

**IN THE MATTER OF ARBITRATION**

**BETWEEN**

**County of St. Clair and the  
Sheriff of St. Clair County**

**AND**

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

**ARBITRATION AWARD:**

**ILLINOIS STATE LABOR  
RELATIONS BOARD CASE NO.  
S-MA-03-067  
CORRECTIONS OFFICERS**

**Before Raymond E. McAlpin,  
Neutral Arbitrator**

**APPEARANCES**

**For the Union: Gary Bailey, Attorney**

**For the Employer: Alvin Paulson, Attorney**

**PROCEEDINGS**

**The Parties were unable to reach a mutually satisfactory settlement of their negotiations covering the period January 1, 2003 through December 31, 2005 and, therefore, submitted the matter to arbitration pursuant to the Illinois Public Employee Labor Relations Act. The**

**Parties did not request mediation services. The hearing was held in Belleville, Illinois on July 21, 2004. At these hearings 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. The Parties stipulated that the matter is properly before the Arbitrator. Briefs were received on September 21, 2004.**

### **STATUTORY CRITERIA**

**(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 the 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. 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:

1. In public employment in comparable communities.
  2. 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.
- (I) In the case of peace officers, the arbitration decision shall be limited to wages, hours and conditions of employment and shall not include the following: (I) residency requirements; (ii) the type of equipment, other than uniforms, issued or used; (iii) manning; (iv) the total number of employees employed by the department; (v) mutual aid and assistance agreements to other units of government; and (vi) the criterion pursuant to which force, including deadly force, can be used; provided, nothing herein shall preclude an arbitration decision regarding equipment or manning levels if such decision is based on a finding that the equipment or

manning considerations in a specific work assignment involve a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the factors upon which the decision may be based, as set forth in subsection (h).

ISSUES

	<u>Union</u>	<u>Employer</u>
Wages:	1/1/03: 0%-4.5% 1/1/04: 3.25% 1/1/05: 3.25%	1/1/03: 0%-3.5% 1/1/04: 2.0% 1/1/05: 2.0%
Scheduling:	Employees to choose the scheduling of their short days.	Status quo.
Collective Bargaining wage pmts. to Union Reps.:	Asking for 2 bargaining unit members to be paid for negotiations sessions that are held on days & times that the bargaining unit members are scheduled to work.	Status quo.

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

The Union argued that of all of the statutory criteria are of significance in this dispute, and those factors are the comparable communities, traditional factors in collective bargaining, cost of living and overall compensation. Many arbitrators have found that the factor of external comparability is the main factor for deciding the appropriateness and reasonableness of a final offer. The traditional factor in collective bargaining, status quo, is extremely important to interest arbitration. Where one side wishes to deviate from the status quo, it bears a special burden.

With respect to wages, the Parties did agree that anniversary date increases would be implemented as of January 1, 2003. In addition, in order to rectify a problem in the wage scale, there would be escalator increases in the first year followed by two years of across-the-board increases. The Parties also agreed that corrections officers needed larger wage increases at the top salary steps than at the bottom of the salary scale. These are consistent with the agreed upon comparables.

St. Clair County Corrections officers trail behind the salaries of correction officers in comparable communities, and this is disparity increases as the officer goes higher in the pay scale. The Union's proposal moderately decreases the disparity. On the other hand the Employer's final offer barely changes the wage disparity at the top of the pay scale, and actually increases the disparity at 5 years of service. The Employer's wage offer does not do anything to meet the needs of this employee group. The Union is only attempting to bring the unit closer to the average of the

comparable group. While it is difficult to determine wages in the comparable communities for years two and three of the proposals, the 3.25 % increases in years 2 and 3 seem modest and temperate based on what is known.

The Union's proposal comes at a time when there are relatively few officers at the top end of the scale. The total difference in the wages offers for 2003 is only \$6, 436 for the entire unit. The bulk of the officers will receive 2003 increases of 2.50%.

The 2% increase proposed by the Employer in 2004-2005 is not supported by the comparables. These would be the lowest recorded increases offer the last 5 years and would undoubtedly widen the disparity between St. Clair corrections officers and their comparable counterparts. The average wage increase of 4.16% of the comparable jurisdictions over the last five years is only a full per cent above the Union's offers for 2004 and 2005. In addition, the Union's 2003 wage offer is also modest and has practically no impact on the Employer's budget while meeting the goal of decreasing wage disparity.

With respect to the cost of living statutory factor, the last pay raise received by the officers was on January 1, 2002. Since that time the cost of living has risen over 6% with 2.2% in the first five months of 2004. The Employer's proposal would pay officers a wage that is below the cost of living, while the Union's proposal would pay the officers a wage that is at or above the cost of living. There was no objective reason why these employees should receive wage increases that are less than the cost of living. Interest arbitrators simply do not award wage offers that are left than the cost of

living even where there are financial constraints. There was no reason to punish Officers and their families by adopting a wage offer that is a reduction in real dollars earned.

The Arbitrator must also consider the overall compensation. The overall compensation received by corrections officers in the bargaining unit is similar to that which is received by correctional officers in comparable departments, although levels of particular benefits and amounts and types of compensation are predictably different. The Employer argued that overall compensation provided to the St. Clair County correctional officers is significantly better than the comparables because of the health insurance benefits provided. This argument was made by the Employer in each of the previous two interest arbitrations. Arbitrator Traynor found that overall compensation should not have an overriding effect on the determination of wages. Wages are not fringe benefits. In the last interest arbitration Arbitrator Finkin essentially awarded, as Arbitrator Traynor did.

In addition to the above the Union was unsuccessful in persuading the Arbitrator that it should have the right to impact bargaining during the term of a contract when changes in the health insurance costs to the employees are made. Employees should not get their wages offset because insurance benefits are excellent this year. The Union might consider negotiating some form of credit for good health insurance benefits if these benefits could not be unilaterally altered.

The Employer has taken the position that, if one assumes family coverage and then reconfigures comparable adjusted salaries, then only a minor salary increase would be appropriate. Not all employees receive family coverage. Therefore, should an employee choosing single health

insurance make a larger salary than an employee choosing family insurance coverage? What about an employee choosing no health insurance coverage? Given that, why should we stop at health insurance? What about employees who receive more vacation benefits because of their seniority? Arbitrator Traynor's decision not to consider such fringe benefits avoids this quagmire. The overall compensation package for corrections officers is similar to the overall compensation package for the corrections officers in comparable communities. As a result, a review of all of the appropriate statutory factor supports the Union's final wage offer.

With respect to scheduling, the Union has proposed additional language in Section 6.01 to formalize the scheduling practices that have been in the Corrections Division for many, many years. A review of the comparables shows that they take different approaches to this problem. Correctional officers must staff the facility 24 hours a day, 7 days a week. Employees are charged with working 12-hour shifts; however, they do not work 168 hours in a 28-day period. The Employer has historically limited corrections officers and deputies to working 160 hours in a 20-day period. Employees historically were allowed to choose one or two shifts during their 4-week work period and reduce one shift to 4 hours or two shifts to 8 hours on different days. There were limitations on how many officers could select a short shift on any particular day, and it has worked so well that neither Party sought to memorialize the practice in the labor contract, because there seemed to be no reason to address the issue.

During the last year the Employer changed the system to the extent that the Employer now assigns correction officers to their short shifts. As a result, this issue without agreement of the Parties

is presented to the Arbitrator.

While the external comparables do not support or even address this issue, the internal comparables support the Union's final offer. This is the same system that the Employer has agreed to use for its deputies, and it is the accepted method for deployment of personnel.

The Union is not seeking some new breakthrough of shift scheduling. It is just seeking to have the historical system reapplied. The Employer, for its part, wants the contract to remain silent on this very important issue. This is a term and condition of employment and not an inherent managerial right. "Hours" certainly includes the length of a shift as found by the Illinois Labor Relations Board. The Employer's attempt to achieve silence on a term and condition of employment is simply unfair. The Union will be at the Employer's mercy should the Arbitrator select the Employer's office beyond another contract period and be forced to bring up the issue again. There is no objective reason to reject the Union's final offer. It is fair and reasonable and supported by the internal comparables. With respect to compensation for the Union's negotiators, the Union wishes to end the practice of having its members use accumulated time off to participate in negotiations. The Union members are allowed to process grievances while on duty. There was no showing that this has caused any problems. The external comparables are split and, therefore, these provisions are not illegal as argued by the Employer. The Arbitrator should note that this is the Parties' third interest arbitration. It would seem advisable that they expend more effort and try to resolve their disputes voluntarily. Since each bargaining session costs Union members serving as negotiators time out of their accumulated banks, the Employer need only hold out at the table to try to force concessions.

This current approach is counterproductive. The Parties have tried it one way for eight contracts, three of which have failed to produce a voluntary settlement. The remaining four statutory factors reveal that they have little, if any, impact on this case. The Employer is obligated to bargain over wages, hours and other conditions of employment regardless of any power vested in its managerial and/or corporate authority. The Arbitrator has the authority to bind the Parties over the issues submitted to interest arbitration.

With respect to the other criteria, none of them is determinative in this matter.

#### EMPLOYER POSITION

The following represents the arguments and contentions made on behalf of the Employer:

The wage offer by the Employer, considering the factors to be relied upon, is not only generous, it is above average. The offer by the Employer significantly exceeds the consumer price index (CPI). Its offer is no more than \$2,239 less than the average of all comparables in year 15. St. Clair County has less assessed value per person than any other comparable county. The Union wants the Employer to spend as much as the comparables on corrections salaries without the tax base. The County has one of the highest populations and one of the lowest assessed property values. The Union argued that the County needs to catch up to the average. The statute, however, requires that overall compensation be considered. The Employer provided a revised Exhibit 15 which takes into

consideration corrections officers' payments for health coverage. The numbers are based on a family plan. Approximately 50% of the bargaining unit has family coverage. Based on this the Employer's offer is significantly above average. Currently, the County spends more on insurance per employee than all other comparable counties. Meanwhile, the employees contribute less to the cost than any other comparables. When you look at the picture as a whole, St. Clair County doesn't need to catch up. The Employer's offer is generous and above average when taking health insurance into account. The 2003 offer of the Employer is well above the average of the agreed upon comparables, and while the Parties did not negotiate years two and three, the Employer's offer is right at the CPI and should be the award issued. The Employer stated that the Arbitrator can accept either side's offer for each year of the contract. If the Arbitrator feels that he cannot split the award, then it is the Employer's position that its offer more accurately reflects the comparables and the CPI.

With respect to scheduling, this is a matter of inherent managerial policy and is part of the right to direct employees. The policy in question does not directly affect hours, terms and conditions of employment. Employees are not entitled to determine when he or she will work a particular shift. All that the Employer is doing is arranging the hours within the schedule. It is not increasing or decreasing the hours to which the employee is entitled. Even if the this issue was considered to be part of the wages, hours and terms and conditions of employment test, it is also a matter of inherent managerial authority. It is also a matter of inherent managerial authority. Management must control scheduling. Trying to meet every correctional officer's wishes would place an undue burden on management. The schedules are made up well in advance. Employees have notice of their work schedule. Management must not have its hands tied when it comes to insuring compliance with the

Illinois County Jail Standards Act. This was not an economic situation as no employee's hours are being cut.

Finally, the Employer responded to the Union's request that two bargaining unit members be paid for collective bargaining negotiations sessions. If these employees should be paid, it should be the Union that should pay them. When an employee is working to further the business interests of the Employer, then the Employer is obligated to pay. When the employee is furthering the business of the Union, then it is logical that the Union should pay. The Union admitted that there is really no on point comparables. If other counties choose to pay their bargaining unit members to negotiate, that is their business, but no one should force the Employer to pay negotiating members when they are not performing duties on behalf of the Employer. Since there are insufficient comparables to support the Union's position, the award should favor the Employer's position.

### DISCUSSION AND OPINION

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Illinois legislature determined that it would be in the best interest of the citizens of the State of Illinois to substitute compulsory interest arbitration for a potential strike involving security

officers. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must pick in each area of disagreement the last best economic offer of one side over the other. The Arbitrator must find for each open issue which side has the most equitable position. We use the term “most equitable” because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of 8 factors contained within the Illinois revised statute (and reproduced above). It is these factors that will drive the Arbitrator’s decision in this matter.

Prior to analyzing each open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and/or there is a compelling need for this change. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a proven and compelling need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In

addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

The Arbitrator would, however, say to the bargaining unit that interest arbitration is an essentially conservative process. The Arbitrator is bound by the criteria placed upon him by the State of Illinois and the Parties respective positions. The criteria for change, as noted in the above paragraphs, are difficult to achieve. Quantum leaps in interest arbitration are, therefore, difficult to attain. The Collective Bargaining/Interest Arbitration process in the public sector is generally one of small steps over a period of time to achieve an overall goal except under the most extraordinary circumstances.

Finally, before the analysis the Arbitrator would like to discuss the cost of living criterion. This is difficult to apply in this Collective Bargaining context. The weight placed on cost of living varies with the state of the economy and the rate of inflation. Generally, in times of high inflation public sector employees lag the private sector in their economic achievement. Likewise, in periods of time such as we are currently experiencing public sector employees generally do somewhat better not only with respect to the cost of living rate, but also vis-a-vis the private sector. In addition, the movement in the consumer price index is generally not a true measure of an individual family's cost of living due to the rather rigid nature of the market basket upon which cost of living changes are measured. Therefore, this Arbitrator has joined other arbitrators in finding that cost of living considerations are best measured by the external comparables and wage increases and wage rates among those external comparables. In any event, both sides have agreed that the wage increases for

this bargaining unit would exceed the cost of living percentage increases no matter what source.

### Wages

It is the Arbitrator's position that wage proposals must be considered as a whole, as a separate issue even though the Employer offered the Arbitrator the opportunity to split each year of the proposal into three separate issues. Wages need to be considered as a whole. To do otherwise could lead to some significant skewing of the outcome. Likewise, the Employer's position that health insurance benefits and contributions need to be considered as part of the wage proposal has been adjudicated by two interest arbitrators in previous decisions. Both Arbitrators Traynor and Finkin found that this item should not be taken into consideration when making a decision on wage increases. The record shows that in terms of overall compensation, including all fringe benefits and wages for a total cost of employment would not be determinative in this matter. In addition, consistency is an extremely important aspect to all collective bargaining, and in particular in the public sector. If the Parties are unaware of what the rules are when going into particular negotiations, their chances of resolving it voluntarily NOTE TO RAY: Approximately one-half of the employees have family medical coverage. The remainder have either single coverage or no coverage at all.

When reviewing the wage proposals for each side for the three years of the proposed

contract, the Arbitrator finds that the difference between 2003 for the Union and Employer's proposal are minimal. Both sides agreed that the steps should be changed and made into proposals that would do that. There is a significant difference between the Employer's offer for the second and third years of the contract and the Union's offer. The external comparables certainly favor the Union's position in 2003 and, while there is not as much data as the Arbitrator would like to see, it is almost outside the realm of possibility that the four comparable counties would settle with their corrections officers for an amount that would anyway near 2%. What this would mean is that at the end of this contract and the beginning of 2005 is that this group of employees would be even further behind the comparables than they are now. The Arbitrator has considered the economic situation of the County and it is an effective argument, but not one that overrides the importance of paying at least reasonably comparable salaries, not so much in percentage, but in dollars to their corrections officers. Based on the statutory criteria, the Arbitrator finds that it is the Union's wage offer for 2003-2004-2005 that is most appropriate and will order that implemented.

### Scheduling

This is an unusual situation in that the Union seeks to memorialize a practice that was previously in effect between the Parties but never discussed in the Collective Bargaining Agreement. Since this is not the current practice of the Parties, the status quo situation exists as noted above, the Arbitrator feels that he does not have to get into the matter of whether this is a mandatory subject of bargaining or inherent managerial policy. The facts are that there is no showing that the Employer has abused this short day scheduling situation. Employees are given sufficient notice so that they may

plan their lives and, therefore, the Union has not met the test of the change of status quo in this matter, and it is the Employer's position that will be directed to be part of the new Collective Bargaining Agreement.

Negotiations Pay

This is also an attempt by the Union to alter the status quo. There is insufficient support within the comparables nor an offered quid pro quo. Therefore, the Union has not met its burden of proof and, therefore, this proposal will be denied, and the status quo will be maintained.

AWARD

Under the authority vested in the Arbitrator by Section XIV of the Illinois Public Employees Labor Relations Act, the Arbitrator selects the last best offers as noted above.

The Arbitrator having considered all of the Statutory criteria directs that the provisions noted above along with the predecessor agreement as modified by the tentative agreements previously agreed to will constitute the January 1, 2003 through December 31, 2005 Collective Bargaining Agreement between the Parties.

Dated at Chicago, Illinois this     Day of October, 2004.

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Raymond E. McAlpin, Arbitrator

