AWARD OF INTEREST ARBITRATOR

In the Matter of Interest Arbitration Between County of McHenry/McHenry County Sheriff's Department and the Illinois Fraternal Order of Police Labor Council	Opinion and Analysis, Findings of Fact, and Award by Arbitrator Peter Feuille in ILRB No. S-MA-13-004 Unit III

Date of Award: March 20, 2014

APPEARANCES

For the Employer:

Mr. John H. Kelly, Ottosen Britz Kelly Cooper Gilbert & DiNolfo, Ltd., Attorney
Mr. Robert Ivetic, Human Resources Director
Ms. Crystal Schilling, Human Resources Coordinator
Cmdr. Duane Cedergren, Administration Bureau Commander
Sgt. Carolyn Decman, Administration Sergeant

For the Union:

Mr. John R. Roche, Attorney
Mr. Richard Stomper, Field Representative

INTRODUCTION AND BACKGROUND

The County of McHenry and the McHenry Sheriff's Department ("Employers" or "Employer") and the Illinois Fraternal Order of Police Labor Council ("Union") negotiated to generate a successor collective bargaining agreement ("CBA") to succeed the 2008-2012 CBA that expired on November 30, 2012 (Union Exhibit 7 ("UX 7")). During their negotiations, which included mediation, the parties reached agreement on almost all issues (UX 4) but were not able to

reach agreement on one issue. Accordingly, the Union invoked the interest arbitration procedure specified in Section 14 of the Illinois Public Labor Relations Act ("Section 14," “Act”). The parties selected the undersigned as Arbitrator, waived the tripartite arbitration panel format and agreed that I would serve as the sole Arbitrator, and the Illinois Labor Relations Board ("Board," “ILRB”) appointed me as the interest arbitrator in this matter.

Additionally, the parties waived the Act’s requirement in Section 14(d) that the hearing in this matter must commence within 15 days of the Arbitrator’s appointment, and the parties agreed to waive/extend Section 14(d)'s hearing and other timelines to accommodate the scheduling needs of the participants in this matter (UX 1). I am most grateful for the parties’ willingness to modify the arbitration process timelines contained in Section 14, particularly their extension of the time allowed for this Award to be issued (60 days from the date briefs are received by the Arbitrator; Tr. 56).

By mutual agreement, the parties held an arbitration hearing on December 17, 2013, in Woodstock, IL. This December 17 hearing was stenographically recorded and a transcript was produced. The parties waived oral closing arguments at the hearing and instead submitted written post-hearing briefs. With the Arbitrator's final receipt of these briefs and other post-hearing materials on February 7, 2014, the record in this matter was closed.

STATUTORY DECISION CRITERIA

Section 14(g) of the Act mandates that interest arbitrators "shall adopt the last offer of settlement [on each economic issue] which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 14(h) of the Act requires that an interest arbitrator or arbitration panel base the decision upon the following Section 14(h) criteria or "factors," as applicable. These factors, in their entirety, are:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

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

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.
(B) In private employment in comparable communities.

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

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

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

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Act does not require that all of these factors or criteria be applied to each unresolved item; instead, only those that are "applicable." In addition, the Act does not attach weights to these decision factors, and therefore it is the Arbitrator's responsibility to decide how each of the applicable criteria should be weighed. We will use the applicable criteria to make decisions on the issue presented in this proceeding.

ANALYSIS, OPINION, AND FINDINGS OF FACT

The Parties

Employer. The County of McHenry is a general purpose county government that provides governmental services to McHenry County citizens, including law enforcement and public safety services via its Sheriff's Department. The County is located northwest of Chicago and abuts the Wisconsin border. The County has a growing population, as can be seen in its 2010 Census population of 308,000 and its 2011 population estimate of 327,000 (UX 12).

The County has a total of about 1,300 employees, with most of those employees represented in 10 different bargaining units (Tr. 37).

Union. As of the date of the hearing in this matter, the instant bargaining unit included about 75 full-time employees (UX 8), none of whom are sworn law enforcement personnel. This unit includes civilian employees of the Sheriff's Department, including Dispatchers, Auto Technicians, Court Security Officers, Process Servers, Clerks, Secretaries, and so on (UX 8). There are a total of three units of represented employees in the Sheriff's

Department, including Unit I (Deputies), Unit II (Corrections), and the instant Unit III (Civilians). All three of these units are represented for the purposes of collective bargaining by the Illinois Fraternal Order of Police Labor Council. In addition, there are seven other bargaining units of County employees located in different parts of County government (Employer Exhibit 2 ("EX 2")).

Issue and Final Offers

The record shows that the parties are at impasse over, and have submitted final offer proposals on, the wage issue. This is the only unresolved issue in the instant proceeding (Tr. 12). Wages are specified in Article XXV of the parties' CBA. The parties agree that this is an "economic" employment term within the meaning of Section 14 of the Act (UX 1).

As will be seen shortly, each party has submitted a three-year wage offer, which means that the successor contract emerging from this proceeding will cover the period December 1, 2012, through November 30, 2015.

1. Wages (Article XXV)

Current. Unit members currently are being paid their Article XXV wages in effect during the 2011-2012 contract year ((UX 7). During the pendency of the parties' negotiations and subsequent impasse, unit members have not received any general wage increases. Each party has submitted a three-year wage offer that proposes wage

increases to take effect on December 1, 2012, December 1, 2013, and December 1, 2014. The parties mutually agree that any wage increases effective December 1, 2012, and December 1, 2013, will be retroactive to those dates (EX 1, UX 2). December 1 is the start of the Employer's fiscal year, and along with numerous other Illinois bargaining parties the County and Union decided to have their fiscal year serve as their contract year (December 1 – November 30).

Employer's Final Offer. The Employer proposes a set of three-year wage increases as follows: (1) effective December 1, 2012, Article XXV wages be increased by 2.75 percent above their current (2011–2012) amount; (2) effective December 1, 2013, contract wages be increased by 3.0 percent above their 2012–2013 amount; and (3) effective December 1, 2014, contract wages be increased by 2.5 percent above their 2013–2014 amount (UX 2). If we set aside the effect of compounding, the Employer has proposed a total wage increase of 8.25 percent during the three-year life of the parties' next contract.

In addition, the Employer proposes that the Auto Technicians' wage schedule be compressed from 20 steps down to 15 steps effective on December 1, 2012, with the new top step in the compressed wage schedule paying essentially the same amount as the top step under the previous 20-step schedule (EX 1). Similarly, the Employer proposes that the Dispatchers' wage schedule be compressed from 15 steps down to 12 steps effective on December 1, 2013, with the new top step in the compressed schedule paying essentially the same amount as the top step under the previous 15-

step schedule (EX 1). As this indicates, both Auto Technicians and Dispatchers would make their way upward through their respective wage schedules and reach their top step wages faster than under the current CBA. As will be seen below, the Employer's proposed compressed wage schedules for Auto Technicians and Dispatchers are identical to the Union's proposed compressed wage schedules for these two employee groups. As this indicates, then, the only difference between the parties' two final offers is one-half of one percentage point (0.5%) general wage increase for the 2014-2015 contract year (EX 1, UX 2).

The Employer supports its wage offer with a variety of evidence. The Employer argues that the totality of the evidence supports the selection of its final offer.

Union's Final Offer. The Union proposes a set of three-year wage increases as follows: (1) effective December 1, 2012, Article XXV wage rates be increased by 2.75 percent above their current (2011-2012) amount; (2) effective December 1, 2013, contract wage rates be increased by 3.0 percent above their 2012-2013 amount; and (3) effective December 1, 2014, contract wage rates be increased by 3.0 percent above their 2013-2014 amount (UX 2). If we set aside the effect of compounding, the Union has proposed a total wage increase of 8.75 percent during the three-year life of the parties' next contract.

In addition, the Union proposes that the Auto Technicians' wage schedule be compressed from 20 steps down to 15 steps effective on December 1, 2012, with the new top step in the compressed wage schedule paying essentially the same amount as the

top step under the previous 20-step schedule (UX 2). Similarly, the Union proposes that the Dispatchers' wage schedule be compressed from 15 steps down to 12 steps effective on December 1, 2013, with the new top step in the compressed schedule paying essentially the same amount as the top step under the previous 15-step schedule (UX 2). As this description indicates, both Auto Technicians and Dispatchers would make their way upward through their respective wage schedules and reach their top step wages faster than under the current CBA (UX 2). I note that both parties have submitted identical compressed wage schedules for Auto Technicians and Dispatchers (EX 1, UX 2).

The Union supports its wage offer with a variety of evidence. When viewing the totality of evidence in the record, the Union argues that the evidence supports the selection of the Union's final offer.

Analysis

When we examine the evidence that the parties have submitted in support of their proposals, we observe the following.

First, neither party submitted any evidence or arguments directed at the *lawful authority of the employer* under the Section 14(h)(1) decision factor. Accordingly, it will not be considered.

Second, under the *stipulations of the parties'* decision factor specified in Section 14(h)(2), there is an important stipulation reached by the parties during the negotiations that preceded the instant arbitration, and we will examine that stipulation later in this section.

Third, the *ability to pay* decision factor under Section 14(h)(3) has played only a *de minimis* role in this proceeding. In its brief, the Union devoted several pages to showing that McHenry County is in very strong financial shape and could easily afford to fund the Union's final offer (Union Brief. pages 22-31 ("Un.Br. 22-31")). For its part, the Employer argues that the Union's proposed 3.0% raise in the third contract year, when added to the step movement of employees still moving upward through their wage schedules, results in an increased expenditure of taxpayer dollars. In contrast, the Employer notes that its proposal for this same year holds down the impact on the County budget (Employer Brief, pages 4-5 ("Er.Br. 4-5")).

When we consider how highly similar the parties' wage offers are, it is very difficult to use ability to pay evidence and arguments to justify the selection of one offer over the other. Moreover, neither party submitted any unit-specific cost information to specify the dollar amount of the cost of these two wage offers. As noted above, the Union offer calls for wage increases totaling 8.75%, plus the compressed wage schedules for the Auto Technicians and the Dispatchers. The Employer's offer calls for wage increases totaling 8.25%, plus the same compressed wage schedules for Auto Technicians and Dispatchers. The Union presented several exhibits designed to show that the Employer's financial condition is very strong, and the Union concluded that the Employer can afford to fund the Union's offer. The Employer presented a less optimistic view of its fiscal condition than did the Union, but the Employer presented no claim of inability to pay

or that the selection of the Union's offer would adversely affect the Employer's operations. Although the Employer is in a strong fiscal posture, I note that the Union's offer does not deserve to be selected simply because the Employer can afford to fund it. Accordingly, I find that the ability to pay evidence is not helpful when making a selection decision in this matter.

Fourth, I note that both parties submitted very little *external comparability evidence* under the Section 14(h)(4) decision factor. As noted in the Union's post-hearing brief, "In the instant case, the parties simply did not rely upon external comparables as a reference in the current round of negotiations for this Collective Bargaining Agreement" (Un.Br. 15). As a result of the parties' decisions to not rely on external comparables in this matter, we will make our selection decision without relying upon bargaining and arbitration developments in comparable communities.

Next, when we move to the *internal comparability evidence* under Section 14(h)(4), we see that the Employer's practice is to try and be consistent with the wage increases across its bargaining units, particularly the units in the Sheriff's Department. Looking at the history of recent wage increases in the Sheriff's Department's units, we see the following:

TABLE 1
SHERIFF'S DEPT. % WAGE INCREASES

Unit	12/01/2011	12/01/2012	12/01/2013	12/01/2014
Unit I (Deputies)	2.75%	3.00%	3.00%	__
Unit II (Corrections)	2.00%	2.75%	3.00%	__
Unit III (Civilians)	3.25%	2.75%	3.00%	2.5% or 3.0%

Source: EX 2.

We know that the wage increases in Unit III effective December 1, 2012, and also December 1, 2013, will be 2.75% and 3.0%, respectively, because those are the final offers of both parties for the wage increases scheduled for those dates.

When we examine the internal comparability evidence, we see that this evidence supports the selection of either offer. During the years represented in Table 1 above, wage increases in Sheriff's Department bargaining units have ranged from 2.0% to 3.25% with an average increase I calculate as 2.83% per year. This average increase provides somewhat more support for selecting the Union's final offer instead of the Employer's offer. When we expand the scope of our internal search to include other bargaining units elsewhere in County government, we see that there are two CBAs which have wage increases specified for the contract year effective December 1, 2014. They include IUOE Local 150's contract with the County that includes the Facilities unit. According to the Employer, that CBA provides for a 3.0% increase effective December 1, 2014, in that unit (Er.Br. 6). At the same time, the Employer points out that the County's contract with SEIU covering the support staff at the Valley Hi Nursing Home specifies a 2.5%

increase effective on December 1, 2014 (Er.Br. 6). As this preliminary evidence indicates, wage increases for the 2014 contract year in two other County bargaining units are in the 2.5% – 3.0% range (EX 2), which provides us with little help in selecting a final offer of either 2.5% or 3.0% in this matter.

Turning to the dimension of compressed wage schedules for Auto Technicians and Dispatchers, I note that the Employer proposed both of these compressed wage schedules, the Union accepted them (Un.Br. 9), and they are included in both final offers.

The Employer calls attention to the fact that, in addition to the general or across-the-board wage increases specified in the parties' final offers, unit members will receive additional money via step increases. The Employer argues that these step increases are significant and go a long way toward meeting increases in the cost of living. The Employer notes that the step plans in the parties' CBA provides an average of between 1.25% and 1.9% per year in income to those employees who are still moving up through the steps. The Employer says these step increases are "new money" to the employees receiving them. The Employer says that when the 1.25% – 1.9% step movement is added to the 2.5% annual wage increase proposed by the Employer in the third year, these employees clearly gain against the CPI.

For its part, the Union downplays the importance of step increases, noting that the wage amounts generated by step increases are "old money" that is the result of bargains reached in prior years. The Union also notes that wage levels generated by step increases provide an incentive for employees to remain with the

Employer, which in turn provides the Employer and County citizens with the benefit of an experienced workforce. I note that both parties' arguments about step increases have merit, and thus I find that this step increase information is not particularly helpful in making a selection decision between these two final offers.

Next, Section 14(h)(5) specifies the *cost of living* decision factor. UX 14 contains a Consumer Price Index ("CPI") chart for the period 1982 – 2013. The Employer points out that the CPI change from December 1, 2011, to December 1, 2013, averaged 2.06% (Er.Br. 7). The Employer notes that during that same time period the average wage increase for Unit III was 3.07% (Er.Br. 8). The Employer argues that CPI increases for 2014 very likely will not exceed the Employer's final offer for that year. In light of the fact that we have good CPI data for the successor CBA's first two years, and the parties have agreed on wage increases for those two years, I find that the cost of living data for the 2012 and 2013 years are not helpful in selecting the appropriate final wage offer for the 2014 contract year.

The Union emphasizes that there is an issue that arose in the current negotiating round between the instant parties that deserves significant weight. During mid-2013, the Union agreed to what it has termed "significant insurance concessions." These changes, effective July 1, 2013, specified that employees enrolled in the Employer's PPO plan would pay an additional 5% of their co-insurance (from 10% up to 15%) (UX 4). Additionally, employees enrolled in the HMO plan have been paying higher premiums since July 1, 2013, with these dollar amounts being larger as the

coverage increases from employee-only to employee plus two (Un.Br. 20). The Union emphasizes that it made this early concession on insurance without getting a *quid pro quo* in return. The Union notes that the parties explicitly recognized this insurance bargain as a relevant concession to be considered by the Arbitrator when resolving the wage issue. They stipulated accordingly:

> "The Union hereby accepts the Employer's proposal on health insurance for the purposes of allowing a uniform implementation of health insurance policies for McHenry County employees. The parties acknowledge that the Union has proposed that status quo language be continued for the term of the contract through the negotiations. In consideration for the Union's concession on this issue, the Parties mutually agree to stipulate to the interest arbitrator that due weight be given to this concession in the formulation of an award of wages as provided in Section 14(h)(6) of the Illinois Public Labor Relations Act. 5 ILCS 315/14" (Un.Br. 21).

On the other hand, the Employer notes that the health insurance changes mentioned above are rather modest and, more importantly, have been agreed to by every other County employee group, union and non-union. The Employer notes that its approach to health insurance has helped to hold down insurance premium cost increases (EX 4), a result that benefits the Employer and employees alike. The Employer also argues that the total wage and benefit package enjoyed by unit members leads to a conclusion that the Employer's wage offer should be selected.

As noted above, I have determined that many of the Section 14(h) decision factors were not helpful in deciding which final offer should be selected.

However, there is an additional dimension to this dispute that needs to be considered, under either the *stipulations of the parties* in the Section 14(h)(2) decision factor, or under the *such*

other factors . . . in the Section 14(h)(8) decision factor, and that is the Union's mid-term agreement with the Employer's proposed insurance changes. I find that this change constitutes a meaningful Union concession during the instant round of bargaining. The Union's concession resulted in the parties' stipulation above that I give "due weight" to this action. I note that the Union agreed to this concession before the parties reached impasse. The parties agree that this insurance change allowed "a uniform implementation of health insurance policies for McHenry County employees" (Stipulation in Un.Br. 21). I find that the Union's concession on the health insurance issue, plus the parties' stipulation memorializing that concession, supports the selection of the Union's wage offer.

Finding. After considering all of the Section 14(h) decision factors, I find, for the reasons explained above, that the Union's final offer on wages more nearly complies with the applicable Section 14(h) decision factors than does the Employer's final offer on wages. Accordingly, I select the Union's last offer of settlement to resolve the wage issue.

I note that Union's wage offer says nothing about how the retroactive pay process will be handled. As a result of the final offer constraint in Section 14 on this economic issue, I must leave the details of this retroactive payment process in the parties' hands to be worked out and implemented. If there are any problems implementing the retroactive payment process, I am available to assist the parties in resolving any such problems.

Tentative Agreement and Status Quo Provisions

As noted above, the parties resolved several issues during their negotiations (UX 4). Consistent with widespread colloquial terminology, they referred to these items as TA'd (tentatively agreed to) issues. The parties provided me with a copy of their TA'd issues (UX 4), and these issues are incorporated by reference in this Award. In addition, the parties agreed that all the provisions in the expiring CBA that were not changed at the negotiating table and are not on the agenda in this arbitration proceeding will carry forward unchanged into the successor CBA as "status quo" items. Accordingly, I hereby incorporate into this Award all of these TA'd issues and status quo provisions by reference.

AWARD

Under the authority granted to me by Section 14(g) of the Illinois Public Labor Relations Act, I find that the following outcome more nearly complies with the applicable decision factors prescribed in Section 14(h) of the Act. Accordingly, I select and award this outcome on the issue on the arbitral agenda:

1. Wages (Article XXV)

   The Union's offer is selected.

In addition, all of the parties' TA'd issues and status quo provisions are incorporated by reference into this Award.

It is so ordered.

Respectfully submitted,

Champaign, IL
March 20, 2014

Peter Feuille
Arbitrator