

BEFORE
JAMES R. COX
ARBITRATOR

CHAMPAIGN COUNTY SHERIFF'S)	
DEPARTMENT)	Interest Arbitration
)	
and)	Contract Years Commencing
)	12/1/89, 12/1/90 and
ILLINOIS FRATERNAL ORDER OF)	12/1/91
POLICE, LODGE 17)	

DECISION AND AWARD

The Hearing in this matter was conducted by the Arbitrator December 14, 1990 in Champaign County, Illinois. Attorney Thomas Sonneborn represented the Fraternal Order of Police, while Assistant State's Attorney Trisha Crowley presented the County's case. Both counsel filed excellent Post-Hearing Briefs.

THE ISSUES

Prior to the onset of interest arbitration, the parties had reached tentative agreement on a number of issues, attached as Exhibit A. Those issues included jury/witness leave, seniority, probation, no strike/no lockout, Grievance procedure, personnel files, sick leave, callback, and clothing allowance. The parties have stipulated that their tentative agreements in these areas would be incorporated into the Award and made a part of the new Labor Contract.

One of the impasse issues, involving indemnification, was resolved prior to the conclusion of the Hearing. An understanding was reached that the language of Article 34.01 would provide indemnification for certain off-duty conduct of employees, provided that such conduct was consistent with the County's established policies concerning off-duty police action.

Seven issues were presented to the Arbitrator for final and binding determination.

EMPLOYEE TESTING

In the course of their negotiations, the parties have negotiated the drug testing issue. The Union's final offer is fashioned with two alternatives -- either a comprehensive drug testing Article, or introduction of language into the Agreement which would require the County to notify the Union and bargain over a drug/alcohol testing program they may determine to implement. Any impasse, according to the Union proposal, would be resolved in accordance with Section 1614 of the Act.

The County's position is that the Agreement should not include any Article concerning drug or alcohol testing.

There is no evidence that drug or alcohol abuse is a current problem affecting the employment relationship in this bargaining unit. At this time, the County has no plans to implement drug/alcohol testing. Such testing, however, has been put into effect in many bargaining units across the country whose

work involves public safety and/or transportation. The evidence does not establish that, at this time, receipt of state or federal funds are conditioned upon having a drug testing program in place.

Without a program which provides for removal from service and/or discipline in the event an employee tests positive, it is extremely difficult to establish a disciplinary case based upon impairment. A mutually agreed upon drug testing program would provide a foundation for valid, mutually-acceptable testing methods and procedures, establish a recognized threshold for a determination when an employee has tested positive and set forth mutually agreed upon consequences.

In view of the fact, however, that there is no evidence of any employment or operational necessity for such a program, the Arbitrator finds that a drug testing Article should not become a part of the Labor Agreement and that, should the County elect to implement such a program during the remaining term of the Contract, their bargaining obligation shall be as then defined by State law.

PERSONAL LEAVE

The present Contract provides for personal leave, and that the employer shall not "require an employee to give a reason as a condition for approving personal leave, provided, however, that prior approval must be obtained, and that, where possible,

such approval shall be requested 24 hours in advance of the leave". The Article concludes, "When employee selections of personal days are in conflict, the conflict shall be resolved on the basis of seniority." The Union seeks to add a provision to Article 18.02 that "Such approval shall not be unreasonably denied."

Under the present language, an employee may be denied a personal day for departmental reasons. There is no right to deny a personal day based upon the employee's reason for taking the day off. The language already recognizes that, when there is a conflict in the selection of personal days, seniority is to be the determining factor in determining who gets the personal day.

It is significant that the personal days must be used and cannot be accumulated. Employees, depending upon their seniority, may earn as many as three days a year.

Under these circumstances, employees should have a right to challenge the denial of any personal day through the Grievance procedure, and the application of the sought language preserves the Department's right to deny personal days when, because of operational requirements, it is reasonable to do so. As the County acknowledges, "Reasonableness is the standard by which an Arbitrator would judge a Grievance over the denial of

use of personal time." The sentence, "Such approval shall not be unreasonably denied", shall be incorporated into paragraph 18.02 as an express clarification of existing language.

OVERTIME/COMPENSATORY TIME

The issue, as stipulated before the Arbitrator, is whether overtime compensation and compensatory time will be paid for hours worked after 8 in a work day.

The current Agreement provides for overtime after 40, and that in lieu of overtime, at the option of the employee, "The employee may earn compensatory time off at the rate of time and one-half for each hour worked for which overtime would otherwise be paid. Compensatory time may be accrued up to a maximum of 40 hours . . . Compensatory time off may be taken at any time with prior approval of employer." (Paragraph 12.02.) The final position of the County is that there should not be any change in current Contract language or any provision for overtime/compensatory time after 8 hours in a work day.

Both the County governmental unit comparables utilized by Champaign and the mixed county/municipal school comparables listed by the Union indicate that, in most Departments, overtime is paid after 8 and after 40. Law Enforcement Officers in Champaign County are averaging only about 2 hours a week, and

there was no evidence of absenteeism or how much daily overtime would also be over 40. Overtime in Corrections is more controllable and much lower.

For these reasons, the new Contract shall provide for overtime pay/compensatory time after 8 hours in a work day, with no change in the 40 hour accrual maximum.

UTILIZATION OF PART-TIME, TEMPORARY AND AUXILIARY EMPLOYEES

The Agreement, in Section 8.04(a), presently expressly permits the employer to utilize part-time and temporary employees who are excluded from the terms and conditions of the Agreement for bargaining unit work. Employees within the Corrections Department, however, "normally scheduled to work 32 hours per week or more, shall be considered full-time employees and shall be covered by the terms of this Agreement."

There is insufficient evidence that any part-time employees have been used to reduce overtime opportunities for full-time Officers, or that they have been used in such a manner as to erode the bargaining unit. There has been no increase in the number of part-timer workers used, and their use is largely restricted to limited contractual commitments.

The Union would also restrict the County's use of auxiliary Deputies by requiring that they "first offer to full-time employees the opportunity to work any shifts or assignments prior to offering such opportunities to temporary,

part-time or auxiliary employees. Such opportunities shall be offered to full-time employees in the same manner as callback opportunities, as set forth in Article 13, 13.2. The Union also seeks to incorporate into the Contract the provisions of Chapter 34, Sections 3-6011-6013 of the Illinois Revised Statutes, which concern the training, duties and compensation of auxiliary Deputies.

The FOP, arguing that, "Police work is not a hobby and cannot be a part-time job", states that, by incorporating the provisions of the law into the Contract, it will be able to utilize the Grievance procedure to challenge what it perceives as misuse of auxiliary Deputies by the Sheriff, rather than pursuing injunctive relief through the Courts. By requiring that full-time Officers be offered the opportunity to work the assignments being offered to part-timers, the Union focuses upon safety and what they see as the hazards of "permitting untrained full-time something other than Police Officers to pin on a badge, strap on a gun and ride the streets as a part-time cop." There is no evidence of any such abuse.

There should be no change in the Contract regarding the use of auxiliary, part-time and temporary employees. The parties have expressly permitted such utilization in their Contract, and there is insufficient evidence of any factor which would warrant adoption of the FOP's last offer.

INSURANCE

Paragraph 25.01 of the Collective Bargaining Agreement requires the County to contribute 100% of the cost of health and hospitalization coverage up to a cap of \$90 per month, and in the event that cap does not cover 100% of the cost of coverage for an employee for at least one of the plans offered, the Contract can be opened for negotiating who should pay the difference between the contribution and the cost of the lowest cost plan. The Union seeks contractual changes which would remove this cap. The Union would recognize the existing situation, as far as dependent coverage is concerned, with a clause stating that employees would continue to bear the cost of any dependent insurance coverage elected. They would also modify paragraph 25.01 by tying the employer's obligation to keep the level of benefits of the lowest rated plan in effect at the time of the execution of the Agreement to be a plan which is "determined to be appropriately in effect". The County's final offer is to raise the cap for employee coverage to \$110 a month.

Almost all of the Union's comparables pay the full premium for employee medical insurance.

The Arbitrator is well aware of the increases in medical care costs and projections that health insurance premiums will increase 15% to 25% this year. However, considering that a substantial portion of the employee premium is now being paid by

the County, and especially the increase in overall compensation resulting from wage increases awarded herein, and the trend in insurance bargaining toward requiring employees to assume a greater share of growing insurance costs, the Arbitrator has determined that the County's final position is most consistent with the provisions of Subsection 14 and that, therefore, the County will contribute 100% of the cost for an employee of health and hospitalization coverage with a \$100 cap until April 1, 1991, a \$110 cap commencing April 1, 1991 and a reopener December 1, 1991 on the issue of whether the County should pay the difference, if any, between the cost of the lowest cost insurance plan then made available to employees and the cap. The parties, in recognition of the factors I have mentioned above, did, in recent negotiations, as the County points out, agree upon a cap beyond which employees would pay for their own insurance.

WAGES

Historically, Law Enforcement Deputies and Correction Officers in Champaign County have, as in many governmental bodies, been treated separately in the course of wage rate determination. There is no valid reason to change that practice, since the duties and qualifications between the units are distinctive.

With respect to the Law Enforcement Division employees, the parties are in agreement on a 5% increase the second year, but apart the first and third years. For the first year, the Union seeks 8%. The County offers 8% for those with seniority after December 1, 1983, but 6% for those with earlier seniority dates. The third year, the Union seeks 5%, while the County offers 3%.

CORRECTIONS OFFICERS' WAGES

In the Corrections Division, while the parties are in agreement on a first year increase of 6%, the Union seeks 5% in the second and third years, as in the case of the Law Enforcement Division employees. The County, however, wishes to effect a wage increase in the 2.5% area each of these years by increasing rates of the steps in the progression schedule \$.25 an hour in each of those two years.

The County points out that Corrections employees in the wage progression receive increases at least every two years as a result of their advancement through the progression. The four steps following the first year of service have two year increments, and almost all Corrections Officers are in these stages of the progression. On both Union and County comparables, Corrections Officers rank relatively high in salary. The comparative difference between Corrections Officers and Deputies is disproportionate to that relationship in other comparable

counties and municipalities in that the differential between Deputy and Corrections Officer pay is relatively narrow and, in fact, compensation levels are relatively similar during the initial years of employment. Obviously, a cents per hour adjustment to the progression schedule results in identical cents per hour increases (except in the County's "rounded" raises the second year), but smaller percentage raises for the higher paid classifications. There is no compaction argument made, and considering the salaries paid in the comparable government units for Corrections Officers, as well as the relationship of the wages of that group with the Deputies in Champaign County, and recognizing the incremental adjustments Corrections Officers receive as the result of advancement through the progression schedule, as well as the other factors described in Subsection h of Chapter 48, Section 1614, the Arbitrator finds that the final position of the County with respect to the salaries of Corrections Officers more nearly complies with the applicable factors prescribed by the Statute Subsection h. Under the County proposal, as adopted, increases over 3 years will range between 12.18% to 16.46%, including the wage advancement resulting from progression through the steps. I have noted that the County has rounded its adjustments for the second year, and that, in some cases, certain employees may actually receive less than \$.25, while others receive cents per hour increases of \$.26 and \$.27

without any progression through the steps. Over the three year period, however, this rounding balances out. In fact, the five employees scheduled to receive \$.20 increases the second year receive, as a result of their increases and progression, 16.46% increases over the three years.

DEPUTY WAGES

Law Enforcement Division employees will receive an 8% increase the first year, the agreed upon increase of 5% the second year, and 5% the third year. This determination, like the others, is in accordance with the factors prescribed in Subsection 14h of 48/1614 of the Illinois Revised Statutes.

The disagreement between the parties with respect to the first year of the Contract (FY 90 - December 1, 1989 - November 30, 1990) is whether wages in this unit should be increased 8% for those with seniority after December 1, 1983, and 6% for Deputies whose seniority dates begin earlier than December 1, 1983. The County points out that, in recent years, there have not been changes in the entry level for Deputies salaries and, in any event, comparatively-wise, the Champaign Deputies' salaries rank less favorably in the initial years of employment than they do for the more senior Officers.

Considering the relatively higher salaries for Officers in the labor market in which Champaign County competes, and the relative position of Champaign Deputies with those in comparable

counties selected by Champaign for comparison, it is apparent, in order to maintain its relative position, that the Union's position that there should not be a smaller percentage increase for those in the highest step is most reasonable. I recognize that 8% is a substantial wage increase, and have recognized the impact of this increase upon the total package in my consideration of the insurance issue.

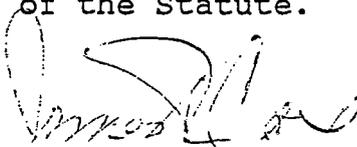
Among the County's comparables, if the County proposal were adopted, at the start of the second year Champaign Deputies would rank, according to Champaign County exhibits, 7th; after the fifth year, 6th; at the start of the tenth year, 5th; and at the beginning of the 15th year, 5th. The Union proposal moves them up to 4th at the start of the tenth year and during the fifteenth year. This is presently a realistic position, considering the economic conditions of the other comparable counties, as well as, as I mentioned above, the going rates in the labor market for Police Officers in and around Champaign County.

There are approximately 20 Deputies with start dates prior to December 1, 1983 who would receive 2% more than the County's last offer pursuant to this Award.

Each party's wage proposal must be considered by the Arbitrator as an entirety. The Arbitrator, therefore, awards 5% the third year of the Contract -- the Union's final position

rather than the County's 3% proposal -- based upon the fact that the Union's wage offer for salaries of the Deputies more nearly complies with the applicable factors of Subsection h than does that of Champaign County over the three year period. With respect to this issue I have noted that there is no inability to pay, and there is no significant impact of the relatively small differential between the Union and the County's last wage offers to be of consequence for the overall County budget.

The Arbitrator adopts the final position of Champaign County on the issues of (1) wages for Corrections Officers; (2) insurance; (3) employee testing; and (4) utilization of part-time employees; and the final position of the Union on (1) wages for Deputies; (2) overtime; and (3) personal leave, all in accordance with the applicable provisions of the Statute.



James R. Cox, Arbitrator

Dated January 18, 1991
at Chicago, Illinois

BEFORE
JAMES R. COX
ARBITRATOR

CHAMPAIGN COUNTY SHERIFF'S)	
DEPARTMENT)	
)	Supplemental
and)	Interest Arbitration
)	
ILLINOIS FRATERNAL ORDER OF)	
POLICE, LODGE 17)	

DECISION AND AWARD

The Hearing in this matter was conducted by the Arbitrator April 19, 1991 in Champaign County Courthouse Annex, Illinois. County Administrator Peter Herlofsky, Jr. presented Champaign County's case while Attorney Thomas Sonneborn, assisted by Becky Dragoo, represented the Fraternal Order of Police.

THE ISSUE

The sole issue presented the Arbitrator was whether Inspectors (detectives) in the department should have a reduction in their clothing allowance, currently set at twelve hundred dollars (\$1,200) a year and paid on a one hundred dollar (\$100) a month installment basis.

THE FACTS

The Arbitrator in his prior award issued January 18, 1991, for contract years commencing December 1989, December 1990, and December 1991, incorporated by reference several tentative agreements. In the course of formulating contract language and incorporating those agreements into the collective bargaining agreement, the parties disagreed on how the clothing issue had been resolved. Unlike other tentative agreements, agreement on that matter had been verbal. The principal spokesperson for the County in the negotiations had, at the time the disagreement developed, left the employ of Champaign.

Prior to the parties initial contract agreement in 1987, the County had been providing five hundred dollar (\$500) clothing allowance for Investigators (detectives) and Civil Process Servers. No allowance was provided other Deputies, principally uniformed patrol officers ("road" Deputies). No clothing allowance was provided Correctional Officers. Certain items of clothing were provided directly, at no cost, to the bargaining unit.

In the course of their 1987 negotiations, the parties increased the Investigators allowance by seven hundred dollars (\$700) to twelve hundred (\$1,200). The uncontested evidence indicates that the increase in the clothing allowance was sought and granted, not because of clothing purchase and/or replacement needs, but in order to provide a greater salary increase for this relatively small portion of the overall bargaining unit.

There is no evidence that during their 1989-90 negotiations the County sought to reduce the clothing allowance of the Investigators nor was there any evidence that the reduction or give back was even discussed. Likewise, no proposals were made by the County to reduce the allowance of the Civil Process Servers. Instead, the evidence is that the parties negotiated and agreed upon a three hundred dollar (\$300) clothing allowance for Deputies, (the basis of reference for that figure the fact that their Deputies then had no allowance) and a one hundred fifty dollar (\$150) cleaning and clothing allowance for Corrections Officers. Existing contract language providing for the five hundred (\$500) and twelve hundred (\$1,200) cleaning and clothing allowances then in effect was not addressed.

ANALYSIS

It is clear from the evidence that there has been no meeting of the minds on the question of whether Investigators should have a reduction in their contractually provided cleaning and clothing allowance to the level negotiated for other Deputies - three hundred dollars (\$300). In the absence of any evidence of any discussion during negotiations and in view of the fact that were I to sustain the County's position, there would be a substantial reduction in Investigator compensation and they would be receiving a cleaning and clothing allowance lower than they had received prior to the advent of the union in 1987, there is no basis for an implication that the parties intended to provide a single three hundred dollar (\$300) clothing allowance for all Deputies. This intention is particularly evidenced by the fact that the County has neither sought nor effected any change in the five hundred dollar (\$500) allowance paid Civil Process Servers. Failure to reduce the allowance of the Civil Process Servers while at the same time maintaining that all Deputies should be paid at the same three hundred dollar (\$300) clothing allowance rate is inconsistent.

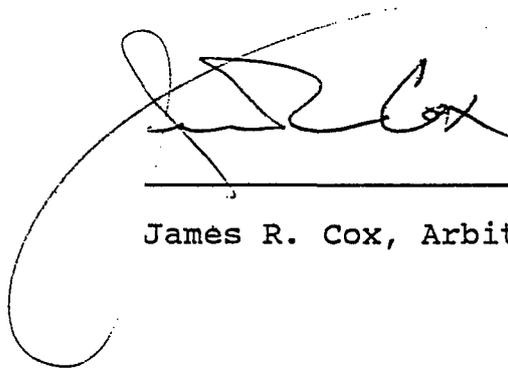
Furthermore, concerning the issue of whether the investigators ought to be paid any allowance, the evidence indicates that the clothing allowance for the Investigators was five hundred dollars (\$500) a year and that following the seven hundred dollar (\$700) increase designed to increase their compensation, an opinion letter from the Internal Revenue Service was obtained ruling that the allowance was to be considered wages for Federal Income Tax purposes both in the case of the Civil Process Servers and the Investigators. Moreover, the evidence shows a pattern among comparable police groups of higher pay for those in the Investigator or Detective classifications.

The union had originally sought during the 1989 bargaining to bring the clothing allowance of everyone in the bargaining unit up to the level of Investigators. As the union points out, the County in wage material worked up for purposes of the negotiations, specifically identifies Deputy Investigators as being in separate positions than "road" Deputies. "Road" Deputies do not include Investigators. It was during the mediation stage of the Collective Bargaining Process that the parties reached apparent agreement on the clothing issue. While the evidence does show that agreement was reached that "road" Deputies would receive, for the first time, a three hundred dollar (\$300) clothing allowance and Correctional Officers one hundred fifty dollars (\$150), the evidence is equally clear that

there was never any meeting of the minds or even discussion on reducing the higher clothing allowance paid to Investigators. Under these circumstances, I find that the parties did not have any Agreement to reduce any clothing allowances. Consequently, the pre-existing twelve hundred (\$1,200) and five hundred (\$500) dollar clothing allowances shall be carried forward without change into the new Agreement.

While the union contends that the County has unnecessarily denied implementation of the Agreement following my initial Interest Arbitration Award, the evidence does not show that the County acted in bad faith. The County had a valid basis for refusing to finalize and sign the Collective Bargaining Agreement, including the new clothing allowance in view of the failure to reach complete agreement. The parties indicated at the April 19 hearing that, except for their difference over clothing allowance, they are in accord on the other terms of the Collective Bargaining Agreement. I therefore direct the parties to finalize and execute their agreement within ten days following receipt of this Award. It is my understanding that most of the back pay calculations for the initial year of the contract have already been made. I will retain jurisdiction in the event that either party believes that the Award is not being complied with

be promptly. In view of the long delay in negotiations and the extent of the retroactivity, back pay should be expeditiously processed.

A large, stylized handwritten signature in black ink, appearing to read 'J.R. Cox', is written over a horizontal line. The signature is highly cursive and loops back to the left.

James R. Cox, Arbitrator

Issued this 22nd day of April, 1991