

ARBITRATION

COUNTY OF CRAWFORD, ILLINOIS,
CRAWFORD COUNTY SHERIFF
EMPLOYER

CASE NO. S-MA-09-092
INTEREST ARBITRATION/
GRIEVANCE ARBITRATION

vs.

ILLINOIS FRATERNAL ORDER
OF POLICE LABOR COUNCIL,
UNION

JAMES A. MURPHY,
ARBITRATOR

DECISION AND AWARD

APPEARANCES:

For the Employer: JACK KNUPPEL, Attorney

For the Union: JAMES L. DANIELS, Attorney

July 11, 2012

BACKGROUND

The County of Crawford (County or Employer) is located in east central Illinois with the County Seat located in Robinson, Illinois. The County has a population of approximately 20,000 residents, and covers approximately 444 square miles. The Sheriff's Department employs a mixed bargaining unit with three employee groups of sworn and unsworn personnel consisting of 8 full time deputy sheriffs, 5 full time corrections officers, 6 full time dispatchers, 1 dispatch supervisor, 1 chief correctional officer and 1 administrative assistant, all of whom are represented by The Illinois Fraternal Order of Police Labor Council (FOP or Union). The Sheriff also employs 9 part time deputy sheriffs, 4 part time corrections officers and 3 part time dispatchers, none of whom are represented.

The FOP has had a bargaining relationship with Crawford County and the Crawford County Sheriff since fiscal 1993. The last CBA expired November 30, 2010. Bargaining for a successor agreement has resulted in agreement on some issues, but a **Notice of No Agreement** was filed with the Illinois Labor Relations Board on September 3, 2010. The Parties stipulate that the procedural prerequisites for binding arbitration of the outstanding issues have been met, and the Parties waive appointment of panel delegates. The Parties further stipulate that the Arbitrator has authority to award increases in wages and all other forms of compensation retroactive to December 1, 2010.

Effective October 1, 2011, the County made unilateral changes to the health insurance provisions of the CBA which, among other things, raised the insurance premium

contributions for all bargaining unit employees from the negotiated rate of \$33.81 per month to \$100 per month and raised the negotiated deductible from \$500 to \$3,500. The Union grieved the increase, and the Parties agreed that the Grievance arbitration could be heard in conjunction with the Interest arbitration since the resolution of the grievance would determine the status quo for the insurance premium contribution at issue in the interest arbitration. The Parties stipulate that the grievance has been duly processed, and is properly before the arbitrator for final and binding resolution.

Arbitrator James A. Murphy was jointly selected by the Parties, and a Hearing was held on March 20, 2012 at the Courthouse in Robinson Illinois. The Parties presented evidence by narrative, exhibits and witnesses. The Parties waived closing arguments, and briefing was scheduled for 30 days after delivery of transcripts. The Union filed its Brief on May 8, 2012 and the County waived filing a brief on May 25, 2012, at which time the record was closed.

THE GRIEVANCE

Issue

Did the County violate the Collective Bargaining Contract when it unilaterally changed the terms of the health care provisions in the Contract; and, if so, what is the remedy?

Relevant Contract Provision

Article XXII Section 1

Each Employee will contribute \$33.81 per month to premium payment effective 10/01/07 through 11/30/10. This amount includes the premium for the current Dental Plan.

Contributions to premium by employees under the Collective Bargaining agreement will be no more than contributions by non-collectively bargaining employees.

Employees may select either the \$500.00 annual individual deductible plan or the "HSA" plan, under which the Employer will contribute \$83.17 per month on the employee's behalf to the plan savings account.

A Health Insurance Review Committee will be formed to review possible changes in insurance benefits during the term of the agreement.

The Employer may change Plans without bargaining if coverage, premium, and deductible remain the same. With input from the Health Insurance Review Committee, Employer can make changes to the current plan. Any substantial changes to the employee contribution towards premiums will be negotiated. Substantial change to the employee contribution toward premiums would be 20 per cent or more of the 2007-2008 contribution or the 2007-2008 annual out of pocket maximum. Retirees must go onto the health plan of their new employer after leaving the County. The Employer agrees to pay 50 percent of the cost of the premium for retirees toward health insurance to maximum County cost of \$400.00 per month until age 65 or eligible for Medicare.

Facts

Prior to the commencement of this interest arbitration, the Union had filed a grievance contesting the County's action changing the terms of the health insurance program in October 2010. Since the resolution of that grievance would determine the status quo of

the insurance plan in this arbitration, the Parties requested that the grievance be resolved in this same proceeding.

By the terms of the then current contract in October 2010, employees were to pay \$33.81 per month for individual coverage which included dental. The employee then had the option to select either the \$500 annual deductible plan or the "HSA" plan with a \$1,500 deductible under which the County would contribute \$83.17 per month to the employee's Plan savings account. Effective October 1, 2010 the County unilaterally adopted a Plan which raised the employees' monthly payment to \$100 and the deductible from \$500 to \$3,500 and shifted the cost for dental coverage from the County to the employees. In the "HSA" option the deductible was raised from \$1,500 to \$5,000 with the first \$1,000 paid by the employee and the remaining \$4,000 split 80/20 with the County. Contributions made to "HSA" account were discontinued, and cost for dental coverage was shifted to the employees.

The CBA at Article XXII Section 1 states, in pertinent part: "The Employer may change Plans without bargaining if coverage, premium, and deductible remain the same. With input from the Health Insurance Review Committee, Employer can make changes to the current plan. Any substantial changes to the employee contribution towards premiums will be negotiated. Substantial change to the employee contribution toward premiums would be 20 per cent or more of the 2007-2008 contribution or the 2007-2008 annual out of pocket maximum."

It can hardly be argued that bargaining was not required for the new Plan inasmuch as coverage, premium, and deductible did not remain the same; nor can it be disputed that a roughly 200% increase in employee contribution toward premium was required to be negotiated, or that a 600% increase in deductible required input from the Health Insurance Review Committee. Testimony from the Union which was not disputed by the County established that neither bargaining nor input was requested or took place here and the Plan was presented to the bargaining unit as a *fiat accompli*.

The County has offered no explanation why it unilaterally imposed significant Plan increases without attempting to negotiate with the Union or attempting to seek input from the Health Insurance Review Committee. Nor does it appear that there was any discussion with the Committee to seek other cost cutting measures in lieu of these increases. Lesia Olinger testified without contradiction that she was told by County Board Member and chairman of the County Board Insurance Committee David Fullom that the County did not try to rebid the insurance Plan because the local agency that was currently carrying the insurance stated that they may have to raise their premiums if the contract went out for bids.

The rationale offered by the County for its unilateral action is that the insurance cost to the County had increased dramatically which is not disputed. County Board minutes state the cost increase was 47%, and that insurance costs consume about 25% of the County budget. These statements were made at a County Board meeting, not under oath,

and even if not entirely accurate; they do portray what is by any measure, a drastic increase, and a serious financial problem which calls for action to control those costs.

The County here faces what has become an all too familiar dilemma of dealing with spiraling health care costs while facing shrinking resources. Arbitral reaction to unilateral changes in health insurance terms varies widely; depending mainly on how explicit is the contractual duty to bargain. (See a discussion of the issue in Elkouri & Elkouri, Sixth Edition at page 1181 et seq) In this case, the obligation to bargain could not be more clear. Substantial change to the employee contribution toward premiums is defined in the CBA as 20 per cent or more of the 2007-2008 contribution. I understand the financial pressures that the Employer is under and the equity of shared sacrifice in health insurance. In the context of the bargained agreement, however, the County's financial difficulties cannot excuse the County's ignoring its clear contractual obligations to negotiate what are, by definition, substantial changes to premium contributions and changes to coverage, premium, and deductible in a new Plan, nor to seek input from the Health Insurance Review Committee on the increase in deductibles and other costs.

Decision: Given the state of the record, I have no alternative but to sustain the grievance and make the affected employees whole.

Award: To that end, all affected bargaining unit members who have paid additional premium contributions or incurred other costs under the imposed Plan which they would not have paid under the then existing Plan since October 2010 shall receive a credit to

their health insurance accounts for those payments for the months of October and November 2010. All affected bargaining unit members who have paid additional premium contributions or incurred other costs under the imposed Plan which they would not have paid under the Union proposed Plan, which is adopted in the companion Interest Arbitration, shall receive credit to their health insurance accounts for those payments from December 2010 through the date of implementation of this Award.

The credits awarded herein shall be promptly calculated and posted to the employees' health insurance accounts not later than 30 days following the date of this Award unless a longer time is agreed between the Parties. Any affected individual who is no longer employed by the County or is no longer on the County insurance plan shall be reimbursed for any overpayments as described above.

The Arbitrator will retain jurisdiction for 90 days to resolve any implementation issues.

For purposes of the companion interest arbitration, the status quo is established as the language of the 2006 - 2010 Contract.

THE CONTRACT

The Parties have successfully negotiated a number of terms in the CBA, but state that they have bargained to impasse on seven issues:

- 1) Health Insurance
- 2) Wages
- 3) Pay Scale
- 4) Shift Differential
- 5) Compensatory Time
- 6) Overtime
- 7) Clothing/Equipment Allowance

For the purposes of this arbitration, I view the issues of Wages and Pay Scale as a single issue. The County's wage proposal is, in fact, the pay scale; and the Union's wage proposal is based on adjustments to the current pay scale.

The Parties stipulate, and I concur that the issues in dispute are economic. Therefore, The Illinois Public Labor Relations Act, Section 14(g) sets forth the standard for selection of offers made by the parties:

... 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 presented in subsection (h).

Therefore I am constrained to select either the County's or the Union's last offer for each issue in dispute in this case. I have no authority to impose an award different from one of the presented offers on an issue. Furthermore, I am required to base my decision on the factors set forth in Section 14(h) of the Act.

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, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) 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 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.

Moreover, it is well-settled that the statute makes no effort to rank these factors in terms of their significance and thus it is for the arbitrator to make the determination as to which factors bear most heavily in any particular dispute. (See, e.g., *City of Decatur*, S-MA-29 (Eglit, 1986).

Health Insurance

Current: Employee contribution is \$33.81 per month for individual coverage which includes dental. Employee then has the option to select either the \$500 annual deductible plan or the "HSA" plan under which Employer contributes \$88.33 per month to the Employee's plan savings account. For retirees, Employer pays 50% of premium cost to a maximum of \$400 per month until age 65 or eligible for Medicare. Health Insurance Review Committee is established to review possible changes in benefits. With input from the Committee, Employer may make changes to the current Plan, but any substantial increase towards premiums (20% or more of 2007-2008 contribution) is to be

negotiated. Employer may change Plans without bargaining if coverage, premium, and deductible remain the same.

Union Proposal: Employee contribution is \$50.00 per month including current dental coverage. Employee pays the first \$750 of plan deductible, and any remaining Plan deductible is split 80% to Employer and 20% to Employee. In the “HSA”, Employer pays \$93.78 per month into the Plan savings account. Employee pays the first \$1,000 of any Plan deductible, and any remaining deductible is split 80% to Employer and 20% to Employee. “HSA” includes current dental benefit. For retirees, Employer pays 50% of premium cost to a maximum of \$500 per month until age 65 or eligible for Medicare. The Health Insurance Review Committee shall meet at least twice annually

County Proposal: Employer contributes \$550 per month toward a plan that Employees engage and is approved by the County Board. Any additional amounts are paid by Employees. Employees have sole responsibility to choose amount and types of insurance, but Employer contribution is capped at \$550 and depends on County Board approval of the Plan. Discontinues retiree health insurance premium benefit and discontinues “HSA” program. Creates a County wide Insurance Committee made up of representatives from each union, elected officials, unrepresented employees, and Chairman of the County’s Insurance Committee. The Committee is to decide on a benefit package to cover all persons in the group, and the Plan must be approved by the County Board. County may require Employees to enroll in certain wellness programs as necessary to enable the Employee to perform their duties in a reliable manner.

Discussion: Here, as in most jurisdictions, health insurance is a significant budget item. It has been the trend in recent years that health care costs significantly outstrip inflation, and there is no reliable evidence that would suggest that these increases will not be continuing into the future with or without reference to The Affordability Care Act.

The issue of how the Parties share the extent and cost of health insurance benefits is one that has been a challenge to arbitrators, particularly in this recent difficult economy from which we seem to be moving only very slowly out of. I will not unduly lengthen this Decision with a recitation of all of those competing considerations, but for a detailed discussion of this issue in the health care arena see: City of Park Ridge and Fraternal Order of Police Labor Council (Hill, 2011).

Applying those considerations to the instant case, on the issue of health insurance, the factor of internal comparability frequently weighs heavily in the arbitrator's consideration, particularly where there is consistency among all employee groups or where over a course of bargaining one bargaining unit has been intransigent. Neither is the case here. It does appear that the County is making some movement towards uniformity which weighs in favor of its proposal. The initial problem, however, is that detailed information on the extent to which that goal is being pursued or has been attained is not in the record. It is clear that, at least, the Highway Department Employees are not in uniformity since they have their own plan through their Union. Similarly, there is no history of extended bargaining attempts by the County to implement its current

proposal which have been rebuffed by the Union. This is the first time the proposal has been made. Health insurance coverage has been a part of every collective bargaining agreement between the Parties since the initial contract. It was only in the most recent contract that employee contributions towards premiums were instituted; and that was offset by a quid pro quo of \$0.25/hr shift differential. I can identify no quid pro quo here.

In this round of bargaining, the Union has proposed some significant concessions on premium contributions. Employee contribution goes from \$33.81 to \$50.00, a roughly 50% increase, and the deductible goes from \$500 to \$750, also a 50% increase. The County contribution to the "HSA" plan is increased to \$93.78, a 12.75% increase, but the deductible is raised to \$1,000. It was noted in the Grievance decided above, that the County Board cited a 47% cost increase (represented as 30% at hearing) as reason for its unilateral employee contribution increases of October 2010. In that context, the Union's offer of 50% increases in Employee contribution and deductible does recognize the County's financial problem, and is responsive to it. The County's proposal is a radical change from the current Plan which involves significant takeaways. Probably the primary advantage to the County is that the proposal caps their cost for the duration of the Contract, and gives them a finite number to work with in upcoming budgets. The flip side is that it puts 100% of the risk of future insurance cost increases on the Employees. There is no evidence in the record as to what type of coverage can be purchased for \$550 per month, and how that would compare with coverage under the current Plan now or in the future.

In addition to those considerations, the County's proposal eliminates retiree health insurance contributions entirely, and also eliminates the "HSA" plan. It also initiates the right of the County to require Employees to participate in certain wellness programs when deemed "necessary" to enable the employee to perform their duties in a "reliable" manner.

Finally, the County proposal puts this bargaining unit into a group with all employees and elected officials in the County in a committee charged with coming up with one health insurance plan to cover the entire group. There may well be a great deal of merit to a county-wide insurance program, and it is an increasingly common strategy to deal with skyrocketing insurance costs. It certainly deserves further discussion. The committee here is couched in the context of exploring options within the County's overall proposal of capping the County's contribution, and I do not have the option of taking or modifying only parts of a Party's proposal.

In the area of health insurance, external comparability generally carries less weight than internal comparability, but it is still a factor to consider. Among the agreed external comparables, only one, Clay County, has a contribution system like that proposed by the County. Four comparables require no employee contribution, while the remaining three have employee contributions ranging from \$10 per month to \$47.66 or 10%.

Contribution rates, of course, do not tell the whole story because differences in coverage, co-pays, caps etc. affect the value of the benefit. On the whole, however, it appears that

the Union proposal places Crawford County above the average for employee participation in the cost of health insurance; and the County does not dispute this.

While it does appear that the County has shown some need for change because of financial considerations, the change proposed here by the County is a radical change to the negotiated system that has historically been in place. It is well established in Illinois collective bargaining that a Party seeking a breakthrough change, as the County does here, bears a heavy burden to show the compelling need for that change or to offer an adequate quid pro quo. Not only is there no quid pro quo offered here, but in a separate proposal the County seeks to take back from some Employees the quid pro quo that was incorporated in the last CBA in exchange for instituting employee premium contributions. A radical change to the status quo such as proposed here is better bargained between the Parties than imposed by an outside third party. (Park Ridge, supra, citing Arbitrator Imes pp. 41,42). The Union's proposal recognizes the County's financial problem, and does offer some relief within the existing system.

Award: The County's proposal represents a major breakthrough and a radical change to the current system with no identifiable quid pro quo. A compelling need to change to a system which caps the County's contribution and places all of the risk of future cost increases on the Employees and eliminates various other benefits that have been bargained in the past is not supported by the evidence. Granted there is a need to "share the pain" of rapidly increasing health insurance costs in difficult financial times. The

Union's proposal does make significant concessions within the current system. I find that the Union's proposal is the more reasonable.

Union's proposal is awarded.

Wages and pay scale

Current: All three of the Employee groups in the Sheriff's bargaining unit are on a 16 step pay plan with step increases at intervals beginning with year 1 through the top at year 24. As of 12/1/09 Deputies start at \$29,378.03 and top out at \$53,400.89; Correctional Officers start at \$27,887.86 and top out at \$43,216.16; Dispatchers start at \$27,074.11 and top out at \$42,055.76.

Union Proposal: Retroactive percent increases added to current pay scale:

Effective: 12/1/10 2.5%
12/1/11 2.5%
12/1/12 3.0%
12/1/13 3.0%

County Proposal: Revised pay scale with no per cent increases.

Effective: 12/1/10 Placement on new pay scale
12/1/11 Movement through pay scale
12/1/12 Movement through pay scale
12/1/13 Movement through pay scale

Discussion: What the County proposes here is a significant departure from the current system and the bargaining history of these Parties. The County proposes one adjustment to the pay scale which is then in force for four years retroactive to 12/1/2010 with no annual percentage increases.

In the County's wage/pay scale plan Correctional Officers' and Dispatchers' raises are in \$1,000 increments each year from start thru year 4, and then \$1,000 every two years to the top at 24 years. Deputies get a \$5,000 increase after year 1, \$3,000 after year 2, and \$2,000 after years 3 and 4. Then they assume the same \$1,000 every two years progression like the Correctional Officers and Dispatchers. After the 24 year increase, there are no more longevity or cost of living increases for the most senior Employees in any of the groups.

Because of the difference in pay scales, this results in bi-annual increases after the fourth year, in the Dispatch and Corrections groups of roughly 3%, while the bi-annual increases in the Deputy group are roughly 2%. The resulting non-compounded annual increases for Corrections and Dispatch are roughly 1.5% and for Deputies are roughly 1%.

The Union's proposal calls for annual increases to the existing pay scale of 2.5% in 2010 and 2011 and 3% in 2012 and 2013. This is the more traditional approach, and is in keeping with the Parties' bargaining history. It is also more realistic in terms of CPI. The average increase in CPI for 2010 and 2011 is 2.4%. The Union's 2.5% and 2.5% across the board for those two years for which we have statistics and the 3% in the two out years is a reasonable proposal to keep pace. The County's proposal appears to benefit some members of the Employee groups while disadvantaging others at the implementation stage. The non-compounded increases of 1% or 1.5% going forward are unlikely to keep up with anticipated CPI increases.

One of the major factors that is traditionally considered in evaluating wage proposals is the comparison of the wages, hours and conditions of employment with employees doing similar work in comparable communities. It appears that what the Parties have bargained in the past is a pay scale that pays Crawford County Employees in all three job classes below the average of the agreed comparables thru approximately the first five years and above average from roughly the tenth year on. Taking the Deputies as an example, both the Union's and the County's wage plans for the first year of the Contract would increase the disparity versus the average of the comparables at start and after one year, although the County's proposal would increase the gap slightly more. At the five year mark, the County's proposal puts Deputies 3.75% above the average while the Union proposal leaves the Deputies 1.20% below the average. At the ten year mark, the County wage is 5.92% above average while the Union wage is 4.87% above average. From there on, the Union proposal outstrips the County's until at top pay, the Union's proposal places Deputies at 11.22% above the average (compared with 11.33% in 2009) while the County proposal places them at only 6.55% above the average. By 2012 and 2013 the County proposal places Deputies at further percent disparity from average at every benchmark step than the Union proposal or the existing wage scale. The effect is basically the same in the Correctional Officer and Dispatcher job classes.

The County offers two major criticisms to support changing the current percentage based system and the Union's adherence to that system. First, the County points out that the system and the practitioners in the system fail to take into account the real and continuing costs of percentage raises to the employer. To illustrate the point, the County

looks back to the prior contract and purports to calculate the impact of compounding the percentage raises given to the Employees through the eight year term of both contracts; and comes to the conclusion that the County's cumulative wage cost increase over the two contracts is 104%. Using that logic, it would seem that, for example, a top paid Deputy who was making \$47,446 in 2005 would by the end of these two contracts, be making in excess of \$96,000 in 2013. Such is not the case. In fact the pay would be slightly under \$60,000.

While the example may not add up, there is a point to be made that we in the industry must bear in mind that these increases are not one time expenditures – they are ongoing and cumulative. At the same time, we must recognize that CPI increases are also ongoing for the Employees.

Secondly, the County asserts that applying across the board percentage increases in a step system will “tear it apart from the top” because bottom to top difference continues to increase. However, whether you like the system or not, you must acknowledge that, in the real world, percentage increase is, by far, the most common way wage increases are done; and that is the system that was freely bargained in the initial contract here, and has not been deviated from since.

The change from a percentage based pay scale to a flat rate pay scale is, indeed, a breakthrough item. The County offers no evidence that the current system is not working or of a compelling need for change at this time other than to save some money and the

theoretical argument that over time percentage based pay scales will be torn apart from the top because of the percentage increases. On the other hand, over time, the flat rate system will result in compression of pay scales. Of course, adjustments can be made periodically to either system if that is found to be necessary. The County has not shown such necessity in this case, nor is there a quid pro quo. In fact, the County offers this wage scale proposal as the quid pro quo for taking back the 25 cent shift differential that was bargained in the last Contract as the door opener for Employee insurance contributions.

One factor which is especially critical in public safety units is the interest and welfare of the public and, the employer's ability to pay. The County does not make an argument for inability to pay other than to say that the Sheriff is unable to keep within his budget year after year. This is presumably because of the high labor costs, but there is no evidence in the record to support the presumption that labor costs as opposed to flawed budgeting practices are the reason that the Sheriff cannot live within his budget. Further, there is no evidence in the record, nor any suggestion, that public safety has been or will be compromised, or that funds have had to be or will have to be diverted from other necessary County functions to meet either Party's proposals.

Again, as with the insurance proposal, the County has failed to make a case for a compelling need for the Arbitrator to impose a breakthrough proposal which is not supported by any viable quid pro quo. In a similar case where the City of DeKalb was proposing to add steps to the established pay scale, Arbitrator Peter R. Meyers observed:

A change such as the City proposes here is just the type of modification that should be implemented only upon careful negotiation and mutual

agreement of the parties. The City really is seeking to implement quite a sweeping change in the established contractual salary step structure, which presumably came about as a result of many negotiations, and this significant a change to so basic a contractual term should not be imposed from outside. Fraternal Order of Police, Labor Council and City of DeKalb, S-MA-10-366 (Meyers, 2012)

That reasoning applies with equal force to the present case.

Award: The County proposes a quantum change in the pay scale which is in no way supported by the evidence. In addition that pay scale advantages some employees while disadvantaging others at inception, and eventually because of the 0% increases, disadvantages virtually everybody. The Union's proposed increases are within reason relative to both internal and external comparables as well as the CPI.

The Union's proposal is awarded.

Shift Differential

Current: First Shift (Midnights) - \$1.00 per hour added to base
Second shift (Days) - \$0.25
Third shift (Afternoons) - \$0.75
Fourth shift (Power Shift) - \$0.90

Union Proposal: Status quo

County Proposal: Eliminate the first and second shift differentials

Discussion

The shift differential system in Crawford County is somewhat unusual in that it pays differential on all shifts – even day shift. This is, however, what the Parties freely

bargained in 2006. The uncontradicted testimony of Lesia Olinger, a 9-1-1 Telecommunicator who was on the Union bargaining team for the 2006 – 2010 contract was that the County agreed to add shift differentia of 25 cents per hour to all employees' base pay as quid pro quo for initiating \$33.87 per month employee contribution to health insurance premiums where there had previously been no employee contribution. Now in the next successor contract, the County proposes to take back the 25 cents on day shift and to completely eliminate the \$1.00 on midnight shift while leaving the Afternoon and Power shifts status quo. The County offers as quid pro quo for the elimination of first and second shift differentials, the restructuring of the salary scales. Aside from the merits of the salary scale proposal which is not adopted, it purports to be a benefit to the bargaining unit as a whole, while the County's shift differential proposal here falls on only two of the four shifts in the Sheriff's Office. One might see some logic to proposing a take back of the 2006 quid pro quo for the insurance contribution by eliminating a 25 cent shift differential on day shift which rarely has any shift differential; but there does not appear to be any rational connection to eliminating the entire \$1.00 differential on the midnight shift, which usually enjoys the largest differential while leaving 75 cent and 90 cent differentials intact for the other two shifts.

The County's exhibit shows that only two of the eight agreed comparable pay any shift differential and those are at much lower rates and paid only to afternoon and midnight shifts. Those external comparables alone do not support the substantial and inequitable takeaways in the County's proposal.

Award: The County's proposal represents a large takeaway from a small group, and sets up a system of shift differential to only second and fourth shifts while denying it to day and midnight shifts which is unparalleled in any comparable and does not seem fair or reasonable. Therefore, the Union's proposal of status quo is the more reasonable.

The Union's proposal is awarded

Compensatory Time

Current: Employees may protect up to 80 hours from mandatory use. Compensatory time over 80 hours may be bought back by the Employer at hour for hour rate. There is no cap on accumulation.

Union Proposal: Status quo

County Proposal: Limit accumulation to 160 hours during the calendar year.

Discussion: The County seeks to cap the accumulation of comp time because it sees it as an unfunded liability. In theory there is a potential for a build up of comp time that could create a situation where the County would be using an excessive amount of overtime to cover comp time off; or there could be a "run on the bank" in which a large number of employees would demand to use or cash out their comp time at the same time. There was certainly no evidence that, in the real world, such scenarios were likely. In fact, the County as well as the Union represented that there was really no problem with the current system. The exhibits introduced by both Parties show a snapshot of comp time balances in March 2012 in which no one was close to the 160 hour proposed cap, and only one employee had as much as 100 hours. I also note that only two of the

comparables impose any cap. Moultrie County caps at 24 hours and Richland County caps at 80 hours. The Shelby County cap of 480 hours is meaningless in practice since that is the maximum cap by law.

Award: The current system is working, and neither Party sees a real problem with it.

Therefore, I find that the Union's proposal of status quo is the more reasonable.

The Union proposal is awarded.

Overtime

Current: The established practice is that overtime is offered first to the most senior qualified Employee. Order in is at the discretion of the Sheriff.

Union Proposal: Status quo

County Proposal: Overtime is posted daily, and offered first to the qualified person low on the overtime list. If all refuse, the least senior qualified Employee can be ordered in.

Discussion: The County recognizes that most comparables have the system that currently exists in Crawford County, but the County is looking for ways to reduce costs. While in theory, it may appear that such a system could potentially save some cost by paying lower salaried personnel to work the overtime, there was no evidence presented as to what the current burden on the County is, nor what the projected savings might be in the real world in Crawford County. Furthermore, this system degrades the value of seniority to the long term Employees while offering no quid pro quo. Employees from each of the employee groups (Deputies, Dispatchers, and Correctional Officers) testified without contradiction that the current practice works well and there have been no problems with it. From a review of the comparables, it appears that only one, Shelby County, uses the

system proposed by the County while six use the seniority based turnsheet, as is the practice in Crawford County. Clark County was unknown.

Award: The current system is working, and neither Party sees a real problem with it in practice. Therefore, I find that the Union's proposal of status quo is the more reasonable.

The Union's proposal is awarded.

Clothing and Equipment

Current: Each employee is credited with \$600 annually for clothing and equipment purchases and maintenance. The employee and the Sheriff agree on appropriateness of the expenditures.

Union Proposal: Employees have discretion how to spend the \$600 on uniforms and equipment without agreement of the Sheriff.

County Proposal: Status Quo.

Discussion: The Union's proposal has the effect of eliminating virtually any control or supervision by management of the expenditure of \$600 by each of the bargaining unit's 22 employees – for a total \$13,200 each year. The only restriction would be that the money be spent on uniforms or equipment with no limit on what type or amount of equipment or the necessity for the purchase. The Union argues in its brief that there would be a list of equipment that could be purchased, but such a list or how it would be agreed upon is not in evidence. In any event, such a list would curtail only the types of equipment that could be purchased but would still not address the amounts. In my experience, I have seen cases where under provisions similar to the Union's proposal, employees have amassed closets full of uniforms and other equipment, not because they needed them, but just because they could and because with slight alteration they can be

put to other personal uses. Some oversight is desirable when it comes to spending taxpayer money.

In support of this proposal, the Union cites one instance where the Sheriff apparently temporarily suspended purchases for a period of time near the end of a budget year and where one deputy had to delay the replacement of a coat. This does not evidence a pattern of arbitrary refusal to agree on the appropriateness of expenditures; but, rather speaks to the need for all parties to cooperate in managing a budget in lean years. I find the Union's proposal to completely eliminate the Sheriff's input on the Employees' purchasing discretion to be an overreaction.

Award: The Union has not made a case for compelling need for a change in the status quo, so I find the County's proposal to continue to allow oversight by the Sheriff to be the more reasonable.

The County's proposal is awarded.

Tentative Agreements

All agreements which have been signed off by the Parties in the course of their negotiations are hereby incorporated into the successor Collective Bargaining Agreement effective December 1, 2010.

SUMMARY OF AWARD

GRIEVANCE

The Grievance is sustained, and the Employees are to be made whole as outlined above.

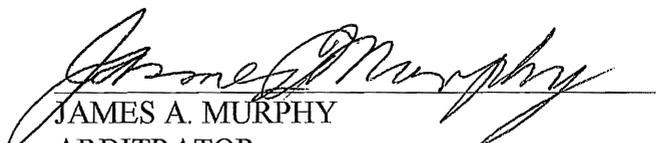
CONTRACT

- 1) HEALTH INSURANCE: _____ THE UNION'S PROPOSAL IS AWARDED.
- 2) WAGES AND PAY SCALE: THE UNION'S PROPOSAL IS AWARDED.
- 3) SHIFT DIFFERENTIAL: THE UNION'S PROPOSAL IS AWARDED.
- 4) COMPENSATORY TIME: THE UNION'S PROPOSAL IS AWARDED.
- 5) OVERTIME: THE UNION'S PROPOSAL IS AWARDED.
- 6) CLOTHING & EQUIPMENT: THE COUNTY'S PROPOSAL IS AWARDED.

ALL OF THE TENTATIVE AGREEMENTS BY THE PARTIES ARE ADOPTED.

I SHALL RETAIN JURISDICTION OF THE GIEVANCE AND THE BARGINING ISSUES FOR 90 DAYS IN THE EVENT OF IMPLEMENTATION PROBLEMS.

ENTERED THIS 11TH DAY OF JULY, 2012


JAMES A. MURPHY
ARBITRATOR