

agreement, the parties submitted their unresolved differences to interest arbitration before the undersigned with the understanding that they would be resolved on an issue-by-issue basis. Hearing in said matter was held in Springfield, Illinois, on October 15 and 19, 1990. The hearing was transcribed and the parties filed briefs and reply briefs which were received by February 11, 1991 and the Employer on that day also filed a Motion for Leave to Submit Additional Evidence. The Union by letter dated March 1, 1991, advised the undersigned that it did not object to the consideration of such new evidence.^{1/}

Pursuant to Section 14(f) of the Illinois Public Relations Act, and with their mutual agreement, I remanded this matter back to the parties on April 9, 1991, to see if some of the issues could be resolved. They subsequently informed me on April 19, 1991, that they were unable to do so.

The ten issues in dispute here relate to time off for Union business; personnel information provided to the Union; posting vacant positions; non-discrimination; flex time; involuntary transfers; Employer payment for Attorney Registration and Disciplinary Commission fees; evaluations and how a brief is defined; subcontracting; and wages.

The parties have agreed that the resolution of these issues should follow the statutory criteria spelled out in the Illinois Public Relations Act which provides at Section 14 therein that:

...
"(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the

^{1/} I have considered the record to be closed as of that date.

existing agreement, and the wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulation 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 community 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.

...

There is one point of significant disagreement between the parties as to how the economic issues herein should be addressed: the Union asserts that the wage issues involving the attorneys and secretaries are two separate items and should be resolved independently

of each other, while the Employer contends that they cannot be separated and thus must be treated together as one item. This is a matter which will be discussed below.

It perhaps should be noted at the outset that the record herein is very detailed, particularly as it relates to the economic items in dispute. It thus is impossible to address every single contention advanced by the parties and to comment upon every single piece of evidence and testimony which they cite in support of their respective positions. It suffices to say that the entire record has been considered and that what follows here represents the most salient aspects in dispute.

With the foregoing in mind, it is now time to address each of the ten (10) issues herein seriatim.

DISCUSSION:

1. Union Rights

Article III, Section 3, of the contract, entitled "Time Off for Union Activities," provides that bargaining unit employees from each District office are entitled to time off with pay for "legitimate" Union business without any limitation on the number of days that can be used for that purpose and subject only to "reasonable notice to their supervisors."

The Employer acknowledges that "Union

representatives have not abused" this provision. Nevertheless, it has proposed a limit of three such paid working days on the ground that "it is sound public policy to limit the number of paid days an employee can use for activities that are only marginally in the public interest." It thus points out that it has not proposed to limit the number of unpaid days available and that the collective bargaining agreements covering RC-14 and the Office of State Appellate Defendants do not provide for any time off.

In response, the Union states that no bargaining unit members have even used such paid time off for Union business and that the Employer has not produced any evidence that the existing language is burdensome.

The Union's position is well taken.

The normal rule in interest arbitration cases is that the proponent of change must prove the need for change and that its proposal is the best method for dealing with the problem addressed.

Here, the Employer has not established that the current contract language on this issue needs to be changed. The only basis for changing it, then, rests on the Employer's contention that other related contracts do not have a similar provision for paid time off.

The problem with this claim is that that was also apparently true when the instant language was initially

agreed to in the negotiations leading up to the expired contract. Absent any documented problem which has arisen since then, I find that the Employer has not met its burden and that the present language in Article III, Section 3, should remain as it is.

2. Personnel Information Provided To The Union

The contract now provides in Article III, Section 5, entitled "Information to Union," that the Employer must provide quarterly reports to the Union relating to personnel matters involving layoffs, new hires, promotions, checkoff revocations, reemployment, transfers, resignations, terminations, discharges, leaves of absences, any other change in employment status, seniority rosters, and re-employment lists. The Employer wishes to limit this requirement altogether and to, instead, only provide such information when the Union specifically asks for it. It states out that no such information was provided to the Union during the first year of the contract and that, furthermore, "The relatively small size of the bargaining units, as well as the infrequency of personnel transactions do not seem to justify the quarterly submission of lists."

The Union wishes to keep the present contract language intact and states that the Employer has not provided any evidence showing that this requirement has been burdensome.

Again, the Employer as the moving party has the burden of establishing that there has been a problem over the course of the expired contract with furnishing this information.

It has failed to meet that burden. Accordingly, and because compliance with this particular contract provision involves only a minimum amount of inconvenience and cost to the Employer, its proposal to change Article III, Section 5, is rejected.

3. Posting Of Vacancies

The Union has proposed a new provision in the contract requiring the Employer to post all statewide job vacancies. Its proposal states:

"The Employer will post all permanent vacancies for a period of ten (10) working days prior to filling them. During this period, employees who are interested in applying for these positions shall be allowed to do so."

The Union maintains that such posting is routine among public employer "given the proliferation of Civil Service Statutes," and that under said proposal employees would not "have any contractual rights whatsoever to any vacant positions."

The Employer opposes this provision on the grounds that it represents an attempt "to interfere in its management of the other divisions within the agency," and because it in any event will be of "little utility for bargaining unit employees" because of the infre-

quency of any transfers.

The record establishes, as pointed out by the Employer, that most bargaining unit members may not be able to post into other vacancies in state service.

However, the fact remains that some employees will be able to do so and that, furthermore, the posting of said vacancies may be the only way that they will be able to learn about vacancies in which they are interested. When that is coupled with the fact that such posting will involve only a miniscule amount of inconvenience to the Employer, I conclude that the contract should be amended by the inclusion of the above posting language.

Said language, of course, does not mean that the Employer must fill any or all of the posted vacancies. That is normally within the Employer's inherent management prerogative and nothing in this new language should in any way be construed as limiting the Employer's rights in that regard.

4. Non-Discrimination

The Union proposes to amend Article VIII, Section 2, of the contract, entitled "Prohibition Against Discrimination," by adding the phrase "or other non-merit factors" to said provision which now provides:

"Both the Employer and the Union agree not to illegally discriminate against any employee on the basis of race, sex, creed,

color, marital or parental status, age, national origin, political affiliation and/or beliefs, mental or physical handicap, sexual orientation."

The Union claims that this additional phrase is routinely contained in other contracts, including the one covering the Office of State Appellate Defender (OSAD) and the State of Illinois and that the absence of such language would "allow management to discriminate on the basis of a non-merit factor not explicitly listed in the Non-Discrimination Article."

The Employer counters that said language is unneeded because "The list of prohibited factors contained in the non-discrimination section is inclusive of every conceivable basis of discrimination," and it suggests that the Union really wants this language in order to shore up any grievances filed by employees who have been denied transfers under the Union's preceding posting proposal.

As to this issue, the Union has not demonstrated any need for the additional language it seeks. Indeed, given the very broad sweep of the current language, it is difficult to envision what other non-merit factors there may be in addition to those already spelled out therein. It thus is not controlling that other related contracts may have the language proposed since the Union has failed to meet its burden in this case that this language should be changed.

5. Flex Time

Article XXIII of the contract, entitled "Hours of Work" provides that "Normal agency hours shall be from 9:00 a.m. to 5:00 p.m. except that a secretary in each District shall work from 8:30 a.m. to 4:30 p.m.", and that "Employees may be allowed to work flexible hours between 8:00 a.m.-6:00 p.m., Monday-Friday," if the Employer grants prior approval to do so, and provided that employees work a minimum of seven (7) hours per day.

Claiming that employees in at least two (2) District offices have had difficulty in getting flex time, the Union proposes to change this language by allowing employees to work anytime between 6:00 a.m.-8:00 p.m., Monday-Friday, provided that they work a minimum of four (4) hours a day and thirty-five (35) hours per week. An exception would be made under this language so as to allow the Employer at each District office to "require one secretary to be present during the hours of 8:30 a.m. to 5:00 p.m." The Union argues that its "proposal is much more limited than the existing policy" in other contracts including the State of Illinois "Master" contract with AFSCME covering secretaries and professional employees, and that "The combined effort of that language and [various] arbitration decisions... are that employees have a right to flex time provided it does not conflict with the opera-

tional needs of the Employer."

The Employer maintains that said proposal "is clearly not in the interest of the public welfare" because it would interfere with its ability to properly staff its offices during a regular work day, as it could lead to a situation of where no attorneys would be present during certain times. The Employer contends that the arbitration awards relied upon by the Union are distinguishable because they all turned upon specific contract language and involved only "a minor change in the configuration of work day hours" which were never less than seven (7) hours a day - unlike the situation here which would allow employees to work as little as four (4) hours a day.

The record on this issue shows that the Union has failed to meet its burden of proof as to why the current contract should be changed in the manner it proposes.

At the hearing, Attorneys Rita Mertel and Gerry Arnold testified on behalf of the Union regarding the problems various employees have had obtaining flex time in their District offices. Mertel said that only two employees in her office were allowed to be on flex time at the same time; that they were only allowed a 15-minute variation from their normal schedule; and that other requests for flex time were turned down.

Arnold related how the Deputy Director in the 5th District office cancelled all flex time schedules after two employees left work early one day (one of whom was apparently disciplined) and how it now is allowed only if one has a special circumstance and obtains permission from the Deputy Director. In that case, said Arnold, the Deputy Director "did say he would give some permission to people to work at alternative hours for limited periods of time." The Deputy Director also issued a memorandum stating that if production increased in the office with employees working 9:00 A.M.-5 P.M., he might consider returning to a more flexible time system in January, 1991.

Since this latter situation appears to have been the result of some abuse of prior flex time schedules, it appears that the Deputy Director had some valid basis for doing what he did.

But even if he did not, the best way to cure any such problems in that office, or anyplace else, is to simply grieve those situations where employees believe that flex time is being improperly denied.

That is what happened in the arbitration cases involving the Union and various state entities and which are relied upon by the Union in support of its position.

In one case where I served as the arbitrator, Grievance No. 62,63-415-86, Exhibit 35, an employee

was allowed to work through her lunch hour so that she could drop her children at school and come to work at a later starting time. In the second, Grievance No. 14-151-84, Exhibit 36, Arbitrator Fred Witney ruled that an employee should be permitted to leave work early because the warehouse was too hot and because he wanted time to wash up for his part-time job. In the third, Grievance Nos. 62,63-178-85 and 62,63-179-85, Exhibit 37, I ruled that two employees were allowed to leave work early so that one could see her doctor during regular hours and one could drive back and forth to work with her father. In the fourth, Exhibit 38, Arbitrator Anne-L. Draznin held that an employee should be permitted to come to work 15 minutes earlier and to leave 15 minutes earlier so that she could catch a bus.

There are several common threads running throughout these prior arbitration cases - they all involved either one or two employees, they all involved minor adjustments in an employee's normal work schedule, and they all recognized that the employing entities had a legitimate interest in seeing that they were properly staffed throughout the day so that they could properly provide their services.

The Union's proposal here, on the other hand, would give employees way too much discretion in altering their normal work day at the expense of the Employer's

legitimate operational and business needs - which require that its offices be fully staffed during the time period specified in the contract.

Accordingly, and because any problems in this area can be better resolved either informally or through the contractual grievance procedure, the Union's proposal on this issue must be rejected.

6. Involuntary Transfers

The Employer proposes to totally delete Article XXIX, Section 2, of the contract, entitled "Involuntary Transfer and Promotion," which provides that: "No employee shall be transferred to another District Office involuntarily nor be promoted involuntarily."

It claims that "work contingencies may require the transfer of personnel between its district offices" because the present practice of reassigning briefs to equalize caseloads is inadequate and that "it should retain the same management rights of other units of government," as it points to other contracts involving OSAD and the Master contract between AFSCME and the State of Illinois, neither of which has the kind of prohibition found here. It also contends that, "The Union has a safety net of grievance and arbitration procedures to protect it against..." its concern that the Employer's proposal could lead to disciplinary transfers.

The Union, in turn, is fearful that involuntary

transfers can be used to constructively discharge employees as they were in the past before the Union appeared on the scene. It also maintains that the Employer now equalizes workloads in the various district offices by reassigning briefs and that the Employer has not produced any evidence establishing the need for the change it seeks.

The Employer's proposal, of course, directly impacts upon one of the most important private rights that any employee now has - i.e., the right to live where one chooses vis-a-vis his/her existing job. If implemented, this proposed language would negate and/or severely limit this right by forcing employees (and their families) to physically move to another location if the Employer decides to transfer them to a different district office.

Given the adverse consequences that it can have on bargaining unit personnel, the Employer therefore is under a particularly strong burden to show why this change is needed.

Based upon the facts presented, it must be concluded that the Employer has failed to meet this burden. Thus, there is no evidence showing that the Employer has been unable to meet its legitimate operational needs by either: (1) reassigning briefs to bargaining unit attorneys in those district offices having light or more current caseloads; or (2), subcontracting out

the preparation of briefs to outside attorneys when bargaining unit personnel are unable to do so on a timely basis, a matter which is discussed below. To the contrary, the record shows that the Employer has dealt with its difficult manpower (personpower?) needs by following both of these steps over the course of the expired contract and that they have succeeded in giving the Employer the flexibility it needs in juggling its overall workload.

As a result, there is no valid basis for changing the status quo and for adopting the Employer's proposal. Article XXIX, Section 4, therefore stands as is.

7. Employer Payment For Attorney Registration And Disciplinary Commission Fees.

The Union proposes a new article entitled "Reimbursement For Registration Fees" under which the Employer would pay the Attorney Registration and Disciplinary Commission annual fees that bargaining unit attorneys must now pay as a precondition to practicing law in Illinois. Such payment is proper, it maintains, because collective bargaining agreements commonly provide for employer payment of licensing fees such as the Commercial Driver's license which is now mandated.

The Employer points out that the Union has failed to cite any example of where a state or local agency provides for such payment and it argues that such fees "are a condition of being licensed to practice law

in the State of Illinois, and are not unique to employment with the Employer."

The Employer is correct.

Said licensing fees must be paid as a condition precedent to one's right to practice law and not merely because bargaining unit employees are working for the Employer. The Union's case would be stronger if it could point to other instances of where other public employers - such as the Cook County Public Defender, OSAD, or the Illinois Attorney General - paid this fee. But it has failed to do so, apparently because none of them do. More weight must be given to this lack of comparability than to whether other employers pay for a commercial driver's license, as the attorneys here must be compared to other attorneys, not truck or bus drivers.

The Union's proposal for a new benefit therefore is rejected.

8. Evaluations And How A Brief Is Defined

Article XI of the contract, entitled "Evaluations," contains a comprehensive evaluation procedure for attorneys in the bargaining unit and provides that "Under ordinary circumstances, it is expected that each attorney shall produce not less than thirty-six (36) briefs on an annual basis." It goes on to add

"In the event that an employee does not meet the minimum standards for productivity, the Director, in consultation with the Deputy Director,

shall determine whether the employee has reasonable grounds for not meeting such minimum standards."

Both parties propose to change this language as it relates to the requirement that attorneys produce a minimum of 35 appellate briefs per year.

The Union's proposal calls for supplemental documents to be counted toward the 35-brief minimum and for more complex cases to count as more than one brief. It argues that since "not all briefs are equal," it is only fair "to take into account, in a systematic way, the length and complexity of briefs as well as supplemental documents..." and that "To consider all briefs equal as the Employer is proposing is clearly unfair."

The Employer proposes to recognize certain additional work and to more clearly define the word "brief" by changing the contract to provide: "i) 'Brief' means the original appellant or appellee brief required to be filed by the State." It also wants to count briefs from the beginning of the calendar year to the end of the calendar year. The Employer also wants to institute a new evaluation system, detailed below, and to consider years of service when determining whether minimum performance standards have been met. It cites the testimony of various Union witnesses for the proposition that bargaining unit members have no difficulty in meeting the present 36 brief minimum and it claims

that their testimony shows that the Union's own proposal to change that minimum standard is unworkable. The Employer also states that it has "tied its evaluation proposals to wage and compensation provisions"; that it "feels very strongly that a realistic evaluation article must be adopted"; and that since this issue is non-economic in nature, the arbitrator is free to modify it.

Neither party seeks to change the evaluation language as it applies to secretaries in the bargaining unit.

In resolving this issue, it is necessary at the outset to define exactly what a "brief" is because it is not now defined under Article I, Section 2, of the contract, entitled "Definition of Terms," or at any other place in the contract.

The Union's proposed definition suffers from the fact that it includes certain factors which are to be weighed in determining whether the thirty six (36) brief minimum standard has been met. The weighing, though, is a separate issue from defining exactly what a "brief" is for production purposes.

The Employer's definition, on the other hand - i.e., that a "Brief means the original appellant or appellee brief required to be filed by the state" - is much simpler and it is the one used in ordinary parlance. Accordingly, its definition is chosen over the Union's

and Article I, Section 2, shall be amended to include the Employer's definition.

The thirty six (36) brief minimum production standard can, of course, in given situations be unfair if it is applied in a mechanistic fashion. A lawyer's work, after all, is highly individualized and the effort put into a particular case can vary greatly from case to case, depending on its complexity and importance. Moreover, given the wide spectrum of ability found among any group of attorneys, it is only natural that some attorneys will easily meet and exceed this standard, while others will not. Furthermore, it is similarly true that outstanding attorneys will be given an abnormal mix of very complex cases which require more time and attention than fairly routine ones. Hence, it is entirely possible for such attorneys to actually do more work than some of their counterparts even though they produce fewer briefs.

All this is why writing briefs cannot be compared to the manufacture of widgets and why rigid production quotas must be rejected.

If the contract here contained such rigid quotas, there would be a need to change it. But it does not. It instead provides for needed flexibility when it states that "Under ordinary circumstances, it is expected each attorney shall produce not less than thirty six (36) briefs." (Emphasis added)

This underlined phrase - if properly administered - recognizes all this. Hence, any fair evaluation as to why someone did not meet this general goal would have to take into account many of the factors cited by the Union in its proposal (Union Exhibit 4) - i.e., whether a case involved oral argument, a reply brief, petitions for leave to appeal and rehearing, motions, a petition for writ of certiorari and answers to same, petitions for mandamus and supervisory orders and answers to same, extensive research done on briefs which are not actually filed involving such matters as confession of errors, and dismissals of state appeals. In addition, attorneys must be given credit if they perform other services such as reviewing and/or otherwise helping out in someone else's case and if they give out advice to County State's Attorney.

The contract here recognizes the need to be flexible when the thirty six (36) brief standard is not met, as it states that "the nature of the cases handled by the employee, the employee's duties, responsibilities and work in other cases..." shall be considered.

Furthermore, the Union has failed to prove that all of its wholesale changes are needed. Thus, Union witness Cynthia Schneider acknowledged here that meeting the thirty six (36) brief minimum is not that difficult, a point reflected in Employer Exhibit 11 which shows that almost all attorneys have met this requirement

in the past. In addition, Union witness Rita Mertel, Gerry Arnold, and Robert Biderman all acknowledged on cross-examination that attorneys regularly exceed the thirty six (36) brief requirement.

It is true, as testified to by Schneider and as reflected in Union Exhibit 34, which details all of the work expended on just one case, that some cases are very complex and difficult and that they thus can take as much time and effort as is expended on several routine cases. However, such isolated examples, standing alone, are insufficient to do away with the current production standards unless it can also be shown that the Employer has failed to take that into account when determining whether an attorney has met the minimum production requirement. Here, no such showing has been made.

Hence, it follows that the Union's proposal must be rejected because it is too sweeping in scope to deal with whatever problems may arise in meeting this standard.

Instead, its legitimate concerns can be met by simply modifying the last sentence (the remainder of the paragraph remains the same) in the second to last paragraph of p. 20 of the contract to read as follows:

"In determining whether reasonable grounds exist, the Director and Deputy Director shall consider the nature of the cases handled by the employee and the highly individualized factors which affect how much

time and effort have been spent on a particular case by performing such tasks as making oral argument; filing reply briefs; petitioning for leave to appeal and rehearing; filing motions, petitioning for writs of certiorari, mandamus, and supervisory orders and filing answers to same; performing research and preparing for briefs and/or other documents which are not actually filed. The Director and Deputy Director shall also consider the employee's overall duties, responsibilities, and work in other areas and any comments or explanation submitted by the employee."

Taking into account all of the aforementioned variables should provide the needed flexibility in determining whether valid grounds exist as why the thirty six (36) minimum brief requirement has not been met.

If the Employer ultimately determines that no such valid grounds exist, employees then can grieve over that determination, just as the Employer points out. However, there is a problem with the existing contract language in Article XI which now reads:

"In any arbitration proceeding conducted under this Article, the arbitrator shall accord the Employer's decision great deference and weight."

This proviso simply gives the Employer too much discretion and power in an area which is fraught with possible subjectivity and arbitrariness. The Employer's legitimate needs can instead be adequately protected by deleting this sentence in its entirety and by simply requiring the Employer to have a proper basis for taking whatever action it deems appropriate on this general subject. Article XI is therefore modified to reflect

said deletion.^{2/}

The Union also proposes several other changes to the existing evaluation procedure provided for in the contract. It has failed to show, however, that any problems have arisen over how this procedure has been applied over the course of the expired contract. Since it has failed to meet its burden as to why these other changes are needed, its proposal must be rejected.

The Employer, in turn, seeks to add the following language to those factors now considered in preparing an employee's evaluation:

"The employee's preparation of any legal documents required for the orderly prosecution of any case, including but not limited to, supplemental briefs, reply briefs, petition for leave to appear, motions, objections, and any other duties as assigned."

The Employer also wants to be able to evaluate "trial assistance as assigned..."

These added factors are all reasonable, as they more fully spell out all of the varied duties performed by attorneys in the bargaining unit. Accordingly, and since the Union has not presented any valid objections as to why they should not be considered and made part of an attorney's evaluation, the Employer's proposal in this regard is adopted.

The Employer also proposes that:

^{2/}The Employer agrees that but for economic matters, "all other matters are left to the Arbitrator for his review, adoption or modification."

"Briefs shall be counted from the beginning of the calendar year (January 1) to the end of the calendar year (December 31)."

This language is certainly reasonable since it would be easier for the Employer to use the same common time frame for determining whether its minimum production standards are being met. Accordingly, Article XI shall be amended to include this language.

Ditto for the Employer's additional proposal to include the phrase "years of service with the Agency" as one of the grounds to be considered when the thirty-six (36) brief requirement has not been met. Seniority and experience - or the relative lack of same - are legitimate factors in considering an attorneys' overall work performance and the Employer's proposal quite properly takes them into account. This phrase therefore shall be added to the contract.

10. Wages

Position of the Parties

The Union has proposed (Union Exhibit No. 2) a three-year wage schedule for attorneys which provides for a three (3) grade, fifteen (15) step schedule which is as follows:

SCHEDULE A				
Effective 7/1/90				
<u>Steps, Years of Service</u>	<u>Grade 1</u>	<u>Grade 2</u>	<u>Grade 3</u>	
Less than 1	24,000	24,750	25,500	
More than 1	25,000	26,250	27,000	
More than 2	27,000	27,750	28,500	
More than 3	28,500	29,500	30,500	
More than 4	30,500	31,500	32,500	
More than 5	32,500	33,500	34,500	

More than 6	34,500	35,500	36,500
More than 7	36,500	37,500	38,500
More than 8	38,500	39,100	39,700
More than 9	39,700	40,300	40,900
More than 10	40,900	41,500	42,100
More than 11	42,100	42,700	43,300
More than 12	43,300	43,900	44,500
More than 13	44,500	45,100	45,700
More than 14	45,700	46,300	46,900
More than 15	46,900	47,650	48,400

SCHEDULE B
Effective 7/1/91

<u>Steps, Years of Service</u>	<u>Grade 1</u>	<u>Grade 2</u>	<u>Grade 3</u>
Less than 1	25,500	26,250	27,000
More than 1	27,000	27,750	28,500
More than 2	28,500	29,250	30,000
More than 3	30,000	31,000	32,000
More than 4	32,000	33,000	34,000
More than 5	34,000	35,000	36,000
More than 6	36,000	37,000	38,000
More than 7	38,000	39,000	40,000
More than 8	40,500	40,100	41,700
More than 9	41,700	42,300	42,900
More than 10	42,900	43,500	44,100
More than 11	44,100	44,700	45,300
More than 12	45,300	45,900	46,500
More than 13	46,500	47,100	47,700
More than 14	47,700	48,300	48,900
More than 15	48,900	49,650	50,400

SCHEDULE C
Effective 7/1/92

<u>Steps, Years of Service</u>	<u>Grade 1</u>	<u>Grade 2</u>	<u>Grade 3</u>
Less than 1	27,200	27,950	28,700
More than 1	28,700	29,450	30,200
More than 2	30,200	30,950	31,700
More than 3	31,700	32,700	33,700
More than 4	33,700	34,700	35,700
More than 5	35,700	36,700	37,700
More than 6	37,700	38,850	40,000
More than 7	40,000	41,250	42,500
More than 8	42,500	43,100	43,700
More than 9	43,700	44,450	45,200
More than 10	45,200	45,800	46,400
More than 11	46,400	47,000	47,600
More than 12	47,600	48,200	48,800
More than 13	48,800	49,400	50,000
More than 14	50,000	50,600	51,200
More than 15	51,200	51,950	52,700

These annual rates of pay would become effective on July 1 of each year and each attorney would be placed upon the appropriate salary step based upon his or her years of service on July 1, 1990, with the Agency's Director having the discretion to place employees into grade 1, 2, or 3. It also provides that "On the anniversary of an employee's service date, he or she shall move to the next higher step, and the Director shall determine which grade the employee shall be placed upon," and that notwithstanding the above, "no employee shall receive less than a 7% pay increase July 1, 1990, less than a 4% pay increase July 1, 1991 or less than a 4% pay increase July 1, 1992."

The Union calculates that its proposal would provide for pay increases of 11.9% in fiscal year 1991; 7.62% in fiscal year 1992, and 7.73% in fiscal year 1993. The Employer asserts that said proposal calls for 12.38% in fiscal 1991, 10.62% in fiscal 1992, and 8.6% in fiscal 1993.

Section 2 of the Union's proposal defines length of service as the total time that an attorney has worked for either the Employer, OSAD, or in another position "in which the primary responsibilities are the same as the duties of the attorneys in the bargaining unit" and it goes on to provide for a prorated formula to be used for other employment.

The Union's pay proposal for the secretaries in

the bargaining unit (Union Exhibit No. 3) provides for step movement to occur in two-year intervals after the first year as follows:

SECRETARIES PAY SCALE			
<u>Steps, Years of Service</u>	<u>FY 91</u>	<u>FY 92</u>	<u>FY 93</u>
Less than 6 months	14,500	14,500	14,500
6 months - 1 year	15,250	16,000	16,750
More than 1 year	16,250	17,000	17,750
More than 2 years	17,250	18,000	18,750
More than 4 years	18,250	19,000	19,750
More than 6 years	19,750	20,500	21,250
More than 8 years	21,250	22,000	22,750
More than 10 years	22,750	23,500	24,250
More than 12 years	24,250	25,000	25,750

Said proposal adds that these rates of pay shall become effective on July 1 of each year based upon an employee's year of service; that the steps on the schedule represent years of service; that effective July 1, 1990, each employee is to be placed upon the appropriate step based upon their years of service; and that employees would move to the next higher step on the anniversary of their service date. The Administrative Secretary in each District office would receive \$2,000 per year in addition to the salary he, she would have earned as a legal secretary. Notwithstanding the above, the Union's proposal states that "no employee shall receive less than 7% pay increase July 1, 1990, less than a 4% pay increase July 1, 1991, or less than a 4% pay increase July 1, 1992."

Both parties peg the cost of the Union's proposal as 8.8% in fiscal year 1991, 5.63% in fiscal year 1992,

and 5.24% in fiscal year 1993.

The Employer's wage proposal for attorneys (Employer Exhibit No. 2) calls for a seven-step, three-grade grid as follows:

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Gr. 1	24,600	25,900	27,200	28,500	29,800	31,100	32,400
Gr. 2	34,800	36,100	37,400	38,700	40,000	41,300	42,600
Gr. 3	45,100	46,500	47,900	49,300	50,700	52,100	53,500
Gr. 1	Vacancy						
	Turpin	Klug		Bernhard		Majors	White
	Campbell	Manuel		McGann		Bauer	Mcclain
	Thompson	Mitchell				Slovacek	
		Burns					
Gr. 2			Mannchen	Gnidovec	Mertel,R		Buckley
			Schneider	Wood	Mertel,T		
			Stevens		Arnold		
			Kelly				
			**Carter				
			Buchman				
			*Klingler				
Gr.3						Moltz	

* 80% times Step 3 salary

** 1/2 of Step 3 salary

The Employer calculates that said proposal will generate percentage increases of 5.35% in fiscal year 1991, 6.6% in fiscal year 1992, and 3.9% in fiscal year 1993 (Employer Exhibit 19).

The Union challenges these figures on the ground that they presuppose that all attorneys would get a wage increase when the Employer's own wage proposal provides that no one is guaranteed a raise during the course of the contract.

The Employer proposes the following wage schedule

(Employer Exhibit No. 2) to the secretaries:

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Gr. 1	14,750	15,217	15,788	16,380	16,994	17,631	18,292
Gr. 2	19,282	20,197	21,112	22,022	22,947	23,808	24,700

Gr. 1	Wright	Elzer	Barr				Tate
Gr. 2	Riley	Martin		Fox	Bagby		
	Jeffries	Smith			Wars		
					Yeager		

Add \$1,750 to step for administrative secretaries

The Employer calculates that said schedule will amount to about 5.35 percent in fiscal 1991, 6.6 percent in fiscal 1992, and 3.9 percent in fiscal 1993.

The Employer's offer also provides that the Agency Director may grant merit increases equal to one step or in certain situations to raise employees from one grade to another.

In support of its attorney wage proposal, the Union primarily contends that, as reflected in Union Exhibits 19, 22, 23, 24, 26, 27, and 28, "the current wage rates for bargaining unit attorneys are well below those of comparable attorneys." It maintains that the attorneys most comparable to bargaining unit employees are those employed by the Office of State Appellate Defender, (OSAD), because they, too, write appellate briefs "quite commonly in the same cases." That is why it has patterned its offer after the contract now in existence between OSAD and the Union (Union Exhibit No. 9). The Union points out that its

guaranteed minimum salary is still less than that offered by OSAD and that, furthermore, attorneys working for the Cook County Public Defender's Office and in other state agencies are also comparable and that their wages are higher than here.

Union representative Kent Beauchamp testified that the Union's wage proposal is aimed at closing this gap and establishing "a wage structure which would allow attorneys to predict what they would be paid in the future..." The Union states this is needed to prevent high turnover in the office which Union witness Gerry Arnold said has resulted in the loss of 8 out of 24 attorneys since November, 1988.

The Union argues that the Employer's wage proposal "does not in any significant way begin to narrow the wage gap with comparable attorneys," and that it does not account for increases in the cost of living, thereby forcing attorneys here to fall still further behind those attorneys employed by OSAD and the Cook County Public Defender.

The Union also points out that under the Employer's proposal, attorneys could move into a higher grade only if management determines that they have performed "more than satisfactorily." That is unfair, it says, because the Employer does not define what it means by the terms "satisfactorily" or "more than satisfactorily."

As to the wages for the secretaries, the Union maintains that Union Exhibit Nos. 13 and 14 show that they are "paid less than secretaries who work for the State Agency most comparable to SAAP OSAD" and that but for three (3) exceptions, Union Exhibit Nos. 21, 45, 48, and 49 show that they are paid "less than employees performing comparable work who are employed by those State Agencies under the control of the Governor." It goes on to note that even under its proposal, "the second and third-year pay increase would do little more than keep abreast of the cost of living..."

The Union also maintains that the Employer's proposal is faulty because, like its offer to the attorneys, it pegs pay raises to whether an employee has performed "satisfactorily" or "more than satisfactorily", hence guaranteeing no one a pay raise since pay increases will be left "almost totally at the Employer's discretion."

The Union disputes the Employer's contention that its financial situation prevents it from granting the Union's wage proposal. The Union argues that this claim should be "discounted" because OSAD received sufficient appropriations to cover the much larger wage increases it gave to its employees and because it could obtain a supplemental appropriation from the state legislature through a "good-faith effort."

Lastly, the Union maintains that its wage proposals for the attorneys and secretaries are "separate issues" and can be ruled upon independently of each other since they are in separate bargaining units and since the criteria spelled out in Section 14 of the Illinois Labor Relations Act "would not necessarily apply to one unit in the same manner as the other."

The Employer disputes the Union's contention that a supplemental appropriation can be obtained from the state legislature and claims that "this bare and bold assertion is not supported by the record and that adoption of the Union's wage proposal would force it to reduce its head count by layoffs in the bargaining unit or force the possibility of not meeting its payroll commencing in May of fiscal year 1991."

It also contends that while its proposal "is based on a first-year expenditure within the appropriation enacted into law by the Illinois General Assembly," the Union's first-year wage proposal "disregards the availability of funds appropriated in accordance with the Public Act" because it exceeds the budgeted amount by about \$78,525. Accordingly, the Employer argues that the Union's offer is outside its lawful authority and directly contravenes Ill. Rev. Stat. (1989) Cl. 177, Section 166, which provides:

"Section 166. Indebtedness Exceeding
Appropriation Prohibited
Sec. 30. No officer, institution, department,

board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law."

As for the merits of its own wage proposal for its attorneys, the Employer primarily argues that it is "performance based" because it "would require the employee to perform his,her duties satisfactorily," thereby enabling the Director to grant merit raises equal in amount to one step and to advance attorneys from one grade to another. It also maintains that its wage proposal is aimed at providing "early inducements for young attorneys" and that its overall plan "provides for the recruitment and retention of qualified career prosecutors."

The Employer also challenges much of the data relied upon by the Union in support of its proposal and asserts that it must be given little, if any weight. The correct data, says the Employer, shows that it is highly competitive with other public agencies and that its overall wage compensation package, including benefits, exceeds what private attorneys earn in the Springfield area.

It adds that "the comparable data submitted by the Union on behalf of the secretaries' bargaining unit suffers from the same problems as identified with regard to the attorney comparables", particularly the fact that it did not make any attempt to ascertain

the prior employment experience for the OSAD secretaries and because evidence shows that the data is faulty.

Again, the Employer argues that its merit plan for the secretaries "would encourage superior performance," while the Union's proposal "significantly reduces the compensation available to the superior employee."

The Employer claims that but for a lower entry level, its wage proposal for the secretaries is better than the wage plan in the RC14-OCB unit because it "provides for greater growth through the steps and a much higher salary cap" and that six of its employees would actually end up earning more than the salary cap for Office Assistants in the RC-14 bargaining unit.

Discussion

In resolving these issues, it is first necessary to determine whether the respective wage proposals for the secretaries and attorneys must be ruled upon together as a single issue as the Employer maintains, or ruled upon separately as two different economic issues as the Union contends.

Article VI of the contract, entitled "Resolution of Impasse," is silent on this matter since it provides that:

"All bargaining impasses over mandatory issues of bargaining shall be resolved by interest arbitration utilizing the procedure in Section 14 of the Illinois Public Labor Relations Act, except that all arbitration hearings shall be conducted in Springfield,

Illinois. Specifically, however, the parties agree that the Resolution of Impasse Article contained herein shall expire at the expiration of the next succeeding contract at which time the parties may resort to all economic recourse, unless by mutual agreement this Article is renewed and agreed upon prior to the expiration of the next succeeding contract."

Elsewhere, Article I, Section 1, of the contract, entitled "Unit Description," provides that:

"The Employer hereby recognizes the Union as the sole and exclusive collective bargaining representative for the purpose of collective bargaining on matters relating to wages, hours, and other terms and conditions of employment of all employees of SAAP as separately certified under SLRB Nos. S-RC-89-40 and S-RC-89-42.

The parties recognize that there are two bargaining units separately certified herein and the fact that they are contained in one agreement shall not imply that any provision or policy affecting or benefiting one unit applies to the other, unless otherwise so provided.

The Employer recognizes the integrity of the bargaining units and will not take action the intent of which to erode them."

This language thus mandates that each bargaining unit, which is recognized as being "separately certified," retains its own independent rights and responsibilities "unless otherwise so provided."

Well here, there is no language "otherwise providing" that the economic proposals submitted by these separate units under the interest arbitration procedure in Article VI of the contract must be considered together as one wage proposal. Absent any such limiting language to that effect, it must be concluded that

each bargaining unit retains its right under the Illinois Public Labor Relations Act to submit separate economic proposals covering its own bargaining unit members and to have those proposals ruled upon independently of whatever other economic proposals may be submitted by the other unit.

Hence, the economic proposals covering the secretaries and the attorneys should be ruled upon separately.

1. The Attorney Wage Proposal

There are both negative and positive aspects to the attorney wage proposals submitted by both parties. The difficulty here is trying to sort out which proposal, on balance, is more reasonable and less unreasonable. That can be largely determined by examining these proposals pursuant to the statutory criteria spelled out in Section 14, Paragraph (h), of the Illinois Public Labor Relations Act which the parties have jointly agreed is to be followed.

(1) The lawful authority of the employer

The Employer claims that the Union's offer is unlawful because, if adopted, it would exceed the fiscal 1991 appropriations established by the Illinois state legislature.

It is certainly true that adoption of the Union's proposal would exceed said appropriation by about \$78,525 for both the attorneys and secretaries bargaining units. However, that does not necessarily mean

that it is unlawful and that it must be rejected out of hand on that basis.

For here, the Employer clearly has the legal authority to negotiate labor contracts with its employees and the accompanying legal right, exercised here, to enter into a contract providing for an impasse procedure calling for binding interest arbitration patterned after Section 14 of the Illinois Public Labor Relations Act.

Having exercised its lawful authority in that fashion, it follows that this proceeding is also lawful, as it ultimately determines whether the Employer or the Union's wage proposal should be accepted pursuant to that contractual provision.

To claim otherwise is to in effect say that the end result of this proceeding is lawful only if the Employer's economic offer is accepted.

But that is not what interest (or any other kind) arbitration is all about: arbitration centers around the fundamental fact that either the employer or union can win, depending upon the specific proposals they advance. When the parties herein therefore agreed to the voluntary impasse procedure spelled out in Article VI of the contract, the Union certainly never agreed that it would limit its wage proposals under that procedure to whatever sums were provided for in the Employer's annual appropriation. It instead assumed, and rightfully so, that it remained free to

make whatever economic proposals it wanted bearing in mind, of course, the iron rule governing all interest arbitration cases - i.e., the more a union seeks, the greater the probability that it will lose; the less an employer offers, the greater the probability that it will lose. This is why adoption of the Employer's argument - which in essence can be boiled down to "Heads I win, tails you lose" - would represent the very antithesis of meaningful collective bargaining.

Furthermore, if the Employer's position were to be applied across the board to the security, police, and fire disputes covered by Section 14, any employer in Illinois seeking to frustrate that law could do so through the simple expedient of establishing modest appropriations and then turning around in an interest arbitration proceeding and say that a union's wage proposal could not be accepted because it exceeded those appropriations. Such an argument, surely, would most assuredly be rejected, just as it should be here.

It is true, of course, that it was the state legislature and not the Employer which ultimately established the agency's 1991 appropriation. But in doing so, it was either told, or should have been told, that any sum appropriated would be directly affected by the outcome of the instant interest arbitration procedure.

Furthermore, the state legislature and the employ-

ing entity here are parts of the State of Illinois - which is the real employer here. While the state legislature may have the power to either nullify or modify the interest arbitration provision provided for in the contract, an issue which need not be decided here, the fact remains that it did not do so. Hence, it was, and is, bound to said provision and whatever result flows from it.

Section 166, supra, therefore must be read within this context, one which shows that the Employer's appropriation was subject to an outstanding, unresolved contingency, i.e., how much its bargaining unit employees were to be paid in fiscal 1991.

In this connection, the record shows that the state legislature in the past has passed supplemental appropriations for back wage claims involving the Department of Corrections. While the Employer asserts the contrary, it is difficult to see how such supplemental funds are much different from what is involved here since this proceeding also deals with, inter alia, what bargaining unit personnel are to be paid from the beginning of the present fiscal year.

The Employer argues that the state legislature rejected its proposal for a six (6) percent wage increase for its attorneys for fiscal 1991 and that there is no reason to believe that the legislature would now approve the wage increase sought by the Union.

But as the Union correctly points out, the legislature's rejection was made in the absence of a collective bargaining agreement. Hence, there is no reason to believe that it will not enact whatever measures are needed to meet the Employer's contractual obligations under this new situation.

Moreover, it does not necessarily follow that the Employer must take drastic action in fiscal 1991 to deal with this problem. If the Union's proposal is chosen over the Employer's, it will be done with the express understanding that the Employer in fiscal 1991 need only pay for that part of the Union's 1991 wage offer for which it has sufficient appropriations. Any sums over that need not be paid until the state legislature grants whatever other supplemental funds are needed. In that way, the Employer need not curtail any of its operations in fiscal 1991 in order to pay for the Union's offer.

However, it is only fair that there be some deadline for the state legislature to act least this matter be indefinitely delayed. September 1, 1991, therefore should be more than ample time for the Employer to seek and for the state legislature to act on whatever supplemental appropriation is needed.^{3/}

Given all of the above, I therefore find that the Employer does have the lawful authority to pay for the Union's wage proposal if it is ultimately selected.

^{3/} Addressed later on is the question of what is to happen if the state legislature does not act by that date.

(2) Stipulations of the parties

While otherwise agreeing to the accuracy of certain documents and exhibits, the parties have not made any written stipulations which affect which offer should be selected over the other.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet these costs

The basic unit of government here is the State of Illinois, of which the Employer is but a small entity. As such, and putting aside the separate question discussed above of whether the Employer has sufficient funds in its 1991 fiscal appropriation to pay for the Union's offer,⁴ it certainly has the financial ability to fund the pay increases sought by the Union. Indeed, this same unit of government - i.e., the State of Illinois - has approved pay increases of about 16.5 percent to the attorneys employed by OSAD for fiscal 1991. Having granted such raises to attorneys who defend criminals and accused criminals, there is no reason why it cannot pay for similar increases sought by the Union on behalf of attorneys who help prosecute criminals and accused criminals.

As far as the "interests and welfare of the public"

⁴ The Employer's reply brief, p. 2, acknowledges this distinction between lawful authority and ability to pay.

are concerned, the public most certainly has a strong interest in attracting and retaining a permanent cadre of experienced, able, lawyers who can prosecute criminal cases and who are paid about the same as attorneys who are defending those criminals. As noted in greater detail below, the Union's proposal would help insure that that is done by raising the salaries here to about what they are for those attorneys employed by OSAD.

The Employer argues that its offer better serves the interests and welfare of the public because it would help produce "a strong agency which recruits and retains qualified employees" by paying higher salaries for entry attorneys during their first few years of employment. That is true.

But the question then becomes whether the Employer's merit base system is really in the public interest when it grants so much power and discretion to the Director who is free to decide whether an employee has performed "more than satisfactorily" and thus should be promoted to a higher grade. The Employer does not define this key term, hence apparently leaving it entirely to management's discretion to determine what it means and how it is to be applied in a given case. Absent any clear definition and objective standards, this proposal simply can lead to too much mischief and arbitrary actions by the Employer. That hardly serves the public interest.

This is not to say that some sort of merit system is not desirable. Recognition of merit is highly important in any organization and it should be encouraged here. The Employer's proposal, however, goes too far in this direction. A better compensation system would include some recognition of merit and some fairly defined objective criteria to govern some sort of general pay raises. The Union's proposal does just that by enabling the Director to use merit as the basis for moving attorneys to a higher grade upon their anniversary date and by letting him give one time performance awards of \$2,000. That is why its proposal is preferable on this score.

(4) Comparison of 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 in public employment in comparable communities and in private employment in comparable communities.

Since the inquiry at this point centers on what bargaining unit attorneys should be paid, it is unnecessary to compare their hours and other conditions of employment with other attorneys. It suffices to say that the attorneys here generally have the same hours and conditions of employment shared by other attorneys employed in the public sector, particularly those employed by the State of Illinois among its various entities and that, furthermore, there are some differences in the hours and conditions of employment

between the attorneys here and some attorneys in private practice in the Springfield area.

As far as wages are concerned, both parties point to comparables which are most favorable to their own positions while attacking the comparables advanced by the other side.

For private employment, the record shows, as evidenced by the testimony of Employer witness Grady Holley a private practitioner in Springfield, that entry level attorneys here generally earn more than what other attorneys in private practice earn in the Springfield market. In addition, Holley testified that the attorneys here have a much better compensation package as it relates to holidays, vacations, health insurance, etc.

As for public employment, some Assistant States Attorneys in various counties earn considerably less than the attorneys here and the wages paid to attorneys employed by the Illinois Attorney General are somewhat mixed, depending upon one's experience and length of service. Moreover, the Employer points out that under its proposal, most attorneys in the Attorney General's office would be making more than they do presently.

Union Exhibit No. 11 shows that attorneys serving as law clerks, research attorneys, hearing referees, and technical advisors in various kinds of public employment earn more than the attorneys here. These

jobs, though, are dissimilar from the appellate work and other work found here. Hence, and contrary to the Union's claim, they can only be given little weight.

I also am unable to accept the Union's argument that "The Cook County Public Defender's Attorneys are comparable because a section of them write Appellate Court briefs. (Emphasis added) This underlined phrase demonstrates the flaw in the Union's own argument because it recognizes that some attorneys in the Cook County Public Defender's office do work which is dissimilar to most of that found here - i.e., appellate advocacy. For while the attorneys here also sometimes try cases and work on real estate matters, child custody cases, drug forfeitures, and give advice to state's attorneys, and provide collective bargaining support to judges, the bulk of their work centers on appellate advocacy. To be a true comparison, we must try to determine what attorneys doing similar appellate work as here are paid.

That can best be done by examining the wages paid by OSAD which I find is the best comparison because OSAD attorneys do practically the same kind of appellate criminal work performed here. Indeed, OSAD attorneys are regularly on the opposite sides of the attorneys here on the very same cases. This is why Robert Biderman, Deputy Director for the Fourth District, testified that, "the agencies mirror one another in what we do to a large extent."

The record establishes, as pointed out by the

Union, that the wage rates here are substantially below the wage rates paid to OSAD attorneys as could be seen in Union Exhibit 43a which provides in pertinent part:

<u>Years</u>	<u>SAAP Current Seniority</u>	<u>SAAP Current Experience</u>	<u>AFSCME Proposal Experience</u>	<u>AFSCME Proposal Effect on Seniority</u>	<u>OSAD Attorneys (Seniority)</u>	<u>Current SAAP \$ Difference (Seniority)</u>	<u>Current SAAP % Difference (Seniority)</u>
-1	\$24,958	\$23,000	\$24,000	\$24,000	\$26,578	-\$ 1,629	- 6.50
1+	25,166	23,000	25,000	27,333	26,631	- 1,465	- 5.80
2+	none	26,750	27,000	none	28,342	-	-
3+	33,293	none	28,500	36,308	32,275	+ 1,018	+ 3.10
4+	26,750	31,000	30,500	32,500	33,845	- 7,095	- 26.50
5+	37,125	27,875	32,500	39,728	34,577	+ 2,548	+ 6.90
6+	34,026	32,564	34,500	36,960	35,649	- 1,623	- 4.80
7+	31,000	31,000	36,500	36,960	40,874	- 9,874	- 31.90
8+	31,000	35,191	38,500	38,500	40,957	- 9,957	- 32.00
9+	36,250	none	39,700	41,650	40,500	- 4,250	- 11.70
10+	35,500	35,200	40,900	40,900	45,033	- 9,533	- 26.80
11+	37,750	none	42,100	43,900	47,217	- 9,467	- 25.10
12+	38,500	37,750	43,300	43,300	50,987	- 12,487	- 32.40
13+	none	37,000	44,500	none	53,052	-	-
14+	none	none	45,700	none	50,001	-	-
15+	46,491	46,491	46,900	50,412	54,168	- 7,677	- 16.50

But for employees with 3 and 5 years experience who are paid more than their OSAD counterparts, we see that there are very substantial wage disparities of \$1,620, \$1,465, \$7,095, \$1,623, \$9,874, \$9,957, \$4,250, \$9,533, \$9,467, \$12,487, and \$7,677 between the attorneys here and those at OSAD who have the same seniority.

These disparities of course will be lessened because they do not take into account the Employer's wage offer which would raise their wages. Union Exhibit 44 shows that the Employer's first-year wage proposal will produce an average percentage raise of 5.75 or \$1,793.50 for bargaining unit members as follows:

			\$	%
	<u>Present</u>	<u>Proposed</u>	<u>Difference</u>	<u>Difference</u>
Turpin	23,000	24,600	1,600	6.95
Campbell	23,000	24,600	1,600	6.95
Thompson	23,000	24,600	1,600	6.95
Klug	23,000	25,900	2,900	6.95
Manuel	23,000	25,900	2,900	12.6
Mitchell	23,000	25,900	2,900	12.6
Burns	23,000	25,900	2,900	12.6
Burnhard	26,750	28,500	1,750	12.6
McGann	26,750	28,500	1,750	6.54
Majors	29,500	31,100	1,600	5.42
Bauer	30,000	31,100	1,100	3.6
Slovacck	31,000	31,100	100(new)	.32
White	31,000	32,400	1,400	4.5
McClain	31,000	32,400	1,400	4.5
Manachen	35,500	37,400	1,900	6.76
Stevens	35,500	37,400	1,900	6.76
Schneider	35,500	37,400	1,900	6.76
Kelly	35,500	37,400	1,900	6.76
Carter(PT)	18,190	18,700	510	2.8
Buchman	36,000	37,400	1,400	3.88
Gridovce	37,000	38,700	1,700	4.6

Wood	37,119	38,700	1,571	4.2
Mertel, R.	38,500	40,000	2,500	6.5
Mertel, T.	38,500	40,000	2,500	6.5
Arnold	38,500	40,000	2,500	6.5
Buckley	42,586	42,600	14	.0328
Mottz	50,397	52,100	1,703	3.4
Klingler(80%)	27,200	29,920	2,720	10.

These increases however, while a step in the right direction, still do not rectify the very substantial wage disparities which remain for the bulk of its attorneys.

It is true that the Employer's proposal is more generous to newer attorneys than is the Union's and that it has attempted to provide early inducements for younger attorneys. But since the Employer already has considerable discretion over what it pays new attorneys, and since the disparities here are more severe for older attorneys, this one feature is insufficient to overcome its comparability problem.

Calling them "apples and oranges comparisons," the Employer challenges the Union's data regarding OSAD on the ground that it compares attorneys with prior experience there to attorneys here who have not been credited with any prior experience. Union Exhibits 41, 42, and 43,^{5/} however, have separate categories for experience and length of service with the Employer, thereby addressing this issue. Moreover, and as the Union correctly points out, there is no reason to believe that OSAD's new hires have any more prior experience than new hires here. Hence, it must be concluded that the OSAD data

^{5/} I reserved ruling on these and certain other Union exhibits at the hearing. I have decided to admit them with the understanding that some exhibits may not be as worthy as others.

is accurate and that, furthermore, it shows that the attorneys here earn less than the attorneys there.

The Union's proposal here, which the Employer estimates calls for about a 31.39 percent wage increase over the life of the three-year contract, is certainly very substantial. However, it still does not accomplish complete parity with OSAD's attorneys.

The Employer's wage proposal, on the other hand, seeks to maintain this discrepancy. Indeed, if adopted, it could easily widen this gap for those attorneys who are not given any raises under its merit based system.

Given the exodus of attorneys who have previously left for higher paying jobs, the Employer can hardly afford to widen the wage disparity found here. Thus, Gerry Arnold testified that of the about eight attorneys who left the office in the past few years, seven left for higher paying jobs elsewhere and that some of them increased their salaries from \$20,000 and \$24,000 to \$32,000. He added that all but one of the eight went to work for other public employers, hence showing that the wages here are substantially below what is found elsewhere.

Given the need for catch-up, I therefore find that the comparison most on point, i.e., what OSAD attorneys earn - favors adoption of the Union's proposal.

5. The average consumer prices for goods and services, commonly known as the cost of living

Here, the CPI increased about 5.4 percent for the one-year period ending in August, 1990.

The Union's first-year wage proposal of about twelve (12) percent exceeds this figure, while the Employer's first-year wage proposal of about 5.35 percent more nearly meets it.

As far as fiscal 1992 and 1993 are concerned, no one today of course knows exactly what the CPI will be for those subsequent years. Nevertheless, it is questionable whether it will increase to the wage increases sought by the Union in fiscal 1992 and 1993 which it estimates come out to 7.62 and 7.73 percent respectively and which the Employer asserts really amount to 10.62 and 8.6 percent. The Employer's 6.6 and 3.9 percentage wage increases for fiscal 1992 and 1993 therefore will probably more nearly match the CPI.

Under normal circumstances, such increases would be unwarranted and would not be awarded. But, as just noted above, the attorneys here are in a catch-up situation. As a result, they are entitled to raises which may exceed the CPI for fiscal 1991, 1992, and 1993, as that is the only way that they can increase their real earning power.

Furthermore, since the Employer's merit based wage proposal can result in no raises to certain attorneys in those years, it is entirely possible that they will actually suffer a pay cut.

On balance, and given the fact that the attorneys here are entitled to catch-up pay and that the Employer's proposal could actually result in a loss of earning power, I conclude that this factor does not particularly favor either side even though the Employer's proposal is closer to the CPI for the duration of this contract.

6. Overall compensation

There is no question but that the Employer now provides the attorneys here with a generous wage and benefits package which includes vacation, holidays, other excused time, health and dental insurance, pension, the purchase of unused vacation time upon termination at full pay, half pay for unused sick leave upon termination, and disability payment for an off the job injury.

Furthermore, the attorneys here enjoy "continuity and stability of employment" which is extremely beneficial, particularly at a time when the legal profession is undergoing considerable economic dislocation.

This factor therefore is favorable to the Employer.

7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings

Following the conclusion of the hearing, the Employer filed a Motion For Leave To Submit Additional Evidence, unopposed by the Union and therefore granted, regarding an August 7, 1990, memorandum from David Wood, Acting Director Bureau of the Budget, to all heads of departments, agencies, boards, and commissions which stated,

inter alia, that for fiscal year 1992:

"You should assume a 3.6% step increase and 0% increase for COLA and Merit Compensation; however, you should document what 1% COLA and Merit Comp. increase cost."

The Employer contends that said memo "demonstrates the likelihood" that it will receive approximately the same budget for 1992 as it did for 1991 and that based upon its projections, "this would result in a massive layoff in the Spring of 1992." That, says the Employer, "is not in the public interest or welfare."

Again, this argument presupposes that the state legislature will deny the appropriations needed to fund the Union's proposal if it is selected when in fact that is not necessarily true. Furthermore, and as also noted above, it would be improper to let this extraneous factor govern which of the wage proposals herein should be selected since the Union never agreed to limit its wage offer to whatever the state legislature otherwise appropriates and since adoption of the Employer's argument would mean that there is no purpose in even submitting the wage issue to arbitration.

Accordingly, I find that the August 7, 1990, memorandum cannot be given any weight.

8. Other factors

Section 14(h) also states that other factors regarding wages, hours, and conditions of employment should also be considered as if they had been established "through voluntary collective bargaining, mediation, fact-finding,

arbitration or otherwise between the parties in the public service or in private employment."

Application of this factor does not have any meaningful bearing here.

Conclusion

The foregoing shows that selection of either proposal herein is within the Employer's lawful authority; that there are no stipulations which affect which proposal should be selected; that no changes have occurred since the hearing which favor adoption of either proposal; that other factors do not favor either side; and that while the cost of living is more in line with the Employer's proposal, the Union's higher offer is justified by the need for catch-up hence making this factor neutral.

We also see that the overall compensation package here strongly favors the Employer's proposal.

Adoption of the Union's offer in turn would be in the interest and welfare of the public because it would result in paying attorneys who prosecute criminals and suspected criminals the same as those attorneys who defend them; because it provides for a proper mix of merit pay and automatic pay raises; and because the Employer has the financial ability to pay for it.

As to comparability, the Union's offer is preferred because it would best bring up the wages here to what the State of Illinois pays OSAD's attorneys for doing roughly similar work.

Since comparability and the interest and welfare of the public are the most important factors in this particular dispute, and since application of the other criteria even out, I find that the Union's wage proposal should be adopted with the caveat noted above regarding receiving a supplemental appropriation from the state legislature.

2. The Secretary Wage Proposal

Much of the aforementioned discussion regarding the wage proposal for the attorneys is also applicable for the wage proposal submitted on behalf of the secretaries. Application of the statutory criteria therefore establishes the following:

(1) The lawful authority of the Employer

For the reasons noted above, possible selection of the Union's offer for the secretaries is not outside the Employer's lawful authority even though it may result in paying secretaries more than what has been appropriated for them in fiscal 1991 by the state legislature. Thus, the Employer remains free to seek a supplemental appropriation on their behalf if the Union's offer is selected. It need not pay them more than what has been budgeted on their behalf for fiscal 1991, thereby insuring that the Employer for the rest of fiscal 1991 does not suffer any disruptions caused by selection of the Union's offer. Again, the state legislature will have until

September 1, 1991, to appropriate any additional money for this purpose if the Union's offer is selected.

(2) Stipulation of the Parties

But for the submission of exhibits, the parties have not entered into any stipulations which influence which party's wage proposal should be selected over the other's.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs

The Employer argues that while its merit plan encourages superior performance, the Union's proposal is deficient because "a secretary has no incentive to excel" and because it "fails to provide for changes in grade."

The Union's proposal here is different from its attorneys' proposal because it does not provide for the kind of merit pay proposed for the attorneys. There really is no valid reason why secretaries should be treated differently from attorneys when it comes to merit pay. This is a serious deficiency which does not make the Union's proposal on behalf of the secretaries as attractive as the one it submitted on behalf of the attorneys.

The Employer's offer, however, still suffers from the fact that secretaries are to receive raises based only upon management's recommendation, hence giving it

too much control without any provision for some kind of of automatic pay raises.

Since this deficiency is as serious as the Union's, I find that application of this criteria does not favor either side.

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 with other employees generally in public and private employment

The major difficulty here is trying to ascertain just what constitutes "similar services" when looking at comparisons in both the public and private sectors.

The Union relies upon Union Exhibit Nos. 21, 45, 48, and 49⁶ to show that the secretaries and administrative secretaries here earn less than some employees employed by the State of Illinois in such classifications as Office Aides, Officer Clerks, Office Assistants, Office Associates, Office Coordinators, Office Specialists, Office Administrative Specialists, Office Administrator Is, IIs, and IIIs. However, it is not at all clear as to whether the employees in those classifications perform the identical duties that the secretaries here perform. If they do not, little weight can be given to such comparisons.

The record establishes through the testimony of

⁶/ Like the exhibits noted earlier on which I reserved ruling, I am accepting into the record Union exhibits regarding the secretaries with the caveat noted above - i.e., that different weight will be given to different exhibits. Union Exhibit 46, however, is rejected because of its inherent unreliability.

Administrative Secretary Shirley Bagley and Deputy Director Biderman that the legal secretaries here basically type, file, check record citations, take dictation, operate computers, are familiar with legal terms and applicable court procedures, operate general office machinery, and perform other routine clerical skills.

The administrative secretaries primarily work as lead workers by assigning cases to the legal secretaries in their offices after they have been edited by either a Deputy Director or one of the attorneys in the bargaining unit. They also check the mail, compile statistical reports, and check inventory.

As for comparables, the parties again pick and choose those which are favorable to their own positions, while downplaying those that are not.

Union Exhibit 14 indicates that there is about a \$1,122.50 difference between the average salaries of the legal secretaries and those employed by OSAD. Exhibit 15 shows that there is a \$5,764.50 difference between the average salaries for the administrative secretaries employed by OSAD and those here. However, the Employer points out that the latter figure covers two of OSAD's administrative secretaries who earn \$33,000 in its Chicago office and that Union Exhibit 14 contains an error regarding the legal secretaries. Other comparables relied upon by the Union show that but for the three highest paid administrative secretaries here, there are substantial differences between the wages here and those paid

in other state agencies. But again, we do not know exactly what the duties at these other agencies entail.

Hence, these comparables, as well as those cited by the Employer, again must be disregarded in favor of what OSAD pays its secretaries and legal secretaries since they perform the most similar work.

The Employer's proposal provides for an additional \$1,700 for the administrative secretaries thereby bringing them closer to what OSAD pays theirs. Its wage proposal would also exceed what is paid to all but one of the legal secretaries in OSAD's Elgin office and, excluding OSAD's Chicago office, its entry level proposal would exceed OSAD's entry level pay for legal secretaries.

But having said all that, it appears that the Employer's proposal still will not achieve complete parity with OSAD regarding all wage levels. On balance, I therefore find that this criteria slightly favors the Union.

5. The average consumer prices for goods and services, commonly known as the cost of living

The Union's first year wage offer of 8.8 percent exceeds the 5.4 percent increase in the cost of living for 1990-1991, while its proposal of 5.63 and 5.24 percent for fiscal 1992 and 1993 may match the cost of living for those subsequent years.

The Employer's wage proposal is closer to the cost of living for fiscal 1991 since it provides for an increase of 5.35. Its proposal of 6.6 and 3.9 for fiscal

1992 and 1993 is only slightly higher than the combined Union's proposal for those years if all secretaries are granted such raises - i.e., 10.5 percent versus 10.87 percent.

However, there is no guarantee that they will since the Employer's merit plan may leave some of them with no raises whatsoever, thereby causing them to incur a real cut in wages.

The Union's proposal for fiscal 1992 and 1993 thus will probably be closer to the CPI for all employees than will be the Employer's since the latter's proposal may result in no raises whatsoever.

That tips this criteria in the Union's favor.

6. Overall Compensation

The secretaries receive the same generous overall compensation package as do the attorneys since it includes vacations, holidays, other excused time, health and dental insurance, pension, the purchase of unused vacation time upon termination at full pay, half pay for unused sick leave upon termination, and disability payment for non-work related injuries.

This criteria supports the Employer's position.

7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings

The Employer points to the August 7, 1991, memorandum from David Wood, supra, in support of its position that selection of the Union's offer for the secretaries will

adversely affect its operations for fiscal 1992 and that its proposal thus should be selected over the Union's.

For the reasons noted above, little weight can be given to this fact because it is not at all certain that the state legislature will not make the necessary appropriation and because consideration of this extraneous factor in any event cannot control when the Union itself never agreed to limit its wage offer in that fashion when it agreed to the impasse procedure provided for in Article VI of the contract.

8. Other factors

As with the attorneys' proposal, this criteria has no bearing here.

Conclusion

The foregoing shows that the criteria regarding other factors, changes in circumstances, lawful authority of the Employer, and stipulations of the parties, are even for both sides.

The overall compensation offered by the Employer favors adoption of its proposal.

The Union's offer better meets the cost of living factor because the Employer's proposal can result in real wage cuts for some of its employees. The interests and the welfare of the public are also served by its proposal because it is not as subjective as the Employer's on the question of whether raises should be granted and because it is also within the Employer's ability to pay.

As to comparability, the Union's proposal is slightly preferred over the Employer's.

Overall, the latter factors outweigh the Employer's overall compensation package. Hence, the Union's wage proposal is selected.

10. Subcontracting

Article II of the contract, entitled "Management Rights," now gives the Employer the express right to subcontract "work or services."

The Union proposes a new article, entitled "Subcontracting," aimed at changing the contract and prohibiting the Employer from subcontracting via language providing:

"The Employer shall not contract out or subcontract any work performed by bargaining unit employees. This article shall not preclude the Employer from hiring a Secretary temporarily for a period not to exceed three (3) months, or for the duration of the incumbent's leave of absence."

The Union claims that this change is needed to prevent erosion of the bargaining unit; that the money now spent on non-agency attorneys to write briefs could then be spent to hire additional staff; and that the overall quality of contracted non-agency attorneys is not as good as that produced by bargaining unit attorneys.

The Employer disputes the Union's claim that contract attorneys produce substandard work and it maintains that it simply "cannot keep pace with the influx of briefs without the use of contractual attorneys." It also states that "The prospects for a reduction in bargaining unit

work are virtually nonexistent" since "the available work for the bargaining unit will increase" because of court imposed rule changes aimed at reducing the backlog of pending cases and because of OSAD's reduced jurisdiction. The Employer notes that the Illinois state legislature refused its request for the creation of several more attorney slots in the last budget cycle; that it "has no funds available to increase the head count"; and that the Union has failed to show how its past subcontracting has had any detrimental effect on the bargaining unit.

The Employer's position is well taken because the Illinois state legislature refused to authorize and fund the additional attorney slots it requested even though it should be obvious to everyone that the agency is understaffed and in dire need for additional personnel if it is to meet the ever growing demands on its resources. Faced with that legislative fiat, the Employer can only obtain additional manpower through the only means allowed by the state legislature - i.e., by hiring contracted attorneys.

Furthermore, the use of these contracted attorneys has not resulted in any detrimental effect on the bargaining unit, as no bargaining member has suffered from any reduction in his, her hours and none have been laid off as a result of it. Indeed, if outside attorneys were not used, attorneys in the bargaining unit would face

an even bigger backlog of cases and even more pressure to process their cases quicker - and to process more of them. Moreover, little weight can be given to the Union's claim that the work performed by these contract attorneys is substandard, as the record fails to establish that this is a general problem.

Given all this, the Union's proposed subcontracting language would be rejected under normal circumstances.

But the situation here is hardly normal; rejection of the Union's subcontracting proposal and the failure to properly appropriate whichever sums are needed to fund the Union's wage proposals noted above will lead to a situation of where the attorneys here are paid less than their defense counterparts at OSAD and the contracted attorneys who are paid more on an hourly basis and who cost the Employer \$200,000. That simply makes no sense whatsoever from a public policy standpoint and it is very unfair to the attorneys here who, the Employer concedes, will be expected to assume an even greater caseload than they do now.

It appears that there is only one way to make sure that does not happen. And that is to adopt subcontracting language which prevents the Employer and the State of Illinois from having it both ways - i.e., to pay the attorneys here less than they pay contracted attorneys and OSAD attorneys for doing similar work.

Accordingly, and pursuant to my authority to refashion and modify noneconomic language proposals,

I conclude that the following subcontracting language should be made part of the contract as a separate article:

The Employer between April 26, 1991 to September 1, 1991, retains the right to use contract attorneys.

If the Illinois state legislature by September 1, 1991, provides for whatever supplemental appropriations are needed to meet the Union's wage proposals for fiscal 1991 and fiscal 1992, the Employer retains the right to continue subcontracting out for outside attorneys after that date, just as it has in the past.

If such sums are not appropriated by that date, the Employer, commencing September 1, 1991, is prohibited from using outside attorneys to perform any work on any newly assigned cases after that date.

This prohibition does not prevent the Employer from using contract attorneys after that date for whatever cases they were working on before September 1, 1991. The prohibition on the use of contract attorneys shall be immediately rescinded if the necessary appropriations are forthcoming anytime during the life of this contract.

If I could, I would avert this problem in its entirety by reducing the Union's wage offer to what has been appropriated by the Illinois state legislature and by delaying the additional implementation of any additional compensation to June 30, 1991, so that it has practically no effect on the Employer's fiscal 1991 budget, as that would provide the lifts needed here.

But since I do not have the power to modify the parties' economic proposals, I am left with the very difficult task of trying to reconcile the Employer's difficult situation with the equally compelling need to see that

the employees here finally achieve greater parity with OSAD, something that is long overdue. Under these difficult circumstances, I believe that the above solution is the best of the worse choices available to me.^{7/}

ARBITRATOR'S SUMMARY

Based upon the foregoing, I therefore find that the Employer's proposals regarding Union rights, supplying personnel information to the Union, and involuntary transfers should be rejected.

I also find that the Employer's proposals regarding evaluations and how a brief should be defined should be adopted and thus made part of the 1990-1993 contract with the additional language change I have made regarding the standard of review to be followed if any such matters are appealed to arbitration.

For the reasons noted above, the Union's proposals regarding non-discrimination, flex time, Employer payment for Attorney Registration and Disciplinary Commission fees, and how a brief is defined are rejected.

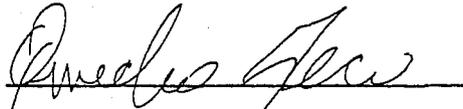
The Union's separate wage proposals for the attorneys and secretaries are also selected over the Employer's proposals with the caveats noted above - i.e., that the Employer need not pay either its attorneys or secretaries

^{7/}The Union, of course, can always unilaterally agree to take the Employer's 1991 wage proposals in exchange for the guaranteed higher wages its members will receive in fiscal 1992 and 1993 under this Award. But that is a choice it must make on its own. If the Union does agree to do that, and if the Employer then agrees to resolve this problem in that fashion, the prohibition on subcontracting will be rescinded.

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in fiscal 1991 more than has been appropriated by the Illinois state legislature.

As for subcontracting, the Union's proposed language is rejected if the Employer meets and pays for the Union's wage proposals. If it does not, the subcontracting language provided for above will become part of the contract and effective September 1, 1991.

Dated the 26th day of April, 1991, at Middleton, Wisconsin.


Amedeo Greco, Arbitrator