

**INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD**

**JOHN C. FLETCHER - NEUTRAL CHAIRMAN
JOHN G. KALCHBRENNER - EMPLOYER DELEGATE
BARBARA KRAFT - UNION DELEGATE**

**County of Cook and Illinois Fraternal Order of Police Labor Council,
L-MA-96-007, Fletcher, 09/15/98**

**in the matter of the arbitration between
ILLINOIS FRATERNAL ORDER OF POLICE
LABOR COUNCIL**

and

**COUNTY OF COOK and
COOK COUNTY SHERIFF**

**ISLRB No. L-MA-96-007
Investigators II - Fugitive Unit**

OPINION and AWARD

PROCEDURAL BACKGROUND

This matter comes as an interest arbitration between the County of Cook and the Cook County Sheriff as joint employers (“the Employers”) and the Illinois Fraternal Order of Police Labor Council (“the Union”) pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/14 (“the Act”). The bargaining unit consists of approximately twenty-nine (29) employees in the classification of Investigator II assigned to the Fugitive Unit of the Cook County Sheriff’s Department of Community Supervision and Intervention (“DCSI”).

This dispute arises from the parties’ impasse in the negotiation of their initial collective bargaining agreement for this unit, covering the period of December 1, 1995, through November 30, 1998.¹ The parties have stipulated that the only issue before the

¹ This time period corresponds to the 1996, 1997 and 1998 fiscal years for Cook County.

arbitration Panel is the issue of wages for fiscal years 1996, 1997 and 1998, and have further stipulated that the Panel has jurisdiction to hear and decide this issue.

Hearing was held on this matter in Chicago, Illinois, on April 28, 1998, at which time the parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses, and to make such arguments as were deemed pertinent. At the hearing the Union was represented by:

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FACTUAL BACKGROUND

The County of Cook employs approximately 27,000 persons, about 20,000 of whom are unionized in 82 separate bargaining units. Approximately 6,000 employees are

law enforcement officers, the majority of whom are employed jointly by the County, which traditionally has negotiated over economic issues, and the Sheriff, who is responsible for negotiating non-economic issues. The Sheriff's Office consists primarily of four departments. The Cook County Department of Corrections, which operates the Cook County Jail, has approximately 3,000 sworn personnel; the Court Services Department, which provides security in the court facilities, has approximately 1,600 sworn personnel; the Sheriff's Police Department, which provides police services in unincorporated areas of the County and supports smaller municipal police departments, has approximately 515 sworn personnel; and the Department of Community Supervision and Intervention has approximately 450 sworn personnel.

Within the DCSI, there are four major programs. The Electronic Monitoring Program ("EM") permits the home incarceration of defendants by use of a non-removable anklet that is monitored via phone line and supported by periodic, unannounced home visits from EM personnel. The Day Reporting Center ("DRC") requires defendants to report in person on a daily basis until their cases are disposed of in court. The Pre-Release Center ("PRC") is a minimum security facility for less serious substance abuse offenders designed to provide educational programming in a positive environment. The Sheriff's Work Alternative Program ("SWAP") provides community work using post-conviction misdemeanants and minor felons performing strenuous manual labor, such as street and park cleanup.

Employees within the bargaining unit are primarily responsible for locating and apprehending fugitives from the DCSI programs, the majority of whom are either in the EM (approximately 70%) or the DRC (approximately 20%) programs.

FINAL OFFERS

The final offer of the Joint Employers with respect to wages is attached hereto as Exhibit A. The final offer of the Union with respect to wages is attached hereto as Exhibit B. The wage amounts therein have been rounded to the nearest dollar. The Employers' offer represents general wage increases of 3% effective December 1, 1995, 1% effective November 30, 1996, 4% effective December 1, 1996, and 3.5% effective December 1, 1997. The Union's offer represents general wage increases of 4% on each of these four dates.

POSITION OF THE UNION

According to the Union, the parties are, in large measure, in agreement as to the wage issues. It says they agree to a wage structure that is different from the Schedule I grade system and similar to those structures applicable to other sworn employees of the County. It is only with respect to the actual pay amounts that the Union says there is a difference.

The Union, while not objecting to the Employers' identification of fifteen comparable employers, does not agree that the Employers' data reflect employees who perform comparable work. It questions whether the employees of those jurisdictions were

actually responsible for the recapturing of individuals who were AWOL from the electronic monitoring programs. The Union also questions the relationship between the wages of the employees studied by the Employers and the wages of police officers in the respective jurisdictions.

The Union insists the Employers have been told by a succession of Arbitrators that there is a need to close the pay gap that exists between the law enforcement units it employs. In this regard, the Union cites *County of Cook/Sheriff of Cook County and Teamster Local Union No. 714*, L-MA- 94-005 (McAlpin, 1994); *County of Cook/Sheriff of Cook County and Teamster Local Union No. 714*, L-MA-95-001 (Goldstein, 1995); and *County of Cook/Sheriff of Cook County and Teamster Local Union No. 714*, L-MA-97-_____ (Berman, 1998). It submits there is a great disparity in pay between the Cook County Police Officers and the other sworn employees of the County, and notes the Employers' counsel acknowledged that the Cook County Police were among the highest paid officers in their suggested list of comparables. Referring to the Awards of Arbitrators Goldstein and Berman, the Union argues it is appropriate to look at dollar-for-dollar comparisons with the police unit to determine if a proposal tends to give this unit a "catch up" with the police. According to the Union, only its proposal would do so because the Employers' proposal is nearly equivalent to its offer to the police unit.

The Union denies that this unit should be comparable to the Investigators II in the EM program, asserting the Fugitive Unit Investigators' duties are more similar to those of the police because they perform both detective and patrol functions. The Union notes the

Fugitive Investigators work primarily in high crime areas with inmates who are clearly uncooperative and often dangerous, and frequently get involved in other police matters. It says the Sheriff clearly recognized this difference when he insisted on placing the Investigators in the two units in different bargaining units and then allowed the EM Investigators to join the correctional officer bargaining unit.

The Union is not satisfied with the wage agreement accepted by the Investigators in the EM unit. It points out that Investigators in each of the units were promoted from a correctional officer or deputy position, which would entitle them to an increase upon promotion of 8-10%. Arguing the Employers' offer puts the pay schedule for Investigators into a virtual equivalence with correctional officers, the Union maintains the Investigators will not receive the benefit of the promotional increase. Moreover, says the Union, new inductees into the Investigator ranks may "leap frog" over current Investigators who have more seniority in the unit but comparable overall seniority with the County. As an example, the Union says a correctional officer with ten years of service would move to an Investigator position under the Employers' proposal at the fifteen-year longevity step.

For these reasons, the Union asks that its proposal on wages be awarded by the Panel.

POSITION OF THE EMPLOYERS

Of the eight evaluative factors cited in the statute, the Employers aver the factor known as “comparability”² is generally considered the most important factor. They argue

² 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:

- . In public employment in comparable communities.
- . In private employment in comparable

they have presented comprehensive internal and external comparability evidence that supports their wage offer. Internally, the Employers say there is no perfect comparison within the County, but suggest the EM Investigators most resemble the Fugitive Investigators in terms of training, experience and duties. They deny that the Sheriff's Police offer an appropriate comparison because their training and experience is far more extensive than that of the Fugitive Investigators. They further contend the duties of the Police Officers are significantly different from those of the Fugitive Investigators.

For external comparability, the Employers state they conducted a nationwide survey of large urban areas, seeking information on employees who perform duties similar to those of the Fugitive Investigators. They presented data from fifteen jurisdictions they say are comparable and have electronic monitoring programs as well as employees with similar duties. According to these data, argue the Employers, the wages paid to Cook County Fugitive Investigators are highly competitive, placing second in maximum wage rates and sixth in minimum wage rates among the fifteen jurisdictions. They note that of the five jurisdictions with higher minimum rates, only Dallas County, Texas, also has a higher maximum wage rate. The Employers explain that Dallas County also makes offenders charged with any crime, including murder and sex offenses, eligible for electronic monitoring, unlike Cook County, which screens DCSI detainees to ensure they are low risk and non-violent.

The Employers aver the Union presented no comparability data other than testimony regarding the duties and responsibilities of the EM Investigators. The

Employers contend this evidence was presented by the Union to suggest that the EM Investigators should be paid less than the Fugitive Investigators. Because it says the Union produced no evidence regarding law enforcement units it believes the be comparable to the Fugitive Investigators, the Employers ask that the Union's comparability evidence be disregarded. They argue their evidence readily shows that the Employers' offer best fulfills Section 14(h)(4) of the Act.

With respect to its evidence on internal comparability, the Employers argue the EM Investigators are the most appropriate comparison because their training, experience and duties are similar to the Fugitive Investigators. According to the Employers, both groups of Investigators have identical professional backgrounds prior to being assigned to DCSI in that they have either served as a Deputy Sheriff performing court security functions, or as a Correctional Officer monitoring inmates in the Cook County Jail. The Employers state the two groups of Investigators have either attended the Court Services Academy or the Corrections Academy, and neither unit has any additional academy training. The Employers further note they both hold the same professional merit certification in the Cook County Sheriff's Merit Board and are identically recognized by the Illinois Law Enforcement Training Standards Board.

The Employers further argue the duties of the two groups of Investigators are similar in that approximately 70% of the Fugitive Unit's work is apprehending EM detainees who have violated the program's rules or otherwise gone AWOL. They note the EM Investigators conduct field investigations of detainee rule violations, make

unannounced home visits and arrest detainees who break the rules of the EM program. When EM detainees goes AWOL, the Employers note, the EM Investigators, during the initial 16 hours, have the responsibility for locating and arresting them. An additional 20% of the arrests by Fugitive Investigators involves detainees from the DRC, who, according to the Employers, must meet the same criteria as for EM. The Employers also aver there are often instances when Investigators from the two units work together. The Employers deny that the work of a Fugitive Investigator is substantially more dangerous than that of an EM Investigator. They state that detainees are more likely to hide or flee from either Investigator rather than resist arrest.

The Employers deny that it is appropriate to compare the Fugitive Investigators with Sheriff's Police Officers because the latter's duties are different and their training and experience are superior to the Investigators'. To apply for a position as Police Officer, according to the Employers, an individual must pass written, psychological and physical fitness tests. The Employers further state Police Officer candidates must then attend a 440 hour course of police training at the SPD Training Academy in addition to the 400 hours of training they had received as a Deputy Sheriff or Correctional Officer. The Fugitive Investigators, say the Employers, need only an additional 40 hours of formal training when they are transferred to DCSI. Additionally, note the Employers, Police Officers are certified by the Training Board as police officers, while Fugitive Investigators are certified as Deputy Sheriffs or Correctional Officers.

The Employers next argue the duties of the Police Officers are different from those of the Fugitive Investigators. The Police Officers' duties, say the Employers, include front-line police protection, response to 911 calls, fighting gambling, prostitution and organized crime, investigating "cold" homicide cases and bomb disposal. They also distinguish the Fugitive Investigators from the Police Officers in the Fugitive Warrants Section, who are responsible for locating, apprehending and transporting fugitives wanted on felony warrants throughout the County, as well as apprehending and transporting fugitives who have fled Cook County from other counties and states. This group, according to the Employers, also conducts periodic warrant sweeps in conjunction with the FBI Warrants Unit and other law enforcement agencies. The fugitives with whom the Fugitive Investigators work, note the Employers, are screened to ensure they are non-violent, while the Police Officers work with the most dangerous criminals in the State, who are sought for crimes such as murder, rape, armed robbery and kidnapping, who would not be eligible for any DCSI program.

Finally, the Employers presented cost of living data (CPI-U), which they say show the economy is not inflationary, necessitating only very modest wage increases in order to keep pace with increases in living costs. They note their proposal exceeds the cost of living experienced locally and nationally in the first two years of the Agreement. They further project their proposed increase will outpace inflation for the remainder of 1998.

The Employers conclude that the overall compensation package for Fugitive Investigators is fair, providing an overall general wage increase totaling 11.5 percent over

the three years for all unit employees, and even larger increases through enhanced longevity steps for the most senior unit employees. They ask, therefore, that the Panel adopt the Joint Employers' wage proposal.

DISCUSSION

Under the Statute, this Panel is required to base its findings, opinions and order upon eight specific factors, as applicable. Of those eight factors, the Panel received evidence touching on two, namely:

- (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.

and

- (5) The average consumer prices for goods and services, commonly known as the cost of living.

As the Panel finds that both proposals would provide wage increases in excess of increases in the cost of living, this factor is not determinative. The Panel has reviewed the record with respect to the other six specified factors and finds them not to be determinative, as well.

The thrust of the Union's evidence in this case goes to its assertion that the Fugitive Investigators should be compared with Sheriff's Police Officers, while the

Employers argue they are more appropriately compared with Investigators in the DCSI Electronic Monitoring and Day Reporting Units.

While it is true the Fugitive Investigators may, at times, become involved in the apprehension of violent criminals, the data proffered by the Union simply do not support any suggestion that this is a major portion of the work. The Activity Report showing arrests and special investigations conducted by the DCSI Fugitive Unit during 1995 shows a total of 323 entries, 270 of which were "Day Reporting No-Shows." These are individuals who have been accepted into the Day Reporting Program but have failed to attend as required. The next largest number of arrests (6) was in the category "Release from the D.O.C. in error." In these cases, the Investigators apprehended persons who, for some reason, were erroneously released from the Cook County Jail. During the same year, the Fugitive Investigators cleared 95% of the 1635 AWOL cases assigned to them, with 1005 AWOLs being reincarcerated by them. There are some entries that suggest the Investigators were required to apprehend violent offenders, *e.g.*, gun charges (1), unlawful use of weapons (3), armed robbery (1) and battery/resisting arrest of a Sheriff's Officer (4), but the numbers strongly indicate these are relatively rare when compared to their normal day-to-day duties.

While the Employers acknowledge there is the possibility of human error, it is evident efforts are made to limit participation in the Electronic Monitoring and the Day Reporting Programs to persons who are not likely to be violent. Specifically, anyone charged with a violent crime or having a history of violent criminal activity is ineligible for

these programs. The evidence further shows that these persons, when they are fugitives as a result of being AWOL from the program, generally seek to elude the Investigators rather than resist arrest. The Union's witness, Investigator II Patrick Moriarty, testified the fugitives often hide in closets and under beds, or flee by jumping out of windows or driving away. When asked if he has ever been injured, he replied that he has broken a couple of fingers and other Investigators have broken arms and wrists apprehending fugitives. It is not clear, however, if these injuries were incurred during a chase or during a physical confrontation with a fugitive.

In contrast, the Sheriff's Police Officers regularly deal with offenders of various sorts, from traffic violators to violent criminals. They are regularly involved in crimes in progress. While the Fugitive Investigators might be exposed to the same risks as the Police Officers, the Panel finds the frequency of such exposure to be a distinguishing characteristic. Furthermore, the record sufficiently establishes that Police Officers are required to have substantially more formal training than the Fugitive Investigators. The Police Officers are required to have an additional 440 hours of academy training above the 400 hours they received as Correctional Officers or Deputy Sheriffs, while the Fugitive Investigators receive only 40 hours of additional training when transferred to the DCSI. This additional training translates into the expectation that the Police Officers would have a higher skill level, which, in turn, would warrant higher compensation.

While the EM Investigators are responsible for setting up and maintaining the electronic monitoring equipment, it is also evident they share the responsibility for

apprehending AWOLs with the Fugitive Investigators. During the first two watches (up to 16 hours) after detainees are designated as AWOL, it is the responsibility of the EM Investigators to attempt to locate and apprehend them. The Panel was not presented with information that would show what proportion of these AWOLs are apprehended by the EM Investigators, and it is impossible to draw any conclusions that those not caught within the first sixteen hours are any more dangerous than those who are.

It is additionally relevant that the Fugitive Investigators have historically been paid at the same rates as the EM Investigators and the Day Reporting Investigators. Both of those units have reached collective bargaining agreements with rates of pay that are identical to each other, as well as identical to the pay schedule proposed by the Employers in this case. As noted by Arbitrator Goldstein in *County of Cook/Sheriff of Cook County and Teamster Local Union No. 714*, L-MA-95-001 (1995), the Panel should not award “breakthroughs” that would substantially change the *status quo* in the absence of substantial and compelling justification. In this case, there is insufficient justification to warrant discontinuing the parity that has existed between the Fugitive Investigators and the other two units. This Panel does not accept the Union’s characterization of Arbitrator Goldstein’s Award (as well as Arbitrator McAlpin’s Award) that the pay gap with the Police Officers should be narrowed. Both of those Awards refer to Deputy Sheriffs, who are paid at a rate lower than the Investigator II rate that was agreed to by the Electronic Monitoring and Day Reporting Unit employees. The Awards cited by the Union do not

establish that an inequitable pay gap exists between the Investigator II employees and the Police Officers.

The Panel concludes, therefore, that internal comparability favors the Employers' proposal. The only evidence before the Panel concerning external comparability was proffered by the Employers. Although the Union questions the appropriateness of the inclusion of some of the jobs cited by the Employer, the Panel has nothing else to which the proposals may be compared. If the Panel were to reject the Employers' data on external comparability, it would be required to base its decision solely upon the internal comparability data.

Significantly, the Union's objection goes only to the comparability of the particular jobs, and not to the comparability of the jurisdictions identified by the Employers. The Employers' data, however, show that the employees identified in each jurisdiction are responsible for the apprehension of program violators. The Panel recognizes it is often quite difficult to identify positions in other communities that are totally identical to those that are the subject of an arbitration. To be sure, in this case we can safely assume that the employees in other jurisdictions are required to perform the same type of apprehension duties that are the bulk of the duties of the Fugitive Investigators, but we do not know what proportion of their work this represents. Some, such as the Sheriff's Police Officers in Wayne County, Michigan, may also perform the same type of police activities as are performed by the Sheriff's Police Officers in Cook County, while others may have duties

with less exposure to risk than the Fugitive Investigators. It is quite possible these differences, if they exist, will simply “average out.”

The external comparability data presented by the Employers show that their wage proposal places the Fugitive Investigators at a high competitive level with respect to employees of the other jurisdictions. Only one jurisdiction, Dallas County, Texas, has both higher minimum and maximum rates of pay. This difference may be sufficiently explained by the fact that Dallas County does not limit participation in the electronic monitoring program to non-violent offenders. Under the circumstances, the Panel concludes the Employers’ proposal is at least comparable to wages paid for similar work in other comparable jurisdictions.

The evidence of record considered by the Panel shows the Employers’ proposal to more nearly comply with the applicable factors prescribed in Section 14(h) of the Illinois Public Employees Labor Relations Act.

AWARD

By a majority vote, the Panel adopts the wage proposal of the Joint Employers.

_____(Date _____)
John C. Fletcher, Neutral Arbitrator

_____(Date _____)
John G. Kalchbrenner, Employer Delegate - Concurring

_____(Date_____)
Barbara Kraft, Union Delegate - Dissenting