

INTEREST ARBITRATION

COUNTY OF LAKE, ILLINOIS and  
LAKE COUNTY SHERIFF'S DEPT.

Employer

and

ILLINOIS F.O.P. LABOR COUNCIL

Union

ISLRB No. S-MA-02-19

Barbara W. Doering  
Impartial Arbitrator

June 9, 1993

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Opinion and Award

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County Arbitrator: Ray Amadei

Union Arbitrator: Gary Bailey

APPEARANCES

For the Union: Thomas Sonneborn, Legal Director  
Becky Dragoo, Legal Assistant  
Tony Olszewski, Field Representative

For the City: Alan M. Kaplan, Attorney  
Steven Davidson, Attorney  
Clifford Van Dyke, Admin., Hum.Res.Dept.  
Willie Smith, Under Sheriff

PROCEDURE

The undersigned, impartial arbitrator, Barbara W. Doering, was selected by mutual agreement of the parties for the interest arbitration pursuant to the Illinois Public Labor Relations Act. Section 14(g) of the Illinois Public Labor Relations 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)." Section 14(h) sets forth eight factors to be utilized in evaluating economic proposals.

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other employees performing similar services

- and with other employees generally:
- (A) In public employment in comparable communities.
  - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
  - (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
  - (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
  - (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in 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(p) of the law allows the parties to submit unresolved disputes to an alternative form of impasse resolution, notwithstanding the earlier provisions of the Section. Under Section 14 (p) the parties waived certain time deadlines and also allowed for mediation by the arbitrator at the pre-hearing stage and later in the deliberation period after submission of post-hearing briefs. The final offer format and statutory criteria were, however, utilized.

In this case, 2 days of pre-hearing mediation (prior to preparation of final offers) were held on January 19 and 27, 1993, at which time a number of issues were resolved and the number of issues at impasse was reduced to five -- one of which was resolved immediately prior to hearing. The hearing was held on February 23, 1993 at which both parties presented final offers and evidence in support of their offers on the four remaining issues. Arguments were filed in post-hearing briefs received, after an extension, on April 18, 1993. The parties agreed that, in view of the briefing extension, they would waive the section of the Act mandating that the arbitration award be issued within 30 days. On May 13th, after studying the evidence and arguments, the arbitrator scheduled an Executive Session with the parties' arbitrators for May 26, 1993. At the time this session was scheduled, the arbitrator decided to informally communicate some ideas as to a combined approach to that might yield middle ground on all 4 issues. This was merely offered as "food for thought" and it was made clear that any re-definition of the issues or offers (whether in light of ideas generated by the arbitrator, or in response

to the suggestion in one of the briefs that the wage dispute be handled year by year rather than as a 3 year offer) would require not only agreement of the parties, but concurrence of the arbitrator (which was not to be assumed).\*

An Executive Session\*\* was held on May 26, 1993. The parties' arbitrators had an opportunity to discuss alternatives with the impartial arbitrator and with their constituent teams -- both as to whether any settlement could be achieved and as to arguing their side's point of view with respect to final offers. After several hours of discussion, the Panel of Arbitrators went ahead and decided each of the 4 issues in the context of the Final Offers advanced at the February 23, 1993 hearing.

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\* The essence of a final offer process is that, when "final" offers are made, each side knows each issue will be resolved in accordance with one final offer or the other with no further opportunity for compromise -- at least no further opportunity for compromise short of a voluntary agreement to do so. The fact that there will be no later chance to soften a position, nor any opportunity for the arbitrator to opt for middle ground, is supposed to exert great pressure on both sides to put forward their very best offer -- including any final compromises they might have been willing to make -- in order that their position be deemed the more reasonable of the two in conjunction with statutory criteria. It would defeat the purpose of the process to allow later chances to revise offers or re-define issues. At the same time, however, the point of "final offers" is to see how close the parties can come to settlement, and there may be some utility in one final meeting prior to issuance of an award -- particularly since both parties and the arbitrator may have a better grasp of the situation, and perhaps even some new ideas, after studying the evidence and arguments. Exploratory discussions should not become an added step, or be allowed to delay resolution, or un-do "finality" of the offers before the arbitration panel.

\*\* The tri-partite nature of the arbitration panel, under the statute, would not have much point if a decisional meeting is not convened. There is no reason discussion cannot range beyond final offers, but discussion and resolution of the dispute without further delay is the object of the meeting, and if there is no consensus, issues should be discussed and decided on the basis in which they were received and studied.

## BACKGROUND

The County has some 2000 employees, of whom approximately 308 are employed in the Sheriff's Department and are represented for collective bargaining by the F.O.P. The County also bargains with some of its other employees (in two other bargaining units), although the large majority of other county employees are not covered by labor contracts.

This bargaining unit is composed of essentially 3 groups of employees: patrol deputies and communications personnel who support them (who number about 156); 11

bailiffs at the court; and employees at the jail managing prisoners and providing food service (who number about 140). The two largest classification are patrol deputies (141) and corrections techs (117). In some other jurisdictions, corrections techs are hired, and trained, as deputy sheriffs. That is not the case here, however. There are differences in both the hiring procedure and the training given in these two large classifications, and personnel are not utilized interchangeably between the jail and patrol. Limits on cross-utilization were formalized in a contractual provision in these negotiations.

One of the reasons bargaining was so protracted was because of a large number of issues in general, and some very difficult issues, in particular, which involve internal parity among the the two large classifications represented. History comes into this because in 1988 or '89 the County opened a new jail facility. It was not merely a new building, but it involved an entirely new concept -- the "pod" arrangement. The parties had negotiated a 3 year contract in 1986 with a last year (1988) wage re-opener. Because of the new jail, 1988 negotiations wound up involving far more than a one year wage scale, and indeed a 3 year agreement with very significant changes with respect to correctional personnel was negotiated. The contractual wage scale has 7 labor grade (pay) classifications. In 1988, the County recognized that, for the "pod" system, significant training was going to be necessary and not only was higher pay for corrections techs appropriate to reflect the new job, but it was also necessary to reduce turnover and protect the training investment. Correctional techs had previously been slotted at labor grade III, whereas patrol deputies were slotted at labor grade VII. In 1988, the County initially proposed reclassifying correctional techs at grade VII with the deputies, but eventually, after much negotiation -- as to where to slot the classification as well as on the subject of how much longevity experience credit to allow each continuing employee in the new classification for prior service in the old classification -- it was agreed that correctional techs be classified (with negotiated numbers of longevity steps) at labor grade VI, which, for pay purposes is 11.87% below grade VII at which deputies are paid.

The 1988 contract expired in 1991, and negotiations for a new 3 year contract are the negotiations which ended in the impasse now before the arbitrator. Three of the 4

issues which remained at impasse, and are the subject of the final offers, relate to Union dissatisfaction with pay and pension of correctional personnel. The fourth issue is the general wage increase for each of the 3 years of the contract. Two major economic issues -- insurance and compression of longevity steps -- were resolved immediately prior to going into final offers, and a further overtime issue with an economic impact (equivalent to about a half percent pay raise) had been resolved earlier.

FINAL OFFERS

Final offers address only unresolved issues and are premised on inclusion of: (1) all provisions of the current collective bargaining agreement which the parties have agreed not to change; and (2) all items resolved and tentatively agreed during negotiations or the pendency of these proceedings. Final offers are summarized below.

ISSUE	F.O.P.	COUNTY
<b>1. Wage Increase:</b>		
1st Yr % Incr:	4% [12-1-91]	3% [12-1-91]
2nd Yr % Incr:	4% [12-1-92]	2% [1-1-93]
3rd Yr % Incr:	4% [12-1-93]	Wage Reopener
<b>2. Pay Parity for Corrections Techs with Deputy Sherriffs:</b>		
Corrections Pay-Gr Techs	LG 7 eff. last pay '94	LG 6 (as current)
Corrections Pay-Gr Wk Release Couns.	LG 7 last pay '94	LG 6 (no obj. Un Prop)
Corrections Pay-Gr Warrants, Comm, Process Supvrs.	LG 8 eff. 12-1-91	LG 7 (as current)
Cost:	11.87% for about 1/3 of bg. unit or equiv. of 4% for whole unit in the end of the last year	no change

**3. Actual Yrs. Service Credit for Longevity Steps**  
(This issue is aimed largely at limited longevity step credit given to corrections techs, hired before 1988, when they were moved in the 1988 negotiations to the new labor grade VI classification)

Corrections Steps	1 for 1 eff.	No change from 1988 neg'd placement
Cost:	not clear, but would affect 30+ people	no change

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4. Pension:

SLEP	cover corrections eff. 1-1-93	No change
Cost:	deputize + 5-6 % increased Employer contrib. for 1/3 unit	no change

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CONTENTIONS

1. Both parties submitted good arguments in support of their position on the across the board wage increase. The County argues strongly for internal comparability with other county employees, because, in its view, external comparability -- based upon its market study -- shows that law enforcement pay is not out of line with pay of law enforcement personnel in comparable jurisdictions. The County argues that cost of living increases and available resources were carefully considered in arriving at the percentages it offered this bargaining unit and other county employees. The County notes that longevity steps and merit arrangements with other county employees allow for increases (in addition to the basic increase) of only 2.5 -4.5%, whereas longevity steps in the F.O.P. contract are 5% for the first 5 years, followed by 3 additional 3.5% steps. The 3.5% steps, moreover have, in these negotiations, been compressed to occur at 6, 8 and 10 years instead of at 10, 15 and 20 years.

The Union points out that the County 3%-2% offer falls short of covering the 3.1% and 2.9% cost of living increases in the first two years, and, in the Union view, it also falls short of comparability within the 6 county area (Chicago and the collar counties). Moreover, the Union strongly objects to a wage reopener for the 3rd year. The Union insists that at this late date, after protracted negotiations, it is unreasonable to require the parties to go back into negotiations almost immediately to determine the wage rate

to go into effect at year-end.

2. With respect to the second issue -- reclassifying corrections techs and supervisors -- this issue involves very significant cost, and the County points out that the Union, by proposing an effective date in the last month of 1994, is really attempting to negotiate a provision for the next contract at a time when the significant cost of the provision cannot be set off against, or figured into, the economic demands of other issues which will need to be resolved at that time. The County takes the position that the slotting of corrections classifications was thoroughly negotiated in 1988 and that subsequent events have shown that the new pay-rate has had the desired effect on both hiring and retention of good personnel at the jail. The County argues that the "pod" system is relatively unique and is not precisely comparable to facilities wherein deputies are utilized as correctional personnel. The Union argues that the very uniqueness justifies a higher pay rate and that, whatever the County may have thought, Union intentions in the 1988 negotiations were to simply begin bringing correctional rates up to the same level as deputy rates, spreading the costs (and increases received by correctional personnel) over several contracts. The Union argues that correctional pay does not compare well with pay in the 6 county area.

3. The Union argues that the same philosophy of spreading out the cost applied to the limited longevity credit given at the new pay classification for current correctional personnel in 1988, and that now those individuals who did not receive full service credit should be moved to longevity steps reflective of their actual years of employment with the County. The County disagrees. The County contends that careful consideration went into the negotiation of how much credit would be given for prior service after the change to the new type of facility and new job duties in the higher pay classification, and argues that re-opening that whole complicated matter is not appropriate at this time.

4. As to the pension issue, the County argues that corrections has never been speci-

fically staffed by deputies and correctional personnel are covered under the IMRF pension plan applicable to all other county employees. Although some prior sheriffs have, on occasion, deputized a few of the correctional employees with the result that those employees have been able to come under SLEP, that was never generally intended and the County has strong objection to deputizing correctional personnel, as well as to their inclusion under SLEP. There is a 5-6% increased cost to the County for SLEP coverage because that program permits retirement much earlier than the IMRF program aimed at other types of employees. The County points out that entry age restrictions and physical agility and fitness which pertain to deputies do not equally restrict hiring of correctional personnel. The County contends that retirement, like hiring, in these two classifications, simply falls into a different category. The Union notes that there are some people in the correctional facility who are on SLEP and, in any case, its view is that correctional personnel should receive both the same pay and the same benefits as deputies.

#### DISCUSSION AND FINDINGS

The above does not purport to note each and every contention offered. It is only a summary of major contentions relevant to the decision which follows. Furthermore, the arbitrator gave careful attention to all of the comparables offered -- both external and internal -- and to the CPI figures, the question of overall compensation, stipulations of the parties in the form of other agreements reached both in the prior contract and also in these negotiations before and during the arbitration proceeding, the figures offered on crime and the arguments made with respect to the public interest, and to the cost to the employer impinging on its ability to pay, as well as other factors traditionally considered in arbitrating this sort of dispute. All of these factors played a role in the decision, and to the extent that one or another was particularly significant it will be mentioned in the rationale offered with respect to each issue.

Issue #3. Year for Year Step Placement:

In attempting to cost out this issue, the arbitrator went through the seniority list to discover where correctional techs hired before 1988 had been placed. This exercise bore out the Employer's contention that conscious decisions had been made about prior service credit in the framework of some sort of general guideline as to how much credit would be extended for various amounts of prior experience. Furthermore, it dawned on the arbitrator that very significant change in the job itself was the basis for re-classification at labor grade VI, and that the move was in some ways similar to a promotion. (Some members of this pre-88 group were actually promoted and were not given any longevity credit in their new positions.) Just as in the case of a promotion, experience in a "different job" does not necessarily equate to years of experience in the changed and re-classified job in the pod facility. Different skills and training were now necessary and even the lessons gained by experience would be different. Individuals were given as much credit for relevant prior experience as they and the Union were able to negotiate on their behalf.

When a job is re-classified, or when an individual moves to a new classification, longevity steps (absent a merit contingency) at a new labor grade must certainly reflect years of service *at that labor grade*, but any additional steps for service in some prior classification or labor grade are up to the individual and/or the Union to negotiate, and there is nothing inherently unfair in not being credited one-for-one. The Union's final offer was premised on a notion of across-the-board inherent inequity which the arbitrator finds unpersuasive.

Ruling: Management's Final Offer (No Change).

Issue #4. SLEP:

Of the 140 correctional personnel, 13 had been deputized at some point in the past and now have coverage under SLEP. Eight of the 13 are in higher-rated (officer) positions at Labor Grade 7. There are 8 others in higher-rated positions at Labor Grade 7 who do not get SLEP. The remaining 5 who get SLEP are correctional techs hired be-

fore 1988. The arbitrator suggested dealing with this issue in the context of a compromise approach to all 4 issues, by deputizing (and training, if necessary) all those in the higher-rated positions and extending SLEP to them, while creating an interim pay grade between 6 and 7 which, in the case of 5 regular techs with SLEP, could be a quid pro quo for opting over the the IMRF program in which the other 112 in their classification are enrolled. Middle ground not being a possibility, however, the question must be decided all-or-nothing, and the arbitrator is of the opinion that in that framework, the answer is nothing.

Although deputies are all covered under SLEP, none of the 1700 other county employees have it. The insurance issue was settled with significant added cost (\$1000 per year on family coverage) to the Employer on the basis of internal equity, and, in my view, when it comes to an all-or-nothing ruling, this issue also must be settled on the basis of internal equity with other county employees. Correctional techs are not hired as deputies and have neither the hiring restrictions, nor training, nor expectation of performing patrol duties. They could just as easily have been represented in an AFSCME bargaining unit as in an FOP bargaining unit. The evidence simply was not persuasive that correctional techs should be deputized and brought under SLEP.

Ruling: Management's Final Offer (No Change).

#### Issues #1 & #2. Wages and Pay Classification Issues:

The final offer procedure caused the Union to reduce its wage demand to a level which was, for the first time, within talking distance of what the Employer feels it can do. As finally presented, neither offer is unreasonable with respect to external comparables -- whichever set you look at.

The Employer's first year, 3% offer covers increase in the CPI and maintains both internal and external comparability. One must also remember that the parties have already agreed upon compression of upper longevity steps, and that agreement costs a little more than a 1% base wage increase (even though it only immediately affects 86 of 308 people). The Employer's second year, 2%, offer falls 1% behind the CPI, but one

might consider the difference as having been made up by compression. The 2nd year offer, however, while obviously based on internal equity, does less well with external comparisons. Differences could, of course, be dealt with in the 3rd year re-opener.

The Union's 4%-4%-4% offer is a little ahead of the CPI, but, based on external comparables, it is not unreasonable and it provides closure rather than requiring the parties to go right back to the bargaining table. In addition to its wage offer, however, the Union also proposes that in the last pay period, corrections techs be brought from labor grade 6 to grade 7 -- which is roughly a 12% increase, and across the whole unit equates to an additional 4%.

In studying the labor grades, the arbitrator discovered that there is about 5.5% between the first six, and then a nearly 12% jump to grade 7. The arbitrator suggested to the parties that they consider an interim labor grade between 6 and 7 with the idea of moving some or all of the corrections techs to the interim level and dealing with the SLEP and seniority issues at the same time. For various reasons that idea was not useful, and we are back to an either-or on the 3 year wage increase and all-or-nothing on the Union's re-classification proposal.

The Union's proposal on the re-classification is not limited to just raising 118 corrections techs to grade 7, but it also calls for creating a new 12% step above grade 7 and placing certain supervisory members of the bargaining unit on such step. Aside from the very significant cost of the Union's proposed "parity", there is the problem of creation of a new labor grade with a 12% differential. Aside from the "break-through" nature of that proposal, the arbitrator already has doubts as to the extraordinary nature of the 12% differential dividing grade 7 from grade 6 where other labor grades are divided by half as much. The arbitrator is of the opinion that the parties may well want to turn their attention to some sort of adjustment between labor grades on the pay scale, but that this is the type of issue which should be thoroughly explored, and preferably resolved, in negotiations -- which is where the move from grade 3 to grade 6 for corrections techs came from. Although management considers it a "done deal", the arbitrator agrees with the Union that, just like compression of step increases, this is a

subject which is likely to be revisited from time to time and is certainly not immutable. Cost, however, is a serious consideration. That the Union recognized the cost problem is obvious by virtue of tagging its proposal to the last pay period. Basically the Union is asking the arbitrator to order a change -- not for the term of this contract -- but for the package to be negotiated in the next contract.

The arbitrator gave the classification pay-grade slotting issue serious consideration in conjunction with a possible decision in favor of the Employer's wage offer, because the Employer's wage offer includes a 3rd year re-opener and the cost of "parity" could be offset against the 3rd year increase. The 3rd year re-opener, however, is, in the arbitrator's view, something of a stumbling block in itself. Negotiations have been long and difficult, and at this point it is hard to see that a re-opener could be justified.

The Employer seeks to justify a re-opener on the basis of bargaining history. It is now mid-1993, however. Even if a projection might have been difficult back in 1991, the same is no longer a valid reason to re-open wages for the rate to go into effect 6 or 7 months from now. While bargaining history shows that a re-opener was previously included, it equally shows that when the parties sat down to negotiate the re-opener (in 1988) they decided not to waste their time on a one year wage-rate, but rather negotiated a new 3 year package. Even if the same might be expected to occur under the Employer's final offer, this situation differs from 1988, in that the parties have not had a 2 year break from negotiations.

After a lengthy discussion of all the factors and considerations, between the impartial arbitrator and the two arbitrators representing the parties, this arbitrator concluded that the deciding vote should be cast in favor of closure and against the Union's "parity" demand, which essentially relates to non-closure by imposing very significant costs to come out of the next round of negotiations. The arbitrator recognizes that this award will create problems of internal equity vis-a-vis other county employees. The Union correctly points out that it does not bargain for other county employees, and they (other county employees) do not bargain (by virtue of what they accept) for employees of the sheriff's department. The County, however, does appear to have taken a

reasonable approach with its market studies, and past history shows that it has been willing to make adjustments when they appear warranted or necessary. The County's offer is rejected here, not necessarily because of what was in it, but rather because of what was not in it. (i.e. a 3rd year wage offer to show what the total package would add up to).

**Ruling: Union's offer on Wages, Management's position on Parity.**

