IN THE MATTER OF ARBITRATION	)	
	)	*Case No. S-MA-080103 (2008)*
BETWEEN	)	*AFSCME 2007-10-30697*
	)	
MACOUPIN COUNTY	)	*Hearing Date: January 15, 2008*
HEALTH DEPARTMENT	)	*Remand Date: March 26, 2008*
	)	
Employer,	)	*Interest Arbitration*
	)	
and	)	
	)	
AFSCME LOCAL 3176	)	*Marvin Hill, Jr.*
	)	*Arbitrator*
Union,)		
_____)		

APPEARANCES

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I. BACKGROUND, FACTS, AND STATEMENT OF JURISDICTION

This matter arises out of the parties' agreement to submit a first contract dispute to

voluntary interest arbitration. (R. 70). To this end the parties have stipulated that the criteria as outlined in the statute (*infra* at 9-10) are applicable in this proceeding. They have also stipulated to eight (8) economic issues for resolution:

wages (general wage increase)
longevity
hours & overtime
milage/travel reimbursement
out-of-county travel assignment/travel time
personal days
sick-leave exchange
duration

A hearing was held at the offices of Macoupin County, County Board Room, Carlinville, IL. The parties appeared through their representatives and entered exhibits and testimony. Ms. Karin Paisley, CSR, made a transcript of the proceedings, dated February 5, 2008. Post-hearing briefs were exchanged on March 14, 2008, through the offices of the undersigned Arbitrator. The record was closed on that date.

Remand to the Parties

On March 26, 2008, the undersigned Arbitrator sent the following letter to the parties' representatives:

> *Re: Health Department, County of Macoupin & AFSCME 3176*
> *S-MA-09103 (2008), Hearing Date: January 15, 2008 Carlinsville, IL*
>
> Gentlemen:
>
> Section 14(f) of the IPLRA reads:
>
> *At any time before the rendering of an award, the chairman of the arbitration panel, if he is of the opinion that it would be useful or beneficial to do so, may remand the dispute to the parties for further collective bargaining for a period not to exceed 2 weeks.* If the dispute is remanded for further collective bargaining the time provisions of this Act shall be extended for a time period equal to that of the remand. The chairman of the panel of arbitration shall notify the Board of the remand.
>
> *I am today remanding this matter back to the parties for 14 days.*

The opinion and award is more or less written and ready for distribution. If you do not reach an accord by 5:00 p.m. on April 9, 2008, I will mail my award before the 5:30 p.m. mail that same day. You have my fax number.

There is a deal to be done here. While the Employer has advanced a valid inability to pay argument,

which should be recognized by the Union, it is still asking the employees to take a hit for a full three years, with no re-opener in the event that the situation changes. You folks get together and see if you can work something out, especially on wages and length of agreement. Everything else is easy.

The parties were unable to reach an accord.

II. POSITION OF THE UNION

A. The Union's Final Offer

Introduction – Bench-Mark Comparables

External Comparables. The Union, citing the Briggs award (UX 3), asserts the following seven (7) comparables were found as relevant by Arbitrator Briggs: Adams, Christian, Fulton, Logan, McDonough, Montgomery, and Morgan (R. 85). The Union concedes that it was unable to find comparables for all of the counties noted in the Briggs award (R. 86). Accordingly, the Union proposed the following comparables as appropriate bench-marks: Calhoun, Greene, Jersey, Montgomery, Morgan, Scott and Shelby (UX 5; *Brief for the Union* at 2 n.2).

Internal Comparables. The Union has used internal comparability as the linchpin of its argument (*Brief for the Union* at 2), specifically the Briggs award for the County Telecommunicators. In terms of other employees in the County, the Union submits that the relevant document is UX 2, the collective bargaining agreement concerning the courthouse employees (R. 87).

1. Wages. General Wage Increase

The Union's wage proposal (UX 1) is as follows:

All bargaining unit wage increases shall be issued in accordance with the following provisions:

Retroactive to January 25, 2007: 3.0 or .31 per hour, whichever is greater.

Effective January 25, 2008: 3.0 or .34 per hour, whichever is greater.

Effective January 25, 2009: 3.0 or .35 per hour, whichever is greater.

Effective January 25, 2010: 3.0 or .36 per hour, whichever is greater.

All minimum and maximum salary ranges shall be increased annually to match the percentage of the general

wage increase. In the event an employee's general wage increase places him/her above the maximum salary range, the employee shall receive the difference as a lump sum bonus.

The Union submits the last day there was a general wage increase was May of 2006 where the unit received a 2.0 increase.

Addressing the County's inability-to-pay argument, the Union maintains that it has not received a fair accounting of the Employer's costing of the proposals. According to the Union: "We see the main issue as being one, of how the county orders its priorities as opposed to the inability to pay argument. We believe that there is sufficient money to allocate towards the pay increases in other monetary increases that the Union has proposed. It's really just a question of the County Board's priorities." (R. 92-93).

2. Longevity

The Union's longevity proposal (UX 1) reads as follows:

Based upon their anniversary date, all bargaining-unit employees shall receive annual longevity increases to their base rate or salary based on the following schedule:

0 – 5 years	0
6-10 years (paid at start of 10th year)	1
10-15 years (paid at start of 11th year)	2
15-20 years (paid at start of 16th year)	3

The Union points out that its longevity proposal is based on internal comparables, specifically the terms between the County and AFSCME 3176, the "Courthouse" bargaining unit (UX 2)("All full-time and regular part-time non professional employees at the Courthouse employed by Macoupin County Board, and the Clerk, Recorded and Treasurer of Macoupin County including the following job titles: Clerk, Election Manager, Chief Deputy, Animal Control Warden and Economic Development Coordinator." See, Article I, Recognition, Section 1, Unit Recognition). The Union's proposal is for longevity identical to that of the Courthouse employees (R. 88).

3. Hours & Overtime

The Union's proposes the following Hours & Overtime provision (UX 1), which reads as follows:

> Overtime Payment
>
> Employees shall receive straight time comp for all hours worked up to 40 hours weekly. For all weekly hours worked beyond 40 employees shall be compensated at the rate of time and one-half either in pay or comp time at the employee's discretion. Employees working on Saturday or Sunday shall be compensated at the rate of time and one-half in pay or comp time at the employee's discretion.
>
> d) Time Off: Time off for any holidays or accumulated holidays, vacations, personal days and/or sick days shall be counted as time worked for overtime compensation.
>
> Payment
>
> Employees shall receive straight time comp for all hours worked up to 40 hours weekly. For all weekly hours worked beyond 40 employees shall be compensated at the rate of time and one-half either in pay or comp time at the employee's discretion. Employees working on Saturday or Sunday shall be compensated at the rate of time and one-half in pay or comp time at the employee's discretion. Employees working on a contractual holiday shall be compensated at the rate of double time in pay or comp time at the employee's discretion.

The current practice is that employees working overtime receive comp time (R. 96). The Union believes that employees should have a choice between comp time and paid time (R. 88).

4. Milage Reimbursement

The following is the Union's proposal on Milage Reimbursement (UX 1):

> a) All employees required to utilize their personal vehicles to perform work related duties shall be reimbursed in accordance with the most current Federal Internal Revenue Service reimbursement rate, adjusted annually upon the sate of ratification. No employee will be reimbursed for travel between his home and his normal work headquarters.
>
> b) Any employee required to travel for work-related purposes, a distance further than the normal commute between the employee's home and his headquarters shall be reimbursed for the extra milage traveled.

Basically, the Union's proposal is to adopt whatever federal rate is adopted by the Internal Revenue Service (R. 88-89). In counsel's words: "Whatever the date of ratification of the

contract is, the parties would review the IRS figures, and that would be the figure for the year. We think that is more workable and easy, easier to administrator that the Employer's proposal." (R. 89).

5. Out-Of-County Assignment/Travel Time

The Union's proposal is as follows:

> An employee whose work assignment requires him/her to travel outside Macoupin County or Montgomery County for Dental Office employees, shall be compensated at the appropriate rate for any/all additional time or shall be allowed to flex their work schedule for any additional travel time.

Here, counsel argues that "if employees have to get up early and go out of the county, drive for a long distance, they are not getting compensated for that time, and furthermore that they are not allowed to leave early so that basically they are working an hour or two extra during the day and not getting compensated. And the Union's view of that is if at such time it kicks the person over 40 hours in a week, obviously, that may cause an FLSA issue on federal level." (R. 89).

6. Personal Days

Citing the Courthouse collective bargaining agreement with the County (UX 2), the Union proposes the same language as follows:

Accrual and Use

a) Each employee with less than ten (10) years of service shall have three (3) personal days per year with pay to be credited on January. Employees with ten (10) years or more service shall be credited with four (4) personal days per year to be credited on January 1. Employees shall not use personal days until they have completed their probationary period. For the initial Agreement only, employees shall be credited with the appropriate number of personal days upon ratification of the Agreement.

b) Personal days shall be taken in not less than one-hour increments and the employee shall receive the employee's base salary for each personal day taken. Personal days may not be accumulated from year to year but must be taken or lost.

c) Part-time employees with less than ten (10) years of service shall have one (1) personal day per year with pay to be credited on January 1. Part-time employees with ten (10) years or more of service shall be credited with two (2) personal days to be credited on January 1. Part-time employees shall not use personal days until they have completed their probationary period. For the initial agreement only, part-time employees shall be credited with the appropriate number of personal days upon ratification of the Agreement.

Scheduling

Days off shall be scheduled sufficiently in advance to be consistent with operating necessities and the convenience of the employee except for emergency situations of the employee which preclude such prior arrangements.

7. Sick Leave

Sick Leave Exchange

Employees with 20 (20) or more days of unused sick leave shall be allowed to exchange three (3) sick leaves for one (1) personal day.

The Union submits that if an employee has 20 or more days of unused sick leave, that means that they have been diligent in performing work and adding productivity to the Employer. According to counsel: "And I guess we view this as a good trade-off, a good incentive for the Employer and actually would result in more productive time being worked by the employees." (R. 90).

8. Duration

Three (3) year agreement, beginning January 25, 2007 and expiring on January 24, 210 (UX 1).

The Union points out that it selected the January date as the operative date for the wage increases because that was the certification date of the bargaining unit (R. 95). Roger Griffith outlined the Union's rationale as follows:

> Well, we use the certification date as the way to kick off the agreement. I mean I don't think we are really opposed to maybe even changing the, you know, the expiration date of the contract; but, you know, we had to have a starting date; and it wasn't fair to those folks to ask them to where – They haven't got a raise since May of 2006. It wasn't fair for this contract to start in September and then go the entire period of time without raises. People who had gone off probation period during this period of time

were denied raises, because we were in bargaining, and we had to pick a date somewhere to start. We use the certification date (R. 98).

According to Griffith, the only disagreement is over retroactivity:

> Just you know, three years was the date. I mean they came back with three years. I don't think we are in disagreement on the length of the term. I think the only disagreement is over the retroactivity (R. 99).

III. POSITION OF THE ADMINISTRATION

A. The Employer's Final Offer

Bench-Mark Comparables

Counsel for the Administration presented no evidence on external comparables. "Once the Employers determined that their final offer had to be a three-year period with no pay increases, any evidence regarding comparables was useless," in the County's words (*Brief for the Employer* at 5). As such, the Union's bench marks were not contested.

1. Wages

The County is offering a total wage freeze for the entire term of the contract with no reopener language. It asserts an inability-to-pay defense to the Union's across-the-board wage offer.

With respect to any argument regarding giving raises to other employees, the County maintains it is merely complying with the raises that were bargained by these unions several years ago when the Employer was not in the present financial emergency. To this end the County submits that the entire increase in this years' tax levy must be used to fund the raises for the AFSCME employees in the Courthouse, not the Health Department (R. 6). There is no new money for raises for any other employees. In fact, the County will be forced to spend over a half million dollars in reserves just to make it through the rest of this fiscal year. All levies are maxed out and taxes capped (R. 6).

Addressing the 911 Dispatchers' case, the County asserts that this unit was awarded a raise by Arbitrator Steven Briggs. This award has no impact on the County, since the 911 Board is

self-funded through a surcharge on every telephone line in the county. Thus, it should not be used as a comparable.

The County submits it has lost over one million dollars in anticipated revenue when two mines have recently closed, the first resulting in over a $300,000 loss, the second a $600,000 loss (R. 20). The County did everything it could to get the mine owners to keep the mines operating. It is unlikely, asserts the Employer, that the revenue loss will be made up elsewhere.

The Administration soon will be commencing collective bargaining with every union in the county, including the AFSCME courthouse units. Wage freezes, layoffs, and other cutes are likely, which has already occurred in this Health Department. The Employer entered this year facing over $350,00 in deficits. It has managed to cut that to about an $87,000 deficit by laying off numerous employees already this year. Any pay increase to this unit will result in further layoffs and cuts (R. 7).

Management notes that the levy in which the Health Department receives is controlled by the County, not the Department. Indeed, the amount that they have received from the County has not increased in the past 10 years. The levy will very likely be reduced by the County Board during this year's budget process. The amount of the reduction will be needed by the county general fund to address increasing employee costs throughout the county in other areas. Any notion that the County has any money to come riding to the rescue to fund a pay raise for the Health Department is a fantasy (R. 7).

Regarding the time period proposed by the Union, the County asserts that it and the Health Department are both on a September 1st to August 30th fiscal year (R. 8). This is why it has a problem with the January dates that are being proposed by the Union. Granting a raise to be given every January creates problems for the County. It does not correspond to any other union contract in the county. All other union contracts are on the same fiscal year which is September 1st to August 30th. It does not correspond to the County's budget and tax process either, and the most troubling problem is it does not correspond to the County's health insurance coverage.

Finally, the County has no obligation to fund the Health Department at all. It can abolish the Health Department at their next meeting by simple majority vote. More likely, says the Employer, the County will take the entire levy that was previously used for health and take the money to pay for other rising employee costs in other areas. The Department could continue, but only by using funds received from other state and federal sources. It would be severely scaled back from other things it was able to accomplish for the people in the County the last 10 years (R. 8-9).

2. Longevity

The County is offering the current practice, or "*status quo.*"[1]

3. Hours & Overtime

The County is proposing *status quo* on accrual that is straight rate to 40 hours then overtime at time and-one-half for all hours over 40. Paid time off does not count towards hours worked under the current practice. In the Administration's proposal, all overtime would be paid. This is a change from the current practice allowing some compensatory time off (R. 5; 72). Under the current proposal, no new compensatory time off will be given for overtime hours (CX1).

As with other requests for more paid time off, compensatory time impacts many of the programs which are fee for service. The more people there are taking time off, the fewer clients the Administration can serve. The fewer clients the County serves, the less revenue it generates. The less revenue received, the fewer employees it can afford.

Mr. Tarro elaborated on the Department's rationale for the change:

> Q. [Knuppel]: Can you tell us why we're requesting a change in that?
>
> A. [Tarro]: I think that to try to keep those records straight with the small amount of office management staff I have worked would be an absolute nightmare. I do believe there's a lot of motivation in paying those hours worked out, and I think it helps me reflect my budget a lot better as the year goes on what I can and can't afford to do, you know, given that we do straighten the budget out.
>
> Q. Does comp hours also impact the fee for service you were talking about before?

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[1] As noted, this is a first contract. The term "status quo" refers to status quo *in terms of current practice,* as opposed to maintaining the current contractual provision (R. 70).

> Arbitrator Hill: So, when you folks, meaning the Employer, when the Administration is at *status quo* on some of these issues –
>
> Mr. Knuppel: Yes, your honor.
>
> Arbitrator Hill: Are those recorded anyplace? Are they in any kind of an employee handbook or memorandum or anything like that?
>
> Mr. Knuppel: They are. We might be able to get one of those before the end of the hearing today (R. 70).

The employee handbook was entered into the record as CX 13.

A. Oh, yes, definitely so? (R. 72-73).

4. Travel Reimbursement

The Employer is offering to pay 48 cents per mile as travel reimbursement for the duration of the collective bargaining agreement. This, noted the Administration, is an increase over the previous amount of 0.44/mile. (R. 72). This would include language that would reduce the amount on a set formula if the price of gasoline does actually go down during the contract (R. 5).

5. Out-of-County Assignment

The County's position is *status quo*. Hours traveled over the seven and-one-half hours worked are not recorded or paid at this point in time (R. 72):

Q. [By Mr. Knuppel]: Can you tell us what the policy is with respect to the hours that you spend traveling on department business?
A. [By Mr. Tarro]: Hours traveled over the seven and one-half hours worked are not recorded at this point in time.

Q. Okay. They are not paid?
A. Not paid.

Q. Not counted towards any –
A. Comp or anything.

Q. – accrual of time?
A. Nothing (R. 72).

6. Personal Time

The Employer is proposing "*status quo*,"i.e., one personal day after 13 years. One additional day after 15 years.

7. Sick Time/Sick-Day Exchange

The Employer is proposing "*status quo*," i.e., no exchange of sick days for personal days (CX 1).

The County asserts the Union is demanding something that no other employees are currently receiving. The Administration has refused to agree to the Union's proposal since each additional day off with pay costs the Employer over $8,000. This is new money which the Employer simply does not have. (R. 4-5).

Moreover, according to the Employer, such a provision mandates a staffing problem for the Department:

> Q. [By Mr. Knuppel]: The Union is asking for the sick day exchange where they can trade sick days for personal days. Why is that a problem for the Employer?
>
> A. [By Mr. Tarro]: Again, if my staff is not working to their full capacities, not only the cost of paying them for the day off, but not producing the number of people we serve will go down.
>
> Q. There is a current practice on this?
>
> A. No. (R. 71).

8. Duration

The County is offering a contract duration of September 1, 2007 through August 31, 2010, a three-year collective bargaining agreement (CX1). It differs from the Union's proposal (three years) only with respect to the effective dates.

* * *

The Employer submits that the Union bears the burden of proof on any issue where it requests a change in the *status quo*. (*Brief for the Employer* at 3). In the Administration's view, "the Union has failed to produce any compelling evidence to support any such changes." *Id.* Once the Employer determined that its final offer had to include a three-year period with no pay increases, and evidence regarding comparables was useless. No matter what the comparables showed, the Employer could not afford to pay it. According to counsel for the Administration, "The Employers could not in good conscience put more people out of work just to offer some bogus COLA they could not actually afford." (*Brief* at 5). The current health employees have averaged at least one wage increase every year up until the bargaining unit was

certified in January, 2007 (ER 9; R. 64). The County has no new money to help the Health Department fund any raises. With a deficit of over $85,000 for the rest of the rest of the current fiscal year, the only way the Administration can make it through the first half of the current fiscal year is by laying off several employees (*Brief* at 8).

IV. DISCUSSION

E. Background – Statutory Criteria

The instant arbitration is a voluntary proceeding. No security union is involved as defined by the statute. However, the parties have stipulated that the undersigned Arbitrator is to resolve this dispute based upon the factors of Section 14(h) of the Illinois Public Labor Relations Act, Ill.Rev.Stat, ch. 48. § 614(h). The relevant provisions of the Act restricts the Arbitrator's discretion in resolving economic issues to the adoption of the final offer of one of the parties. 5 ILCS 315/14. There is no Solomon-like "splitting of the child."[2] In this proceeding, the parties have defined all issues as economic (R. 89).

The eight factors specified in Section 14(g) of the Act are as follows:

(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:

[2] *Cf.* 1 Kings 3, 24-27. "And the king said, 'Bring me a sword.' When they brought the king a sword, he gave this order, 'Divide the child in two and give half to one, and half to the other.' Then the woman whose son was alive said to the king out of pity for her son, 'Oh, my lord, give her the living child but spare its life.' The other woman, however, said, 'It shall be neither mine nor yours. Divide it.' Then the king spoke, 'Give the living child to the first woman and spare its life. She is the mother.'"

(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 costs 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.

Section 14(h) requires only that the Arbitrator apply the above factors "as applicable."

The Act's general charge to an arbitrator is that Section 14 impasse procedures should "afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes" involving employees performing essential services such as fire fighting. Enumeration of the eighth factor, "other factors," in Section 14(h) reinforces the discretion of an arbitrator to bring to bear his experience and equitable factors in resolving the disputed issue.

F. Comparable Bench-Mark Jurisdictions

As is often the case, the parties are not completely in agreement regarding the relevant bench-mark comparables. In this case, the Union offers selected comparables while the County elects to "stand pat," asserting that no comparables are necessary in light of its inability-to-pay argument (*Brief for the Employer* at 5).

Supporting the selected comparables offered by the Union is a 1994 decision by Arbitrator Peter Feuille. In *Macon County Board and AFSCME, Council 31 and Local 612*, S-MA-94-70, Arbitrator Feuille stressed geography and size in selecting comparables. His reasoning is instructive:

I selected 12 comparison counties from the Union's comparability group that I believe are the most comparable for pay comparison purposes (those listed in UX 3, excluding Madison, St, Claire, and Winnebago Counties). Eleven of these are central Illinois counties in the area bounded generally by Kankakee and Peoria on the north, Springfield on the west, Effingham on the south, and Champaign on the east. These counties fall generally between Interstate 80 and Interstate 70, and they exclude counties in the St. Louis metropolitan area (Madison and St. Clair). ***It is well known that pay levels in larger metropolitan areas generally are significantly higher than in other areas, and just as it would be inappropriate to compare Decatur-area salaries with those in the Chicago area, so it is inappropriate to use St. Louis area jurisdictions.*** Five of these counties – Champaign, McLean, Peoria, Rock Island, and Sangamon – are larger (i.e., more populous) than Macon, and seven counties – Christian, Coles, DeWitt, Effingham, Kankakee, Knox and Logan – are smaller than Macon. With the exception of Rock Island and Kankakee Counties, these comparison counties are geographically close to Macon County and these counties include an equitable mix of larger and smaller jurisdictions. These may not be the 12 best comparison counties in the entire state, but they are the most appropriate comparison counties with precise starting salary and maximum information in the record. *Feuille* at 14-14 (footnote omitted).

Arbitrator Steven Briggs, in *City of Mt. Vernon & IFOP*, S-MA-94-215 (1995), likewise found geographic proximity and local labor markets as primary considerations in selecting comparables:

> The selection of appropriate comparables for an interest arbitration proceeding is educated guesswork. No two cities or towns are mirror images of one another; thus, no two are absolutely comparable. The task is made much easier for interest arbitrators if, during the bargaining process, the parties have mutually adopted a set of benchmark communities for comparison purposes. But that is not the case here. In the present dispute each party has taken a different approach to identifying what it believes is an appropriate comparables pool.
>
> ***It is axiomatic that communities used for comparability purposes in an interest arbitration proceeding should be located within the same local labor market as the community where the interest dispute exists.*** That principle has been upheld again and again by interest arbitrators and there is no need to discuss it al length in these pages. Suffice it to say that in attracting and retaining qualified police officers, Mt. Vernon competes with communities lying within a reasonable commuting distance. The City has defines that distance as fifty miles, which is certainly not inordinately restrictive. *Briggs* at 10 (footnote omitted).

Significantly, Arbitrator Briggs found many of the comparables proposed by the Union as "just too far away to be meaningful for comparison purposes." Briggs determined that Dixon, Macomb, and Jacksonville – more than 100 miles from Mt. Vernon – were inappropriate comparables. He likewise found Mattoon, at 75 miles from Mr. Vernon, "as being outside of the local labor market in which Mt. Vernon competes for police officers." *Briggs* at 11. Like Arbitrator Feuille, Arbitrator Briggs found inappropriate bench-mark jurisdictions that were close enough to St. Louis to fall within its local labor market. *Id.*

Arbitrator Herbert Berman, in *City of Peru & IFOP*, S-MA-93-153 (1995), likewise provided an analysis of selecting comparables and declared:

> *Geographic proximity and comparable population are the primary factors used to determine comparability. But these factors only establish the baseline from which comparisons may be drawn. When dealing with a fairly small city like Peru, the proximity of cities of similar population is obviously important; but it is not the sole critical factor.* An adjacent city may draw largely from the same general labor market, but the nature of the work performed by the alleged comparable employees as well as bench-mark economic considerations may preclude its consideration for purpose of comparison. At some point, distance may foreclose consideration. Where that point lies is conjectural and might require a detailed study of the labor market and other economic and demographic factors. Without an expert study of hard data derived from reasonable hypotheses, an arbitrator must rely on the limited data available, his experience and his ability to make reasonable inferences and reach reasonable conclusions. As I noted in City of Springfield & IAFF, Local 37, S-MA-18 (Berman, 1987), at 26, "[d]etermining comparability is not an exact science." Or as Arbitrator Edwin Benn wrote in *Village of Streamwood & Laborers Int'l Union, Local 1002*, S-MA-89-89 (Benn, 1989), at 21-22:
>
> The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more toward hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities.
>
> *In addition to population and proximity, critical factors are the number of bargaining-unit employees, tax base, tax burden, current and projected expenditures, and the financial condition of the community upon which the government must rely in order to raise taxes.* *Berman* at 9-10.

Arbitrator Lisa Kohn, in *City of Aurora & Aurora Firefighters Union, Local 99*, S-MA-95-44 (1995) summarized the thinking of the arbitral community on comparability as follows:

Thus, in selecting a comparability group, the arbitration panel should look to "those features which form a financial and geographic core from which a neutral can conclude that the terms and conditions of employment in the group having similar core features represent a measure of the marketplace." The features often accepted are population of the community, size of the bargaining unit, geographic proximity, and similarity of revenue and its sources. Kohn at 7.

* * *

The following comparables are selected as appropriate bench-marks:

Calhoun
Greene
Jersey
Montgomery
Morgan
Scott
Shelby

While less relevant in this particular interest arbitration, an arbitral determination of relevant comparables may prove useful in future disputes between the parties.

C. The Impasse Items

1. Wages (general wage increase)

The Union has proposed the same 3.0% increases that Arbitrator Steven Briggs ordered for the Macoupin County Telecommunicators, minus the 1.5% equity adjustment (UX 3 at 7-10). In the Union's view the 3.0% increase compares favorably with the consumer price index (CPI) which was 4.3% in November of 2007 (JX 7) and in January 2008 (UX 7; *Brief* at 2).

Important to the Department's wage issue is the testimony of Health Director Kent Tarro, who estimated that the cost of the annual increase, plus what benefits would go up, would cost the Department $32,800 the first year (R. 55). The second year, the cumulative effect, "would be basically the effect." The cumulative effect for three years is $234,649 (R. 56).

In an exchange with counsel, Tarro outlined the problem for the Department in funding the Union's wage increase demand:

> Q. [By Mr. Knuppel]: The Union is asking for a 6 percent increase in this current fiscal year.

Do you have any money in this current fiscal year for these kinds of fiscal increases:

A. [By Mr. Tarro]: We don't. We actually had problems the last two years making payroll. The last couple of months of the year have really been a problem for us where we actually stopped paying bills to make sure that the payroll gets met. We have been experiencing problems with the dental clinic. We lost almost $150,000 last year, and we have really not had any particular program where we have really not had any particular program where we have actually gained, had any real positive gains.

* * *

From September 1 of '06 to August 31, '07, we lost around $51,000; and from September 1 of '07 to August 31 of '08, we project about $87; and that is after a cumulative 18 layoffs in the past several years. Bigger yet, we are losing four big programs next year from '08 to '09, Children's Health Care Foundation, the M & M Dental Clinic. I have laid off staff there. We will not produce all listed there, and we received no more revenues. As a matter of fact, we took a few cuts in monies that we were receiving to the point where we actually started working on the budget with $357,000 expenses over revenue. (R. 51-54)

Q. Okay, buy now, we're about halfway through this fiscal year. You're reflecting that there's an $87,000 deficit still pending for the remainder of this fiscal year?

A. Yes. I have not only an $87,000 loss, but at this time of year, normally, we would have a cash flow of two-and-a half, three months. We are showing a cash flow of at most four to six weeks. So, we're about two months less cash flow than we had this time last year.

Q. How did the deficit change from the 357 down to the 87?

A. We had layoffs, and those layoffs are

Q. Tab 7?

A. Tab 7, and the second page of the layoffs shows my response to the $357,000 loss of expected loss for this fiscal year; and one of the biggest, of course, includes the loss of s dentist, then a dental assistant. A domestic violence advocate part-time was taken. Part-time WIC clerk had resigned, and we didn't replace her. Another part-time clerk resigned. A counselor was reduced from five days a week to two, and those are some of the things that we had done to reduce the budget.

Q. So, all of these layoffs and/or reductions in people's hours have occurred since September 1st of '07?

A. Yes.

Q. Within the last six months?

A. Yes.

Q. Those people are still on layoff?

A. One is right in the process, yes. She will – her last day is January 31. Actually, that one's not referenced on here.

Q. So there's an additional layoff pending?

A. Yes. (R. 54-55).

Tarro estimated that he was writing grants "as we speak." "I really have tried to go after every grant that even comes close to fitting within the mission of the Public Health Department." (R. 57). He added, however, prospects were bleak: "With the potential of over $400,000 in the hole to start the fiscal year, there's going to be the potential of more reduction in staff than anything." (R. 56).

Up to May 16 of '06, everyone in the Department received 18 raises in the past 17 years. (R. 64). There have been no raises in the first half of this fiscal year, which brings us up to today (R. 65).

During cross examination the Union established that the Employer's cost estimates *includes* a total of 58 employees, 28 employees that are *not* in the bargaining unit (R. 74-75). Management acknowledged that if the Union's offer were accepted, the Employer would implement any raise for the non-union employees also (R. 75-76). Mr. Edstrom made his point as follows:

> Q. Now, the non-bargaining-unit employees for the most part are higher paid than the bargaining unit employees, is that correct? Or let's first focus on the eight that were given raises [raises that were given to non-unit staff in March of '07].
>
> A. Right.
>
> Q. Those are the higher level management staff?
>
> A. Management staff, yes.
>
> Q. So, the impact of giving those folks the raises would be greater than the impact of a person-by-person basis of giving bargaining unit that same percentage?
>
> A. Yes. (R. 75-76).

This same procedure was used by the Employer for all of the Union's economic proposals.

In the Union's view, it has not received a fair accounting of the Employer's costing out of the proposals. In counsel's words: "I guess we see the main issue as being, one, how the County orders its priorities as opposed to the inability to pay argument. We believe that there is sufficient money to allocate towards the pay increases in other monetary increases that the Union has proposed. It's really just a question of the County Board's priorities." (R. 92-93).

Significantly, one week after the hearing in this case the County Board Finance Committee began the process of finding new ways to address the financial emergency, necessary to make it through the remaining months of the current fiscal year. To this end the Board has already begun the process of reducing the amount of the tax levy which they appropriate to the Health Department. Two more employees of the Health Department have been laid off since the hearing in this case (Supplemental Record I & II; *Brief for the Employer* at 9).

* * *

It has been observed by one practitioner/researcher that "the attitude of many arbitrators toward the inability-to-pay criterion ranges from indifference to hostility."[3] Some arbitrators

[3] R. Theodore Clark, Jr., *Interest Arbitration: Can the Public Sector Afford It? Developing Limitations on the Process: II A Management Perspective*, in Arbitration Issues for the 1980s, Proceedings of the 34th Annual Meeting, National

consider the criterion in form only and not in substance. Others accord it substantial weight by never awarding any kind of contractual benefit that would significantly alter the public employer's budget priorities.

Addressing the issue of what an inability-to-pay argument entails, Arbitrator Edward Krinsky found that:

> In the extreme case it means that the employer has reached the limits of its taxing authority, or that it is bound by fiscal control legislation and is precluded from additional spending or borrowing. In the more typical case the assertion means that the employer cannot pay more without additional borrowing, taxing, or altering of budget priorities in ways deemed undesirable, and perhaps resulting in curtailment of services and benefits.[4]

This case pits two competing considerations in interest arbitration. On the one hand, neutrals have to recognize a *bona fide* inability-to-pay argument under the "interests and welfare of the public" criterion. To do otherwise would be a disservice to the parties and a violation of the statute. At the same time, employees should not be expected to finance an institution that is unprepared to "bell the cat" by going to the public to raise taxes or cutting back services. In *Winning Arbitration Advocacy* (BNA Books, 1997), Hill, Sinicropi and Evenson address inability-to-pay arguments and conclude:

Academy of Arbitrators (J.L. Stern & B.D. Dennis, eds) 248, 250 (BNA Books, 1982), as cited in Hill, Sinicropi & Evenson, Winning Arbitration Advocacy 452 (BNA Books, 1997).

[4] E.B. Krinsky, *Interest Arbitration and Ability to Pay: I, U.S. Public Sector Experience*, in Arbitration 1988: Emerging Issues for the 1990s, Proceedings of the 41st Annual Meeting, National Academy of Arbitrators (G.W. Gruenberg, ed.) 197, 199 (BNA Books, 1989), as cited in Hill, et al., at 452-453.

> The late Senator Everett Dirksen of Illinois once observed that the federal government was spending "a couple billion here, a couple billion there, and that pretty soon it was going to add up to real money." The point to stress from these examples is that interest neutrals, while recognizing that public sector spending is a matter of priorities, must also realize that it is possible for a government entity to be "dead broke." Arbitrators may question priorities in the budget (being careful, we hope, not to substitute their judgment for that of public management) by making inquiries into such subjects as (1) management's history of understating revenues and overstating expenses; (2) whether additional sources of revenue are in fact available, given constitutional or statutory debt limitations; (3) whether major repairs and capital expenditures listed in the budget can be amortized; and (4) whether employees are being asked to bear an unreasonable burden in a financial crisis. Ability to pay, as opposed to willingness to pay, is a factual determination and a valid interest criterion. If arbitration is to continue to be a viable alternative to public sector strikes, financial considerations must be given proper weight by the arbitral community. [5]

The County has not just offered up an inability-to-pay argument. It has offered up an argument documented by what it argues is hard evidence. As stated by one commentator:

> [A]bility to pay . . . can only fairly and intelligently considered when the [arbitration] panel is presented with fully documented references to such subjects as real estate and sales tax collections, constitutional debt limitations, the possibility of deficits, per capita income of citizens, economic trends in the particular locality, and recent settlements with other bargaining units by this government entity and other employers. [6]

The loss of sales tax revenue from closing of two mines ($900,000) has rendered the financial situation at Macoupin County precarious. The County has already bitten the bullet by re-ordering priorities, instituting cutbacks ($210,091 for FY '08)(CX 7), and effecting layoffs (8 full-time & 10 part-time employees in the past five years)(CX 7). Absent any viable alternative suggested by the Union, the financial situation of the County is relevant in assessing the validity of the Union's request for a 6.0% (yr 1), 3.0% (yr 2), and 3.0% (yr 3) wage increase.

The courthouse contract and 911 dispatchers award by Arbitrator Briggs, while supportive of the Union's case, are not dispositive in the Health Department Employees' contract

The AFSCME courthouse collective bargaining agreement provides for a 4.0% increase September 1, 2007 (UX 2). The record indicates that the County ratified that contract in September of 2005, a time where the County Board was in better financial shape (one and one-half fiscal years ago) than before the current financial emergency engendered by the loss of sales tax revenue when the mines closed.

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[5] Hill, *et al*, at 457 (footnotes omitted).

[6] A. Anderson, E.S. MacDonald & J.F. O'Reilly, *Impasse Resolution in Public Sector Collective Bargaining – An Examination of Compulsory Interest Arbitration in New York*, 51 St. John's L. Rev. 453, 465 (1977), as cited in Hill, et al., at 454.

Similarly, the Briggs award is not dispositive to the outcome for this bargaining unit. While the dispatchers employed by the 911 Board received a 3.0% increase during the current fiscal year, the dispatchers are funded by a separate surcharge on every telephone line in the County. That money is not available to be used for any other purpose. Moreover, the employer in that case was the 911 Board, a separate entity from this Board. Significantly, unlike the health and clerical employees, the County provides no funding for the 911 employees.

Having said this, the Briggs award is a valid internal comparable and has relevance for this purpose.

The history of wage increases, and external criteria, favors the Administration's position

The Employer submits that when it had funds available, it has always been fair with its employees, reflected in the annual increases in the Health Department (*Brief for the Employer* at 7). To this end the Administration has demonstrated that health employees have averaged at least one wage increase every year up until the bargaining unit was certified in January of 2007 (R. 64). Indeed, 18 raises were given in the past 17 years (EX 9). I am not convinced by any of the external data (difficult to ascertain) [7] that this unit is so underpaid so as to warrant an increase notwithstanding the County's dismal financial situation.

The Employer's ability-to-pay argument is based on its maintenance of its current manner and level of services being funded at the unit's expense rather than that of the taxpayers and users

While the Administration is correct in its assertion that the County Board could eliminate the entire Health Department by a simple majority vote, or may need to reduce services and lay off employees, in the Union's eyes its proposal at arbitration is to maintain current services while freezing bargaining-unit employees' pay and increasing non-bargaining-unit employees' pay, effectively reducing the bargaining-unit employees' standard of living as the primary means of funding its increasing costs and decreasing revenues (*Brief for the Union* at 3-4). According to the Union: "The evidence reflects that the Employer prefers to make its budgetary decisions, be they layoffs, service cuts or other choices, in the context of a wage freeze rather than in the context of maintaining some measure of respect for the employees' standard of living." (*Brief* at 4).

[7] The Union provided several comparable job titles in UX 5, including Health Educator, Registered Nurse, LPN and Dental Assistant from Illinois Department of Employment Security figures for relevant bench-mark jurisdictions. Given the form presented, it is difficult to get a read on external data.

If a government entity elects to provide a service, whatever its nature, police, fire, sanitation, health care, etc., it is expected that it will pay market rates to deliver that service. It is unrealistic to posture itself in an untenable position by asking the unit to take a three-year wage hit, *with no reopener available,* and then announce that non-bargaining-unit employees will receive the same wage increase that is awarded in arbitration. As characterized by the Union: "The Employer, for its own reasons, has chosen to apply the 'all for one and one for all' principle to bargaining-unit and non-bargaining-unit employees only if the Arbitrator orders benefit increases for bargaining unit employees. Otherwise it has been on a one-way street in favor of the non-bargaining-unit employees." (*Brief* at 3).[8]

The Employer's bargaining proposal – that the health unit accept a wage freeze for three years notwithstanding the uncertainty of events during that period – is completely unacceptable

What really tips the decision in favor of the Union is the Employer's insistence that the bargaining unit accept a three-year freeze *notwithstanding future developments*. It is one thing for the Administration to enter a plea of inability to pay because of revenue declines. This I recognize and accept. It is another to assert that the unit take a freeze *with no re-opener,* even in the event that conditions change. All risk is placed on the employees. This position is completely unreasonable and trumps the Administration's inability-to-pay argument.

* * *

For the above reasons, the Union's final offer is awarded.

2. Longevity

The relevant document with respect to longevity is UX 2, the collective bargaining agreement for the courthouse employees. The Union's proposal is for the same provision as the

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[8] In *City of East St. Louis, IL & East St. Louis Firefighters Local 23*, S-MA-87-25 (1987), Arbitrator Duane Traynor considered an inability-to-pay argument, and rejected the notion that budget deficits must be financed on the backs of bargaining- unit employees. Relevant is the following paragraph:

> The panel of arbitrators realizes that the City of East St. Louis is nearly bankrupt and that unless it curtails its expenses, generates greater revenues, increases in wages might force it into bankruptcy. The City government, however, is responsible for providing certain essential services such as a fire department. It cannot expect that the fire fighters, who, by law, are denied the economic weapon of striking, to suffer a cutback in wages due to the loss of the purchasing power of the dollar. It therefore has the obligation of funding increases in wages.
>
> * * *
>
> It is the opinion of the panel of arbitrators that the Union's last offer of settlement on the economic issue of wages should prevail.

courthouse employees (R. 88), and based on the internal documentation, the Union's proposal on longevity is awarded.

3. Hours & Overtime

As outlined above, the parties' current practice is that employees working overtime receive comp time (R. 96). The Union believes that employees should have a choice between comp time and paid time (R. 88).

The *status quo* is awarded.

4. Milage/Travel Reimbursement

At the conclusion of the hearing I notified counsel that the Employer's proposal has a number of administrative problems inherent in the language, specifically being tied to the price of gasoline. Making much more sense, the Union's proposal (adopting whatever the federal IRS reimbursement rate is and adjust this on an annual basis) would be awarded.

5. Out-of-County Travel Assignment/Travel Time

The Administration's proposal here is outlined in an exchange with the undersigned Arbitrator:

> Q. [By Mr. Edstrom]: Now, I had a question with respect to the travel time issued before the Arbitrator. As I understand it, part of the Union's proposal is that if a person has to – let's say – go to Bloomington or someplace and get caught up and start driving an hour or two early to get there, that the Employer is not giving the person the current practices for that person to not get any pay for that time spent in travel status?
>
> A. [By Mr. Tarro]: The current practice is really more if they have to be there at 7 or 8 in the morning, we are probably going to have them go overnight.
>
> Q. Okay.
>
> Arbitrator Hill: – to get someplace?
>
> A. Exactly. If it's within an hour, we don't.
>
> Q. [By Mr. Edstrom]: So, you would pay them for the travel status if they went that couple hours travel time?
>
> A. To Bloomington, yes. Often it occurs, yes.

Arbitrator Hill: That is not reflected in your final offer, by the way. I think that is what counsel is getting at. This says hours spent traveling outside normal work hours.

A. That is actually a nonissue. If they have to travel the night before to Bloomington, no, that is not paid.

Arbitrator Hill: But if they travel during their working hours, if they are "on the clock" so to speak, 8 to 5 or –

A. Yes.

Arbitrator Hill: – 7 to 4 you would pay them?

A. [yes] Nods head.

Arbitrator Hill: If somebody has to leave after work to get to Bloomington, you won't pay them for that?

A. Yes. (R. 80-81).

* * *

Staff Representative Roger Griffith also advanced the argument for compensation when an employee is away on Department-related business:

Q. What about the out-of-county assignment? You heard Mr. Tarro's testimony about if somebody normally had to go a couple hours, they would have them stay overnight the night before. Is that your understanding of the practice or what really led to the Union taking this position?

A. It's been one of the key issues is my understanding from talking to the members of the past year down here. First of all, nobody's ever told me they have gone anyplace and spent the night. The same thing if they are required to get up and leave early to go to a meeting or function a further distance than they normally travel, they don't get any compensation for it. If they have to leave at 6 o'clock to get to the meeting that starts at 8 o'clock, they get nothing. If they get home late, they get nothing. I don't think they are compensated at all for any of the travel. (R. 96-97).

* * *

The Union's goal was for employees' time to be treated consistent with the Fair Labor Standards Act, 29 USCA Sec. 201, *et seq*. The proposal was intended to allow the parties to avoid enforcement issues before the U.S. Department of Labor and, instead, cover them under the parties' collective bargaining agreement (*Brief for the Union* at 5).

The Union advances the better argument regarding getting paid for travel. I find no support for the proposition that employees should not get paid for travel when they are traveling

on behalf of the County. The County has complete discretion if and when employees leave the base, so it is difficult to accept an inability-to-pay argument in this respect.

The Union's proposal is awarded.

6. Personal Days

Again, the Union has requested the same provision on personal days as the courthouse unit (CX 2).

The Union's rational is sound. As articulated by Mr. Edstrom at the hearing:

> The sick leave exchange language that we have proposed is, I guess, similar in intent to the sick leave bonus policy. That is that if an employee has 20 or more days of unused sick leave, that means that they have been diligent in performing work and adding productivity to the Employer; and I guess we view this as a good trade-off, a good incentive for the Employer and actually would result in more productive time being worked by the employees. (R. 90).

Under the Administration's proposal, only two current employees get personal days (R. 97).

Similar to longevity, the Union's proposal is awarded.

7. Sick Leave Exchange

Unlike other proposals, the sick-leave exchange program is not in the courthouse contract.

Mr. Griffith outlined the thinking of the Union this way:

> A lot of contracts have it. It's a way to reward employees for not using and abusing sick time. In a way, it benefits the Employer. If I can exchange three sick days that I may get paid three times for one personal day, we looked at it as a way of benefitting both parties. (R. 98).

The Administration's final offer is awarded.

8. Duration

Mr. Griffith acknowledged that all other union contracts in the county are on the

September 1st – August 31st fiscal year (R. 102). He also conceded that this is a real problem in terms of the tax process and the budget process (R. 102). There may also be problems in insurance coverage, although this is speculative (R. 102-103). Mr. Knuppel makes his point in an exchange with Mr. Griffith:

> Q. [Knuppel]: You're proposing that these increases are going to fall right in the middle of each fiscal year for this unit?
> A. [Griffith]: Basically, yeah, if you look at our proposal, that is what it says.
>
> Q. And you heard Andy testify that is a real problem in terms of the tax process and the budget process, correct?
> A. That is true.
>
> Q. And in theory, it could lead to problems with the insurance coverage for these employees also, couldn't it?
> A. I wouldn't expect it to cause problems, not in the insurance. The language in this thing's already agreed to. These guys get whatever the county employees get. Really, there was no bargaining with this particular language on insurance. They are getting whatever the rest of the employees already get. (R. 102-103).

* * *

The record indicates that the next fiscal year begins Department 1, 2008. At that time the County will be in bargaining with all union employees at that time since the duration articles of all other union contracts in the County correspond to the County fiscal year. Given the economic situation facing the County, the Administration's position makes more sense than the Union's proposal.

With confidence the Administration can "fit" the Union's salary offer (awarded) to an expiration date of August 31st, the Employer's duration provision (three years) is awarded.

VI. AWARD

wages (general wage increase) – Union's proposal
longevity – Union's proposal
hours & overtime – Union's proposal
milage/travel reimbursement – Union's proposal
out-of-county travel assignment/travel time – Union's proposal
personal days – Union's proposal
sick leave exchange – Employer's proposal
duration – Employer's proposal

Dated this 9th day of April, 2008
at DeKalb, IL 60115

_____
Marvin Hill, Jr.
Arbitrator