IN THE MATTER OF INTEREST ARBITRATION BETWEEN	)))	
COUNTY OF BOONE and THE BOONE COUNTY SHERIFF	)))	**S-MA-11-029 (2012) Corrections Unit Arbitration**
AND	)))	**Marvin Hill Arbitrator**
ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL, CORRECTIONS UNIY	)))	**Hearing Date: June 26, 2012 Boone County, Illinois**

Appearances:

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I. BACKGROUND, FACTS AND STATEMENT OF JURISDICTION

This case – an interest arbitration under authority of Section 14 of the Illinois Public Labor Relations Act (the "Act" or "statute") – arises pursuant to the collective bargaining relationship between the Illinois Fraternal Order of Police Labor Council (FOP, or the "Union") and Boone County and the Sheriff of Boone County (collectively "the Employer" or the "Administration").

The Boone County Sheriff's office is organized into three (3) bargaining units with two (2) units represented by the Illinois Fraternal Order of Police (FOP) Labor Council and the other represented by the United Auto Workers (UAW). Unit I consists of road deputies. Unit II represents all of the corrections officers and is the focus of this interest arbitration and the

bargaining unit represented by the UAW includes civilian employees in the Sheriff's office. Presently, there are approximately 28 corrections officers and six supervisors (UX 13). The bargaining-unit members have been represented by a union for decades.

The parties most recent collective bargaining agreement expired on November 30, 2012 (UX 19). The parties began bargaining for the successor contract in March of 2011. After several negotiating sessions (at least five) and a mediation session with an FMCS mediator, the parties reached agreement on most issues but were unable to reach agreement on two issues: wages and one aspect of health insurance, eye care coverage. The parties stipulated that both of these issues are economic in nature. Thus, under the Act I am constrained to select either the Employer's or the FOP's last offer for each issue in dispute in this case. I have no authority to impose an award different from the offers presented by either side.

The parties have had one prior interest arbitration, Case No. S-MA-08-025 (Benn, 2009)(UX 22). That arbitration was in 2008 with Arbitrator Ed Benn and involved the road deputy unit. *Id.* In that arbitration, Arbitrator Benn elected not to use the external comparables suggested by the parties. For this arbitration the parties have agreed on external comparables of the following counties: Lee, Ogle, Stephenson and Whiteside. The Employer has also suggested the use of DeKalb County (UX 8 and EX 3). Both parties have proposed a three-year contract.

STATUTORY CRITERIA

The statutory provisions, in pertinent part, governing the issues in this case are found in Section 14 of the IPLRA:

> (g) As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).
>
> (h) Where there is no agreement between the parties,...the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
> (2) Stipulations of the parties.
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

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

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

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

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

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

Furthermore, "It is well settled that where one or the other of the parties seeks to obtain a substantial departure from the party's *status quo*, an "extra burden" must be met before the arbitrator resorts to the criteria enumerated in Section 14(h)." Additionally, where one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations, the onus is on the party seeking the change." *Village of Maryville and Illinois Fraternal Order of Police,* S-MA-10-228 (Hill, 2011). Accord: *IL FOP & City of DeKalb*, Case S-MA-10-366 at 32 (Meyers, 2012)(holding, "Because it is seeking what amounts to a "breakthrough" on the issue of retiree health insurance, the City bears the significant burden of proving that there is a substantial and compelling justification for its proposal to gradually eliminate the currently existing retiree health insurance benefit.").

II. POSITION OF THE COUNTY

The position of the County, as outlined in its opening statement and post-hearing *Brief*, is summarized as follows:

A. WAGE PROPOSAL

By way of introduction, the parties have proposed the following wage adjustments to the contract (EX 1 and UX 16):

EMPLOYER		UNION	
12/01/10	0%	12/01/10	2%
12/01/11	1.5%	12/01/11	2%

12/01/12	1.5%	12/01/12	2%

Over the life of the Agreement, the Employer raises would total 3% and the Union raises would total 6%. Thus, 3.0% is all that separates the parties' wage offers.

Management points out that a consideration of its wage proposal in terms of the statutory factors found in Section 14(h) of the IPLRA finds that each applicable factor supports the award of the Employers' wage proposal. Specifically relevant are the following considerations:

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

As this Arbitrator has noted in 2011, government still must be cautious in this time of an "up and down, roller coaster economy." *Village of Schaumburg and Fire Command* (Hill, 2011). Employer Exhibit No. 8 contains several media reports which highlight the continuing turmoil in the American economy and job market. This turmoil is translated into economic uncertainty for units of government. The record in this case highlights the steps that Boone County has taken to prudently manage the enterprise in a manner that best provides the services to its citizens and is fiscally responsible.

Employer Exhibit No. 7 presents several summaries, both written and graphic, of the financial challenges that Boone County has faced since 2009. In response to these challenges (loss of revenue on almost every tax front and one of the worst unemployment rates in the State and nation), the County has found it necessary to cut staff (15 person head count reduction County-wide), voluntary furlough days, budget cuts in the 2009, 2010 and 2011 budgets and pay freezes for all administration and elected officials. (See EX 7). **Most importantly, all other unionized County employees have agreed to at least one year of a 0% increase in collective bargaining agreements covering the period of 2010 to 2014.**

The evidence record indicates that the County has suffered a minimum of $1.6 million in decreased revenue over this period of time (R. 34-35). The Union, in the presentation of its case, pointed to the fact that as of November 30, 2011, the County had a $4 million balance in its general fund. Management asserts that the $4 million dollar balance is a "snapshot" at that particular moment of the general fund, which is maintained on an accrual basis and contains monies that might not have actually reached the County treasury at that point, State of Illinois sales tax distributions, for instance. Additionally, the recommendation of the County's auditors is to maintain a general fund balance of 3 to 6 months of funds. A $4 million dollar balance on a general fund of $13 million dollars is at the low end of that recommendation (R. 38-39). The County has been forced to dip into other funds in order to prop up the General Fund during this time of financial uncertainty (R. 39-40). Finally, the County's current Aa2 bond rating will suffer if the County continues to deplete its General Fund balance. It is fiscally unsound for the County not to recognize that both the loss of revenue and the depletion of its general fund balance warrant continuing measures to control expenses, including the salaries of its correctional officers, management asserts.

While the Union argues that a 2.0% raise has minimal impact on even a depleted general fund balance, this proposed raise cannot be viewed in a vacuum. A 2.0% raise given effective December 1, 2010 is compounded by the additional 2% raises proposed by the Union for the second and third years of the contract. These raises are also applied to a step table which provides step movement every two (2) years for the correctional officers (See UX 19, pages 39 (a) and 39 (b)). The step movements average 3.64% over two years, or approximately 1.8% per year. A review of the seniority table of the employees of the bargaining unit shows that every employee will enjoy at least one step movement during the term of this contract. Two employees, Leider and Loofboro, will only receive a one-step movement, while all other employees will receive two (See EX 5). These costs must also be included in the dollar value of the proposed wage increases, whether County or Union. The tables shown below portray the actual dollar cost of each wage proposal and the step movement over the life of the contract.

Boone County
Corrections
Annual Raise
Breakdown
Employer Proposal

Fiscal Year	Annual Increase (%)	$ Allocated for Raises Per Year	Contract Years	Total $ Spent on Raises
FY 2011	0.00%	$23,456	3	$70,368
FY 2012	1.50%	$38,246	2	$76,492
FY 2013	1.50%	$41,460	1	$41,460
Total		$103,162		$188,320

Boone County
Corrections
Annual Raise
Breakdown
Union Proposal

Fiscal Year	Annual Increase (%)	$ Allocated for Raises Per Year	Contract Years	Total $ Spent on Raises
FY 2011	2.00%	$57,885	3	$173,655
FY 2012	2.00%	$47,944	2	$95,888
FY 2013	2.00%	$51,633	1	$51,633
Total		$157,462		$321,176

In the eyes of management, it is clear from these tables that the Union wage proposal has a significant cost to the County over the life of the Agreement. The Employer's proposal results in a cost about 1/2 as much as the Union proposal. Given the economic condition of the County and the fiscal uncertainty of the times, the amounts of raises proposed by the Union cannot be said to be "in the interests and welfare of the public and the financial ability" of Boone County.

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

The Employer believes that both internal and external comparisons in this case strongly favor its wage proposal.

External Comparables

The external comparables suggested in this case are not in dispute. While the Employer has suggested the addition of DeKalb County, it is appropriate to focus on the four (4) counties on which both parties agree, specifically Lee, Ogle, Stephenson and Whiteside (UX 8 and EX 3).

All of the counties considered as comparables are located in northwestern Illinois and are fairly similar in terms of the usual factors of comparison (See UX 7 and EX 3).

The Union, in its presentation during the arbitration hearing, conceded that Boone County Correctional Officers are paid at the middle of the range of the comparables. Two counties pay more and two counties pay less (R. 13). The Union argues that their intent is to prevent the Boone County officers from falling behind this middle ground (R. 13). If the County wage proposal and the Union wage proposal are applied to the table shown at UX 9, it is apparent that neither proposal will result in any appreciable change in the placement of Boone County Correctional Officers in terms of wage rates against the other counties. This Exhibit also points up the difficulty of using external comparables because of the differing terms of the individual collective bargaining agreements in each of the jurisdictions.

Management asserts that a better comparison of the external comparables can be made by reviewing the wage percentage increases received by each of the counties over the period of 12/01/10 through 12/01/12. The chart below, taken from the various labor contracts introduced as Union Exhibits, demonstrates that the Employer proposal is more reasonable when viewed in the setting of the comparable counties:

PERCENT INCREASES IN COMPARABLE COUNTIES

COUNTY	12/01/10	12/01/11	12/01/12
LEE	1.85-2.5%	1.8-2.4%	1.8-2.4%
OGLE	0%	2%	2%
STEPHENSON	3%	0%	0%
WHITESIDE	0%	3%	N/A
BOONE (EMPLOYER)	0%	1.5%	1.5%

Management submits that this chart shows that the Employer proposal is very much in line with the kinds of raises being given during the period of 2010 to 2012, the Administration submits. Three out of the four comparable counties also negotiated a "0%" increase in at least one year of their labor agreements. Stephenson County has negotiated two "0%" increases. Because of the pattern of wage increases in the comparable counties, Boone County Correctional Officers will not suffer a change from their current middle position in the wage rankings. The external comparables favor the award of the Employer proposal in this case.

Internal Comparables

From an internal perspective Boone County has been extremely consistent in the wage agreements negotiated with its unionized employees during this period of time, management submits. Specifically, Employer Exhibit 4 summarizes the wage terms of the collective bargaining agreements the County has negotiated with its other unions. All of these agreements contain a 0% wage increase in at least one year of the agreement and similar wage increases to

those offered to the Corrections Officers in the other years. The fact that an Employer is able to negotiate a zero percent increase with other bargaining units is not insignificant. See, *Village of Schaumburg and Fire Command* (Hill, 2011).

Many arbitrators have distinguished public safety employees from other unionized governmental employees when it comes to the comparison of internal contract procedures. See, for example, *Village of Lisle and MAP #187* (Kenis, 2011) at 27 and other cases cited therein. Two groups of employees in the Boone County Sheriff's Office are represented by the Illinois Fraternal Order of Police (FOP), Labor Council. The other unit besides the Corrections Officers is the road deputies. Employer Exhibit No. 5 shows the history of the wage rates paid to the Corrections Officers over the last two contracts. The Deputies unit has received wage rates in the following amounts over that same period of time:

12/01/04-11/30/07 5.25%, 5.0%, 5.0% (See UX 23).
12/01/07-11/30/10 3.5%, 3.0%, 3.0% (See UX 22).

With the exception of 2005 and 2006 when the Correction Officers received 2.5% and 3.0% plus an added amount to the wage table, both the Deputies and the Corrections Officers have received the same pay increases. As demonstrated in EX 4, the FOP unit of Road Deputies has previously agreed to the wage proposal made by the Employer in this arbitration. **The Employer has strived for internal parity between these two bargaining units and the wage proposal made in this instance continues that pattern.** The County has treated all other unionized employees, including its other public safety unit, in the same manner as it proposes to treat the Correctional Officers. Considerations of internal comparability clearly favor the award of the Employers' wage proposal.

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

Like the application of contract wage terms in external comparable comparisons, the application of the Consumer Price Index (CPI) is not an exact science. UX 14 contains the CPI chart for the period from 1982 to the present. The change in the CPI from December 1, 2007 to December 1, 2011 averaged 1.9%. Over that same period of time the average wage increase of the Corrections Officers, using the Employers' wage proposal, is 1.8%, or very nearly the cost of living. This Arbitrator has recognized that the use of a broad time perspective when viewing changes to the CPI makes more sense. See, *City of Park Ridge and Fraternal Order of Police, Labor Council* (Hill 2011) at 34. If the Union wage proposal is applied to this same scenario, the average wage over that time frame is 2.4%, or well above the CPI. The CPI information released by BLS as of August 1, 2012 shows a CPI-U for the 12 months ending June 30th to be at 1.7%, again within the range of the Employers' wage proposal.

An additional consideration when determining the impact of the CPI on wage increases is the addition of step movement to the employee's wages. As detailed above, the step plan provides an average of 1.8% per year in new money to those employees on the step table. Most of the employees in this bargaining unit are still receiving step movement and will do so for the

life of the contract. When looking at the effect of the CPI, or the cost of living, on the individual employee, some of that impact is offset by the "new money" received as a result of step movement. This is especially true in the 2010 year in which the County is proposing no annual increase. While the Union may argue that the step table is bargained for and is a wage reality that the County knew about and should have been prepared to fund, the fact is that movement into higher paying wage steps provides more money to the employee, thus off-setting the effect of the CPI. When the average 1.8% step move is added to the annual wage increase, even in the 2010 year where the County is seeking a 0% increase, the employees are all gaining against the cost of living. Arbitrator Benn engaged in a detailed analysis of the effect of step movement and the compounding effect of step movement and wage increases in his award in City of Chicago and FOP Lodge No. 7, Benn (2010). For these reasons, the consideration of the average consumer prices supports the award of the Employers' wage proposal.

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 reliability of employment and <u>all other benefits received</u>

This "catch-all" factor encompasses many of the points raised above. The collective bargaining agreement covering this bargaining unit is very similar to the other collective bargaining agreements covering Boone County employees. (See, UX 23). These Corrections Officers enjoy wages and benefits similar to other corrections officers in the area (UX 23). Employer Exhibit No. 2 demonstrates the relatively low turnover rate among the Corrections employees. This is further borne out by a review of the seniority dates of the employees in the bargaining unit (UX 13). Employees are not leaving the Sheriff's office to take employment elsewhere because of better wages and benefits.

While the County did have to lay off four (4) Correctional Officers in 2009 as a result of the economy and the County's efforts to reduce the budget, generally the employment as a Corrections Officer has been steady and reliable.

In the presentation its case the Union referenced the increase in out of pocket insurance costs that the employees have agreed to accept. This increase, $15.00 per month for the final 15 months of the contract, amounts to a total of $225.00 over the life of the contract. Importantly, the County has not sought this increase in the year in which the County offered the 0% increase. This change cannot be said to really impact the employees' wages.

B. HEALTH INSURANCE

The Employer has proposed changes to the health insurance plan. The proposed changes include a change in the amount of the employee monthly contribution to the health insurance premium cost. Currently, single employees pay $133 per month and those employees choosing family coverage pay $225 per month toward the cost of health insurance. Believing these

amounts too low, the County is proposing an increase in the employee premium contributions as follows:

> Single contribution from $133.00 per month to $148.00 per month (Effective 8/01/12)
> Family contribution from $225.00 per month to $240.00 per month (Effective 8/01/12)

It is also important to note that the Employer's proposal is to be effective on August 1, 2012, and will cover only the final fifteen (15) months of the three-year contract (EX 1).

According to the Employer, the Union has essentially agreed to this change as proposed by the Employer in its Final Offer (UX 16).

The Employer has also proposed a change in Article 11, Section 6 (Miscellaneous Provision) of the current contract relative to the eye-care plan furnished by the County. The Employer is proposing to replace the current $400.00 eye care stipend with enrollment in a Vision Plan (EX 1). The Union has proposed *status quo* with no change to the current contract language on the eye-care benefit.

The Employer has proposed that instead of the current contract language which provides for the payment of up to $400 in eye care reimbursement to the employee during the term of the contract, that the employees be enrolled in the VSP Choice Plan (EX 1). Specifically, the Administration proposes the following language:

> County employees shall be eligible for enrollment in a Vision Plan per the Plan Document parameters identified in the attachment to this contract (EX 1).

This plan provides no cost enrollment for the employee (County pays the $5.23 per month cost) and the option to enroll family members at an employee-paid cost of $6.01 per month. The plan proposed by the County provides most vision services and eyewear at no additional cost to the enrolled member with some co-pay amounts for various services.

The advantages of this change would be an actual insurance plan, instead of the current $400 reimbursement amount, and the opportunity to provide eye-care coverage for family members, which does not exist under the current contract language (R. 41-42). For the employee, this plan is far better in that there is not the life of the contract limit of $400 and the opportunity exists to obtain low cost eye care coverage for family members. If the employee chooses not to enroll his or her family, then that employee will receive better benefits than the current plan due to the removal of the $400 life of the contract limit. If the employee does enroll the family, an option that does not currently exist, then there will be some cost, but the family members will be afforded quality eye care coverage.

Significantly, the County's non-union employees and the unionized employees represented by the UAW and the Teamsters have also agreed to this plan (R. 42). Based on the fact that the plan as proposed by the Employer affords greater advantages to the employees than

the current *status quo* contract language, the Employer believes its language on eye care should be awarded.

C. CONCLUSION

While the award of the Employers' proposal including the 0% raise for December 1, 2010 may seem harsh, it is not without precedent in other interest arbitration awards. The following awards, argues management, include a 0% wage term: *City of Woodstock and Illinois Fraternal Order of Police* (McAlpin 2011); *Village of Schaumburg and Schaumburg Fire Command* (Hill 2011); *City of Park Ridge and Illinois Fraternal Order of Police, Labor Council* (Hill 2011); *City of Peru and Illinois Fraternal Order of Police, Labor Council* (Fletcher 2011) and *Village of Morton Grove and Firefighters Association of Morton Grove, Local 2178*, IAFF (Briggs 2012).

Nothing in the record of this proceeding justifies the award of the Union's wage proposal, particularly in light of the additional $132,856 over the life of the contract that their wage plan would cost the taxpayers of Boone County. No justification, whether comparability, CPI or increased workload has been presented which deems this wage award to be in the interests and welfare of the public. As arbitrators have consistently noted, their duty is to place the parties in the position they would have been in had bargaining continued. And as evidenced by the agreements reached with the other seven (7) organized employee groups, that position is the acceptance of the County's wage proposal of 0%, 1.5% and 1.5% and the award of the Employers' proposal on eye care. For these reasons, the Employer asks that its final proposals be awarded.

III. POSITION OF THE FOP

The position of the FOP, as outlined in its opening statement and post-hearing *Brief*, is summarized as follows:

A. WAGES

As discussed above, the Union's final offer is as follows: 12/01/10 -- 2.0%; 12/01/11 -- 2.0% and 12/01/12 -- 2.0%, or six percent (6.0%) over the three-year term of the collective bargaining agreement.

Cost of Living Increases

The FOP points out that the cost of living has increased steadily, and is greater than the Union's wage proposal (UX 19). That factor, which has reached particular importance in the last several years, mitigates in favor of the Union's proposal.

To this end, the Union submits that between December 1, 2010 and December 1, 2011 – the first year of the new contract – the cost of living increased 2.8%, which is almost a full percentage point more than the Union's final offer for the same period. Because the Administration has offered a 0% increase for that same period, effectively the members would start the contract by taking a pay cut. Even under the Union's proposal, the employees' wage increases will not keep pace with inflation (*Brief* at 6). Indeed, the cost of living from December 1, 2011 to May 1, 2012 – just half of the contract's second year – increased 1.8%, or essentially the same as the Union's proposal for the whole 12 month period (*Brief* at 6). Thus, the Union's proposal almost certainly will not keep pace with inflation for the second year either (*Brief* at 6). Anything less than what the Union has offered is simply insufficient (*Brief* at 7). The mere fact that the Union's wage increases may have outpaced inflation in the past years, and not in others, is not a valid reason to deny the bargaining unit a wage increase now (*Brief* at 7).

External Comparability

In the Union's view, the external comparability criterion supports its wage proposal. To this end, the following are the wage increases received by the communities proposed by the Union since 2010:

	Boone	**Lee**	**Ogle**	**Stephenson**	**Whiteside**
2013	n/a	n/a	2%	n/a	n/a
2012	*2%*	n/a	2%	n/a	n/a
2011	*2%*	$1000	0%	n/a	3%
2010	*2%*	$1000	3.0%	3.0%	0%

(UX 23, 24 & 25).

All four (4) of the counties proposed by the Union (Lee, Ogle, Stephenson and Whiteside) have reached contracts that cover 2010; Stephenson County employees received a 3% wage increase that year, as did Ogle County employees. The Union proposes only 2%, the Employer, 0%. Lee County employees received a $1,000 wage increase. (UX 23, 24 & 25). $1,000 equals a 2% wage increase for an employee who makes $50,000 annually, which is near the top of the pay scale for bargaining unit corrections officers. **Only Whiteside County employees received a 0% wage increase for 2010, and in exchange for that they received a 3% increase in 2009 and a 3% increase in 2011 -- 6% over three years, which is exactly what the Union proposes in this case.** Also for 2011, Lee County employees received another $1,000 increase, and the employees of the only other comparable proposed by the Union that has a contract for that period, Ogle County, received no increase. They did, however, receive 2% increases for years 2012 and 2013. At the time of the hearing, Ogle remained the only comparable proposed by the Union that had a contract extending past 2011. The wage increases for those years are the same as what the Union proposed.

The Union points out that for 2010, its proposal is greater than only what one other comparable received, less than at least two, and approximate with one (Lee County). The Employer's 0% proposal does not square with the weight of contract settlements for that year. For 2011, the Union's 2% proposal is again greater than just one, less than one, and approximate to a third (Lee County). The Employer's 1.5% offer for that year is less than probably two of the three comparables for that year, and is certainly less in 2012 for the only community that has reached an agreement for that period.

Overall, the external comparables support the Union's proposal more than the Employer's, as does an evaluation of the cost of living and the Employer's financial status. Indeed, the Union, citing numerous arbitration awards (*Brief* at 5), argues that the statutory factor of external comparability is the main factor for deciding the appropriateness and reasonableness of a final offer.

Internal Comparability

Acknowledging that the Act provides that "internal comparability" is a factor for consideration in making an award (but not the only factor), the FOP submits that the Employer's only argument for adoption of its proposal is that it more closely tracks the internal comparables. True, says the FOP, the deputies accepted a wage proposal that mirrors what the Employer proposes here, and some of the other units that the Employer negotiates with accepted some modified version of it. However, in addition to the arguments that on this point that the Union made at the arbitration, the deputies' top pay is some $4.01 per hour higher than what the corrections officers make – about 13% more (UX 23). Where, as here, all of the other most significant statutory factors mitigate in the Union's favor, the Arbitrator should adopt the Union's offer.

Absence of Wage Parody Between Corrections Officers and Deputies. There is no history of wage parody between the corrections officers and the deputies, notes the Union. Though the deputies and corrections units did receive the same wage increases on a percentage basis in their last contracts (2007-2009), the similarity ends there.

The FOP submits that the most recent deputies' contract shows that it was signed by the parties in June, 2011, more than one year ago. The parties then did not have the same information available to them that they have now, namely, actual knowledge of the increases in the cost of living and the results of external comparable contract negotiations. If the contract was signed in June, 2011, it was tentatively agreed to considerably earlier than that. The parties no longer have to speculate as to whether the cost of living will increase that year. It did. The parties no longer have to wonder whether that trend will continue through 2012. It has. It is doubtful that the parties would have agreed to the same figures had they available to them then what we know now, the Union asserts.

Arbitral Precedent Supports the Union's Proposal

The overwhelming weight of interest arbitration decisions in recent years supports the Union's proposal. Though arbitrators, in a few decisions, have ordered a 0% wage increase in one year of the contract, the crush of arbitration awards reject 0% as unsupported by the statutory factors. Those decisions in the past two years where arbitrators have rejected employer final offers that include 0% wage increases, in favor of higher union proposals include the following: Cook County/Sheriff of Cook County and Illinois FOP Labor Council, L-MA-11-003 (Clauss 2012); Village of Dolton and Dolton Professional Firefighters Association, Local 3766, IAFF, S-MA-11-154 (Meyers 2012); Henry County/Sheriff of Henry County and Illinois FOP Labor Council, S-MA-10-048, S-MA-10-049 (Meyers 2012); Iroquois County/Sheriff of Iroquois County and Illinois FOP Labor Council, S-MA-11-060, S-MA-11-061, S-MA-11-062 (Sigler 2012); Southern Illinois University at Carbondale and Illinois FOP Labor Council, S-MA-10-340 (Meyers 2012); City of Bloomington and IAFF Local 49, S-MA-08-242 (Goldberg 2011); Carroll County/Sheriff of Carroll County and Illinois FOP Labor Council, S-MA-10-041, S-MA-10-042 (Perkovich 2011); Kane County/Sheriff of Kane County and Policemen's Benevolent Labor Committee, (Clauss 2011); City of Marengo and Illinois FOP Labor Council, S-MA-10-227 (Feuille 2011); Village of Morton Grove and Illinois FOP Labor Council, S-MA-09-015 (McAllister 2011); Village of North Aurora and Metropolitan Alliance of Police Chapter 633, S-MA-11-389 (Feuille 2011); Palos Fire Protection District and Palos Professional Firefighters Association, IAFF Local 4480, S-MA-11-007 (Feuille 2011).

Clearly, the Union's position in this matter is supported by the overwhelming weight of arbitral precedent in recent years, argues the FOP. Internal comparability, on its own, is insufficient reason to adopt the Employer's wage proposal over the Union's final offer. The Employer has not claimed that it is financially unable to pay the wages increases by the Union in this interest arbitration (*Brief* at 9). Thus, concern over the Employer's finances has limited consideration (*Brief* at 9).

For the above reasons, the Union's proposal should be adopted.

B. Article 11, Section 6 – Eye Care

The Union's proposal is the keep the *status quo* for Article 11, Section 6. The Employer seeks to strike the entire provision and replace it with language providing for enrollment in a vision insurance plan.

The Employer's proposal seeks to move from a defined benefit plan to a defined contribution plan. Currently, the employees receive a flat $400. Under the Employer's proposal, they will have to contribute a premium in order to receive any benefits. The premium amount will change "based on plan (%) increase" (EX 1). While some employees may benefit from the change, it is likely that most will not, and so the loss of this benefit will, overall, result in a loss to the bargaining unit.

In the Union's view, the Administration has not shown any compelling need for this sweeping change. Sweeping alterations like this need to come as a result of bargaining, argues the Union. The Employer has not offered any *quid pro quo* for its proposal, and therefore, it should be denied.

IV. DISCUSSION

At this stage of interest arbitration in the State of Illinois there can be no serious dispute that arbitrators attempt to issue awards that reflect the position the parties would have reached if left to their own impasse devices. Recently, one Arbitrator reflected the genesis of this concept back to Arbitrator Whitley P. McCoy who, in the often-quoted *Twin City Rapid Transit Company* decision, 7 LA (BNA) 845, 848 (1947), stated:

> Arbitration of contract terms differs radically from arbitration of grievances. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of the contract rights ought to be. In submitting . . . to arbitration, the parties have merely extended their negotiations, having agreed upon . . . [T]he fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men, have voluntary agreed to? . . . [The] endeavor is to decide the issues as, upon the evidence, we reasonable negotiators, regardless of their social or economic theories, might have decided them in the give and take process of bargaining.

See, *City of Galena, IL*, S-MA-09-164 (Callaway, 2010).

Similarly, Chicago Arbitrator Harvey Nathan, in *Sheriff of Will County and AFSCME Council 31, Local 2961*, S-MA-88-9 (1988), Arbitrator Nathan declared that the award must be a natural extension where the parties were at impasse:

> [I]nterest 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 parties themselves would never agree to. Nor is his function to embark upon new ground and to create some innovative procedural or benefits scheme which is unrelated to the 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 Board and Sheriff of Will County* (Nathan, 1988), quoting *Arizona Public Service*, 63 LA 1189, 1196 (Platt, 1974); Accord, *City of Aurora*, S-MA-95-44 at p.18-19 (Kohn, 1995).
>
> . . . The well-accepted standard in interest arbitration when one party seeks to implement entirely new benefits or procedures (as opposed to merely increasing or decreasing existing benefits) or to markedly change the product of previous negotiations is to place

the onus on the party seeking the change....In each instance, the burden is on the party seeking the change to demonstrate, at a minimum:

> (1) that the old system or procedure has not worked as anticipated when originally agreed to or
>
> (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.

Without first examining these threshold questions, the Arbitrator should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.

Sheriff of Will County at 51-52 (emphasis mine), as cited in *City of Danville*, S-MA-09-238 (Hill, 2010); See also, *Sheriff of Cook County II,* at 17 n.16, and at 19.

Arbitrator Elliott Goldstein said it best: "Interest arbitrators are essentially obligated to replicate the results of arm's-length bargaining between the parties, and to do no more." *Metropolitan Alliance of Police, Chapter 471*, FMCS 091103-0042-A (2009). [1]

A. Wages

1. External Criteria

Side-by-side the external data submitted by the parties reads as follows:

	Boone	Lee	Ogle	Stephenson	Whiteside
2013	n/a	n/a	2%	n/a	n/a
2012	*2%*	n/a	2%	n/a	n/a

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[1] See also, *City of East St. Louis & East St. Louis Firefighters Local No. 23*, S-MA-87-25 (Traynor, 1987), where the Arbitrator, back in 1987, recognized the teak of determining where the parties would have landed had management been able to take a strike and the union able to withhold its services. In Arbitrator Traynor's words:

> Because of the Illinois law depriving the firefighters of the right to strike, the Union has been deprived of a most valuable economic weapon in negotiating a contract with the City. There seems to be little question that if the firefighters had been permitted to strike, and did so, insisting on increased wages, public pressure due to the lack of fire protection would have motivated the City Council to settle the strike by offering wage increases.

Id. at 11.

2011	*2%*	$1000	0%	n/a	3%
2010	*2%*	$1000	3.0%	3.0%	0%

(UX 23, 24 & 25).

The Employer's data is presented as follows:

COUNTY	**12/01/10**	**12/01/11**	**12/01/12**
LEE (45 inmates; 8 officers)	1.85-2.5%	1.8-2.4%	1.8-2.4%
OGLE (87 inmates; 12 officers)	0%	2%	2%
STEPHENSON (120 inmates; 18 officers, 3 corporals and 3 sergeants)	3.0%	0%	0%
WHITESIDE (115 inmates; 15 Officers)	0%	3%	N/A
BOONE (EMPLOYER)	0%	1.5%	1.5%

Significantly, the only external receiving over six percent over three years is Lee (perhaps). As noted, the Administration reports every comparable, except Lee, with receiving a zero from 12/10 through 12/12 (two of three).

A slight edge to the Administration when external data is considered, especially in view of "zeros" in Ogle (2010), Stephenson (2011 & 2012), and Whiteside (2010). Significantly, under either final offer the unit will maintain its relative position among the comparables. All told, the Administration's final offer is very much in line with the kinds of raises during the period of 2010 to 2012. Indeed, when step increases are considered (approximately 1.8%), the Administration's position is enhanced even further.

2. Internal Criteria

There is authority holding that a well-established internal pattern generally is given greater consideration by arbitrators than external patterns. See, e.g., Elkouri & Elkouri, *How Arbitration Works* 1422(6th Ed. 2003); *County of Cook and Cook County Sheriff,* L-MA-03-004. (Nathan, 2006)(finding a history of comparable agreements with other "sworn personnel" unions to be particularly convincing"); *City of St. Paul, Minn.*, 101 LA (BNA) 1205 (Jacobowski, 1993)(a "historical pattern of parity" is particularly persuasive); *City of W. Bend, Wis.*, 100 LA (BNA) 1118 (Vernon, 1993)("where there is a well-established internal pattern among the bargaining units in a city or county, the internal pattern shall prevail unless adherence to the internal pattern results in unacceptable wage level relationships between the unit at bar and its external comparables. The reasons for this are well known and relate primarily to the negative affect that breaking the pattern could have on the stability of bargaining and overall

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employee morale."); *City of Edmond, Okla.*, 112 LA (BNA) 1137 (Baroni, 1999)(arbitrator ought to find the areas of agreement which the parties have achieved in the past [and] build on those to form a new agreement. In this way the arbitrator stays closer to the intent and needs of the parties as they themselves have defined them.). See also, the 2012 award reported by Arbitrator Peter Meyers in *IL FOP & City of DeKalb*, Case S-MA-10-366 (finding that "the internal comparison absolutely supports the City's proposal [to phase out retiree health insurance] here.").

An examination of internal criteria clearly favors the Administration's position. To this end the data indicate the following:

Status of Collective Bargaining -- Internal Settlements
Boone County, Illinois
May 14, 2012

Unit/Union	**Contract Status**	**Duration**	**Wages**	**Health**	**Other**
Deputy (FOP)	Contract in place	December 10 – November 13	0%, 1.5%, 1. 5%	15.00 increase	Specialty Pay
Corrections (FOP)	Arbitration Hill	December 10 – November 13	6.0% (Union) 3.0% (Employer)	15.00 increase	(as per agreement of parties)
A. Control Teamster	Contract in place	December 11 – November 14	0%; 2.0%; 1.0% (no steps)	Frozen/Non Union	On-call pay
Building Teamster	Contract in place	December 11 – November 12	0%; 0%	Frozen	N/A
Highway Teamster	Contract in place	December 11 – November 12	0%	Frozen Non-Union	N/A
011-PSB (UAW)	Contract in place	December 11 – November 13	0% from rollover 2/1/10; 1.5%; 1.5%	15.00 increase	Higher pay grade Maintenance
Treasurer (UAW)	TA	December 11 -- November 13	0% from rollover 12/1/10 1.5%; 1.5%	15.00 increase	Chief Deputy 1.50 increase, also hours to Part time
Circuit Clerks (UAW)	Contract in place	December 11 -- November 13	0% from rollover 12/1/10 1.5%; 1.5%	15.00 increase	Three clerks additional .40 One-time
Non-Organized					
Management	N/A	N/A	Frozen 12/1/08	Same as Union	N/A
Three management positions: Administrative, Engineer, Assessor					
Employees	N/A	N/A	Last increase 12/1/09	Same as Union	N/A

SOURCE: Employer Exhibit 4

As correctly pointed out by the Administration, all of these internal agreements contain a 0% wage increase in at least one year of the agreement and similar wage increases to those offered to the Corrections Officers in the other years. The internal criterion clearly favors the Administration's final offer.

3. Financial Considerations

Although the Administration has not entered an inability-to-pay defense, there is no serious argument that ability-to-pay considerations in the public sector simply amount to governmental priorities. Is the employer funding a new roof in the park pavilion and planting trees or putting another half percent on the bargaining unit's base? Is management replacing office furniture and trees and shrubs, or funding pensions? Clearly, decision making with respect to priorities is the bread and butter of public management.

The evidence record indicates that since FY 2009, the Employer took a number of significant actions designed to navigate tough economic waters, including the following: FY 2009 -- departmental voluntary reductions on line items (estimated savings 526,147); FY 2009, voluntary unpaid days (approximately 35 employees for an estimated savings of 22,098); FY 2009, county board members voluntary took unpaid meetings (75,000/meeting); FY 2009-2010 – head count reductions (approximately 15 positions); layoffs, termination, attrition (estimated savings annually 602,884); FY 2010 – voluntary 2.0% reductions in line items (estimated savings 93,379); FY 2011 – adopted budget with total cuts of approximately 400,000 (line item reductions and possible 6 positions eliminated and 3 positions reduced to part time); negotiations with vendors to reduce costs (county lease on garage space for sheriff; RMT contract; county agreement with electronics software vendor; Illinois EPA groundwater testing); FY 2011 – pay freeze implemented; other positions frozen beginning 12/01/09: county administrator, Engineer, Supervisor of Assessments, Planning, GIS, City/County IT (EX 7).

Boone County has not been immune to the economic downturn. Management demonstrated that since FY 2008 Boone County experienced a total cumulative loss of approximately 1.65 million (EX 7). To this same end, Boone County's unemployment rate for 2011 averaged 13.5%, compared to 8.2% for the United States (EX 7; BLS Data). Nearby Rockford is at 10.7% (EX 7). Sales tax revenue and EAV are both down (EX 7).

Nationally, management submits data showing that, with lump sum payments factored in, the first-year median income increase for public sector contracts stands at 1.3% (EX 8; BNA data).

Arbitrator Peter Myers reflected on the weight that should be given to the current financial difficulties in the economy as follows:

> The economic situation that now faces all employers, public and private, is one factor that "normally or traditionally" should be taken into account when considering wages, hours and conditions of employment, pursuant to Section 14(h)(8) of the Act. The financial difficulties facing the Village as a result of the ongoing economic downturn therefore must be given appropriate weight and considered here. *Village of Western Springs and Metropolitan Alliance of Police, Western Springs Police Chapter #456*, S-MA-09-019 (Myers, 7/30/2010).

Arbitrator Benn devoted most of his opinion in *State of Illinois and International Brotherhood of Teamsters, Local 726*, S-MA-08-262 (1/27/2009, Benn) to an analysis of the "economic free-fall" which occurred in 2007, mentioning, in part, the sharp drop in the stock market, the freezing of credit markets and the worst unemployment rates in Illinois since June, 1993. In a case submitted by the Union by Arbitrator Benn, S-MS-08-010, *County of Boone and Boone County Sheriff & FOP* (2009), Arbitrator Benn had this to say regarding economic problems facing government:

> It should appear obvious that the interest arbitration provisions of the Act may not be that well-equipped to address establishment of economic provisions in collective bargaining agreements in these volatile, uncertain and unstable economic times.
>
> The problem stems from Section 14(g) which requires interest arbitrators to select one of the economic offers with no discretion for modification, as exists with non-economic offers. Again, Section 14 (g) provides that " . . . as to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." With an economy in free fall, unemployment marching steadily upward, credit markets frozen, business laying off or closing, revenue streams diminishing, government intervention programs of massive proportions seeking to prevent further harm and not knowing whether, when or what degree those programs will succeed in stopping the blood-letting, how am I as an interest arbitrator rationally supposed to set the economic terms of a multi-year collective bargaining agreement with the parties unsuccessfully attempted to reach before the economy crashed with the added requirement that my hands are tied by Section 14 (g) and I can only select one of the parties' economic offers? The task becomes particularly difficult for interest arbitrators when, in the past, heavy emphasis has been placed on economic settlements in comparable communities and in this transition period, comparisons end up being made to contracts which were negotiated before the economic crisis. (*Benn* at 13-14).

Arbitrator Benn went on to argue that an alternative approach to negotiations would be for the parties to negotiate re-openers on economic items or to tie re-openers to triggers in the out years of labor agreements (*Benn* at 14). In Benn's words: "For now, final offer interest arbitration does not serve the parties well when flexibility is not built into the parties' offers.

Until the economy settles, parties may also want to consider giving interest arbitrators the authority to impose reopeners along these lines or to not be bound by the final offer provisions of Section 14 (g). The parties did not do that in this case." (*Benn* at 14).

Where does this leave the parties?

In *City of DeKalb & IL FOP*, Case S-MA-10-366 (2012), Arbitrator Peter Meyers discussed the "interests and welfare of the public" criterion of Section 14 (h) of the Act and reasoned:

> The interests and welfare of the public, the first part of Section 14(h)(3) of the Act, always must be given considerable weight as an important consideration in an interest proceeding, but this particular factor must be viewed and applied in a very careful manner. DeKalb's citizens have an obvious interest in restraining the cost of their local government through such means as operational and administrative efficiencies, and this interest includes maintaining careful oversight and curbs on operational, administrative, and personnel costs. The public also has an obvious interest, however, in attracting and retaining skilled, experienced, and capable employees, particularly those who fill first-responder safety positions. Reaching this goal generally requires that an employer offer competitive, even attractive, salary and benefit packages. (*Meyers* at 11).

Significantly, Arbitrator Meyers recognized that "evidence relating to the current economic slowdown and its impact on the City's finances therefore must be given appropriate weight and consideration here." *Id.* at 12.

As noted, both parties have proposed three-year collective bargaining agreements. The Administration advances the better case regarding its financial situation, making significant efforts to place itself in a responsible position. Its actions are not *de minimis*. The overall economy, while perhaps no longer in free fall, is nevertheless still problematic, especially with evidence of high unemployment rates in Boone County. A close call but on balance the Administration's proposal more closely satisfies the statutory criteria than the FOP's final offer on wages.

B. Article 11, Section 6 Insurance – Eye Care Coverage

As noted, the Union's proposal is to retain the *status quo* for Article 11, Section 6. In contrast, the Administration seeks to strike the entire provision and replace it with language providing for enrollment in a vision insurance plan. In the Union's eyes, this is moving from a defined benefit plan to a defined contribution plan (*Brief* at 17-18).

In *City of Aurora & IAFF 99* (Kohn, 1995), S-MA-95-44, Arbitrator Lisa Salkovitz Kohn considered Aurora's proposal to increase the length of time in the first two steps of the salary structure for firefighters hired *after* the effective date of the contract. The record indicated that

the Aurora firefighters' maximum base salary was "approximately average for the comparison group, although they have the lowest starting rate." *Id.* at 18. In rejecting the City's final offer, Arbitrator Kohn had this to say regarding the City's burden when requesting a change in benefits:

> **When one party proposes to modify a benefit, that party bears the burden of demonstrating a need for a change.** *Village of Elk Grove & Elk Grove Firefighters Association, Local 2298, IAFF, supra* at 67. Here, the City offered no reason to lengthen the time period for Steps A and B from six months to 1 year, other than the fact that its police officers have accepted this change, albeit only for the duration of the current contract, and the City, having imposed it on their executive and exempt employees, now intends to seek this extension from all other bargaining units. **However, a "break-through" of this sort is best negotiated at the bargaining table, rather than being imposed by a third-party process.** *Kohn* at 19 (emphasis in bold mine).

The lesson here is this: Arbitrator Kohn rejected Aurora's offer, reasoning that "a breakthrough is best negotiated at the bargaining table," a position endorsed by the better weight of arbitral authority.

The Union has advanced the better case. While I do not believe that the Administration's proposal is "sweeping" in any sense of the term, still the Union views this change as the loss of a benefit. To be sure, the Administration has not shown any compelling need for this sweeping change, nor has it offered a quid-pro-quo. As such, the better and more conservative approach is to retain the status quo. Any change should come from bargaining, especially when there is no evidence that the Union has been recalcitrant and unwilling to bend to legitimate management concerns over the years. [2]

For the above reasons, the Union's final offer (*status quo*) is retained.

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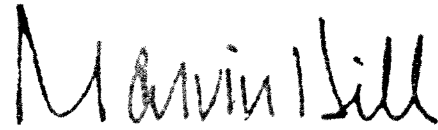
[2] See, e.g., the decision of Arbitrator Peter Meyers in *IL FOP & City of DeKalb*, Case S-MA-10-366 (2012) where Arbitrator Meyers awarded the City's final offer on phasing out the city's cost of retiree health insurance, reasoning that "the Union so far has been unwilling to accept any changes that would address the problem of the sky-rocketing cost of this coverage." The Arbitrator also found "there is little or no evidence that would suggest that the Union might be willing to change this stance in future negotiations." Noteworthy is his conclusion that "in such a situation, it is appropriate for an interest Arbitrator to consider the adoption of such sweeping, game-changing proposal." (*Meyers* at 33).

V. AWARD

A. WAGES – EMPLOYER'S FINAL OFFER AWARDED

B. INSURANCE – EYE-CARE PROVISION – UNION'S OFFER (STATUS QUO) AWARDED

Dated this 29th day of August, 2012,
at DeKalb, Illinois



Marvin Hill,
Arbitrator