

ILRB

# 278

BEFORE  
EDWIN H. BENN  
ARBITRATOR

In the Matter of the Arbitration

between

COUNTY OF COOK AND COOK COUNTY  
SHERIFF

and

ILLINOIS FRATERNAL ORDER OF POLICE  
LABOR COUNCIL

CASE NOS.: L-MA-02-008  
Arb. Ref. 03.212  
(Interest Arbitration -  
Day Reporting Investigators)

OPINION AND AWARD

APPEARANCES:

For the Employer: Lynn Train, Esq.  
Helen Kim, Esq.

For the FOP: Gary Bailey, Esq.

Date of Award: December 3, 2003

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## **I. BACKGROUND**

This is an interest arbitration under authority of §14 of the Illinois Public Labor Relations Act, 5 ILCS 315/14 ("IPLRA") between the County of Cook/Cook County Sheriff ("Employer") and the Illinois Fraternal Order of Police ("FOP") to resolve issues the parties could not settle through negotiations for the December 1, 2001 - November 30, 2004 collective bargaining agreement ("Agreement") covering Investigator IIs in the Day Reporting Center of the Cook County Sheriff's Department of Community Supervision and Intervention.<sup>1</sup>

The Day Reporting Center is located on the south campus of the Department of Corrections at 3026 S. California in Chicago and is an intensive supervision program for non-violent, low risk, participants in pre-trial status. Tr. 69-71. The Investigator IIs are assigned to security, case investigation and room monitoring. Tr. 71-73; Employer

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<sup>1</sup> The parties waived the tri-partite panel called for in Section 14(b) of the IPLRA. Joint Exh. 1 at ¶2. Through their negotiations, the parties reached a number tentative agreements on other issues. Those agreements are incorporated into this award. Joint Exh. 1 at ¶6; Joint Exh. 3.

Exh. 11. There are approximately 30 Investigator IIs covered by the Agreement. Joint Exh. 2; Tr. 60.

## **II. ISSUES IN DISPUTE**

As more fully discussed below at IV, the issues in dispute in this matter are: (1) wages (economic); (2) the definition of seniority (non-economic); and (3) certain application of seniority (non-economic). Joint Exh. 1 at ¶5; FOP Exh. 1; Employer Exh. 1.

## **III. THE STATUTORY FACTORS**

Section 14(h) of the IPLRA lists the following factors for consideration in interest arbitrations:

(h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally;

- (A) In public employment in comparable communities.
- (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in 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.

#### **IV. DISCUSSION**

##### **A. Wages**

###### **1. The Parties' Offers**

The FOP seeks wage increases of 4% effective December 1, 2001; 4% effective December 1, 2002; and 4.5% effective December 1, 2003. FOP Exh. 1; FOP Brief at 12.

The Employer offers effective the first full pay period after June 1, 2002, a lump sum bonus equal to 2% of gross earnings from December 1, 2001 to May 31, 2002, plus a 2.5% wage increase; and further wage increases of 2% effective December 1, 2002; 1% effective June 1, 2003; and 3% effective December 1, 2003. Employer Exh. 1; Employer Brief at 2.

##### **2. Application Of The Relevant Factors**

Not all of the statutory factors listed in §14(h) of the IPLRA are always helpful in resolving these disputes. The FOP points out (FOP Brief at 9-11) that a number of the factors do not help in this case. According to the FOP (*id.*), the lawful authority of the Employer factor (#1) is not an issue because I have the authority to resolve this issue; the interests and welfare of the public factor (#3) is not an issue because ability to pay is not in dispute; the overall compensation factor (#6) is not an issue because the Investigator IIs "receive compensation and benefits in the typical areas (holidays, vacations, court pay, etc.) that others do and the levels and amounts of such compensation are

quite similar and often identical"; and the changes during arbitration factor (#7) is not an issue because neither party has presented any evidence that seriously demonstrated that anything of consequence has occurred during pendency of this dispute. I agree. Those factors add nothing to this particular dispute and will not be further considered.

As discussed below, I will consider comparability (#4); cost-of-living (#5); traditional factors (#8); and stipulations of the parties (#2).<sup>2</sup>

**a. Comparability**

**(1). External Comparability**

Over the years, there has not really been unanimity concerning which counties or other public entities should be used for comparison purposes with the Employer. See e.g., my award in *County of Cook and Cook County Sheriff and Metropolitan Alliance of Police*, L-MA-97-009 (1998) at 4 (describing "... the parties' divergent positions on external comparability ...."). See also,

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<sup>2</sup> As to stipulations of the parties, that factor will not be individually addressed, but is considered by what the parties have agreed to in the presentation of the evidence and arguments.

*County of Cook and Sheriff of Cook County Metropolitan Alliance of Police* (McAllister, 2003) at 5-6 (where a prior award's selection of comparables was discussed and the parties offered further comparables for consideration).

Typically, selecting external comparables for comparison purposes is a difficult task. The main reason for that difficulty is "[a]side from using the phrase 'comparable communities', the statute gives absolutely no guidance on how to select those 'comparable communities'." *Village of Algonquin and Metropolitan Alliance of Police*, S-MA-95-85 (Benn, 1996) at 2.

As a result of that lack of guidance from the IPLRA, I have utilized an analysis that looks to the parties' agreements on which entities are comparable; identifying factors to be used for comparisons; compiling the relevant data for those factors; ranking the entities within the appropriate factors; and comparing contested entities with the range of agreed upon comparables.<sup>3</sup>

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<sup>3</sup> See generally, Benn, *A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act*, The Illinois Pub-  
[footnote continued]

I find that I need not go through that type of analysis in this case. Albeit for different reasons, the parties appear to be in agreement that external comparability is not a determinative factor in this case.

The FOP observes (FOP Brief at 14-16):

... [T]he issue of external comparability is no less important; however, based upon the evidence presented by the parties, the external comparables do not favor one offer more than the other.

\* \* \*

... [T]he issue of external comparability is practically a non-factor. Whether the Arbitrator were to adopt the Union's final wage offer or the Joint Employers' final wage offer, the result would not impact where the employees would rank among the comparables (regardless of which are chosen). ...

\* \* \*

... [T]he difference between the two wage offers again causes no impact upon where these employees will rank among others in comparable counties across the United States.

The Employer takes a slightly different approach, but in the end agrees that external comparability is not a determinative factor in this case. According to the Employer (Employer Brief at 15):

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[continuation of footnote]  
lic Employee Relations Report (Kent College of Law, Vol. 15, number 4 (Autumn, 1998)).

... [T]he external comparables show that the employees in this unit continue to be paid very competitively compared to employees who have similar responsibilities in the other major metropolitan counties of the U.S. and the Illinois Department of Corrections, those being the same external jurisdictions that have been used previously for external comparisons to this unit. Since they are already paid competitively with their external comparisons, that factor fails to warrant larger increases than the Employers are offering them.

Therefore, albeit for different reasons, the parties have for all purposes agreed that external comparability is not a determinative factor in this particular case. I will therefore abide by that agreement and will not consider external comparability in this analysis.

### (2). Internal Comparability

The Employer points out (Employer Brief at 16-17):

Of the law enforcement units that have gone to interest arbitration, the Sheriff's Police Officers, the Stroger Hospital Security Sergeants, and the Oak Forest Hospital Public Safety Officers, the arbitrators accepted the employer's offer which in each case was identical to the wage package being offered to the Day Reporting Investigators. *Map and the Cook County Sheriff and County of Cook (Sheriff's Police Officers)* (Yaffe, April 9, 2003) ...; *MAP and County of Cook (Stroger Hospital Security Sergeants)* (Cox, May 9, 2003) ...; *MAP and County of Cook (Oak Forest Public Safety Officers)* (Cox, August 30, 2003) ....

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In addition to those awards, recently in his award dated September 29, 2003, Arbitrator McAllister adopted the Employer's wage proposal in the Correctional Officers bargaining unit. *County of Cook and Sheriff of Cook County Metropolitan Alliance of Police, supra* at 7, 9-15, 29.

In its arguments, the FOP stresses comparisons to the Corrections Officers (FOP Brief at 18-19):

... [T]he Day Reporting IS2s must maintain a gap above the Corrections Officers, who have advanced their contract impasse to interest arbitration and have proposed the same 12.5% pay increase over three years. Whereas most of the IS2s in Day Reporting come from the ranks of the Corrections Officers, it is essential to maintain the salary disparity between these two classifications. If the Corrections Officers were to win their arbitration, but the Joint Employer were to prevail in this matter, the disparity (which has been shaved 1% over the past six years) will decrease even further.

But the Corrections Officers did not prevail on the wage issue in that arbitration before Arbitrator McAllister.

While distinctions may exist amongst the duties and responsibilities performed by the various units discussed by the parties and there may be some gap differentials amongst the groups, standing back

and looking at the larger picture shows that from an internal comparability standpoint, it is evident that the Employer's similar proposals have been adopted in the other units. Internal comparability therefore favors the Employer's wage offer.

**b. Cost-Of-Living**

The FOP correctly observes (FOP Brief at 13):

From December 1, 2001 to December 1, 2002, the cost of living, as calculated by the CPI-U table provided by the Union was less than 2%. From December 1, 2002 to July 1, 2003, the cost of living, as calculated by the CPI-U table provided by the Union was less than 2%. Thus, both the Joint Employers and the Union are making wage proposals that exceed the cost-of-living.

The FOP's wage offer exceeds the cost-of-living more than the does the Employer's wage offer. This factor therefore favors the Employer's offer.<sup>4</sup>

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<sup>4</sup> The FOP argues that cost-of-living is irrelevant to the Employer's offer because the Employer's proposal is based upon pattern bargaining and, "[t]he truth is that these final offers would have been proposed if the cost-of-living was 2% or 10%." Perhaps — but if the cost-of-living was at or near the "10%" level, the conclusion on this factor would have been that the Employer's wage offer was deficient in this area and would have placed this factor into the FOP's column.

### c. Other Factors

The FOP (FOP Brief at 21-24) focuses upon the introduction of the bonus method of compensation into the Employer's wage offer and sees this as a breakthrough or change in the *status quo* — something which interest arbitrators are said to be reluctant to impose. The problem is that the other imposed wage settlements discussed at IV(A)(2)(a)(2) have adopted that method of compensation as part of the package. At this point, the concept of a bonus cannot be considered as a "breakthrough".

### 3. Conclusion On The Wage Offers

Wages are obviously an economic issue. By the terms of the IPLRA, I can only select one party's final offer.<sup>5</sup> Based on the above discussion and considering the relevant statutory factors, external comparability is not an issue; internal comparability favors the Employer's wage offer; cost-of-living favors the Employer's wage offer; and other factors

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<sup>5</sup> See Section 14(g) of the IPLRA ("As to each economic issue, the arbitration panel shall adopt the *last offer* of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors presented in subsection (h)" [emphasis added]).

do not change the result. The Employer's wage offer is therefore adopted.

## B. Definition Of Seniority

### 1. The Parties' Offers

The FOP seeks to change Section 8.1 of the Agreement as follows (FOP Exh. 1; FOP Brief at 3, 25-28):<sup>6</sup>

#### Section 8.1. Definition of Seniority:

For the purposes of the Article Agreement, seniority in the bargaining unit is ~~defined as an employee's length of service in the bargaining unit, however, for purposes of earned benefits and pension, the employee's seniority shall be defined as the length of the most recent continuous employment with the Employer County.~~

~~In the event that two or more appointments to Investigator II were made on the same day, seniority shall be based on date of hire with the Employer. If the date of hire is the same, the lowest employee number shall indicate the most senior employee.~~

The Employer seeks no change in the language. Employer Exh. 1; Employer Brief at 2, 26-28.

### 2. Discussion On The Proposed Changes

The FOP (FOP Brief at 26) asserts that there are three changes to the

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<sup>6</sup> Strike through text shows deletions sought. Underscored text is proposed added language.

proposed definition of seniority: (1) clarification that the definition of seniority in Section 8.1 is applied throughout the contract and not just limited to Article VIII; (2) clarification that "Employer" is actually a reference to the County; and (3) redefines the term seniority from time in the bargaining unit to time with the County. The FOP (FOP Brief at 26-27) argues that the first two changes are not controversial and are changes either in reformation or to correct language to a mutually recognized meaning. The third change, according to the FOP (*id.* at 27), is a substantive one seeking to change seniority from time in the bargaining unit to time with the County. The FOP (*id.* at 28) claims that there are no costs or burdens on the Employer to implement these changes.

The Employer (Employer Brief at 27) objects to the proposed changes arguing that there is no basis for deviating from the *status quo*. In specific response, the Employer (*id.* at 27-28) argues that it has been computing seniority based on the current language for years without any problems; to change the method of computation would create more work and problems for the Employer

and would unfairly and arbitrarily reduce the seniority status for many of the employees (*e.g.*, an employee with many years of experience on the job would be in a position of having less seniority than someone who has only six months on the job, but more years of employment with another County agency); and there just have not been any disputes based on the computation of seniority.

When a change to the *status quo* is sought, the burden is on the party seeking the change to justify that change.<sup>7</sup> Essentially, in simple terms, that means that the FOP must show that the current system is not working. Stated in even more simple terms, "if it ain't broke, don't fix it".

The FOP has not shown that the manner in which seniority is defined results in a broke seniority system that needs repair. No concrete examples of unworkable or inherently unfair situations have been presented. The FOP's reasons for

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<sup>7</sup> See *County of Winnebago and Sheriff of Winnebago County and Fraternal Order of Police*, S-MA-00-285 (Benn, 2002) at 18 ("The FOP seeks to change the *status quo*. The burden is therefore on the FOP to justify that change.").

changing the language are theoretical, but theoretical or "good" ideas are not reasons for changing the *status quo* or changing language that came about through the negotiation process.

The FOP's burden has not been met. The Employer's position to maintain the *status quo* is adopted.

### C. Application Of Seniority

#### 1. The Parties' Offers

The Employer seeks to change Section 8.4(C) of the Agreement as follows (Employer Exh. 1; Employer Brief at 2-3, 28-32):

#### Section 8.4. Application of Seniority:

\* \* \*

C. In the event ~~an~~ a shift opening is to be bid in the unit, ~~shift, or other assignment available to bargaining unit members,~~ notice of such bids shall be posted in such a manner as to insure all bargaining unit members have ample notice and opportunity to bid. ~~Job~~ Shift openings shall be filled by bargaining unit members, by use of strict seniority, ~~once all other conditions for particular training or certificate required for the position have been met.~~ Bargaining unit members shall have ten (10) days from the date of posting to submit their bid. As a general rule such bids ~~position~~ shall be filled within sixty (60) days from the close of bidding, unless exigent circumstances prevent filling the shift opening position.

Such circumstances to be discussed with the union upon written request.

It is understood that assignments within the bargaining unit (i.e., Case Investigator, Security, Monitoring, etc.) are not bid-dable, and that bargaining unit members may be assigned to any assignment within the Employer's discretion.

The FOP seeks no change to the language. FOP Exh. 1; FOP Brief at 3-4, 29-33.

#### 2. Discussion On The Proposed Changes

The Employer argues that its proposed change should be adopted because when the current language was negotiated, boilerplate language was used and the Employer interpreted that language to mean that it had discretion as to what should be open for bidding. Tr. 86; Employer Brief at 29. Further, a dispute arose concerning the filling of a job opening in the Records Division with an employee from another department without first posting that job for bid, which was progressed to arbitration. *County of Cook, Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council* (Fletcher, 2002). FOP Exh. 20. Although dismissing the grievance because it was not timely filed, in *dicta*, the arbitrator stated (*id.* at 8):

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... Section 8.4(C) provides the only means by which a bargaining unit employee may "lawfully" move from one position to another in the application of his seniority. To accept the County's interpretation of that language (that is to say the County is free to post vacancies — or not to post vacancies — at its own discretion), would be to limit that particular exercise of seniority so severely as to render the remainder of Section 8.4 relatively meaningless. Any finding of that nature would make no sense whatever.

According to the Employer (Employer Brief at 29) in disagreement with Arbitrator Fletcher's conclusion, "[t]his conclusion is contrary to the well established past pattern and practice and operational needs of the employer." The Employer argues (Employer Brief at 29-31) that the Day Reporting Unit is small with a limited number of assignments and "such a scenario cannot work"; employees are hired to perform a particular job which includes multiple duties, and each employee must be capable to perform a particular job which includes multiple duties; each investigator should be able to perform all tasks associated with their position and abilities as needed depending on operational needs, not employee discretion; under the current language, the Employer is not allowed to determine assignments, despite operational

needs and past pattern and practice; such discretion should be allowed to the Employer in order to increase efficiency and ensure adequate coverage; the employees "may" be overwhelmed as the number of participants increase; when there is a drop in the number of participants, there are times where there are not enough cases to be assigned, creating a situation where employees are sitting around without much work to do despite their abilities and need for their assistance elsewhere; the Employer needs flexibility of assigning employees as needed; by allowing such assignments, experienced employees can be used to train newer employees; bidding for assignments results in loss of skills and knowledge; and the idea of bidding for assignments is "hollow". The Employer also points out (Employer Brief at 31-32) that none of the other collective bargaining agreements for investigators allow bidding for assignments. The Employer concludes (Employer Brief at 32):

The Employers' proposed modification with respect to the bidding of core assignments is necessary in order to avoid any misunderstanding, ensure that contract coincides with the employer's interpretation of the original language, maintain the past

pattern and practice of the employer, ensure that operational needs take precedence over employee preference in terms of assignments, and maintain consistency with the internal comparables.

At the hearing, the following question was asked about the Employer's proposed language change (Tr. 89-90):

ARBITRATOR BENN: ... Are these real examples -- are there real problems where there have been difficulties with making assignments, or are these hypothetical situations?

\* \* \*

But from a practical standpoint, I'm being told to fix something, and it really becomes very basic. Tell me what's broke about it.

The answer given by the Employer was essentially the arguments made in the Employer's Brief as outlined above. Tr. 90-96.

Because the Employer seeks the change, it has the burden (as the FOP did concerning its requested change to the definition of seniority) of showing that the existing system under the current language is "broke". That burden is not met through general assertions and hypothetical situations. The parties negotiated this language. Although the Employer asserts the language was "boilerplate", nevertheless, it was negotiated and agreed to

through the give and take of the bargaining process. Changes through the interest arbitration process do not come about based upon hypothetical problems — and these problems articulated by the Employer are hypothetical. From the Employer's perspective, this change is a good idea. But, as with the FOP's proposed change concerning the definition of seniority, good ideas are not reasons to change collectively bargained language — particularly seniority systems.<sup>8</sup> Taken to its logical extent, if a series of hypothetical problems or a "good idea" could be the basis for changing existing language, then unions would prevail in every economic issue because paying employees the most money and providing the most benefits would theoretically attract and retain the most qualified and dedicated employees. However, that is not how this system works.

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<sup>8</sup> From an employee's perspective, protection of seniority is often paramount. "Seniority protects and secures an employee's rights in relation to the rights of other employees in his seniority group ...." *Axelson Manufacturing Co.*, 30 LA 444, 448 (Prascow, 1958). Seniority is "... a basic objective in collective bargaining negotiations". Schedler, "Arbitration of Seniority Questions", 28 LA 954 at 954 (1957).

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The Employer has not carried its burden on this issue. It has not shown that the existing language results in the operation of a seniority system that is "broke". The Union's position to maintain the *status quo* is adopted.

**V. AWARD**

The Employer's proposal is adopted on wages; the Employer's proposal of no change is adopted on the definition of seniority; and the FOP's proposal of no change is adopted on application of seniority.



Edwin H. Benn  
Arbitrator

Dated: December 3, 2003

