

STATE OF ILLINOIS
ILLINOIS STATE LABOR RELATIONS BOARD

In the Matter of

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AUG 28 1989

ARBITRATION

II. State Labor Relations Bd.

Between

ILLINOIS FRATERNAL ORDER OF POLICE
LABOR COUNCIL, LODGE NO. 61

AND

COUNTY OF ROCK ISLAND AND
ROCK ISLAND COUNTY SHERIFF

Before

Charles C. Hines, Arbitrator

In the Matter of Arbitration Between)
 Illinois Fraternal Order of Police)
 Labor Council, Lodge No. 61)
)
 and) No. S-MA-89-48
)
 County of Rock Island and)
 Rock Island County Sheriff)

BACKGROUND

The County of Rock Island and Rock Island County Sheriff, hereinafter referred to as "County", employ patrol officers, investigators, sergeants and lieutenants that work in the Rock Island County Sheriff's Department. The employees form a bargaining unit that is represented by the Illinois Fraternal Order of Police Labor Council, Lodge No. 61, hereinafter referred to as "Lodge".

The instant case proceeded to interest arbitration under the provisions of the Illinois Public Labor Relations Act, hereinafter referred to as the "Act" (Ill. Rev. Stat. Ch 48, §1601 et. seq.). Prior to the hearing, the parties agreed to stipulate as follows:

1. That they waive mediation.
2. That they waive a three member arbitration panel and submit their unresolved disputes to a single, neutral arbitrator.
3. That pursuant to §14(j) of the Act and the Rules and Regulations of the Illinois State Labor Relations Board, the Arbitrator has the authority and jurisdiction to issue increases in rates of compensation and other economic benefits retroactive to December 1, 1988.

A total of thirteen bargaining inpassé issues have been presented for decision. The parties have also presented their final offer regarding each of the issues.

The impartial Arbitrator was selected from a list submitted by Federal Mediation and Conciliation Service, Washington, D.C. The hearing was held on May 18, 1989, at the Rock Island County Office Building, Rock Island, Illinois.

All parties participated, were represented by counsel, submitted evidence, and examined and cross-examined witnesses. A transcript of the proceedings was made and has been submitted to the Arbitrator. Following the conclusion of the proceedings, the parties were given the opportunity to submit post-hearing briefs. The County's brief was received on July 10, 1989, and the Lodge's brief was received on July 7, 1989.

ISSUES

The parties have stipulated to a total of thirteen issues that are in dispute and have further stipulated as to whether the issues are classified as economic or non-economic. The issues and classifications to be decided are as follows:

1. Wage Rates for First and Second Years - Economic
2. Sergeants and Lieutenants Differential - Economic
3. Duration of Agreement - Non-Economic
4. Holidays - Economic
5. Shift Differential - Economic
6. Hours of Work and Overtime - Non-Economic
7. Lodge representative - Economic
8. Vacation - Economic
9. Insurance - Economic
10. Sick Leave - Economic
11. Management Rights - Non-Economic

12. Grievance and Arbitration Procedure - Non-Economic

13. Maintenance of Standards - Non-Economic

CONTRACT LANGUAGE

Article 4

Management Rights

The Employer may exercise the following management rights provided that no such right is exercised contrary to or inconsistent with other terms of this Agreement or the Act:

* * *

Article 8

Grievance and Arbitration Procedure

Step 4: Should the Lodge desire to advance the grievance to Step 4 and refer the grievance to arbitration, it shall give written notice to the Sheriff within fifteen (15) working days from the date of the Answer in Step 3. The parties shall attempt to agree on an Arbitrator within ten (10) days. Absent agreement, the arbitration proceeding shall be conducted by an Arbitrator selected by the parties from the Federal Mediation and Conciliation Service, using FMCS selection procedures.

* * *

Article 9

Maintenance of Standards

All established work practices which are not set forth in this Agreement and which are currently in effect shall continue and remain in effect for the term of this Agreement. This shall not limit the management rights of the Sheriff as set forth in this Agreement or the rights and duties of each party as set forth in the Illinois Public Labor Relations Act in §1604 and §1607.

* * *

Article 14

Lodge Representatives

§1. Attendance at Lodge Meetings: Lodge members shall be permitted to attend Lodge meetings according to the current practice.

§2. Grievance Processing: Reasonable time off with pay while on duty shall be granted to Lodge representatives for the purpose of aiding or

assisting or otherwise representing officers in the handling and processing of grievances or exercising other rights set forth in this Agreement. Lodge representatives shall not be released more than two (2) hours per week unless an extension is granted by the Sheriff or his designee. Face to face meetings with the Employer shall not count toward the two (2) hours.

§4. Lodge Negotiating Team: Bargaining unit employees designated as being on the Lodge negotiating team shall be released from duty with pay for negotiations according to the current practice.

* * *

Article 22

Vacations

Officers covered by the terms of this Agreement shall receive vacation time off with pay each year according to the current schedule and practice.

The parties agree to continue the current practice of counting time served in the employ of the Employer as other than a merited deputy for purposes of determining length of service and vacation accrual. However, for purposes of selecting dates of vacations and all other matters where seniority may be applicable in this Agreement, only length of service and seniority as a merited deputy shall apply unless otherwise specifically stated.

* * *

Article 24

Insurance

All eligible employees are encouraged to participate in the County group hospitalization insurance program offered at the group rate through the County.

The Lodge shall be represented on the County Insurance Study Committee by a representative designated by the Lodge President.

* * *

Article 25

Holidays

For purposes of this Agreement, bargaining

unit employees shall have holidays scheduled and receive holiday benefits and compensation according to the current practice of the parties.

§1. Holidays During a Vacation Period: In the event that a holiday falls during an officer's vacation period or time off, the day upon which the holiday falls shall not count as a vacation day. Such day shall be treated as a holiday upon which the officer did not work. In such cases, the "unused" vacation day shall remain in the officer's vacation accumulation for his future use according to the current practice.

* * *

Article 27

Sick Leave

Sick leave shall be governed by current practice in all respects during the term of this Agreement.

* * *

Article 30

Duration

§1. Term of Agreement: This agreement and its provisions shall be effective on the 1st day of December, 1986, and continue in full force and effect until the 30th day of November, 1988. It shall continue in effect from year to year thereafter unless Notice of Desire to Bargain is sent in accordance with this Article. Notices referred to herein shall be considered to have been given as of the date of receipt by the other party. Notices shall be delivered either personally or by certified mail, return receipt requested.

STATUTORY AUTHORITY

The instant arbitration proceeding is governed by the provisions of the Illinois Public Labor Relations Act. The portions of the Act applicable to this proceeding are as follows:

14(g) At or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute, and direct each of the parties to submit within such time limit as the panel shall prescribe, to the arbitration panel and to

each other its last offer of settlement on each economic issue. The determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive. The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and promulgate a written opinion and shall mail or otherwise deliver a true copy thereof to the parties and their representatives and to the Board. As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h). The findings, opinions and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

14 (h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of

living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

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

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

The Act makes a distinction in deciding economic and non-economic issues. Section 14(g) of the Act provides, in relevant part, "As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with applicable factors prescribed in subsection (h)." The Act, therefore, limits the arbitrator's authority in deciding economic issues to accepting one party's last offer of settlement. The Act is silent as to non-economic issues. Consequently, the arbitrator is free to select either party's last offer of settlement or to reject both parties' last offer and fashion an award that he finds to be appropriate.

The Act further enumerates eight factors that may be considered in making an award. An arbitrator is not required to address all of the factors but only those that are appropriate. The eighth factor is very general and allows the arbitrator to consider

factors that are normally taken into consideration in determining wages, hours and conditions of employment. Moreover, the Act does not specify the weight that is to be assigned to each factor. The decision as to which factors carry the most weight in a particular dispute is, therefore, left to the discretion of the arbitrator.

OPINION

ISSUE I

PATROL OFFICER AND

INVESTIGATOR WAGE RATES

LODGE'S FINAL OFFER: All patrol officers and investigators, except those at the first step, would receive a 5% increase effective December 1, 1988. During the second year of the agreement, all patrol officers and investigators would receive a 5% increase adjustable up or down with the consumer price index.

COUNTY'S FINAL OFFER: All patrol officers and investigators would be paid the higher of their current rate of pay or the rate of pay received by an employee in the same classification in Scott County, Iowa.

DISCUSSION

In contending that its offer should be accepted, the County argues that Rock Island County and Scott County, Iowa, are comparable communities. As the counties are comparable, the County argues that it should only be required to pay patrol officers and investigators the higher of their current salary or the salary they would receive under the Scott County wage agreement. The net effect of the County's proposal is that the wages of the majority of patrol officers and investigators would be frozen as their current salary exceeds the

salary being paid in Scott County. Under the County's proposal, the wages of patrol officers and investigators would continue to be frozen until such time as the salary being paid in Scott County exceeds their current salary.

The County's argument that the two counties are comparable is based upon the fact that Rock Island County and Scott County, Iowa, are located within the Quad Cities and are, therefore, part of single labor market. The County has also presented a number of factors that it contends demonstrate that Rock Island County and Scott County are comparable communities. The factors presented by the County include the following:

Comparability Factor	Rock Island County	Scott County
Number of Housing Units	63,412	59,764
Median Value of Owner Occupied Units	\$46,900	\$52,800
Labor Force	87,336	87,708
Number of Employees in Protected Services	1,035	920
% of Labor Force Employed In:		
Manufacturing	26.9%	22.4%
Wholesale & Retail	18.4%	19.9%
Professional Services	18.5%	21.4%
Per Capita Income	\$ 8,241	\$ 8,226
Change in Per Capita Income from 1979-1985	+27%	+45.7%
Median Household Income	\$19,942	\$20,767
Median Family Income	\$23,188	\$23,812
1988 Unemployment:		
Unemployment in Labor Force	8%	6.8%
Labor Force	73,430	82,050
Unemployed	6,017	5,650
Housing Vacancies		
Total Vacancies	5.6%	6.1%
Single Family Vacancies	4.5%	3.7%
Multi-Family Vacancies	9.8%	13.2%

The County also presented evidence that Rock Island County and Scott County are similar in size and are expected to remain so through the year 2000. The comparison of the population of the counties is

shown as follows:

<u>Year of Census</u>	<u>Rock Island County</u>	<u>Scott County</u>
1980	165,968	160,022
Estimated 1990	173,700	174,000
Estimated 2000	182,000	187,300
Change in population from 1980 to 1986	-4.2%	-2.0%

The Lodge has disputed the County's contention that Rock Island County and Scott County are comparable communities. Among the objections that the Lodge has raised are that the counties are located in different states, and the states have different state bargaining laws, different tax bases, different laws concerning taxation, and different fiscal years.

There is, however, one significant difference in the conditions of employment between deputies in Rock Island County and Scott County. In 1985, Rock Island deputies handled an average of 135.06 index crimes per year while Scott County deputies handled an average of 10.65 index crimes per year. Index crimes are defined as serious crimes that include murder, manslaughter, rape, robbery, aggravated assault and battery, larceny, and auto theft. The County has not disputed the accuracy of the Lodge's evidence regarding index crimes or presented any evidence showing that the disparity in index crimes handled has appreciably changed during the intervening years.

The Lodge has also presented a list of counties which it contends are comparable to Rock Island County. The counties submitted by the Lodge are located in the State of Illinois and include Champaign County, McHenry County, McLean County, Peoria County, Sangamon County, Winnebago County, Tazewell County, Macon County and

LaSalle County.

The comparison of wages, hours and conditions of employment for employees in the community in question and in comparable communities is important but is only one of the factors that the arbitrator may consider in reaching a decision. It must be recognized that there will always be similarities and differences in comparisons between two counties. The Act, however, does not require counties to be mirror images of each other. In this instance, the counties relied upon by the Lodge and counties relied upon by the County, bear similarities and differences to Rock Island County. The arbitrator is not required to reject any of the counties submitted by the parties simply because the counties and Rock Island County are not identical. Instead, the arbitrator will consider the similarities and differences in deciding upon the weight to be given to the comparisons that each of the parties seeks to draw.

The Lodge presented evidence regarding the purchasing power of deputies. The evidence indicates that, depending upon the step, deputies have lost between 10% and 12% of their purchasing power during the last decade. The evidence further indicates that, depending upon their step, sergeants have lost between 11% and 15% of their purchasing power for the same period. From June 1, 1988, through May, 1989, deputies and sergeants sustained a 5% loss in their purchasing power.

The County has argued that from December 1, 1986, through November 30, 1988, deputies received an increase of \$2,080.00 for each longevity step in each classification. According to the figures cited by the County, the raise amounted to a wage increase of 11.1% over the

two-year life of the agreement for employees starting work as a deputy and a raise of 7.8% over the twoyear life of the agreement for the highest paid employees.

Despite the \$2,080.00 raise that deputies received between December 1, 1986, and November 30, 1988, it appears that over the past ten years deputies have lost significant purchasing power. The wage increases that were negotiated under the previous Agreement served, at best, to prevent a further, sharper decline in their purchasing power. For most employess, the raise was less than the current increase of 5.4% per year in the cost of living that has been used by the County.

The County has also raised a concern that if deputies are given a cost of living increase during the second year of the Agree-ment, the County's long range planning will be adversely affected as the cost of the raise cannot be established in advance. While the amount of the second year cost of living adjustment cannot be precisely stated, it can be predicted with sufficient accuracy to be budgeted. Furthermore, the County's own proposal calls for wages to be reopened in June, 1990. It is difficult to understand how a cost of living increase during the second year of the contract would introduce greater uncertainty into the County's long range planning than reopening wage negotiations in July, 1990.

The Act further provides that the Arbitrator is to consider the interest and welfare of the public in rendering a decision. Anytime County government increases expenditures, there is a potential that the public will be adversely affected by higher taxes. However, the public also has a contravailing interest in employing and keeping competent, dedicated police officers. The vital role that police

officers serve in protecting the welfare of the public was recognized by the legislature when it enacted the Act and specifically prohibited police officers from engaging in strike activities. Adopting the County's proposal and tying employees' wages to the lower wage scale paid in Scott County would almost certainly have an adverse effect upon employee morale and upon the County's ability to keep competent police officers.

Furthermore, the County has not claimed that it would be unable to pay the additional costs associated with the Lodge's offer or that the offer would place a financial hardship upon the County. As the County has not made ability to pay an issue, the discussion of the financial status of the County will be limited. Overall, the evidence indicates that the County is financially sound and that it will continue to remain financially sound in the future.

The existing wage structure is the result of years of negotiations between the parties. The County's final offer would abandon the current wage structure and tie salaries to the wages paid in Scott County, Iowa. The only real justification the County has offered for adopting the Scott County wage structure is the Scott County and Rock Island County are comparable communities.

On balance, the factors set forth in the Act support the Lodge's final offer and the offer is hereby accepted. The salary adjustment during the second year of the Agreement shall be tied to the Consumer Price Index for Urban Workers and shall be based upon the percentage of change in the index during the period from December, 1988, through November 30, 1989.

ISSUE II

SERGEANTS' AND LIEUTENANTS' DIFFERENTIAL

LODGE'S FINAL OFFER: Pay sergeants \$2,000.00 more than patrol officers and lieutenants \$2,000.00 more than sergeants.

COUNTY'S FINAL OFFER: Pay sergeants and lieutenants the higher of their current rate of pay or the rate of pay received by an employee in the same classification in Scott County.

DISCUSSION

Sergeants and lieutenants are responsible for supervising patrol officers. Both parties recognize that the duties and responsibilities of sergeants and lieutenants dictate that they be paid at a higher rate than patrol officers. Under the Lodge's proposal, sergeants and lieutenants would be paid a set amount above their salary as a patrol officer. The County, again, seeks to adopt the wage structure currently in effect in Scott County. Much of the prior discussion regarding wages for patrol officers and investigators is also applicable to this issue and does not need to be addressed again.

Under the Scott County wage structure, the salaries of sergeants and lieutenants top out after ten years of service. As a result, the salaries of sergeants and lieutenants raise at a quicker rate than in Rock Island County where salaries do not top out after ten years of service. The difference in the wage structures of the counties is reflected in the fact that the County's proposal would actually pay sergeants and lieutenants more than the Lodge's proposal during their first fourteen years of service. Following the fourteenth year of service, the Lodge's proposal would exceed that of

the County.

The wage structure for Rock Island County has been in effect for a number of years. It is the result of years of negotiations between the parties. If the County's proposal were adopted, it would adversely affect only veteran employees, those with more than fourteen years of service. The net result of the County's proposal is that sergeants and lieutenants who have foregone higher wages during their earlier years of employment would now be locked into a wage structure where their salary would top out after fourteen years of service. The County is, in essence, seeking to change the rules during the middle of the game.

The only real justification the County has presented in support of its proposal is that Scott County is comparable to Rock Island County and the wage structure that it has proposed is used in Scott County. The comparison of wages received by employees in comparable communities is only one of eight factors an arbitrator may consider when making an award. Furthermore, the Act only provides that an arbitrator is to consider the wages paid in comparable communities. In this instance, as with its proposal regarding the wage rates for patrol officers and investigators, the County not only requests the Arbitrator to consider the wages paid in Scott County but to implement the identical wage structure for Rock Island County. To do so would be to adversely affect those employees who have foregone higher wages during their earlier years of service in lieu of the benefits that the County now seeks to take away. Such a result is not justified under the Act and the Lodge's final offer is, therefore, accepted and the following Appendix H is added to the Agreement:

"Officers holding the rank of Sergeant shall be paid annually Two Thousand Dollars (\$2000) over the annual salary for a Deputy at each of the pay steps set forth in Appendix E.

Officers holding the rank of Lieutenant shall be paid annually Two Thousand Dollars (\$2,000) over the annual salary of a Sergeant at each of the pay steps set forth in Appendix H."

ISSUE III

DURATION OF AGREEMENT

LODGE'S FINAL OFFER: The new labor agreement would be in effect from December 1, 1988, to November 30, 1990.

COUNTY'S FINAL OFFER: The new labor agreement would be in effect from December 1, 1988, to November 30, 1991, with the Lodge having the right to reopen wage negotiations for the period from July 1, 1990, to November 30, 1991.

DISCUSSION

The County's proposal for a three year agreement with wage negotiations being reopened for the period subsequent to July 1, 1990, is based upon the County's desire to adopt the Scott County wage structure. July 1, 1990, is the expiration date of the Scott County agreement and under the County's proposal, it would reopen wage negotiations for the purpose of adjusting salaries to reflect changes made in Scott County. For the reasons previously discussed, the Arbitrator has declined to adopt the Scott County wage structure for Rock Island County.

The Lodge's final offer is accepted and Article 30, §1 of the Agreement is hereby amended and shall provide as follows:

"§1. Term of Agreement: This Agreement and its provisions shall be effective on the 1st day of December, 1988, and continue in full force and

effect until the 30th day of November, 1990. It shall continue in effect from year to year thereafter unless Notice of Desire to Bargain is sent in accordance with this Article. Notices referred to herein shall be considered to have been given as of the date of receipt by the other party. Notices shall be delivered either personally or by certified mail, return receipt requested."

ISSUE IV

HOLIDAYS

LODGE'S FINAL OFFER: Pay employees time and one-half and continue existing practice of giving employees that work on a holiday an additional day off.

COUNTY'S FINAL OFFER: Continue existing practice of giving employees that work on a holiday an additional day off.

DISCUSSION

Obviously, police officers are in a unique position as compared to other county employees. Unlike most other county officials, the Sheriff cannot simply close his office on holidays and give all of his employees the holiday off. The citizens of the county must be given year round police protection. Consequently, while most other county employees receive a day off with pay, county police officers must work the holiday as scheduled and take an additional day off at a later date.

In reviewing the counties cited by the Lodge as being comparable to Rock Island County, the Arbitrator finds that approximately one-half of the counties have holiday benefits that are comparable to the benefits currently being offered by the County, and approximately one-half of the counties have holiday benefits that exceed the benefits currently being offered by the County. Scott County offers

holiday benefits similar to those proposed by the Lodge; however, Scott County also recognizes less holidays.

The Arbitrator recognizes the sacrifices that police officers make by working holidays. However, the officers are compensated by being given an additional day off for working a holiday. The counties relied upon by the Union do not indicate that the current practice is out of line with the practice in comparable communities. Furthermore, the Arbitrator's previous decision on the wage issue has substantially increased the economic package for police officers.

Based upon the foregoing, the County's offer is accepted.

ISSUE V

SHIFT DIFFERENTIAL

LODGE'S FINAL OFFER: Increase the second shift differential to the rate of 48 cents per hour and the third shift differential to the rate of 72 cents per hour.

COUNTY'S FINAL OFFER: Pay second and third shift differential of 25 cents per hour.

DISCUSSION

Under the current Agreement, officers receive 14 cents per hour shift differential for the second and third shifts. The County's proposal would raise the shift differential to 25 cents per hour for both second and third shifts, while the Lodge's proposal would increase second shift differential to 48 cents per hour and the third shift differential to 72 cents per hour.

The Lodge contends that the increase it seeks is justified by the duties that officer must perform on second and third shifts and by the effect the shifts have upon an officer's home life. Only two of

the counties that the Lodge contends are comparable to Rock Island County currently pay any shift differential. The County's final offer of 25 cents per hour almost doubles the current shift differential.

Based upon the foregoing, the County's final offer is deemed more reasonable and is accepted.

ISSUE VI

HOURS OF WORK AND OVERTIME

LODGE'S FINAL OFFER: Amend Article 26 of the agreement to allow employees to bid for openings and shifts in the Legal Department.

COUNTY'S FINAL OFFER: Continue the current practice of allowing the Sheriff to appoint employees in the Legal Department.

DISCUSSION

The County contends that the current practice of allowing the Sheriff to appoint employees to the Legal Department should be continued due to the unique nature of the work. The Sheriff testified that he previously worked in the Legal Department and, based upon his experience, individuals will often go to great lengths to avoid service of process. Consequently, employees working in the Legal Department must be highly motivated as they may be required to make several attempts at service before they are able to locate the individual. The Sheriff further testified that supervision of the employees in the Legal Department is difficult, as most of their work is performed outside of the office and outside of the presence of supervisors.

The Lodge is the party seeking to change the existing language in the Agreement and, therefore, it has the burden of going forward

and presenting evidence justifying the change. While the Lodge was able, to some degree, to mitigate the testimony of the Sheriff during cross examination, it did not present sufficient evidence to justify changing the current language.

It is the finding of the Arbitrator that employees working in the Legal Department are in a unique position. While the skills and motivation they must possess may not be as pronounced as the County contends, they must, nevertheless, be diligent and motivated in attempting to effectuate service of legal process.

For the reasons discussed above, the final offer of the County is accepted.

ISSUE VII

LODGE REPRESENTATIVE

LODGE'S FINAL OFFER: The Lodge proposes no changes in the language of Article 14.

COUNTY'S FINAL OFFER: The County proposes making three changes in the language of Article 14. First, the County would eliminate the words "according to the current practice" from Section One. Second, the County would omit the words "or exercising other rights set forth in this Agreement" from Section Two. Third, the County would eliminate Section Four of the Agreement.

DISCUSSION

Article 14 of the Agreement states as follows:

"§1. Attendance at Lodge Meetings: Lodge members shall be permitted to attend Lodge meetings according to the current practice.

§2. Grievance Processing: Reasonable time off with pay while on duty shall be granted to Lodge representatives for the purpose of aiding or

assisting or otherwise representing officers in the handling and processing of grievances or exercising other rights set forth in this Agreement. Lodge representatives shall not be released more than two (2) hours per week unless an extension is granted by the Sheriff or his designee. Face to face meetings with the Employer shall not count toward the two (2) hours.

§4. Lodge Negotiating Team: Bargaining unit employees designated as being on the Lodge negotiating team shall be released from duty with pay for negotiations according to the current practice."

The County contends that the language it seeks to delete from Section One is too vague and proposes spelling out the current practice. The County further contends that the language regarding exercising of other rights as set forth in the Agreement is superfluous, and that Section Four should be completely eliminated as it is unfair for the County to be required to pay employees for the time they spend negotiating against the County.

The language that the County seeks to eliminate was mutually agreed to by the parties as a result of the negotiations. The County now seeks to have the Arbitrator unilaterally strike the language from the Agreement. While the Arbitrator is empowered under the Act to strike language, this power must be exercised cautiously and only after careful consideration of the reasons necessitating the change. The Arbitrator cannot strike contractual language without being presented with a compelling reason justifying the change.

The County has failed to present any evidence that the changes it seeks have been caused by changes in the circumstances between the parties or that there is some other compelling reason for changing the language in Article 14. The reasons that have been given for making

the changes are the same reasons that existed for refusing to initially agree to the language. If certain language in Article 14 is unacceptable to the County and it wishes to modify the language, the modifications should be made as a result of negotiations between the parties. For the Arbitrator to hold otherwise and freely strike language that has become a part of the Agreement would undermine the stability of the entire bargaining process.

For the reasons set forth above, the Lodge's final offer is accepted.

ISSUE VIII

VACATION

LODGE'S FINAL OFFER: First, add language permitting employees to carry over vacation days that they are not allowed to take due to staffing shortages. Second, grant employees an additional five days of vacation after their twentieth year of service.

COUNTY'S FINAL OFFER: Continue the current practices of not allowing employees to carry over vacation days and of granting employees a maximum of twenty days of vacation.

DISCUSSION

Under the current practice, employees may begin scheduling vacations sometime around the month of March. If more than one employee schedules the same date, the employee with the most seniority is given preference. Employees are given a great deal of flexibility in taking their vacations in that they may take their vacations all at once or one day at a time.

The Lodge's request to change the current practice by permitting employees to carry over vacation days is based upon the fact that

from time to time employees are required to reschedule their vacations due to circumstances that are beyond their control. Such circumstances include illness or injury to employees scheduled to work and the scheduling of trials. If the employee cannot reschedule his vacation by December 1, the beginning of the new fiscal year, the employee loses the vacation. The Lodge contends that it is grossly unfair for employees to forfeit vacation time when the employee is not at fault.

The Lodge, however, has failed to present any evidence of any serious problem with employees actually being forced to forfeit their vacation. The Lodge's witness testified that employees have the flexibility of scheduling vacations one day at a time. The Sheriff testified that he attempts to accommodate employees who request vacations late in the fiscal year.

The Lodge also proposes that employees be given an additional five days of vacation following their twentieth year of service. Currently, employees receive four weeks of vacation after ten years of service. Only two of the counties cited by the Lodge as being comparable to Rock Island County allow twenty five days of vacation. The most vacation the majority of the counties offer is twenty days. Furthermore, most of the counties that allow twenty days of vacation only offer the benefits after more than ten years of service.

For the reasons stated above, the offer of the County is accepted.

ISSUE IX

INSURANCE

LODGE'S FINAL OFFER: The County must bargain over changes in the premium costs or benefit levels of employee health insurance with any impasses in bargaining being submitted to arbitration under Section 14 of the Act.

COUNTY'S FINAL OFFER: The County should have the right to unilaterally change the premium costs or benefit levels of employee health insurance without bargaining with the Lodge.

DISCUSSION

The evidence establishes that the County currently provides employees with good health insurance benefits at a reasonable cost. The County contends that in order for it to maintain coverage on a cost effective basis, it must have the right to make unilateral changes in coverage and premiums. On the other hand, the Lodge contends that the County could use that right to change coverage and premiums as a means of defeating any wage increases received by employees.

Section 4 of the Act places certain limitations on management rights. In relevant part, Section 4 provides:

"Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment (as well as the impact thereon) upon request by employee representative."

Employees' ability to receive health insurance coverage for themselves and their family, as well as the amount of the premium that they are required to contribute toward the coverage, are matters that directly affect relations between the parties. They are matters that

employees take into consideration in deciding whether to accept or continue employment. In this instance, the County affords health insurance to employees and employees rely upon the health insurance as a term and condition of their employment.

As health insurance is a term and condition of employment, Section 4 of the Act mandates that the County negotiate any changes in coverage or premiums. The County has voiced the concern that, if it is not given the right to make unilateral changes in its health insurance policies, all County employees will be adversely affected. However, the Lodge cannot necessarily prevent the County from implementing changes in health insurance coverage. In the event the parties are unable to resolve a dispute regarding health insurance, the parties may, pursuant to Article 30, Section 4 of the Agreement, use the impasse procedures set forth in Section 1614 of the Act. Accordingly, the following language is hereby added to the conclusion of Article 24:

"The Lodge shall have the right to bargain with the Employer on any proposed changes in the premium costs or benefit levels of medical or health insurance. Impasses in such bargaining shall be resolved by the procedures set forth in §1614 of the Illinois Public Labor Relations Act."

ISSUE X

SICK LEAVE

LODGE'S FINAL OFFER: Give employees the option of having accumulated sick leave at retirement or separation (other than termination for just cause) paid to the Illinois Municipal Retirement Fund or paid to the employee at the rate of one day's pay for two days of accumulated sick leave.

COUNTY'S FINAL OFFER: Continue the current practice of paying employees accumulated sick leave to the Illinois Municipal Retirement Fund at retirement or separation.

DISCUSSION

In contending that its offer should be accepted, the Lodge argues that its offer, if accepted, would actually save the County money by reducing absenteeism. The Lodge seeks to support its argument by citing an article from Police Labor Monthly entitled Accrued Sick Leave Compensation (1987). The thrust of the article is that if employees are offered a monetary benefit for reporting to work, absenteeism will be dramatically reduced.

Whether implementing the Lodge's final offer would actually save the County money by reducing absenteeism is, at best, speculative. There are many factors that affect employee absenteeism and the findings of one study regarding absenteeism is not sufficient reason to modify the current sick leave policy. The County, obviously, does not believe that the Lodge's offer will save money as it has rejected the offer. Furthermore, a review of the counties that the Lodge contends are comparable to Rock Island County indicates that only two of the counties have a 50% buyback provision in their Agreement.

If the Lodge's proposal would actually save the County money, both parties would benefit by adopting the proposal. The County would save money and its employees would gain an additional benefit. Under the circumstances, the Lodge's proposal is a matter that should be resolved by the parties as a part of the bargaining process. The County's final offer is, therefore, accepted.

ISSUE XI

MAINTENANCE OF STANDARDS

LODGE'S FINAL OFFER: Make no changes in the current contract language.

COUNTY'S FINAL OFFER: Eliminate the first sentence of Article 9 recognizing past practices.

DISCUSSION

Article 9, Maintenance of Standards, provides as follows:

"All established work practices which are not set forth in this Agreement and which are currently in effect shall continue and remain in effect for the term of this Agreement. This shall not limit the management rights of the Sheriff as set forth in this Agreement or the rights and duties of each party as set forth in the Illinois Public Labor Relations Act, Section 1604 and Section 1607."

Under the County's proposal, the contract language recognizing past practices would be eliminated. The County would also, in conjunction with eliminating the first sentence in Article 9 recognizing past practice, add a new first sentence to Article 4, which would state as follows:

"Employer's right of management shall not be amended or limited by any claimed or unwritten custom, practice or informal agreement, nor by any claim the employer has condoned or tolerated any practice or any act or acts of the employees."

A custom and practice is a part of the collective bargaining agreement to the same extent and to the same degree as the written portion of the agreement. The role of a custom and practice as a part of the "whole" agreement of the parties has been stated as follows:

"A union-management contract is far more than words on paper. It is all of the oral understandings, interpretations and mutually accepted habits of action which have grown up around it

over the course of time. Stable and peaceful relations between the parties depend upon the development of a mutually satisfactory superstructure of understanding which gives operating significance and practicality to the purely legal wording of the written contract. Peaceful relations depend, further, upon the parties faithfully living up to their mutual commitments as embodied not only in the actual contract itself, but also in the modes of action which have become an integral part of it." Elkouri & Elkouri, How Arbitration Works, (4th Ed. 1985) at 437-38.

The language in Article 9, expressly recognizing custom and practice as a part of the Agreement, is language that the parties have mutually agreed to as a part of the negotiation process. As the County is now seeking to eliminate the language and to replace it with language stating that custom and practice will no longer be recognized, the County must bear the burden of establishing the necessity for the proposed changes.

In contending that its proposed changes should be accepted, the County argues that it is difficult to determine whether a past practice exists and eliminating past practices eliminates confusion. Article 9, however, sets forth specific criteria that must be met in order for a past practice to exist. The Article provides the practice must be an "established work practice" and "currently in effect".

Furthermore, the County has presented virtually no evidence that recognizing past practices has created any confusion or caused any hardship in operating the police department. The County has only cited one specific problem that the parties have encountered in connection with past practices. The problem involved employees taking patrol cars with them home at night and was resolved at the first step of the grievance procedure. Other than the dispute involving the

employees' right to take patrol cars home with them at night, no other evidence was presented regarding problems or confusion in connection with past practices.

The County also contends that there is a potential for confusion in the future as the Sheriff is elected in general elections and may not be familiar with past practices that have been established by the parties. Whatever potential problems may exist by virtue of the Sheriff holding an elective office also existed at the time the County agreed to recognize past customs and practices.

For the reasons stated above, the Lodge's final offer is accepted.

ISSUE XII

MANAGEMENT RIGHTS

LODGE'S FINAL OFFER: The Lodge would make no changes in the language of Article 4 of the Agreement.

COUNTY'S FINAL OFFER: The County would make the following changes in the language of Article 4 of the Agreement.

1. Add language to the first sentence of Article 4 stating that the County is not required to recognize past customs and practices.
2. Add paragraph 10 to Article 4 stating that the County has the right to contract out for goods and services.
3. Add language to the end of Article 4 stating that, "Except as specifically limited by express provisions of this agreement, the employer retains traditional rights to manage all affairs of the Sheriff's Office as well as those rights set forth in the Illinois Public Labor Relations Act."

DISCUSSION

The County's first proposed change in Article 4 regarding recognition of past customs and practices was previously discussed in conjunction with Maintenance of Standards. For reasons set forth in the discussion regarding Maintenance of Standards, the County's proposal to eliminate language recognizing past customs and practices is rejected.

The County's second proposal is to add a new paragraph 10 to the Agreement expressly recognizing the County's right to contract out for goods and services. The evidence establishes that the County has historically contracted out for goods and for services except for services performed by bargaining unit employees. The County has stated that it is not seeking the right to contract out for services in order to gain the right to replace services currently being provided by bargaining unit employees. The Lodge, on the other hand, does not oppose language giving the County the right to contract out for goods or services, other than work being performed by bargaining unit employees.

The parties have designated this issue as being non-economic, thereby giving the Arbitrator the right to fashion an award that differs from the final offers presented by the parties. In this instance, there does not appear to be any substantive dispute between the parties. Accordingly, a new paragraph 10 is hereby added to Article 4 and shall state as follows:

"10. To contract out for goods and services, other than those services and work currently being performed by bargaining unit employees."

The County further proposes adding the following language to

the end of Article 4:

"Except as specifically limited by the express provisions of this agreement, the employer retains traditional rights to manage all affairs of the Sheriff's Office as well as those rights set forth in the Illinois Public Labor Relations Act."

Basically, the County contends that including the proposed language would expressly recognize the County's inherent right to manage the Sheriff's Office. The County is correct in that management generally has the residual or reserved power to manage the Company, or, in this case the Sheriff's Department. The inherent right to manage and to direct the working forces arises from recognition of the fact that someone must be in charge and make decisions. The County, therefore, has the inherent right to direct the working forces provided that its actions do not conflict with other provisions of the Agreement.

The County has the right to have language included in the Agreement specifically recognizing its inherent right to manage the Sheriff's Department and to direct the working forces. The language suggested by the County is, however, too broad. Accordingly, the following language is hereby added to the conclusion of Article 4 of the Agreement:

"Except as specifically limited by provisions of this agreement, the employer retains traditional rights to manage the Sheriff's Office and to direct the working forces, as well as those rights set forth in the Illinois Public Labor Relations Act."

ISSUE XIII

GRIEVANCE PROCEDURE

LODGE'S FINAL OFFER: The parties toss a coin to determine who will strike first.

COUNTY'S FINAL OFFER: The party requesting arbitration strikes first.

DISCUSSION

The dispute regarding Article 8, Grievance and Arbitration Procedure, has occurred as a result of language in Step 4. The language provides in relevant part, "Absent agreement, the arbitration proceedings shall be conducted by an Arbitrator selected by the parties from the Federal Mediation and Conciliation Service, using FMCS selection procedures." Currently, the FMCS does not have any procedures which set forth the manner by which parties are to select an Arbitrator.

The decision as to which party must strike first from the proposed panel of arbitrators is important in that the party striking second always has the advantage of selecting between the two final names. The procedure that is implemented for selecting an arbitrator should be designed to fairly balance the order of selection. Neither party should always have the disadvantage of selecting first or always have the advantage of selecting second.

On the surface, the County's proposal that the party requesting the arbitration be required to strike first appears to be fair. However, the language in Step 4 of the grievance procedure only gives the Lodge the right to refer grievances to arbitration. Under the County's proposal, the Lodge would always be required to strike

the first name from the arbitration panel and the County would always have the advantage of selecting between the two final names. The County's proposal does not, therefore, fairly balance the selection process.

The Lodge's proposal of using a coin toss to determine the party that must select first gives each party an even chance at gaining the advantage of selecting second. The Lodge's final offer is, therefore, accepted.

AWARD

For the reasons stated above, the County and Lodge are to attempt to agree as to the implementation and amounts payable under this award. Any unresolved disagreement may be returned to the Arbitrator, at the request of either party, for which sole purpose jurisdiction is reserved.

Dated: August 24, 1989.



Charles C. Hines
Arbitrator