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* ARBITRATION IN THE INTEREST MATTER * Interest Arbitration
*                                     * Multiple Issues
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*           Between
*
*           PEORIA COUNTY
*
*           and
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*           COUNCIL 31 OF THE AMERICAN
*           FEDERATION OF STATE, COUNTY * Anthony V. Sinicropi, Arbitrator
*           AND MUNICIPAL EMPLOYEES,
*           AFL-CIO AND AFSCME LOCAL 2661
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PRELIMINARY STATEMENT

A lengthy hearing in this matter was held in Peoria, Illinois, at the Peoria County Jail on November 22, 1985. Both Parties were given full and ample opportunity to present evidence and testimony at the hearing. Post-hearing briefs were not exchanged as the Parties chose to make closing statements, and the hearing formally closed when the corrected transcript was submitted on January 28, 1986. It should also be noted that the Parties entered into the following stipulations.

1. The Peoria County Sheriff and Peoria County are jointly the lawfully authorized Employer.
2. Council 31 of the American Federation of State, County and Municipal Employees, AFL-CIO and AFSCME Local 2661 is the Union.
3. The Collective Bargaining Agreement will be an agreement entered into by the Employer and Union described above.
4. A "Certification of Representative" was issued by the Illinois State Labor Relations Board on December 28, 1984. It certified AFSCME, AFL-CIO as the exclusive representative of the unit composed of "All Jail Sergeants and Jail Officers employed in the Peoria County Jail and Work Release Center."
5. Collective Bargaining for an initial contract began February 8, 1985. Meetings were held intermittently until the parties declared an impasse in early June 1985. They then sought the services of a Federal Mediator. Commissioner Tom Montgomery of the FMCS began participating in negotiations on July 23, 1985. He has participated in all negotiation meetings since that date.
6. The Jail Sergeants and Jail Officers are "Security Employees" as defined in the Illinois Public Relations Act.
7. At the September 20, 1985 meeting, the parties agreed to:

- a. Secure the services of Arbitrator Anthony Sinicropi and obtain a mutually agreeable date for Interest Arbitration.
 - b. Continue to meet and narrow the issues between the parties.
8. November 22, 1985 was selected as the Arbitration date.
9. The parties have had several meetings between September 20 and November 22, 1985. They have narrowed the issues.
10. In this Arbitration procedure the parties agree to follow Section 14 of the Illinois Public Labor Relations Act beginning with sub-section (d) and continuing through sub-section (o). The parties also agree to follow Section 1230.40 of the Rules and Regulations of the ISLRB beginning with sub-section (5) and continuing through sub-section (11).
11. However, the parties have waived their right to select a delegate to an interest arbitration panel. Arbitrator Sinicropi above is designated to decide the matters at interest.
12. The parties have reached tentative agreement on many Articles. A "Table of Contents" is attached as an exhibit. The agreed to Articles are encircled and a copy of each is also attached.

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APPEARANCES

For the Union

Thomas Edstrom - Spokesperson
 Steve Dellinger - Witness
 Kevin Murphy - Witness
 Kathleen Farney - Witness
 Paul Booth - Witness
 Dave Widger - Witness

For the County

William Fitzpatrick - Spokesperson
 Nina Naffziger Brown - Witness
 David Krings - Witness
 Julie Johnson - Witness
 Lyle McClellan - Witness
 Carol Van Winkle - Witness

I. BACKGROUND AND FACTS

On July 1, 1984, the American Federation of State, County and Municipal Employees Council 31 (AFSCME) filed a representational election petition pursuant to the Illinois Public Labor Relations Act. That petition sought representation rights for Jail Officers and Jail Sergeants employed by Peoria County, Illinois.

On December 18, 1984 an election was held to determine which organization, if any, would be selected as the exclusive bargaining agent for the employees in question. As a result of that election AFSCME was selected as that bargaining agent by a vote of the relevant employee groups, and bargaining between the employee group and the Employer commenced in February 1985. It should be noted that this was the first such bargaining between these Parties, and the interest arbitration in this matter is the first to be conducted under the Act.

Although substantial progress was made through direct bargaining and mediation, a significant number of important issues remained at impasse at the time the Parties agreed to interest arbitration. Pursuant to the requirements of the law, the Parties invoked interest arbitration and those yet unresolved issues were submitted to the undersigned for final resolution.

This Arbitrator was selected by the Parties to act as the sole impartial Arbitrator, thus waiving the tripartite arbitration panel requirement. In conjunction with this appointment, the Parties presented a list of the yet unresolved issues, and as indicated above, a hearing was conducted at the Peoria County Jail on November 22, 1985.

At the start of the arbitration hearing, the Parties submitted their respective revised lists of final offers on the remaining issues, as some progress in bargaining occurred from the time of the Arbitrator's selection to the day of the hearing. This revised list is described in detail under Section II of this award. It is also important to note that pursuant to the law and the desires of the Parties the Arbitrator is required to select one and only one of the Parties' last best offer on each issue in dispute and thus the Arbitrator is not free to fashion a resolution of his own design.

Finally it should be noted that the Parties submitted numerous and lengthy exhibits in support of their positions and the Arbitrator studied the record (a transcription was taken) and these exhibits with great care and deliberation.

II. THE ISSUES

The economic Issues before the Arbitrator for disposition are as follows:

1. Personal Business Days
2. Hours of Work
3. Roll Call
4. Employer Provided Lunch
5. Wages/Salaries

The noneconomic Issues before the Arbitrator for disposition are as follows:

6. Check-off-People contribution
7. Check-off-Fair Share
8. Probationary Period

III. POSITION OF THE UNION

The following is a summary of the Union's last position on each issue in dispute and includes a brief description of the rationale in support of those respective positions.

A. Economic Issues

1. Personal Business Days

In its closing statement at the hearing, the Union amended its previous "last best offer" on this issue. The last specific proposal put forth by the Union is as follows:

All employees shall be permitted two (2) personal days off each calendar year with pay. Such leave shall be credited to each employee at the start of the calendar year. Employees who enter employment with the County after the beginning of the calendar year shall have the pro-rated amount of personal business time credited to them based on the number of months remaining in the calendar year. Personal leave may be accumulated from year-to-year, and shall be paid to the employee at the time of separation from the employer. Personal business time may be used only in increments of two (2) hours or more. The use of such time will be granted, unless the employer is facing an operational emergency.

(Union Exhibit F)

In support of this position the Union argues that in the past these employees enjoyed this benefit and more, as in the past three (3) personal business days were granted for each employee's use. Thus the Union feels its position on this issue is an equitable benefit and it should be supported by the Arbitrator particularly because the Union modified its previous position of three (3) days--the benefit level formerly provided by the Employer.

2. Hours of Work and Overtime

The Union made a multifaceted proposal on this issue. In effect it includes several aspects of the work periods, e.g., work day, shifts, work week, and overtime accumulation bases. The Union proposal on this issue (Union Exhibit B) is as follows.

Section 1. General Provisions

a. The regular work day shall consist of eight (8) consecutive hours, including a half hour paid lunch. The work shifts shall be 6:00 a.m. - 2:00 p.m.; 2:00 p.m. - 10:00 p.m.; and 10:00 p.m. - 6:00 a.m.

b. The work week shall consist of five (5) consecutive days, beginning with the time the employee starts work on the first day of his/her work week.

c. Hours in excess of eight (8) in any such work day or forty (40) in a work week shall be paid at the rate of one and one-half ($1\frac{1}{2}$) times the employee's straight time hourly rate.

Section 2. Treatment of Holidays

Time off for any holidays shall be counted as time worked for overtime computation.

Section 3. Overtime Scheduling

The employer will schedule overtime in a fair and equitable manner among all employees in the appropriate overtime unit.

Section 4. Emergencies

Employees shall not be required to work more than two (2) consecutive shifts except in extreme emergencies, and then only after a proper period of paid time for sleep and rest.

Section 5. Overtime Information Provided to Union

The employer shall provide to the union, on a quarterly basis, a list of the overtime hours worked, the employees offered overtime, the employees directed to work overtime, the employees who worked overtime, and the number of hours each employee so worked.

Essentially the Union is seeking an eight (8) hour shift that would include a one-half ($\frac{1}{2}$) hour paid lunch period with time and one-half to be paid for all work time performed in excess of eight (8) hours in any one day or forty (40) hours in any work week. The Union contends that this proposal approximates the past practice, is reasonable, and is now required by law, i.e., the Fair Labor Standards Act pursuant to the recent Garcia decision by the United States Supreme Court.

3. Roll Call

The Union proposal on this issue (Union Ex. 1C) is as follows:

If the employer requires employees to stand roll call in

excess of the regular work day, it shall be paid at the appropriate rate.

The Union (and the Employer for that matter) argues that this issue is closely allied to the previous issue--Hours of Work. In the past, employees were expected to report for work 15 minutes prior to the start of their shift for roll call but were not paid for that time because of the paid lunch period. However because of equity and the Garcia decision, the Union claims that the employees must receive overtime for the additional time they must take on as a result of the roll call requirement. In effect, the Union contends that all work time required outside of an employee's eight hour shift must be paid at a rate of time and one-half.

4. Employer Provided Meals

The Union proposal on this issue (Union Exhibit 1D) is as follows:

The employer will continue the practice of providing one (1) meal per shift for bargaining unit employees.

The Union points out that the Employer has, in the past, provided meals for the employees. In this connection, the Union argues that this practice should be continued as it is a benefit which the employees enjoyed in the past and one which they have continued to expect. In addition, the one-half hour lunch period, whether paid time or not, is too difficult for the employees to take advantage of if they were not granted paid meals on the work site since the work site is rather isolated and remote from prepared food sources. In addition, few prepared food sources are to be found in the area, the Union argues, and thus Employer provided meals are essential.

5. Wages/Salaries

The Union proposal on this issue (Union Exhibit 1E and Union Exhibit 1F) is as follows:

1. Rates

Effective December 1, 1985, the following rates of pay shall apply:

	<u>Length of Service in Classification</u>	<u>Minimum Annual Salary</u>
Jail Officers	0 - 3 years	\$15,255
	3 years & over	\$16,255
Jail Sergeants	0 - 3 years	\$18,000
	3 years & over	\$19,000

Notwithstanding the above rates, no employee will receive less than a 4% increase above the annual salary which he/she was receiving immediately prior to the effective date of this Agreement.

2. Bonus

Effective with the first paycheck reflecting the new pay rates listed above, each employee whose County hiring date was before January 1, 1985, shall receive a one-time bonus in the amount of 3% of that employee's annual salary prior to the new rate. Each employee whose County hiring date was on or after January 1, 1985, but before June 1, 1985, shall receive a one-time bonus in the amount of 1.5% of that employee's annual salary prior to the new rate. Each employee whose County hiring date was on or after June 1, 1985 shall receive a one-time bonus in the amount of .75% of that employee's annual salary prior to the new rate.

3. • Second Year

Effective December 1, 1986, the wage schedule, and each employee's salary described above shall be increased by 4%.

The Union argues that the above proposal approximates in total cost that of the Employer but in distinction to the Employer's proposal it contains a more rational and equitable pay schedule. The Union challenges the present employer pay formula as being arbitrary and unstructured. In addition the Union argues that under the Employer's pay schedule the overlap between classifications makes job titles, classifications, and length of service insignificant characteristics in determining individual employee's pay. The Union alleges that the record shows that several long term employees receive less pay than do new and less experienced employees. Moreover under the Employer's proposal--although the total amount of wage money is not significantly different than that proposed by the Union--most of the new money could possibly go to a few employees and some or most employees would experience little if any pay increases. In this same regard the Union alleges that the record shows the methods employed by the Employer to evaluate employees and determine their pay is capricious and arbitrary. Thus in the Union's view, its proposal is reasonable in that it realistically structures a pay schedule so that it is in reality a bargained structure for the entire bargaining unit of employees, while the Employer's proposal essentially allows the Employer to individually negotiate or determine each employee's wages.

The Union further specifies that Jail Officers as a group fall below the average pay rate within the Employer's pay structure. This result, the Union argues, is clear evidence of the arbitrariness of the Employer's present pay structure.

In comparing other like situated occupational groups in the external market, the Union contends the bargaining unit employees involved in this dispute are paid considerably less than their peers.

Finally in reviewing the Employer's "ability to pay" argument, the Union contends the Employer has the capability to meet the Union's demands. In this regard the Union points out that its wage package represents a 10.99% total increase after the December 1, 1986 of four (4) percent. It is also noted by the Union that the employees in question did not receive the four (4) percent

bonus given to other County employees on June 1, 1985. This situation, the Union argues, is cared for and is included in its proposal and thus the total package should not be considered as excessive. The Union argues further that the County's proposal of a 9 percent increase over the same period of time as the Union's proposal represents a total funding difference of approximately \$20,000 and therefore any inability to pay argument advanced by the Employer should not be credited. In this regard the Union contends that there are various budgetary items in the proposed County budget that would more than adequately cover this \$20,000 difference.

Given these arguments the Union asks that its proposal on this issue be accepted.

B. Non Economic Items

1. Check Off--PEOPLE Contribution

The Union proposal on this issue (Union Exhibit 1G) is as follows:

The employer agrees to deduct PEOPLE contributions from employees' pay in the same manner as union dues are deducted.

In support of this position the Union argues that this is a no cost item to the Employer and it is an encouraging and convenient way to assist employees to exercise their rights and obligations as citizens and be politically active. Moreover employee participation would be voluntary, thus making the program's availability to employees who want it and non-mandatory to those opposed to it.

2. Check Off--Fair Share

The Union proposal of this issue (Union Exhibit 1H) is as follows:

Employees covered by this Agreement who are not members of the Union or who do not make application for membership within thirty (30) days of employment, shall be required to pay--in lieu of dues--their proportionate fair share of the cost of the collective bargaining process, contract administration, and the pursuance of matters affecting wages, hours, and terms and conditions of employment. Said amount will not exceed the cost of union dues. The proportionate fair share payment, as certified to be current by the Union, pursuant to the Illinois Public Labor Relations Act, shall be deducted by the employer from the earnings of the non-member each pay day.

The Union shall indemnify, defend and hold the employer harmless against any claims, demands, suits, or liability arising from any action taken by an employee against the employer as a result of the employer's complying with this Article. The employer shall notify the union upon receipt of notice of any such action.

In support of this proposal the Union argues that this proposition would only require that which is reasonable, i.e., all employees who are granted protection of the law and representational rights by the Union be required to pay a reasonable fee equal to or less than that of the Union dues. The Union also feels this proposal, if granted, would lend stability to the bargaining relationships and hence better labor relations for the Employer.

3. Initial Employment Period

The Union proposal on this issue (Union Exhibit 1L) is as follows:

The length of an employee's "initial employment" period shall be six (6) months.

The present probationary (initial employment) period is twelve (12) months. The Union argues that testimony in the record indicates that all training for new employees has been completed before the proposed six (6) month deadline and therefore the Employer has sufficient time within the six (6) month period to evaluate each new employee's performance and potential. The six (6) month period thus would allow employees to have full contract protection rights at an earlier and more reasonable time, the Union argues.

IV. EMPLOYER'S POSITION

The following is a summary of the Employer's last position on each issue in dispute and includes a brief description of the rationale in support of those respective positions.

A. Economic Issues

1. Personal Business Days

The Employer position on this issue is to deny any personal business leave days.

The Employer contends that all practices prior to the initiation of bargaining should not be credited. In regard to this issue the Employer argues that while this group of employees did enjoy personal leave days in the past, such a benefit was not accorded other County employees. Thus with regard to equity to other County employees the Employer argues this benefit should not be granted to the employees in question. In addition the Employer contends that since this question is an economic issue, it should be recalled by the Arbitrator, if it were to be granted, it would add to the Employer's economic burdens and thus should only be considered in conjunction with the other economic issues sought by the Union.

2. Hours of Work and Overtime

The Employer argues that with the overtime requirements as per the Garcia decision, the Union position on its demands with regard to this issue would amount to an increase of 4.5% in its payroll obligations.

Consequently, the County argues that the Union position must be rejected as it is unreasonable and inequitable. In effect the County argues that it is legally required to assume the overtime payment obligations and it is willing to do so where and when applicable. Thus it argues that it could still meet these legal requirements without incurring the exorbitant costs if it did not have to pay for the employees' lunch periods and simultaneously be required to pay the employees overtime for their availability for roll. Thus the Employer has tied the roll call and lunch hour provisions together and indicates the Union demands on these issues when considered in tandem with other economic issues make the Union's demands excessive.

3. Roll Call

As indicated above the Employer feels this condition is tied to an unpaid lunch period thus giving the Employer the flexibility to have the roll call and not incurring the costs associated with overtime.

4. Employee Meals

Again referring to the budgetary problems, the Employer argues that Employer provided lunch period should not be required.

5. Wages/Salaries

The Employer's last position on the Salary/Wage issue is as follows.

- a two (2) percent general increase voluntarily made retroactive to June 1, 1985
- a two (2) percent merit increase to be distributed by management, voluntarily made retroactive to June 1, 1985
- a two (2) percent bonus, effective December 1, 1985
- a one (1) percent bonus, effective June 1, 1986

The rationale of the Employee's position is founded on a number of grounds. It first argues that the County is in dire economic straits which are conditions beyond the control of both the Employer and the Union. It is argued that it is well known that Peoria County is a severely depressed area as a result of massive layoff by the largest employer in the area. The governmental structure of the County has been left with an eroding tax base which has no prospects for improving in the near future. Given these overriding uncontrollable factors, the Employer argues that the true facts demonstrate a difficult situation at present and a deteriorating one in the future. Consequently not only are the resources not present for the Union's demands, but the political and social temperament of the area is not postured to accept the Union's position.

To be specific, the Employer points out that the assessed valuations in the County have dropped in constant dollars during the last ten (10) years by nearly one-third. In addition the County has suffered further revenue losses caused by a number of factors including

- annexation by the City of commercially developed incorporated land;
- loss of the right to retain earnings from the investment of collected taxes prior to distribution;
- drop in court fines and fee income;
- interest rates are lower and thus interest earnings are down.

These conditions, the County argues, portend the present and future difficulties to be encountered. Given this scenario the Employer asks that the Union salary proposal be rejected. The County claims that not only is the Union salary demand inappropriate, but it becomes more so when one considers the added burden caused by the overtime requirements as a result of the Garcia decision.

Another factor to consider, the Employer contends, is the following: (1) the pay proposals in the public and private sectors tend to be clustered around two (2) percent while the Union's proposal is at four (4) percent.

With regard to the pay structure the Employer argues that it is a rational and reasonable schedule that was developed with care; with cost of time and effort by well qualified wage and salary specialists. The Employer contends it is a system that is designed to (1) reward those employees who put forth the greatest effort, and (2) encourage and motivate others to strive for the same result.

B. Non Economic Issues

1. Check Off--PEOPLE Contribution

The County rejects the Union's proposal for a political action checkoff, arguing that there is no bar for its employees to exercise good citizenship and to become politically active. Moreover it is argued that employees who seek such involvement can and should do so directly without a checkoff system.

2. Check Off--Fair Share

In rejecting this Union proposal the Employer argues that this item is one that favors the International Union rather than the Local and its members. In addition the Employer argues this Union proposal is premature considering the length and experience of the Parties' bargaining relationship.

3. Initial Employment Period

The County proposes to continue the practice of having new employees serve a twelve (12) month period rather than a six (6) month period as advanced by the Union. In effect the Employer feels it needs and should have the longer initial discretionary period for determining employees' potential and assessing performance.

V. DISCUSSION

The parties provided the Arbitrator with a wealth of information and a formal transcript of the proceedings. A great deal of time and effort was required to inspect and analyze these documents to determine their relevance to the outcome on the issues. While these documents were helpful, some were not helpful to the disposition of the issue in that issue determinations must turn on other more compelling evidence and factors. In addition it must be recognized that this is the first bargaining between the Parties, and as would be expected, they provided more information than might ordinarily be the case with the parties whose experience in these matters is greater. Nevertheless the Arbitrator found the cooperative spirit of both parties to be exceptional and their desire to be forthright and helpful to this neutral for his deliberations. Indeed both the Employer and the Employees' association are to be commended for their actions and behavior.

One additional preliminary comment is warranted. The Parties often resorted to arguments of past practice with an inference that these past practices are binding. Past practice, unless otherwise limited by a clause in a previous or present agreement, indeed is a persuasive and at times binding concept in instances where bargaining has had a history (emphasis supplied). However past practice as it is commonly defined in labor relations does not exist and is not binding if it is predicated upon relationships that antedated the establishment of a bargaining relationship. This is not to say, however, that past understandings that existed before the establishment of collective bargaining can not be influential and persuasive. In that regard then the Arbitrator will consider the Parties' references to those "past practices" or past understandings. With these preliminary remarks completed a consideration of the last best offers on the specific issues will be addressed.

A. Economic Issues

1. Personal Business Days

This Arbitrator can not find any compelling reason for this issue as advanced by the Union to not be granted. Such a "practice" existed in the past and it is a common benefit afforded public sector employees in bargaining situations. Moreover the Union's modification of its position from three (3) to two (2) days is a demonstration of moderation that merits consideration. In addition, if the Employer were able to show misuse of this benefit in the past or an exorbitant cost associated with the benefit, then a different result might be expected. That not being the case, the Union's position seems to merit support. Finally is the Employer's argument that other non organized employees of the County do not enjoy this benefit, hence a disparity exists. Perhaps so. But there is no absolute rule that complete parity of wages, benefits and working conditions must exist for unionized and non-unionized employees of the same employer. In fact, it is often the case that two different bargaining units of the same employer have different benefits and different wages.

Thus for the reasons stated above the Union proposal on this item is accepted.

2. Hours of Work and Overtime

While the Parties presented this issue and the next one--roll call--separately, they indeed argued them together and it is inescapably clear that they are indeed inseparable and interdependent. Despite this condition the Arbitrator feels duty bound to respond to the issues separately. Thus, despite the relationship of these two issues, the selection of each will be addressed independently.

In analyzing the Parties' positions on this issue the Arbitrator has elected to accept the Employer's position for several reasons. First the Union's proposal is complex and far reaching. It is not confined to requiring overtime to be paid in conformity with the law as has been determined by the Garcia, but rather it requires several characteristics beyond those required by the law. For example, the proposal defines the work day, the length as well as starting times for shifts, the work week, time and one-half payments after eight (8) hours, and the inclusion of holidays not worked for purposes of calculating time and one-half after forty (40) hours in a work week. These concepts are not in and of themselves unacceptable, but they indeed can have severe cost ramifications that may not be justified along with the other economic issues under consideration. In addition they are not legally required but are over and above legal requirements.

Of particular note on this issue is the fact the Union is seeking a paid lunch period and overtime payment for roll call which is often required at the start of a shift and which is outside the parameters of the eight hours the employees are required to be at the work site. The Employer alternatively wants an unpaid lunch period in order that the roll call can be included as part of the standard day. If the Union proposal were selected, in effect the employees would have a 37.5 hour work week. In addition, overtime would be paid on a daily rather than a weekly basis. While these concepts are widely accepted in the private sector, it seems to be too drastic a jump to go from a position of nonpayment of overtime to grant it on a daily basis rather than weekly basis and to have a half hour paid lunch period to be part of that package. In addition, the Union proposal, in this writer's judgement, has many facets that could lead to several contract disputes.

Essentially the Employer's proposal is more equitable and appears to meet the legal overtime requirements. For these reasons the Employer's position is accepted.

3. Roll Call

When this issue is considered independent of the above issue, the Parties are in partial accord. That is, they have agreed that overtime should be paid if it is a work requirement in excess of the normal work period. The difference seems to be if the overtime is to be paid on a daily or weekly basis--i.e., in excess of eight (8) hours in one day or in excess of forty (40) hours in a week.

From the rationale already presented on the previous issue, the Arbitrator has elected to favor the Employer's position on this issue.

4. Employer Provided Meals

The Union argued past practice on this issue while the Employer pleads the case of economics once again, as well as a defense that this is a benefit not extended other County employees. The Union argument has one strong supporting leg--that given the time period for lunch ($\frac{1}{2}$ hour) and the dearth of eating establishments close at hand, the employees essentially can not get proper meals within the prescribed time period. The Employer's position of not providing employees meals is meritorious, again primarily on the basis of equity and economics. Because the Arbitrator does not have the luxury of fashioning a remedy but rather must elect only one Party's position, he feels compelled to accept the Employer's position on this issue. Notwithstanding that selection, he strongly urges the Parties to bargain the issue so that the Employer provides meals for the affected employee group but at a reasonable cost to the employees.

For the reasons cited above the Employer's position is selected but with a recommendation consistent with the above reasoning.

5. Wages/Salaries

On this issue the Parties do not appear to be far apart in real dollar terms, and although the rhetoric put forth by the Parties seems to dwell on the monetary question, it is obvious to this Arbitrator that philosophical differences on the method of payment is their major difference. Their differences are classical labor and management positions. Unions, by and large, are dedicated to uniform standardized pay for employees granted on an across-the-board basis with due regard for seniority; while management wants the flexibility to grant monetary rewards on the basis of merit as determined by the Employer. This classic stance is at the core of this dispute.

Prior to examining the internal factors regarding this issue, the Arbitrator has decided to first look at the external market comparisons to determine which Party's position is more worthy. Unquestionably the information supplied on this issue by the Union is more current and better documented. In this regard it seems the kind of monetary standard it (the Union) is seeking is merited. Thus the external comparisons favor the Union.

Going to the internal factors, it also appears to this writer that the Union has the stronger case. First it should be noted that while the Employer argued that it has monetary problems and expects them to be more acute in the future, it never did contend that it had an inability to pay. In addition, the Employer did not refute the Union's assessment that the two wage proposals were about \$20,000 apart. Consequently the Arbitrator can not accept an inability-to-pay argument. Also it is noteworthy that most of the Employer's position on the other economic issues has more or less been accommodated by the Arbitrator so the argument of increased or compounding costs caused by the Union's prevailing on those issues have been taken into account.

Another Employer defense goes to the question of the dire economic indicators for the future and the role in costs on a recurring basis of the Union's proposal. That too must be rejected although recurring costs will very well be present and the diminishing revenue may occur. But those items

may be addressed when and if they occur. In this age of bargaining, Employers as a group have been successful in "take aways" or have prevailed in concession bargaining. Thus if the future presents itself for the conditions the Employer alleges, then at that time the Employer relying on the inability to pay may resort to such a defense.

The more critical question is the pay structure itself. The Employer contends that its structure is rational and equitable. Moreover it was put together by recognized experts in wage and salary administration. In response to these claims the Arbitrator offers these critical comments.

First, the Employer's program of salary administration is indeed "theoretically" well founded but its operation has not conformed to those theoretical foundations. For example, the overlap in wages for various job classifications is so great that it is difficult to find that any classification can be identified by a wage structure. Secondly, the amount of flexibility afforded the Employer in this area effectively undermines the bargaining ability of the Union. Because such wide discretion is left to the Employer, any negotiated increase the Union would achieve would be distributed as the Employer would see fit. Thus there would be no collective bargaining but rather a series of individual bargains. While the Employer might not savor the bargaining requirements the Union has achieved through legal means, once a bargaining plateau or status has been achieved it merits the requirements of that status.

Notwithstanding the above analysis, a telling critical aspect of the Employer's defense is its evaluation of employees. For the system the Employer espouses to be fair, equitable, and acceptable, it must be predicated upon objective evaluation of employees. The record has demonstrated in an unrefuted fashion this was not the case, at least as reflected by the unrefuted testimony of two Union witnesses.

Some of the key elements of internal wage and salary administration require the system to be rational, objective, predictable, and demonstrate a reasonable relationship between and among jobs. The Employer's system presently does not reflect those elements. In addition, wage and salary administration is based upon rating jobs and their relationship to one another, not people. The Employer's system seems to ignore job requirements but rather goes to rating the individuals. As stated earlier, even this alternative might be acceptable if the results seemed to be objectively fair. The record shows otherwise.

In sum, because the external market forces show that the employees as a group are justified with an increase equal to the Union's proposal, and because the County's capacity to meet these demands is demonstrably present, and because the present system of compensation has been found to be inadequate--at least to the extent it is presently being administered--the Union proposal on this issue must be accepted.

B. Non Economic Issues

1. Check Off--PEOPLE Contribution

While the Union's argument on the encouragement of good citizenship basis is interesting, it is not one that convinces this Arbitrator

that it is a benefit to be granted in this arbitration. Such a benefit to the Union vis-a-vis the members of the Union, if achieved, should be acquired through bargaining. In effect no one individual's political freedom or right of expressing such is encumbered by the rejection of this Union position.

For the reasons cited above, the Employer's position is accepted.

2. Check Off--Fair Share

The Arbitrator as a student and teacher in the labor relations field has long been philosophically in sympathy with this concept. It stands to reason that any individual, Union members or not, who will benefit from the Union's representational status should pay something for that service. However again this kind of benefit should be realized from bargaining rather than arbitration, or if not, the Union should be required to produce some evidence that it is required for the financial stability for which the Union argues. Since no showing has been made in this case, this item must be granted to the Employer. Perhaps in the future, if the Union can show an abuse of its representational responsibilities by non Union members of the bargaining unit, then perhaps the Union would prevail.

Consistent with the above reasoning the Employer's last best offer on this issue shall prevail.

3. Initial Employment Period

The Union's position on this issue seems to be most reasonable. The Employer did not demonstrate that employees required twelve (12) months to acquire the skills to do their job, or that the Employer could not determine the employable characteristics of employees within a six (6) month period. Employees should not have to endure a probationary period beyond that time period which is reasonable to determine and evaluate their employment performance and potential. In addition employees should be entitled to full employment status and the equal protections of the labor agreement as soon as is practicable.

Given the facts on this issue the Union's proposal is accepted.

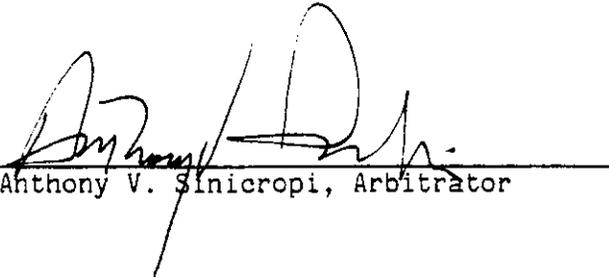
VI. AWARD

Consistent with the above reasoning the following awards are to be implemented.

1. Personnel Business Days - The Union's Proposal
2. Hours of Work and Overtime - The Employer's Proposal
3. Roll Call - The Employer's Proposal
4. Employee Provided Lunch Period - The Employer's Proposal (with a recommendation to provide on a cost basis a lunch to the employees)

5. Salary/Wage - The Union's Proposal
6. Check Off--PEOPLE Program - The Employer's Proposal
7. Check Off--Fair Share - The Employer's Proposal
8. Instant Employment Period - The Union's Proposal

Iowa City, Iowa
February 11, 1986



Anthony V. Sinicropi, Arbitrator

<p>ARBITRATION IN THE MATTER</p> <p>Between</p> <p>PEORIA COUNTY</p> <p>and</p> <p>COUNCIL 31 OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO AND AFSCME LOCAL 2661</p>	<p>Interest Arbitration</p> <p>Multiple Issues</p> <p>Supplemental Proceeding</p> <p>Anthony V. Sinicropi, Arbitrator</p>
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APPEARANCES

For the Union

John C. Dempsey, Attorney
Thomas J. Edstrom, Attorney

For the Company

David Krings - Peoria County Administrator
William Fitzpatrick - Negotiator on behalf of County of Peoria

I. BACKGROUND AND FACTS

The County of Peoria and the American Federation of State, County and Municipal Employees, Council 31 (AFSCME) presented unresolved items of negotiation to this Arbitrator and, after hearing testimony and arguments and receiving evidence, a decision on the last offer interest items was issued on February 11, 1986. On the issues in dispute the undersigned Arbitrator's award was as follows:

1. Hours of Work and Overtime Issue--awarded the employer's proposal;
2. Role Call Issue--awarded the employer's proposal;
3. Employer-provided Meals Issue--awarded the employer's proposal;
4. Check-Off Issue--awarded the employer's proposal;
5. Fair Share Check-Off Issue--awarded the employer's proposal;

6. Salary/Wage Issue--awarded the Union's proposal;
7. Personal Business Days Issue--awarded the Union's proposal;
8. Probationary Period Issue--awarded the Union's proposal.

After reviewing the Arbitrator's decision, the Peoria County Board rejected the three issues decided in favor of the Union pursuant to the following provisions of the Illinois statute:

Section 14(n) ... If the governing body [by a three-fifths vote] affirmatively rejects one or more of the terms of the arbitration panel's decision, it must provide reasons for such rejection with respect to each term rejected, within 20 days of such rejection and the parties shall return to the arbitration panel for further proceedings and issuance for the supplemental decision with respect to the rejected terms.

Section 14(o) ... If the governing body of the employer votes to reject the panel decision, the parties shall return to the panel within 30 days from the issuance of the reasons for rejection and further proceedings and issuance for supplemental decision. All costs of such supplemental proceeding including the exclusive representatives' reasonable attorneys' fees, as established by the Board, shall be paid by the employer.

The County's notice of rejection was accompanied with reasons for rejection.

A Supplemental Proceeding was subsequently heard by the Arbitrator on March 21, 1986. Several procedural issues were raised and the parties agreed to simultaneously exchange briefs. In addition, Mr. Donald W. Anderson, Attorney for the Illinois Public Labor Relations Association, was permitted to file with the Arbitrator an amicus brief.

II. THE ISSUE

The procedural issue concerns the nature of the "supplemental proceeding" and what may the Arbitrator consider in a supplemental proceeding under the statute. The substantive issue is whether the items in the first award contested by the Employer should be overturned.

III. POSITION OF THE UNION

A. Procedural Issues

The Union contends that the threshold issue is the determination of what is constituted by a "supplemental proceeding." The Union submits that legislative history and professional literature provide little guidance in this regard. Further, the Union notes the complications involved in determining the nature of the appropriate level of proof that must be advanced by the Employer before the Arbitrator can change his earlier decision.

The Union argues that the Arbitrator's initial decision should not be changed unless the Employer meets a heavy burden of persuasion. The Union also holds that the initial decision should not be changed as a result of the "supplemental proceeding" if there is no demonstration of "manifest error" on the part of the Arbitrator. However, the Union acknowledges that it may be appropriate for the Arbitrator to modify his initial decision if the Employer is able to show an "extraordinary hardship." In any event, the Union argues that the first award is entitled to great weight.

The Union's position is founded upon two major propositions. The first is that the initial procedure must be presumed to have been fair and regular and that no changes should be permitted absent a showing of "manifest error." The Union argues that to make any other assumption would undermine confidence in the system. The statute provides that "supplemental proceedings" may be requested by the Employer. In such cases, the Union contends that the Employer must base its request upon reasons which were not advanced in the initial proceeding. In other words, the Employer must show significant error in the initial decision before asking for changes in that direction.

The Union's second rationale is that the principle of finality requires that the Employer bear a heavy burden of persuasion. According to the Union, if the Employer cannot establish that extraordinary hardship would result, the initial decision should be left unchanged. The Union points out that only one side (the Employer) is allowed to seek reconsideration of the arbitration decision and that this condition is inconsistent with the concept of finality. Therefore, the Union asserts, the only logical and rational manner for this system to function is by placing a heavy burden on the Employer in the "supplemental proceeding." The Union notes that the Employer may be inconvenienced by having lost; however, it must be shown that the level of hardship exceeds the ordinary and causes significant economic dislocation to the Employer before the first award should be set aside.

B. Substantive Issues

Addressing the substantive issue, the Union contends that the Employer has failed to provide evidence that would warrant a change in the Arbitrator's initial decision with respect to the Probationary Period issue, the Personal Days issue, and the Wage/Salary issue.

The Union points out that the Employer submitted "new evidence" through the testimony of Sheriff Shadid. Shadid testified on the probationary period issue and stated that jailers are required to complete a five week training course which shortens in-house training and direct supervision under probationary periods. The Union contends that this evidence concerning the length of the probationary period is unpersuasive and insufficient to warrant a change in the Arbitrator's initial decision. It is argued that improved jailer training makes the determination of qualified employees easier in the sense that competence or lack thereof should be obvious after a short time. In addition, Union Exhibit A was submitted at the supplemental hearing and provides support for the Union's argument that six months probation is adequate.

With respect to the Personal days issue, the Union agrees that the Employer may face scheduling difficulties at times, but maintains that these are problems which Management must solve. It is argued that the County has made no showing of extraordinary hardship which could not be resolved through the grievance procedure. Therefore, the Union submits that the County's new proposal should be rejected.

In the initial decision the wage/salary issue was resolved in the Union's favor. At the supplemental hearing the County modified its proposal, including better salary parity in the first year. In addition, the County's offer of retroactivity was altered to be completely merit pay, rather than a general increase. The Union argues that County maintains its philosophical position on the merit pay proposal and does not meet its burden in refuting the findings in the initial decision.

In conclusion, the Union contends that the County failed to meet the level of proof appropriate for a "supplemental proceeding." The Union maintains that there was no showing of manifest error or extraordinary hardship and therefore the Arbitrator should not and cannot change his initial decision. In the supplemental hearing the County only rehashed the reasons it presented at the initial hearing. The Union argues that those reasons were rejected then and likewise, should be rejected now.

IV. POSITION OF THE EMPLOYER

A. Procedural Issues

The County raises many jurisdictional/procedural questions dealing with the nature of a "further proceeding" under section 14(n) of IPELA.

1. Is the Arbitrator's decision binding upon the Employer?
2. What, if any, limits are there of the legislative body's rejection of the Arbitrator's decision?
3. Is the "further proceeding" limited to addressing the last final offers of the parties in the first arbitration proceeding?
4. Is the further proceeding a "last final offer" proceeding in which new "last final offers" are to be presented by both parties?
5. Does the "further proceeding" change into conventional arbitration wherein the Arbitrator may fashion a new decision?
6. In either event (last offer or conventional), may the Arbitrator receive new evidence at the "further proceeding"?
7. Is the Arbitrator limited to choosing a "last final offer" presented at the first arbitration sessions?
8. Must the Arbitrator first determine if the original decision constituted a clear and convincing error?

9. Does the Employer have any greater burden of persuasion during the "further proceeding"?

The County points out that the law is unclear as to whether the parties are required to stay with the proposals or with their last position before the Arbitrator's initial decision. The Employer turns to the record of legislative debates regarding the IPELA. According to the Employer, these debates reveal that, although interest arbitration is compulsory in some instances, it is not binding on the Employer.

Further, the County states that the only other state with a similar interest arbitration law is Oklahoma. Under review by the Oklahoma Supreme Court, interest arbitration has been determined non-binding.

The County argues that the Arbitrator's decision is binding only to the items not rejected by the Employer. Legislative intent demonstrates that the decision should not be binding on items the Employer rejects. Further, the Employer asserts that there is no suggestion in the commentaries, the statutes, or the legislative debates that the Employer must prove that the decision on the rejected items was the result of clear and convincing error.

The Employer also contends that the Arbitrator and the parties are not limited in the supplemental proceeding to the initial decision after the first "final offer" deliberations on the rejected items. The result of such a limitation would be an endless cycle of decision/rejection and the County contends that this was not the legislative intent. On the other hand, if the Arbitrator is permitted to tailor a different remedy in the supplemental proceedings, the result is an "expeditious" and "effective procedure for the resolution of labor disputes."

It is the County's position that although the statute clearly mandates last final offer in the first arbitration session, there is no such requirement in the supplemental proceeding.

The County also contends that new evidence can be received at the further proceeding. Moreover, it is necessary to present new evidence to assist the Arbitrator and to convince the parties to accept the Arbitrator's supplemental decision.

The Employer also submits that it has an absolute right to reject an Arbitrator's decision. The County argues that the Arbitrator does not have to determine whether the initial decision constituted clear and convincing error and that the County does not have a greater burden of persuasion during the "further proceeding."

B. Substantive Issues

The County offered a compromise position on wages at the second hearing. The results of telephone survey conducted on March 6, 1986 were introduced at that hearing. The County argues that these results show wide variance in the salaries of jailers in Illinois and that there must be additional factors to be considered that had not been learned by the County or by AFSCME. (County Supplemental Exhibit D).

In addition, the County notes that the Arbitrator, in his initial decision, found that the parties did not appear far apart in real dollar terms. However, it is the County's contention that this is true only for the first year of the contract. The recurring increase at the end of the contract under the Union proposal would be 12.6%. Yet the recurring cost of the County proposal is 4% plus whatever was negotiated in the wage reopener in the second year.

The County's compromise wage proposal provides a 5% average increase retroactive to June 1, 1985 and performance bonuses equal to 3% of total annual bargaining-unit payroll. The proposal also provides for a 2% general increase in the second year and a performance bonus fund equal to 2% of annual payroll.

The County indicates that this proposal fulfills Union objectives:

1. The money spent during the contract life is comparable to that of the Union proposal.
2. The rate structure matches that of the Union proposal. (A single rate dependent on length of service.)

With respect to the proposed merit increase, the County requests no modification. However, the County holds the position that it should be allowed the flexibility to reward superior performance in the form of one-time bonuses. It is argued that such bonuses reward performance, create incentives, and serves the interests of taxpayers by increasing performance and morale which in turn results in a more stable work force and less cost to taxpayers. The County also submits that costs will be contained within the life of the agreement and that recurring costs of the Union proposal are reduced. The County cannot incur sizable recurring increases in light of a severe downturn in population, employment, tax base, tax income, and growth in general. The County asserts that its proposal lowers the total recurring cost at the end of the contract to 7% which is seen by the County as a more realistic basis for future bargaining.

The County further maintains that its position that the Union's demand for Personal Business Days be rejected. The County argues that it is strictly a cost item and that Personal Business Days were discontinued as a standard County policy when an attempt was made to standardize personnel practices throughout the County.

The County offers two reasons for rejecting the Union proposal of Personal Business Days. First, the decision of when time off is taken rests entirely with the employee unless the Employer is facing an operational emergency. Second, the award provides for unlimited accumulation. In this regard, the County urges the Arbitrator to consider proposed language that does not provide for accumulation. The County argues that no other County offers unlimited accumulation of personal days to employees. The purpose of personal days is to accommodate employees' needs without eroding their vacation time; however, Management argues that the days are not meant to be a "nest egg" and supplement to vacation time, which would be the result of unlimited accumulation.

The County also proposes that prior approval of a supervisor should be required for personal time off other than in emergency situations. Personal Business Days should be scheduled in advance because it is difficult to adequately staff the jail due to vacations, training, sick leave, etc. without additional scheduling problems that would result if employees were given the discretion to solely choose personal days. Sufficient scheduling of staff is directly related to the safety of employees, the prisoners, and the general public.

The County also asserts that a 12-month probationary period is necessary to have sufficient time to properly train the jailers and to assess the new jailer's work performance and ability to deal with inmates and the public. The County explains that there is a State law which requires that jailers pass a five week training course during the first six months on the job. Another reason for concern is that jailers open doors to potential liabilities with every decision made on how to handle an inmate. The County argues that it is dangerous to have an inexperienced staff and that it does not want to be forced to make hasty decisions regarding an employee's qualifications to remain on the job.

A concession is offered by the County. If a one-year probationary period is granted, the County will allow a discharged probationary employee an appeal through the contract grievance procedure up to but not including arbitration.

V. DISCUSSION

While there is no legal or arbitral precedent and little relevant material in the legislative history which provides guidance on the nature of a "supplemental proceeding" under the statute, this much is clear: the initial award must be entitled to "great weight" and should not be changed in a second proceeding absent "extraordinary hardship" or evidence that a significant error was made by the Arbitrator in his first award. The policy reasons for this position are as follows:

1. The Illinois statute requires that the arbitration panel hold a hearing at which both parties are afforded an opportunity to produce evidence in support of their respective positions. Moreover, the Arbitrator is required to issue a written decision and opinion based on statutorily-prescribed criteria. If the first award is rejected, reasons must be provided in support of the rejection. Absent a showing of significant hardship or manifest error (or other extraordinary circumstances), to allow a party to assert completely new positions or additional arguments on issues raised in the first proceeding will effectively make the first arbitration comparable to an advisory factfinding. As noted by the Union, the only logical conclusion to be reached is that the Employer must come forward with some solid reasons establishing that a significant or manifest error was made by the arbitration panel in its initial decision. If the Employer cannot do so, the initial decision should be left untouched. In short, the initial award, while perhaps not completely final and binding under all circumstances (such as in a "rights" arbitration), is entitled to great weight.

2. The statute allows only one side (the Employer) to seek review of the issues which it lost. In this respect the Union argues as follows:

A procedure which allows only one side to seek reconsideration of an arbitration decision is, of course, entirely inconsistent with the concept of finality. In all other arbitration or legal proceedings, a decision once rendered is considered final and binding (subject, of course, to appeal or review at a higher level). Here, the Illinois statute provides a limited opportunity under which the employer may seek review of the items on which it was unsuccessful in the initial proceeding. It clearly could not have been the contemplation of the Illinois legislature that each and every employer would be allowed to go back to the arbitration panel and seek, in effect, to "cut a better deal." The arbitration panel would be placed in the position of being asked to compromise its own position. At the worse, this system of "supplemental proceedings" would become a procedure in which the employer and the arbitration panel would "bargain" over various matters while the union would stand by as a frustrated bystander.

While the Employer may argue that the procedure was not intended by the legislature to be "final," the Union's position as noted above is well-taken. Accordingly, the only way for the statutory system to function as an effective dispute-resolution system is to place a heavy burden on the Employer in the supplemental arbitration. To rule otherwise would be inconsistent with the concept of final-offer arbitration. Final offer arbitration is designed to force the parties to modify their original positions. In effect, it is supposed to impose a great deal of pressure on the parties to force them to settle or at least modify their respective positions considerably so that their modified position will be more attractive and be deemed more reasonable by the Arbitrator. If a final offer is not final--as the Employer alleges--then the theory upon which the Final Offer Arbitration concept is founded is not operative. Moreover, due to the fact that the statute allows only the Employer to request a second hearing, it is more logical to conclude that such a right given to only one side must be available only if unusual circumstances such as a manifest error or an unusual hardship upon the Employer heretofore unknown has arisen.

Again, this is not to assert that the Arbitrator must "stick with the initial decision." Moreover, as the parties know, there is no requirement that the supplemental award must be the same as the original award. My reading of the statute is that the Employer, seeking to overturn the first award, must come forward with significant reasons that the award was either procured as a result of some manifest error, or the award, if implemented, will cause extreme hardship. The Employer's burden must be greater in the second proceeding. In this regard, "new" evidence may be received only if offered in support of the "manifest error" or "undue hardship" argument.

While this Arbitrator has determined in this instance the procedural arguments advanced by the parties leads to the conclusion that the original award should not be altered, a brief consideration of the substantive issues is merited.

As noted earlier, in the first arbitration the undersigned awarded the Union's position on three issues, all of which were rejected by the Employer: Salary/wage; Personal Business Days; and Probationary Period.

The Employer's argument on the Salary/wage issue in the second proceeding did nothing to indicate that an alteration of the first decision should occur. It first claimed that Union's position could have a significant and costly impact in the future. Yet the Employer also argued that its revised offer closely matched the Union's position on total dollars during this contract term. Thus no undue hardship or extraordinary circumstance was demonstrated for the Union's position to be overturned on this first issue except as it might relate in the future when further negotiations or a new contract could be negotiated. The other Employer position on the Salary/wage issue goes to the retention of the merit system. It was this very system and its administration that was a major factor for the rejection of the Employer's initial position. The Employer's dedication to this system, even though modified in the second hearing, clearly makes it known to this Arbitrator that very little if anything has changed from the first hearing.

With regard to Personal Business Days, the Employer makes arguments it made the first time--only it was done more forcefully at the second hearing. Those main points are: inconvenience in scheduling, lack of supervisory approval prior to leaves, and unlimited accumulation. As for the first two items, it is clear that abusive and unreasonable utilization of this benefit by the employees can be regulated by the Employer by its procedural right to manage. With regard to unlimited accumulation, that can only occur for the duration of this and subsequent contract periods, and then only if agreed upon by the Employer. An accumulation of this benefit during this contract period cannot be deemed too costly. Those limitations can be further enlarged by the Employer in subsequent bargains.

Finally is the Probationary Period item. The record did not reveal any evidence to demonstrate that an increased probationary period was necessary or even beneficial.

Accordingly my ruling on these three items is the same as it was on February 11, 1986.

VI. AWARD

The award of February 11, 1986 is reaffirmed in toto.

Iowa City, Iowa
July 2, 1986



Anthony V. Sinicropi, Arbitrator