INTEREST ARBITRATION REPORT

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SECTION OF LABOR AND EMPLOYMENT LAW

STATE AND LOCAL GOVERNMENT BARGAINING AND EMPLOYMENT LAW COMMITTEE

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INTEREST ARBITRATION REPORT

1. Impact of a Tentative Agreement

City of Alliance, Ohio v. FOP, Ohio Labor Council, 22-MED-09-0933 (Zeiser 2023)

The bargaining unit was comprised of 10 Police Command Officers (Sergeants, Lieutenants and Captains).

After a tentative agreement in just two meetings, the Union membership rejected the TA by a vote of 8-2, with only the union negotiators supporting ratification. The Fact-Finder's report, based largely on adopting the City's argument that a tentative agreement should not be disturbed, was also rejected by the union membership, with a vote of 7-0.

At Conciliation, the City argued that the tentative agreement and the Fact-Finding Report should be adopted. The Conciliator noted that deference is normally given to a TA.

The Conciliator, however, found that the case cited in the argument by the City was distinguishable. In the cited Ohio case (where a TA was upheld), the union rejection was a "razor-sharp" vote in a larger unit, where in this case the vote was unanimous, except for the negotiators who believed they were required by law to vote in favor of the TA. The Conciliator reasoned that a narrow vote likely means some members of the bargaining unit think a better deal can be reached whereas an overwhelming vote signals that the negotiating team misunderstood the needs and demands of the membership.

The Conciliator agreed with the City that rejecting a contract settlement proposal "simply to get another bite of the apple" goes against the statutory framework of fact-finding and conciliation proceedings. But the Conciliator saw this unit's rejection of the TA differently than did the City and the Fact Finder.

The Conciliator concluded that a tentative agreement reached only after perfunctory negotiation sessions is different than one reached after numerous meetings and the exchange of various offers. The Conciliator found that the Union made a compelling case as to why the Fact Finder's Report should not be given the usual deference.

Nevertheless, the Conciliator adopted the City's offer regarding rank differential, longevity and wages. The City's offer was simpler and addressed the Union's underlying issues. The ranks received wage increases of 9.1%, 8.7% and 8.6% in year one, with 3% increases in the following two years. These increases were more than 1/3 of that bargained by the Patrol Officers.

2. Pandemic Pay

State of New Jersey and N.J Investigators Association, FOP Lodge 174, IA-2023-021 (Burrell 2023).

The Union represented 90 State Correctional Facilities Investigators, who conduct investigations of alleged correctional employee misconduct, as well as alleged abuses by prisoners and visitors in the facilities. Six issues were submitted to the Arbitrator, including Wages and "pandemic pay".

The Employer proposed wage increases of 2.0% each year of the four-year agreement. The Union proposed a 2.0% increase the first year, a monthly 'Pandemic stipend" covering sixteen months (in recognition of the life-threatening hazards encountered during those months), a 2.0% increase in year two, followed by 3.0% increase in the last two years.

In two comparable State law enforcement units, interest arbitration awards were issued with increases of 2.0%, 2.0%, 3.0% and 3.0% in one case and 2.0%, 2.0%, 2.75% and 2.75% in the other. Both arbitrators cited concerns over the impact of inflation on the employees at issue.

The Arbitrator rejected both offers and awarded increases of 2.0%, 2.0%, 2.75% and 2.75%. While recognizing the toll of inflation on the employees, the Arbitrator did not believe that 3.0% increases in the final two years were warranted. The Arbitrator rejected the Union's proposed "Pandemic Pay" as no other law enforcement units received such payments.

3. Work Schedule

City of Bayonne, New Jersey v. Police Benevolent Association, Local 7, IA-2023-014 (Cure 2023).

The Union represented 136 Police Officers in the City Police Department, with an average length of service of six years. The parties submitted fourteen issues to the Arbitrator.

Police Officers assigned to Patrol are scheduled to work four consecutive 9.5-hour shifts (including a half-hour lunch), followed by four consecutive days off. The City proposed to change this schedule to have officers assigned to Patrol work four consecutive 12.0-hour shifts, followed by four consecutive days off (and four consecutive ten hour shifts, with four consecutive days off for officers not assigned to patrol). The Arbitrator described the work schedule dispute as the "dominant" issue between the parties.

The City argued that although the Union proposed higher wage increases, the officers would make higher salaries due to the increased regular hours under the City's work schedule proposal. The City noted that the Police Supervisors' Union adopted the disputed work schedule.

The Union produced expert testimony that working four consecutive 12-hour shifts would increase fatigue, create safety issues, decrease productivity, promote burnout and lead to emotional exhaustion. To this point, the Union provided testimony from officers that the 9.5-hour shifts was beneficial to their family life and a change to the City's proposed schedule would be "brutal" and ruin their well being.

The Union further argued that the 9.5-hour shift was the "main draw" of new employees to the Police Department, and changing it would lead to attrition in the police force. The Union argued that members of the Supervisors' Union were older and closer to retirement. The Union asserted they accepted the new schedule to enhance their soon-to-be collected pensions.

In contrast, the City emphasized the testimony of the Chief, who stated that it was imperative to have the police supervisors and police officers on the same work schedule. The Chief stated that given the lack of experience on the force, it was important to have continuity of supervision to ensure adequate police services and safety. The Union countered that the schedules were different at present time and provided the testimony of a Police Sergeant that the difference had caused no supervisory issues.

The City further asserted that while its final offer meant current officers would make higher salaries, it would be forced to hire more officers (perhaps 40 more) to meet manpower needs under the existing schedule. The Chief testified that he needed less officers under a 12-hour shift to fully-staff the Patrol Division, and added that since the pandemic, it was much harder to recruit and find space for officer to attend training academies (who had reduced the number of cadets they would allow in their classes).

The Arbitrator awarded the City's proposal, with modifications. The Arbitrator found it was in the public interest to run a police department efficiently and the loss of command unity (by having two different work schedules of supervisors and rank-and-file employees) would ensue. The Arbitrator found that clearer lines of supervisory authority and reduced chances of inconsistent commands were more important than officers having fatigue when encountering dangerous confrontations with the public. The Arbitrator further noted that he had no authority to order the City to hire more officers, which would be necessary under the Union's offer.

As to the Union's argument that the proposed schedule would disrupt their lives in a brutal fashion, the Arbitrator noted that each officer who testified had taken the Sergeant promotional exam and admitted that they knew they would have to work the 12-hour shift if promoted. As a result, the Arbitrator concluded the schedule change would not be as disruptive to the workforce as was described by the Union witnesses.

The Arbitrator ordered the City to increase the officers' salaries at the same percentage rates as it agreed to with the Supervisors' Union. The Arbitrator rejected six Union proposals on new economic issues because New Jersey law prohibits arbitrators to order such:

> **An award of an arbitrator shall not include base salary items and non-salary economic items which were not included in the prior collective bargaining agreement.**

One of these issues was adding Juneteenth as a holiday.

4. Ability to Pay

Town of Evans, New York and Town of Evans Police Benevolent Association, IA2021-008 (Lewandowski 2023).

The Union represented 18 Police Officers in the City Police Department. The issues of Wages and Health Insurance were prominently discussed in this award.

The Town had "an increasingly healthy financial position however that financial position follows a recent period wherein the Town's financial health was in serious danger."

The Union proposed a $9.000.00 per employee retroactive base wage increase, followed by 2.5% wage increases in each year of the two-year contract. When asked at the hearing how that figure was derived, the Union had no answer but responded it would put the officers' salaries in line with the salaries of officers working in comparable communities.

The Arbitrator found that the officers were next-to-last in salaries among the external comparables, which made it appropriate to award a higher increase than those obtained in those communities. The Arbitrator, noting the cost of living, internal and external comparables, awarded pay increases of 1.5% for six-month intervals over a two-year period. The Arbitrator found the Town could afford this increase without suffering any setback in its financial standing.

The Arbitrator rejected the Town's proposal to increase the employee share of health insurance premiums, noting the Town's offer would result in officers losing in excess of 1.0% of the salaries just awarded.

5. Internal Comparability and Similar Work

Lorain County, Ohio and FOP, Ohio Labor Council, 2023-MED-01-0011 (Nowel 2023).

The Union represented a unit of 10 County Road Sergeants and Lieutenants. The sole issue submitted to Conciliation was rank differential.

The Union proposed to increase the rank differential for its Road Supervisors. The Corrections Sergeants' rank differential was the same as the Road Sergeants' rank differential. The differential was based off the highest rate of pay in the Road Deputy pay schedule. So, Corrections Sergeants and Road Sergeants made the same salaries.

Because the Corrections pay schedule was less lucrative than the Road pay schedule, Corrections Sergeants always received a higher pay increase when promoted than the Road Deputies promoted to Road Sergeants. The Union wanted its members to receive a comparable increase upon promotion so that Road Supervisors would be paid more than Corrections Supervisors. The Union argued that Road Supervisors and Corrections Supervisors did not perform comparable work, so they should not be paid the same.

The County rejected the Union's argument that the Road Supervisors and Corrections Supervisors did not perform comparable work, noting a nearby county had a similar pay schedule. The County noted that while its Corrections Sergeants and Lieutenants might be too highly paid, the Road Sergeants and Lieutenants were not underpaid. The County emphasized that the Fact Finder rejected the Union's offer and found in favor of the County's offer, which was part of a "pattern" with other units.

The Conciliator reviewed the arguments regarding internal comparability, citing to other conciliation awards and professional conferences where the topic of internal comparability had been discussed and dissected. The Conciliator found the Union had the burden to overcome the Fact Finders' Report and had in fact done so. The Conciliator emphasized that the Union was currently proposing a reduced increase than it did during the fact-finding process.

The Conciliator relied heavily upon the difference between the training and experience required for Road Supervisors and Corrections Supervisors. In Ohio, a law enforcement officer must have three years of experience to be eligible for promotion whereas a corrections officer needs only have six months of experience. Under Ohio law, prior to employment as a law enforcement officer, a person must complete basic training of 737 hours. In comparison, corrections officers must have training of 148 hours in the first year of employment.

Based on the evidence, the Conciliator adopted the Union's final offer.

6. External Comparability

City of Huber Heights, OH and FOP, Ohio Labor Council, 2022-MED-09-0859-004 (Buettner 2023).

The Union represents a unit of 41 Police Officers. The sole issue submitted to Conciliation was Wages.

The City proposed 2.75% in each year of the three-year agreement. The Union proposed the same, but with a $1.00 market adjustment in the middle of the first year of the contract. The City argued that its wage proposal was fair and that union members (who were not required to pay any share of the health insurance premiums) received other economic benefits in negotiations.

The Fact Finder recommended the market adjustment. The Union argued the market adjustment would incentivize new recruits and bring City police officer salaries more in line with those in the external comparable communities. Two other bargaining units also negotiated market adjustments.

The Conciliator awarded the Union's proposed wage increases.

7. Zero?

County of Steuben and Steuben County Sheriff and Deputy Association of the County of Steuben, and FOP, Ohio Labor Council, IA2022-005 (Taylor 2023).

The Union represented a unit of 34 County Deputies, Corporals, Sergeants and Lieutenants. The parties reached an impasse on the issue of Wages.

The County and the Union had agreed to add a $1,500 stipend to officers who maintain an EMT certification during negotiations. Evidence presented showed that 18 of the 34 members were EMT certified when the arbitration occurred.

The County's wage proposal included a new salary grid, which reflected increases of 9.2% in the second year of the two-year contract, not including the stipend which the County calculated just over 2.0%. The County's offer, however, included a 0.0% increase in the first year of the agreement, which was based upon a decline in revenues during the pandemic.

The Union argued that it was losing officers to retirements and to higher-paying law

enforcement agencies at a time when the qualified pool of candidates was shrinking. The Union argued that a competitive salary was needed for recruitment and retention of officers, as well as for public safety reasons. Consequently, the County's offer of "no retroactive pay increase" in the first year of the contract would be a noticeable disincentive for attracting officers to the agency. Moreover, because of an influx of federal and state COVID relief funds, the retroactive pay increase would cause no stress to county finances.

The Arbitrator awarded a 3.0% retroactive wage increase for the first year of the contract. The Arbitrator then, based upon external comparisons, adjusted the wages of each rank of the department. The Arbitrator found that although the County genuinely addressed issues with Deputy salaries, it did not address market rate adjustments for Corporals, Sergeants and Lieutenants. The Arbitrator also rejected the County's wish to get "credit" for the stipend when only 18 employees would be receiving it.

The Management Delegate wrote a lengthy dissent. The Management Delegate claimed that the Arbitrator awarded more money than the Union requested, and that the Arbitrator had previously stated (and as the hearing transcript revealed) that the arbitration panel would not award both the Union's proposed wages and the stipend.

A REVIEW OF SELECTED 2023 PUBLIC SECTOR INTEREST ARBITRATION AWARDS FROM MIDWESTERN STATES

Minnesota

City of Saint Paul, Minnesota and International Association of Fire Fighters Local 21, BMS Case. No. 23-PN-1811 (November 5, 2023), Arbitrator Frank J. Kundrat.

The bargaining unit represents 467 employees in the Fire Department within the second largest municipality in the State. The arbitration award mostly focused on the parties' disputes related to the payment of wages, with (or without) market adjustments.

Without offering market adjustments, the City proposed a series of "lump sum" increases of 3.5% (7/1/23), 3.5% (4/1/24), and 2.5% (1/1/25). In contrast to the City's offer of a 9.5% cumulative increase through the term of the CBA, the Union proposed a series of more staggered base wage increases and other market adjustment increases totaling 15% throughout the contract period.

Initially, Arbitrator Kundrat recognized that the parties' historical wage settlement pattern showed more gradual smaller percentage increases in base wages instead of larger lump sum settlements through the terms of the various CBAs from 2013 to 2022. Moreover, the Arbitrator called the Union's proposed increases "quite dramatic" in that no prior CBA raised firefighter base wages at a 15.0% level. Additionally, Arbitrator Kundrat determined that "market adjustment" concept was "a new wrinkle" that the Union really was nothing more than an increase in wages.

Notwithstanding, Arbitrator Kundrat opined that "the demands of increasing calls and difficult urban conditions justify an appropriate wage increase for the firefighters. There appears to be room for an increase in the wages proposed by the City, although not to the level proposed by Local 21." As a result, the Arbitrator awarded staggered wage increases that totaled 11% over the course of the 3-year contract term.

Itasca County, Grand Rapids, MN and Law Enforcement Labor Services, Inc., Brooklyn Center, MN, BMS Case No. 23-PN-0934 (October 9, 2023), Arbitrator James A. Lundberg.

This interest arbitration had nine issues before the Arbitrator, most notably, individual rights and wage increases.

First, the County tried to maintain the *status quo* related to contract language that required the Union, upon request of the Employer, to give evidence to the Employer that the Union still represents a majority of employees. Even though Arbitrator Lundberg recognized that the parties normally change the contract through the negotiation process and that this provision did not cause any disputes over the past decade, the Arbitrator ultimately determined that "the plain language of existing contract extends the rights of the Employer into the exclusive territory of employees and the Union." As such, Arbitrator Lundberg adopted the Union's proposal to

change the language in that "[t]he Union shall, in the responsibility of exclusive representation of employees, represent all employees without discrimination, interference, restraint, or coercion."

With respect to wages, the Union proposed annual increases of 3% with a 3% market adjustment in 2022, 3% and a 3% market adjustment in 2023, and 3% and a 3% market adjustment in 2024. In contrast, the employer proposed no market adjustments, with increases of 2% (2022), 2% (2023), and 2.65% (2024). Both parties made compelling arguments related to ability to pay, internal comparability, external comparability, recruitment and retention issues, and high inflation. Ultimately, the Arbitrator's award was split on wages in accepting the County's lower offer on annual adjustments (2%, 2%, 2.65%) while also adopting slight market adjustments (1%, 1%, 1%) each year.

Illinois

City of Chicago and FOP, Chicago Lodge No. 7, AAA Case. No. 01-22-0003-6534 (June 26, 2023), Arbitrator Edwin H. Benn.

The bargaining unit represents City of Chicago patrol officers. In this interim award, the parties arbitrated issues related to a retention bonus, as well as the arbitration of (serious) discipline and discharge.

On the retention bonus issue, the FOP proposed a retention bonus of $2,000 for all police officers on September 1 of each year after their 20th year of service. Initially, Arbitrator Benn recognized that due to resignations and retirements, the City suffered a 12.9% decline in police officers from 2019 to 2023, going from 11,899 officers below the rank of Sergeant to just 10,358 officers. As a result, Arbitrator Benn found that the decrease in personnel caused cancellation of days off, low morale, and that reduced service levels: "because of diminished staffing, has hampered the ability of the Police Department to adequately respond with services thereby affecting the safety of the public and the officers." Moreover, Arbitrator Benn explained that high inflation caused a substantial loss of buying power, which in turn, made it attractive for officers to take pensions and leave the Department. Based on the foregoing, Arbitrator Benn adopted the FOP's final offer.

Arbitrator Benn also adopted the FOP's final offer related to arbitration of discipline and discharge. Historically, while the Union had the ability to grieve certain disciplinary decisions, suspensions greater than 365 days and separations (dismissals) were decided by the civilian Chicago Police Board after the Superintendent of Police filed charges. The Chicago Police Board is made up of Chicago citizens who are appointed by the Mayor with the advice and consent of the City Council. The Union sought to have the option to have grievances protesting such serious discipline and discharge decided by an arbitrator selected by the parties in final and binding arbitration.

Initially, the City proposed to maintain the *status quo*. Then, the City proposed a system in which the Police Board would initially serve as a factfinder (whose findings would be accepted as *prima facie* correct), while still allowing the Union to appeal the grievance to an arbitrator, as long as the arbitrator was a Cook County resident who had received training from the Police

Board. Ultimately, Arbitrator Benn determined (as he and other Arbitrators similarly decided in numerous prior awards) that the plain language of the Illinois Public Labor Relations Act guarantees a mechanism which culminates in final and binding arbitration. As such, he awarded the Union's final proposal on arbitration of discipline and discharge.

City of Chicago and FOP, Chicago Lodge No. 7, AAA Case. No. 01-22-0003-6534 (Supplemental Opinions August 2, 2023 and January 4, 2024), Arbitrator Edwin H. Benn.

On two occasions, Arbitrator Benn supplemental interim award on arbitration of discipline and discharge based on the City of Chicago's objections to ratification. On each occasion, Arbitrator Benn argued that certain objections about arbitration amount to a "big lie." For instance, in the January 4, 2024 award, Arbitrator Benn was adamant that:

> The detractors of arbitration have successfully persuaded some members of the public and those alderpersons who voted to reject with assertions that the privacy of arbitration which occurs "behind closed doors" is somehow a corrupt process for dispute resolution – even though arbitration is required by the Rule of Law and is the long-held policy of this state (as well as at the federal level). Misinformation, untruths and half-truths about the arbitration process have been fed to the public and have been repeated over and over to the point that the misinformation, untruths and half-truths have now become fact. That misinformation, untruths and half-truths are that the Lodge selects the arbitrators and the arbitrators therefore have a financial incentive to please the Lodge and the arbitrators therefore compromise their decisions and rule in the Lodge's favor in order to get future work. The fact and truth are that arbitrators are mutually selected by the parties (and not solely by the Lodge as has been misrepresented) and that the arbitrators cannot compromise their decisions to curry favor with the Lodge because doing so will (and should) get those arbitrators removed from hearing future cases. The rule for the arbitrators is "Good cases win. Bad cases lose. Split no babies. Throw no bones." If arbitrators do not follow that rule, they should not be used.

Bensenville Fire Protection District and IAFF Local 2968 (August 4, 2023), Arbitrator Marvin Hill.

This award followed mid-term bargaining over a new drug testing policy for cannabis. Even though Illinois began allowing recreational cannabis in 2019, under the statute, public employers of law enforcement officers, corrections officers, probation officers, paramedics, or firefighters could still implement policies "prohibiting or taking disciplinary action for the consumption, possession, sales, purchase, or delivery of cannabis or cannabis-infused substances while on or off duty." 410 ILCS 705/10-35(a)(8). Notwithstanding, the Illinois statute also emphasizes that these matters are subject to collective bargaining. *Id.*

Here, the bargaining unit represents 21 Firefighters, Lieutenants and Battalion Chiefs. The existing CBA did not address off duty use of marijuana (nor off duty use of illegal drugs). As such, the Fire District created rules that stated: "Possession or use of medical marijuana or being

under the influence of marijuana on or off duty is prohibited and may lead to disciplinary action, up to and including termination."

After the District put the Union on notice of the new rules, the Union demanded to bargain. During subsequent negotiations, the parties reached a tentative agreement. The TA was over a new drug/alcohol testing policy that permitted off duty usage of recreational marijuana. The Union ratified the TA. The Board of Trustees voted to reject it, and as a result, the parties found themselves in interest arbitration.

Ultimately, Arbitrator Hill awarded the Union's proposal, which was to enforce the TA. Initially, Arbitrator Hill concluded the agreement was negotiated in good faith by informed representatives. Moreover, the Arbitrator found that the TA was an accurate reflection of the accord of the parties, and that there was no error or miscalculation. In that respect, the reason for the rejection was not an "ideological opposition to recreational use of cannabis." The arbitrator stated that the employer "was absolutely willing, multiple times . . . To adopt the [TA'd drug and alcohol testing language] . . . If the Union simply gave up more." Arbitrator Hill also cited to 31 jurisdictions that – according to the Union – removed cannabis prohibitions for their agreements., which also favored the Union's position.

Notably, the Arbitrator acknowledged that the employer had "valid concerns" and that "[n]o Firefighter needs a positive test for marijuana after an accident, especially if a citizen is injured or killed." Nevertheless, based on the foregoing, Arbitrator Hill enforced the TA to remove cannabis from drug testing.

Mattoon Fire Fighters Association, Local 691, IAFF, AFL-CIO & City of Mattoon, ILRB Case No. S-MA-22-271 (April 14, 2023), Arbitrator Barry E. Simon.

The bargaining unit staffs two fire stations with a minimum manning requirement of 30 firefighters. The parties arbitrated four issues, including wages (linked with contract term), engineer staffing, holidays, and health insurance. With respect to wages, the parties essentially gave the Arbitrator a choice between the City's two-year proposal with wages of 2.75% (2022/23), 2.5% (2023/24), in contrast to the Union's four-year offer of 2.75% (2022/23), 2.5% (2023/24), 4% (2024/25), and 4% (2025/26).

While the City argued that a shorter contract was necessary so that its expiration would coincide with contracts of its two other bargaining units, Arbitrator Simon emphasized the value of ensuring fixed costs. Moreover, while the City complained that adding two additional years of wages at 4% each year was unreasonable, Arbitrator Simon explained that "[w]ith recent annual inflationary rates of 7 to 8 percent, the 2.75% and 2.5% increases come nowhere near matching the cost of living." Moreover, citing external comparables, the Arbitrator determined that the 4% increases were similar to wage increases in other communities. As such, the Union's final offer on wages/contract term was adopted.

On the staffing issue, the City convinced Arbitrator Simon to change language in the CBA, effectively reducing the number of Engineers from twelve to nine. This was based off of the

City's reduction of the number of apparatuses it utilized, which historically have always been staffed with at least one Engineer. While the Union was able to cite a series of prior awards in which arbitrators declined to reduce staffing requirements, Arbitrator Benn distinguished those cases based on the fact that the City was proposing its modification without any reduction to minimum staffing.

With City patrol officers receiving considerably more holiday hours than firefighters, citing internal comparability, Arbitrator Simon also agreed with the Union that bargaining unit members should receive a fifth and a sixth holiday. Finally, the Arbitrator determined that the City did not provide breakthrough evidence to support its proposal in seeking health insurance modifications and increases in out-of-pocket maximums.

Village of Bartlett & Metropolitan Alliance of Police, Chapter #114, FMCS No. 220126-0288, Arb. Ref. 22.059 (March 16, 2023), Arbitrator Edwin H. Benn.

The Union represents approximately 32 patrol officers. During arbitration, the parties arbitrated 10 different issues, including wages, contract term, merit pay, body-worn cameras, and arbitration of discipline.

In granting the Union's final wage proposal for 4% (effective 5/1/21) and 4% (effective 5/1/21) (as opposed to the villages offer of 3% (effective 5/1/21), 3% (effective 5/1/22) with a wage reopener (effective 5/1/23)), Arbitrator Benn found that actual and forecasted CPI for the two-year term was approximately 10.03%. In that respect, the Union's final offer of a compounded 8.16% increase was closer to CPI than the Villages 6.09% compounded final offer over the same two-year period.

With respect to merit pay, based on the fact that the Union could not show the system was broken, Arbitrator Benn refused to change a merit pay step system that had existed within the parties' collective bargaining agreement for over two decades. Arbitrator Benn also considered the effects of body-worn cameras, which under new Illinois law, will be required for all police officers. However, instead of issuing an award on body-worn cameras, Arbitrator Benn remanded the issue back to the parties for further negotiations. Finally, the Arbitrator added arbitration of discipline to the CBA based on his determination that the Illinois Public Labor Relations Act guarantees a mechanism which culminates in final and binding arbitration.

Michigan

Police Officers Association of Michigan and Saint Clair County and Saint Clair County Sheriff, MERC Case No. 22-I-1769-CB (July 7, 2023) (Chair Charles Ammeson, Employer Delegate Karry Hepting, Union Delegate Kevin Loftis).

Command Officers Association of Michigan and Saint Clair County and Saint Clair County Sheriff, MERC Case No. 22-I-1767-CB (July 7, 2023) (Chair Charles Ammeson, Employer Delegate Karry Hepting, Union Delegate Kevin Loftis).

These panels issued nearly identical awards related to two bargaining units in St. Clair County. One bargaining unit represents Deputies and Detectives employed by the St. Clair County Sheriff's Department. The other represents Sergeants, Lieutenants and Captains. The parties arbitrated eight issues, including wages.

For wages in 2023, the panel adopted the Union's final offer of 5% for a number of reasons. First, the panel noted that the Union's offer was closest to high increases in cost of living. Moreover, while explaining that a large wage increase was necessary notwithstanding a deviation from the internal comparables, the panel cited the competitive job market for law enforcement, in which the County benefits from being a "wage leader." The panel further explained that "[p]olice officers, as essential workers and given the nature of their work, are not amenable to remote or work-from-home assignments." Finally, the panel noted the fact that the bargaining unit only received a 2% increase in wages notwithstanding "extraordinary inflation." Despite the panel's adoption of the Union's high 2023 offer, without much explanation, the panel later adopted the County's lower wage offers of 3% in 2024 and 2.5% in 2025, respectively.

Wisconsin

Milwauke County and Milwaukee Deputy Sheriff's Association, WERC Case ID 161.0086, Decision #: 39789-B (September 8, 2023), Arbitrator Amedeo Greco

This interest arbitration focused on wages and retro pay. Both parties agreed to across-the-board increases of 2% effective 1/1/21 and 1% effective 7/1/21. However, the Association proposed a 5% increase effective 1/1/22, a 3% increase effective 1/1/23, and a 1.5% increase effective 7/1/23 (a three-year total of 12.5%). In contrast, the County offered a 2% increase effective 1/1/22, a 2% increase effective 7/1/22, and a 2.25% increase effective 1/1/23 (a three-year total of 9.25%). The difference between the two proposals was $1.2 million over the course of the Agreement.

Arbitrator Greco gave "great weight" to the fact that the County had the ability to raise revenues in order to pay higher salaries. Initially, the Arbitrator seemed to acknowledged that the County "faces difficult fiscal problems," has "limited" ability to raise revenue, faces a "fiscal cliff" based on "heavy restrictive state-imposed levy limits; flat share revenue; and limited increases in state reimbursement for mandated services," and has "growing expenses in retiree health care costs; pension obligations; and a huge backlog of infrastructure needs." However, Arbitrator Greco also recognized that "the County's fiscal situation is improving because the County in 2024 can raise its sales tax, thereby taking some pressure off its fiscal problem." The Arbitrator also found that the Association's wage offer was more in line with external comparables and that the Association's offer is closer to high increases in cost of living, which "has gone up more than at any other time since the early 1980s, nearly 40 years ago." Accordingly, the Arbitrator adopting the Association's offer on wages.

Arbitrator Greco also refused to grant the County's request to permanently remove retro pay from the contract, which had inadvertently been removed from the CBA after the parties' prior negotiations as part of a scrivener's error.

FLORIDA

SPECIAL MAGISTRATE RECOMMENDATIONS

1. Faculty workload

Broward College Board of Trustees and United Faculty of Florida, Broward County Chapter, SM-2023-004 (Charles 2023)

There were ten issues. Broward College had the second largest enrollment in the state college system. The college employed approximately 4,000 full-time and part-time faculty and staff. UFF represented the full-time faculty. The parties were in agreement that the COVID-19 pandemic continued to negatively impact student enrollment, reducing the funds available to compensate faculty. Student tuition and fees have been capped since 2014 by state law. According to a compensation study conducted in February 2022, the College paid the second to last lowest salary of its comparators. The significant issues at impasse related to faculty's pay and opportunities to earn extra pay.

Contractually, faculty were required to teach fifteen credit hours per semester and permitted to teach one extra pay teaching assignment per semester, not to exceed 4.5 adjusted credit hours. Full-time faculty had the right of first refusal over extra pay assignments. There was no cap on extra courses during the summer months when 9-month faculty did not have a contractual course load.

The College proposed to give full-time faculty preference, but not priority, over extra pay assignments; cap at eighteen the credit hours faculty were permitted to teach during the summer; permit deans to cancel a class (due to low enrollment) three days from the start of the class; and use faculty's extra pay assignment to meet minimum course load requirements. The UFF proposed to increase extra pay assignments from 4.5 extra credit hours to 10 per semester.

Special Magistrate Charles recommended adoption of the Union's proposal to maintain faculty's priority over extra pay assignments and the College's proposals on the remaining course load issues. The parties were $3,000 apart in base, or reference, salary used to calculate starting salaries based upon degree held and years of experience. The Special Magistrate agreed with the Union's reference salary proposal, including a $2,000 one-time bonus, reasoning that a higher salary should help alleviate faculty's need to work extra pay assignments and satisfy the college's need to cap extra pay assignments worked by faculty.

2. Work schedules: mandatory subject of bargaining?

Palm Beach County Police Benevolent Association and School Board of Palm Beach County, SM-2023-003 (Sergent 2023)

The PBA represented 226 sworn police officers employed by the School Board's Police Department. Each year, the parties reopened the 3 year contract to negotiate 3 or more issues, including wages. There were 5 issues presented at impasse after 3 sessions of bargaining the 2023 reopener.

The PBA proposed language making work schedules a mandatory subject of bargaining. The proposal required the School Board to bargain the Police School Year Duty Day Calendar. It was undisputed for the past four years, command staff prepared the summer (June and July) calendar in April and met with PBA representatives and officers to get their input before the Police Chief finalized the schedule. The Marjorie Stoneman Douglas Act required officer coverage at schools providing instruction, and there were schools that provided instruction during the summer. Most of the officers were hired on a 10 month schedule, but in the previous year, the Police Department added a 12 month schedule.

In existing PBA contracts with law enforcement agencies, work schedules and duty days were management rights. Special Magistrate Amy Sergent ("Sergent"), citing a long-standing principle that even in the absence of an express management rights provision, the employer had the inherent management right "to schedule and assign employees and to determine the methods, means, and personnel by which such operations are to be conducted." The parties' contract however included a waiver of the School Board's management right to schedule officers' work schedules. In an earlier reopener, the School Board agreed to a provision that it would discuss the June and July 2023 work schedules in a Joint Study Committee of three representatives of each party. Any disagreements would be included in contract negotiations.

The PBA's proposal at impasse added the requirement that the School Board provide the proposed work calendar to the PBA and, if requested within 10 days, bargain with the PBA within 10 days thereafter. In 2023, the School Board for the first time, made final the summer work schedule before discussing it with the PBA. Sergent recommended adoption of the union's proposal to clarify the existing bargaining requirement.

Other issues presented to the special magistrate were (1) a perfect attendance supplement to be unaffected by the use of personal time off, rejected by the special magistrate; (2) a $1,000 increase to Sergeant supplemental pay, adopted by the special magistrate as de minimis, comparable, and subject to future negotiation; and (3) a 7% increase across the board and to the minimum and maximum salary ranges. The School Board proposed the following wage increase options: (1) a 3.5% reoccurring raise plus a one-time bonus of 3% or $1,500, whichever is greater; or (2) a tiered raise ranging from 3% to 5% and a one-time bonus of 3% or $1,500, whichever is greater. Sergent accepted the PBA's proposal, citing the need to retain officers and the Marjorie Stoneman Douglas Act. Sergent weighed all statutory factors, including

the interest and welfare of the public, hazards of employment, comparability, and availability of funds. The School Board had government funds from COVID-19 impacts and funds from an approved referendum to increase property taxes.

Finally, the special magistrate rejected the School Board's proposal to decrease from 3 to 2 the number of years of service with the School Board to be eligible for promotion to Sergeant, in part, considering a PERC hearing officer's recommended factual finding that the employer bypassed the sergeants' promotional examination to hand-pick its sergeants.

3. Seniority

SEIU, Local 1991 and Public Health Trust of Miami-Dade County, Florida, SM-2023-012 (Young 2023)

In December 2022, the employer notified the union of its decision to increase the number of RN case managers to perform the specific job duty of utilization reviews ("UR"). Those employees would be permitted to work remotely. Under the employer's plan, the employer would seek volunteers to fill the new vacancies. If there were more volunteers than available slots, the employer would select 14 to 20 by seniority in the position. Only 14 people volunteered, and the employer decided that 14 was sufficient. As a result, seniority was not a consideration in the selection of RN case managers for remote work. The union objected because the employer provided insufficient or no notice of the remote work opportunity, and there were more senior RN case managers who wanted the remote work.

The union demanded impact bargaining. The impasse issue was the process of notification and selection of employees to perform remote work assignments. The union proposed that the notice and selection requirements already in the contract for reassignments be applied, requiring 14 days notice and selection by seniority in classification. The employer wanted to retain complete discretion over the assignment of remote work and countered with 10

days' notice. For years, the employer had a policy giving it discretion over the assignment of remote work. The employer was opposed to seniority restrictions on such assignments arguing that it would disrupt the healthcare system. The union countered that there was an increased demand by employees to work remotely due to the COVID-19 pandemic having a greater impact on employees' conditions of employment. The employer argued that during full contract bargaining, the union proposed the selection of remote work assignments by seniority. The employer rejected the union's proposals, and the contract was ratified.

Special Magistrate Young recommended the union's proposal be adopted. The parties' past practice was not relevant. There was nothing in the contract on remote work and no need to bargain remote work prior to the 2020-2021 pandemic. Times change, and the employer filled vacancies by seniority in the past. The union did not waive its right to bargain over the assignment of remote work by previously unsuccessful attempts. Evidence that a comparable hospital with more restrictive policies and procedures on remote work assignments was not compelling. The statutory factor of "interest and welfare of the public" weighed heavily in Young's recommendation. In this instance, Young considered that seniority corresponded with good morale and job satisfaction, citing as instructive *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391 (2002).

OREGON

1. **Lincoln County, Oregon and Lincoln County Deputies Association, (Cavanaugh, 2023)**

In Oregon, interest arbitrators are required to select either the entire employee association's or the entire employer's "last best offer" packages. In this case, the only remaining issue was the wage increases for both years of the collective bargaining agreement. The term of the contract was July 1, 2022 to July 1, 2024. The employer proposed 3% and 3%. The association proposed 5% and 5%. The arbitrator chose the union's package, based on the high CPI numbers and how higher wages would increase morale and therefore support retention.

2. **City of Ashland, Oregon and the International Association of Firefighters, Local 1269 (Alpern, 2023)**

The two issues in this case were the employee/employer split of health insurance contribution and longevity. The city proposed to reduce its share of the health care premium from 95% to 90%. This was paired with longevity bonuses of $1,000 for 5-9 years of service, $1,250 for 10-14 years and $1,500 for 15 years.

The union's package retained status quo on health care and had larger annual longevity bonuses. The union proposed $1,000 for 5-10 years, $1,750 for 10-15 years, $2,500 for 15-20 years, and $3,250 for 20 years.

The arbitrator would have preferred to choose the city's offer for longevity, but external comps did not support a reduction in the city's health care contribution, so the arbitrator selected the union's package.