

**ILLINOIS LABOR RELATIONS BOARD  
INTEREST ARBITRATION**

Before  
**PETER R. MEYERS**  
Arbitrator

In the Matter of the Interest Arbitration  
between:

**ILLINOIS FRATERNAL ORDER OF  
POLICE LABOR COUNCIL,**

Union,

And

**COUNTY OF  
TAZEWELL/TAZEWELL COUNTY  
SHERIFF,**

Employer.

Case No. **S-MA-02-054 (Corrections)**

**Wages, Hours, Terms, and Conditions of  
Employment**

**DECISION AND AWARD**

**Appearances on behalf of the Union**

Thomas F. Sonneborn—General Counsel

**Appearances on behalf of the Employer**

Bruce C. Beal—Attorney  
Chris W. Walters—Attorney

This matter came to be heard before Arbitrator Peter R. Meyers on the 29<sup>th</sup> day of May 2003 in the County Board Room, 1<sup>st</sup> Floor, Old Post Office Building, 334 Elizabeth Street, Pekin, Illinois. Mr. Thomas F. Sonneborn presented on behalf of the Union, and Messrs. Bruce C. Beal and Chris W. Walters presented on behalf of the Employer.

## **Introduction**

The parties in this matter are Tazewell County, Illinois, and the Tazewell County Sheriff (hereinafter collectively referred to as "the Employer"), and the Illinois Fraternal Order of Police Labor Council (hereinafter "the Union"). The parties entered into collective bargaining negotiations for a successor collective bargaining agreement to replace their previous contract. The parties engaged in extensive negotiations over the new agreement, but by January 2003, they had not yet successfully resolved certain of the issues raised during negotiations. The parties thereafter submitted this matter for Compulsory Interest Arbitration with the Illinois Labor Relations Board.

Pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.*, this matter was scheduled to be heard by Neutral Arbitrator Peter R. Meyers on May 29, 2003, in Pekin, Illinois. Before this matter came to be heard, however, the parties engaged in additional negotiations over the remaining unresolved issues. The parties successfully reached a verbal agreement on all of these issues, and then subsequently entered into a written stipulation memorializing their resolution of the issues that had been submitted for arbitration. At the parties' request, this Decision and Award formalizes the parties' agreement.

## Relevant Statutory Provisions

### ILLINOIS PUBLIC LABOR RELATIONS ACT 5 ILCS 315/1 et seq.

**Section 14(h)** Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, 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) Comparisons 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 between the parties, in the public service or

in private employment.

### **Issues Submitted for Arbitration**

The parties submitted issues relating to the following contractual provisions for Compulsory Interest Arbitration:

1. Article VII - Bill of Rights;
2. Article VIII - Resolution of Impasse;
3. Article X - Discipline and Discharge;
4. Article XI - Dispute Resolution and Grievance Procedure;
5. Article XIII;
6. Article XV;
7. Article XVI – Vacations;
8. Article XVII – Holidays;
9. Article XIX – Sick Leave;
10. Article XXI – Unpaid Leaves of Absence;
11. Article XXII – Insurance;
12. Article XXVI – Physical Fitness;
13. Article XVII – Wages; and
14. Article XVIII – Miscellaneous Provisions

### **Discussion and Decision**

This matter relates to the bargaining unit of corrections officers employed by the Employer and represented by the Union. The parties' written stipulations set forth their full and complete agreement in resolution of all remaining issues between them in

connection with their new collective bargaining agreement. The parties' written stipulation provides a detailed description of their agreement on each of the issues that were submitted for arbitration, and it establishes the remaining terms that shall be included in their new collective bargaining agreement.

What follows are the agreed-upon stipulations that resolve the parties' dispute as to each of the issues submitted for binding interest arbitration. The parties' new collective bargaining agreement shall include the modifications, additions, and deletions described below.

#### **ARTICLE VII – BILL OF RIGHTS**

The language of **Section A** remains unchanged from the parties' previous collective bargaining agreement.

The following language shall be inserted into **Section B**:

No photo of any officer under investigation shall be made available prior to a conviction for a criminal offense or prior to a decision being rendered, unless otherwise required to comply court order, subpoena, or a Freedom of Information Act request.

#### **ARTICLE VIII – RESOLUTION OF IMPASSE**

Article VIII remains unchanged from the parties' previous collective bargaining agreement.

#### **ARTICLE X – DISCIPLINE AND DISCHARGE**

The language of Subparagraph C from the previous collective bargaining agreement shall be replaced with the term "unpaid suspension."

#### **ARTICLE XI – DISPUTE RESOLUTION AND GRIEVANCE PROCEDURE**

All references in this Article to "working days" shall be changed to "business days." A "business day" shall be defined as Monday through Friday, excluding weekends and holidays.

The language of **Section 4, Subject Matter**, shall be modified as follows:

Only one subject matter shall be covered in any one grievance. A grievance shall contain a statement of the grievant's position, the Article, the Section of the Agreement allegedly violated, the date of the alleged violation, the relief sought, and the signatures of the grieving employee(s) and a local FOP representative, and the date.

The following language shall replace the existing language, if any, that appears as "**Section 8, Steps in Procedure**," within the parties' previous collective bargaining agreement.

Disputes arising under this Agreement shall be resolved as follows:

Step 1. If no agreement is reached between the employee and the Supervisor, as provided for in Section 2 – Dispute Resolution, the Lodge may prepare a written grievance on a form mutually agreed to and present the same to the Sheriff which shall not be more than fifteen (15) business days from the date of the event or occurrence giving rise to the grievance regardless of the limitation periods provided for in Section 2. Within ten (10) business days after the grievance has been submitted to the Sheriff, the Sheriff or his designee may meet with the grievant and the Lodge representative to discuss the grievance and make a good faith attempt to resolve the grievance. Whether the Sheriff or designee meets with the grievant or not, he shall, nevertheless, respond in writing to the grievant and the Lodge representative within fifteen (15) business days from the submission of the written grievance to the Sheriff. If the resolution of the grievance requires the expenditure of money beyond available budget funds, the grievance shall be referred to Step 2.

Step 2 of this Section remains unchanged from the parties' previous collective bargaining agreement.

Step 3. Unless the parties agree otherwise, the parties shall request the services of a mediator from the Federal Mediation and Conciliation Service. The function of the mediator shall be to attempt to assist the parties in resolving the grievance prior to arbitration. To this end, the parties shall meet with the mediator at a mutually agreeable time/place/date, without undue delay. The mediator shall have the power to recommend a resolution, but shall have no power to impose a resolution.

Step 4. If the dispute is not settled at Step 3, the matter may be submitted to arbitration within ten (10) business days after the Committee's written decision or the expiration of the five (5) day period if the Committee fails to render a written

decision. Within ten (10) business days after the matter has been submitted to arbitration, a representative of the Employer and the Lodge may meet to select an arbitrator from a list of mutually agreed to arbitrators. . . . (et al.)

The language that appears as Section 9 of this Article in the parties' previous collective bargaining agreement shall be deleted in its entirety from the parties' new collective bargaining agreement.

### **ARTICLE XIII**

The language of Section 1 of this Article shall remain unchanged from the parties' previous collective bargaining agreement.

The following language shall be added to **Section 5, Layoffs**:

Employer shall give thirty (30) day prior notice to the employee of his/her layoff.

The third sentence of **Section 9** shall be modified as follows:

The Sheriff or his designee shall post a list of available days off and shifts including swing shifts for Sergeants, for bidding no later than twenty (20) working days prior to the effective date.

In addition, the following new paragraph shall be added to **Section 9**:

Correctional officers shall bid shifts so that a minimum of one female and one male officer is on each shift.

### **ARTICLE XV**

The following language shall be deleted from **Section 2**:

Time spent on vacation, holidays, sick leave or authorized leave shall not be considered hours worked in computing overtime.

The following language shall be added to the end of **Section 4**:

but under no circumstances shall an employee work an entire shift without a lunch period.

The language of **Section 5** and **Section 8** shall remain unchanged.

## **ARTICLE XVI – VACATIONS**

The language that appears in **Section 4** of the parties' previous collective bargaining agreement shall be deleted, in its entirety, from the parties' new collective bargaining agreement.

The language that appears in **Section 5, Vacation Carry-Over**, of the parties' previous collective bargaining agreement shall be replaced, in its entirety, with the following:

Employees may carry over from one fiscal year to another two (2) weeks of vacation time. If an employee fails to use vacation earned during the fiscal year in excess of the maximum permitted carry over, he/she shall lose the same. Notwithstanding the foregoing, if the Employer unreasonably denies a vacation request, then the employee will be entitled to carry over the vacation requested into the following fiscal year for use. No employee may sell back unused vacation at the end of the year.

Employees may anticipate and use up to two (2) weeks of vacation that is not yet earned.

The language of **ARTICLE XVII – HOLIDAYS** shall remain unchanged.

## **ARTICLE XIX – SICK LEAVE**

The language of **Section 2** shall remain unchanged.

The language that appears in **Section 4** of the parties' previous collective bargaining agreement shall be replaced, in its entirety, with the following:

Except in cases of emergencies, the employee will notify the Corrections Sergeant on duty, or the officer in charge (OIC) if no Sergeant is working, at least two (2) hours in advance of the start of the shift for which sick leave is being requested.

## **ARTICLE XXI – UNPAID LEAVES OF ABSENCE**

The reference in **Section 1** of the parties' previous collective bargaining agreement to "Director of Administrative Services" shall be deleted and replaced with "County Administrator."

## **ARTICLE XXII – INSURANCE**

The following language shall be added:

### **Section 5, Survivor’s Insurance**

The Employer agrees to provide, without charge, the same health insurance coverage and benefits provided to bargaining unit employees to the surviving spouse and all dependents of an employee who dies as a result of performing his/her official duties.

- (a) Such surviving spouse and/or dependents shall continue to be provided coverage and benefits by the Employer until, in the case of the spouse, such time as he or she may remarry or otherwise becomes eligible for other insurance or Medicare, and in the case of dependents, until such time as they no longer qualify for coverage under the terms of the plan.
- (b) The costs of such coverage and benefits shall be fully paid by the Employer.
- (c) For purposes of this section only, the phrase while performing his/her official duties shall include all supervisory and other law enforcement activities in which a deputy might engage in during the normal course of service. The Employer shall not be required to provide this benefit to the surviving spouse or dependents of an employee who dies as a result of natural or other causes or suicide.

## **ARTICLE XXVI – PHYSICAL FITNESS**

The language of **Section 2** shall be modified as follows:

The Sheriff adopts the Illinois Secretary of State’s Physical Fitness Program as it exists on 12/01/01 and the same is hereby incorporated by reference. The program shall be administered and supervised by Sheriff’s designee. Those who successfully complete the test each year shall be eligible for the achievement bonus provided by in Section 3 herein. The test shall remain the same during the duration of this Agreement. Results of the skin fold test shall not be used to determine eligibility.

## ARTICLE XVII – WAGES

The language of **Section 1, Base Pay Rates**, shall be modified as follows:

Effective December 1, 2001, employees will receive a 4 ½% wage increase;  
Effective December 1, 2002, employees will receive a 4 ½% wage increase; and  
Effective December 1, 2003, employees will receive a 3% wage increase.

It is agreed that all employees on the payroll as of May 29, 2003, shall be eligible for and receive a retroactivity pay check.

The following language shall be added under the heading “**Longevity (Appendix A)**”:

Effective December 1, 2002, on the seventeenth (17<sup>th</sup>) anniversary of each employee covered under this Agreement, such employee shall receive a three percent (3%) longevity increase that shall be added to the base pay rate. Effective after December 1, 2003, on the nineteenth (19<sup>th</sup>) anniversary of each employee covered under this Agreement, such employee shall receive a three percent (3%) longevity increase that shall be added to the base pay rate.

## ARTICLE XVIII – MISCELLANEOUS PROVISIONS

The language that appears in **Section 6** of the parties’ previous collective bargaining agreement shall be replaced, in its entirety, with the following:

The employer agrees to repair or replace, as necessary, an officer’s eye glasses, contact lenses, prescription sun glasses, wrist watches (limited to \$100.00), if such are damaged or broken, when during the course of the employee’s duties the employee is required to exert physical force or is attacked by another person. The incident is to be documented with the immediate supervisor by providing proof of payment.

The following shall be added as **Section 9, Alcohol and Drug Testing**:

### Section 1. Statement of Policy

It is the policy of Tazewell County and the Illinois Fraternal Order of Police Labor council that the public has the right to expect persons employed by the Tazewell County Sheriff’s Department to be free from the effects of drugs and alcohol. The Employer has the right to expect its employees to report for work fit and able for duty. The purposes of this policy shall be achieved in such manner as not to violate any established rights of bargaining unit employees.

## Section 2. Prohibitions

Employees shall be prohibited from:

(a) Consuming or possessing alcohol, unless in accordance with duty requirements, at any time during the work day or anywhere on County premises, job sites, including all County buildings, properties, vehicles and the employee's personal vehicle while engaged in County business;

(b) Illegally consuming, possessing, selling, purchasing or delivering any illegal drug;

(c) Failing to report to their supervisor any known adverse side effects of medication or prescription drugs that they are taking.

This section is not intended to limit the duty of the Employer to enforce the laws of the State of Illinois and all regulations of the Tazewell County Sheriff's Department, or to restrict the Employer's right to require prospective hires to submit to a drug screening procedure.

## Section 3. Drug and Alcohol Testing

When the Sheriff has reasonable suspicion to believe that an employee is under the influence of alcohol or drugs during the course of the work day, the Sheriff shall have the right to require the employee to submit to alcohol or drug testing as set forth in this Agreement. Employees who test positive for either prescribed drugs or alcohol by virtue of the employer having reasonable suspicion are subject to random testing for a period not to exceed one (1) year from the date of the confirmed positive test result as a condition of continued employment.

## Section 4. Order to Submit to Testing

At the time an employee is ordered to submit to testing authorized by this Agreement, the Sheriff shall provide the employee with a written notice of the order, setting forth the objective facts and reasonable inferences drawn from those facts which have formed the basis of the order to test. The employee shall be permitted to consult with a representative of the FOP or a private attorney at the time the order is given; provided, however, that in no circumstances may implementation of the order be delayed longer than forty-five (45) minutes. No questioning of the employee shall be conducted without first affording the employee the right to FOP representation and/or legal counsel. Refusal to submit to such testing may subject the employee to discipline, but the employee's taking of the test shall not be construed as a waiver of any objection or rights that he may have.

## Section 5. Tests to Be Conducted

In conducting the testing, authorized by this Agreement, the Tazewell County Sheriff's Department shall:

- a) Use only a clinical laboratory or hospital that is licensed pursuant to the Illinois Clinical Laboratory Act that has or is capable of being accredited by the National Institute of Drug Abuse (NIDA):
- b) Insure that the laboratory or facility selected conforms to all NIDA standards;
- c) Establish a chain of custody procedure for both sample collection and testing that will insure the integrity of the identity of each sample and test result. No employee covered by this Agreement shall be permitted at any time to become a part of this chain of custody;
- d) Collect a sufficient sample of the same bodily fluid or material from an employee to allow for initial screening, a confirmatory test and a sufficient amount to be set aside reserved for later testing if requested by the employee;
- e) Collect samples in such a manner as to insure a high degree of security for the sample and its freedom from adulteration;
- f) Confirm any sample that tests positive in the initial screening for drugs by testing the second portion of the same sample by gas chromatography/mass spectrometry (GCMS) or an equivalent or better scientifically accurate and accepted method that provides quantitative data about the detected drug or drug metabolites;
- g) Provide the employee tested with an opportunity to have the additional sample tested by a clinical laboratory or hospital facility of the employee's own choosing, at the employee's expense; Provided the employee makes such demand of the Sheriff or his designee within seventy-two (72) hours of receiving the results of the test;
- h) Require that the laboratory or hospital facility report to the Sheriff that a blood or urine sample is positive only if both the initial screening and the subsequent confirmatory test indicate the presence of a substance. Should any information concerning such testing or the results thereof be used herein (i.e. billings for testing that reveal the nature or number of tests

administered), the Employer will not use such information for any manner or forum adverse to the employee's interests;

- i) Require that with regard to alcohol testing, for the purpose of determining whether or not the employee is under the influence of alcohol, test results that show an alcohol concentration of .02 or more based upon the grams of alcohol per 100 milliliters of blood be considered positive. This shall not preclude the Employer from attempting to show that lesser test results, i.e., below .02, demonstrate that the employee was under the influence of alcohol, but the Employer shall bear the burden of proof in such cases. The Employer shall also be permitted to offer and the employee shall be required to submit to a breathalyzer test administered by non-bargaining unit personnel, provided that such breathalyzer test shall be conducted by qualified personnel in an area which affords privacy;
- j) Provide each employee tested with a copy of all information and reports received by the Employer in connection with the testing and the results at no cost to the employee;
- k) Insure that no employee is the subject of any adverse employment action except temporary reassignment or relief from duty with pay during the pendency of any testing procedure. Any such temporary reassignment or relief from duty shall be immediately discontinued in the event of a negative test result.

#### Section 6. Right to Contest

The Labor Council and/or the employee, with or without the Labor Council, shall have the right to file a grievance concerning any testing permitted by this Agreement, contesting the basis for the order to submit to the tests, the right to test, the administration of the tests, the significance and accuracy of the test, the consequences of the testing or the results or any other alleged violation of this Agreement. Such grievances shall be commenced at Step 2 of the grievance procedure. It is agreed that the parties in no way intend or have in any manner restricted, diminished, or otherwise impair any constitutional rights that employees may have with regard to such testing. Employees retain any such constitutional rights as may exist and may pursue the same at their own discretion, with or without the assistance of the Labor Council.

#### Section 7. Voluntary Requests for Assistance

The Employer shall take no adverse employment action against an employee who prior to any mandatory testing and for the first time voluntarily seeks treatment,

counseling or other support for an alcohol or prescribed drug problem, other than the Employer may require reassignment of the employee with pay if he is then unfit for duty in his current assignment. The Employer may make available through its Employee Assistance Program (if available) a means by which the employee may seek referrals and treatment. All such requests shall be confidential and any information received by the Employer, through whatever means, shall not be used in any manner adverse to the employee's interests, except reassignment as described above.

All employees who voluntarily seek assistance with a prescribed drug and/or alcohol related problem, shall not be subject to any disciplinary or other adverse employment action by the Employer.

The foregoing is conditioned upon:

- a) The employee agreeing to appropriate treatment as determined by the physician(s) involved;
- b) The employee discontinues his abuse of the drug or abuse of alcohol;
- c) The employee completes the course of treatment prescribed, including an "after-care" group for a period of up to twelve (12) months;
- d) The employee agrees to submit to random testing during hours of work during the period of "after-care" for a period of not more than one (1) year.

Employees who do not agree to or act in accordance with the foregoing, or who test positive for drugs, or test positive for alcohol shall be subjected to discipline, up to and including discharge, based on the facts and circumstances of the particular case. Employees who test positive for either prescribed drugs or alcohol by virtue of the employer having reasonable suspicion are subject to random testing for a period not to exceed one (1) year from the date of the confirmed positive test result as a condition of continued employment.

The foregoing shall not be construed as an obligation on the part of the Employer to retain an employee on active status through the period of rehabilitation if it is appropriately determined that the employee's current use of alcohol or drugs prevents such individual from performing the duties of a Tazewell County Sheriff's Department employee or whose continuance on active status would constitute a direct threat to the property or safety of others. Such employees shall be afforded the opportunity to use any accumulated paid leave that he/she may have, such as compensatory time, vacation time, sick days, or personal leave days, or take an unpaid leave of absence pending treatment at their option.

## Section 8. Discipline

The Employer shall have the right to discipline employees or recommend discipline against employees, as may be appropriate, for any violations of this Policy. Such discipline, or recommendations for such, may include discharge subject to the provisions of Section 7.

Positive confirmed test results for any illegal drug shall result in termination of an employee.

The following language shall be added as **Section 10, Duty Injury Leave**:

A deputy who is temporarily disabled as the result of sickness, accident or injury in the line of duty shall be entitled to the statutory benefits of 5 ILCS 345/.01 *et seq.* Deputies may also be entitled to benefits under the Illinois Worker's Compensation Act provisions.

### **Stipulated Award**

This Arbitrator finds that the parties' stipulated agreement on all of the issues set forth above shall be adopted and incorporated into the parties' new collective bargaining agreement.

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**PETER R. MEYERS**  
**Impartial Arbitrator**

**Dated this 19<sup>th</sup> day of August 2003**  
**At Chicago, Illinois.**