matthew W. Finkin, Arbitrator.

The instant matter was heard in Belleville, Illinois, on May 22, 2000. St. Clair County was represented by Stephen R. Wigginton, Esq. The Fraternal Order of Police Labor Council [hereinafter the "Union"] by Thomas F. Sonneborn, Esq. The hearing was conducted by the identification and introduction of an extensive documentary record. Included in this and admitted by the Arbitrator was an agreed upon statement of the parties on "Ground Rules and Pre-Hearing Stipulations." By this agreement, the parties stipulated *inter alia* that all procedural prerequisites under the Illinois Public Labor Relations Act have been met, that the parties waived the appointment of employer and union representatives to the arbitration panel, that five of the six remaining issues are within the Arbitrator's jurisdiction to decide -- the sixth issue to be discussed more fully below -- and that the tentative agreements reached between the parties on all other remaining issues and introduced on the hearing record as Joint Exhibit 2 will be incorporated by reference into the Arbitrator's award.

Pursuant to the agreement of the parties, the County's written brief arguing the above was transmitted under date of July 17. The Arbitrator inquired of the Union by facsimile transmission of July 25 of when its brief might be expected. The Union requested an extension

of which request the Union stated that it would inform the County. The undersigned granted the request with leave to the County to submit a written reply if it felt the need so to do. The County objected to receipt of the Union's brief as not within the stipulated Ground Rules requiring the consent of both parties for an extension. The Union then requested to withdraw its brief which request the undersigned granted on August 21. By letter of August 22, the County informed the undersigned accordingly that it would not be submitting a Brief in reply.*

The undersigned requested the parties' clarification of the record on the cost of their respective longevity proposals. This was complied with by the Union on August 11 with notice to the County, and by the County on August 31, 2000, with notice to the Union.

Both parties were very ably represented; the facts and issues were thoroughly presented and, though the Union failed to submit written argument in support of its position, the factual record is amply developed for the disposition of the issues presented.

I. The Issues

The parties Stipulations set out six impasse issues. The wage increases for deputies and corrections officers are treated as separate issues even though the respective last offers of the parties are identical for each; but longevity pay is treated by the parties as a single issue, even though the sums offered vary as between deputies and corrections officers. Even so, the

*The County stated that in consequence of the withdrawal of the Union's brief, "the legal argument and facts set forth in the Union's brief are not part of the record." The former is certainly correct; and any disadvantage to the Union as a result of its failure timely to file its brief is a consequence of its own inaction. The latter is accurate only insofar as the brief would attempt to adduce facts not already on the record. The facts relied upon in this Award are contained exclusively in the extensive sets of documents laid out in the record, save where arbitral notice of public documents might be taken or where the parties have supplemented the record at the Arbitrator's express request.

Arbitrator is called upon by law to treat these economic issues as the parties have framed them. Consequently, the issues presented are: (1) and (2) wage increases for deputies and corrections officers respectively; (3) eligibility date for longevity pay; (4) longevity pay increments; (5) vacation time for officers of more than twenty years of service; and, (6) the employee's right to elect overtime compensation in money or in compensatory time. On the latter, the County argues that the undersigned lacks power to award in favor of the Union.

A. Last Offers

The respective last offers of the parties on these issues are:

1 & 2. Wage Increase For Deputies and Corrections Officers

Both parties have made offers for a three-year package retroactive to January 1, 1999. (The County's fiscal year and calendar years coincide.) The respective last offers are:

<i>Union</i>	<i>County</i>
1999 -- 3.5%	1999 -- 3.5%
2000 -- 4.0%	2000 -- 3.5%
2001 -- 4.0%	2001 -- 3.5%

These additional features of the parties wage offers ought also be laid out:

(a). The Union proposes that the initial probationary step in the existing pay plan be maintained (or "frozen"). The County does not disagree.

(b). The County has made an alternative offer which the Union contests as unauthorized by the arbitration procedure established by the Illinois law. Under the County's alternative, the arbitrator would have to accept the County's offer of longevity pay increases and reduce the number of sick days from 12 per year to 8. Were this to be adopted -- putting aside for the moment the Arbitrator's power so to award -- the wage increases offered would be:

1999 -- 4.0%
 2000 -- 5.5%
 2001 -- 4.0%

(c). The Union has asked the Arbitrator to award that the County will pay the retroactive pay due within 45 days of the date of the award. There is no magic to this number; the Union asked that the award reflect an order of reasonably prompt payment.

3. Timing of Longevity Pay

<i>Union</i>	<i>County</i>
To be paid on the anniversary date of the date of hire.	To be paid, as <i>per</i> current practice, on the number of years of continuous service as of January 1.

4. Longevity Increases

<i>Union (Deputies)</i>				<i>County (Deputies)</i>
	1999	2000	2001	All Years
Years/Service				
5-9	\$ 250	no increase	\$200	\$ 200
10-14	\$ 750	\$250	\$200	\$ 400
15-19	\$1,500	\$500	\$200	\$1,000
20+	\$2,000	\$500	\$200	\$1,500

<i>Union (COs)</i>				<i>County (COs)</i>
	1999	2000	2001	All Years
Years/Service				
5-9	\$ 250	\$250	\$200	\$ 75
10-14	\$ 750	\$250	\$200	\$ 250
15-19	\$ 750	\$250	\$200	\$ 500
20+	\$ 750	\$250	\$200	\$1,500

5. Vacations

The Union seeks forty hours (a week in common parlance) for deputies and corrections officers upon the completion of twenty years of service. The County insists upon the status quo, which is four weeks of vacation after twelve years service.

6. Overtime

The Union demands that when an officer works overtime, he or she be given the option to choose whether to be paid for that time or to take that time as compensatory time. The County argues that the Arbitrator lacks authority in the matter as a result of operative provisions of the Fair Labor Standards Act as interpreted by the United States Supreme Court. Assuming *arguendo* the Arbitrator to hold that he has power to award on this issue, the County insists on the status quo whereby the employer has the authority to designate how the time will be compensated.

II. The Statutory Criteria

Illinois law directs the parties to submit to the Arbitrator "its last offer of settlement on each economic issue." 5 ILCS 315, § 14(f). It then directs the Arbitrator to "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). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h)."

Subsection (h) directs the Arbitrator to base his 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, 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.

Pursuant to subsection 4(A) above, the parties have stipulated to comparable public sector communities for purposes of this proceeding. *Viz.*: Champaign, Madison, Peoria and Sangamon counties.

III. A Preliminary Matter: The County's Alternative Economic Package

Before the undersigned can address the competing last offers under the above statutory criteria, the permissibility of considering the County's alternative package has to be addressed.

As noted above, the County has made "last offers" on wages and longevity increments; but, it has offered as well a second last offer that links an alternative and increased wage offer to acceptance of its longevity offer coupled with a reduction in sick days. The Union contests the permissibility of considering this second (or alternative) last offer. Disposition of this question requires a close reading of the statute and its context.

When the possibility of legislation extending collective bargaining into the public sector was widely discussed in the 1960s, one of the most vexing questions was whether or not to permit public employees to strike, and, if a strike were to be forbidden -- especially for employees in the protective services -- what means could be provided to substitute for that device. (The literature is canvassed in Harry Edwards, Theodore Clark & Charles Craver, *LABOR RELATIONS LAW IN THE PUBLIC SECTOR*, Ch. 7 (4th ed., 1991)). An obvious possibility was interest arbitration. But the major drawback was summarized by Professor Carl Stevens,** the modern progenitor of what he called "one-or-the-other arbitration," but which has come to be termed "best last offer" arbitration:

Under conventional compulsory arbitration, at least one party may feel he could get more from the arbitrator than he could by direct negotiation with his opposite number. Consequently, the collective bargaining session would be merely a period of preparation before the real adversary hearing with the arbitrator.

Carl Stevens, *The Management of Labor Disputes in the Public Sector*, 51 ORE. L. REV. 191, 195 (1971). Or, as another leading commentator put it, "[C]ompulsory arbitration undermines good faith bargaining, for the weaker party has little to gain from bargaining." Merton Bernstein, *Alternatives to the Strike in Public Labor Relations*, 85 HARV. L. REV. 458, 467 (1971). "Best last offer" arbitration was thought to provide a "strike-like" alternative, bringing the parties closer to agreement without an interruption of critical services. *Id.*

Rather quickly, two forms of "best last offer" arbitration were considered. In one, the "package vs. package" plan, the arbitrator had to accept one or the other of the parties' last offers

**The seminal writing is Carl Stevens, *Is Compulsory Arbitration Compatible with Bargaining*, 5 INDUS. RELATIONS 38 (1966).

in its entirety, the potential consequence of a loss in arbitration thus driving the parties closer together in bargaining. The other, the "issue-by-issue" form, required the arbitrator to select one or the other parties last offer on an issue by issue basis. Illinois adopted this approach. See Robert Howlett, *Interest Arbitration in the Public Sector*, 60 CHI.-KENT L. REV. 815, 830-832 (1984). "In this way," it is argued, the arbitrator has "the prerogative of considering each issue on its merits," and intransigence is minimized. Joan McAvoy, *Binding Arbitration of Contract Terms: A New Approach to the Resolution of Disputes in the Public Sector*, 72 COLUM. L. REV. 1192, 1201-1202 (1972) (reference omitted).

For three closely interrelated reasons, I conclude that the County's alternative proposal is not countenanced by the law. First, the statute provides that the offer must be for settlement of "each economic issue." (Emphasis added.) Second, to accept this particular conflated package of three economic issues is to move toward a "package vs. package" arbitration system that the Illinois legislature tacitly rejected. Third, to make this conflated package an "alternative" last offer moves the arbitrator toward a non-last offer system where the parties can hold their real positions in reserve hoping for the arbitrator later to "split the difference." The legislature may have chosen wisely or unwisely to opt for an issue-by-issue system; but, opt it did and the arbitrator is bound by that choice.

IV. Analysis

The Illinois law set out above requires consideration *inter alia* of the welfare of the public and the financial ability of the unit of government to meet the costs in question. The County has expressly not invoked an inability to pay as driving its position here. Nevertheless, the statute requires the undersigned to be very sensitive to the costs that would be imposed on the

governmental unit, and so directs attention to the County's financial situation insofar as it would be affected by the Arbitrator's award.

According to census data supplied by the County, in 1997, St. Clair County had a population of just over 263,000, virtually unchanged from 1990; and, as of 1996, a poverty rate (16.5%), which, however, represents a significant reduction from 18.3% in 1993. Unemployment in the years 1996-1998 remained stable at around 6%, higher than the national average. Between 1990 and 1997, however, new permits for private housing units increased by about a third. The ending balance of the County's General Fund for the three years preceding the date for which this award would be effective (1999) are: 1996 -- \$36.9 million, 1997 -- \$35.9 million, 1998 -- \$44.2 million.

The prior interest arbitration between the parties noted the policy of the County to budget more in the nature of anticipated expenditures than the County actually expends. That policy is reflected as well in the figures given for the above years. Moreover, actual expenditures in these years remained relatively stable: 1996 -- \$21.5 million; 1997 -- \$22.5 million, 1998 -- \$22.2 million. Total tax revenues also remained stable, \$65.9 million in 1996, \$64.8 million in 1998; but, the general fund tax rate declined, from 0.1868 to 0.1720 in that period, this while equalized assessed property valuation increased from \$1.88 billion to \$2.16 billion. *I.e.* the general fund tax rate declined by about 8% while the equalized property value in the County increased by about 15%. In other words, the County has continued to pursue a relatively conservative fiscal policy, enjoys a substantial and growing tax base and strong positive budgetary balances.

It would also be useful to consider the County's expenditures for Public Safety in the period 1990-1998, the prior interest award being made retroactive to 1991:

	1990	1991	1992	1993	1994	1995	1996	1997	1998
(in millions)	5.82	7.24	9.23	8.48	8.40	8.60	9.10	9.80	10.21
% change from prior year	+17%***	+24%	+28%	-8%	—	+2%	+6%	+8%	+4%

As a percentage of total expenditure, the County's Public Safety budget represented 42.3% of total in 1996, 43.5% in 1997 and 46% in 1998.

Issues 1 & 2: Wage Increase for Deputies and Correctional Officers

The wages for deputies and corrections officers are a combination of base pay and longevity increments. Because of the way the statute sets up the best last offer system, the parties have made separate last offers on each, that is, on across-the-board pay increases as a percentage of base pay and longevity increments in dollar amounts. As a result, the statute commands the Arbitrator to consider each issue under the eight statutory heads set out above, one of which, however, also commands the Arbitrator to consider the "overall compensation" currently received -- which means that each cannot be taken in isolation from the other, *i.e.* wages and longevity.

As the prior award between the parties, *In the Matter of the Interest Arbitration Between County of St. Clair and Illinois Fraternal Order of Police Labor Council* (May 27, 1992) [hereinafter 1992 *Interest Arbitration*], observed, the analysis of increases to base pay bears special emphasis on those for whom longevity increments do not yet apply. *Id.* at 25. Here, a considerable disparity between Deputies and Correctional Officers is presented: There are no deputies currently on the roster with less than 5 years seniority (69% have between 6 and 15

***The Public Safety Expenditures for 1989 were almost exactly \$5 million.

years seniority), whereas 6 correctional officers have under one year's seniority and a total of 51% are under 6 years seniority.

The general wage structure for these groups in the context of comparable communities for

Deputies are:

	<i>St. Clair</i>	<i>Champaign</i>	<i>Madison</i>	<i>Peoria</i>	<i>Sangamon</i>	<i>Av.</i>
Starting	29,985	31,054	30,805	27,989	31,720	30,392
After 1 yr.	33,317	32,677	33,176	28,586	32,306	31,686
After 25 yrs.	36,887	45,323	43,965	39,933	47,658	44,220

St. Clair County Deputies currently start at \$407 (about 1.3%) below the average for all comparable communities which disparity continues until, after 25 years of service, it is \$7,333 (or about 16.6%) below average. Irrespective of pay bracketed by length of service, these data evidence that the wage structure as a whole for deputies falls significantly below the average for comparable communities.

Analysis accordingly proceeds to the statutory criteria: First, the interests of the public and the financial ability of the government unit. These were rehearsed fully in the previous interest arbitration and need not be recast again save insofar as conditions have changed. On the latter, the record is ample concerning the County's fiscal situation. The County has not argued on any account to an inability to pay; and, indeed, is in sound financial shape.

Second, the statute directs consideration of comparative data in both the public and private sectors. The former has been set out and will be dealt with in greater specificity in the treatment of longevity. The latter is less relevant inasmuch as the positions presented here are not well reflected in the private sector workforce. Even so, the County has provided data on wage

behavior in the private sector. These data show that non-seasonably adjusted wages in private industry grew at an annual rate of between 3.2% and 3.6% per quarter in 1999, and 4.2% in the first quarter of 2000. Wages and salaries in state and local government grew at an annual rate of 2.9% and 3.6% per quarter in 1999, and at 3.8% in the first quarter of 2000.

Third, the law directs consideration of the increase in consumer prices -- the CPI. Analysis here is complicated by the Bureau of Labor Statistics (BLS) changing its computation period to a new base (1982-1984) and refining its comparisons. The County has argued that the "inflation rate" for 1999 and 2000 are 2.5% and 2.7% respectively, and is projected to be 2.9% for 2001. Brief of the County at 5. But it provides no authority or source for this statement other than a chart in its submission which, in turn, also provides no reference. The Union's data includes reference to BLS figures for 1998, 1999 and for the first quarter of 2000 on which CPI data is also provided by BLS on its website: <http://stats.bls.gov/cpihome.htm> (visited July 18, 2000). According to these BLS data, the growth in CPI for 1999 was 3.5% and for the 12-month period ending in June, 2000, 3.7%; no projection is given for 2001. Accordingly, all these data are reflected below:

	<i>Union Offer</i>	<i>County Offer</i>	<i>Public Sector Wage Increase</i>	<i>Private Sector Wage Increase</i>	<i>CPI Increase</i>
1999	3.5%	3.5%	3.25% (unadjusted)	3.4% (unadjusted)	3.5%
2000	4.0%	3.5%	3.8% (first quarter)	4.2% (first quarter)	3.7% (first quarter)
2001	4.0%	3.5%	----	----	----

Fourth, the law directs consideration of overall compensation including matters other than wages, e.g. vacations, benefits, holidays and the like. The County argues that the total

compensation for deputies, that is, wages plus medical insurance (which costs will have increased by 38.6% over three years), in conjunction with increases the County projects for retirement and clothing “exceeds that found in the private sector.” Brief of the County at 5. The argument elides the point that because police and corrections have few private sector counterparts the stronger, indeed the compelling comparison is to the total package of wages and benefits paid to persons in comparable positions in comparable communities, as the statute directs. On this, the County has adduced no evidence in this proceedings comparing St. Clair County’s package of non-wage benefits with those provided comparable employees in the comparable communities. The undersigned accordingly adopts the approach taken in the 1992

Interest Arbitration:

A review by the Chairman of comparable County contracts show they contain provisions, while not exactly the same as those of St. Clair County, for the payment of fringe benefits of medical, dental, vision, dependent coverage in those areas as well as provisions for life insurance and dependent coverage, personal days, holiday and vacation time, etc. While these items are an expense to the Employer, the same or similar expenses occur in the comparable counties who, like St. Clair County, must negotiate wages. Where the comparable counties have similar problems and provisions solving them, it is the Panel’s belief that these items should not be taken into consideration in making a decision on wage increases.

1992 *Interest Arbitration, supra* at 14.

With respect to **Correctional Officers**, much of what has been discussed concerning the deputies is equally applicable and need not be repeated. The parallel comparison for the Correctional Officers is set out below:

	<i>St. Clair</i>	<i>Champaign</i>	<i>Madison</i>	<i>Peoria</i>	<i>Sangamon</i>	<i>Av.</i>
Starting	25,689	30,826	28,933	22,300	19,561	25,405
After 1 yr.	28,543	31,366	32,531	25,000	21,895	27,698
After 25 yrs.	31,711	41,101	41,669	30,750	28,349	35,467

St. Clair County Correctional Officers currently start \$284 above average in pay and broaden that advantage to \$845 after the first year, but fall about 10.6% below after 25 years.

As the parties recognize, there is a significant disparity in the wage structure in terms of how Deputies and Correctional Officers are treated vis-a-vis their counterparts in comparable communities. (This is recognized in the distinctions between the two groups in the respective last offers on longevity increments.) Although the parties have treated the wage increases for these two groups as separate matters, the last offers for each are identical; and maintaining a general equality in the growth of the two wage structures as a whole was articulated in the 1992 *Interest Arbitration* as an important public policy which, consistent with 5 ILCS 3/5, § 14(f)(8), arbitrators are required to take into account.

Accordingly, taking account of all the statutory factors and the evidence presented bearing on them, I find the Union's last offer better to comport with the application of these criteria than does the County's. In particular, the Union's offer more closely adheres to the known and projected cost of living increases for the period in question and the growth in both public and private sector wages. It would better serve the welfare of the public, consistent with the County's ability to pay, than would the County's offer.

Issue 3: Timing of Longevity Pay

The County pays the longevity increment on the basis of completed years of service as of January 1. It would keep its current (and past) practice in this regard. The Union would change this to require payment on the basis of the employee's anniversary date of hire as a more equitable policy. In support of this position, the Union has adduced the fact that three of the four comparable communities -- Sangamon, Peoria and Madison -- compute longevity on this basis.

The County argues that the record is inadequate to overcome its well-established past practice: "The Union's argument that the past practice (agreed to on several occasions by the Union) creates a pay inequity is meritless." Brief of the County at 8.

The County's argument touches a point critical to the "best last offer" interest arbitration process: "The weight of arbitral authority . . . is that the proponent of change bears the burden of persuasion on the need for the change. . . . [T]he burden is assumed because of the long-standing nature of the prior policy and the expectations concomitantly founded on it." *In the Matter of the Interest Arbitration of the Village of University Park*, ISLLRB Case No. S-MA-99-123 (Finkin, Arb.) (1999) at p. 15.

The current practice may be less reasonable than a date of hire policy; but, the Union has not shown that the system has created operational problems for the employer or has ceased to serve its operational end which would appear to be ease of administration and, possibly, a husbanding of the public fisc, though the County has not argued specifically to these. The latter, it should be noted, can also be served by treating the question of longevity pay increments directly, which would obviate the need to treat the timing of the increments as a subsidiary aspect of the longevity pay issue.

In sum, on the facts and statutory criteria, this is a *very* close issue. Insistence on a prior practice that has been rendered anachronistic by a widely accepted change, evidenced in comparable communities, could not be defended merely because it is the status quo. But the record on that account is equivocal. Three of five comparable communities pay on an anniversary date basis; two (including St. Clair County) on a January first basis. Were St. Clair County the singular hold out, I would find that factor under subsection (h)(4)(A) to weigh in the Union's favor. But in terms of working conditions and managerial policy, there is a very heavy presumption in an interest arbitration in favor of the status quo which presumption, for the foregoing reasons, is not quite (or yet) overcome here.

Issue 4: Longevity Increases

The parties' last offers treat Deputies and Correctional Officers separately albeit as part of a single last offer.

(a). Deputies

Set out below is the current wage structure of St. Clair and comparable communities (not accounting for differences in fiscal and calendar years in some counties):

	<i>St. Clair</i>	<i>Champaign</i>	<i>Madison</i>	<i>Peoria</i>	<i>Sangamon</i>
Starting Pay	\$29,985	\$31,054	\$30,805	\$27,989	\$31,720
After 1 yr.	33,317	32,677	33,176	25,000	32,306
After 5 yrs.	33,817	34,944	40,142	30,975	37,700
After 10 yrs.	34,874	40,102	42,053	33,961	42,978
After 15 yrs.	35,880	42,723	43,965	36,947	43,746
After 20 yrs.	36,887	45,323	43,965	39,933	47,658

After 25 yrs.	36,887	45,323	43,965	39,933	47,658
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The disparities are better revealed by comparing St. Clair with the average of all comparables.

	<i>St. Clair</i>	<i>Average of Comparables</i>	<i>% Difference</i>
Starting	29,985	30,392	-1.34
1 yr.	33,317	31,686	+5.15
5 yrs.	33,817	35,940	-5.91
10 yrs.	34,874	39,774	-12.32
15 yrs.	35,880	41,845	-14.26
20 yrs.	36,887	44,220	-16.58
25 +	36,887	44,220	-16.58

(b). Corrections Officers

Set out below is the current wage structure of St. Clair and comparable communities (not accounting for differences in fiscal and calendar years in some counties):

	<i>St. Clair</i>	<i>Champaign</i>	<i>Madison</i>	<i>Peoria</i>	<i>Sangamon</i>
Starting Pay	\$25,689	\$30,826	\$28,933	\$22,300	\$19,561
After 1 yr.	28,543	31,366	32,531	25,000	21,895
After 5 yrs.	29,043	32,989	38,045	26,900	27,048
After 10 yrs.	29,983	35,693	39,857	29,100	27,829
After 15 yrs.	30,847	38,376	41,669	30,750	28,349
After 20 yrs.	31,711	41,101	41,669	30,750	28,349
After 25 yrs.	31,711	41,101	41,669	30,750	28,349

The disparities are better revealed by comparing St. Clair with the average of all comparables:

	<i>St. Clair</i>	<i>Average of Comparables</i>	<i>% Difference</i>
Starting	25,689	25,405	+1.12%
1 yr.	28,543	27,698	+3.05%
5 yrs.	29,043	31,246	-7.05%
10 yrs.	29,983	33,120	-9.47%
15 yrs.	30,847	34,786	-11.32%
20 yrs.	31,711	35,467	-10.59%
25 +	31,711	35,467	-10.59%

Obviously, there is a significant disparity in the treatment of longevity -- that is, in the growth in the wage structure that an individual can expect over the course of his or her career -- between St. Clair and comparable counties, albeit more sharply so of deputies than of corrections officers; and, indeed, both parties recognize the need for different treatment of the two groups by making different final offers with respect to each of them. Both would begin to rectify the disparity in the wage structures between St. Clair and comparable communities, the County at a slower rate than the Union. However, the County defends its proposed final offers only in terms of the respective rates of increase in longevity pay separate from the total wage structure: It would increase longevity pay over the three year period from 14% to 42% for deputies, and from 6% to 47% for corrections officers; but, it charts the Union's proposals as increasing deputies longevity pay from 35% to 86%, and corrections officers from 38% to 140%.

Not surprisingly, the Union presents a different picture. It factors its longevity proposals into the wage structure and computes the increase in total wages (base rates plus longevity) over the three year period worked by its proposals as varying from 12% to 18% for deputies, and from 12% to 20% for corrections officers. Of course, both are accurate in their respective frames of reference; but neither are especially helpful in the resolution of the issue.

The County characterizes the Union's offer as "astronomical." Brief of the County at 8. It claims the Union's offer is unacceptable under the law. *Id.* at 9, citing ISLRB Rules and Regulations, § 1230.100(b). It claims its increases are substantially above the increases offered by comparable counties. *Id.* at 10. And, most importantly, it asserts the Union's proposal will cause "tremendous increases" in the County's costs in future:

Under the Union's longevity proposal, the cost to the County for *longevity pay alone* will increase an average of 26.1% per year. Under the Union's proposal, longevity costs will nearly double over the proposed three year term and will triple, rising from \$127,000 in 1998 to \$360,000 in 2005. Under the County's proposal, the amount paid out by the County during the three-year term will rise from \$127,264 to \$184,155.

Id. at 11 (emphasis added).

The facts do not justify the hyperbole. Let us analyze each of these claims. The Union's longevity increases appear "astronomical" only because the County has focused on those increases and on those increases alone. Any growth from zero is exponential: An increase of an allowance of one dollar to ten dollars constitutes a raise of 1000%. So, for example, when the Union proposes to increase the corrections officers longevity increment after five years of service from its current \$500 to \$750 (adding \$250) in 1999, to \$1,000 (adding another \$250) in 2000, and to \$1,200 (adding another \$200) in 2001, the total increase over that period of 140% may

well seem "astronomical" looking at longevity pay alone, but the total increment at the end of the three year period is \$700 above the existing level -- scarcely an "astronomical" figure. That \$700 would constitute about 2% of the corrections officer's wage of \$33,153 under the Union's proposal.

Moreover, the County's disaggregating treatment is inconsistent with its argument on wages dealt with earlier (and reiterated in the above quoted assertion) that the Arbitrator has to be sensitive to the total compensation package and to the costs it would require the County to absorb. These are the factors the statute directs the Arbitrator to consider and which are reiterated in Rule § 1230.100(b) relied upon above. Section 1230.100(b)(3) directs the Arbitrator to base his award on "[t]he interests and welfare of the public and the financial ability of the unit of government to meet these costs." The former element was dwelt upon by the prior *Interest*

Arbitration:

The Arbitration Panel recognizes that the maintenance of a well-trained police force who can respond to public needs, apprehend law violators and render these services to the public are in its best interest and welfare and therefore needs to be adequately compensated to ensure continuity of employment in the service of the County. The Panel also recognizes that it is likewise in the best interest and welfare of the public that well-trained and able correctional officers who see that criminal violators are properly incarcerated and handled in an acceptable manner without involving the County in lawsuits is also in the best interest of the public and therefore needs stability in personnel which stability can only be obtained through proper remuneration.

Id. at 9-10.

Both offers recognize a current disparity in the wage structure between St. Clair County and comparable communities which both would address by increases in longevity pay. How they

would begin to redress these disparities is displayed below comparing the amount of longevity pay after three years with the *current* levels of wage disparity:

**COMPARISON OF LONGEVITY PACKAGES (2001) WITH *CURRENT*
DEPUTIES WAGE LEVELS VIS-A-VIS AVERAGE OF
COMPARABLE COMMUNITIES**

	<i>Proposed Increase (County)</i>	<i>Proposed Increase (Union)</i>	<i>Dollar Difference</i>	<i>Current Wage Disparity</i>
5 years	\$700	\$900	\$200	-\$2,123
10 years	\$1,957	\$2,757	\$800	-\$4,900
15 years	\$3,563	\$4,763	\$1,200	-\$5,965
20 years	\$5,070	\$6,270	\$1,200	-\$7,333

**COMPARISON OF LONGEVITY PACKAGES (2001) WITH *CURRENT*
CORRECTIONS OFFICERS WAGE LEVELS VIS-A-VIS AVERAGE
OF COMPARABLE COMMUNITIES**

	<i>Proposed Increase (County)</i>	<i>Proposed Increase (Union)</i>	<i>Dollar Difference</i>	<i>Current Wage Disparity</i>
5 years	\$575	\$1,200	\$625	-\$2,203
10 years	\$1,690	\$2,640	\$950	-\$3,137
15 years	\$2,804	\$3,504	\$700	-\$3,939
20 years	\$4,668	\$4,368	-\$300	-\$3,756

As the above illustrates, neither offer dramatically affects these disparities. (Nor can it be assumed that these communities will be giving no wage increases at all in this period.) The Union's offer does a slightly better job and is accordingly better in keeping with a long-term goal of reducing these disparities better to serve the public welfare for the reasons set out above.

Consequently, and just as the County rightly argues, the question is one that comes down to cost.

By letter of July 31, the Arbitrator requested the parties to provide him with a more precise accounting of the costs of their respective longevity proposals. The Union replied by laying each of the proposals against the seniority rosters (and so dates of hire) of the deputies and corrections officers. By its lights, the cost difference between the parties is::

<i>Year</i>	<i>Employer</i>	<i>Union</i>	<i>Difference</i>
1	\$136,899	\$152,225	\$15,326
2	\$153,270	\$187,516	\$34,246
3	\$171,577	\$233,699	\$62,122

So, too, did the County cost out these proposals. By its lights, the cost difference between the parties is:

<i>Year</i>	<i>County Proposal</i>	<i>FOP Proposal</i>	<i>Difference</i>
1999	\$124,783	\$141,383	\$16,600
2000	\$113,254	\$175,254	\$34,250
2001	\$126,649	\$212,246	\$53,747

By the Union's reckoning, the cost to the County for the three year period that would be covered by the instant award by accepting the Union's last offer instead of the County's is \$111,694. By the County's reckoning, the Union's last offer would cost the County \$104,579 more. The discrepancy of \$7,097 is not significant and, for the purpose of analysis, the Union's larger figure will be taken.

Inasmuch as County expenditures should average (conservatively) about \$22 million a year, or, \$66 million over the period 1999-2001, the addition of this \$112,000 over the three year period resulting from adopting the Union's proposal over the County's would represent a further

cost to the County of 17/100 of 1% -- .0017 -- of its total budget, and about 4/10 of 1% -- .004 -- of its expenditures for public safety (*see* page 10, *supra*). It is well within the public employer's ability to pay.

To be sure, the County has argued to the long-term cost impact of the Union proposal pointing to an increase to \$360,000 in 2005; but one simply cannot know now, in the year 2000, what quit rates or other circumstances will be in 2005. Of course, both proposals will have implications that transcend the period presented here; that is, in the very nature of a longevity structure. The critical question for the Arbitrator, given the "best last offer" statutory mandate, is the impact of the *differential* between the parties offers, one or the other having to be accepted. Sufficed it to say, the prospect of growth in the wage structure serves as an incentive for trained and experienced officers to remain with the Department. Accordingly, considering the facts before me, I conclude that the Union's proposal better comports with the statutory criteria than does the County's.

Issue 5: Vacations

The County's past and current policy is to provide ten days of paid vacation after one year of service, fifteen days after five and twenty days after twelve. The Union seeks to add an additional week after twenty years of service.

Relatively few persons currently have or will have the requisite years of service in the immediate future: Eight deputies were hired on or before 1979; only one corrections officer was hired in that period. Thus the current cost of the County would be small; but, cost will increase as those on the seniority roster age, absent death, discharge or voluntary departure.

More important, there is no pattern in the matter of vacation time for more senior officers among the comparable communities: Sangamon County gives twenty-five days after fifteen years' service; Madison and Peoria does so after twenty years; and Champaign adds no days beyond the four weeks given after ten years of service.

For the same reasons more fully explored and explained in conjunction with the treatment of the last offers on the timing of longevity pay, I find the statutory criteria to require acceptance of the County's position.

Issue 6: Overtime Use

(a) Arbitrability

The Fair Labor Standards Act [FLSA] mandates the payment at the rate of time-and-a-half for hours worked in excess of a forty hour work week. In consequence of the Act's application to public employees, Congress amended the Act to permit public employers to compensate for overtime by compensatory time rather than by payment at the higher rate. Section 207(o) of the Act as amended provides in pertinent part:

(o) Compensatory time

(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

(2) A public agency may provide compensatory time under paragraph (1) only --

(A) pursuant to --

(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other

agreement between the public agency and representatives of such employees; or

(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

Section 207(o)(1) and subsection (2)(A) were glossed by the United States Supreme Court in *Moreau v. Klevenhagen*, 508 U.S. 22 (1993). In that case, the employees had designated a union to represent them; but collective bargaining by public employees was prohibited in the state and collective agreements made by unions on behalf of public employees were void. The question was whether subsection 2(A)(i) applied. The Court held it did not. The Court read subsection (2)(A) as “referring to employees who have designated a representative with the authority to negotiate and agree with their employer on ‘applicable provisions of a collective bargaining agreement’ authorizing the use of comp time.” *Id.* at 34. In Texas, the union had no such authority. The Court further explained:

So read, we do not understand subsection 7(o) to impose any new burden upon a public employer to bargain collectively with its employees. Subsection 7(o) is, after all, an exception to the general FLSA rule mandating overtime pay for overtime work, and employers may take advantage of the benefits it offers “only” pursuant to certain conditions set forth by Congress. . . . *Once its employees designate a representative authorized to engage in collective bargaining, an employer is entitled to take advantage of those benefits if it reaches a comp time agreement with the representative.* It [a public employee] is also free, of course, to forgo collective bargaining altogether; if it so chooses, it remains in precisely the same position as any other employer subject to the overtime pay provisions of the FLSA.

Id. note 16, at 34 (emphasis added).

The Court confronted section 207(o) again in *Christensen v. Harris County*, 120 S.Ct. 1655 (2000). The case also concerned employees who were not represented by a union and for whom no policy on the issue presented had been announced in advance. The public employer set a maximum number of compensatory hours that employees could accrue; an employee approaching that maximum would be compelled to use his or her compensatory time at times specified by the employer. The question presented was whether the FLSA prohibited the employer from taking that action in view of the law's giving the *employee* the power reasonably to use his accrued compensatory time.**** The Court held that the FLSA did not prohibit that action. As Justice Thomas explained:

Our interpretation of § 207(o)(5) -- one that does not prohibit employers from forcing employees to use compensatory time -- finds support in two other features of the FLSA. First, employers remain free under the FLSA to decrease the number of hours that employees work. An employer may tell the employee to take off an afternoon, a day, or even an entire week. . . . Second, the FLSA explicitly permits an employer to cash out accumulated compensatory time by paying the employee his regular hourly wage for each hour accrued. § 207(o)(3)(B); 29 CFR § 553.27(a) (1999). Thus, under the FLSA an employer is free to require an employee to take time off work, and an employer is also free to

****Section 207(o) provides in pertinent part:

(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency --

(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

use the money it would have paid in wages to cash out accrued compensatory time. The compelled use of compensatory time challenged in this case merely involves doing both of these steps at once. It would make little sense to interpret § 207(o)(5) to make the combination of the two steps unlawful when each independently is lawful.

Id. at 1661-1662 (footnote omitted).

From this the County argues that the Arbitrator is without power to award that employees rather than the public employer be given the choice of how their accrued overtime will be compensated, Brief of the County at 13-17; that under the FLSA it is “the *employer’s choice*” of whether comp time will be taken or paid, *id.* at 16 (emphasis in original), so long as comp time is authorized by a collective agreement under § 207(o)(2)(A)(i).

I find the argument unpersuasive. The County’s argument is that although it has to reach agreement with the union on whether it can compensate for overtime in compensatory time, it is not required by the FLSA to reach agreement with the Union on how it will be taken. From this, the County reasons that because the County is not constrained by the FLSA, the Arbitrator cannot constrain the County. This is a *nonsequitur*. The FLSA does not prohibit an employer from requiring that comp time be taken; but a lack of prohibition is not a grant of a federal prerogative insulated from regulation via state public sector collective bargaining law. The County’s argument would be dispositive if the FLSA prohibited the County from agreeing with a union to give the employee the choice in the matter. But the law does no such thing. The County is free to bargain with the Union about the matter -- as it has here -- and is free to agree with the Union in the matter. Where, as here, state law subjects disagreement to an impasse-arbitration procedure, whereby the Arbitrator makes the agreement for the parties, the arbitral

award stands on no different footing vis-a-vis the FLSA than would the County's accession to the Union's demand.

(b) The Merits

The County points to the contractual protections accorded employees with respect to their accrual and use of overtime, notes no change in conditions or circumstances in the matter since the last collective agreement, and stresses the importance of past practice:

Historically, the County Board and the Union have recognized that the County has sole authority to determine whether the employee should be paid cash for overtime worked or granted compensatory time off work. This past practice has remained unchanged despite the negotiation of multiple collective bargaining agreements.

Brief of the County at 17. And,

Given the historical recognition by the Union of the Employer's right to determine how overtime should be compensated and the well established past practice, there is no sufficient basis for eliminating the Employer's right of determination by reversing the current practice in its entirety. Accordingly, the arbitrator should reject the Union's position and find in favor of the Employer on this issue.

Id. at 18.

The Union has placed on the record the treatment in comparable communities: Champaign, Peoria and Sangamon Counties give the employee the choice the Union seeks here; Madison permits individual agreement, failing which a default rule is adopted requiring payment in cash.

This issue revisits the analysis presented in the matter of the timing of longevity pay. There, the undersigned, acknowledging the importance of past practice -- the burden a party proposing a change in longstanding policy must bear -- found there to be colorable economic and, perhaps, administrative reasons for the County's insistence on the status quo and found further that the

treatment of the issue by comparison communities was not such as to make a compelling case for the Union. Here the County has made no argument other than to past practice; it has pointed to no economic or administrative constraint or consequence that would be harmful to the County; and, St. Clair is the only one of five comparable communities to demand unfettered discretion in the matter. I find the Union's position better to comport with the statutory criteria set out in 5 ILCS § 315, § 14(h).

V. Implementation

The Union has requested the Arbitrator to set a date certain for the implementation of this Award. The Arbitrator has no reason to believe that the County will not implement this Award in a timely fashion.

Award

1. On the respective last offers on wages for deputies and corrections officers, the Union's offer is adopted.
2. On the respective last offers on the timing of longevity pay, the County's last offer is adopted.
3. On the respective last offers on longevity pay, the Union's last offer is adopted.
4. On the respective last offers on vacations, the County's last offer is adopted.
5. On the respective last offers on overtime, the Union's last offer is adopted.
6. The tentative agreements reached by the parties on all other issues and entered upon the record in this proceeding are adopted and incorporated by reference in this Award.

Matthew W. Finkin

Matthew W. Finkin
Arbitrator

20 Sept 2000

Date