

IN THE MATTER OF THE ARBITRATION BETWEEN:

COUNTY OF WILLIAMSON, ET AL., )  
 )  
Employer, )  
 )  
and ) FMCS Case No:190521-07339  
 ) ILRB Case No:S-MA-19-007  
ILLINOIS FRATERNAL ORDER OF )  
POLICE LABOR COUNCIL, )  
 )  
Union. )

BEFORE JEROME A. DIEKEMPER, ARBITRATOR

Hearing Held in Marion, IL: November 22, 2019  
Appearance for Employer: Rhett T. Barke, Counsel  
Appearance for Union: James L. Daniels, Counsel

## OPINION AND AWARD

### I. INTRODUCTION

This proceeding is an Interest Arbitration pursuant to Section 14 of the Illinois Public Labor Relations Act to resolve the economic issues between the County of Williamson/Williamson County Sheriff ("Employer"), and the Illinois Fraternal Order of Police Labor Council ("Union").

The parties entered into thirteen pre-hearing stipulations as follows:

- 1) The Arbitrator in this matter shall be Jerome Diekemper. The parties stipulate that the procedural prerequisites for convening the arbitration hearing have been met, and 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 December 1, 2018. Each party expressly waives and agrees not to assert any defenses, 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 November 22, 2019, at 9:30 a.m. The requirements 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, have been waived by the parties. The hearing will be held on the second floor of the Williamson County Administration Building at 407 N. Monroe St., Marion, IL 62959.
- 3) The parties have agreed to waive Section 14(b) of the Illinois Public Labor Relations Act (IPLRA) requiring the appointment of panel delegates by the Employer and exclusive representative.

4) The hearing will be transcribed by a court reporter or reporters whose attendance is to be secured by the Employer for the duration of the hearing by agreement of the parties. The cost of the reporter and the Arbitrator's copy of the transcript shall be shared equally by the parties.

5) The parties agree that the following counties shall be considered "comparable" for the purpose of external analysis under the meaning of the factors set forth in Section 14 of the IPLRA: Marion, Jefferson, Jackson, and Randolph.

6) The parties agree that the following issues, which are mandatory subjects of bargaining and over which the Arbitrator has authority and jurisdiction to rule, are in dispute: as proposed by the Employer as a package, a. Wages, and b. Rank and Specialty Assignment Differentials; and as proposed by the Union, Wages only.

7) 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.

8) Final offers shall be presented at arbitration. As to the economic issue(s) in dispute, the Arbitrator shall adopt either the final offer of the Union or the final offer of the County. As to the non-economic issue(s) in dispute, the Arbitrator shall have the authority to adopt either party's final offer or to issue an alternative award consistent with Section 14 of the Public Labor Relations Act.

9) 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.

10) Post-hearing briefs shall be submitted electronically to the Arbitrator, who will conduct the exchange. Deadline extensions as may be mutually agreed to by the parties. 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 this matter.

11) 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 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.

12) 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.

13) 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.

Pursuant to Stipulation 7, the tentative agreements of the parties are incorporated into this Award for inclusion in the parties' successor labor agreement that results from this proceeding.

Pursuant to Stipulation 1, the annual wage increases for Fiscal Years '18 and '19 set out are made retroactive to December 1, 2018, and December 1, 2019, respectively.

Pursuant to Stipulation 2, the hearing was held on November 22, 2019. At the hearing, each party had the opportunity to call, examine, and cross-examine witnesses, and to introduce documentary evidence.

After the hearing, a transcript was prepared and the parties, after a number of mutually agreed extensions, filed post-hearing briefs. The last post-hearing brief was received on March 6, 2020. The record was kept open until the last supplemental exhibit was received on March 27, 2020.

Pursuant to Stipulation 10, the Arbitrator bases his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois Public Labor Relations Act ("Act") which provides:

(h) Where there is no agreement between the parties, or where there is an agreement but the parties have

begun negotiations or discussions looking to a new agreement or amendment of the existing agreement and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the Arbitration Panel shall base its findings, opinions, and order upon the following factors, as applicable:

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

## II. BACKGROUND

The County and the Union have been parties to successive Collective Bargaining Agreements (CBA), the last of which expired on November 30, 2018. The bargaining unit covered by the CBA now consists of 29 employees, 26 Deputy Sheriffs, and 3 Merited Dispatchers.

Of the Deputies, as of the hearing date, two were lieutenants (one of whom was designated as a Detective/Lieutenant), three sergeants (one of whom was designated as a K-9/Sergeant), three were detectives (one of whom was designated Detective/FTO), three FTO's, two ARO/FTO's, one Public Relations Deputy, one SIEG Agent, and seven deputies with no other designation.

Of the three Dispatchers, one is a Lieutenant and one is a Sergeant.

See Employer Exhibit 4-A with employee ranks and designation in the "rank" column.

The Employer also has CBA's covering five other bargaining units: a unit of Corrections Officers and others represented by AFSCME, Local 3369; a unit of employees of the Assessor's office, et al., represented by AFSCME, Local 3369; a unit of Highway Department employees represented by Operating Engineers, Local 318; a unit of Animal Control Department employees represented by Operating Engineers, Local 318; and a unit of

Circuit Clerk employees represented by Laborers' Local 773. The current CBA's for these units are contained in Employer's Exhibit 6. Three expire on November 30, 2021, and two expire on November 30, 2022.

### **III. WAGES AND ALLOWANCES UNDER THE EXPIRED CBA**

Base wages are set out in Appendix C of Union Exhibit 2. Section 16.1 also provides for step increases on each employee's anniversary date through the employee's 20th anniversary. Employer's Exhibit 3-D shows the longevity wage scale with step increases varying between \$0.21 and \$0.52 per hour depending on the particular anniversary year.

Section 16.2 provides for pay differentials based on rank and/or job title. Sergeants were paid a \$2,250 annual differential, Corporals were paid a \$1,850 annual differential, Lieutenants were paid a \$2,500 annual differential, Detectives were paid a \$2,000 annual differential, and Captains were paid a \$2,750 annual differential.

Any officer assigned on a full-time basis to the Southern Illinois Enforcement Group (SIEG), was paid a \$2,000 annual differential.

The K-9 officer received an additional thirty-minutes of pay per day for dog handling duties performed outside regular work hours.

Appendix C sets out the "rank differentials." It contains no mention of payments for ARO's (Accident Reconstruction

Officers), FTO's (Field Training Officers), Public Relations Officers or Evidence Custodian Officers, which are addressed in the Employer's final offer. See Union Exhibit 6.

The Arbitrator notes that Section 1.2 of the CBA deals with "new classifications." There is no record evidence that the Employer ever gave a notice to establish new classifications.

#### **IV. RECORD EVIDENCE OF PRE-ARBITRATION BARGAINING**

The record evidence of the written proposals of the parties (Union Exhibit 7), shows a Union proposal to create a new Section 11.13 for an FTO to accrue one hour of comp time for every full shift spent as an FTO. (Union Exhibit 7, first page of the first Union proposal.) The Employer's counter-proposal dated October 10, 2018, does not mention the Union's proposal for Section 11.13 and it states at Issue 10 of Appendix C, "The County wishes to maintain the status quo."

The Union's second proposal dated November 8, 2018, contains no mention of its earlier Section 11.13 proposal. The Employer's counter-proposal dated February 13, 2019, Issues 9 and 10 regarding base wages and Appendix C, makes no mention of new differential rates.

In the Employer's counter-proposal of August 1, 2018, Issues 9 and 10, the Employer offers a package proposal of a \$0.55 per hour increase each year, with a \$500 increase in the annual differential for the ranks with an established differential, and the addition of a differential for



titleholders for "Evidence Custodian/Public Relations" of \$500, and "FTO/ATO" of \$500, with the stipulation that if an officer held both titles of FTO and ATO the officer would only receive one \$500 differential. This is the same as the final offer made at the Arbitration Hearing.

There is no record evidence of any written proposals or counter-proposals made after August 1, 2019. The Union's demand for Compulsory Interest Arbitration had already been received by the Illinois Labor Relations Board on April 24, 2019. See Union Exhibit 3. The Illinois Labor Relations Board, by letter dated September 10, 2019, notified the Arbitrator of his appointment as Interest Arbitrator. The FMCS had notified the Arbitrator of this appointment on September 9, 2019.

The arbitration record contains no other evidence concerning how the parties reached an impasse or of any bargaining after the Employer's counter-proposal of August 1, 2019.

#### **V. DISCUSSION OF STATUTORY FACTORS**

Because the issues in dispute are "economic" within the meaning of the Act, 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 subsection (h)."

#### **A. The Lawful Authority of the Employer. (Section 14(h) (1) of the Act)**

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

**B. 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.

**C. The Interest 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 Union introduced financial information gathered from audited financial statements that suggest the Employer has the financial ability to pay for the additional cost involved in the Union's final offer. The Employer has calculated that the additional cost of the Union's final proposal is \$126,672 for wages only, for the 29 employees. (The Union's proposal of \$358,904 minus the Employer's proposal of \$232,232 equals a difference of \$126,672.) See Employer Exhibit 3-D.

There is also an increased cost in the IMRF (pension) cost contribution of \$4,446. (Union, \$12,597 less Employer \$8,151.) (See Employer's Exhibit 3-D for the IMRF costs.) This makes the wage portion of the cost differential \$131,118.

The total cost difference between the two final offers must account for the value of the differential pay offered in the Employer's proposal. Using Employer Exhibit 3-A as a guide, the Arbitrator estimates the increased differential pay offered each year will be \$6,000 for the first year ( three lieutenants, four sergeants, four detectives, and SIEG agents at \$500 each), \$6,000 for the second year (the same as the first), and \$9,500 for the third year (the same as the first two years, plus six FTO's and public relations officers at \$500 each). That reduces the total cost difference between the two final offers to \$109,618.

The Employer introduced financial information and the testimony of the Employer's Independent Auditor, Kimberly Meyers, to suggest that the Employer could not afford the cost difference between the two final offers. The testimony of Ms. Meyers points more to the Employer's inability to control its own cash-flow than to an inability to pay the increased cost of the Union's final offer. The Employer's two main revenue payments come in August and October, late in the fiscal year (TR. 112).

According to the Independent Auditor's Report dated November 30, 2018, the Employer had "current assets" of \$3,647,778 and a "total net position" of \$13,833,696. See Union Exhibit 16 at p. 11. Union Exhibits 13, 14, and 15, show that

the Employer, over time, has had healthy year-end balances in its General Fund and that its tax base is expanding.

The Arbitrator believes the Union's final offer is one that the Employer has the ability to pay. The Arbitrator regards the ability to pay factor as one that would disqualify a demand that could not be met, but not as a factor that requires the adoption of a demand that can be met.

With regard to the interest and welfare of the public, neither party argued that the adoption of it's or the other party's offer would have a material impact on the public welfare. It is obvious that retaining good, well-trained and experienced employees is in the best interest of the public. The adoption of either final offer will not seriously impact this criterion. The Arbitrator views this factor as being neutral in his decision-making.

**D. Comparison of the Wages, Hours, and Conditions of Employment of 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 has found in cases he reviewed, that other interest arbitrators look at internal comparability (within the

same employer), and external comparability (among other governmental and non-governmental employees).

Neither party has cited any private employers as comparables. The parties have stipulated that four other counties are comparable; Marion, Jefferson, Jackson, and Randolph Counties. There are five other bargaining units that have current CBA's with the Employer. The Employer contends the internal comparables strongly support the adoption of its final offer. The Union contends the external comparables strongly support the adoption of its final proposal.

#### 1. Internal Comparables

As one might expect, each CBA is different. The closest match is the Corrections Officer's CBA negotiated by AFSCME, Local 3369. It will be discussed further below.

Page 2 of Book 2 of the Employer's Exhibits contains a chart showing "internal CBA wage increase comparisons" from 2009 through 2021, where data are available. This shows the Union bargaining unit from 2009 through 2017 got annual increases of \$0.55, except in 2012, 2013, and 2014 when the employees received \$0.45 increases, plus rank, from 2009. From 2009 through 2014, the other bargaining units got increases of \$0.70 each year, (except \$0.60 for Animal Control and \$0.65 for Highway in 2009). The Circuit Clerks and Highway maintained \$0.70 increases through 2016. The Assessor and Animal Control maintained \$0.70 increases through 2017. The State's Attorney's

support got \$0.55 in 2015 and 2016 and \$0.60 in 2017. The Corrections Officer pay for 2014 and 2015 is not contained in the chart. In 2016 it went to \$0.55 and will stay there through November 30, 2021.

Historically, the pay increases of \$0.55 did not become common for most units until 2018. The chart does not have a pay rate for the State's Attorney's unit for 2019, 2020 or 2021.

In reviewing the other internal comparables, none of the CBA's but that for Corrections includes annual step increases along with wage increases. The holidays for the Circuit Clerks are determined by the Illinois Appellant Courts and are paid at seven hours per day. Vacation accrual is similar to the FOP Unit through ten-years of service, with no increase until twenty-five years of service. No increases thereafter, until twenty-five years of service. The Highway and Animal Control Units receive only eleven holidays per year and vacations are accrued on a less favorable basis than for the FOP Unit. The Assessor's Office Unit gets thirteen holidays, plus a general election day every other year. Vacation accrual is better than the FOP at eleven-years and then increases after nineteen, twenty-four, and twenty-five years of service. The Corrections Unit gets fourteen holidays, plus a general election day every other year. The vacation accruals are identical to the FOP Unit with increases from seventeen days after ten-years and one extra day every two-years until reaching twenty-five days after

twenty-six years of service. The FOP Unit has fifteen holidays with the general election day every other year.

With regard to the Wage Matrix (Appendix C in the Corrections Unit's CBA), employees get a \$0.55 per hour raise every year through 12/1/2020, and an annual step increase of \$0.48 on their anniversary date. This adds up to \$1.03 in wage increases during each contract year. The FOP step increases vary between \$0.21 and \$0.52 per hour. Only six employees in the FOP Unit will receive greater step increases over three-years ( $3 \times .52 = 1.56$ ), than those received by each member of the Corrections Unit ( $3 \times .48 = 1.44$ ). See Employer Exhibit 3-B for the FOP longevity increases during the term of the new CBA. Because of their longevity, three additional members of the FOP Unit will receive annual stipends of \$1,200 that will not be added to their salary base. These stipends amount to about \$0.58 per hour ( $\$1,200 \div 2080$  hours).

## 2. External Comparables

The parties stipulated that Marion, Jackson, Jefferson, and Randolph Counties are comparable to the Employer. The record evidence shows that historically there has been a gap between wages of Deputy Sheriffs of the Employer and Deputies in the comparable counties.

Employer Exhibit 10 is a chart that shows historical wage data for Deputies in the relevant jurisdictions. The data for the Employer and for Jackson and Marion Counties are from 2017,

and for Jefferson and Randolph Counties are from 2018. Wages for Jackson County Deputies are higher at every pay level in the chart: by \$8,418 at one-year; by \$7,326 at five-years; by \$5,202 at ten-years, and by \$604 at twenty-years. Wages for Marion County Deputies are higher at every pay level but one: by \$1,221 at one-year; by \$3,610 at five-years; by \$90 at ten-years, and by \$343 less at twenty-years.

Recognizing that the data from Randolph and Jefferson Counties are from 2018 rather than from 2017, Randolph County (like Jackson County) has higher wages at every pay level, going from \$6,431 at year one to \$2,425 at year twenty. Jefferson County (like Marion County) has higher wages at every level until year twenty, going from \$5,599 at one-year to \$1,663 less at year twenty.

Wages for Dispatchers compare more favorably than for Deputies. At year one, the Employer's Dispatchers are in the middle, ahead of Jackson and Marion Counties, and behind Jefferson and Randolph Counties. The same is true for year five, though the gap between the top two counties is less. By year ten the Employer's Dispatchers are the highest-paid. By year twenty they remain the highest-paid by \$11,424 over the next lowest County (Jackson), and by \$19,757 over the lowest (Marion).

The Union has provided data concerning the future wage increases and the comparable jurisdictions as of the date of the



hearing. The Employer's final offer amounts to 2.3% per year, for a total of 6.9% for three-years. The Union's final offer amounts to 3.5% per year, for a total of 10.5%. The average comparable wage increases over three-years are 7.79%. See Union Exhibit 9.

The Arbitrator will discuss comparables in more detail in the Decision Section of this Opinion and Award.

**E. The Average Consumer Prices for Goods and Services, Commonly Known as the Cost of Living. (Section 14(h) (5) of the Act)**

While the parties have suggested different CPI-U figures for the second year of the CBA, both parties agree the final offer of each party exceeds the cost of living for 2018 and that part of 2019 up to the hearing. The Employer's offer is closer to but still above, the cost of living. Because of the current COVID-19 pandemic, it is perilous, if not foolhardy, for anyone, including this Arbitrator, to try to predict the cost of living for 2020. The Arbitrator finds this factor to be neutral in his decision-making. Whichever offer he adopts will be in excess of the likely cost of living.

**F. 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 issues at an impasse, the most recently expired CBA provides a package of other economic benefits. The health insurance costs to the Employer are increasing and the Union agreed to a \$10 per month increase in the employee's share of that cost. In addition, there was an increase in the IMRF contributions, as was pointed out in Subsection V (C) above (\$4,446), that the Employer will pay.

The existing and tentatively agreed economic items will be contained in the successor CBA. There is no evidence that the continuity and stability of employment will be impacted during the term of the successor CBA.

**G. Changes in any of the Foregoing Circumstances During the Pendency of the Arbitration Procedures. (Section 14(7) of the Act)**

There is no evidence of any change in any of the foregoing circumstances during the pendency of the arbitration proceedings.

**H. 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)**

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 pre-hearing Stipulation 1, the parties agreed the Arbitrator could make all wage increases and other economic items retroactive to December 1, 2018. In Part I above, the Arbitrator indicated that annual wage increases would be retroactive to December 1, 2018. The same ruling shall apply to any tentatively agreed economic terms.

In its post-hearing brief, the Union raised the issue of whether the Employer's final offer would result in a "breakthrough." The Arbitrator will discuss the "breakthrough" issue in the Decision Section of this Opinion and Award.

The parties have not cited any other factors, and the Arbitrator finds none, that would impact his decision in this case.

## **VI. POSITIONS OF THE PARTIES**

Some positions of the parties have been set forth in Part V above. To the extent they are not repeated below, they are incorporated by reference in Part VI.

### **A. Position of the Union**

The Union urges that the Arbitrator adopt its proposal for annual \$0.85 wage increases in the base rate for each of the three-years of the CBA.

### 1. External Comparables

The Union contends the Employer's Deputies are paid "significantly less than their peers at other departments for most of their careers..." The Union states that until fifteen-years of service the Employer's Deputies are receiving significantly less than their counterparts in comparable counties. It further contends that the majority of them(16 of 26) are receiving below-average wages and that its proposal will result in only a "modest improvement" in the Deputies' comparable standing while "the Employer's offer will actually degrade it."

The Union points out that if its offer is adopted, year one Deputies will still be the lowest paid (5th of 5, year five Deputies will be 4th of 5, and year ten Deputies 3rd of 5).

### 2. Healthcare Premium Increases

The Union admits that there have been increased health insurance premium increases, but it points out that until six-years ago the Deputies paid no share of the premium and they now pay about 9.5% of the premiums. In the new CBA, the employees will pay an additional \$10 per month.

### 3. The Employer's Ability to Pay

The Union contends the Employer has the ability to pay for its proposed increases. It points out that in 2018 the Department ran \$50,000 under budget and the current budget line

item for Deputy Salary anticipates a 4.5% increase, while the Union's proposal seeks an average 3.5% increase.

4. The Employer's Proposal Seeks a "Breakthrough"

The Union points out that the Employer's package proposal provides only \$0.55 per hour annual increases while providing \$500 rank and title differential pay increases for six existing ranks or titles while adding four new titles that were not agreed to in bargaining. The new titles are "Evidence Custodian," "Public Relations," "Field Training Officer," and "Accident Reconstruction Officer."

The Union points to the lack of testimony or evidence that the six current ranks and titles are underpaid. As to new titles, it argues: "not one written or spoken word was exchanged at the bargaining table to determine how individuals holding these specialty positions would be selected, or how long they would keep their assignment, or whether their tenure would be permanent or for a limited time, or rotate on a certain schedule, or what certifications or training would be necessary to qualify, or whether vacancies in these titles must be filed (and within what timeline), and whether such vacancies need to be posted to allow interested applicants to apply, or whether the pay would be awarded to those appointed part-way through the year *in toto*, or on a pro-rated basis, and whether employees receiving such assignments shall be given different schedules or shifts than those already set forth in the contract."

The Union also objected to the new differential pay positions because they violate the existing structure without any showing of a compelling need to do so. The Union expresses concern that the new positions are not necessarily permanent, and that employees can be given assignments to them or removed from them at the Sheriff's discretion.

#### 5. Internal Comparables

The Union contends the Employer did not give \$0.55 per hour raises to all other bargaining units until 2019. Also, it asserts most arbitrators have given less consideration to units not engaged in public safety when considering cases involving the Law Enforcement Unit. The only other public safety unit is the Corrections Unit. The other units are made up of employees "not sworn to put their lives on the line to uphold the law."

The Union next points out the lack of a historical "lockstep" comparison of wages for the other units, even the Corrections Unit. That there is no history of parity is shown by the Employer's chart at page 2, Book 2 of the Employer's Exhibits.

#### **B. Position of the Employer**

The Employer urges that the Arbitrator adopt, as a package, its proposal for annual \$0.55 wage increases in the base rate for each of the three-years of the CBA, together with its proposal to raise the differential pay for six existing ranks or titles by \$500 a year retroactive to December 1, 2018, and to

grant differential pay of \$500 a year to employees with four titles which are new in the CBA.

1. Ability to Pay

The Employer contends that a combination of a reduction in revenues, rising health insurance costs, worker's compensation costs, and costly terms and conditions contained in its CBA's with other units "has resulted in the County having limited reserves." The Employer cites the testimony of Auditor Kimberly Meyers that the County is operating in a deficit factoring in "over-expenditures" by officeholders throughout the County. Ms. Meyers has recommended that the County maintain reserves in excess of three months while increasing its level of savings. The Employer finds itself in the "odd position" of acknowledging it can pay for wage increases for the life of the contract but that it cannot pay the demand of the Union, which it contends exceeds the Employer's proposal by over \$126,000.

2. Comparables Factor

With regard to internal comparables, the Employer contends that "historically the County has treated all employees and bargaining units the same." The Employer does concede that Deputies "receive longevity and varying amounts in addition to their base wage increase (generally \$0.52/hr), and no other bargaining unit in the County receives a longevity increase to that extent." The County contends this factor "**strongly favors the County.**" (Emphasis in original).

With regard to external comparables, the Employer asserts that "the comparables must be looked at in totality." The Employer "acknowledges that there is a section of employees within the Sheriff's Department who are behind in pure wage, but also points out that the rest of the employees are at or near the top of comparables."

The Employer also asserts it "is one of only a few counties in Southern Illinois that provides payments toward dependent and family health insurance coverage." It states it provides \$324,744 per year for dependents and family coverage "just for the Sheriff's Department." It also states it pays health insurance benefits to the bargaining unit at an average annual cost of \$17,186 per employee. The Employer contends that while "it could be argued that wages for employees in the five-ten year service range could be higher," employees in that same range "traditionally utilize the dependent and family insurance the most," the cost of that benefit must be factored in.

The Employer "believes" its overall wages are at or greater than the comparables and that when the total compensation package is considered, the external comparables factor is "strongly in favor of the County as well."

### 3. Consumer Price Index

While both final offers exceed the CPI, the Employer's offer is closer to the actual CPI and is therefore "more appropriate and in line with the CPI than the Union's proposal."



#### 4. Overall Compensation

The Employer contends the bargaining unit members receive "more health insurance value than any other county in Southern Illinois." It also contends the increasing IMRF contribution rate is a cost outside its control and "is one of the highest in Southern Illinois."

The Employer urges that "taking all financial factors into consideration, the Williamson County Sheriff's Department is a well-compensated unit, if not the most highly compensated unit in Southern Illinois."

The Employer argues the overall compensation factor weighs heavily in its favor.

### VII. ANALYSIS AND CONCLUSIONS

#### A. Interest Arbitration Under the Act is

##### Basically Conservative

In a seminal case, Arbitrator Nathan observes as follows concerning the interest arbitration process:

If the process is to work, "it must not yield substantially different results than could be obtained by the parties through a bargaining process. Accordingly, interest arbitration is essentially a conservative process. While obviously, value judgments are inherent, the neutral cannot impose upon the parties' contractual procedures he or she knows that the parties themselves would never agree to. Nor is it his function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these

particular parties have developed for themselves. To do anything less would inhibit collective bargaining." *Will County*, S-MA-88-009 (Nathan, 1988) (citations omitted) at pages 44-45.

In the same vein, Arbitrator Goldstein has noted:

At its core, interest arbitration is a conservative mechanism of dispute resolution. Interest arbitration is intended to resolve an immediate impasse, but not to usurp the parties' traditional bargaining relationship. 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.

*Burbank*, S-MA-97-56 (Goldstein, 1998) at pages 9, 11.

Regarding "breakthroughs," he also noted:

Under this theory, there should not be any substantial "breakthroughs" in the interest arbitration process. If the arbitrator awards either party a wage package which is *significantly* superior to anything it would likely have obtained through collective bargaining, that party is not likely to want to settle the terms of its next contract through good faith collective bargaining. It will always pursue the interest arbitration route and this defeats the purpose. *Burbank, supra*, at pages 11 and 12 (citations omitted).

Arbitrator Goldstein cited Arbitrator Nathan's test for resolving "breakthrough" issues:

However, it is also important to note that while it is difficult to obtain a change in interest arbitration, it is not impossible. Otherwise, there would be no point to interest arbitration at all. In *Will County*, Arbitrator Harvey Nathan set forth an excellent test for meeting the burden on a party attempting to obtain a new or expanded benefit in interest arbitration. In

order to obtain a change in interest arbitration, the party seeking the change, must at a minimum, 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.

It 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.

This Arbitrator agrees with and will follow the above-cited principles.

**B. The Employer has the Financial Ability to Meet the Cost of the Union's Proposed Increases**

The Arbitrator finds that record evidence does not support the Employer's contention that it cannot afford to pay for the Union's proposed increases while it admits it can afford to pay for its own proposed increases. This "odd position" is not tenable based on the record evidence.

The Illinois Public Labor Relations Act, in Section 14(h) (3) in setting forth the criterion of the financial ability of the unit of government to meet the cost of a Union proposal says nothing about the government unit's desire to maintain a certain level of reserves in addition to "meeting the cost." It

appears from the testimony of the Auditor, Ms. Meyers, that the County's cash-flow problems arise from the timing of incoming payments late in the fiscal year in August and October, and from the unwillingness of the County Treasurer to require elected County officials to stay within their departmental budgets.

The cost of the Union's proposal above the Employer's is approximately \$109,000. This amount could largely be covered just by the approximate \$50,000 the Sheriff came in under in the 2018 budget and by the 4.5% amount budgeted for Deputies' salaries in 2019.

With the County's history of having healthy year-end balances in its General Fund (in the millions of dollars, see Union Exhibits 13, 14, and 15), and with the County's expanding tax base, the Arbitrator can see no reason why the Employer could not afford the \$109,000 difference between the cost of the Employer's proposal and the cost of the Union's proposal.

**C. The Cost of Living is not a Substantial Factor  
in the Decision**

As is pointed out above, both proposals exceed the relevant recent CPI figures. That makes this factor neutral in the decision-making process. That said, the Arbitrator does find that the Employer's proposal is closer to the reported CPI figures than the Union's proposal.

D. Comparables (Wages and Overall Economic Costs)

1. Internal Comparables

The Arbitrator finds that historically the Sheriff's Department bargaining unit has never moved in lockstep with any of the other five Employer bargaining units. Only the Corrections Unit has longevity steps, the other four units do not. With the addition of \$10 per month increases in the Deputies' contribution to their health insurance, they will be the same as for employees in the Assessor, Animal Control, and Circuit Clerk Units but there are no provisions for employee contributions under the Highway Unit CBA, and the CBA for the Corrections Unit, running through November 30, 2021, has no language in Section 17.3 similar to the same section in the Deputies' CBA, despite the fact both CBA's cover Sheriff Department employees. Also, the Corrections CBA has a two-tier wage system, providing for \$2,142 in annual increases for Correctional Officers hired prior to December 1, 2010 (Appendix B), and for a step and raise grid for Correctional Officers hired after December 1, 2010 (Appendix C). The Highway Unit also has a two-tier wage scale for employees hired before and after December 1, 2010. See Article IX, where Group I Employees are paid a minimum of \$27.35 per hour if hired before December 1, 2010, and start at \$15.00 per hour if hired after that date. Group II Employees get a minimum of \$26.75 per hour if hired before, and a starting wage of \$14.40 per hour if hired after.

There are also differences in vacation accruals as pointed out above.

In short, the Arbitrator finds there are significant differences historically and presently between the CBA for the Deputies and the other five internal bargaining units. The internal comparables do not support the Employer's final offer.

## 2. External Comparables

The Employer has conceded that there are "pure" wage differences for some of the Deputies, and it contends that the "rest" are "at or near the top of comparables." Employer Exhibit 10 shows all Deputies through year 10 are below their comparables in all four counties, with the differences being between \$11,264 per year for Randolph County to \$90 per year for Marion County. By year '20 the Deputies are still \$2,425 per year behind Randolph County and \$604 per year behind Jackson County. By year '20 the Deputies have moved ahead of Marion and Jefferson Counties.

A review of hire dates in Employer Exhibit 3-A reveals 10 of 26 Deputies have not completed ten-years of service and that only 3 of 26 have completed twenty years of service. Half of the Deputies have between ten and twenty years of service. The Employer suggests that the comparables must be looked at "in totality" and further suggests its higher health care expenditures for the Deputies are part of that totality. Indeed it asserts it is one of the few counties in Southern Illinois

that provides payment towards dependent and family insurance coverage, and that it spent an average of \$17,186 per year, per employee for health insurance benefits.

A review of the relevant external comparable CBA's reveals that Jackson County pays 100% of the cost of the employee's own health insurance cost and nothing for the extra cost of dependant or family coverage. The Jefferson County CBA says it pays 100% of the premium cost of the plan for the employee "with the employees contributing" \$50 per month as of December 1, 2016. There is no mention of the availability of any dependent or family coverage or of who pays for it if it is available.

The Marion County CBA provides the County will provide 95% of the premium costs for "employee insurance coverage." After the effective date of December 1, 2014, the employee is to pay 25% of any increase in premiums up to \$40 a month, after December 1, 2015, 25%, up to \$45 a month, and after December 1, 2016, 25%, up to \$50 per month. There is no mention of the availability of dependent or family coverage or who pays for it if it is available.

The Randolph County CBA merely states all employees will receive the same medical insurance provided for all other County employees without any indication of employee contributions or of the availability of dependent and family coverage.

The Employer has not cited any documentary record evidence of that supports its assertion that it spends an average of more

than \$17,000 per employee for health insurance. The line items in the 2019 budget for the County Sheriff do not include employee health insurance expenditures for Deputies or any other employees. See page 16 of Employer Exhibit 5. There is a general entry for "employees' health insurance fund" with \$3,200,633 as the "appropriation amount." See line 63, p. 10 of Employer Exhibit 5. (26 X \$17,000 = \$442,000).

The Employer asserts that employees with less service use more dependent and family coverage. No corroborating evidence of this assertion is in the record. The Deputies' CBA does show, however, that employees who select dependent or family health coverage will still pay hundreds of dollars per month more than employees selecting individual coverage. Under Section 17.3 of the new CBA the contribution for individual coverage will increase to \$140 per month, while the contributions for coverage with one dependent and family coverage will increase to \$540 per month (a \$400 difference), and \$640 per month (a \$500 difference), respectively.

For comparison purposes, neither party has provided a full analysis of what the overall differences are, if any, in average healthcare insurance costs per individual employee for the comparable counties. Similarly, neither party has provided a full analysis of what the average overall differences are, if any, in the total economic cost per individual employee for the comparable counties. In these circumstances, the Arbitrator is



sure that the Employer's Deputies in the first ten-years of employment are being paid less than their counterparts in comparable counties. What the "totality" of the respective economic costs are for the comparable communities cannot be determined from the record evidence. In these circumstances, the evidence of the wages paid to Deputies in the comparable counties favors adoption of the Union's proposal.

**E. "Breakthrough" Analysis**

Under the Act, the Arbitrator must select either the whole Union proposal or the whole Employer proposal. He has no authority to nullify or change any part of a party's proposal, and he must adopt one final offer and reject the other.

The Employer's final offer is a package proposal that consists of three annual wage increases of \$0.55 each, coupled with \$500 increases for employees receiving "differentials" in six existing categories (Captain, Lieutenant, Sergeant, Corporal, Detective, and SIEG Agent), together with \$500 differentials for employees in four new categories (Evidence Custodian, Public Relations, Field Training Officer (FTO), and Accident Reconstruction Officer (ATO), with the provision that if an employee is denominated as both the "FTO" and "ATO" the employee will receive only one \$500 differential.

In the post-hearing brief, the Union contended the creation of the four new categories of employees to receive differentials amounted to a "breakthrough" under the analysis outlined in

subsection VII (A) above. Because the parties stipulated there would be no reply briefs (See Stipulation 10), the Employer has not been heard on this issue and the Arbitrator felt constrained by the Stipulation not to invite a reply.

Had this issue arisen during the term of the prior CBA, it would have been governed by Section 1.2. Under this Section, the Union could have requested bargaining. If the parties agreed to the new classifications or if the Illinois State Labor Relations Board approved it, the Employer could have set a temporary pay grade pending either Union agreement or an Impasse Resolution Procedure under Article XX. By adopting this procedure in the expired agreement and by their failure to propose changing it in the new CBA, the parties have shown the importance of engaging in good faith negotiations to establish new classifications and new pay rates.

The Union has claimed the creation of four new classifications with new differential compensation, without any substantive bargaining, amounts to a prohibited breakthrough. The Union points to the uncertainties that accompany the new differential. Who determines who is appointed? The Sheriff? What are the qualifications? Are the positions permanent or temporary? Can an employee be removed and under what circumstances? Do employees selected during a fiscal year receive the differential on a pro-rata basis?

These are relevant questions not answered in the Employer's final offer. There is no record evidence they were ever addressed in the bargaining that led to impasse and final offers being made.

Given the conservative nature of interest arbitration generally, Arbitrators are loathe to award substantially different results than can be obtained by parties through the bargaining process. If the questions raised by the Union had been vetted in the bargaining process, the Arbitrator would have had some basis for approving or rejecting the newly proposed differential pay classifications, as part of the Employer's package.

Using the standards set out above for obtaining a change interest arbitration, the Arbitrator finds there is no evidence to suggest that the old differential system or procedure did not work as anticipated when originally agreed to. (If it is not broken, don't fix it). Here, the addition of four new categories of employees with so many unanswered questions might break a system that evidently has worked for the six existing categories.

Next, there is no evidence that the existing system with six categories has created operational hardships for the Employer or equitable or due process problems for the Union. The same cannot fairly be predicted for the same system with the four new categories included. It may well work out for the

parties, but there is no bargaining history to support the hope that it would.

Finally, there is no evidence that the party seeking to maintain the *status quo*, the Union, has resisted attempts at the bargaining table to address the problems. There is no record evidence the problems were ever even addressed.


The Arbitrator finds the Employer's proposal does seek a "breakthrough," something that should be worked out through normal collective bargaining and not granted by arbitral fiat in interest arbitration. Because the Arbitrator has no authority to change or delete any part of a final order presented as a package proposal the Arbitrator feels constrained to reject the Employer's final proposal.

#### AWARD

1. The Union's proposal to increase base pay by \$0.85 per hour for each of the three years of the new CBA is accepted and adopted.
2. Pursuant to the parties' request all the tentative agreements of the parties are accepted.
3. All economic terms are made retroactive to December 1, 2018, for increases proposed for the first fiscal year of

the CBA, and to December 1, 2019, for increases proposed for the second fiscal year of the CBA.

Dated April 3, 2020



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Jerome A. Diekemper, Arbitrator