

In the Matter of Interest Arbitration between:)
)
Illinois Fraternal Order of Police Labor Council) ILRB Case Numbers:
)
and) S-MA-09-082
) S-MA-09-083
County of St. Clair, Illinois)

Hearing Date June 28, 2010

Appearances:

For the Union RICHARD V. STEWART, JR.
Illinois Fraternal Order of Police
974 Clock Tower Drive
Springfield, IL 62704

For the County J. BRIAN MANION
STEPHEN R. WIGGINTON
Weilmuenster & Wigginton, P.C.
3201 West Main
Belleville, IL 62226

Date of Award November 18, 2010

Impartial Arbitrator MICHAEL A. WOJCIK

An interest arbitration hearing was held on June 28, 2010, at the St. Clair County Court House in Belleville, Illinois. Pursuant to the Illinois Public Labor Relations Act, the hearing was held before an Impartial Arbitrator. At the hearing, the parties presented sworn testimony and offered documentary exhibits into evidence. A court reporter made a verbatim transcript of the hearing. The parties filed post-hearing briefs which were received and exchanged by the Arbitrator on September 21, 2010, at which time the record was closed.

PROCEEDINGS AND STIPULATIONS

This is an interest arbitration under Section 14 of the Illinois Public Labor Relations Act (Act) to determine disputed terms of the successor to the collective bargaining agreements (Agreements) between the County of St. Clair, Illinois (the County / the Employer) and the Illinois Fraternal Order of Police Labor Council, FOP Lodge 148 (the Union) for the following bargaining units of the County's employees:

Correctional Officers Unit

Road Deputies Unit

The County is located in Belleville, Illinois and governed by a Board consisting of elected members.

Although there are two separate Collective Bargaining Agreements (and corresponding ILRB Case numbers), the parties requested a single hearing and award.

The Agreements had an expiration date of December 31, 2008. The parties were unable to reach consensus on successor Agreements and resolution of the matter was submitted to the interest arbitration procedures of the Act. The parties selected the undersigned to serve as the neutral sole arbitrator for the interest arbitration.

At the hearing, the parties submitted stipulations on several items including their agreement on the issues at impasse. All pre-hearing stipulations are included in the Union's Exhibit 1, signed jointly by the parties. The parties also identified items for which they have reached tentative agreement and which will be incorporated in this award.

A summary of the issues at impasse are as follows:

- 1) Wages
- 2) Vacation Accruals (Correctional Officers Unit only)
- 3) Shift Bidding
- 4) Drug Testing
- 5) Discipline and Discharge
- 6) Sick Leave
- 7) Probationary Period
- 8) Compensatory Time
- 9) Damage to Employer's Property

The parties agree that the Arbitrator should consider the issues of Wages and Vacation Accruals as economic in nature, while the remaining issues are considered non-economic. All other issues except the ones contained in the following award have been agreed to and/or withdrawn.

The parties have also stipulated agreement on the comparable communities. These are:

Champaign County
Madison County
Peoria County
Sangamon County

FINAL OFFERS

1) Wages

Employer's offer

3.0% increase effective January 1, 2009

Wage freeze effective January 1, 2010

Wage reopener (base wages only) effective January 1, 2011

Union's Offer

3.0% increase effective January 1, 2009

3.25% increase effective January 1, 2010

3.25% increase effective January 1, 2011

2) Vacation Accruals (Correctional Officers Unit)

Employer's offer

Status Quo

Union's Offer

Amend section 9.02 of the CBA by adding:

(d) from completion of twenty (20) years of continuous service: two hundred hours per year.

3) Shift Bidding

Employer's offer

Status Quo – However, Employer is willing to allow the Road Deputies Unit to rotate shifts in the same manner currently afforded to Correctional Officers.

Union's Offer

The Union proposes the addition of new Article 7.06 – Shift Bidding:

(a) The employer shall use a shift bidding procedure, based upon seniority to determine which employees work the shifts determined by employer and shall bid to shift annually.

(b) A sign-up list will be posted on or before December 1 of each year and each employee may sign up for the shift of his or her preference prior to the beginning of the next shift bid period and shall receive their shift assignment based on seniority.

(c) The Sheriff may change the shift of the two (2) least senior officers on each shift so as to balance the shift.

(d) Any employee eligible for shift bidding, who does not sign up on a timely basis or who fails to sign up shall be assigned to any shift as determined by the Sheriff or his designee for the following shift bid period.

(e) The initial shift bidding shall begin on the first day of a new pay period on a mutually agreed to time after the execution of this Agreement, thereafter, shifts shall be bid to begin on the first day of a new pay period in January of each year.

(f) Shift bidding shall not apply to any other special assignment positions designated by the Sheriff which are positions that require special expertise. A employee shall have the option of refusing any special assignment position.

(g) An employee shall be able to change the shift they have bid if they have obtained the consent of another employee who would like to switch shifts and approved by the Employer.

4) Drug Testing

The parties are in agreement regarding the Drug Testing Policy with one exception. The one unresolved issue relates to language regarding the drug testing process, specifically who and where the sample is collected (Section 5 (l) of the Policy).

Employer's offer

... provide that all drug testing be performed by licensed professionals that are not St. Clair County employees.

Union's Offer

... provide that all drug testing be performed by licensed professionals that are not St. Clair County employees or the Medical Service Contractors licensed professionals.

5) Discipline and Discharge

Employer's offer

Status Quo

Union's Offer

The Union proposes the addition of Article 17.04 Discipline and Discharge:

Post-probationary employees shall be disciplined, and/or discharged only for just cause.

The Sheriff shall comply with the provisions of the Illinois Uniform Peace Officers' Disciplinary Act in conducting any formal investigation as defined in the Act.

The Sheriff agrees with the tenants of progressive and corrective discipline. Once the measure of discipline is determined and imposed, the Sheriff shall not increase it for the particular incident of misconduct, unless new facts or circumstances become known.

Disciplinary action may include, but not necessarily be limited to, one or more of the following; however, the types of disciplinary action imposed shall be based on the seriousness of the offense:

- Oral warning or reprimand;
- Written reprimand;
- Suspension with pay;
- Suspension without pay up to 3 days;
- Suspension without pay for more than 3 days;
- Suspension pending ultimate discharge.

Discipline shall be administered within a reasonable period of time after the completion of the investigation. Discipline shall not be imposed in such a manner as to embarrass the employee in front of his coworkers or the general public.

All discipline may be grieved. Grievances involving discipline or discharge shall be initiated at step 3 of the grievance procedure, within ten (10) business days of the employee's knowledge of the disciplinary action.

The employee shall make an election between continuing through with the grievance procedure or continuing under the Merit Commission rules and regulations.

The election of forum must be made in writing not later than the final date for referring any such grievance to binding arbitration under section 5.03. The election is irrevocable. The right to have a hearing before the Merit Commission and the right to pursue disputes regarding disciplinary actions under the grievance procedure are mutually exclusive, and under no circumstances shall an employee have the right to a hearing in both forums.

It is agreed that only the Labor Council, and not the individual employee, shall have the right to refer such grievances to arbitration; however, this shall not

limit the right of the individual employee to pursue the matter before the Merit Commission with or without Labor Council approval.

If the employee and/or Union fail to make their election of forum pursuant to this section, the matter cannot be further pursued through the Grievance Procedure and must be pursued through the Merit Commission.

If the matter is pursued through the Merit Commission, the employee shall not suffer a loss or reduction in pay during the pendency of the Merit Commission proceeding.

If the matter is pursued through the grievance procedure, the Sheriff may impose the discipline during the pendency of the grievance proceedings. However, if the grievance is sustained, the employee shall receive all back pay and benefits and otherwise be made whole.

6) Sick Leave

Employer's offer

The Employer proposes the addition of Section 10.14 – First Day – Sick Leave: Employees shall be granted two "first days of sick leave" each year. After an employee has used the two "first days of sick leave" then the next time that the employee uses sick leave the "first day" of such sick leave shall be without pay.

Union's Offer

Status Quo

7) Probationary Period

Employer's offer

The Employer proposes to change the probationary period for new hires from 12 months to 18 months.

Union's Offer

Status Quo

8) Compensatory Time

Employer's offer

The Employer proposes to add the following sentence to Section 6.05: On or before January 1 and June 30 of each year the employee shall notify the Employer whether the employee wishes to be paid at the overtime rate or receive compensatory time in lieu of pay for all hours of overtime worked for the next six months.

Union's Offer

Status Quo

9) Damage to Employer's Property

Employer's Offer

The Employer proposes to add the following new Section, 13.04 to both Agreements titled "Damage to Employer's Property".

"Employees shall be responsible for the cost of repair or replacement of Employer's personal property by the acts or omissions of negligence or misconduct of the employee up to \$2,500.00."

Union's Offer

Status Quo

STATUTORY CRITERIA

The Illinois Public Labor Relations Act mandates certain requirements in interest arbitration cases. Section 14 (h) of the Act sets forth the factors to be considered in these cases:

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

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

stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in 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.

Additionally, with respect to each economic issue in dispute, the Arbitrator is required to adopt the final offer of one of the parties. With respect to each non-economic issue, the Arbitrator may adopt the final offer of one of the parties or may render an alternative resolution.

DISCUSSION OF ISSUES

Economic Issues

The parties have stipulated that the issues of Wages and Vacation Accruals are economic. As such, the Arbitrator is required to adopt the final offer of one of the parties.

1) Wages

The Union offers several arguments in support of their wage proposal and the Arbitrator has summarized them as follows:

- a) Of the eight factors set forth in Section 14(h) of the Illinois Public Relations Act, three are most critical in interest arbitration. In almost every award issued, arbitrators typically look to the pay and benefits received by other similarly situated employees, the impact of inflation on employees' purchasing power and whether the employer has the ability to pay the wages or other benefits the arbitrator deems appropriate.
- b) Despite the County's contention to the contrary, the Union believes that the use of external comparables is an important factor in determining which final offer should be awarded.
- c) There is no justification to support the County's proposal for a wage freeze.
- d) The Union's wage proposal allows both Corrections Officers and Road Deputies to maintain average wage rates in line with external comparables.

- e) Based upon an analysis of the cost of living and the resulting erosion of the employees' purchasing power, the Union's final offer is more reasonable.
- f) The evidence supports the County's "ability to pay".

The County offers several arguments in support of their wage proposal and the Arbitrator has summarized them as follows:

- a) The County has been significantly impacted by the recession. County revenues have dropped from 2008 to 2010. County costs, particularly in the areas of health insurance coverage, workers compensation coverage and pension obligations are increasing. The County has implemented several cost-cutting measures, including the elimination of positions through attrition, no pay raises for other County personnel in 2010 and the refinancing of bonds to reduce interest expense.
- b) The State of Illinois has implemented "slow pay" policies and is behind between four to eight months on some of the payments to the County.
- c) Comparing the wage contracts from comparable counties is of little value, since three of the four were negotiated prior to July 2008, the month the economic crash began. In fact, in the one contract that began after 2008, the parties returned to the table to negotiate a reduction on wages to avoid layoffs. However, to the extent the comparables are utilized, the County proposal does not significantly impact the pay ranking of either the Road deputies or Correctional Officers when compared to externals.
- d) While the County has proposed a 3.0% base wage increase in 2009 followed by a freeze in 2010 and a wage reopener in 2011, the County has not elected to increase the employee's portion of health care coverage in 2009 or 2010.
- e) The Consumer Price Index (CPI-U) supports the County's proposal. The wage increase offered by the County outpaces the CPI-U by more than 4%., while shielding the employees from the increasing costs of medical costs and health insurance.
- f) If the Union's wage proposal is adopted, the County will be left with no choice but to layoff Road Deputies, since existing State law mandates staffing levels in the correctional facility. Up until now, the County has not had to initiate any layoffs of County personnel.

Both of the parties' proposals provide for a 3.0% increase in 2009. It is the inability to reach agreement in the following two years (2010 and 2011) which has resulted in the impasse on wages. The County proposes a freeze in 2010 followed by a wage reopener in 2011. The Union has proposed 3.25% increases in both 2010 and 2011. As a result, the issue facing the Arbitrator is determining which proposal for the

years beyond 2009 is more reasonable when evaluated under the statutory criteria of the Illinois Public Labor Relations Act.

The Act identifies several factors which are to be considered by the Arbitrator when resolving interest arbitration issues. In the case of economic issues (wages), it is up to the Arbitrator to evaluate the evidence offered by the parties in accordance with the factors and determine which proposal better meets the requirements of the Act.

The County suggests that the analysis of comparables is of little or no value in deciding this issue, since three of the four counties and their unions negotiated their agreements prior to the impact of the economic downturn in 2008. The Arbitrator assumes the County believes that if the three counties and their unions had begun their negotiations sometime later, they would have settled (or arrived at) lower wage rates. While the Arbitrator understands the County's rationale, it is only speculation by the County and determining its validity is impossible.

Instead, the Arbitrator finds it is indeed necessary to factor in the impact of wage rates in comparable counties for comparable services. The other counties have made decisions on how much to pay for law enforcement services. Regardless of when (or how) comparable wage rates were determined, they exist. These are counties that the parties have agreed to, and historically looked to, for comparability because of similar underlying criteria, such as geography, population and income.

In this case, the parties have agreed to four counties which are to be used for comparison. The counties are Champaign, Madison, Peoria and Sangamon. With respect to wages for Road Deputies, three of the counties (Madison, Peoria and Sangamon) have negotiated wage schedules through at least 2011. Champaign Road Deputies have a wage schedule through 2010. In the case of Correctional Officers, two of the counties (Madison and Peoria) have negotiated wages through 2011, while the remaining two (Champaign and Sangamon), have wage schedules only through 2009.

Because the proposed wage increases for 2009 are the same for both the County and the Union (and will be, no matter which proposal is adopted), the

Arbitrator has decided to view the wage rankings for both 2008 and 2009 to determine the relative position of St. Clair County law enforcement personnel in comparison to their counterparts in the comparable counties.

In both 2008 and 2009, wages for experienced Road Deputies in St. Clair County rank second overall and about 3.0% above the average for a 15 year employee and 1.5% above average at top pay. In 2010, under the Union proposal for a 3.25% increase, the number two ranking would remain unchanged, while the above average comparisons would increase to 3.5% and 2.3% respectively. In 2011, the Union proposal of 3.25% would maintain their ranking at number two (out of four since Champaign County has not negotiated wages for 2011) and an above average wage of about 4.0% and 2.5%. Under the County proposal for a wage freeze in 2010, the ranking at 15 years would drop to three out of five and reduce the 15 year wage rate to about the average. Similarly, the ranking for top pay deputies would drop to four out of five and their wage rate would dip slightly below the average.

In the case of Correctional Officers for 2008 and 2009, wages for experienced personnel rank in third place out of the five counties, with wages for 15 years and top pay slightly below the average. However, neither Champaign nor Sangamon Counties have wage schedules for 2010 and 2011. Peoria and Madison do. When comparing wage rates for St. Clair County Correctional Officers to their counterparts in Peoria and Madison County for 2008 and 2009, St. Clair ranks second of three, with 15 year wage rates below average by about 0.5% and top pay wage rates above average by about 1.5%. In 2010, under the Union proposal for a 3.25% increase, the number two out of three ranking would remain unchanged and the comparisons to average would remain relatively the same. Similarly, in 2011, the Union proposal of 3.25% would also maintain their ranking at number two and the comparisons to average would remain relatively the same. Under the County proposal for a wage freeze in 2010, the ranking for Correctional Officers would remain at two out of three, but the 15 year wage rates would drop to 3.8% below the average (from 0.5% below) and top pay would drop from about 1.5% above average to 1.7% below average.

The County points out that the Sangamon County Road Deputies recently negotiated to reduce their 2010 wage increase downward from 3.5% to 0.5% to avoid layoffs. The County suggests that this re-negotiation supports their proposal for a freeze and wage reopener. While it is true that Sangamon County and their Road Deputies reached agreement on the 2010 wage reductions, the Arbitrator has already taken them into account in the analysis of comparables above. In addition, the Sangamon County agreement also extended the current contract by one year and includes a wage increase of 0.5% effective in June, 2011 and another increase of 3.53% effective in December, 2011.

The Arbitrator believes the analysis and comparison of wage rates among comparable counties favors the Union proposal.

The Act requires the Arbitrator to consider the impact of the average consumer prices for goods and services (the cost of living) in arriving at a decision.

The County offers evidence that indicates the CPI-U for the period of May 2009 through May 2010 increased 0.9% (excluding food and energy). However, including all items, the CPI-U growth for the period was 2.0%. The County further suggests that for the period January 2010 through May 2010, the CPI-U was relatively flat, an indication of little or no recent growth in the cost of living. The County believes that the 2009 wage increase of 3.0% alleviates any issues relative to cost of living, and the 2010 wage freeze is in line with recent cost of living statistics which indicate little or no growth.

The Union presented evidence indicating what they believe is a loss of purchasing power by members. The Union exhibits showed that for the period between January 2008 and May 2010, both Road Deputies and Correctional Officers have experienced a 3.25% loss of purchasing power. While this is true, their analysis does not include the impact of a 3.0% wage increase for 2009, which will result whether either parties wage proposal is adopted. Taking into account this increase, the actual loss of purchasing power during the same period is only about 0.3%.

The Arbitrator believes the cost of living arguments provided by the parties support what has already been determined, that the 3.0% wage increase for 2009 addresses the impact of the higher cost of goods and services since their last increase in 2008. The twelve month ended September 2010 CPI-U shows an increase of 1.1% for all items. This data supports neither the County's proposal for a wage freeze in 2010 nor the Union's offer of a 3.25% wage increase for 2010.

Another important statutory factor to be considered is "The interests and welfare of the public and the financial ability of the unit of government to meet those costs".

There is no denying that the economy has taken a negative toll on all aspects of public and private enterprise. It is well documented that all levels of government are wrestling with growing deficits, strained financial resources and declining revenues. The State of Illinois is no exception. The County points out the "slow pay" status of the State in providing the County with the revenues the state has collected for the County (sales tax, state income tax, personal property replacement tax). The County testified that the State is "about three to four months behind" in making these payments to the County, however, "they are making full payments" when they finally pay. In addition, the State is as much as eight months in arrears in payment for services the County has provided on behalf of the State (Probation Department, State's Attorney's Office, Public Defender's Office). The County is also experiencing declining property taxes and decreases in other local fees and revenue sources. These have contributed to the negative growth of the County's general fund over the last few years. To address the impact of the economy, the County has implemented several measures to control rising costs. These have included the elimination of positions through attrition, no pay raises for other County personnel in 2010 and the refinancing of bonds to reduce interest expense. Despite the rising costs and declining revenues, the County has avoided the necessity to layoff any County personnel. The County suggests that if it is required to implement the Union's wage offer, it may be

unable to maintain that approach and be forced to consider layoffs of law enforcement personnel, particularly the Road Deputies.

The County also suggests that the Arbitrator should consider the positive effect the employees have experienced from the County's decision to shield employees from the rising costs of health care. The County has elected to bear the increased costs of health insurance premiums and has not required employees to share in the increased costs. While the Arbitrator agrees that employees are benefiting from the County's decision, the County did not provide any evidence to show that this decision and its resulting beneficial impact on total compensation is superior when compared to similar benefit plans and total compensation packages provided in comparable communities.

The Union does not dispute that the County is experiencing financial pressures from the economic situation and may have "difficulty in paying". However, the Union asserts that "difficulty in paying" does not mean "inability to pay". The Union suggests that at the end of 2008 the County had approximately \$51 million in the General Fund and had a liquidity ratio which would allow the County to pay off current debt "eight times over".

The Arbitrator believes that the County has done an excellent job in managing County finances and has placed St. Clair County in a better financial position than many other levels of government. The County has shown that it can successfully balance the interests of the public and its employees. The County's cost-cutting measures and desire not to layoff County employees are admirable. However, the County has not convinced the Arbitrator that implementation of the Union's wage proposal would result in great economic consequences to the County.

Finally, there is a wide disparity in the proposals for wages and the difference has resulted in this interest arbitration. If the Arbitrator were to accept the County's offer for a wage freeze in 2010 and a wage reopener for 2011, the Arbitrator would be immediately sending the parties back to the negotiating table to engage in discussions on an issue which they could not resolve and, in all likelihood, would cause them to return to interest arbitration very soon. The Arbitrator does not see

that as a reasonable solution at this time or a benefit to the longer term relationship of the parties.

As required by the Act, the Arbitrator must adopt one of the parties' final offers. Based on the above discussion, on the issue of "Wages" the Arbitrator finds in favor of the Union proposal.

2) Vacation Accrual (Correctional Officers Unit)

The Union has proposed a change to vacation accrual for the Correctional Officer's Unit, only. Specifically, the Union proposes that upon completion of twenty (20) years of continuous service, the vacation accrual be increased to two hundred hours per year.

The Union offers the following to support their proposal:

- a) The increase provides the Correctional Officers with the same level of vacation benefits as the Road Deputies, and as a result, places them in line with the closest internal comparable.
- b) St. Clair County is the only county among the comparable communities where vacation benefits are not the same for Correctional Officers and Road Deputies.
- c) The proposed change is not a "new" benefit or breakthrough issue.

The County proposes no change to the contract and offers the following to support their position:

- a) An increase in vacation benefits would result in additional cost to the County.
- b) The economic and financial circumstances of the County dictate the Agreement provision related to this benefit remain as status quo.
- c) The Road Deputies successfully negotiated the higher level of benefits in their previous and separate Agreement discussions with the County.
- d) The Union has not offered quid pro quo for the change.

Prior to the last Agreement, the provisions related to vacation were the same for Road Deputies and Correctional Officers. During negotiations of the last Agreement, the units split into two separate contracts. At the time of that split, the Road Deputies negotiated different vacation benefits than the Correctional Officers. Those benefits included an enhancement to the vacation schedule for Road Deputies,

increasing their vacation accrual to 200 hours per year upon completion of twenty years of continuous service. The Union is now proposing the same increase for the Correctional Officers.

The Union suggests that the increase in vacation for the Correctional Officers is supported by internal and external comparability. While there may be merit to this argument, the Arbitrator finds it of little value. For some reason (and most probably through an exchange of value), the Road Deputies were able to negotiate this benefit in their last contract. Apparently, the Correctional Officers decided that it was less important and, either failed to elect to negotiate or failed to negotiate the same benefit. Asking for comparability now, without any evidence of quid pro quo seems unreasonable.

Therefore, on the issue of "Vacation Accrual", the Arbitrator finds for the County and status quo.

Non-Economic issues

The parties have stipulated that the remaining issues are non-economic. As such, the Arbitrator may adopt the final offer of one of the parties or may render an alternative resolution.

3) Shift Bidding

The Union proposes new language in the Agreement to allow for shift bidding and offers the following to support their position:

- a) Employees should be allowed to have some choice in selecting which shift to work.
- b) Two of the four comparable communities (Champaign and Sangamon Counties) have some form of shift bidding.

The County proposes no change to the contract and offers the following to support their position:

- a) The Union proposal is an attempt to take away the inherent ability of the County to control management of the Sheriff's department.
- b) The Union's proposal is a breakthrough issue and an attempt to alter the pre-existing and negotiated status quo.

- c) A review of external comparables does not support a change to the Agreement. Madison and Peoria Counties have no form of shift bidding and the Union's proposal is much broader than the shift bidding process in both Champaign and Sangamon Counties.
- d) The County is willing and has offered a compromise position to the Road Deputies allowing them to rotate shifts in the same manner as the Correctional Officers (Rotate shifts about ever four months or three times per year).

The Union's argument for proposing a change to the status quo is based on providing employee's a choice with respect to the hours/shifts they will work. While the Arbitrator recognizes the benefit this will provide for an employees personal life, the impact on the County's ability (and authority) to effectively manage and control day-to-day operations must also be considered.

There is some support for the Union proposal in comparable communities with two having some form of shift selection. However, neither of the two comparables have a process as broad as the one proposed by the Union.

The County has indicated a willingness to accommodate some change to the shift assignment process and has proposed offering the current shift rotation procedure utilized for Correctional Officers to the Road Deputies. In essence, the Road Deputies which currently rotate from days to nights every 28 days, will be assigned to shifts which will rotate every fourth-twenty eight day pay period (or three times per year). The Arbitrator sees this as a reasonable resolution.

Therefore, on the issue of "Shift Bidding" the Arbitrator finds for the County and orders that the parties incorporate the existing policy language governing shift rotation for Correctional Officers into the Collective Bargaining Agreements for both Correctional Officers and Road Deputies.

4) Drug Testing

The parties are in agreement regarding the Drug and Alcohol Testing Policy with one exception. The one unresolved issue relates to language regarding the drug testing process, specifically who and where the sample is collected and is covered in Section 5 (l) of the Policy.

The County proposes that the language read "... provide that all drug testing be performed by licensed professionals that are not St. Clair County employees" and has offered the following to support their position:

- a) The current process for collecting samples has been in place and conducted by Medical Contractor personnel since 2001.
- b) The Union has not provided any evidence of a single complaint supporting their claims regarding issues related to violations of employee privacy.
- c) If the Union's proposal is accepted, the County would incur additional costs in both lost time and money.

The Union proposes that the language read "... provide that all drug testing be performed by licensed professionals that are not St. Clair County employees or the Medical Service Contractors licensed professionals" and offers the following arguments:

- a) The issue is about employee privacy. While the medical personnel at the jail are not County employees, they have a day-to-day working relationship with the Correction Officers.
- b) There is the potential that this day-to-day relationship could result in a disgruntled medical staffer manipulating an employee's sample.
- c) Three of the four comparable communities require sample collection to be performed by a licensed clinical laboratory or hospital.

The Union raises two main issues, employee right to privacy and the potential risk that the day-to-day working relationship between officers and the jail medical staff could result in "a disgruntled medical staffer manipulating a sample". While the concern regarding sample manipulation is understandable, there is little likelihood this will occur. No evidence was presented to indicate that the existing medical staff at the jail has not met professional standards regarding the manner in which it currently collects and processes test samples. In fact, the Arbitrator believes that standards to insure the chain of custody must already be in place that minimize, if not eliminate, the risk of sample manipulation between the time of collection and laboratory testing.

As suggested by the County, the current collection process has been in place for about 10 years with no evidence of unreliability or any instances claiming violation of employee privacy. In addition, the Arbitrator agrees that incorporating the Union's

proposal would result in additional burden on the County with respect to cost and employee productive work time with very little resulting benefit.

As such, on the issue of "Drug Testing", the Arbitrator finds for the County. The language for Section 5(l) as proposed by the County shall be incorporated into the Agreements as Section 16.05 and Appendix C.

5) Discipline and Discharge

The Union proposes new language in the Agreement regarding discipline and discharge. In general, the Union is proposing that an employee who has been disciplined or discharged by the County be given an opportunity to elect whether to contest the County's action and seek remedy through the grievance procedure or the Sheriff's Merit Commission. In support of their position the Union offers the following:

- a) In 2007, the statute governing the Sheriff's Merit Commission changed and Section 3-8013 and 3-8014 now provides that disciplinary measures and their method of review are subject to mandatory bargaining, including the use of impartial arbitration. As a result, this is the first time the issue of discipline/discharge could be discussed and/or bargained by the parties.
- b) Because this is the first time the issue could be negotiated, it is not a status quo or breakthrough issue and the Union does not bear a greater burden of proof.
- c) Public policy (Section 8 of the Illinois Public Labor Relations Act) has been deemed by several arbitrators to require discipline to be subject to the grievance/arbitration procedure.
- d) A review of external comparables supports the Union position. All four communities have some level of employee choice regarding the disciplinary process.
- e) The Union proposal is not requiring the elimination of the Sheriff's Merit Commission. The Union is requesting that the employee be given a choice regarding the path they wish to pursue to appeal disciplinary action.
- f) The Arbitrator has authority to resolve the issue through the interest arbitration process.

The County proposes no change to the Agreement and offers the following in support of their position:

- a) Section 3-8007 of the Sheriff's Merit System Law provides that discipline and discharge are mandatory duties of the Sheriff Merit Commission. Sections 3-8013 and 3-8014, which the Union relies on, are in conflict with Section 3-8007.

- b) The County is a non-home-rule county and, as such, cannot deviate from state statute as other communities may.
- c) There is little evidence that the current process under the Merit Commission is broken. In fact, the one case the Union provided as an example to support their reason for change, demonstrates that the current process provides the greatest protection to employee's rights for due process.
- d) With respect to comparable communities, two have only the Merit Commission, while the other two allow an employee to choose between the Commission and a grievance procedure.
- e) The Union is proposing a radical change and is a major breakthrough issue. In addition, the proposal is much broader than just allowing an employee to elect the grievance procedure as a path to remedy.

This is the first time since the change in statute that the issue of discipline and discharge has been discussed by the parties during contract negotiations. Prior to the expiration of the Agreements, the law provided that the issue of discipline was the sole authority of the Sheriff's Merit Commission, and not subject to the grievance procedure. However, in 2007, the statute covering the Sheriffs Merit Commission was changed by Public Act 095-0136. With respect to disciplinary measures, Sections 3-8013 and 3-8014 of the Sheriff's Merit System Law were modified to include the following:

"However, on and after June 1, 2007, in any sheriff's office with a collective bargaining agreement covering employment of department personnel, such disciplinary measures and the method of review of those measures shall be subject to mandatory bargaining, including, but not limited to, the use of impartial arbitration as an alternative or supplemental form of due process".

As a result, the Union brought the issue up for bargaining with the expiration of the Agreements on December 31, 2008.

The County proposes the status quo and suggests that certain Sections of the Sheriff's Merit System Law are in conflict. Specifically, the County offers that Section 3-8007 supports their position and clearly provides that discipline and discharge are mandatory duties of the Merit Commission. Section 3-8007 reads in part as follows:

"Duties and jurisdiction of commission. The Merit Commission shall have the duties, pursuant to recognized merit principles of public employment, of certification

for employment and promotion, and, upon complaint of the sheriff or states attorney as limited by this Division, to discipline or discharge as circumstances may warrant”.

While the County may view the Sections as being in conflict, the Arbitrator does not. Sections 3-8013 and 3-8014 clearly provide that as of June 1, 2007, discipline shall be subject to mandatory bargaining, including impartial arbitration as an alternative or supplemental form of due process and, in the Arbitrator’s opinion, Section 3-8007 does not contradict this provision. The Arbitrator further interprets the meaning of “shall have the duties” to mean that when a complaint is presented to the Merit Commission for review, the Commission has the authority “to discipline or discharge as circumstances warrant”, but does not mean that the Commission has sole authority of all complaints or that all complaints must be brought before the Merit Commission. As such, the Arbitrator believes that as of June 1, 2007, Sections 3-8013 and 3-8014 of the Act opened the door for the parties to bargain issues of disciplinary action including impartial arbitration as an alternative to the Merit Commission.

Although the Arbitrator has determined that the issue of discipline and discharge can be negotiated, the Union’s proposal for new contract language must be evaluated and measured against the County’s request for status quo.

It is well recognized that employees are entitled to fairness and due process in all matters of employment. While there is no doubt that the Merit Commission provides both, the Union is requesting that employees have the option of selecting another path of equal fairness and due process, the grievance procedure and impartial arbitration. The Union is not implying that the current process is “broken” (and indeed it is not) or requesting that the Merit Commission process be eliminated. The Union is requesting that an employee be allowed to make an either/or choice with respect to who will be the authority to which they can direct their appeal for fairness and that the choice be made very early in the process.

The Union suggests that providing the option for an employee to pursue fairness through the grievance procedure is supported by public policy, arbitral authority and existing provisions within comparable counties. The Union refers to several arbitration awards substantiating their claim.

A review of comparable communities provides mixed results and favors neither party. Champaign County deputies and corrections officers and Sangamon County deputies may choose between the Merit Commission and impartial arbitration (similar to the Union proposal). In the remaining counties, employees are allowed little or no opportunity to choose.

Under the current St. Clair County Sheriff Merit Commission Rules and Regulations, disciplinary hearings are initiated and conducted only when the disciplinary suspension imposed by the Sheriff "exceed(s) a total of thirty (30) days within a twelve month period". No hearings are conducted for all other lesser disciplinary action (reprimands or shorter suspensions with or without pay). Unlike Champaign County, which the Union includes as an example supporting their position, the St. Clair County Sheriff Merit Commission Rules and Regulations do not provide for employees to request or initiate hearings to appeal any disciplinary actions. As a result, because the existing St. Clair County Sheriff Merit Commission Rules and Regulations do not allow employees to request a hearing, the Union proposal for choice between the Commission and the grievance procedure can not occur until the Commission Rules and Regulations are modified to allow employees to request a hearing or appeal.

While the Arbitrator feels there is some merit to the basis for the Union's proposal, at least to the extent of providing employees with some process to appeal disciplinary action not automatically brought before the Commission, the Arbitrator has no authority to change existing Sheriff Merit Commission rules. As such, the Arbitrator can not impose a process which allows an employee to choose between the Commission and the grievance procedure, where the employee does not already have the opportunity to initiate an appeal to the Commission.

Finally, the Arbitrator believes that the parties have not fully explored (and discussed) this issue during negotiations and is, therefore, unwilling at this time to impose a resolution which may be far different than what the parties could achieve with more meaningful discussion and negotiation.

As such, on the issue of "Discipline and Discharge", the Arbitrator finds for the County and status quo.

6) Sick Leave

The County proposes the addition of language to the Agreement regarding pay for first day of sick leave and offers the following in support of their position:

- a) The change to the provision regarding sick leave is necessary to address the costs incurred by the County for the sick leave pay paid to the employee as well as the cost to fill the vacated shift position on overtime.
- b) The Correctional Officers use approximately two times the amount of sick leave as the Road Deputies.

The Union proposes no change to the Agreement and offers the following:

- a) Section 10.10 of the Agreement already prescribes the specific requirements for employees who have requested sick leave.
- b) There is no evidence that an employee has ever been disciplined for sick leave abuse. Nor is there any evidence that the County has ever tried to discipline an employee for abuse of the sick leave benefit.
- c) The County has not met the burden of proof for changing the status quo.

The County's proposal is aimed at addressing what it feels is abuse of first day sick leave by employees it has termed "earners and burners". The County suggests this abuse is costly and can be controlled by the new contract language. The Union proposes status quo and suggests that the current Agreement provides the County with appropriate methods to address the issue.

It is interesting to this Arbitrator that the County has never shown a need to address this issue with any employee. If the problem were as significant an issue to warrant new contract language, one would assume there would be several instances to show that the County has had a need to address employees regarding abuse. The County testified that the Correctional Officers use approximately twice as much sick leave as the Road Deputies, although there is no evidence detailing the amount (hours/days) of sick leave taken by either Unit.

While the Arbitrator recognizes the County's concerns regarding the need to control costs, the County has not convinced the Arbitrator that the new language is

the necessary solution at this time. Instead, the Arbitrator believes the County should utilize existing language and authority to address issues of abuse. Moreover, implementing the County's proposal across the board would affect the Road Deputies Unit, which by the County's own testimony is not the "big problem", and also individual Correction Officers who do not abuse the benefit.

On the issue of "Sick Leave", the Arbitrator finds for the Union and status quo.

7) Probationary Period

The County proposes to lengthen the probationary period from twelve to eighteen months and offers the following in support of their position:

- a) Twelve months is not sufficient time to evaluate a new officer because much of their time is spent in the police academy and training.
- b) The extended probationary period is of benefit to both the County and the Union. Under the current timeframe, if the County is unsure about an employee's capability at twelve months, the County is in the position that it must terminate employment. Under the proposed timeframe, the employee would have a longer period to prove themselves worthy of retention.

The Union proposes the status quo and offers the following:

- a) The extended probationary period is not warranted.
- b) The County offered no evidence of disciplinary or performance problems which occurred shortly after an employee completed their twelve month probationary period.

The County suggests a need to extend the probationary period from twelve to eighteen months to provide additional time to better evaluate a new officer. The Union opposes the longer period and proposes the status quo.

The County provided testimony that a new officer must first attend and complete academy training. This is a ten week program conducted at the Southwestern Illinois College (SWIC). After conclusion of the ten week program, the new officer is assigned to a field training officer (FTO). The County witness testified that the time the new officer spends with the FTO varies, but the optimal time period would be "at least a month, but it doesn't always get achieved". Other than the ten week academy and the month with the FTO, it appears that the new officer begins

performing regular duties sometime after their first four to five months of employment. Based on that timeline, the County has approximately seven to eight full months to evaluate the new officer.

The Union suggests that a change is not warranted and points to a lack of evidence indicating a need to change. In fact, there is no evidence to show the County has had to address disciplinary or performance issues for an officer with more than twelve months but less than eighteen months service.

The Arbitrator recognizes the County's interest in a longer period for evaluation to insure that officers are fully capable of performing their duties with competence and professionalism. However, the County has not convinced the Arbitrator of a compelling need that supports the change.

Therefore, regarding the issue of "Probationary Period", the Arbitrator finds for the Union and status quo.

8) Compensatory Time

The County proposes adding new language to change the existing process of when an employee makes an election of how to receive compensation (either pay or time off) for overtime worked and offers the following discussion:

- a) The current process for recording the employee's election at the time the overtime is worked results in a lot of paperwork and is difficult to administer.
- b) The purpose of the County's proposal is to lower administrative costs related to processing payroll and compensatory time.

The Union proposes no change to the Agreement and offers the following to support their position:

- a) This is an historical issue between the County and Union. The current process has been in place for over seven years.
- b) There is no evidence to support that the current process is an issue.

The County suggests that the current process, which requires the employee to make the election (of pay or comp time) at the time the hours are reported on the time sheet, makes calculation of payroll more difficult. However, the County offered

no evidence to support the claim. The County also states it can be an issue every day and the change to limiting the election to twice a year would result in lower administrative costs.

While on the surface, one could assume that changing a process which occurs almost every day to only twice a year would be easier and less costly, the County did not provide information regarding the expected savings (administrative time) the change would achieve. Absent some evidence which would support the County's position and provide a strong basis for the need to change the process, the Arbitrator finds no reason to accept the County's proposal.

On the issue of "Compensatory Time", the Arbitrator finds for the Union and status quo.

9) Damage to Employer's Property

The County proposes to add a new section to the Agreement requiring employees to be responsible for damage to County property and offers the following:

- a) The purpose is to reduce costs related to preventable property damage and encourage employees to be more careful with County equipment.

The Union proposes no change to the Agreement and offers the following discussion:

- a) The County has not provided a compelling reason or evidence to support this change.
- b) This proposal is a new benefit to the County and a new cost to employees.

To support their proposal, the County submitted evidence identifying costs for repairs. In particular, several internal memos dated in both 2009 and 2010 were provided to indicate the cost of radio repairs. In all, the memos represented ten separate Wireless USA invoices related to radio equipment. Most of the invoices were for radio repairs. One invoice was for a replacement power supply and two others were for the engraving. None of the invoices had an amount which exceeded \$180.00. There was no indication on any of the invoices/memos identifying the reason

for the repair, nor was there any evidence or testimony provided identifying the cause of the damage.

The Arbitrator recognizes the County's need to insure that County personnel bear some responsibility for County equipment and property. However the County has not convinced the Arbitrator that there is a need to incorporate the proposal in the Agreements. The invoices presented may have been to cover costs associated with normal "wear and tear". Nothing indicated that the repairs were required due to negligence or misconduct on the part of County personnel. In fact, two were for "engraving" which appears to more of an administrative need rather than the result of damage. In addition, none of the invoices was for an unusually substantial value and over the two years all of the invoices totaled only slightly above \$1,500.00.

With respect to the issue of "Damage to Employer's Property", the Arbitrator finds for the Union and status quo.

AWARD

In summary, I find and award the following on each of the contested issues in this matter:

Issue 1 - Wages

For the Union

Issue 2 - Vacation Accrual

For the County

Issue 3 - Shift Bidding

For the County

Orders that the parties incorporate the existing policy language governing shift rotation for Correctional Officers into the Collective Bargaining Agreements for both Correctional Officers and Road Deputies.

Issue 4 - Drug Testing

For the County

Issue 5 - Discipline and Discharge

For the County

Issue 6 - Sick Leave
For the Union

Issue 7 - Probationary Period
For the Union

Issue 8 - Compensatory Time
For the Union

Issue 9 - Damage to Employer's Property
For the Union

As stipulated by the parties, separate checks reflecting retroactive pay shall be issued within forty-five (45) days of the date of this award. I also order that the substance of the above findings are to be incorporated into the parties' new Agreements, along with all tentative agreements previously reached by the parties and agreed to be included in this Award.

Dated: November 18, 2010



MICHAEL A. WOJCIK
ARBITRATOR