

**INTEREST ARBITRATION
OPINION AND AWARD**

In the Matter of Interest Arbitration

between

MACOUPIN COUNTY EMERGENCY
TELEPHONE SYSTEM BOARD
(the Employer)

and

ILLINOIS FRATERNAL ORDER OF POLICE
(FOP) LABOR COUNCIL (the Union)

(ISLRB Case No. S-MA-06-004)

Hearing Held

April 12, 2007

Macoupin County Sheriff's Dept.
215 South East Street
Carlinville, Illinois 62626

Arbitrator

Steven Briggs

Appearances

For the Union:

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For the Employer:

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BACKGROUND

Macoupin County, Illinois (the County) has approximately 49,000 residents. It is located about 60 miles southwest of Springfield, the state capitol. The Macoupin County Emergency Telephone System Board (the Employer) employs seven full-time 911 Telecommunicators, all of whom are represented for collective bargaining purposes by the Illinois Fraternal Order of Police Labor Council (the Union).

The Employer and the Union are parties to a September 1, 2004 – August 31, 2005 collective bargaining agreement. To initiate negotiations for its successor, the Union presented the Employer with a “Formal Notice of Demand to Bargain” on June 8, 2005.¹ When subsequent contract talks between the parties were unsuccessful, the Union filed a “Notice of No Agreement” with the Illinois Labor Relations Board (the Board) on July 8, 2005, and on August 1 of that year it submitted a “Request for Mediation Panel” to the Board. The Union filed another “Request for Mediation Panel” on August 1, 2006. Neither the parties bilateral negotiations nor their talks with the assistance of a mediator resulted in a settlement of all outstanding issues. The Union filed a “Demand for Compulsory Interest Arbitration” with the Board on October 13, 2006.

In an October 25, 2006 letter the Union notified Steven Briggs of his appointment to serve as Interest Arbitrator. The sole interest arbitration hearing was ultimately conducted on April 12, 2007. At its outset, the parties presented the Arbitrator with a document containing the following “Pre-Hearing Stipulations:”

A) Arbitrators and Authority: The parties stipulate the procedural prerequisites for convening the hearing have been met, and that the Arbitrator, Steven Briggs, has jurisdiction and authority to rule on the issues set forth below.

B) The Hearing: The hearing will be convened on April 12, 2007 in the City of Carlinville, Illinois. Section 14(d), requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator’s appointment has been waived by the parties. The hearing will be transcribed by a reporter the Employer will secure, and the cost of the reporter and the Arbitrator’s transcript copy shared equally by the parties.

C) Impasse Issues; The parties agree that the sole issue (sic) in dispute as set forth below is (sic) economic in nature:

- (1) What wage increases will the employees receive, if any, on 9/1/05, 9/1/06 and 9/1/07?
- (2) What shall the schedule of vacation time earned as delineated in Article 22, Section 2 be?

¹ A copy was filed with the Illinois Labor Relations Board as well.

- (3) What shall the sick leave buyback provision as delineated in Article 27, Section 2.F be?
- (4) Did the Employer violate the current collective bargaining agreement when it changed the work schedule from 10 hour days to 8 hour days?²

D) Tentative Agreements and Final Offers: All tentative agreements shall be incorporated in the Award for inclusion in the agreement. Once exchanged at the start of the hearing, final offers may not be changed except by mutual agreement. The Arbitrator shall adopt either the final offer of the FOP or Employer as to each economic issue in dispute.

E) Evidence: Each party shall be free to present its evidence either as narrative or through witnesses, with advocates presenting evidence to be sworn on oath and subject to examination. The FOP shall proceed first with its case-in-chief, followed by the Employer. Each party may present rebuttal evidence.

F) Post-Hearing Briefs: Post-hearing briefs, if requested by the Arbitrator, shall be submitted to the Arbitrator on or within forty-five days of receipt of the transcript of the hearing or such further extensions as may be mutually agreed or granted by the Arbitrator. Said briefs shall be filed with the Arbitrator who shall then forward a copy to the other party at the expiration of the forty-five (45) day period. The post-marked date of mailing shall be considered the date of filing. There shall be no reply briefs.

G) Decision: The Arbitrator shall base his decision upon the applicable factors set forth in Section 14(h) and issue the same within sixty (60) days after submission of briefs or any agreed upon extension requested by the Arbitrator, retaining the entire record in this matter for a period of six months or until sooner notified that retention is no longer required.

H) Continued Bargaining: Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.

The parties submitted final offers during the hearing. Their timely post hearing briefs were exchanged through the Arbitrator on July 6, 2007. Pursuant to stipulation "G"

² This issue stems from a grievance filed by six 911 Telecommunicators on January 22, 2007.

above, the Arbitrator requested of the parties that the due date for the Opinion and Award be extended until October 26, 2007. They mutually granted that request.

RELEVANT STATUTORY PROVISIONS

Section 14(g) of the Act provides in pertinent part:

. . . 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 prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

Section 14(h) of the Act sets forth the following interest arbitration criteria:

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 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 interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (a) In public employment in comparable communities.
 - (b) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization

benefits, the continuity and stability of employment and all other benefits received.

- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

THE ISSUES

As noted, the parties have advanced the following four economic issues to interest arbitration:

- (1) Wages
- (2) Vacations
- (3) Sick Leave Buy Back
- (4) Length of the Workday

THE EXTERNAL COMPARABLES

Union Position

The Union maintains that its suggested comparables grouping is composed of counties with similar population, geographic location, median home value, per capita income, median family income, and equalized assessed valuation. It proposes that the following jurisdictions be considered comparable for the purpose of these interest arbitration proceedings:

Adams Co.
Christian Co.
Fulton Co.
Logan Co.
McDonough Co.
Montgomery Co.
Morgan Co.

Employer Position

The Employer asserts that its suggested external comparability pool is based on an analysis of 911 population (ranging from a low of 3,488 in Virden to a high of 188,951 in Sangamon County) and geographical proximity (all located in central Illinois).³ It also notes that its own 911 Telecommunicators do not dispatch emergency police department calls; rather, they simply receive those calls and transfer them to the Carlinville police department. The Employer sets forth the following comparables grouping:

Counties

Adams
Christian
Coles
Franklin
Fulton
Greene
Jersey
Knox
Logan
Morgan
Montgomery
Sangamon
Williamson

Police Departments

Auburn
Carlinville
Hillsboro
Jacksonville
Jerseyville
Litchfield
Staunton
Virden

Sheriffs Departments

Calhoun
Christian
Fayette
Greene
Jersey

³ Tr. 58.

Macoupin
Montgomery
Moultrie
Shelby

Discussion

The Employer's analysis of the jurisdictions included in its suggested external comparability grouping is basically limited to population and geographical proximity. With regard to the latter, the Employer provided no indication of the distance to each from Macoupin County, thereby preventing the Arbitrator from using a conventional local labor market approach to evaluating their comparability. Moreover, the Employer did not present any data whatsoever with regard to the median home value, per capita income, median family income, and equalized assessed valuation across its suggested comparables. Those factors seem especially relevant here, as Macoupin County's 911 Emergency Telephone System is funded directly from a special assessment incorporated into the relevant population's land line and cellular telephone bills. Without such data, the Arbitrator cannot perform a complete and conventional analysis of the Employer's comparability grouping.⁴

In contrast, the Union presented a complete array of relevant descriptive information about the counties in its proposed comparables, as illustrated in Table 1 below:

Table 1
THE UNION'S SUGGESTED COMPARABLES

<i>Jurisdiction</i>	<i>Population</i>	<i>Median Home Value</i>	<i>Median Household Income</i>	<i>Equalized Assessed Valuation</i>
Adams Co.	68,277	75,600	34,784	40,632,738
Christian Co.	35,372	61,000	36,561	46,764,687
Fulton Co.	38,250	58,100	33,952	51,921,973
Logan Co.	31,183	75,700	39,389	20,285,695
McDonough Co.	32,913	61,200	32,141	57,132,459
Montgomery Co.	30,652	54,800	33,123	30,242,217
Morgan Co.	36,616	75,800	36,933	44,145,776
Average	39,038	66,029	35,269	41,589,364
Macoupin Co.	49,019	66,700	36,190	35,136,335

⁴ The Union presented data to show that many of the Employer's proposed jurisdictions are not reasonably comparable to Macoupin County on the population and geographical proximity criteria.

The data in Table 1 reveal that on the basis of economic indicators conventionally used in interest arbitration, Macoupin County and the counties identified by the Union are generally comparable. Moreover, it is evident from Union Exhibit 5A that they are within reasonable commuting distance of Macoupin County. Put another way, the counties in the Union's suggested comparables grouping are within its local labor market and they most likely compete with Macoupin County with regard to the attraction and retention of human resources.

The Employer agrees that six of the Union's seven-county external jurisdiction pool are comparable to Macoupin County. The sole exception is McDonough County, which is not identified by the Employer as a comparable jurisdiction. Turning again to Table 1, though, it is evident that McDonough County is within the range established by the six remaining Union comparables on three of the four comparability factors listed (i.e., population, median home value and median household income). McDonough County is also as close geographically to Macoupin County as is Fulton County, one of the agreed-upon external comparables.

For all of the foregoing reasons, the Arbitrator has selected the following counties as external comparables for these interest arbitration proceedings:

Adams
Christian
Fulton
Logan
McDonough
Montgomery
Morgan

WAGES

Union Position

The Union's three-pronged final offer on wages provides the following: (1) a 1.5% equity adjustment retroactively effective September 1, 2005 followed by a 3.0% increase retroactively to September 1, 2005; (2) a 1.5% equity adjustment retroactively to September 1, 2006 followed by a 3% increase effective retroactively to September 1, 2006; and (3) a 1.5% equity adjustment retroactively effective September 1, 2007 followed by a 3.0% increase retroactively effective September 1, 2007.

The Union notes that the affected 911 Telecommunicators work in the same room with Macoupin County Sheriff's Department Telecommunicators, and that there is a \$10,000 differential in their annual starting salaries.⁵ The Union asserts as well that for 2004 the

⁵ The 2004 starting salary for the 911 Telecommunicators was \$24,960 compared to \$34,967 for entry level Sheriff's Department Telecommunicators.

911 Telecommunicators' starting pay was 4.4% behind what the external comparables provided, and that the differential increased to 10.6% after one year and 17.5% after five years. It reportedly rose to 19.3% at the highest pay level.

The Union notes that prior to these interest arbitration proceedings the Employer had proposed a three-year agreement with a 3% salary increase each of those years. The Union believes those salary increments are reasonable, but only if they are accompanied by a 1.5% equity adjustment to begin the catch-up process.

Additionally, the Union emphasizes, negotiated salary increases for the five unionized internal comparables over the period under scrutiny here were 2.0% effective September 1, 2005, 3.0% effective September 1, 2006, and 4.0% effective September 1, 2007. The Union adds that where applicable, those increases were retroactive.⁶

The Union believes that adoption of the Employer's wage offer would place the 911 Telecommunicators even farther behind their counterparts across the external comparables, and would create an inequity between them and employees in other Macoupin County bargaining units.

Employer Position

The Employer's final wage offer sets forth annual increases of 1.0%, 1.0% and 3.0%. The written final offer itself, signed by Attorney Brent Cain at the interest arbitration hearing, states immediately under those percentage increases "no retroactivity."⁷

The Employer notes that the 911 Telecommunicators are not college educated and, other than that provided on the job, they have no specialized training. They currently receive \$12.00 an hour, the Employer adds, plus health insurance, life insurance and pension benefits. That amounts to \$37,079.61 for each of them in 2007 --- a generous compensation package after two years of unsuccessful wage negotiations.

The Employer asserts as well that the 911 Telecommunicators and Sheriff's Department Telecommunicators perform different sets of tasks. It notes especially that the latter serve as court matrons on occasion, and that they have been bargaining as a group with the County for approximately 20 years. Thus, the Employer argues, even though they work just a few feet from the 911 Telecommunicators, their wages should not be considered valid for comparison purposes.

⁶ There is a Circuit Clerk bargaining unit represented by the American Federation of State, County and Municipal Employees (AFSCME), a Probation unit represented by the Illinois Fraternal Order of Police Labor Council (FOP), an FOP-represented Sheriff's Department unit, a Highway Department unit represented by the International Brotherhood of Teamsters (IBT), and an AFSCME-represented County Clerk unit.

⁷ In contrast, the Employer's post hearing brief at p. 2 implies that retroactivity is contemplated by its wage offer by characterizing that offer as fair and reasonable, "*particularly considering the fact that this will be a retroactive raise with a substantial payment to Union employees.*"

And in comparison to other Macoupin Co. bargaining units, the Employer asserts, its salary offer to the ETSB Telecommunicators is fair. Other unions have negotiated four-year County contracts with wage increases of 2%-2%-3%-4%, and the current Sheriff's contract calls for salary boosts of 2%-3%-3%-3%. And in comparison to its own suggested external comparables, the Employer notes, its final offer of 1%-1%-3% would place Macoupin Co. 911 Telecommunicators in the middle of the pack. It points out as well that they do not take police calls, whereas their counterparts in the external jurisdictions do.

The Employer also argues that even under its final wage offer the total compensation package enjoyed by its seven 911 Telecommunicators will be expensive. In year two of the contract, for example, it would amount to \$268,373 (i.e., \$38,339 each). For year three, the comparable figures are (\$283,000 --- \$40,439 each). In addition, the Employer notes, there are anticipated increases in the health insurance premium contributions it will be obligated to pay.

For all of the above reasons the Employer urges the Arbitrator to adopt its final offer on the wage issue.

Discussion

In terms of wage growth, adoption of the Employer's 1%-1%-3% wage proposal would cause Macoupin Co. 911 Telecommunicators to lag behind their counterparts across the internal comparables, as displayed in Table 2. That is especially true given the "No Retroactivity" provision of the Employer's final offer.

Table 2
Wage Increases (%) Across Unionized Internal Comparables

<i>Bargaining Unit</i>	<i>Year 1</i>	<i>Year 2</i>	<i>Year 3</i>	<i>Year 4</i>
Probation Dept.	2	2	3	4
Courthouse	2	2	3	4
Sheriffs Dept.	2	3	3	4
Highway Dept.	2	2	3	4
ETSB (CFO)	1	1	3	n/a
ETSB (UFO)	4.5+*	4.5+*	4.5+*	n/a

* = The Union's 1.5% equity adjustment "followed by" a 3% wage increase implies a total wage increase of slightly more than 4.5% per year.

Source: Employer Exhibit 4; parties' final offers. Figures shown are for the latest years available, per the Employer's Exhibit.

As Table 2 suggests upon first glance, the Employer's final offer seems low *vis-à-vis* the internal comparables and the Union's seems high. However, the Union's final offer contains a 1.5% equity (a.k.a., "catch up") adjustment. That provision calls into question whether the 911 Telecommunicators' wages should be compared to those of the Sheriff's Department dispatchers, who in 2004 earned approximately \$10,000 per year more than the 911 personnel who work with them in the same room.

The Employer argues that they are not comparable jobs, noting that the Sheriff's Department Telecommunicators are also called upon to monitor prisoners, and that they serve as Court Matrons on occasion. But review of the 911 Telecommunicators' Job Description (UX-59) reveals that they also "May be required to monitor female prisoners" and "(serve) as a backup to the Macoupin County Sheriffs telecommunicators when necessary."⁸ Moreover, incumbents in both classifications work under the obvious pressures associated with taking emergency calls. The exact nature of the emergencies, and whether they prompt the need for police, fire, or medical responses, seems like a minor consideration. Both classifications require similar skills and knowledge, and they occasionally place intense pressure on their incumbents.

It is true that the Sheriff's Department Telecommunicators have been union-represented for about two decades. In comparison, the ETSB bargaining unit is in its infancy. But the Union is not seeking immediate parity in these proceedings. Rather, its final offer simply provides for the first step in what might become a gradual catch up.

The external comparables provide even more support for adoption of the Union's wage offer. For 2004, Macoupin Co. 911 Telecommunicators were behind their external counterparts anywhere from 4.4% at the entry level to 19.3% at top pay. Those differentials increased to 7.6% and 22.7% for 2005. And for 2006 they were 12.4% and 29.4%. Clearly, there is an increasing need over time to correct the inequity between Macoupin ETSB Telecommunicators' wages and those of their externally situated contemporaries. The Employer's final offer falls woefully short of reaching that objective.⁹

The cost-of-living factor is also of concern to the Arbitrator. Even using the most conservative of estimates, the Employer's proposed 1% and 1% increases for the first two years of the contract would cause the 911 Telecommunicators to lose absolute purchasing power. All other parity arguments aside, that fact alone calls the Employer's final offer into serious question.

As noted earlier, the record is confusing with regard to a critical element of the Employer's final wage offer. It does indeed include specific annual increases of 1%, 1% and 3%, but just beneath that entry it states "No Retroactivity." A wage proposal with no retroactivity provision is simply not acceptable here, for the 911 Telecommunicators have not had a pay increase since September 1, 2005. The fact that it has taken so long to put a

⁸ Sections 3.09 and 3.10.

⁹ It is also important to acknowledge that the Employer did not claim an inability to pay with regard to the Union's final offer on the wage issue.

successor collective bargaining agreement in place is not entirely the Union's fault. After all, the parties have demonstrated they can responsibly bargain together in good faith; otherwise they would not have reached tentative agreements on the vast majority of the contractual issues. Under those circumstances the Arbitrator sees no reason to punish the 911 Telecommunicators for the fact the parties were unable to reach full and final agreement on all the issues.¹⁰

On balance, the Union's final on the wage issue is preferable to the Employer's, and it shall be adopted.

VACATIONS

Employer Position

The Employer's final offer on the vacation schedule is to retain the status quo. It summarized its position in a single paragraph as follows:

On this issue ETSB is somewhat perplexed. Granted, there have been negotiations (sic) on the issue of changing the vacation schedule, but it is ETSB's position that no change in the current contract language is merited, and in fact, does not fully comprehend what the position of Union (sic) is. Therefore, ETSB submits the attached schedule which is the current language and should remain as such for the period in question.¹¹

Union Position

The Union's final offer on this issue is based upon its comparison of the 911 Telecommunicators' vacation schedule with that of the Macoupin Co. Sheriff's Office. The only difference between the two occurs after one year of service, and the former qualify for 80 hours of vacation time at that point, while the latter receive only 40 hours' time off. The Union's final offer would reduce the 911 Telecommunicators' vacation at that cell in the schedule from 80 hours to 40 hours. In explanation of that rather unusual final offer, the Union offered the following comments:

The Union is willing to have the vacation schedules mirror each other; even though the wages do not. While we are not looking for parity in

¹⁰ Even if the Employer intended to provide for retroactivity, its final wage offer would seem inadequate. In any event, the phrase "No Retroactivity" in the Employer's offer is straightforward and clear. The Arbitrator must take it at face value, notwithstanding arguments the Employer subsequently made to the contrary about retroactive application of the wage increases it proposed. It is also important to note that the statutory requirements for awarding retroactive wage increases have been met.

¹¹ Quoted from the Employer's post hearing brief at p. 4.

wages with the Sheriff's Department, we are willing to give back to gain parity in vacation time.¹²

Discussion

The Union's final offer on this issue is preferable to the Employer's. First, it will actually save the ETSB money in the long run by reducing its paid vacation expenditures at the 1st year level. Second, it will not take away any vacation time from the incumbent 911 Telecommunicators because all of them have sufficient seniority to avoid its negative impact. And third, the Union's final offer will prevent any discontent that might result from telecommunicators at the same seniority level receiving disparate amounts of vacation after their first year of service.

The Union's final offer on the vacation is hereby adopted.

SICK LEAVE BUY BACK

Employer Position

The Employer proposes retention of the status quo on this issue. It notes that upon resignation 911 Telecommunicators may convert a maximum of 75 unused sick days into cash at the rate of \$15.00 per day. Besides, the Employer adds, there are currently no ETSB bargaining unit employees with anywhere near that accumulation level, so there is no current need to amend this contract provision.

Moreover, the Employer emphasizes its need to construct realistic budgets based upon predictable factors. It asserts that adoption of the Union's final offer on this issue would obstruct its efforts to that end. The Employer notes as well that it already deals with several relatively uncontrollable cost increases, including health insurance premiums, IMRF and unemployment compensation contributions.

Union Position

The Union proposes as its final offer that the following underlined language be added to Article 27, §2 of the Agreement:

Employees may use earned sick leave as follows: Upon resigning, employees may convert a maximum of seventy five (75) days into cash at the rate of \$15.00 per sick day.

¹² Union post hearing brief, p. 25.

Effective September 1, 2006, Employees may use earned sick leave as follows: Upon resigning, employees may convert a maximum of seventy five (75) days into cash at 1/3 of employee's regular hourly rate.

Effective September 1, 2007, Employees may use earned sick leave as follows: Upon resigning, employees may convert a maximum of seventy five (75) days into cash at ½ the employee's regular hourly rate.

The Union argues that is not seeking to add a benefit to the Agreement; rather, it is merely trying to increase an existing one. It notes that every other telecommunicator in the external comparability pool can apply sick time toward the IMRF pension, and that the Macoupin Co. ESTB Telecommunicators cannot. And in addition, the Union emphasizes, none of the external comparables except Montgomery Co. limit the sick leave buy back rate to anything less than half of the hourly rate --- but Montgomery Co. allows its employees to buy back up to 100 days.

Moreover, the Union argues, while its final offer represents a large percentage increase, it does not place a large monetary burden on the Employer because it is a very small bargaining unit. The Union also notes that Macoupin Co. Sheriff's Department employees hired prior to January 1, 2005 can convert up to 640 hours of sick leave at the regular hourly rate. Those hired after that date can only apply their unused sick leave to IMRF --- something the ETSB Telecommunicators cannot do.

The Union believes Macoupin Co. ETSB Telecommunicators lag behind on the sick leave buy back issue, and that adoption of its final offer would not make them the lead dog --- only members of the pack.

Discussion

Since the Union is attempting to change the status quo on this issue, it must show a compelling need to do so. Table 3 on the following page has been constructed to help determine whether such a need exists. It illustrates a mixed playing field across the external comparables. Of the seven comparable jurisdictions outside Macoupin Co., only four of them buy back unused sick leave from employees upon their resignation. And three of those (Adams, Christian and Fulton Cos.) have more stringent caps on such buy back (60 days, 60 days and 42 days, respectively). Against that general backdrop, the ETSB provision to buy back 75 days of unused sick leave compares somewhat favorably --- even at a rate of \$15 per day.

It is true that in Adams, Christian and Fulton Counties the applicable unused sick leave is bought back at a higher rate than \$15 per day. It is also true that in all seven external jurisdictions unused sick leave can be applied toward the IMRF pension. Thus, it can be

reasonably argued that ETSB Telecommunicators are somewhat behind their counterparts on that dimension of this issue.

But the per employee cost increase built into the Union’s final offer is substantial. Moving from a \$15 per day buy back rate to 1/3 of the hourly rate would double, triple, or even quadruple the Employer’s cash payout per employee, depending upon the seniority level of the individual employee who decides to resign. There is no justification in the record for such a significant jump in one fell swoop.

Table 3
Sick Leave Buy Back Across the External Comparables

<i>Jurisdiction</i>	<i>Buy Back?</i>	<i>Apply Toward IMRF?</i>	<i>Cap</i>	<i>Buy Back Rate</i>
Adams Co.	Yes	Yes	60 Days	Regular Hourly Rate
Christian Co.	Yes	Yes	60 Days	Regular Hourly Rate
Fulton Co.	Yes	Yes	42 Days	½ Regularly Hourly Rate
Logan Co.	No	Yes	N/A	N/A
McDonough Co.	No	Yes	N/A	N/A
Montgomery Co.	Yes	Yes	100 Days	\$15 Per Day
Morgan Co.	No	Yes	N/A	N/A
Macoupin ETSB	Yes	No	75 Days	\$15 Per Day

Finally, the Arbitrator is not convinced from the record that the parties have exhausted reasonable efforts to address the sick leave buy back issue at the bargaining table. For that and the foregoing reasons, it seems appropriate to retain the status quo for the present. The parties will soon have another opportunity to revisit this issue, as the three year Agreement which will be set in place on the basis of these interest arbitration proceedings will expire in less than a year from the date of this writing.

For all of the foregoing reasons the Arbitrator has decided to adopt the Employer’s final offer on the sick leave buy back issue.

LENGTH OF THE WORK DAY

After the Union filed its Demand for Compulsory Interest Arbitration on October 16, 2006, the Employer decided to change the work schedule of the ETSB Telecommunicators from a 10-hour day to an 8-hour day. On December 22, 2006 it posted a new schedule effectuating the change. Bargaining unit employees grieved the matter on January 22, 2007. When subsequent grievance process discussions did not result in settlement, the Union advanced it to arbitration. The parties decided to place the grievance before the undersigned Arbitrator for resolution in these interest arbitration proceedings.

Employer Position

The Employer's principal arguments with regard to the grievance may be summarized as follows:

1. Article 5 (Management Rights) of the current contract confirms the Employer's right "to schedule and assign work," and "to change, alter, modify, substitute or eliminate existing methods, schedule, ..."

2. Article 13 (Hours and Overtime) provides the following applicable language:

... In the event no employee (full-time or part-time) accepts the vacant shift, then the on-duty employee with the least seniority shall be held over for ½ the shift four to five hours depending on the shift, and the oncoming employee with the least seniority shall be ordered to report to duty four to five hours early to fill the vacant shift.

Each of the above provisions underscores the Employer's contractual right to change employees' hours of work unilaterally.

3. Management always has the inherent right to change work hours, and any deviation from that principle is an attack upon the employer-employee relationship.
4. The change to an 8-hour schedule was necessary due to the lack of coverage created by the 10-hour shift. On the new schedule, if someone calls in sick, two dispatchers can each work four hours overtime --- one for the first ½ of the vacant shift and the other for the second ½ of the shift.
5. Since its inception the ETSB has changed back and forth between 10-hour and 8-hour shifts a couple of times. From that experience it has determined that the latter is more functional.

6. The grievance should be denied.

Union Position

Here is a summary of the Union's main arguments on the shift scheduling grievance:

1. Six of the seven 911 Telecommunicators voted for the 10-hour work schedule. It had been in effect for three years prior to the Employer's 2006 unilateral change to an 8-hour shift. That action violated Article 11 (Maintenance of Standards) of the collective bargaining agreement, which states:

All work practices and economic benefits which are not set forth in this Agreement which are currently in effect shall continue and remain in effect for the term of this Agreement.

2. The Agreement is silent on the question of shift schedules for the regular work day. Thus, Article 11 preserves the 8-hour shift until the Agreement's expiration.
3. Even Article 5 (Management Rights) supports the Union's position. Though it lists functional areas where the Employer has certain unilateral authority, it introduces them with the phrase: "Except as specifically limited, by the express provisions of the Agreement, ..." Article 11 constitutes such an exception.
4. Clearly, shift length is a "work practice" under the meaning of Article 11.
5. Under the 10-hour shift schedule, the Employer needed only four Telecommunicators to cover all the shifts. Under the 8-hour schedule it needs five. In other words, the latter schedule requires more employees to do the same thing.
6. Under either schedule, there is always a time when only one person is on shift. The 8-hour schedule does not provide full double coverage. Telecommunicators must still work alone on occasion. And it takes more of them to cover the same period of time.
7. Telecommunicator Katina Weller testified that in the past they had voted for the 10-hour shifts and that a majority (6 of 7) had voted in favor of it. The result was that it was retained by the Employer --- until December, 2006.

Discussion

In this agreement interpretation dispute the Union has the burden of proof. It must demonstrate through a preponderance of the evidence that its interpretation of the relevant contract provisions accurately reflects the parties' mutual bargaining table intent. Based upon a complete review of the parties' arguments and of the relevant Agreement provisions, the Arbitrator has concluded that the Union's burden has not been met.

The Union relies most heavily on Article 11 (Maintenance of Standards), a generic contract clause covering "All work practices and economic benefits which are not set forth in this Agreement ..." It asserts as well that the 10-hour schedule was a "work practice." Generally speaking, that assertion is true. A work schedule is a routine way of accomplishing the work necessary for an organization to make progress toward its objectives. Thus, it is indeed a "work practice" as the Union asserts.

As noted though, Article 11 covers only the work practices and economic benefits not set forth in the Agreement. Article 13 (Hours and Overtime) reflects a meeting of the minds between the parties about the length of the work day. In discussing overtime pay it cites "work performed in excess of a normal workday of eight or ten hours." Clearly then, when they were at the bargaining table the parties mutually contemplated both 8-hour and 10-hour shifts as "normal" work days. They made specific reference to both. That fact excludes those shifts from the coverage of Article 11 because it sets them forth in the Agreement.

Moreover, Article 5 (Management Rights) confirms the Employer's contractual right to "schedule and assign work" and to "change, alter, modify, substitute or eliminate existing methods, schedule ..." The 10-hour shift arrangement is obviously a "schedule" within the meaning of Article 5, and the Employer has a unilateral right under that provision to change it. Nothing in Articles 11 or 13 specifically limits the Employer in that regard.

It is true that the Employer has allowed the 911 Telecommunicators to vote on their work schedule in the past. It is true as well that it honored the vote and implemented the schedule which garnered majority support in that process. But that does not mean the vote and its outcome somehow became elevated to contractual status. As part of its overall administrative authority the Employer chose voluntarily to consider the Telecommunicators' overall shift preferences. But it still retained the unilateral right under Article 5 to alter the work shifts. Put another way, the Employer's voluntary consideration of the vote did not diminish its contractual rights to adopt either an 8-hour or 10-hour shift schedule.

In exercising their contractually specified managerial rights employers are not free to do whatever they want, however. Arbitrators generally hold that when unilaterally implementing administrative initiatives under a labor agreement, employers must conform to the rule of reasonableness. Here, for example, if the Arbitrator were convinced that the ETSB established the 8-hour schedule in reprisal against the Union's demand for compulsory interest arbitration on other issues, the outcome of this grievance

would be different. But the record does not support such a conclusion. Rather, from the testimony of 911 Administrator Aaron Bishop I am convinced that the Employer moved to the 8-hour schedule for legitimate organizational reasons.

INTEREST ARBITRATION AWARD

After careful study of the record in its entirety, and in full consideration of the applicable statutory criteria, whether specifically discussed herein or not, the Arbitrator has reached the following decisions with regard to what will become the parties' September 1, 2005 – August 31, 2008 collective bargaining agreement:

1. Wages – The final offer of the Union is adopted, including full retroactivity applied to straight time and overtime earnings.
2. Vacations – The final offer of the Union is adopted.
3. Sick Leave Buy Back – The final offer of the Employer is adopted.
4. Length of Work Day - The Employer did not violate the current collective bargaining agreement when it changed the work schedule from 10-hour days to 8-hour days. Accordingly, the Employer's position on the 8-hour workday is adopted.
5. Matters already agreed to by the parties themselves shall also be included in their September 1, 2005 – August 31, 2008 collective bargaining agreement, along with provisions from the predecessor Agreement which remain unchanged.

Signed by me at Hanover, Illinois this 23rd day of October, 2007.

Steven Briggs