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Interest Arbitration

JAN 27 1998

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County of Cook and
Cook County Sheriff,

Joint Employers

and

Teamsters Local 714,

Union

Illinois State Lab Rel. Bd
LLRB No. L-MA-97-085
Arbitrator's File 97-122 ILLINOIS

Herbert M. Berman,
Neutral Arbitrator/Chairman

John G. Kalchbrenner,
Employer Arbitrator

Jerry DeFrancisco,
Union Arbitrator

Issue: Deputy Sheriff II
Wages

Award: 12/01/97
Corrected Award: 12/02/97
Opinion: 01/22/98

Opinion and Award

Interest Arbitration

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LLRB No. L-MA-97-005
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Opinion and Award

I. Statement of the Case

The Union represents approximately 1450 full-time Deputy Sheriff IIs (DSIIIs) assigned to the Cook County Sheriff's Court Services Department. Other Deputy Sheriffs are employed as Police Officers or Correctional Officers (see 1994-97 collective bargaining agreement: Joint Exhibit 1).¹

On February 20, 1997, the parties entered into a collective bargaining agreement (JX 1) for fiscal years (FYs) 1995, 1996 and 1997—December 1, 1994 through November 30, 1997. This Agreement was the product of negotiations as well as a

¹ In the remainder of this Opinion, I shall cite joint exhibits as "JX____," Union exhibits as "UX____" and Joint Employer exhibits as "EX____." I shall cite non-testimonial portions of the hearing transcript as "Tr.____." I shall cite testimony by the surname of the witness and the appropriate page reference, for example, "Abrams 32."

offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 14(h) sets out the factors used to evaluate economic proposals:

1. The lawful authority of the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
4. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - A. In public employment in comparable communities.
 - B. In private employment in comparable communities.
5. The average consumer prices for goods and services, commonly known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise

fiscal years 1995 and 1996 (which the parties later modified), but left FY 1997 wages open for negotiations. This proceeding results from the parties' inability to reach agreement on FY 1997 wages.

Arbitrator Goldstein made two findings critical to resolution of the current dispute: (1) DSIIIs and Sheriff's Police are comparable for the purpose of determining DSII wages; and (2) dollar-to-dollar comparisons are more significant than percentage-to-percentage comparisons:

1. Comparability of DSIIIs to Police Officers

- With respect to the inclusion of police officers who do identical work but can be rotated to a whole range of other duties unlike those done by DSIIIs, the majority does not believe comparisons drawn between those two groups are an "apples to oranges" examination for assessing comparability. The Union's argument that the actual work performed by the police who do court security and civil process work and the work performed by members of the bargaining unit is accepted by the majority of the Panel since, factually, the actual tasks routinely done are indeed closely comparable, and the logic of that proven fact is inescapable (Goldstein Award, at 21).
- [T]he argument employed by Management to differentiate DSIIIs and Sheriff's police and determine their pay through the distinction of "police officer" and "law enforcement officer/DSIIIs" is basically illogical or perhaps arbitrary. The similarity in training, risk and stress in the basic job assignments of the two employee groups ...should require a finding that the Union's claim of some comparability for DSIIIs and Sheriff's police is fair and appropriate, if absolute parity is not what is at issue... (Goldstein Award, at 33).
- [T]he relative pay of the DSIIIs is even worse, in absolute as well as relative terms, when the internal and external comparabilities are put in

(Berman 1/4/88). Adopting the Union's proposal would further undermine the bargaining process because it would make the Union more recalcitrant in future negotiations, while at the same time forcing the Joint Employers to hold back and entrench (Emp. Brief, 33).

In large part, the Employer's argument, cogently set forth in its post-hearing brief, amounts to a critical analysis of arbitrator Goldstein's findings on comparability and the dollar-to-dollar standard of comparison. Not surprisingly, the Union relies squarely on the McAlpin and Goldstein awards, particularly arbitrator Goldstein's analysis of the "the relationship of the DSII's wage rate as to both the internal and external bargaining units" (Un. Brief, 7) and his comparison of the duties of DSII's and other sworn employees of the Sheriff of Cook County:

The duties of the employees in this bargaining unit are not really in dispute and those duties were found and determined by Arbitrators Goldstein and McAlpin. The Union in the instant hearing focused on how if it at all the duties had changed since the prior hearing (Un. Brief, 8).

I concur that the "rulings of the previous Arbitrators on comparability should be recognized as having established a given relationship between the parties..., which should not be sundered without justification in the form of substantial proof of changed facts" (Un. Brief, 18-19). As the Union notes, arbitrators are reluctant to disturb the "continuity of...existing relationships" and to alter the standards of comparability upon which these relationships are based (Un. Brief, 19).

In the interest of "stability and continuity" (Martin Award), it is appropriate to minimize the "gambling" and "windfall" aspects of interest arbitration. Interest arbitration is not bound by legal precedent or *stare decisis*, but it is proper to establish an appropriate standard of comparison on which the parties may reasonably rely in the future without fear that it will be disregarded or reversed by another arbitrator. Once a reasonable bargaining standard has been set, nothing would seem more likely to cause confusion than arbitral creation of an entirely new standard.

Had the evidence established that the relative duties of DSIIIs and the Sheriff's police had changed markedly since December 8, 1995, I would have to reexamine arbitrator Goldstein's finding that "the actual tasks routinely done are indeed closely comparable, and the logic of that proven fact is inescapable" (Goldstein Award, at 21). If anything, however, the evidence showed that the law enforcement duties of DSIIIs have actually (if minimally) increased:

- Since January 1, 1997, DSIIIs have received training on "chemical sprays, semiautomatic weapons and the asp (an "expandable tactical baton") as normal duty weapons" and all DSIIIs have been required to carry an asp and chemical spray in the form of mace while on courtroom security duty (Abrams 33-4).
- In the Markham District, DSIIIs have taken over booking and fingerprinting from the local police or the Sheriff's Police (Dortch 77-8).

my job to second-guess a decision whose essence is drawn from the evidence applied to standards established by law.

A. Positions of the Parties on Comparability

1. The Employer

With respect to percentage wage increases, the Employer writes, DSIIIs "have fared better" since 1992 than Department of Correction (DOC) Officers, Sheriff's Police Department (SPD) Officers and other Cook County employees (Emp. Brief, 23). Assuming a 3% increase in FY 1997, DSII wages will have gone up 33.5% between fiscal years 1992 and 1997 (Emp. Brief, 23). During the same period, DOC Officers received a 26.5% wage increase and the "majority of Cook County employees...received only a 21% wage increase" (Emp. Brief, 23). From 1992 to 1995, "a period during which the deputy sheriffs received a 24.5% increase," SPD Officers "received a wage increase of 19.5%" (Emp. Brief, 23).

Citing Employer Exhibit 16, the Employer says that "[i]n the aggregate," the "deputy sheriffs' minimum and maximum salaries are very competitive with the salaries of employees who perform similar duties in nearby Illinois counties and in major counties nationally" (Emp. Brief, 28). The Employer notes that "there are no perfect comparables" and that it has "attempted to make sense out of an admittedly murky comparability picture" (Emp. Brief, 28). Nevertheless, the Employer suggests, Employer Exhibit 16 "reveal[s] that deputy sheriffs' salaries are competitive regardless of whether they are viewed as court security personnel or as writ servers" (Emp. Brief, 29). Thus, the deputy sheriffs rank "fifth in

government employees generally (33.5% to 17.3%)" and that the "offer of a 3% wage increase is higher than the average wage increase for state and local government employees generally (2.7%)" (Emp. Brief, 30).

2. The Union

The Union makes three important arguments:

1. Citing arbitrator Goldstein's opinion that "the Deputy Sheriff IIs were at the bottom of the heap" among externally comparable employees and "thus there was a 'proven need' for some 'catch up,'" the Union notes that the "update of that 'comparable' data shows that the DSIIIs are still at or near the bottom of the heap (Un. Exh. 7 and 8)" (Un. Brief, 15).

2. The Employer's offer "does not even keep up with lost purchasing power" (Un. Brief, 17). The "loss of purchasing power between December 1, 1996 (start of FY-97) and December 1, 1995 (the date of the DSIIIs last wage increase) was 3.3%" (Un. Brief, 17).

3. For FY 1997 the Employer "agreed to pay other law enforcement employees at least 4% (e.g., Corrections), offered Deputy Sergeants 5% and other non-law enforcement Cook County employees (who historically received a smaller wage increase than sworn personnel)...3% for FY-97 (but an additional 1% the day before FY-97" (Un. Brief, 17-18).

I agree with the Employer that "there are no perfect comparables" (Emp. Brief, 28). As the Employer points out (Emp. Brief, 28)—

[W]ithin the single classification of Deputy Sheriff II, there are employees who perform court security duties and employees who serve writs, but no employees perform both functions. In the majority of other jurisdictions, there are separate classifications for courtroom security personnel and writ servers. Alternatively, in many other jurisdictions, the employees who handle court security or who serve writs often perform a range of other duties, including general police work or corrections.

The Employer has attempted to sort out this confusion by making category-to-category comparisons between DSIIIs and "employees who perform court security function exclusively," "employees who perform court security and other functions," "employees who perform as writ servers exclusively," and "employees serving writs and performing other functions" (EX 16).

Consistent with arbitrator Goldstein's award, I consider the Sheriff's police officers and DSIIIs "closely comparable." It would be illogical to preserve that finding for the purpose of making internal comparisons but to separate the tasks of DSIIIs into discrete categories for the purpose of making external comparisons. I am aware of the difficulty of making comparisons between various protective service units. Security functions may differ markedly from unit to unit; and I realize that the Employer has gone to great lengths to make the point that these differences must be respected and

County	Median Income	Rank	Starting Salary	Rank	Maximum Salary	Years
Harris TX	36,232	9	29,628	5	37,092	11
San Diego CA	33,679	12	29,057	6	39,686	6
Orange CA	41,981	5	35,052	2	39,108	5
Maricopa AZ	30,609	18	24,190	18	39,915	8
Wayne MI	29,360	19	23,500	21	39,000	6
Dade FL	28,246	20	26,698	11	46,755	20
Dallas TX	36,125	10	25,008	13	31,416	unknown
King WA	42,813	4	34,380	3	54,309	16
Philadelphia PA	27,542	21	27,756	10	30,420	4
Cuyahoga OH	31,099	17	24,264	17	33,019	4
Suffolk NY	48,307	2	29,000	7	48,000	5
Allegheny PA	33,710	11	24,654	15	34,523	unknown
Nassau NY	50,674	1	24,281	16	44,000	16
Hennepin MN	38,780	6	32,724	4	40,104	unknown
Westchester NY	48,045	3	28,694	8	39,269	unknown
Hamilton OH	33,300	13	24,792	14	37,980	unknown
Marion IN	32,985	14	20,658	22	22,360	5
Baltimore MD	38,677	7	23,741	20	37,854	30
Denver CO	26,350	22	26,016	12	40,700	10

*Includes Kings, New York, Bronx and Richmond

Salary comparisons between employees in Cook County and comparable employees in the collar counties were made by both parties. The Union points out that "[e]xcluding rural McHenry County, which does not use sworn personnel, the only collar county with a lower max salary is Kane County, and it has a much higher starting salary" (Un. Brief, 15-16).

Arbitrator Goldstein found that "the bargaining unit employees involved in this dispute are paid considerably less than their external peers," that "the kind of monetary standard the Union is seeking is at least to some substantial degree merited" (Goldstein Award, 37) and that "the need for 'catch up' is...crystal clear" (Goldstein Award 43; see also 30). The data supports the Union's contention that at the critical points of starting and maximum salaries the

the Employer's offer, even though it did not "keep up with lost purchasing power" (Un. Brief, 17). Since, however, the need for catch-up still exists and since, as the Union has pointed out, other law enforcement officers have received a 4% increase, Deputy Sergeants a 5% increase and non-law enforcement employees the functional equivalent of a 4% increase (3% for FY 1997 and 1% the day before FY 1997), the 5% increase proposed by the Union is not wholly out of line. Significantly, adoption of the Union's proposal will not alter "DSII rankings relative to the Deputy Police as regards relative wage rates" [underlining in original], the "'critical' internal comparable" (Goldstein Award, 32).⁹

I have not disregarded the Employer's argument that the "overall compensation" of DSIIIs over the past three years should be taken into consideration. Nor would I dispute the Employer's assertion that "deputy sheriffs enjoy an impressive array of benefits in addition to the wages they earn" (Emp. Brief, 31). However, without data comparing the overall compensation of DSIIIs to employees in comparable units, I cannot accurately measure and assess the significance of this factor.

⁹ See Employer Exhibit 2.

