

Interest Arbitration

Fulton County Board and)	
Fulton County Sheriff,)	
)	
Employer)	
)	
and)	ISLRB No. S-MA-53
)	
American Federation of State,)	Herbert M. Berman,
County and Municipal Employees)	Arbitrator
(AFSCME), AFL-CIO, Council 31)	
and AFSCME Local 1372A,)	
)	November 24, 1986
Union)	

Findings, Opinion and Award

I. Statement of the Case

The parties have selected me to arbitrate the issue of whether their current collective bargaining agreement should contain a Union dues checkoff provision. The Union's final offer (Union ex. 1) was:

The Employer agrees to deduct each payday Union dues assessments from the pay of those employees who are Union members covered by this Agreement and who, individually, on a form provided by the Union, request in writing, that such deductions be made. The Union shall certify the current amount of Union deductions. The amount of the above employee deductions shall be remitted to AFSCME Council 31 after the deduction is made by the Employer with a listing of the employee, social security number, and the individual employee deduction(s). The Union shall indemnify, defend and hold the Employer harmless against any claim, demand, suit 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 County rejected this offer; it made no counter-offer.

A hearing on this issue was held in Lewiston, Illinois on September 22, 1986. I received the Union's post-hearing brief on November 3, 1986 and the County's post-hearing brief on November 5, 1986.

II. Findings of Fact

A. Stipulation

On September 22, 1986, the parties entered into a written stipulation (Jt. ex. 1), which I adopt as findings of fact:

1. Fulton County Sheriff and Fulton County Board are the authorized employers.
2. Council 31 of the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) and AFSCME Local 1372A is the exclusive bargaining representative.
3. The parties have entered into a collective bargaining agreement dated August 12, 1986 expiring November 30, 1988.
4. By Letter Agreement dated August 12, 1986, the parties agreed to reserve as the sole issue of arbitration Union Dues Checkoff.
5. A Certificate of Representative issued by the Illinois State Labor Relations Board certifies that AFSCME 1372A is the exclusive representative of all Jailers and Telecommunicators, excluding secretaries, Janitors, Switchboard Operators, Supervisors, confidential employees and other employees excluded under the Act.
6. Negotiations started between the employer and AFSCME on April 3, 1985 and on April 30, 1986 a joint request for mediation was made by the Union and the Employer after [the] Union declared impasse.
7. Commissioner Tom Putnam met twice with the parties. Thereafter, pursuant to further negotiations the parties agreed to the present contract.
8. The Telecommunicators and Jailers are "Security Employees" as defined by Illinois Revised Statutes, Chapter 48, Section 1603(p).
9. The parties agreed to follow Section 14 of the Illinois Public Labor Relations Act (IPLRA) subsections (d) through (o) and Section 1230.40(e) of the Rules and Regulations of the Illinois State Labor Relations Board beginning with subsection (5) through (11).
10. The parties have waived their right to select a delegate to the Arbitration Panel.
11. Fulton County has a total of three bargaining units: (1)

Sheriff's Department Jailers and Telecommunicators; (2) Highway Department; and (3) Fulton County Sheriff's Department Deputies.

12. The Highway Department has an Agreement that does not include Union Dues Checkoff or any other type of Union Checkoff, although the Union requested these Checkoffs during negotiations.

13. The Sheriff's Department Deputies have not started negotiations and the Jailers and Telecommunicators Union [has] reserved the issue of Union Dues Checkoff for this arbitration proceeding.

B. Additional Evidence

Upon the basis of evidence produced at the hearing, I make the following additional findings of fact:

1. The Fulton County Jail works on a 24-hour a day, 7-day a week schedule. Two jailers and one telecommunicator work on each shift. There are thirteen employees in the bargaining unit. About thirty-six inmates are housed in the jail at any given time.

2. At the time of the hearing, all the employees in the bargaining unit were Union members. The collective bargaining agreement does not contain a Fair Share clause or any type of union security clause. Since the effective date of the collective bargaining agreement, the Union has tried to collect dues by means of bulletin board notices and personal contact with its members. Although Local Union Treasurer Darrell Fogliani testified that dues collection has interfered with the work of bargaining unit employees and that it was difficult to collect dues, no evidence was produced to show how many members were delinquent in the payment of their dues. Fogliani has a mail slot in the jail where Union members could put dues payments. It is also possible to set up a collection box in the jail for receipt of dues payments.

3. The current paystub used for County employees contains boxes for payroll deductions for FICA, State of Illinois taxes, the Illinois Municipal

Retirement Fund (IMRF), Equitable Life Insurance, Colonial Life Insurance, American Family Life Insurance, Central National Life, HMO, and deferred Compensation (Emp. ex. 1). Article XV of the Agreement requires the County "to pay the total cost of health insurance for each employee" and "their share of Illinois Municipal Employee Retirement Fund contributions required for each employee." Employees pay for dependent coverage. No evidence was produced to show how many employees in the bargaining unit or elsewhere take advantage of these deductions to pay for additional insurance. The IMRF deduction was adopted in April 1983. The County adopted the HMO deduction in April 1986; the HMO deduction was slotted into a box previously set aside for Great Commonwealth Insurance Company. As there were no available boxes on the paystub as printed and as programmed in the computer for additional deductions, the County turned down the request of another insurance company, the International Harvester Credit Union and the United Way for payroll deduction privileges.

4. For about \$600.00 the County could reprogram its computer to move IMRF from its current box at the top of the paystub to another box now reserved for insurance company premiums, and slot "Union dues" into the vacated IMRF box. The cost would be "minimum" if IMRF remained in its current box and Union dues were slotted into any box now set aside for insurance premiums. If Union dues went into the vacated IMRF box or into any other vacated box, the County would not have to print new paychecks. Otherwise, the County would have to print new checks at a cost of about \$1,050.00.

5. For fiscal year 1986 (12/1/85-11/30/86), the County budgeted \$2,133,786 for expenses and \$1,497,000 for revenues. In other words, the County estimated that expenses would exceed revenues by \$636,786. The Union

introduced a letter from Barbara Coufal, Labor Economist, Department of Research, AFSCME (Union ex. 2). Coufal analyzed the County's fiscal 1986 budget. She concluded, "In sum, given the overestimations of expenditures and underestimations of revenues, it appears that a General Fund Deficit is unlikely. The huge fund balance also adds to the flexibility of the County's budget." Melba Ripper, Chairman of the Fulton County Board, testified that Coufal's analysis was incorrect, and that the County had adopted a bona fide "deficit budget." Ripper also testified, and I find, that in the last three to four years property taxes have gone down 10% to 20% a year, total assessed valuation has decreased from \$330 million to \$216 million in the last "few years," and general fund revenues have gone down by "almost a third." In addition, a recent referendum cut the County's taxing rate twenty-five percent. In the absence of direct expert testimony to the contrary, I find that the County adopted a bona fide deficit budget for fiscal 1986.

6. Chairman Ripper testified that the County did not agree to check off Union dues because it did not "want to become a collection agency for the Union." Ripper drew a distinction between Union dues checkoffs and current payroll deductions: "Other checkoff things are either mandated and required or they're fringe benefits that are offered to our employees by the County."

7. Of the 120 collective bargaining agreements AFSCME has reached with public employers in Illinois, the two agreements with Fulton County are the only agreements without a dues checkoff clause.

III. Positions of the Parties

The Union has advanced the following arguments:

1. Union "dues checkoff is so wide-spread and well-accepted in . . . labor relations . . . as to create, if not a presumption, at least a tremendous

burden on the Employer of showing hardship" (Union brief, 7). *Baptist Hospital of Gasden*, 65 LA 248, 249 (Moberly 1975).

2. Section 2 and Section 7(f) of the Act "indicate a special recognition of dues deduction and fair share, and, at the very least, suggest that these are mandatory subjects of bargaining" (Union brief, 8). Reported interest arbitration decisions "indicated unanimous acceptance of dues checkoff" (Union brief, 8). *Duquesne Light Co.*, 6 LA 471, 483 (Strong 1947); *REA v. Teamsters*, 28 LA 182, 195 (Sanders 1957); *Mercy Hospital*, 53 LA 372, 376 (Edes 1969); and *Baptist Hospital*, supra. Industry "practice in the public sector in Illinois supports the Union's position" (Union brief, 9).

3. As demonstrated in *Baptist Hospital*, "there is no arbitrator-recognized 'philosophical' controversy over dues checkoff" (Union brief, 9).

4. The personal collection of dues interferes with work and "is dangerous in an institution which has as its purpose the provision of security for inmates" (Union brief, 10).

5. The cost of dues checkoff is "negligible," a "fraction of the Employer's cost in processing this arbitration case." The "Union should not bear the incidental cost of implementing dues checkoff" (Union brief, 10).

The County has advanced the following arguments:

1. As there are few reported interest arbitration decisions in the public sector under the new Act, private sector decisions must be analyzed. And while union dues checkoff in the private and public sectors are common, most decisions that recommend or compel checkoff concern "large work forces involving many employees and not just a unit of thirteen. They also involve private sector employers who are in a business to make a profit and not public government that operates not for profit and as in the case of

Fulton County also operate at a deficit during their fiscal year" (County brief, 7).

2. It is not inconvenient for the Union to collect dues from its members. Dues may be paid by check. Employees who work different shifts still have contact with each other at the shift-change. Dues may be deposited in Treasurer Fogliani's mail slot or in a collection box in the jail.

3. The public interest and welfare and the County's ability to pay should "influence the judgment of the arbitrator" in favor of the County's position (County brief, 8). The County is operating under a deficit budget; it cannot "afford . . . the extra monies necessary to make the proper computer changes and check changes to accommodate the Union's request" (County brief, 9). The County did not "indiscriminately [refuse] to consider the Union's request. They have refused other similar type requests . . ." (County brief, 10).

4. In *Texas Utilities Generating Co.*, 86-1 ARB ¶8034 (Caraway 1985), the arbitrator held that the "Employer should not have to bear the burden of a Union dues checkoff change unless it were agreed upon by the parties" (County brief, 12). As in *Texas Utilities*, "the imposition of the additional financial burden to the County in light of a deficit budget for the year would be inconsistent with the ability of the County to incur those costs" (County brief, 12).

4. In *Peoria County*, an unpublished decision (Sinicropi 1986), the arbitrator declined to impose a "Fair Share checkoff" on the parties:

[T]his 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 (County brief, 14).

The Union has not shown that its "financial stability depends upon . . . checkoff and . . . admits that dues may be collected by mail or in person . . . " (County brief, 15).

5. No other bargaining unit in the County has dues checkoff. Uniformity "should prevail" (County brief, 15).

6. The "fact that the Union once proposed . . . checkoff and later withdrew it should not permit the Union to obtain through arbitration what they could not obtain through the normal collective bargaining process" (County brief, 15). *Progress-Bulletin Publishing Co.*, 47 LA 1075, 1077; Frank Elkouri and Edna Asper Elkouri, *How Arbitration Works*, 3rd ed. (Washington: The Bureau of National Affairs, Inc., 1973), 314;¹ *A & P*, 82-1 ARB ¶8007 (Shanker 1981).

IV. Conclusions and Recommendation

A. Preliminary Matters

Section 14(h) of the Act² requires the arbitration panel to "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 government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

¹ Future references to Elkouri and Elkouri will be to the fourth or 1985 edition.

² Ill. Rev. Stat., ch. 48, §1614(b)(1)-(8).

- (A) In public employment in comparable communities.
- (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 14(g) of the Act provides that "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)." Dues checkoff is not an "economic issue." Nevertheless, each party has urged adoption of its "last offer of settlement"—implicitly requesting "final offer" arbitration of the sort prescribed by the Act for the resolution of "economic issues." Were I to apply the standards of "conventional arbitration," I could draft a checkoff clause—a course of action not requested by either party—or, as the parties request, either reject or adopt the Union's offer in its entirety. As the parties themselves contemplate final offer arbitration, which is a form of arbitration sanctioned by the Act for other disputes, "final offer" arbitration is appropriate in these circumstances.

The eight interest arbitration factors "have not been listed by the legislature in order of importance, nor does the Act state what weight is to be accorded these factors. Thus, importance and weight are left for argument

and may be critical to the award by the arbitrator." Richard W. Laner and Julia W. Manning, "Interest Arbitration: A New Terminal Impasse Resolution Procedure for Illinois Public Sector Employees," 60 Chicago Kent L. Rev. 839, 856 (1984). The Union suggests that Factor 4, "comparability," should be given the most weight. The Union also argues that the Act establishes a presumption in favor of dues checkoff and that dues checkoff would promote "a harmonious, stable relationship between the parties" (Union brief, 10). The Factor 8 catch-all of "such other factors . . . normally or traditionally taken into consideration" covers these considerations.

The County argues that its ability or inability to pay is the paramount factor to be considered. It suggests that, because of a projected deficit, it cannot afford "to spend the monies necessary to make the proper computer changes and check changes to accommodate the Union's request" (County brief, 9).³ The Employer also argues that no other "comparable unit" in Fulton County has dues checkoff, and that as a matter of public policy, the Union should not "obtain through arbitration what they could not obtain through the normal collective bargaining process" (County brief, 15).

B. Conclusion

For the following reasons, I adopt the final offer of the Union set out in Union exhibit 1:

1. Comparability is a major factor in interest arbitration.⁴ The only statistical data submitted showed that 119 AFSCME/public employer contracts

³ A "demonstrated inability to pay is viewed as a limiting factor to support an award less generous than otherwise indicated by the comparability data." Laner & Manning, 859.

⁴ It is recognized that "without question the most extensively used standard in interest arbitration is 'prevailing practice.' This standard is applied, with varying degrees of emphasis, in most cases." Elkouri & Elkouri, 804.

in Illinois have a dues checkoff provision.⁵ The Union did not describe these units, show how they were comparable to the unit under consideration, or indicate whether most public-employee units in Illinois not represented by AFSCME have checkoff clauses in their contracts. In any event, the comparability data provided by AFSCME, while sketchy, is perhaps as reliable and precise as the BLS or BNA survey data often reviewed by interest arbitrators. Nor is it unreasonable to conclude that in both the public and private sectors, "the check off of union dues is the prevailing practice in American industry." *Railroads v. Nonoperating Unions*, supra, 17 LA at 866. See also *Baptist Hospital*, supra, 65 LA at 250.

2. As dues checkoff appears to be the norm, the County has the burden of showing that it is inappropriate. The County argues that it cannot afford to implement a dues checkoff provision and that dues checkoff should not be granted for policy reasons.

(a) Ability to Pay

The evidence did not establish that the County lacked the "financial ability to meet [the] costs" of implementing a dues checkoff.

First, the Union's argument that it would probably have been cheaper for the County to agree to a dues checkoff clause than to insist on interest arbitration is well taken. For about \$1,650 the County could reprogram its computer and print new checks. Interest arbitration is a statutory process, and an employer's right to bargain in good faith to impasse is unqualified.

⁵ It is largely immaterial that another unit of Fulton County employees represented by AFSCME does not have a checkoff clause. Reliable comparability requires a broader base for comparison than a single bargaining unit. The similarity of the County's bargaining position in both units is less a function of comparability than an expression of the County's collective bargaining policies, policies subject to review in this proceeding.

But the cost of arbitration compared to the cost of the Union's proposal is an appropriate factor to consider in determining whether an employer's "ability to pay" argument is meritorious. If the cost of arbitration is disproportionate to the cost of the proposal, the ability to pay argument would seem tenuous.

Second, the record did not establish that dues checkoff would necessarily require the County to reprogram the computer or print new checks. By eliminating payroll deductions for one of the insurance companies it now accommodates, the County could avoid additional printing and programming costs altogether.

Third, The evidence did not establish that insurance premiums should take precedence over Union dues. The County has chosen to collect insurance premiums, but not to collect Union dues. The County collects money for insurance companies; it could also collect money for the Union. It is irrelevant that the collection of insurance premiums might be a "fringe benefit." Nothing precludes the County from making the collection of Union dues a similar "fringe benefit."⁶ The County did not show how many bargaining unit employees and other employees pay insurance or HMO premiums through payroll deduction. I cannot determine, therefore, whether it might be impractical to make room on the paystub for dues deduction by eliminating at least one insurance premium deduction.

Fourth, a one-time cost of \$1,650 for new checks and a new computer program would not seem excessive. Sixteen hundred and fifty dollars is less than 0.08% of the County's \$2.1 million budget and slightly more than 0.1% of its projected expenditures of almost \$1.5 million. If all thirteen bargaining

⁶Under Article XV of the Agreement employee health insurance is a fringe benefit provided by the County. Employees pay for dependent insurance coverage.

unit employees earned no more than the minimum \$12,000 a year salary, \$1650 would equal about 1% of the total direct wage cost of \$166,000 for one year. Using the same assumptions, over the 2¹/₄ years of the agreement, this cost would amount to 0.47% of the direct wage cost. The evidence did not demonstrate that the County did not have "the financial ability . . . to meet [the] costs" of the Union dues checkoff.

(b) Policy Considerations

I.

The County's argument that the Union should not be permitted to "obtain through arbitration what [it] could not obtain through . . . collective bargaining" applies to grievance arbitration, not interest arbitration. The principle the County has cited is routinely used to interpret a disputed contract clause, not to determine whether an interest arbitrator should sanction a proposal.⁷ There is no analogy between grievance arbitration and Section 14 interest arbitration. In normal, strike-driven negotiations, a union may strike to secure its demands. Under Section 14, a union cannot strike; it must give up a disputed proposal, compromise it, or submit it to interest arbitration. A Section 14 union is not giving up its demands when it submits them to interest arbitration. To the contrary, it is trying to secure its demands.

Texas Utilities, a grievance arbitration case cited by the County, is inapplicable. In *Texas Utilities*, the arbitrator determined that a union

⁷ *Progress-Bulletin Publishing Co.* and *A & P* are grievance awards and therefore inapposite. In interpreting a contract provision caught up in a grievance, arbitrators routinely examine contract negotiations to determine "what the language meant when the agreement was written." Elkouri & Elkouri, 348.

security and checkoff clause negotiated when dues were a flat rate was not intended to require the employer to absorb additional costs when the union later set variable-rate dues. The arbitrator was not asked to adopt a new contract clause. As in *Progress-Bulletin*, he was asked to interpret an existing contract clause. In reaching a decision, the arbitrator had to consider "the intent of the parties" (86-1 ARB ¶8034 at 3138) when they negotiated the clause.

II.

Arbitrator Sinicropi's decision in *Peoria County*, supra, is equally inapposite. In *Peoria County*, the union sought Fair Share, coupled with dues checkoff, not dues checkoff standing alone. A Fair Share clause requires employees who do not join the union to pay their "fair share" for administration of the collective bargaining agreement. Here, the issue is not, as it was in *Peoria County*, whether "any individual, Union members or not, who will benefit from the Union's representational status should pay something for that service." *Peoria County*, supra, at 16. The issue is whether Union dues will be deducted from the pay of *Union members* at their request.

III.

Factors "normally and traditionally taken into consideration" favor the Union's proposal. In *Baptist Hospital*, supra, 65 LA at 249, arbitrator Moberly wrote:

It is common labor relations knowledge . . . that dues checkoff provisions do contribute significantly to harmonious and stable relationships between the parties. The arrangement permits the union to save time and money that would otherwise be spent in collecting dues personally from each employee, and is recognized to carry with it a concomitant degree of union responsibility. It also is frequently recommended as a means of avoiding the occasional disruption of work that invariably occurs when union representatives must collect dues personally from each

employee. The regularity of deductions is assured and a closer working relationship between the employer and the union is promoted.

If experience is any guide, a dues checkoff arrangement would encourage harmony and stability between the parties

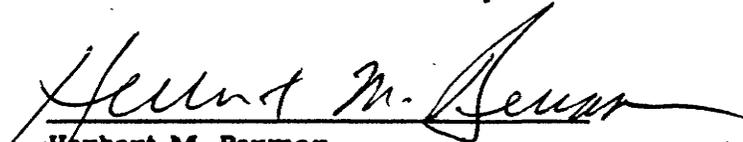
Although the evidence did not show that dues collections had interfered with any jailer's duties, it did show that jailers were kept occupied with their duties. The possibility of interference in a potentially dangerous or tense situation exists.

The minor inconvenience the County might experience as a "collection agent" for Union dues is outweighed by the more serious inconvenience the Union might experience in trying to collect dues. Checkoff clauses are common. They encourage stable bargaining relationships; they tend to reduce on-the-job friction. The County has offered no substantial factual or policy reason to reject checkoff. Its opposition to checkoff appears to stem from a reluctance "to be a collection agent for the Union." The County is the collection agent for a number of insurance companies; the evidence did not demonstrate why it could not also collect Union dues.

The County's objections to dues checkoff are unpersuasive. The proposed checkoff provision is fair and reasonable. It is warranted under the evidence and under the Act.

Award

I adopt the final offer proposed by the Union contained in Union exhibit 1. I reject the final offer of no checkoff proposed by the County. In accordance with Section 14(n) of the Act, the proposal set out in Union exhibit 1 shall be submitted to the Fulton County Board for ratification and adoption.

A handwritten signature in cursive script, reading "Herbert M. Berman". The signature is written in black ink and is positioned above a horizontal line.

**Herbert M. Berman
Arbitrator**

**Deerfield, Illinois
November 24, 1986**