

**ILLINOIS LABOR RELATIONS BOARD
INTEREST ARBITRATION BEFORE
ARBITRATOR BRIAN CLAUSS**

COUNTY OF MCLEAN, ILLINOIS and)	
THE MCLEAN COUNTY SHERIFF)	
Employer)	
)	
And)	FMCS Case # 16-00082-6
)	Case No. S-MA-15-081
ILLINOIS FRATERNAL ORDER OF,)	
POLICE LABOR COUNCIL)	
Union)	

INTEREST ARBITRATION AWARD

For the Union:

John Weathers
James Daniels
Fraternal Order of Police Labor Council
Western Springs, Illinois

For the Employer:

James Baird
Clark Baird Smith LLP
Rosemont, Illinois

Location of Hearing: McLean County Government Building
Bloomington, Illinois

Date of Hearing: May 24, 2016

INTRODUCTION

McClellan County and the McClellan County Sheriff's Department ("County" or "Department") are co-employers pursuant to the Illinois Public Labor Relations Act and are parties to a Collective Bargaining Agreement. ("CBA" or "Contract") with the Fraternal Order of Police Labor Council ("FOP" or "Union").

The parties reached impasse during negotiations for the CBA and the undersigned was selected to decide the interest arbitration pursuant to the procedure of the Illinois Labor Relations Board. The Arbitrator was selected and accepted this appointment pursuant to IPLRA Section 14 impasse procedures for protective service bargaining units.

Resolution Procedure

The interest arbitration session was held at the County Building and was attended by the Sheriff, members of the County Board, the County Manager, members of the bargaining team, the Union Business Representative, and counsel for the Union and the Employer. At the hearing, the parties presented evidence and exhibits. Following the hearing, the parties submitted briefs and support of their positions.

Term of Agreement

The CBA at issue in the instant Award shall be effective January 1, 2015, and shall continue in full force and effect until December 31, 2017. Wages will be paid retroactively on all hours worked or earned.

Jurisdiction

This interest arbitration comes before the Arbitrator pursuant to Section 14 of the Illinois Public Labor Relations Act. The subject collective bargaining agreement ("CBA") covers sworn Deputies, Sergeants, Investigators and Lead Process Servers.

The Arbitrator was selected and accepted this appointment pursuant to IPLRA Section 14 impasse procedures for protective service bargaining units.

McClellan County

McClellan County, Illinois is in central Illinois with the county seat in the City of Bloomington. McClellan County is 1,183 square miles and lies approximately halfway between Chicago and St. Louis with Interstate 55 running through the county.

According to US. Census data, the County had approximately 169,000 inhabitants in 2010. Population is estimated to be approximately 173,000 for 2015 reflecting an increase of slightly over 2%. Bloomington-Normal has a population of approximately 130,000 and is the largest metropolitan area within the county.

There are over 71,000 housing units in the county in 2015 with approximately 66% owner-occupied housing.¹ There are approximately 64,000 households with 2.55 average people per household. Over 94% of the population have high school degrees and over 43% of the population have bachelor degrees.

Household average value is \$158,000. The median household income average for 2010-2014 was \$61,955 and the per capita income in past 12 months for 2010-2014 was \$30,728.² Approximately 14% of the county lives in poverty.

McClellan County has an elected County Board. There are a number of county-wide elected positions mandated by Illinois law, including a County Sheriff. The McClellan County Sheriff is the elected official in charge of the McClellan County Sheriff's Department. The Sheriff's Department is responsible for law enforcement in the unincorporated communities and rural areas of McClellan County. The Sheriff's Department is also responsible for the administration of the McClellan County Jail and providing security and prisoner transportation for the Circuit Court of McClellan County. The Sheriff's Department is also responsible for civil process.

The County Auditor's letter accompanying the Comprehensive Annual Financial Report of McClellan County for fiscal year ending December 31, 2015 provides:

¹ Illinois State University has approximately 20,000 students attending.

² In 2014 dollars.

Economic Condition and Outlook. In 2015, McLean County's equalized assessed value increased from \$4.05 billion to \$4.12 billion. Three major Illinois interstate routes also intersect in McLean County bringing many business and tourist travelers through the area. McLean County is also home to two major universities and two community colleges. Graduates of these facilities often stay in the community due to the quality of life and the employment offered by key employers in the insurance, education, healthcare, and agriculture fields. McLean County is home to Twin Groves I & II; the 240 wind turbines have the capacity to generate nearly 400 megawatts of electricity, which makes it one of the largest facilities of its kind in the United States. The Economic Development Council continues to have a major impact in retaining and attracting new businesses through their network of services. Unemployment rates increased slightly from 5.5% in 2014 to 5.6% in 2015. The majority of the workforce is employed in the category of professional and business services through companies such as State Farm Insurance and Country Financial. There are also a number of community agencies to assist and supplement the lifestyles of those in need. The consensus is that the economy and quality of life in McLean County is vital and strong.³

The parties had been in negotiations regarding the terms of the collective bargaining agreements for the bargaining unit. Upon reaching impasse, the parties selected the undersigned under the process of the Illinois Labor Relations Board.

Prior to the hearing, the parties engaged in a discussion to refine the issues, offers, and seek possible resolution. The record was left open for the parties to submit written briefs after the hearing. The parties submitted written briefs. On August 31, 2016, the Union submitted a letter regarding retroactivity.

STATUTORY FACTORS

The statutory provisions in pertinent part governing this arbitration are found in Section 14. All the statutory factors were considered by the undersigned when analyzing the issues presented in this Interest Arbitration. The statute does not provide for a ranking of the statutory factors according to importance and it is therefore up to the arbitrator to determine the importance of the statutory factors. City of Decatur and IAFF Local (Eglit 1986). Nonetheless, all the statutory factors were considered in the instant matter.

(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

³ Letter from Michelle Anderson, County Auditor to McLean County Board dated June 20, 2016

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.

ECONOMIC IMPACT ISSUES

The parties agreed that the only disputed economic issues that were mandatory subjects of bargaining within the meaning of Section 14(g) of the IPLRA were the wages for the CBA period.

POSITIONS OF THE PARTIES

The Employers' Final Offer

The Employers propose:

- a 2.5% across-the-board increase effective January 1, 2015
- a 2.5% across-the-board increase effective January 1, 2016
- a 2.5% across-the-board increase effective January 1, 2017

The Joint Employers maintain that their final offer is more reasonable than the Union's final offer. In support they point to a number of factors that affirm the final offer. First, the Joint Employers cite the CPI as favoring their position. Second, the wages offered support the Joint Employers' position. Third, the internal comparables support the Joint Employers' position. Fourth, the external comparables support the Joint Employers' offer. Fifth, the application volume and turnover rate support the offer. Finally, the interest of the citizenry and the welfare of the community support the Joint Employers' offer.

The CPI is an important factor in determining the appropriate offer. The Employers argue that their offer is closer to the CPI. The Employers also contend that the Union is aware of the CPI because they did not include the CPI in their materials and admitted that it did not support the Union position.

The wage offer is also an important factor and supports the Employers' offer. All but four members of the bargaining unit will be getting step increases under the offer. When figured in the entirety, the real value of the Employers' wage increases ranged from 7.69% to 18.7% over three years. In the entirety, the Joint Employers' wage offer is the more reasonable. Under the Union's proposal, wage increases would range from 9.27% to 20.45%.

The internal comparables favor the Employers' offer. The Employers point to the lack of Union internal comparables as supporting the Employers' position. Further, if the Union argues that the Corrections unit got a larger raise in their last contract, the Employers counter that the Corrections unit got smaller raises in recent past contracts.

The Employers continue that the external comparable also favor their offer. Under the Employers' proposal, the Department retains its rank among the comparable communities. The Union's argument in favor of a "catch up" to other communities is inappropriate and there is no quid pro quo offered for such an increase. Further, Sangamon County should be excluded from the comparison because the Union did not cite it in 2013. Moreover, the Sangamon County contract created a two-tiered pay system based upon longevity. In addition, the Employers argue that

Macon County should also not be considered because it involved pay for insurance changes and sick leave buyback. Finally, the Employers argue that the Union's wage comparison table is misleading and should be discounted.

The Employers continue that the ease in attracting qualified candidates and the low turnover rate all suggest that the wages are appropriate. Many people apply for a position with the Employers and those who are hired tend to stay employed. In addition, comparing county sheriff deputies to municipal police has been cited by arbitrators as an inappropriate comparison because the departments are different in function and scope.

The Employers conclude with the position that the welfare and interests of the community strongly favor the Employers' offer. The Employers' wage offer will serve the needs of the community and maintain the County's position among the comparables. The Union's wage offer results in exorbitant wage increases that are far too excessive. The Employers' wage offer is the more reasonable.

The Union's Final Offer

The Union proposes:

- a 3.0% across-the-board increase effective January 1, 2015
- a 3.0% across-the-board increase effective January 1, 2016
- a 3.0% across-the-board increase effective January 1, 2017

The Union maintains that its wage offer is the more reasonable of the two offers. In support, the Union points to a number of factors to show the reasonableness of the Union's position. First, the average wage increases favor the Union offer in two of the three years.

Second, the deputies are paid below the average salary in the comparable communities. Over their career, they are 3 percent lower than the other communities. They are between fifth and sixth in comparables and the Employers' offer would result in getting further behind the other communities. The extra half point of the Union's offer would get the deputies closer to average in the steady, modest and incremental manner that is favored by arbitrators. The Union's increase would also benefit the sergeants whose salary increases are worse than the deputies'.

Third, the Employers have an excellent ability to pay. The General Fund has almost doubled since 2010 and had a 1.5 million surplus in 2015 – with a lower tax rate.

Fourth, the Department is losing deputies due to the low pay. The Union witness testified that he has discussed reasons for leaving with deputies. Pay is frequently cited as the reason for leaving the Department. The testing cycles have increased in order to have a candidate pool.

Fifth, the Employers have offered no operational reason why the Union's requested increase should not be granted. Further, there are also no financial considerations offered by the Employers for not granting the Union's offer. The Union repeatedly reminds that the Employers do not argue an inability to pay. Rather, the County is in solid financial shape with a solid bond rating and a diverse economy.

The Union distinguishes the Employers' arguments. First, the CPI will remain low and should not be determinative because both offers exceed the CPI. Second, the pay raises of non-represented employees are irrelevant because they do not have collective bargaining rights. Third, the pay raises of other represented employees are also irrelevant because they are non-public safety. Although fire fighters may be a consideration, there is no firefighting unit in the internal comparables. Fourth, lieutenants received an 18 percent pay increase over 18 months, the Sheriff recently received a 10 percent pay raise, and other senior members of county government got raises similar to the Sheriff. If there is money available for those raises, the Union's offer is not untenable. Fifth, the parties both discuss the impact of the Sangamon County two-tiered salary pay structure. The Union only cited the Tier 1 statistics because the vast majority of Sangamon County is Tier 1 because the two-tier system was implemented in 2014. Sixth, the Employers' concerns about the implications of the budget impasse is not persuasive because the County is in solid financial shape.

ANALYSIS

In interest arbitration, significant gains are meant to be the rarity. It is generally accepted that parties should not make gains at arbitration that they could not get at the bargaining table via face-to-face negotiations. As Arbitrator Bierig recently noted in 2013:

If an arbitrator awards either party a wage package which is significantly superior to anything it would likely have obtained through the collective bargaining process, that party is not likely to want to settle the terms of its next contract through good-faith collective bargaining. The temptation and political pressures will be very great to try one's luck again in arbitration in hopes of getting a better deal than is likely available at the bargaining table. City of Chicago & PBLC Unit 156, (Bierig, 2013) at 56.

The statutory factors that must be considered in Illinois public sector interest arbitration are:

(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.

While all the statutory factors must be considered, there are four key factors to the analysis:

- (i) the impact of inflation on the employees' purchasing power – generally measured by the

Consumer Price Index; (ii) the pay and benefits received by other similarly situated employees – the “comparables;” (iii) the effect of the final offers on the interests and welfare of the public, and the government’s ability to meet the costs after the final offers; and (iv) the effect on the overall compensation of the employees at issue.

The Consumer Price Index

Both the Union and the Employer cite the CPI in support of their position. The Union contends that CPI has little relevance because both offers exceed the CPI, and the Employers because their offer is closer to the CPI.

The CPI is an important factor to consider in Interest Arbitration awards. It has been very low and the leading economic forecasters predict that it will not significantly increase over the remaining life of the Agreement. Both offers exceed the CPI. The Employer’s offer is closer to the projected CPI than the Union’s offer. Therefore the CPI favors the Employers’ proposal.

The Internal Comparables

Both parties argue that the internal comparables favor their offer. The Employers cite the Correction Agreement and other bargaining units as supporting the Employers’ offer. The Employers explain the recent Corrections wages as part of a catch up to the deputies bargaining unit for lagging wages since 2009. The Employers also contend that the non-represented employees did not get wage increases like the Union now requests. The Union maintains that the only relevant unit is Corrections because they are a law enforcement unit.

The Union reminds that non-law enforcement units are not particularly relevant to deciding a public safety Agreement. Many arbitrators agree that a public safety bargaining unit is the appropriate comparison for a law enforcement interest arbitration analysis. See e.g., *City of Chester and Illinois Fraternal Order of Police*, SMA-10-206 (Feuille, 2011). Here, the only internal comparable law enforcement bargaining unit is the Corrections unit. There are no other protective service units. The parties differ on how Corrections should be viewed. The Employers urge a long view to show that recent increases were to catch up to Deputy wage increases. The Union argues for a shorter view.

The parties also disagree about the relevance of the wages for non-represented employees. The Employers see the non-represented employees as being relevant to the wage offer. The Union expands the inquiry to included high-level elected Department officials, like the Sheriff and members of the command staff. The Union also cites the increases given to other department heads and elected officials in the County, with some being increases of over 10% as instructive to the instant analysis.

Many arbitrators have found that non-protective service employees wage and benefit packages have little relevance to the analysis of protective service interest arbitrations. Further, most arbitrators agree that the wages of non-represented employees are largely irrelevant – for the obvious reason that those employees have no bargaining rights. See e.g., *City of Chester and Illinois Fraternal Order of Police*, SMA-10-206 (Feuille, 2011). In the instant matter, the lieutenants have received wage increases under a number of different names. According to the County, this has been done to alleviate wage stagnation for the lieutenants.

The Employers are not persuasive in their argument that the wages for non-represented employees should be considered and the salary increases for the Sheriff and other prominent County officials should be disregarded. Similarly, the Union is not persuasive when it cites the salary increases for the Sheriff, lieutenants and other County officials, but maintains that other non-bargaining employees should not be considered. The best internal comparisons in the instant matter are Corrections and the Lieutenants. In the instant matter, the Sheriff's salary increase is of little comparative value. He is the Sheriff and his duties and responsibilities are much different than those of the members of the bargaining unit.

A review of the internal comparables indicates that the Union offer is similar to the other protective service comparables given, in various forms, to the Lieutenants and under the Corrections CBA.

The External Comparables

The appropriate external comparables are another area of contention, with the Employers arguing for the exclusion of Macon and Sangamon counties. In support of their position, the Employers maintain that Sangamon was not used for comparison in the last Agreement. Further, even if it is used now, there is a two-tiered system for new hires and it should therefore be discounted. Moreover, Macon County's offer involved a quid pro quo in wages for sick day buyback and other concessions. The Union counters that comparables are comparables for a reason and that there is no compelling reason to exclude Sangamon and Macon counties.

Paragraph 6 of the Ground Rules states:

The parties agree that the following jurisdictions and none other shall be deemed the external comparable jurisdictions for purposes of this interest arbitration: Champaign County; Macon County; Peoria County, Rock Island County; Sangamon County; and Tazewell County.

The Employers' argument, that the situations in Macon and Sangamon negate consideration, is not persuasive. The parties have agreed that these are the comparable counties – as Arbitrator Feuille decided in 1993. However, that does not end the inquiry. Wages are part of the comparison. Benefits, buy backs, and other aspects of the total package should also be considered. Macon County has a wage scale that includes pay increases in exchange for certain benefit changes for buy back and medical costs. The total wage package must be considered.

Sangamon County negotiated a two-tiered system that pays new hires less. They are a comparable community and most be considered in the analysis. There are only a handful of Tier 2 employees because the two tiered approach began in 2014. If those Tier 2 employees were excluded from the average, then average salaries would be even higher and McLean County would be even further below the average among comparable communities.

When considering the effect of the two-tiered Sangamon County wage structure and the Macon County wage and benefit package, McLean County's deputy rank slips over the course of a career under the Employers' offer. The Union's offer allows McLean County to maintain its rank

among the comparable communities and not slip further below the average pay in comparable communities. The Union's offer is more favorable under the external comparables analysis.

The Effect on the Interests and Welfare of the Public and the Employer's Ability to Pay

The Employers do not argue an inability to pay. Indeed, the County is in a much better position today than it was during the Recession. McClean County appears to be on sound financial footing according to the Auditor's Report. However, simply being able to pay a wage increase does not mean that the County should pay a wage increase.

The Employers argue that the interest of the community require them to be good conservators of the taxpayers' money and that the County's approach is fiscally conservative. The County maintains that their offer does not remove money from infrastructure and other County-funded programs. The Union cites the testimony that the Department has had trouble keeping employees and recruiting new employees. The County points out that the witness had no authority in the hiring process and did not know whether the Sheriff had increased the hiring requirements or tempo. The County further argues that employees may leave for better pay. However, only one employee left for another law enforcement job. That job was with a municipal police department.

The evidence establishes that the Department has a solid number of applicants and that nearly all employees that have left have gone to higher paying civilian jobs. While this factor favors the Employers, the interests and welfare of the public must also be considered.

As stated above, the County has the ability to pay. There is no evidence that the Union's offer would lead to infrastructure projects left undone. Further, the citizens have an interest in ensuring that the County deputies maintain their position in regards to the comparable counties. Recruiting and retaining Department members benefits the citizens of McLean County. The Union's offer is the more reasonable and best achieves the interest arbitrator's obligation "to replicate the results of arm's length bargaining between the parties, and, to do no more." Illinois *Fraternal Order of Police and McLean County*, (Hill, 2013) citing, *Metropolitan Alliance of Police, Chapter 471* (Goldstein 2009)

The Remaining Statutory Factors

In addition to the above-cited statutory factors, the undersigned has considered all the remaining statutory factors. The remaining statutory factors favor the Union's Wage offer.

TENTATIVE AGREEMENTS

All prior tentative agreements are incorporated into this Award by reference.

RETROACTIVITY

Payments are retroactive and apply to all hours worked or paid.

JURISDICTION

Jurisdiction is retained for 90 days from issuance of this Award to resolve any issues that may arise regarding implementation.

AWARD

Having considered the evidence and arguments in accord with the all applicable statutory factors, the Union's wage offer of 3% is the more reasonable and is therefore granted. Payment to be retroactive for all hours worked or paid during the CBA period.

Date of Award: November 11, 2016

Brian Clauss

BRIAN CLAUSS, Arbitrator