Daniel Nielsen, Arbitrator

In the Matter of the Arbitration of an Interest Dispute Between

ST. CLAIR COUNTY (CORRECTIONS)

and

THE ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL

Case No. S-MA-12-080

Appearances:

The Illinois Fraternal Order of Police Labor Council, by **James Daniels**, Attorney, 974 Clock Tower Drive, Springfield, IL 62704-1304, appearing on behalf of the Union.

Weilmuenster Law Group, P.C. by **Brian Manion**, Attorney at Law, 3201 West Main Street, Belleville, IL 62226, appearing on behalf of the County.

ARBITRATION AWARD

St. Clair County (hereinafter referred to as the County or the Employer) and the Illinois Fraternal Order of Police Labor Council (hereinafter referred to as the FOP or the Union), selected the undersigned to serve as the arbitrator of a dispute over the terms of the collective bargaining agreement for corrections officers in the employ of the County. A hearing was held on April 17, 2013, at which time the parties presented such testimony, exhibits, other evidence and arguments as were relevant. Post-hearing briefs were submitted, which were exchanged through the undersigned on August 6, 2013. Additional evidence, in the form of the Arbitration Award in Madison County, was submitted on September 20. Arguments concerning the relevance and impact of the Madison County Award were received by September 26, 2013, whereupon the record was closed. The parties granted an extension of time for the issuance of the Award.

General

The Union represents Correctional Officers in the St. Clair County Jail, located in Belleville, Illinois. The County is located across the Mississippi River from St. Louis, Missouri. The Union and the County have been parties to a series of collective bargaining agreements over a span of approximately 25 years. Until 2002, the Correctional Officers were in the same bargaining unit as Deputy Sheriffs. Separate units were then established, each represented by the FOP. The 2003-2005 contract between the County and the Correctional Officers resulted from an interest arbitration proceeding before Arbitrator McAlpin.[1] The 2006-2008 agreement was settled voluntarily. The 2009-2011 contract resulted from an award by Arbitrator Wojcik. In that round of negotiations, the County, the Deputies and the Correctional Officers agreed to consolidate the arbitrations for the two units and have a single award for both cases. Both Unions submitted identical wage offers. On November 18, 2010, Arbitrator Wojcik issued his Award.[2] He accepted the Unions' position on wages.

Issues and Offers

The Union and the County have reached stipulations on all but four items, and they have requested that those stipulations be incorporated into this Award. The disputed items include (1) the general wage increase for fiscal years 2012, 2013 and 2014; (2) longevity; (3) training pay; and (4) discipline and discharge.

The final offers on wages are:

	Union	County
FY 2012:	2.00%	0.00%
FY 2013:	2.25%	1.25%
FY 2014:	2.50%	2.25%

On longevity, the County proposes to amend Section 12.01 of the contract to eliminate step increases for new hires at every step other than 1 year, 3 years, 5 years, 6

[1] St. Clair County (Sheriff), S-MA-03-067 (McAlpin, 2004)

[2] St. Clair County (Sheriff), S-MA-09-082 and S-MA-09-083 (Wojcik 2010)

years, 9 years, 12 years, 15 years and 18 years. This transforms the 23 step pay schedule into an eight step pay schedule. The Union proposes to retain the status quo ante on longevity steps.

On training pay, the Union proposes to introduce a training pay system, by increasing base wages in an amount equal to 40 hours of straight time pay to compensate for up 40 hours of training during the year on their off duty hours:

> *The base pay above shall be adjusted by adding forty (40) hours of pay at the straight time rate to compensate each employee for forty (40) hours of training time to be scheduled throughout the year during their off-duty time. Training sessions during off-duty hours can be scheduled Monday through Thursday in minimum blocks of four (4) hours. Any employee who fails to attend all the hours of training provided, through no fault of the Employer, shall forfeit an equal number of hours from their accrued benefit time.*

The County proposes the status quo ante on training.

Finally, the Union proposes to introduce a just cause standard for discipline, with an employee option to challenge discipline before either the Merit Commission or a third party arbitrator:

> *Post-probationary employees shall be disciplined and/or discharged only for just cause. The Sheriff shall comply with the provisions of the Illinois Uniform Peace Officers' Disciplinary Act in conducting any formal investigation as defined in the Act.*
>
> *The Sheriff agrees with the tenets of progressive and corrective discipline. Once the measure of discipline is determined and imposed, the Sheriff shall not increase it for the particular incident of misconduct unless new facts or circumstances become known.*
>
> *Disciplinary action shall be limited to the following:*
> *Oral warning or reprimand;*
> *Written reprimand;*
> *Suspensions;*
> *Discharge.*
>
> *Discipline shall be administered within a reasonable period of time after the completion of the investigation. Discipline shall not be imposed in such a manner as to embarrass the employee in front of his co-workers or the general public.*
>
> *All discipline except for reprimands may be grieved. Grievances*

involving discipline or discharge shall be initiated at Step 3 of the grievance procedure, within ten (10) business days of the employee's or Union's knowledge of the disciplinary action.

The employee shall make an election between continuing through with the grievance procedure or continuing under the Merit Commission rules and regulations. However, the employee may only avail themselves of a Merit Commission hearing under the circumstances set forth in the St. Clair County Merit Commission Rules, Regulations and Procedures.

The election of forum must be made in writing not later than the final date for referring any such grievance to binding arbitration under Section 5.03. Grieving a discipline shall be considered an election of the grievance forum.

Such election is irrevocable. The right to have a hearing before the Merit Commission and the right to pursue disputes regarding disciplinary actions under the grievance procedure are mutually exclusive, and under no circumstances shall an employee have the right to a hearing in both forums.

The County proposes to maintain the status quo ante on discipline.

As the first three disputed items concern economic issues, the arbitrator is confined to selecting one or the other of the final offers, without modification.

Stipulations

The parties made the following pre-hearing stipulations:

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1) The Arbitrator in this matter shall be Daniel Nielsen. 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 January 1, 2012. 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 April 17, 2013 at 10:00 a.m. The requirement set forth in Section 14(d) of the Illinois Public Labor Relations Act, requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment, has been waived by the

parties. The hearing will be held at the St. Clair County Courthouse in Belleville, Illinois.

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

4) The 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 issues, which are mandatory subjects of bargaining and over which the Arbitrator has authority and jurisdiction to rule, are in dispute:

a. General Wage Increases
b. Pay Plan
c. Discipline
d. Training

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

7) Final offers shall be 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 City. 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 alternate award consistent with Section 14 of the Public Labor Relations Act.

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

9) 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.

10) The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator shall retain the entire record in this matter for a period of six months or until sooner notified by both parties that retention is no longer required.

11) Nothing contained herein shall be construed to prevent negotiations and

settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.

12) The parties represent and warrant to each other that the undersigned representatives are authorized to execute on behalf of and bind the respective parties they represent.
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The parties subsequently made the following additional stipulations:

1. The parties have two additional tentative agreements involving §22.04 Impasse Resolution and the Drug Testing policy***.

2. During the past three years, no St. Clair County correctional officers have voluntarily resigned to work elsewhere.

3. Employer's Exhibit 5 contained two sheets in the group exhibit with wage data from the Missouri counties. The annual and hourly wages for St. Charles County, Missouri, were incorrect and were overstated. ***

4. Commissioners on the St. Clair County Merit Commission do not receive insurance through St. Clair County.

5. Madison County correctional officers receive a SLEP pension. Peoria County and Sangamon County correctional officers receive a regular IMRF pension. Champaign County correctional officers have a two tiered system whereby correctional officers hired prior to December 1, 2012, receive SLEP and correctional officers hired on or after December 1, 2012, receive a regular IMRF pension.

5. On February 21, 2013, Champaign County correctional officers unit entered into a Collective Bargaining Agreement with the employer which provided for a 1% wage increase on December 1, 2012, a 1% wage increase on December 1, 2013, and a wage re-opener for December 1, 2014. ***

Statutory Criteria

Section 14(h) of the Illinois Public Labor Relations Act, 5 ILCS 315 provides the specific factors for an arbitrator to use when analyzing the issues in an interest arbitration dispute:

> [T]he 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 following 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.

All of the criteria have been considered in arriving at this Award, although given the nature of the dispute, not every criterion is discussed.

Threshold Issue - External Comparables

The Arguments of the County – External Comparables

The set of external comparables for St. Clair County were established in prior interest arbitration proceedings, most recently a 2010 Award by Arbitrator Wojcik, as Champaign, Peoria, Madison and Sangamon Counties. The County proposes to

supplement these comparables with St. Louis County, St. Charles County, and the City of St. Louis, all of which are located across the Mississippi River from St. Clair County, in the state of Missouri.

The County argues that the time is ripe to broaden the scope of the comparisons, and recognize that the labor market does not stop at the Mississippi River. Missouri law enforcement employees enjoy a constitutional right to engage in collective bargaining. There are substantial correctional centers in St. Louis County, St. Charles County, and the City of St. Louis. All are much more relevant to St. Clair County than the supposed comparable counties of Champaign, Sangamon and Peoria, each of which is 90 or more miles away. The County notes that it has received job applications from employees of these Missouri institutions, and that 25% of the County's population works in Missouri. All of this points to a common labor market.

The County discounts the Union's concerns that the Missouri comparables are not represented, and are subject to different laws concerning collective bargaining. The Act dictates consideration of "comparable communities", and the arbitrator cannot amend that language to say "represented employees in comparable communities" or "comparable Illinois communities." The County notes that the City of Chicago has been compared to out of state communities, and argues that there is no principled distinction to be made between that and the use of Missouri communities in this case. Even if the arbitrator somehow concluded that these communities did not qualify for consideration as comparables under the Act, he should nonetheless consider their wage rates and working conditions under the catch-all provision of Section 8 – "Such other factors ... which are normally or traditionally taken into consideration..."

The Arguments of the FOP – External Comparables

The Union objects to the addition of these Missouri municipal employers, on the grounds that they are non-union, located in a different state, subject to different laws, and not statistically comparable in any meaningful sense. The Union observes that the comparable communities for St. Clair County are well established, and there is no reason to change the historical grouping.

Discussion – External Comparables

The external comparables of Champaign, Madison, Peoria and Sangamon Counties were established by Arbitrator Duane Traynor in 1992.[3] These four counties were agreed upon by the parties, and Arbitrator Traynor accepted them, while rejecting the use of two other, disputed counties. They have since been employed by Arbitrator Finkin for the 1999-2001 contract,[4] Arbitrator McAlpin for the 2003-2005 contract,[5] and most recently, Arbitrator Wojcik for the 2009-2011 contract. There does not appear to have been any serious argument about relying on these four counties in any of those prior negotiations.

The County urges the use of three correctional institutions in Missouri as external comparables. None of three – the City of St. Louis, St. Charles County or St. Louis County – has ever been considered a comparable in the past, and none of their employees are represented for purposes of bargaining.

Given the importance of external comparisons in the interest arbitration process, an arbitrator should tread cautiously in changing the comparable pool once it has been established. Parties rely upon comparable groupings for guidance is setting their bargaining goals, crafting proposals and evaluating settlement offers. The purpose of arbitration under the Act is to resolve bargaining disputes on the terms that would most closely approximate a contract settlement through voluntary collective bargaining, and altering the comparable pool can defeat this purpose and destabilize bargaining in the future.

The wage rates of unrepresented employees, in a state with a completely different statutory framework for public sector collective bargaining, would shed very little light on the subject of what a voluntary settlement negotiated pursuant to the Illinois Public Labor Relations Act would be.[6] I find the Missouri correctional centers to be irrelevant

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[3] St. Clair County (Sheriff), S-MA-91-047 (Traynor, 1992)

[4] St. Clair County (Sheriff), S-MA-99-60 (Finkin, 2000)

[5] St. Clair County (Sheriff), S-MA-99-60 (McAlpin)

[6] As for the point that the City of Chicago Police neogitations use other major metropolitan

under the external comparisons criterion. Moreover, I note that even where new comparable units of represented employees are proposed from jurisdictions within the state of Illinois, arbitrators are loath to disturb the comparable grouping that the parties have historically relied upon. In order to do so, the moving party would at a minimum be required to prove, not merely assert, that there is genuine comparability between the County and the jurisdiction proposed as a comparable. Beyond geographic proximity, there is nothing to suggest that St. Charles County and St. Louis County are comparable to St. Clair County in terms of funding sources, required services, or a myriad of other factors. The City of St. Louis shares these defects as a comparable, as well as being distinguished by virtue of being a city, and a major population center. The appropriate external comparables remain Sangamon, Madison, Champaign and Peoria Counties.[7]

Across the Board Wage Increase

The Arguments of the FOP – Across the Board Wage Increase

The FOP argues that its wage offer is clearly preferable under all of the relevant statutory criteria. The cost of living, as measured by the CPI-U, increased by 1.71% from December 2011 through December 2012. Thus, in order to maintain their current purchasing power in the first year of the agreement, employees must receive an increase of 1.71%. The Union proposes a modest 0.29% more than that, while the County proposes a wage freeze. The County's three year offer is a cumulative 3.5%, and half of that is lost to the inflation of the first year. It is reasonable to project that the County's offer, over the three year term, will result in a net loss of purchasing power for these employees.

Settlements in comparable and area counties also favor selection of the Union's wage offer. Among the four established comparable counties, the settlement pattern is

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departments as comparables, I would suggest that that reflects a practical recognition by the arbitrator and the parties that appropriate comparables within the State of Illinois are difficult to come by.

[7] The County argues that, even if these units are not directly comparable within the meaning of Subsection 4, they should nonetheless be given weight under the general "such other factors" provision of Subsection 8. This is true, as far as it goes – the wage data goes to employees in a similar industry in the same geographical area, and this information, while not directly relevant, is useful background, in the same sense that other general regional or national economic data is useful in understanding the context for negotiations.

reasonably clear and decisively favors the Union's position:

Comparable	**FY 2012 % Increase**	**FY 2013 % Increase**	**FY 2014 % Increase**	
Champaign	1.00%	1.00%	reopener	
Madison	2.50%	2.50%	2.50%	
Peoria	3.25%	3.25%	3.25%	
Sangamon	3.50%	ns	ns	
Average (compounded)	**2.58%**	**2.25%**	**2.87%**	(7.90%)
County Offer	**0.00%**	**1.25%**	**2.25%**	(3.53%)
	-2.58%	*-1.00%*	*-0.62%*	
Union Offer	**2.00%**	**2.25%**	**2.50%**	(6.90%)
	-0.58%	*-0.00%*	*-0.37%*	

The three year impact of the Union's offer is 1% less than the settlements in the comparable counties. The County's offer is 4.37% less. Even if the arbitrator looks to a wider selection of counties, the average of the 19 closest Illinois counties leads to the same conclusion:

	FY 2012 % Increase	**FY 2013 % Increase**	**FY 2014 % Increase**
19 County Average	**2.27%**	**2.51%**	**2.68%**
County Offer	**0.00%**	**1.25%**	**2.25%**
	-2.27%	*-1.26%*	*-0.43%*
Union Offer	**2.00%**	**2.25%**	**2.50%**
	-0.27%	*-0.26%*	*-0.18%*

Again, the Union's offer is below the average increases for correctional officers in the region, while the County's offer is far below the average. By the two most reliable indicators – CPI and comparable settlements – the Union's wage offer is manifestly more reasonable than the County's.

The arbitrator should note that correctional officers in the County actually lose ground in terms of career earnings relative to the comparable units under the Union's proposal. The County's much lower offer obviously accelerates this trend, and causes the officers to go from slightly above average at the end of their careers to below average.

There is no issue of ability to pay which might justify the County's wage position. The General Fund balance stands at $52 Million dollars, the highest in 5 years. County revenues are showing a steady increase. General government expenses are actually declining. Property values have increased by 101% in the past 12 years. The financial picture is rosy enough for the County to have budgeted for a general wage increase of 2.5% in 2013 for all of its workers.

The sole basis on which the County rests its hopes in this arbitration is an internal set of settlements with other bargaining units, including the Deputy Sheriffs. The County's highway and airport maintenance workers have agreed to the County's wage offer, and its non-represented employees have had it imposed. The 911 dispatchers have been at impasse for nearly 3 years over their refusal to accept the County's offer. Those groups are not sworn law enforcement personnel, and it is well-accepted that comparisons between law enforcement personnel and general employees are not persuasive evidence of what a voluntary settlement would be. The working conditions, training, skills and duties of law enforcement personnel are sharply different that those of general employees.

The Union acknowledges that the Deputy Sheriffs agreed to the County's wage proposal, but notes that there is no history of lockstep parity in the settlements between these two groups. Arbitrators have recognized that even strong internal comparisons do not control over external comparisons, since labor markets for different groups of employees may vary. Even if the internal comparisons were persuasive, the Union notes that any parity relationship is more apparent than real. The Deputies and the Correctional Officers were a single unit until the 2003 negotiations. There have only been three contracts since the split, which is hardly sufficient to establish any type of parity, particularly since the two bargaining units and the County made an agreement in the 2009-2011 contract to have a single arbitration proceeding with the outcome controlling both contracts. If a parity relationship exists, it is based on only two rounds of bargaining. In those two rounds, one contract – the 2008 Deputies agreement, granted different wage increases than were bargained for the Correctional Officers. Deputies received 1% more than Correctional Officers, and more senior employees in both units received 1% more than junior employees. The unrefuted evidence of Union Representative Dave Dixon was that these were market adjustments, based on *external*

comparables. Thus the County's parity argument comes down to a single collective bargaining agreement.

The arbitrator must also consider the unusual circumstances that led the Deputies to agree to the County wage proposal. The Sheriff laid off 13 Deputies after the Union's victory on wages in the last interest arbitration, and created a non-union security unit to patrol Metrolink stations. Litigation resulted in the recall of 4 Deputies to correctional officer and court officer jobs. The remaining jobs were restored, with a promise of no layoffs for the life of the contract, and enhanced education and holiday benefits, in return for the Deputies accepting the County's wage offer. This was a complex arrangement, in which the Union was under severe pressure to get its members back to work. In the Correctional Officers unit, by contrast, there is no credible threat of layoffs – the Jail is tremendously overcrowded and understaffed. Detainees are kept in the gymnasium. The Sheriff posted a large "No Vacancy" sign outside the Jail to dramatize the situation. The Illinois Department of Corrections has found that the Jail is roughly 25% over capacity. The leverage used to force this wage settlement from the Deputies is clearly absent in the Correctional Officers unit.

The arbitrator should remember that the Corrections Officers never asked for the Deputies' agreement. It was literally hours before the arbitration hearing that the County first offered the Correctional Officers the same no layoff guarantee and holiday and educational benefit improvements that had been in the Deputies settlement. At the time, neither party had proposals on education or holidays on the table. In that same vein, the no layoff guarantee is meaningless. As noted, there is no possibility of layoffs in this bargaining unit. Any attempt to fashion a comparison between the County's settlement with the Deputies and its offer to the Corrections Officers must founder on the simple fact that the dynamics of the two bargains are utterly different.

The Arguments of the County – Across the Board Wage Increase

The County argues that its wage proposal is supported by the majority of the statutory criteria, and by any realistic view of the economic conditions in and around the County. County revenues dropped substantially as a result of the recession, and are still below the pre-recession levels. Equalized Assessed Value is plummeting, and experienced its largest ever decrease of the recession in this past year. This situation is

exacerbated by the fiscal crisis of the State of Illinois which has, among other things, caused the State to slow its rebating of tax revenues owed to the County, and to fall dramatically behind in payments owed for probation reimbursements, Public Defender and State's Attorney reimbursements, and other County expenses which the State is liable for. Indeed the County's Highway bonds have been downgraded because of concerns about the State's possible reduction or delay in payments for Motor Fuel taxes. Over 45% of the County's annual general fund revenues come through the State.

The Sheriff's Department itself is beset by large increases in costs due to the underfunding of the Sheriff's Law Enforcement Personnel pension fund. In 2009, the plan took 17.68% of the Department's payroll. In 2014, that figure will be 22.89%. Health insurance costs are likewise rising substantially. These pressures on revenues and costs are the background for the County's wage proposal.

The County notes that it has sought throughout negotiations to maintain equity across its bargaining units and employee groups. The wage offer it extended to the Correctional Officers is identical to the voluntary settlements it reached with its other settled unions. The 911 dispatchers do not have a contract for the current term from 2011 to 2013, but they did voluntarily accept a wage freeze in 2010, something the Correctional Officers have not yet done. Most significantly, the Deputy Sheriffs, represented by this same Union, agreed to the County's across the board wage proposal. They did so when the reality of the prior arbitrator's award became clear to them. The County warned that there would be layoffs if the Union's offer was awarded. The Union did not believe it, and apparently the arbitrator did not. The raises, as predicted, were unaffordable and layoff plans were announced. The Deputies attended a meeting with the County – a meeting to which the Dispatchers were invited – to discuss how to ameliorate the layoffs. No agreement was reached to modify the arbitrator's award, and the layoffs were imposed. The parties continued to negotiate in good faith, and eventually the County and the Deputies reached a mutually acceptable agreement that included acceptance of the County's across the board wage increases and a call-back of the laid off personnel.

Realistically, given the no layoff guarantee for the Deputies, if the Correctional Officers are awarded the increases they seek, the Sheriff will have to respond with

layoffs in their bargaining unit. It is likely that they will then engage in bargaining, much the same as the Deputies, and arrive at a settlement along those same lines. Inasmuch as interest arbitration should mirror the likely outcome of collective bargaining, it stands to reason that the arbitrator should favor the offer of the County, an offer that reflects the outcome of voluntary collective bargaining. The evidence of other settlements shows that the only outcome that would never result from voluntary negotiations is that sought by the Union.

Even if the compelling budgetary situation did not mandate acceptance of the Deputies' contract as the template here, the normal principles of collective bargaining would. Parity is well recognized concept, and where a historical parity relationship exists, an arbitrator should not disturb it. To do so encourages parties to arbitrate rather than settle, and unions to whipsaw the employer in an effort to restore parity. The arbitrator himself had recognized this in the past in his Morton Grove Award.[8] Here the Deputies and the Correctional Officers have received the same wage increases for 25 years, with the single exception of a market adjustment in 2008. That market adjustment was made in joint negotiations, with the concurrence of both Unions and the County. It has no effect on the parity relationship.

Neither offer can be favored by the external settlements. In general terms, Madison County is the most comparable municipality to the County, and is nearly identical in the important indicators. It maintains a single unit containing deputies and correctional officers, which buttresses the County's position that parity should be maintained between those two groups of employees. In both 2010 and 2011, Madison County employees received 0.25% less than St. Clair County employees. Thus the resolution of the Madison County contract should be discounted to that extent. More to the point, while the Award in Madison County was issued during the pendency of this proceeding, the arbitrator must be mindful of the fact that the County has the option of challenging the Award in circuit court, and it cannot be treated as a comparable until it is a final contract. The Award is premised on a mistake of fact, which is that no external comparable experienced a wage freeze in 2011, 2012 or 2013. However, as the record here demonstrates, St. Clair County Deputies did agree to a wage freeze in 2012.

[8] Village of Morton Grove (Police), Case No. S-MA-11-031 (Nielsen, 2013)

Moreover, the arbitrator in Madison County found that internal comparables supported the union proposal. Exactly the opposite situation obtains in this case. Finally, the arbitrator in Madison County dismissed the Missouri comparables without much comment, leaving in question the basis for his award. For all of these reasons, the arbitrator here cannot give any weight to the Madison County Award.

Given the uncertainty of the outcome in Madison County, the Illinois external comparables are of little help. Sangamon, Peoria and Champaign Counties are not part of the St. Louis metropolitan area, and participate in the IMRF pension plan, rather than the SLEP pension system. The SLEP system is far more generous, and twice as expensive. It is a significant component of the compensation received by St. Clair County law enforcement employees, and must be held to distinguish St. Clair County from the other asserted comparables.

Turning to consideration of the cost of living, the County points out that bargaining unit employees have fared quite well relative to CPI over the past two contracts:

CPI-U – St. Louis

	2006	**2007**	**2008**	**2009**	**2010**	**2011**
CPI Annual	1.80%	2.00%	2.80%	-0.10%	2.40%	3.20%
CPI Cumulative	2006-2011 = 12.10%					
CO Wages	6.00%	5 / 6%	4 / 5%	3.00%	3.25%	3.25%
CO Cumulative for those with 10 or more years =				26.50%		
CO Cumulative for those with fewer than 10 =				24.50%		

Comparing the cost of living since the last freely bargained contract, with the wages available under the County's offer demonstrates that Correctional Officers' purchasing power would be unaffected. The CPI-U since 2009 has increased by 12.90%. The wages for that period, if the County's offer is accepted, would increase by 13.00%. Moreover, the increase in wages was heavily front-loaded, providing the Correctional Officers with a cushion against the cost of living. Viewed over the long term, the changes to the cost of living must be held to strongly favor the reasonableness of the County's position.

The County points out that the result of the last arbitration was layoffs in the Deputy ranks, to the detriment of the public interests and welfare. An adverse award

here will likely lead to further cuts in the Sheriff's Department, either reducing law enforcement on the streets or reducing security in a crowded jail, forcing the release of potentially dangerous prisoners. While the County has the technical ability to pay the increases demanded by the Union, the consequences of making those payments would be adverse to the public interest. The Union's wage proposal costs the County an extra $414,000, money which is needed for jail expansion and current debt service. An increase to this bargaining unit will inevitably lead to demands for catch-up increases by the other bargaining units, placing greater pressure on County finances. The arbitrator must consider that the Deputies directly suffered as a result of the ill-considered wage decision in the last round of bargaining, while the Correctional Officers merely received the money without consequence. The arbitrator must not compound this situation. For all of these reasons, the County's position on wages should be accepted.

Discussion – Across the Board Wage Increase

The parties take starkly different views of the dispute over across the board wage increases. The Union relies principally on external comparables and the cost of living over the contract term, while the County looks to internal settlements and general economic concerns. Their respective focuses are consistent with the evidence that favors each of their offers.

The Union's wage offer is approximately 1% below the settlement pattern for the external comparables over the three years of the contract term, while the County's is 4.2% below the average. The County argues in its brief that Madison County is the most relevant and persuasive of the comparable counties, because it is adjacent, shares the same labor market, and has great similarities in most of the relevant economic factors. However, the County seeks to distinguish the Madison County Award,[9] which provided 2.50% across the board increases in each year, because it believes that it was premised on the notion that no other unit of law enforcement officers accepted a wage freeze in 2012, while the St. Clair Deputies County did, in fact accept such a freeze. Arbitrator Reynolds' Award does state that there were no freezes in 2012. I note that his summation of the parties' arguments includes this assertion by the Union, and that the County's arguments do not seem to raise the wage freeze argument. Without knowing

[9] Madison County (Sheriff), S-MA-12-093 (Reynolds, 2013)

the record before the arbitrator in Madison County, I cannot say whether his statement about the lack of any wage freeze in 2012 was an error, or an accurate reflection of the record presented to him. The Award itself is an accomplished fact, and despite the County's misgivings I cannot find that it is irrelevant in this dispute.[10] It is a valid external comparable, and it decisively supports the Union's position. There is no support for the County's position in the external comparables as a group, although the Champaign County settlement for 2012 and 2013 is closer to the County's position than to the Union's. I find that comparisons with the wages of comparable employees, in comparable communities, provide strong support for the Union's offer.[11]

The cost of living in the St. Louis metropolitan area has increased by 2.6% between the commencement of the contract term and the middle of the contract. Certainly in the first year of the contract, the Union's proposal is more consistent with the known changes in the CPI than is the freeze proposed by the County. By the same token, the County is correct that real wages have increased over the past two contracts, building on some cushion for employees relative to CPI. Recent national inflation forecasts place the 2013 CPI at 1.2% and the 2014 CPI at 1.8%, but these projections must be approached with a considerable amount of caution, as they have shown considerable variation in the recent past.[12] It is reasonable to assume that the eventual cost of living figures will not decisively favor either party, as over the course of the contract, the County's offer will fall short of the cost of living increases and the Union's will exceed them, but the amount of the excess or shortfall cannot be stated with any confidence.

The County does not assert an inability to pay the requested increases, but points out that the effects of the recession continue to be felt, and have been exacerbated by the

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[10] I would note that in the second and third years of the contract, the offer of the employer in Madison County was within 0.25% of the Union's offer here. As to those two years, the Union's position would be favored, no matter which offer had been selected.

[11] The County has urged the arbitrator to discount Sangamon and Peoria Counties because they participate in a less expensive pension plan, and thus have lower overall compensation costs. That may be true, but it has been true for some time, just as it is true that Madison County, and the bulk of the employees in Champaign County, participate in the same plan as the St. Clair County Correctional Officers. Presumably those facts have been factored into the wage rates and wage increases in past years.

[12] Philadelphia Federal Reserve – Survey of Professional Forecasters, October 2013

unreliability of State funding and State reimbursements. It notes that money dedicated to this contract is money that is unavailable for other County obligations and other County employees. It also warns that layoffs in the Sheriff's Department resulting from a too-high wage increase could cause dangers to the community. Obviously, these are challenging times in the municipal sector, but the issues raised by the County are the issues faced in every municipality. The answer to them is that the interests of the public are best served by moderation in the wage increases sought by employees. Moderation does not mean that the lower offer, at all times, should be favored. The increases sought by the Union are lower than those in three of the four comparables, all of them other counties with the same concerns over the lingering effects of the recession and the fiscal woes of the State. They are lower than the average for the counties in this part of Illinois. I find that the interests of the public are served by both proposals, and that this criterion does not distinguish one from the other.

The crux of this dispute is the weight to be given to internal settlements vs. external settlements. I have previously addressed the value of internal settlement patterns in determining appropriate wage increases. As a general proposition, I have found that internal consistency is desirable, and that there is presumption of reasonableness attached to an offer that tracks the internal settlement pattern. I have also noted, however, that there are important caveats:

> "In general, there should be a presumption that an offer tracking another internal settlement is reasonable. That presumption is, of course, rebuttable. The party seeking to deviate from the settlement can present evidence that the settlement is an anomaly, or was secured for a concession not applicable to another unit, or that conditions have dramatically changed since the settlement was reached, or that the bargaining units involved are so different in terms of labor market or bargaining leverage that the settlement cannot be relied upon as an indicator of what a voluntary settlement would have been in the unit before the arbitrator. It may simply show that the parties themselves have not paid much heed to internal settlement patterns in the past..."[13]

Here the County argues that it has always maintained historical parity between the Deputies and the Correctional Officers. There is some truth to this, in the sense that their wage increases have generally matched one another, but to call it a conscious parity

[13] Village of Lombard (Police), S-MA-11-311 (Nielsen, 2012), at page 17.

arrangement is an overstatement. The Deputies and the Correctional Officers were part of a single bargaining unit, under a single contract, until the end of 2002. There is nothing remarkable about the fact that the employees under the same contract received the same general wage increase. I do note, however, that in the last arbitration involving that combined unit, for the 1999 to 2001 contract, the parties placed separate wage offers for the Deputies and the Correctional Officers before Arbitrator Finkin and asked that they be analyzed and decided separately.[14] The arbitrator selected the Union's offer for both groups, resulting in identical wage increases. In his Award, no reference was made to other internal settlements. More to the point, the manner in which the parties presented the case specifically invited a different outcome on the wage issue, which is inconsistent with an argument that parity is or has been a paramount consideration.

The units separated at the end of 2002, and the Correctional Officers have had three contracts since then. The first was arrived at through an interest arbitration award by Arbitrator McAlpin. The second was a voluntary settlement. The third was an interest arbitration before Arbitrator Wojcik.

In his Award for the 2003-2005 collective bargaining agreement, Arbitrator McAlpin's summary of the arguments never mentioned internal comparability or parity concepts, nor did his Award address them. In the voluntary agreement over the 2006-2008 collective bargaining agreement, the Deputies and the Correctional Officers engaged in coordinated bargaining with the County. The outcome of that agreement was a wage increase that awarded 1% more to the more senior Correctional Officers, and to the more senior Deputies, than was received by the more junior employees. Of greater significance, though, is the fact that the Correctional Officers increases were 1% less than the increases awarded to the Deputies. The County explains this as an agreed upon market adjustment, and doubtless that is true. Any disparity in wage increases can be, and generally should be, the result of a market adjustment, but the market in those cases is the external comparables. The difference in wage increases shows that, in the only round of bargaining to ever result in a voluntary settlement, the parties placed greater value on external comparisons than on notions of internal parity.

The last contract, for 2009-2011, was reached through an Award by Arbitrator

[14] St. Clair County (Sheriff), S-MA-99-60 (Finkin, 2000).

Wojcik. Although there were two separate filings for interest arbitration by the Deputies and the Correctional Officers, the two bargaining units and the County agreed to consolidate the proceedings as a single interest arbitration, and to receive a single outcome as to wages. Parity between the Deputies and Correctional Officers could not have been discussed by Arbitrator Wojcik, given that it was a consolidated proceeding, but as was the case with the 2003-2005 arbitration, Wojcik's Award makes no mention of internal comparability with the other bargaining units in the County ever having been argued as a relevant factor. The case turned on external comparisons, the cost of living, and economic conditions.

I find no evidence of any understanding between these parties that there would be a parity arrangement between the Correctional Officers and any other St. Clair County bargaining unit. It has not been argued in the past, it has not been mentioned in prior arbitrations, and in the only voluntary agreement between the County and the Correctional Officers, the Correctional Officers' wage settlement was consciously different than the settlement with the Deputies.

In addition to the lack of any historical support for the County's theory that the Deputies' settlement should be given controlling weight, there are important distinctions to be made between that settlement and the settlement proposed here. The Deputies' contract settlement was reached as part of an overall settlement of litigation arising from the layoffs in the Deputies unit and the assignment of security work at the rail stations to non-unit personnel. As part of the settlement, the layoffs were reversed, a no layoff guarantee was made, and certain other benefits were enhanced. As I noted in Village of Lombard, supra, the presumption in favor internal settlements can be rebutted by evidence that the settlement "...was secured for a concession not applicable to another unit..." The Correctional Officers have not experienced layoffs, and are of the view that layoffs are not a realistic possibility in their bargaining unit, because of the overcrowding in the Jail. Thus there are no layoffs to be reversed, and they consider a concession in the form of a no layoff guarantee to be of no practical value. The County disputes this view, cautioning that the Deputies and Arbitrator Wojcik did not believe their warnings of Deputy layoffs as a result of the last arbitration. It may well be that the County would respond to a loss here by laying off Correctional Officers. The mechanics of that would be difficult to see, unless some means of reducing Jail population was achieved, but that

is a judgment for the County to make. It is not for me to determine whether the Correctional Officers are wise or foolish to doubt the County's prediction of layoffs. They have a reasonable basis for believing that the County's offer to them has considerably less value than the County's offer to the Deputies.

External comparability favors the selection of the Union's wage offer. Internal comparability favors the selection of the County's wage offer. I am required to award one or the other in its entirety. The history of these parties, as shown in their arbitration cases and the last voluntary agreement, has been that they do not refer to internal settlements when setting wages, and have never established a parity relationship between the Deputies and the Correctional Officers. Moreover the settlement with the Deputies was induced by concessions that appear to have no current value to the Correctional Officers. I therefore conclude that consideration of the statutory criteria dictates selection of the Union's offer on wages.

Longevity Steps

The Arguments of the County – Longevity Steps

The County proposes to modify the salary schedule structure to bring it more in line with other bargaining units within the County and in comparable jurisdictions. The elimination of some longevity steps has no effect on the ultimate top step for Correctional Officers. New hires will arrive at the same wage as their colleagues, with only a slight delay in their longevity increases. The current system of annual longevity is unusual, expensive and in some ways counter-productive. There is no support for it among nearby comparable departments, with only Champaign and Sangamon Counties having something similar to the status quo. By contrast, Madison County has only four longevity steps, and Peoria County has a pay structure roughly the same as the County's offer. In comparison to the nearby Missouri correctional facilities, which utilize flexible pay bands, the County's pay scale results in wages for inexperienced Correctional Officers that are one-third above the labor market average for experienced officers. The proof of this market distortion lies in the fact that there been no turnover in this bargaining unit over the three years leading up to this proceeding. The longevity system is plainly broken by any reasonable market measure, and the County's balanced approach to reforming protects the interests of current employees, while gradually

bringing pay levels into line.

The Arguments of the Union – Longevity Steps

The County seeks to fundamentally alter the compensation system by eliminating two thirds of the steps in the current collective bargaining agreement. This sharply curtails the earnings of new employees, with no particular justification offered by the County. Fundamental changes in the status quo must be supported by evidence of need, proof that the proposed change will address an actual problem, and a showing that reasonable efforts have been made to secure the change short of arbitration. None of this has been shown.

Discussion – Longevity Steps

The County's proposal would create a two-tiered wage structure, based on the assertion that the present arrangement is broken. The evidence that the system is broken is that Correctional Officers in St. Clair County make appreciably more than correctional officers in Missouri, and that two of the four Illinois comparables have step systems that are more akin to the County's proposal than to the status quo. As Arbitrator Benn and many others have noted, simply putting forth a "good idea" is not a sufficient basis for changing the status quo,[15] particularly with something as fundamental as introducing a two-tiered compensation system. Arbitrator Nathan long ago articulated the formulation for the showing needed to support a major alteration of the status quo, in his Will County Sheriff's Award.[16] The proponent of the change must prove that:

> 1) The old system or procedure has not worked as anticipated when originally agreed to;
>
> 2) The existing system or procedure has created operational hardships for the employer or equitable or due process problems for the union; and
>
> 3) The party seeking to maintain the status quo has resisted attempts to bargain over the change (i.e., refused a quid pro quo).

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[15] "...it is not the function of an interest arbitrator to make changes to terms of existing collective bargaining agreements based only on good ideas. That is why the party seeking the change must show that the existing condition is broken and therefore in need of change..." City of Chicago and Fraternal Order of Police Chicago Lodge 7 (Benn, 2010)

[16] Will County Board and Sheriff of Will County, Case No. S-MA-88-09 (Nathan, 1988)

There is no evidence that the existing step system does not work in exactly the way it was intended to work, nor does the fact that half of the comparable counties have similar structures while half have schedules closer to the County's desired structure suggest that the current longevity step system is unusual, much less some sort of outlier.

The very most that can be said of the County's proposal is that they think it would be a good idea to eliminate some of the longevity steps of the wage schedule. It may be or it may not be, but the process of arbitration is conservative by nature. It seeks to determine what the parties might have agreed to on a voluntary basis, and does not invite innovation for innovation's sake. The County has not met any of the criteria for making a major change to the status quo on the structure of the wage schedule, and I conclude that its offer on Longevity cannot be adopted.

Educational Pay

The Arguments of the Union – Educational Pay

The Union proposes to build in 40 hours of pay per year, to compensate employees for off-duty time to be spent in training. This proposal responds to the Sheriff's decision to establish four mandatory training weeks annually, during which employee schedules are altered to change their days off and thereby avoid paying them overtime for the training. The Sheriff's decision was prompted by his loss in grievance arbitration over a prior effort to do the same thing, but without announcing the training days at the beginning of the year. Despite the Union's objections, the grievance arbitrator ruled that the new system did not violate the contract.

The collective bargaining agreement still provides that schedules shall not be altered to avoid the payment of overtime. These four training weeks are plainly an alteration of the normal schedule to avoid the payment of overtime. This creates instability in the employees' schedules, and degrades a valuable benefit. The change in off days creates dangerous understaffing in the jail. All of this seriously impacts the employees.

The Union is proactively seeking to address these problems, while relieving the

Sheriff of paying any overtime, by building in compensation for training at straight time rates on normal off days. This avoids the dangers of understaffing. It is also designed to avoid any type of windfall, in that an employee who does not take 40 hours of training has the difference deducted from accumulated leave time. This is a fair and measured response to a dramatic change in conditions. The Union argues that it does not have the customary burden to justify changes in the status quo, because the County itself has degraded an existing benefit, and thereby changed the status quo during the contract term. As the Union's proposal is fair on its face, and solves a problem that the County created with the existing contract language, it should be adopted.

The Arguments of the County – Educational Pay

The County points out that a novel change must be justified by strong evidence of reasonableness and fairness, and proof that the change sought is established within the industry. What the Union seeks, at base, is a 2% wage increase under the guise of training pay. This increase would ripple through overtime costs, pension costs and all paid leave. This is supposedly to address a concern about short staffing of the Jail during training sessions. There is no proof that this perceived problem needs to be addressed in this costly and unusual way, or that the Union's proposal actually improves safety. It might just as easily be argued that requiring Correctional Officers to devote their off days to training causes fatigue, thus increasing the risks in the jail.

Manning itself is a permissive topic of bargaining. The Sheriff has the inherent right to determine whether staffing levels are adequate, and the Union's proposal seeks to undermine that authority, albeit indirectly. Having said that, nothing would prevent the Union from asking that part-time personnel be used to cover the alleged short-staffing situations, or that some other less costly measure be tried. The Union's pay proposal is an effort to evade the 2012 grievance ruling that held the training weeks approach to be proper under the contract. It seeks to take away a right the Sheriff enjoys, without offering anything in the way of a quid pro quo. This falls into the category of something that may be a good idea, but which does not reasonably address a real problem.

Discussion – Educational Pay

The Union's proposal responds to a mix of decisions by a grievance arbitrator in a case involving the Sheriff's effort to change work schedules to allow for training on off days without paying overtime. Employees work a three month schedule rotation, which establishes their days off. The existing contract provides that "Any employee covered by this Agreement shall not be required to take compensatory time off or to have their shifts modified, unless by mutual agreement, for the sole purpose of preventing overtime payments pursuant to this Agreement." The Sheriff attempted to establish four annual training days, and had his supervisors change employee off days to avoid the payment of overtime on those days. The Union grieved, and prevailed before the arbitrator. In reaction to this, in December 2012, the Sheriff posted a schedule for 2013 that incorporated quarterly training weeks with different days off. The Union returned to the arbitrator, but she ruled that this was not a shift modification – it was the scheduled shift, and that the Sheriff had the right to schedule in this fashion, even if his underlying purpose was the avoidance of overtime.

The Union asserts that the Sheriff's changed approach to scheduling undermines a significant benefit, and warrants a change in how training is compensated. I cannot agree. The benefit being affected is the payment of overtime for training on normal off-days. The Sheriff's solution to this is to ensure that training days do not overlap scheduled off days, by building a variance into the schedules for the year. The Union may feel that this is inconsistent with the spirit and intent of the existing contract, but it has put that question to a grievance arbitrator, and the arbitrator has ruled. The Sheriff's action did not violate the labor contract, and it follows that the bargaining unit members have not lost overtime to which they were entitled. They may have expected the overtime, but the contract did not guarantee it.

That is not to say that the bargaining unit members were unaffected. The underlying issue of Jail staffing levels remains unresolved. The use of on-duty time for training places stress on Jail staffing levels, and to the extent that the Sheriff's training weeks approach avoids overtime, it necessarily increases the diversion of on duty personnel to training. It bears remembering, however, that staffing levels are not a mandatory topic for this bargaining unit.

The Union's proposed solution is a 2% increase in all wage and wage-driven costs, with the ability for the County to recover time, on an hour for hour basis from the leave accounts of any employee who doesn't take 40 hours of training. That very significantly under-repays the County. The proposal also, in practical terms, eliminates the Sheriff's ability to schedule on-duty training sessions, even if Jail occupancy or staffing levels should change in the future to relieve the understaffing problems. Once the cost of training is allocated to off-duty time, no sensible administrator would pay for it twice by doing on-duty training. The Union does not identify any other jurisdictions that have similar educational pay provisions, or effective limitations on conducting training on-duty.

The Union's proposal addresses a legitimate concern with understaffing, but it also works a very basic change to the Sheriff's ability to assign work – including training – during working hours, and it does so at a very substantial permanent monetary cost. It amounts to what may well be a good idea, but one that is novel enough and expensive enough to make interest arbitration an inappropriate venue for its adoption. If changes such as this are to be made, I conclude that they should be made voluntarily, by the parties, at the negotiating table. I find that the County's position of status quo is preferable.

Discipline

The Arguments of the Union – Discipline

The Union proposes to allow officers an irrevocable option of proceeding before the current Merit Commission or before a third party arbitrator for review of disciplinary actions. Even though the existing contract provides for a just cause standard, and contains a broadly written grievance procedure, the Sheriff takes the position that all discipline cases involving demotions, suspensions of 30 days or more, or discharges, are within the purview of the Merit Commission. Penalties of less than 30 days are not, in the Sheriff's view, reviewable by anyone. This is directly contrary to law, in that the Act requires collective bargaining agreements to include provisions for the binding arbitration of all disputes, unless the parties mutually agree otherwise. Here, there is no mutual agreement.

Prior to June 1, 2007, discipline in Sheriffs' Departments was not treated as a mandatory topic of bargaining, and the Union had no ability to bring it to interest arbitration. When the law changed, the Union brought forward a proposal to allow employees to elect between the Merit Commission and the grievance procedure, including arbitration. Arbitrator Wojcik concluded that the Union's proposal would require the Merit Commission to change its rules to review discipline of less than 30 days, and that he lacked authority to order the Merit Commission to revise its rules. The Union has revised its proposal to make it clear that employees may only opt to proceed before the Merit Commission if doing so would be in conformance with the Commission's rules. Moreover, while Arbitrator Wojcik expressed some reservations about only two of the four comparables having the option of grieving discipline, that has changed dramatically. At this point all four comparable departments have the ability to take discipline through the grievance procedure, and 18 of the 19 nearest counties in Illinois do the same. The 19th is in negotiations over the topic.

Not only is the ability to grieve discipline now an almost universal right for Sheriff's Department employees, it is a needed right. The average length of a suspension in St. Clair County is eleven 12 hour days. In the four comparable counties, the average length of a suspension is four days – 8 hour days in Peoria and Champaign Counties and 9 hour days in Sangamon County. Thus employees suspended in St. Clair County are penalized 122 hours on average, while the other counties average 33 hours. The obvious reason, the Union submits, is the inability to mount any meaningful challenge to discipline.

The Union also argues that the members of the bargaining unit have the right to be concerned about the impartiality of the Merit Commission. It consists of five members appointed by the Sheriff. They are subject to removal by the Sheriff during their first year of service. Only one of the five has any law enforcement experience. None has legal training. There is no right to a private hearing, no matter what the charges against an accused officer. The Commission rules based on the preponderance of the evidence, a standard that falls short of the normal clear and convincing evidence required in arbitration. Given all of this, the Union submits that the existing system creates due process concerns which warrant an alteration to the status quo ante. The Union also notes that its proposal in this round of bargaining offers a quid pro quo, in

that reprimands are not subject to review.

The Union points out that the trend in interest arbitration is overwhelmingly in favor of allowing accused officers a choice of venue. In fact, most leading arbitrators have concluded that grieving and arbitrating discipline is required by the Act, unless both parties agree otherwise. Thus it is not treated as an item on which the Union bears any particular burden. Instead, arbitrator after arbitrator has found that the public policy of the State is that discipline must be subject to the grievance and arbitration procedure of the contract.

The statutory and public policy arguments in favor of arbitration are buttressed by the practical benefits to the parties. Merit Commission decisions are subject to circuit court review, but that option is expensive and time consuming. In this case, it is also unavailable for suspensions of less than 30 days. The last court appeal of a discharge from the Merit Commission took three years and two trips to the Illinois Appellate Court. Arbitration is not cost free, but it relatively cheaper and faster, and it provides a degree of finality that preserves the parties' resources. For all of these reasons, the Union urges that its final offer be adopted.

The Arguments of the County – Discipline

The County argues that the issue of arbitrating discipline cases was settled between these parties in the last arbitration. The Union arbitrated the issue of discipline and lost. It now seeks a second bite of the apple. That is improper, as it undermines the stability of labor relations between the parties, in the same fashion as if the County was seeking to recoup the wage increases from the last round of bargaining. Arbitration awards must have finality, and if the Union wishes to overturn the Wojcik Award, it must do so at the bargaining table. It has not done so. The right to discipline up to thirty days is a very valuable condition of employment from the County's perspective, and it cannot be expected to simply give it away. The Union has offered nothing in the form of a quid pro quo. If the Union wishes to be rid of the Merit Commission, it can propose that, but it would then lose the benefits of the SLEP pension plan. Instead it seeks to sideline the Commission where it benefits the County, and retain it where it benefits the Union.

As previously noted, a party who seeks to change the status quo must prove that the current system is broken and in need of change, that the proposed change will fix the problem, and that it does not unduly burden the other party to the negotiations. None of this has been shown here. The Merit Commission provides extensive due process protections, as demonstrated by the discharge case cited by the Union. That employee had the opportunity to be heard before a citizen commission, and then to take her appeal all the way to the Supreme Court if she chose. Nor is there evidence that the Sheriff has in any way abused his latitude to impose discipline. Indeed, the Union's own evidence shows that the Sheriff has been sparing in his use of discipline as a management tool.

The arbitrator should reject the Union's suggestion that Arbitrator Wojcik's Award should be overturned because Section 8 of the Act provides for grievance arbitration. This contract has a grievance procedure which is applicable to the administration and application of the collective bargaining agreement. Section 8 of the Act does not specify that it extends to the imposition of discipline, which can be reasonably distinguished. In short, the Union's reading of the statute is incorrect.

Discussion – Discipline

The collective bargaining agreement provides that management has the right to impose discipline for just cause. The traditional venue for reviewing the propriety of discipline has been the Merit Commission, a five member citizen board appointed by the Sheriff, with the approval of the County Board. The Union seeks to offer employees an option of using the grievance and arbitration procedure to challenge discipline above the level of a reprimand.

Effective June 1, 2007, discipline in Sheriff's Departments was made a mandatory topic of bargaining. In the next round of negotiations, the Union put forth a proposal to create an election between the Merit Commission and the grievance procedure for discipline cases. Arbitrator Wojcik concluded that the comparables were divided. He rejected the Union's proposal because, as he read it, the proposal would allow employees to initiate hearings before the Merit Commission which would not be permitted by the existing Merit Commission's rules. As he felt he was not able to order a modification of those rules, he found the Union's proposal unworkable. In this round of

bargaining, the Union has modified its proposal to address this defect, allowing recourse to the Merit Commission only if it is consistent with the Commission's rules.

The two central arguments of the County in opposition to this change are that the Union should not be allowed to engage in serial litigation to obtain this change, and that the change is significant enough to demand evidence of compelling need and the provision of a quid pro quo. With respect to the first argument, Arbitrator Wojcik's rejection of the proposal was based on a highly nuanced and very specific concern about exceeding his authority by presuming to order the Merit Commission to amend its rules. That concern is no longer present. He did not make any clear statement as to merits, other than finding there was certainly merit to the Union's concerns about a complete lack of ability to challenge discipline of less than thirty days. He expressed the hope that the matter could be resolved through more meaningful discussion and negotiation. At this juncture, it appears those hopes have not been realized.

Turning to the second point, that this represents a dramatic change to the status quo ante, I agree that it does. It is, however, a status quo ante that resulted not from bargaining, but from an inability to bargain. This has practical implications. Deference to the status quo is rooted in part in a respect for the bargains and tradeoffs made by the parties across the table in the past. The party who complains about a system they helped to create should be held to justify the criticism. The inability to challenge discipline through the grievance procedure is not something that the Union had a role in creating. It was a unilateral creation of the County, at a time when the legislature gave the County the unilateral power to do so. That power has now been curtailed, and the legislature has seen fit to require bargaining over discipline and discipline-related matters. The Merit Commission system has the power of inertia – it is the existing state of affairs and the Union must explain its reasons for wanting a change. It does not, however, have the value of consent – the Union has no obligation to justify a change of heart, or to explain why it wishes to walk away from a deal it freely accepted in the past.

The other distinguishing feature of this issue is that there is a very persuasive argument to be made that, with the change in the permissive character of discipline as a bargaining topic, the legislature removed the barrier to the application of Section 8 of the IPLRA to Sheriff Department discipline cases:

> The collective bargaining agreement negotiated between the employer and the exclusive representative ***shall contain*** a grievance resolution procedure ***which shall apply*** to all employees in the bargaining unit ***and shall provide*** for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise. *[Emphasis added]*

The imposition of discipline on employees is part and parcel of the administration of a labor contract. The question of whether there was just cause for the discipline involves the interpretation of the contract. Contrary to the County's argument that Section 8 can be read as not extending to disputes over discipline, it is very difficult to find such a reading in the words of the statute. Indeed, it goes beyond difficulty. It is simply impossible to read Section 8 as exempting discipline.

I conclude that Section 8 of the Act requires that I adopt a proposal that allows for the arbitration of discipline.[17] Even if it did not, however, I would conclude that the application of the statutory criteria would mandate acceptance of the Union's proposal. The existing system provides no possibility of relief for persons experiencing discipline, even significant discipline, until a threshold of 30 days. Given a 12 hour shift, this theoretically allows for unreviewable penalties of up to 348 hours of pay, or roughly one-sixth of a normal work year, for a single infraction. This is, without going on at length, on its face unfair. At 30 days of discipline and up, the review is conducted by a panel of citizens chosen by the Sheriff himself. Without in any way questioning the good faith of those appointees, any reasonable person in the position of a disciplined employee would have strong misgivings about the adequacy of this procedure.

In sum, there are compelling reasons to change the existing system of discipline review in the County. The system proposed by the Union allows for the continued use of the Merit Commission, exempts discipline at the level of a reprimand, and brings the County's discipline review system into line with the uniform pattern of Counties in this area of Illinois. It reasonably balances the interests of the parties, and is overwhelmingly supported by the statutory criteria.

[17] The Union's proposal leaves in place the Merit Commission for those who wish to avail themselves of it, and there is nothing in Section 8 that forbids such an option.

AWARD

On consideration of all of the statutory criteria, and the record as a whole, the 2011-2013 collective bargaining agreement shall incorporate the provisions of the predecessor agreement, as modified by the tentative agreements and by the wage increase proposed by the Union, and the Discipline language proposed by the Union. All other items remain status quo.

The Arbitrator will retain the official record and jurisdiction over the dispute until the parties notify him that any issues related to the implementation of the interest arbitration award have been resolved.

Signed this 31st day of October, 2013.

_____

Daniel Nielsen, Arbitrator

AWARD

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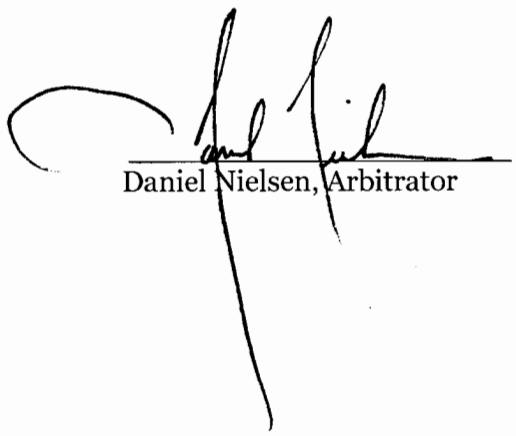

Daniel Nielsen, Arbitrator