**ILLINOIS LABOR RELATIONS BOARD**
In the Matter of the Interest Arbitration Between:

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| Shelby County (IL) Sheriff Office<br>Public Employer | ) | Case No. S-MA-18-345 & 346<br>FMCS 190813-10014 |
| and | ) | Issue: Interest Arbitration |
| FOP- Labor Council<br>Employee Organization | ) | Arbitrator Gregory P. Szuter |
| | ) | **ARBITRATION DECISION AND AWARD** |

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Date of Decision: May 11, 2020
Briefing Date: March 25, 2020
Hearing Date: February 6, 2020 (9:30 a.m.)
Hearing Locale: Shelby County Courthouse. Shelbyville, IL

## I. STATEMENT OF THE CASE

This is an interest arbitration pursuant to Section 14 of the Illinois Public Labor Relations Act ("Act") to resolve economic issues between the Shelby County/ Sheriff Office ("Sheriff" "County"or "Employer") and the Fraternal Order of Police, Labor Council ("Union"). This arbitration concerns an impasse over the terms of a contract for two certified units of the Sheriff's employees. They are the sworn unit ("Unit A") consisting of the deputy sheriffs and the unsworn unit ("Unit B") constituted of dispatcher, jailer, matron/cook, janitor and secretary/bookkeeper job classifications.

## II. RECORD OF HEARING

The Union and County engaged in negotiations over a collective bargaining agreement running from September 1, 2018 – August 31 2021. They reached agreement on all issues except for Wages, and Healthcare. Pursuant to Section 14 of the Act, the Parties waived the three-member arbitration panel appointed by the Illinois Labor Relations Board ("ILRB" or "Board") and selected Gregory P. Szuter from the lists of the Federal Mediation and Conciliation Service to serve as the sole arbitrator. A hearing was held on February 5, 2020, in the Shelbyville, Illinois, the county seat of Shelby County, at which the Parties put on their proof and arguments. The Parties waived the verbatim record of the hearing. The Parties filed post hearing briefs in lieu of closing arguments at the end of the hearing which were received by March 25, 2020. The Parties stipulated to the date of decision under FMCS regulations, 60 days after the filing of briefs (May 25) which was shortened to May 11, 2020.

The Parties submitted their stipulations before hearing marked as a Joint Exhibit (JX). It also appears as UX 1 and CX 1. The Union offered twenty five exhibits (UX) and a CD with copies of internal (AFSCME 3323) and external (Christian, Clay, Douglas, Edgar) contracts and complete County Audited Financial Reports of 2009-2018. The County offered six exhibits (CX) one with eight sub parts and one with six. The testimony with the exhibits and briefs constitute the record of hearing.

## III. BARGAINING UNITS AND DOCKET ENTRIES

Unit A consists of 12 members, all deputies and including the Under Sheriff and Bailiff. Excluded are the Sheriff and Chief Deputy Sheriff. Unit B consists of 19 employees: 11 correction officers, four in dispatcher classifications and four in other classifications. Excluded are the confidential, managerial and supervisory employees defined by the Act. UX 4.

The ILRB filings (UX 3) show the following. On May 3, 2018 Unit A filed the Formal Notice of Demand Bargain with the Board. The notice of no agreement was filed on June 4, 2018. A Request for Mediation Panel was filed on August 1, 2018 as to Unit A. On May 16, 2019 Parties filed a Demand for Compulsory Interest Arbitration identifying Unit A and Unit B. It indicated the units were separately certified, Unit A on June 9, 1986 (S - RC - 178) and Unit B on June 27, 2001 (S - RC - 00 - 098). It indicated there was a single collective bargaining agreement expiring, ILRB Contract Number 2018 - 08 - 007. Unit A was assigned case number S-MA 18 - 345 and Unit B was assigned case number S-MA 18346. Another Request for Mediation was filed for Unit A on August

1, 2019. The most recent agreement was effective from September 1, 2015 to August 31, 2018.

The County has a separate collective bargaining agreement with the AFSCME Council 31, Local 3323 for the County's certified job classification consisting of various clerks and highway, health and community services employees.

## IV. STIPULATIONS

The Parties entered into twelve pre-hearing stipulations (JX 1) as follows:

1) The Arbitrator in this matter shall be Greg Szuter. The Parties stipulate that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, including but not limited to the express authority and jurisdiction to award increases in wages and all other forms of compensation retroactive to September 1, 2018. Each party expressly waives and agrees not to assert any defense, right or claim that the Arbitrator lacks jurisdiction and authority to make such a retroactive award; however, the Parties do not intend by this Agreement to predetermine whether any award of increased wages or other forms of compensation in fact should be retroactive.

2) The arbitration hearing in this case will be convened on Shelbyville, Illinois at 10:00 a.m. The requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act, requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment, has been waived by the Parties. The hearing will be held at the second floor of the Shelby County Courthouse at 301 E Main St #12, Shelbyville, IL 62565.

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

4) The Parties agree that the following counties shall be considered comparable to Shelby County: Edgar, Christian, Clay,Douglass, and Fayette. The inclusion or exclusion of Moultrie County is to be decided by the Arbitrator.

5) The Parties agree that the following issues remain in dispute, over which the Arbitrator has authority and jurisdiction to rule:

(a) What increases in wages will be received by bargaining unit employees for the contract years beginning on September 1, 2018 September 1, 2019, and September 1, 2020?

(b) What monthly health insurance premium contributions shall be made by the employees?

6) The Parties agree that these Pre-Hearing Stipulations and all previously reached tentative agreements shall be introduced as joint exhibits. The Parties further agree that such tentative agreements shall be incorporated into the Arbitrator's award for inclusion in the Parties' successor labor agreement that will result from these proceedings.

7) Final offers shall be stated on the record no later than the start of the arbitration hearing. Thereafter, such final offers may not be changed except by mutual agreement of the Parties. As to the economic issue in dispute, the Arbitrator shall adopt either the final offer of the Union or the final offer of the County.

8) Each party shall be free to present its evidence in either the narrative or witness format. Advocates presenting evidence in a narrative format shall be sworn as witnesses. The Labor Council shall proceed first with the presentation of its case-in-chief. The Employer shall then proceed with its case-in-chief, Each party shall have the right to present rebuttal evidence.

9) If either party chooses to submit a post-hearing brief, it shall be submitted to the Arbitrator, with a copy sent to opposing party's representative by the Arbitrator, no later than forty-five (45) days from the receipt of the full transcript of the hearing by the Parties, or such further extensions as may be mutually agreed to by the Parties or granted by the Arbitrator. The post-marked date of mailing shall be considered to be the date of submission of a brief. There shall be no reply briefs, and once

each party's post-hearing brief has been received by the Arbitrator, he shall close the record in the matter.

10) The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator shall issue his award within sixty (60) days after submission of the post-hearing briefs or any agreed upon date determined jointly by the Parties and the Arbitrator. The Arbitrator shall retain the entire record in this matter for a period of six months or until sooner notified by both Parties that retention is no longer required.

11) Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.

12) The Parties represent and warrant to each other that the undersigned representatives are authorized to execute on behalf of and bind the respective Parties they represent.

## V. PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT[1]

The Parties to the agreement for the two units effective September 1, 2015 through August 31, 2018 (UX 2) provides at Article 10, resolution of impasse:

> All bargaining impasses shall be resolved according to the provisions of Section 1614 of the Illinois Public Labor Relations Act, as amended, except that all arbitration hearings shall be conducted in Shelbyville, Illinois.

## VI. THE STATUTORY FACTORS

The IPLRA sets forth those factors upon which the Arbitrator is to base his "findings, opinions and order..." in Section 14(h):

> Where there is no agreement between the Parties, or where there is an agreement, but the Parties have begun negotiations for a new agreement or amendment of the existing agreement, and wage rates other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinion and order upon the following factors, as applicable:
> (1)The lawful authority of the Employer;
> (2) Stipulations of the Parties;
> (3) The interest 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 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 the foregoing circumstances during the pendency of the arbitration proceedings;

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[1] *Italics* are inserted in the quoted matter in this section and the next are not for emphasis but for ease of location for the reader. The *italics* used elsewhere are for emphasis added except when noted as being in the original. Any underscoring or **bold face** as shown appears in the original.

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

## VII. FINAL OFFERS

The Parties have submitted the following offers with **boldface**/~~cancellations~~ indicating their respective variances from the expiring agreement as to dates and amounts:

Union'S FINAL OFFER - WAGES

Article XXI Wages/Compensation

... in the classification of Jail Matron/Cook, Janitor and Secretary/Bookkeeper... The base salary shall be increased by $1000 on September 1st of each year of this Agreement (**2018** through **2020**).

Effective September 1, **2018**, each step of the Deputy matrix shall be increased by ~~$1500~~ **$1350** and each step of the Dispatcher/Jailer matrix shall be increased by ~~$1000~~ **$1050.**

Effective September 1,**2019**, each step of the Deputy matrix shall be increased by ~~$1500~~ **$1350** and each step of the Dispatcher/Jailer matrix shall be increased by ~~$1000~~ **$1050.**

Effective September 1,**2020**, each step of the Deputy matrix shall be increased by ~~$1500~~ **$1350** and each step of the Dispatcher/Jailer matrix shall be increased by ~~$1000~~ **$1050.**

EMPLOYER'S FINAL OFFER - WAGES

In addition to changing the dates and amounts the Employer Offer splits the Dispatcher Matrix from the Jailer Matrix in text but not as to amounts.

Article XXI Wages/Compensation

... in the classification of Jail Matron/Cook, Janitor and Secretary/Bookkeeper... The base salary shall be increased by ~~$1000~~ **$400** on September 1st of each year of this Agreement (**2018** through **2020**).

Effective September 1, **2018**, each step of the Deputy matrix shall be increased by ~~$1500~~ **$1000** and each step of the **Dispatcher matrix** by ~~$500~~ **$650**. The **Jailer matrix** shall be increased by ~~$1000~~ **$650.**

Effective September 1,**2019**, each step of the Deputy matrix shall be increased by ~~$1500~~ **$800** and each step of the **Dispatcher matrix** by ~~$500~~ **$650**. The **Jailer matrix** shall be increased by ~~$1000~~ **$650.**

Effective September 1,**2020**, each step of the Deputy matrix shall be increased by ~~$1500~~ **$800** and each step of the **Dispatcher matrix** by ~~$500~~ **$650**. The **Jailer matrix** shall be increased by ~~$1000~~ **$650.**

The Parties' final offers for the issue of employee health insurance premium contributions are:

Union'S FINAL OFFER - INSURANCE

> Section 22.1 Insurance
> The County agrees to pay full cost of the employee individual basic health insurance premium, except that each employee will contribute through payroll deduction an amount equal to ~~$40.00~~ **$53.00** per pay period for the term of this agreement, as of November 1, **2020**. The Employer will bear the expense of any increase in costs during the term of the Agreement.

EMPLOYER'S FINAL OFFER - INSURANCE

> Section 22.1 Insurance
>
> Beginning November 1, **2018**, employees will pay **twelve and one half percent (12.5%) of the cost of the individual premium** per pay check for the health insurance plan. The County agrees to pay the remaining cost of the employee individual basic health insurance premium...

The previous contract provides that the Employees pay $40.00 per paycheck for insurance. The Union proposal is to pay $53.00 per pay period beginning November 1, 2020. The Employer's proposal is that the members of this Bargaining Unit pay 12.5% of the cost of the individual premium effective November 1, 2018. The Employees covered by the AFSCME contract previously paid $40.00 per paycheck. In their recent contract, they agreed to pay 12% of the annual cost effective November 1, 2018.

The Parties have agreed that all previously agreed-to tentative agreements are to be included in the new agreement, and that wages shall be retroactive to September 1, 2018 including for any Officers who have left employment since that time.

## VIII. STATEMENT OF THE ISSUES FOR DECISION

The Parties stipulated two issues on the record and in their respective briefs. The Parties agree that those issues in dispute are economic. JX 1¶ 5(a)(b). The Parties also submitted a non-economic issue of which counties would be included as comparables. JX 1¶4. Because it impacts the analysis of the economic issues, the question of the comparables will be addressed first.

## IX. COMPOSITION OF COMPARABLE COMMUNITIES

The Parties stipulated that the following are comparable to Shelby County under the Act: Edgar, Christian, Clay, Douglas, and Fayette. The inclusion or exclusion of Moultrie County is up for decision.

Factor #4 of the Act is the comparison of the bargaining issues to the same issues of other employees, public or private, in "comparable communities." Although of paramount import in interest arbitrations, the Illinois Act does not define"comparable community." Somewhat uniquely Illinois interest arbitration precedent insists that a stable set of comparisons be used by bargaining Parties, and hence by interest arbitrators, rather than *ad hoc* comparisons made at each contract term.

"[A]ltering an established comparable pool could disrupt the Parties' reasonable reliance and good faith expectation on a stable negotiating environment as future discussions proceed."*St. Clair County (Sheriff)*, S-MA-13-067 (Nielsen 2013). In that case variance from the traditional pool of comparable communities was sufficient reason to exclude a community. Attempts to change accepted comparables were also rejected in *City of Rockford*, Case No. S-MA-12-108 (Goldstein, 2013)."It is well-established that the party seeking to change historical comparables has the *burden of clearly proving* that a change is warranted."*Id.*"In order to maintain that stability, prior interest arbitration awards *must be accepted at face value in subsequent proceedings unless they are glaring wrong* which is not the case here." *Village of Algonquin and Metropolitan Alliance of Police, Chapter #78* FMCS Case No. 180306-02190;ILRB Case No. S-MA-17-262 (Greco 2019) pl 2. Hence the party seeking the change must prove by clear and convincing evidence that the accepted comparisons are "glaringly wrong."

*Village of Libertyville and FOP*, S-MA-93-148 (Benn, 1995) set out a five step approach to define comparable communities which is grounded in Factor #2, the stipulations of the Parties. He stated in his summation:

> "It is important to stress that this process of selection of comparables is not a mechanical one. *This process is only a method for organizing the data and arguments offered by the Parties in order to be able to rationally make certain judgments. This process is not one of merely counting factors or rigidly applying cutoffs.* This process places great emphasis on the agreements of the Parties and merely organizes the material to make comparisons based upon those agreements-a process that appears consistent with the mandate of Section 14(h)(2) of the IPLRA that I consider the "stipulations of the Parties."

An arbitrator will look most closely at the communities that are stipulated to be comparable but he will also consider as being somewhat comparable all of additional the communities proposed by the Parties. *Village of Shiloh and Illinois Fraternal Order of Police Labor Council*, ILRB Case No: S-MA-18-226. 2019 (Diekemper) p.__

To determine whether the communities upon which the Parties could not agree are also comparable the five steps from *Libertyville* are applied. They are in precis:[2]

1. The stipulated/agreed upon comparable communities which form a range of agreed criteria to be used for comparison purposes.
2. Identification of the Parties' criteria for making the comparisons and a determination of whether those criteria are appropriate measuring tools for comparison purposes.
3. Compilation of relevant data for each criteria and community.
4. Ranking of the communities with the appropriate criteria (eg tables and charts).
5. Comparisons of the contested communities to determine how they compare with the agreed comparables.

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[2] Where Arbitrator Benn usef the word "factor" in this list I have used "criteria" so not to confuse the diction with the statutory factors. Also the singular of criteria is "criterion" but that is not a convention used herein.

A sample of criteria that Arbitrator Benn had found approriate for comparability included population, department size, number of Patrol Officers, total number of employees, median income, sales tax revenue, sales tax revenue per person, Estimated Average Valutaion, EAV per person, and total General Fund Revenue. *Village of Algonquin, Illinois and Metropolitan Alliance of Police*, Case No. S-MA-95-85(Benn, May 1, 1996).

In addition proximity is a key criteria. In *Libertyville*, Arbitrator Benn rejected the argument to exclude all comparables not in Lake County:

> All of the communities involved in this matter are part of the Chicago Metropolitan complex. For all purposes, all of the communities are suburbs of Chicago greatly dependent upon the Chicago Metropolitan economy.
> . .. I am not being asked to compare communities with independent economies (e.g., such as Springfield, Decatur, Champaign, Peoria, Carbondale, etc.) with suburbs of Chicago. .. ..

In *Algonquin* he found that the two contested communities cannot be viewed as "separately functioning economies" such as downstate cities but are "a short commute to the immediate Chicago area." Therefore, the geographic distances do not automatically exclude communities from being considered as comparable "I shall, however, include the geographic distance from Algonquin as one of the several factors for consideration." *Village of Algonquin, Illinois and Metropolitan Alliance of Police*, Case No. S-MA-95-85(Benn, May 1, 1996), See also *Village of Oak Brook*, Case No. S-MA-96-242 (Kossoff, 1998) where Arbitrator Kossoff stated: "proximity is one of the most frequently used criteria in deciding comparability issues."p.7. In agreement with Arbitrators Benn and Kossoff, I find that proximity is an important and often used criteria to consider.

In this case the Parties selected the comparable communities by the following process. Using the 2013 - 2017 Five-Year Estimates from the American Community Survey of the US Census the Parties selected counties within 50% of the population of Shelby County. They eliminated 25 counties that were not within approximately an hour's drive of Shelby County. One of those was obviously the adjoining Moultrie County. The remaining 13 were compared on the basis of total population, median home value, median household income, median family income and per capita income. They eliminated the counties by those metrics that did not fall within 25% of the population of Shelby County and 10% of the other measures. The Parties then agreed to include the counties in which four or five of the five measures were within 10% of Shelby County. They are Edgar County (five out of five) Christian, Clay, Douglas, and Fayette County (four or five). Counties with zero, one, or two matches or "hits" were eliminated (0/5 DeWitt, Piatt; 1/5 Effingham; 2/5 Logan). The Parties could not agree on the remaining counties that had three out of five matches. (Bond, Clark, Moultrie). They agreed to eliminate Clark with the Union championing Bond County and the Employer championed Moultrie County. The Parties agreed to present the impasse to the Arbitrator.

The Employer argues for including Moultrie County on several grounds other than the three data matches (median income, median family income, per capita income). By contrast the population is two thirds of Shelby County and the home values are approximately 9% higher. Among the additional reasons for inclusion as a comparable is that is obviously adjacent. Although the Employer claims the Union ignored geography, geography in the sense of commuting distance was considered.

The Employer points out that Lake Shelbyville, the largest inland lake in the state of Illinois, is located within the confines of Shelby and Moultrie Counties. It is managed by the U.S. Army Corps of Engineers. It is the locus of brisk regional tourism attracting 4 million visitors annually. That overwhelms to the 37,000 year-round residents combining both Shelby and Moultrie Counties. The Lake is a situs of numerous recreational opportunities including 1500 campsites, eight hiking trails, four horse back riding facilities, four public beaches, three marinas and numerous other picnic and rest areas. It provides opportunity for fishing including recreational and professional fishing. Hunting in season is also pursued for deer, rabbit, waterfowl, and turkey. It hosts several annual events like the Corps of Engineers annual deer/turkey hunt for persons with disabilities. The Lake is also a draw for nearby recreational facilities like golf courses and state parks.

Both Moultrie County and Shelby County Sheriffs' offices have a contract with the Corps of Engineers to provide law enforcement services for the Lake. With 4 million annual visitors engaging in recreational activities from boating, hunting and swimming among others, public safety issues confronted by both County Sheriff Offices are similar. There are boating accidents, drownings, enforcement of fishing and hunting laws, alcohol and drug use, injuries and a multitude of other events that arise from recreational uses. Once a year a major boating accident or drowning occurs.

These sort of events do not arise in any of the other comparable counties. Only one other county, Fayette County, has a small part of Lake Carlisle, a much smaller recreational opportunity. Fayette County is on the interstate, I 70, and located an hour from St. Louis. Both of these criteria present unique law-enforcement burdens that are not shared by Shelby County or the other counties in the comparisons. The Employer argued for its exclusion but consented to Fayette County based on it having four statistical hits.

The Union argues against including Moultrie County. It sees the Employer's argument as being only one of proximity. Moultrie County is both significantly smaller and significantly more affluent than Shelby County based on the statistical hits. Its proximity to Shelby County, the Union argues, ought not to be determinative. Its Sheriff Office also pays significantly less. The Employer is making an argument of convenience merely to make its final offer more appealing by comparison to the wages of Moultrie County. The Employer's argument has "no basis in the factors traditionally considered when determining whether one County is comparable to another, other than proximity."Un. Brf. p4.

The Union proffers that it had urged Bond County is a comparator but receded. It now proposes that if Moultrie County were included with its three matches that Bond County with its three matches should be included as well. It offers this in consideration of arbitration jurisprudence that longer list of comparables are more helpful than shorter ones.

Implementing the Benn *Libertyville* analysis the first step is to identify the range of criteria the Parties found acceptable in their stipulated list. They began with population and then applied one hour distance. That list was refined by tighter consideration of population, then home value and finally three measures of income. When this list is compared to the Benn *Algonquin* criteria there are similarities and differences. Both used population. Both used geography but somewhat differently. Median home valuation is a rough substitute for EAV and EAV personal. The Parties

then look three different measures of personal income whereas Arbitrator Benn considered only median income without indicating the divisor. Unlike the Parties, Arbitrator Benn also considered three measures of the employer's income (general revenue, sales tax and sales tax per person) and measures of comparison of the employer's services (workforce, the department sizes).

The next step is the determination of whether the Parties criteria are appropriate tools. If only by contrast to Arbitrator Benn's lists they are not. While redundant forms of statistics are not necessarily appreciated there should at least be some consideration of the Employer's operation in comparison with other communities which can be in the form of the size of the department/workforce and revenue. Nothing in the evidence shows comparison of Shelby County on these measures although the revenue and department size of Shelby County itself are on the record. A near substitute offered is the Employer's description of the department's activities relative to Lake Shelbyville as being similar to Moultrie County. To some extent that is more valuable than simply the size of the department. I disagree in part with Arbitrator Benn that the size of the department is a criteria that should be considered on the front end of the comparison. It is rather an elimination criteria for communities where it provides some sort of an explanation for outsized or diminished capabilities. In other words the tolerance on size can easily be within 100%+/-unless there is reason why not.

While Lake Shelbyville nexus should not be the limit of comparable law enforcement activities, it is the only one here. As for revenue only circumstantial evidence about the other counties is available on this record through the proffered income measures and geography.

Given this record what should be considered criteria for comparison are the following. Population, per capita income, median home valuation, distance and geography, and law enforcement services. The Parties began the analysis with the question what counties of similar population size have sufficient other statistical similarities to be compared to Shelby County. In the process they used three measures of personal income when one is sufficient. The difference among them is the divisor. That is, the income is divided by household, by family or per capita. Of these three, the last is the most sensitive to poverty and the first two are most sensitive to affluence. Since median home valuation is already listed, household and family income are unnecessary as redundant measures of affluence. Per capita income it is sensitive to individuals who have incomes but do not have property and so is an indication of the less affluent residents.

The Parties' emphasis on population and personal income is biased towards affordability. It interprets Factor #4 as what services can a community support given their comparable sizes and income. That is not the issue under Factor #4. Indeed affordability is completely separate, Factor #3. The primary comparison under Factor #4 are the terms and conditions of employment and secondarily comparison of communities. The comparability process should begin with the concept that the issues being compared, wages, hours and working conditions, are defined competitively by the labor market which is the immediately adjacent area to the employer where it has a likelihood of recruiting staff. Consequently geography is the first step not the middle or the last in the analysis.

The default comparison community should consist of all adjacent counties supplemented by second tier counties (adjacent to the adjacent counties). That creates a geographic region from which the

labor pool is obviously drawn. The one hour commute is a decent substitute. However, the Parties bent that rule to allow inclusion of Edgar County which except for distance has all the similar metrics to Shelby County. Edgar County is 1.19 hrs. commuting distance. Since it was included Clark County, which is 1.22 hrs. commuting distance, was also preliminarily included. However, Crawford County, 1.37 hrs., was excluded. Ultimately Clark County was excluded based on other data. Edgar County was over one hour away and outside the second tier limit. There are other reasons to exclude Edgar County. It is on the Illinois-Indiana line and it is ex-urban to the city of Terre Haute, Indiana. Economically it has closer ties in that direction than it does to Shelbyville. It should have been excluded but is included provisionally here in recognition of the Parties' stipulation.

Counties then to be included for potential comparison are first those adjacent with Shelby County. They are : Macon, Moultrie Coles, Cumberland, Effingham, Fayette, Montgomery and Christian. Applying geography alone Macon County can be immediately excluded,. It has a large central city, Decatur, which can be considered a separately functioning economy distinct from Shelby County.

Coles and Cumberland counties, although adjacent to Shelby County, did not make the Parties cut on the first step, population within 25% of Shelby County. They are apparently quite rural economies by comparison.

Fayette is arguably excludable due to its location on the interstate and hour away from St. Louis. The City of Vandalia might also fall into the separately functioning economy distinction. The Employer would exclude it because of the unique law enforcement problems presented by the interstate. Rather that is a reason to include it. It is not a seasonal recreation facility but it similarly requires enhanced law enforcement attention that is out of the ordinary when compared to the more rural counties in the labor market. In addition the Parties also stipulated to it and that will be undisturbed.

Effingham County is also on the I-70 corridor and potentially excludable on the same bases as Fayette County. The Parties in fact did eventually exclude it from the final list.

The list can be supplemented with second tier counties. Logan, De Witt and Piatt are more than twice the size of Shelby County and in proximity to the Decatur economy. They need not be included. Sangamon County, home of the state capital, Springfield, is also easily described as a separately functioning economy. The other second tier counties that did not make the Parties first cut were Marion and Macoupin Counties presumably based on commuting distance. That will stand.

The Parties stipulated the inclusion of Douglas County based on being within population and the three income measures. It is located between Moultrie and Edgar Counties. It may have more ties to Edgar and Terre Haute but that is not known from the record. It is included.

Bond County urged by the Union is excludable for being quite apparently small and rural. It is also more affluent which is telling of its closer proximity to St. Louis than to Shelbyville.

Geographically speaking Clay County has marginal purchase on inclusion beyond the Parties' stipulation. It is south of Fayette and Effingham and is beyond I-70. Its map (EX 3b) is also

featureless beyond the crossing of two US highways. It is the most rural of the comparators used by the Parties. It is provisionally included for now.

The geographic region representing the labor pool of potential employees of Shelby County on which the other comparable statistics is: Christian, Clay, Douglas, Effingham, Edgar, Fayette, Montgomery and provisionally Moultrie. Next is the compilation of relevant data for the counties. That is combined with the last step, the consideration of the contested county, Moultrie, with the others.

The criteria remaining after geography and used here as explained above are: Population, median home valuation, per capita income and law enforcement services. There is no statistical data on the last item which on this record rests upon the Employer's evidence of comparisons with law enforcement with respect to Lake Shelbyville shared by Moultrie County and the distinctions from law enforcement on the I-70 corridor.

Also mentioned by Arbitrator Benn were the sales tax receipts and general revenue which are measures of the employer's income and department and workforce size which are statistics substituting for evidence of similarity of services. Comparison on those bases are useful but ought not be so emphasized because they include so many data points. If multiple data points are used then the whole class ought to be considered together without permitting a single data outlier to cause elimination or inclusion. That is the method used here for the multiple forms of income. Those categories are shown below with no evidence from the record as placeholders for future reference.

| | Population | median home valuation | per capita income | Measures of Employer income | Similarity of Service |
|---|---|---|---|---|---|
| Clay | 13,582 | 77,200 | 25,700 | | |
| Moultrie | 14,927 | 107,500 | 26,166 | | |
| Edgar | 17,992 | 80,000 | 26,344 | | |
| Douglas | 19,826 | 102,700 | 26,284 | | |
| **Shelby** | **22,115** | **86,800** | **24,808** | | |
| Fayette | 22,136 | 84,010 | 21,844 | | |
| Montgomery | 29,340 | 81000 | 23,172 | | |
| Christian | 34,200 | 87,500 | 25,614 | | |
| Effingham | 34,332 | 137,300 | 29,300 | | |

If this list were pared further by the omission of Effingham County and Montgomery County it would be the list of counties used by the Parties before considering Moultrie. Effingham has as a population 12,000 greater than Shelby. That is effectively better than half the size of Shelby itself. In addition it's median home valuation is $57,000 higher, 60% more. It is excludable.

Montgomery County is 7000 greater in population which sets up a range with Moultrie County which is about 7000 less or about +/- 30%. Using those two counties to set a population range is logical but the record has no data concerning Montgomery County. Christian County is more than 7000 above the population of Shelby. Its home valuation and income are similar to Shelby. Therefore rather than eliminate Christian County as being more than 7000 difference in population it will substitute for Montgomery County based only on the data available on the record.

Edgar and Clay ought be removed from the list. One is beyond the Shelbyville economy and the other is too rural. They remain today only because of the stipulation. Any data they have to offer on the issues comparisons may be discounted.

Although +/- 30% population (here 7000) is the tolerance used by Arbitrator Benn in *Algonquin*, there is nothing insightful about it. From the communities selected by geography when ranked by population shows that the labor market being researched has populations symmetrically arranged by those parameters. Other areas may be more or less tightly arrayed around the median.

Other measures if they were on the record and considered might have an effect on this constellation. As it is this is the best set of comparables that can be made based on the evidence in this case: Christian, Clay, Douglas, Edgar, Fayette, and provisionally Moultrie.

With respect to the fifth step, Moultrie County fits into the comparison when properly considered. It is within the 7000+/- population of Shelby, it has a similar income profile, it is adjacent, and it shares an obligation for similar law enforcement services that none of the others do. The information about its sales tax revenue and the general revenues as used by Arbitrator Benn is unknown but ought not to the eliminating criteria without being extravagantly different from Shelby County.

The Arbitrator is clearly convinced that the process and selection used by the Parties is glaringly wrong. The process did not begin with a search for the comparable labor market but with an affordabilty bias by over emphasizing population and personal income. Although terse, the legislature did specify that the primary comparison is of the labor issues based on the secondary comparison of like communities. However, deferring to the Parties' stipulation as the ultimate, not first, resort for the selection, a list of comparable communities comprising the local labor market has been arrived at. Out of concern for the likely precedential value that the Illinois interest arbitration jurisprudence places on comparables discussed in decisions, the holding needs be clarified.

The criteria in determining the comparability the Parties used in three cuts:

> 1: Population +/-50% ; 2: distance (1 hour); 3: population+/-25%, median home valuation; personal income (household, family, per capita); and (employer only) similarity of services.

The Arbitrator would have used:

> 1: adjacent counties; 2: eliminations by geographic considerations; 3: supplement with second-tier counties applying the same geographic considerations; #4 ranked by +/-30% population; #5 ranked by median home evaluation, per capita income, County income (sales tax/general revenue), service considerations of the employer (type and number of services, size of department, size of workforce).

Based on the constraints of the record the Arbitrator did use the following:

> 1: adjacent counties; 2: eliminations by geographic considerations; 3: supplement with second-tier counties applying the same geographic considerations; #4 ranked by +/-30% population; #5 ranked by median home evaluation, per capita income, service considerations of the employer.

The Parties selected:

Christian, Clay, Douglas, Edgar, Fayette, and provisionally Moultrie

The Arbitrator would have selected:

Douglas, Fayette, Montgomery, Moultrie

Because of the constraints of the record the Arbitrator had to use:

Christian, Clay, Douglas, Edgar, Fayette, and Moultrie

## X. DISCUSSION OF STATUTORY FACTORS

Because the two issues in dispute are "economic" under Section 14(g) of the Act, the Arbitrator must "adopt the last offer of settlement" which in the opinion of the Arbitrator "more nearly complies with the applicable factors prescribed in Section 14(h)."

The Union has represented for collective bargaining purposes 12 sworn officers ( Unit A) since 1986 and 19 non-sworn employees (Unit B) since 2001. The Units jointly filed Demand for Compulsory Interest Arbitration; the ILRB assigned Unit A and Unit B separate case numbers for the purposes of interest arbitration. Although there was a single collective bargaining agreement on file, ILRB Contract Number 2018 - 08 - 007, effective September 1, 2015 to August 31, 2018, the Units in part negotiated separate terms. In the CBA expiring Unit A (deputies) received a $1500.00 increase of the base salary as of September 1 of each contract year. In the CBA expiring Unit B (non-sworn classifications) received a $1000.00 increase of the base salary as of September 1 of each contract year. Both Units A and B have been paying $40.00 per pay period towards health care premiums and the Employer pays the balance. Thus, the Arbitrator must "adopt the last offer of settlement" for each Unit considering the factors is the the Act.

### Factor #1. The lawful authority of the employer (Section 14(h)(l) of the Act)

Neither party has contended that the Employer does not have the lawful authority to enter into any of the final offers made by either of the Parties. The Arbitrator finds the Employer has the lawful authority to implement any of the final offers outlined above selected by the Arbitrator.

### Factor #2. Stipulations of the Parties (Section 14(h)(2) of the Act)

The Arbitrator has recited the stipulations made by the Parties and takes them into account in reaching a decision in this case.

### Factor #3. The interests and welfare of the public and the financial ability of the unit of government to meet those costs (Section 14(h)(3) of the Act)

The Employer has admitted that it has the financial ability to meet the costs of the Union's final offer. The Employer contends that its financial ability to meet the Union's demands, is not alone sufficient reason that it be ordered to pay them. The Union does not contest this and the Arbitrator agrees.

**Factor #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.**
**(Section 14(h)(4) of the Act)**

The Arbitrator discussed the data concerning "comparable communities" in more detail elsewhere in this Opinion and Award.

The Arbitrator has found that the decisions by other interest arbitrators look at internal comparability (within the same employer) and external comparability (among other governmental and non-governmental employers). Neither party has provided any evidence of any private sector comparables, so there is no basis for the Arbitrator to consider any that may exist. With respect to similar health care provisions , the Employer has cited internal comparables including to those do not perform similar services. That is taken as evidence of the desire for uniformity for administration. The Parties' stipulated communities with the Arbitrator's addition are accepted as comparable here, namely: Christian, Clay, Douglas, Edgar, Fayette, and Moultrie.

The evidence produced under this Factor #4 is discussed in the analysis and conclusions regarding the impasse issues.

**Factor #5. The average consumer prices for goods and services, commonly known as the cost of living. (Section 14 (h)(5) of the Act)**

Both Parties agree that the final offers of each party exceeds the cost of living for 2018 and approximates that of 2019. Data for 2020 was available at hearing. The latest Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics on February 3, 2020 increased **1.9 %** for the 12 months ending in December 2018 and **2.3%** in the 12 months ending December 2019. There was no data for 2020 available for the hearing. The Arbitrator finds the cost of living to be neutral in this decision. Whichever offer he adopts will approximate the cost of living.

**Factor #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. (Section 14(h)(6) of the Act)**

In addition to the wage and healthcare premium issues at impasse, the most recently expired CBA for both Units (UX 2) provides a package of economic benefits that includes: holiday pay (Article16); vacation (Article 17); sick leave (Article18); other paid leaves (Section 19 ); overtime, call back, court time and other supplemental pay (Article 20); wages and allowances for uniforms and longevity (Article 12); health insurance (Article 22.1), and pension (Article 22.2). These

economic provisions, except for the base wage increase and certain health care costs, are among the tentatively agreed upon items to be included in the successor CBA. The existing and tentatively agreed economic items will be contained in the successor CBA.

While there are threats to revenue on the horizon for both employees and the Employer, there is no evidence that the continuity and stability of employment will be impacted during the term of the successor CBA which expires August 31, 2021. Most of the economic change in the issues is retroactive to September 1, 2018.

**Factor #7. Changes in any of the foregoing circumstances during the pendency of the arbitration procedures. (Section 14(7) of the Act)**

There was no evidence presented of any change in any of the foregoing circumstances during the pendency of the arbitration proceedings. It would be remiss of the Arbitrator not to take "arbitral notice" of the novel coronavirus pandemic (COVID 19) which between the hearing date and the filing of briefs has resulted in protracted shutdown of the economy in every state. In Illinois closure of non-essential business was ordered on March 12 to expire March 30.[3] Before the expiration the State issued a stay at home order on March 21 to expire April 30 but extended to May 30.[4] Over half a million unemployment claims were made in the five-week period from March 1 to April 4.[5]

Because it filed an early brief, the Employer did not address the circumstance. The Union mentioned COVID 19. It noted the outbreak of coronavirus has reduced the income of many families and the likely increase in healthcare costs resulting from the outbreak. The increase of healthcare costs impact the Employer no less since it pays more than 80% of the costs. Notwithstanding the admission of the Employer's current ability to pay, the failure of some anticipated revenue sources to arrive is very likely but the amount is not currently measurable and the timing is not identifiable. This would be as a result of lower sales and hence lower sales tax as a result of a shutdown economy for what ever period, and may slow or delay property tax receipts resulting from protracted unemployment. All these factors from family income to Employer revenue to insurance costs are far from quantifiable now. The only certainty is the uncertainty with bleak prospects.

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[3] Accessed on the internet at: <<https://www.illinoispolicy.org/pritzker-orders-closure-of-all-illinois-bars-and-restaurants-amid-coronavirus-spread/>>

[4] Accessed on the internet at: <<https://www.illinoispolicy.org/what-you-need-to-know-about-coronavirus-in-illinois/>>

[5] Accessed on the internet at: <<https://coronavirus.illinois.gov/s/>>

**Factor #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(8) of the Act)**

The general standards of interest arbitration are part of what this factor refers to. See ELKOURI & ELKOURI, *How Arbitration Works* (6th Ed., Ruben, BNA, 2003) at pp. 1358-1364:

> ". . .[interest arbitration] calls for a determination, upon considerations of policy, fairness, and expediency, of what the contract rights ought to be. In submitting this case to arbitration, the parties have merely extended their negotiations – they have left it to this board to determine what they should, by negotiation, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntarily agreed to?" *Twin Sheriff Rapid Transit Co.* 7 LA 845 at 848 (McCoy *et al.* 1947)

"What reasonable parties should voluntarily agree to" has it limits in statutory impasse procedures. In Illinois interest arbitration a concept that appears to harken back at least to Arbitrator Nathan in 1988 that "interest arbitration is essentially a conservative process." *Will County*, S-MA-88-009 (Nathan, 1988) (citations omitted) pages 44-45. As Arbitrator Goldstein explained:

> The traditional way of conceptualizing interest arbitration is that parties should not be able to obtain in interest arbitration any result which they could not get in a traditional collective bargaining situation. Otherwise, the entire point of the process of collective bargaining would be destroyed and parties would rely solely on interest arbitration rather than pursue it as a course of last resort.
> *City of Burbank and FOP*, S-MA-97-56 (Goldstein, 1998) at pages 9, 11.

The conservative nature of interest arbitration in Illinois is intended to prevent parties from taking pre-arbitral stances that are as unreasonable as possible in hopes that the interest arbitrator who obligated to select among the two proposals will chose theirs. This is applicable to reasonable proposals as well. Arbitrator Edwin Benn, stated in *Cook County Sheriff & County of Cook and AFSCME Council 31*, L-MA-09-003, 004, 005 and 006 (2010) at 7-8:

> ... [I]nterest arbitration is a very conservative process which does not impose terms and conditions on parties which may amount to "good ideas" from a party's (or even an arbitrator's) perspective. For a party in this case to achieve a changed or new provision in the Agreements — particularly for non-economic items — the burden is a heavy one. See my recent award in *City of Chicago and [Fraternal Order of Police, Lodge No. 7, (2010)]* ... at 6-7 [citation omitted, emphasis in original]:
> ... "The burden for changing an existing benefit rests with the party seeking the change ... [and] ... in order for me to impose a change, *the burden is on the party seeking the change to demonstrate that the existing system is broken.*"

There are a plethora of reasonable "good ideas" that circulate in collective bargaining. Where they are resisted at the bargaining table they ought not be imposed by a neutral merely because they might seem like a good idea at least to one party if not the neutral. Interest arbitration does not serve as a substitute for negotiating. It ought not be a wager on the open issues but a continuation of the good faith bargaining process, invoked as a last resort.

Being "broken" seems a high bar to prove. In *Will County*, Arbitrator Harvey Nathan set the test for meeting the burden. The proponent of a breakthough issue in interest arbitration must at least prove:

> 1. That the old system or procedure has not worked as anticipated when originally agreed to;
> 2. That the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union); and
> 3. That the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.
>
> [I]t is the party seeking the change that must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process. *Will County*, S-MA-88-9 (Nathan, 1988) pp. 52-53.

Here the issue of "breakthrough" has arisen in two of the proposals. The Nathan test will be applied.

A consideration that commonly arises under Factor #8 is retroactivity. It is not uncommon for a CBA to expire before Parties agree to a successor CBA. In those situations, any wage increases are often made retroactive to the day after the predecessor agreement expired. In the pre-hearing stipulation the Parties agreed the Arbitrator could award increases in wages and all other forms of compensation retroactive to September 1, 2018. JX 1 ¶ 1.The health care impasse issue contests the retroactive amount as either none or full retroactivity but the stipulation that the decision may be retroactive as to either is implicit in the stipulations.

**Conclusion on Discussion of Statutory Factors**

Other than the stipulations, the non-neutral factors that are to be applied to the evidence are the comparisons of the issues to comparable communities, the change of circumstances, and the possibility of "breakthrough" proposals (ie. Nos. 2, 4, 7, 8) The Parties have not cited any other factors, and the Arbitrator finds none, that would impact his decision in this case.

## XII. ANALYSIS AND CONCLUSIONS-ANNUAL BASE PAY INCREASES: UNIT A

The Parties presented their proposals for increases in the base rate of pay which is the pay after the first year for an employee. It is not the starting pay. Indeed when compared to starting pays of other counties it is obvious that the first year in law enforcement is appreciated in different styles among the various counties. Some have no difference between the starting pay and year one. Some have an increase such as $4000 or $6000 that is out of sync with the annual general increases. This is a payment of a premium in recognition of the employee's completion of field training.

The base wage increase in the CBA Art. 23 is stated in annual dollars or salary but is also shown on the attached wage scale in hourly increments. They are not stated in percentages. This is significant because to analyze the proposals in percentages becomes difficult based on the Parties' relatively non-synchronous presentation of the data on the record. The Union presents the base wage increases in the context of the wage increases of other counties for the given year. While the contract year increase in Shelby is September 1, the contract years for the other counties vary among the months. An increase that falls in 2018, it is counted as a 2018 increase notwithstanding the effective month.

Although the Union's is by far the most typical approach to analyzing collective-bargaining agreement comparisons, the Employer took a different tact. The Employer ground down into the particulars to compare the actual dollar salary of the given officers of the given counties as of September 1. Hence a county that did not have an increase before September 1 was not counted in the year for the comparison. For example two counties in 2018 had increases in 2017 but none in 2018 and three counties had increases after September 1. The Employer's demonstration takes into account only the two counties having 2017 increases and none that had a December 2018 increase. The same methodology persists in adjusting the data for the actual September 1 payday status of the other years. This is consistent with the Employer's argument that on a dollar basis annually or hourly Shelby County deputy force is more highly paid than the others throughout the steps. However, the percentages based on the Employer data cannot easily be compared to the Union's percentages.

The Union has not spared the Arbitrator complications in its arguments either. Although the final issue in dispute is the base rate, the Union argues about the effect the increase would have on officers higher on the step ladder. Obviously and a dollar increase on the base level when compared to the much higher rates produce a lower percentage increase. That is not an artifact of the base rate increase. It is an artifact of the step system formula. The step system is not up for review. The disambiguation of the base pay effects from the step system structure is not only beyond the Arbitrator's jurisdiction but also beyond the data presented in the evidence.

It would have been preferable to make comparisons of the communities by a percentage analysis if the Parties' data were identical. Consequently the percentages mentioned are based primarily on the Union's data. However, not even the Union's data is consistent because in the third year comparison it had to rely on the only three counties available at the time and not five; thus also skewing the results of a percentage analysis. The inclusion of the data from Moultrie, which has been ordered above, introduces data only from the Employer's approach. Consequently a percentage analysis including it is modestly attempted but not rigorously pursued.

The percentage analysis conclusion yields limited information. First, it is sufficient only to show that both Parties are approximating the CPIU on a percentage basis which makes that factor neutral.

| **Unit A Year 1** | | | | |
|---|---|---|---|---|
| **Expired CBA** | **FY16** | **FY17** | **FY 18** | |
| Wage increase | 1500 | 1500 | 1500 | |
| Percent increase | 3.45 | 3.33 | 3.22 | |
| | | | | |
| **CPIU :** | December 2017-2018 :1.9 (1.7 each September 2018, 2019) | | | |
| | | | | |
| **Successor CBA** | **FY 19** | **FY 20** | **FY 21** | |
| Employer Proposal | 1000 | 1000 | 1000 | |
| | 2.10% | 2.04% | 2.00% | |
| Union Proposal | 1350 | 1350 | 1350 | |
| | 2.81% | 2.74% | 2.66 | |
| Five Counties | 2.47 | 2.62 | 2.78* | *three counties per Union data |
| Six Counties | 2.43 | 2.57 | 2.65* | *four counties |

The starting point is the expired contract. For reasons not stated on the record it shows a history of increases in excess of the CPIU prevailing at the time. As shown below that agreement placed Shelby County well ahead of its peers in the comparative group. Both Parties pulled back from the $1500 annual increases of the last contract. Both proposals still persist above the CPIU. In percentage terms, annually both are very close differing by 0.6% to 0.8% with the Union being a bit more.

The second conclusion from a percentage analysis is that they are very close. They vary by 0.6% to 0.7% per year.

The Union exaggerates the difference by comparing the total of the three-year dollar increases to each other claiming a differences of 25%. This is not a new information because the percentage difference is the same for each discrete year. ($4000 versus $3000; $1350 versus $1000). The percentage difference in the offers whether annually or in a three-year basis is of moment only to the Employer which must support the additional increase. Since that is not a factor, this data point is not relevant. Factor #4 requires the comparison of the issues, here wages, with the comparable communities. Comparing the offers to each other does not serve that requirement.

The third conclusion from a percentage analysis is that the proposals are very close to the comparative community averages, whether five or six counties. They vary either way with the Employer below and the Union slightly above the averages.

As noted above, using percentages makes it difficult to compare the Employer to the Union proposals and to the comparable communities. The Union's data shows the percentage increases on a five-county basis being approximately midway between the Union offer and the Employer offer.

Adjusting the percentages for six counties by using the Union's percentage scale with the inclusion of Moultrie County produces the same conclusion. In the Moultrie County Deputy agreement the wages are stated in hourly rates rather than annual salary. In addition, the total annual salary for Moultrie County in the Employer's evidence appears to be approximately 2050 hours compensation. That is another reason the hourly rate need be used.

The changes in the hourly rates published in the Moultrie CBA show a $.49 increase of 2018 over 2017 and $.51 increase of 2019 over 2018. The amount of the 2017 increase is not apparent in the evidence. Consequently certain interpolations are necessary. On the assumption that bargainers often back-end load the wage increases and in order to follow the trend of the two apparent increases in the CBA, the 2017 hourly rate increase should be $.48 over 2016. Thus the three increases of $.48 $.49 and $.50 that produce the rates of $21.88 $22.37 and $22.88 when converted to percentage increases become 2.24% (2017), 2.23% (2018), 2.27% (2019). When these are inserted in the Union's evidence (UX 11) the above six County averages are achieved. The result with the addition of the sixth county shows the offers of the Employer and the Union are virtually equidistant from the average. The annual percentage increase analysis is unavailing for purposes of determining which is the more reasonable offer.

Comparing the communities on the percentage increases that each county granted their respective workforces is not as telling of the labor market as the ranking the counties . Using the six county comparison the base salary for the Shelby County deputies falls into the following scheme as shown:

2017
Douglas Moultrie Edgar Christian, Fayette *Shelby* Clay
2018
Douglas Edgar, Christian Fayette *Employer Union* Clay
2019
Douglas Moultrie Christian Edgar Fayette *Employer Union* Clay
2020
Douglas Moultrie Edgar Christian Fayette Clay *Employer Union*

The data shows that Shelby County is the second highest paid County among the six in 2017. The Parties' proposals show that each of them maintains this position for 2018 and 2019 with the Union being higher than the Employer. Only in 2020 would Shelby County exceed highest-paid position among the six. That is accomplished both by the Employer and Union proposals.

Unfortunately this exercise does not bring us any closer to the solution of which of the final offers is the most appropriate. Both of them maintain a better than the CPIU rate increase, both of them surround the average increases of the other counties on a percentage basis, and both of them produce salaries placing the Shelby County deputies at the highest end of the comparative communities.

Rather than rank, looking towards the measures of centrality by using dollars rather than percentages somewhat the same conclusion is reached.

| | AVERAGES | | MEDIANS* | | |
|---|---|---|---|---|---|
| | 6 COUNTY | 5 COUNTY | 6 COUNTIES | 5 COUNTIES | FINAL PROPOSALS |
| 2018 | 43 427 | 46,872 | 46,000 | 46,000 | Both over 49,000 |
| 2019 | 43,307 | 48,271 | 46,500 | 46,900 | Both over 50,000 |
| 2020 | 44,378 | 49,662 | 47,000 | 48,600 | Er.51,000 Un.52,000 |

*(rounding to hundreds to break ties for Employer's list of six)

The final proposals for the first two years on a dollar scale show both are $6000 to $7000 above the six county average and $3000 to $4000 over the six county medians. In the third year the Union's proposal pulls away from the Employer's proposal. Employer's proposal is $7000 above the six county average and $4000 above the six county median, with the Union being $1000 more in each category (ie $8000 and $5000 respectively).

Comparing the issues among the comparative communities under Factor #4 makes the case that Shelby County should have an increase that maintains its position as the highest-paid amongst counties in the local labor market. The difficulty for a highly paid community within a labor market is not the maintenance of its position but the prudence to improve the wages of its workforce notwithstanding its top rank. That presents the necessity to use the labor market as the Arbitrator defined it and not as presented in the stipulations. Moultrie County was obviously within the local labor market but so was Effingham although the Parties stipulated it out of consideration. On the

other hand Clay County demographically had a marginal purchase to its position in the local labor market and could of been excluded on demographic terms but was kept in.

The data comparison which concludes with the finding that the Deputy Unit is well-paid and at the high-end of the local labor market is more accurately reflected with the inclusion of Moultrie County. Notably the exclusion of Clay County unexpectedly exaggerated the result. Although its demographic data is suggests less affluence, its compensation structure exceeds Shelby County in two out of three prospective years. A the Union explains, this is in part the result of "market adjustments" granted by the county commissioners there. Effingham with its demographics reflecting more affluence should have been included. If it were, Shelby County's position in the ranking would come into clearer relief. It may have maintained its top position or it may have conceded that to Effingham. Strangely, and satisfactorily here today, the inclusion of Clay County appears to have been a useful substitute for Effingham County.

The guidance that the comparative communities give to the choice between the two final offers for the Deputy Unit is marginal. Because both maintain Shelby County's position at the top rank and since Clay County included a market increase, the Employer's offer seems to be the more prudent.

Whether the Employer's offer is the one that reasonable Parties would agree upon requires consideration of the other non-neutral statutory factors. There are no "breakthrough" issues inherent in the Deputy Unit wage increase so the final factor to consider is changed circumstances.

The COVID19 outbreak is the most significant changed circumstance. It impacts the employees on a day-to-day basis being first responders. The duration is unknown but the end is imminent with the prospect of the reopening of the economy of many states. Since retroactivity has been tacitly agreed, the employees will receive whatever the award on this issue as backpay for two thirds of the contract term. Also the third year of the Union proposal outpaces the Employer's in relation to centrality measures of six county labor market. These facts militate against consideration of the Union's offer.

The impact the COVID19 outbreak has on the Employer is as potentially significant but also has affects both on the Employer and the employees. With so much of its revenue dependent on tourism, it is likely the County's revenue produced by that source will severely decline in 2020. On the generous assumption that a recession will NOT ensue, that nonetheless strains the revenue carryover to the following years. Revenue reduction is in part a result of government restrictions and/or guidelines on social distancing and restricted capacity for facilities continuing into the summer. Even with reopening the Illinois economy which in other states seems imminent for the summer, some seasonal traffic has already been impaired. The hope is that after a period of stay at home orders there would be a surge of economic activity. The more likely reality is that public response to travel and open gatherings is expected to be extremely conservative in the environment where there are still no therapies or vaccines for the disease. The consequence of both the potential reduction in revenue and tourism not only impairs the county finances but could have an impact on the stability of the workforce. There are no assurances either way on the effects of the changed circumstances. However the factor of changed circumstances counsels a conservative instinct which is the final support for adopting the Employer's final offer for the Deputy Unit base wage increase.

## XIII. ANALYSIS AND CONCLUSIONS-ANNUAL BASE PAY INCREASES: UNIT B

The second economic issue for determination is the base wage increase for the unsworn unit, Unit B. As stated before fiscal year (FY) refers to September 1 which is the contract year. Base Wage refers to the wage rate as of the first day after one year of service. The Union presents its comparative data on the basis of increases within the contract year while Employer converts the comparative contracts to the total dollars paid as of September 1 of the given year. The Union addressed the entire unit with one proposal while the Employer made separate proposals for each, Corrections Officers and Dispatchers, and the "Other" Unit B jobs. The Union challenges that as a "breakthrough." The Employer's separate offers makes the comparisons a bit anomalous but the comparisons will persist with the mental notation of the variance from the Union's data.

The base wage increase in the CBA is stated in annual dollars but is also shown on the wage scale in hourly increments. They are not stated in percentages. The percentages cannot be relied upon to compare the Employer and Union data. Consequently a percentage analysis is not rigorously pursued and yields limited information. It is sufficient only to show as found above that both parties are approximating the CPIU on a percentage basis which makes that factor neutral.

The proposals compared to the expiring contract show the following:

**Unit B Year 1**

| **Expired CBA** | **FY16** | **FY17** | **FY 18** |
|---|---|---|---|
| Wage increase | 1000 | 1000 | 1000 |
| Percent increase | 2.63 | 2.56 | 2.50 |

CPIU : December 2018 :1.9 (1.7 September 2018)

| **Successor CBA** | **FY 19** | **FY 20** | **FY 21** | |
|---|---|---|---|---|
| Employer Proposal | 650 | 650 | 650 | <<Excludes "Other" jobs |
| | 1.71% | 1.68% | 1.65% | |
| Union Proposal | 1050 | 1050 | 1050 | |
| | 2.76% | 2.69% | 2.62% | |
| Five Counties | 2.62 | 2.77 | 3.04* | *three counties per Union data |
| Six Counties | 2.76 | 2.84 | 3.09* | *four counties |

The starting point is the expired contract. As shown below that agreement placed Shelby County well in the midst of its peers in the comparative group. The last CBA increases trended just less than 1% above the CPIU. For the sucessor CBA the Employer's proposal of $650 pulled back from the $1000 annual increases of the last contract while the Union added $50.00 to the prior increase amount to be $1050. Both proposals still approximate the CPIU.

Matching the CPIU is not a factor here. That is typically considered a minimum increase absent extenuating circumstances. The bargaining project and the compensation theory are not intended on having the unit/employees tread water by keeping up with the cost of living which is reflcetive of

the "iron wage" of old.[6] Modern compensation theory attempts to capture some of the productivity value created by the employees. It is the "get ahead" feature of compensation. Neither party delved into productivity data which can be esoteric at best and impossible to measure on small scales. However, the "get ahead" impulse is prevalent notwithstanding the calculus.

To evaluate the prospects of improvement, ranking the offers and observations of the measures of comparative centrality should assist. In the following ranking of the offers is based on Union data which includes all Unit B positions. Even with its near 1% improvement on the CPIU, Shelby's Unit B managed to earn a solid middle out of six comparative communities. The Employer's offer maintains that standing while the Union's proposal moves the Unit B up a notch.

2017
Moultrie Edgar Douglas **Shelby**, Fayette Christian, Clay
2018
Moultrie Edgar,Douglas **Employer** Fayette **Union** Christian Clay
2019
Moultrie Edgar Douglas **Employer** Fayette **Union** Christian Clay
2020
Moultrie Edgar Douglas **Employer** Fayette **Union** Christian Clay

The centrality statistics are illuminating. From the Union's data based on the full Unit B data, the Employer's offer hovers within hundreds of dollars above the six county median and averages for the first two years and falls behind by nearly $1000 in most of the third year statistics. The Union's full Unit B offer is about $1000 +/- above the averages and the medians.

| UNION DATA :AVERAGES | | | MEDIANS | | |
|---|---|---|---|---|---|
| | **6 County*** | **5 County** | **6 Counties** | **5 Counties** | **Final Proposals** |
| 2018 | 38,197 | 38,778 | 38,723 | 37,960 | Un. 39,050 Er. 38,650 |
| 2019 | 39,260 | 39,823 | 39,406 | 38,813 | Un.40,100 Er. 39,300 |
| 2020 | 40,331 | 40,944 | 40,385 | 39,770 | Un.41,150 Er. 39,950 |

*(Moultrie CBA data inserted in Union matrix)

Looking to the Employer materials the centrality statistics are as follows comparing the Unit B offer with data separately from the comparatives communities corrections and dispatch while ignoring the "Other" jobs.

| EMPLOYER DATA: AVERAGES | | | | | |
|---|---|---|---|---|---|
| | **Corrections** | | **Dispatchers** | | |
| | **6 County*** | **5 County** | **6 Counties** | **5 Counties** | **Final Proposals** |
| 2018 | 38,799**4 | 35,083*3 | 38,799**4 | 35,083*3 | Un.39,050 Er. 38,650 |
| 2019 | 35,684 | 35,439 | 35,825 | 35,608 | Un.40,100 Er. 39,300 |
| 2020 | 35,477 | 36,193*5 | 35,187 | 36,008 | Un.41,150 Er. 39,950 |

*(2018 uses 4 and 3 and 5 counties respectively)

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[6] Iron Law of Wages."the doctrine or theory that wages tend toward a level sufficient only to maintain a subsistence standard of living." © 2020 Dictionary.com, LLC, Accessed on the internet at: <<https://www.dictionary.com/browse/iron-law-of-wages >>

The averages show the Employer Unit B offer and the Union's offer around the 2018 average but the Union's offer exceeds the averages in both corrections and dispatch categories of the other counties for the other years. For those years both are $4500+/- above the corrections averages.

On a median basis the offers are well above the dispatcher in the first year. In the last two years they are about $4000 to $5000 above the median for the second year. The same is true of the third year median in the corrections comparison but for dispatchers the offers are about $6000 above the medians.

**EMPLOYER WAGE DATA: MEDIANS** (rounded to 000's)

| | **Corrections** | | **Dispatchers** | | |
|---|---|---|---|---|---|
| | **6 County*** | **5 County** | **6 Counties** | **5 Counties** | **Final Proposals** |
| 2018 | 33,700*4 | 33,900*3 | 34,700 | 35,600 | Un.39,050 Er. 38,650 |
| 2019 | 35,900 | 35,600 | 35,000 | 35,600 | Un.40,100 Er. 39,300 |
| 2020 | 36,000 | 35,400*5 | 35,550 | 35,500 | Un.41,150 Er. 39,950 |

*(2018 uses less than 4 and 3 and 5 counties respectively)

The Employer's demonstration suggests that Shelby County's Unit B jobs are well paid in comparison to the other counties, moreso in the Dispatcher category. The rankings of the counties in the Employer data would be:

2018
CO: Moultrie Fayette Clay Edgar **Employer Union**
Disp: Moultrie Clay Fayette Edgar, **Employer Union**
2019
CO: Douglas Fayette Clay Christian Moultrie Edgar **Employer Union**
Disp: Christian Fayette Clay Moultrie Douglas Edgar, **Employer Union**
2020
CO: Moultrie Douglas Fayette Clay Christian Edgar **Employer Union**
Disp: Moultrie Christian Fayette Clay Edgar, **Employer Union**

Comparison of the two Parties' statistics demonstrated the variation between their methodology. Certainly the addition of Moultrie County depresses the Union's comparison but not the Employer's. The Union's ranking shows the offers as "middling" while the Employer's show the county's ranking as vanguard. The Union having only three settlements in 2020 interpolates the other two counties of its five by carrying forward the last increase of the expiring contacts for the first increase of the next contracts. In the years where the Employer is missing counties it omits them and averages the remaining. Of course the Employer divides the Unit By job category. More to the point, the Employer's use of the actual dollars paid exaggerates the differences between its offer and the comparison communities and its offer and the Union offer. It shows its offer as being in excess of the averages and medians. What its methodology is demonstrating is that its offer produces more dollars on a given date (September 1) than the others on the same precise date.

Factor #4 is a comparison of issues, here wage *increases*. The proper comparison is not the dollars paid but the *rate of increase* whether in percentage or dollars. Because one of the Illinois factors is the CPIU, the bias of the legislature is clearly in favor of the language of increase being percentages.

Comparison of wage increases is to be demonstrated in a labor market, ie comparable communities. A market has the characteristics of "bid and ask," not "going price" which is the retail approach. The Employer's data is not so much one of a comparison of the issue (Factor #4) of wage increase as it is one of the sorts of other evidence that bargaining parties may consider in Factor #8.

The conclusion reached on Factor #4 evidence tempered with Factor #8 information is that even with average or median the market increases Shelby County Unit B jobs pay more than other counties. The Employer's offer barely improves on the cost of living. That and the unfortunate retail approach of the Employer bodes against adopting its offer when considering the comparison of wage increases in the local labor market.

There are still two other factors to consider. The changed circumstances, Factor #7, outlined in the Deputy issue pertains as well here. Corrections Officers are no less one of the at risk services possibly more so than road deputies. While the high rank of the Deputies among the counties and the retroactivity mooted any hazard pay consideration, that is not the case here. The Employer offer of merely the cost of living takes no account of the changed circumstance. Compensation should follow on that risk.

The final consideration is Factor #8, those facts that reasonable bargaining parties should consider. One, changed circumstances, has already been considered. There is more to the Factor #8 evidence. It is clearly demonstrated that under the step system the employees of Unit B at higher seniority fall more and more behind. While the base rate for Unit B is about average in year one of the CBA, employees at higher steps fall behind the averages of the other counties. This is shown in both the Union and Employer charts but is actually calculated by the Union. In the out years (after 5) Unit B employees fall behind with both offers.

In year one the lag ranges from -1.5% to -4.9% depending on the offer and the year. In year two it ranges from -2% to -6% depending on the offer and the year. In year three it ranges from -2.2% to -7.2% depending on the offer and the year. Still every case all are negative with the sole exceptions of the first year (base pay) and the top rate. The latter shows significant improvements over the contract. That may have an exclusive motivation owing to the unique role that top rates have in eventual pension calculations. The effects on the top rates can be ignored. The effect on the others cannot. While the step system cannot be disambiguated for the purpose of evaluating a wage increase, it is still relevant that the work force is falling behind its peers in the mid years of the steps. That is yet another reason to favor the Union offer.

There is one other Factor #8 issue. That is the Employer's proposal to "red circle"[7] the Other Unit B jobs of clerk and janitor. There are five clerks and four janitors. The Employer argues they are paid

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[7] When an employee is overpaid, their base pay as a "red circle rate," or a rate of pay that is above the maximum salary for a position. A red circle policy is a common approach to addressing this situation and allowing the market to catch up with the employee's pay. Stacey Carroll, "HR Cost Cutting with a Red Circle Policy," (April 4, 2009) *PayScale.com*, 2020 PayScale, Inc. Accessed on the internet at <<https://www.payscale.com/compensation-today/2009/04/red-circle-policy>>.

more under the FOP agreement than comparable positions in the County's AFSCME agreement. It argues that the janitor compared to the AFSCME laborer is required to perform tasks of lower physical demand and of less skill. The Sheriff's clerks perform the identical tasks to the court clerks. That is a valid internal comparison under Factor #4 and potentially reasonable.

The chief Union argument is that a this is a "breakthrough" issue that must sustain a high burden in order to change it via interest arbitration. The law on that is discussed above. Interest arbitration is not forum for the adoption of the "good ideas" of either party. Essentially per Arbitrator Benn the proponent must prove the current system is "broken." Key to adopting such measures in interest arbitration is the hardship suffered by the proffering party accompanied by other unsuccessful attempts to resolve the matter.

There is no attempt to show a hardship by the County. The only fact is that the clerks and janitors are paid more than others in the County. That is one statutory factor among many. Not only had the Employer not attempted, let alone sustained, the burden to adopt a breakthrough issue, the matter must fail on another ground. The Arbitrator's jurisdiction is to chose one of the final two economic offers. The award cannot be tailored to modify one classification's increase differently than others. As has been concluded for the balance of the Unit B jobs, corrections and dispatch, the Union's offer is the more reasonable. The red circle proposal cannot be separately adapted in this forum even if it were the more reasonable.

## XIV. ANALYSIS AND CONCLUSIONS - HEALTHCARE

Economically the final offers on health care are near identical. The differences arise in some of the features. The issue is the premium share paid by the employees. During the pendency of the negotiations the employees paid the $40.00 per pay period as required in the final year of the expired agreement. The Union proposes to increase that to $53.00 effective November 1, 2020, this year. The Union's proposal is prospective only. The Employer proposes that the payment be converted to a percentage of the individual premium, 12.5%, and that it apply to all pay periods beginning the first insurance plan year of the successor agreement, ie. November 2018. The two amounts, $53 and 12.5%, are identical in economic impact for the current year.

The internal comparisons show that the County employees all pay a percentage of the premium. Under the prior agreement and through hearing and award in 2020 the FOP employees paid $1040 annually. The Union proposal would make that $1378 annually. By contrast the AFSCME unit and non bargaining employees paid $1275 ($49/pay) in 2018 and $1350 ($53/pay) in 2019. Adopting the Union's position would place the FOP employees to an advantage of $235 or $310 annually compared to the County's other employees.

Other Factor #4 of external comparisons provide the following information:

*Insurance Premium Share paid by Employees*

| | |
|---|---|
| Douglas 0% (no cost) | |
| Moultrie | 0% |
| Christian | 6% |
| Fayette | 5% |
| Shelby | 8.88% current |
| Clay | 13.65% |
| Edgar | 15% |
| *Average:* | *6.6%w/o Shelby* |
| *Median* | *5% w/o Shelby* |
| Union 11.77% | |
| Employer 12.5% | |

The adoption of either offer would maintain Shelby County's rank among the six comparable communities. Nothing about the comparisons clearly support either proposal based on economics. The analysis turns to the other non-neutral factors, Factor #7 COVID 19 presenting changes circumstances has been addressed earlier and applies here as well. It can be considered in connection with Factor #8.

A Factor #8 consideration is that the Employer's offer includes a retroactivity feature. That would require a small offset to the retroactive wages once awarded. Compared to other counties, the premium payment would erode the respective wage awards for Unit A and B. That would be a consideration of net pay, ie net the premium. Such consideration would improve the standing of Moultrie and Douglas in the wage comparison but would not change the relative standing of Shelby as tops for Deputies and above average for others.

Relative to Factors #7 and #8 are the consideration of the unknown future premium charges of the carrier. As of the hearing nothing unusual was expected from the carrier. Since the COVID19 outbreak, that is up for serious question. The costs of the disease itself, although it has undershot the projections, is a continuing fact of life until there is a successful therapy or vaccine. The deflection of health care resources away from the routine disease and injury states is another potential cause of premium increases. Of course, employees face the possibility of the disease itself and resultant cost of care. Taken in context of the reduction in wages in the Employer's offer with retroactivity, the factor of changed circumstances supports the Union offer. The lack of retroactive reduction in the wages in the Union offer can rationalize it as a concession towards a token hazard pay for these first responder classifications in light of the changed circumstances.

The breakthrough analysis of the Employer's offer would have supported the Union notwithstanding any other Factors discussed. This Factor #8 issue, to bear repeating, whether mere "good ideas" from either party are up for adoption in interest arbitration absent the showing that the system is broken. Again no serious attempt was made to even show the system was broken by the Employer. It did claim a desire for uniformity among the County employees all of whom pay a percentage of the premium aside from these units. To do so would change the FOP units' dollar denominated payment to a percentage which is inherently more open ended and more susceptible of the effects of changed circumstances. No serious hardship shown beyond the few hundred dollars difference paid by each FOP employee was shown to support an open ended premium charge. No evidence was adduced on

attempts to rectify whatever problem the dollar denominated payment caused. In fact the record was clear that the offers were so close as not to produce significant differences. Finally, these parties are now at interest arbitration after two thirds of the contract term passed. Whatever "hardship" there may have been was not sufficient to cause the parties to agree or to move more quickly to impasse procedures. Factor #8 breakthrough considered alone is enough to recommend the Union's offer.

## XV. AWARD

1. The Employer's final proposal to increase the base pay of the Deputy Unit A retroactive to September 1, 2018 for the successor CBA is accepted and awarded. This shall be retroactive to September 1, 2018 including for any Officers who have left employment since that time.
2. The Union's final proposal to increase the base pay of Unit B classifications retroactive to September 1, 2018 for the successor CBA is accepted and awarded. This shall be retroactive to September 1, 2018 including for any Officers who have left employment since that time.
3. The Union's final proposal to increase the employee premium payment to $53 per pay period effective November 1,2020 for the successor CBA is accepted and awarded.
4. Pursuant to the Parties' request, all previously agreed-to tentative agreements are to be included in the new agreement and are so awarded.

Made and entered at Cuyhoga County, Ohio
May 11, 2020

Gregory P. Szuter, Fact Finder

PROOF OF SERVICE:
The foregoing has been sent by electronic mail via the internet on May 11, 2020, to both FOP-ILC and the Shelby County/Sheriff Office in care of their representatives per addresses shown on the cover and filed with the Illinois Labor Relations Board in the same manner.