

State of Illinois
Illinois State Labor Relations Board



Before

David A. Loebach Ed.D.
Arbitrator
2328 Cherry Hills Dr.#D
Springfield, 62704 4467

IN THE LABOR INTEREST ARBITRATION MATTER BETWEEN:

Illinois Fraternal Order of Police Labor Council

and

Massac County,
and Massac County Sheriff's Department

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)S-MA-95-51
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ARBITRATION AWARD

I.

Introduction

A collective bargaining labor agreement entered into by and between the County of Massac, hereinafter referred to as the Employer or the County, and the Illinois Fraternal Order of Police, FOP, hereinafter referred to as the Union, expired on December 31, 1995. The parties were unable to reach an agreement on wages and other conditions of employment and requested the Illinois State Labor Relations Board for a list of neutral arbitrators to conduct arbitration pursuant to Article 7 of the labor agreement and (Joint Exhibit 2) and Section 14 of the Illinois Public Labor Relations Act.

1. Reference to Hearing Officer, Joint, Employer/County, and Union Exhibits; Transcript; Pre-Hearing and/or Post-Hearing briefs; appear in this Award as: (Ho. Ex.__), (Jt. Ex.__), (Un. Ex.__), (Tr.__), (Er. Pr.H. Br.__), (Un.Pr.H. Br.__), (Er. PHB.__), (Un. PHB __), respectively. The employer refers to its hearing presented exhibits as Co., an abbreviation for county.

The interest dispute between the captioned parties was submitted to the Illinois State Labor Relations Board for selection and appointment of a neutral Arbitrator to resolve seven issues at an impasse between the parties. David A. Loebach Ed.D. was selected as Arbitrator. The arbitrator requested and received a pre hearing brief thirty (30) days before the scheduled hearing. The pre-hearing brief contained a statement of the issues and stipulations. By agreement of the parties in regards date, time, and place a hearing convened at the convenience of all the parties on February 28th 1997. There is no discrepancy that all requests for a waiver of time limitations were timely met. Seven issues involving wages, vacations, shift differentials, meal periods and breaks, compensatory time, use of sick leave, and personal days. At that hearing, one issue was withdrawn by the union; two of the seven impasse issues were settled by mediated settlement of the parties.

The parties desired to submit post hearing briefs which were due by agreed extension on May 2, 1997. The Massac County post hearing brief was submitted timely. The FOP Labor Council brief was received on May 3, 1997. The arbitrator placed the post hearing briefs in the U.S. Mail, addressed corespondingly to the captioned parties on Monday May 5, 1997.

II.

Appearances

For the Employer:

Patricia S. Mc Meen Esq.
Attorney
Gilbert, Kimmel, Huffman &
Prosser, Ltd.
P.O. Box 1060
Carbondale, Illinois 62901

Sam Dunning
Sheriff
Massac County
Court House
Metropolis, Illinois

For the Union:

Thomas F. Sonneborn
General Council
Illinois Fraternal Order
of Police
6345 West Joliet Road
Joliet, Illinois 60525

Becky Dragoo
Legal Assistant
974 Clock Tower Drive
Springfield, Illinois
62704

III.

Background

This is the second collective bargaining agreement negotiated by the parties. The first three year collective bargaining agreement was settled by mediation with wage reopeners in year two and three. The parties have not had labor peace since the collective bargaining process with

the union began. They seem to have been in some stage of collective bargaining negotiations since 1991 (Tr. pp.8-10) through today.

In more mature collective bargaining relationships the parties to the labor agreement have stabilized the comparability issue through extensive experience with past usable political and market available comparable jurisdictional data sources. This bargaining relationship is too new to have that experience built up. Therefore, wherein the Illinois Labor Relations statute requires the arbitrator to consider the comparability of subjects in dispute, the parties have not agree as to which public sector jurisdictions, nor which private sector labor relations data is comparable. In fact, the Employer and Union have selected different jurisdictions to present to the arbitrator to consider in their final offers.

These different jurisdictions of comparability in fact represent different philosophies of determining comparability. The employer chose to persue more of a labor available market analysis, and included municipalities. The Union, on the other hand, argues the more triditional functional component comparison of jurisdiction selection method. The union is far more complete in arguing its case for comparability and explains its methodology understandably at the hearing. The employer is far less explicit in describing its methodology and basis of wage comparability. Accordingly, the the employer is less effective in persuading the arbitrator that it even has a case for jurisdictional comparability on wages justifiable beyond the fact that it is the asserted as the final offer.

The arbitrator's mission is further complicated by the Illinois State Labor Relations Act requirement to resolve all *Economic Issues* in dispute by selection of one of the parties final offers presented at the commencement of the Interest Dispute Hearing.

After the hearing, in this interest arbitration, all issues remaining in dispute are economic.

This Arbitrator honestly believes that interest arbitration is a necessary evil. I am convinced that these parties negotiated up to and past the time they exchanged their final best offers, as evidenced by their willingness to settle issues on the day of the interest arbitration hearing. This arbitration decision is not a replacement for the labor management agreement. It is simply a supplement to the parties genuine collective bargaining relationship.

IV.

FACTS

1. Massac county's assessed valuation fluctuates. (County Ex #2) However, despite slightly lower levies in years intervening between 1988 and 1995, the overall increase amounts to an approximate gain of \$15.5. Thus the counties exhibit reflects increasing assessed value from 1988 thru 1995. Actually, it is a plus fourteen and eight tenths of a percent (+14.8%) trend line slop increase in Massac County assessed valuation.
2. Massac county Sherriff's Department budgets for the years 1995, 1996, and 1997 reflect reflect increases. However, the 1994 budget reflects a \$132,471 deficit. (Co. Ex. 4)
3. Six out of eleven purportedly comparable jurisdictions have two (2) personal days available.

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4. Six (6) out of the twelve (12) employer comparable jurisdictions have thirty (30) minute lunch hours with no mention of *uninterrupted* or paid overtime provisions.
5. No union comparable jurisdictions have provisions for *shift* differentials.
6. No employer wage comparable jurisdiction discussion justifying their final offer describes their methodology to include current wage comparables in either labor market analysis recognizable methodology nor in terms of a common financial or functional analysis. It is presented as asserted argument in dollar terms rather than jurisdictional comparable terms.

V.

ISSUES AND DISCUSSION

Personal Days

The positions of the parties after serious negotiations on the issue is simple. The Employer is agreeable to two (2) personal business days. The Union seeks three (3) personal business days. The arbitrator examining the comparability finds eleven (11) of the seventeen (17) combined employer and union considered comparable jurisdictions have personal business days. Six (6) of the eleven (11) jurisdictions set the personal business days at two (2). (co Ex #8, p. 3&4; and Union PHB p.39).

Irregardless as to what the arbitrator would rule on the appropriate comparable jurisdictions, the facts presented and the argument of the employer, the arbitrator finds in favor of the employer for two (2) non accumulating personal business days. The union on this issue simply asserts its final offer. The employer justifies its position.

LANGUAGE CONCERNING MEALS AND BREAKS

The subliminal issue concerning meal time and breaks is not as simple as it seems on the surface. The language in the contract, Article 13, (Un Ex. , p.12) states that the employees are entitled to sixty (60) minutes of uninterrupted break and meal time during their tour of duty. The union argues that this applies to all tours of duty, irregardless if the time span is a period of eight (8) or nine (9) hours from start to finish of their tour of duty.

The employer argues that strict application of this language results in the payment of one hour of premium time when meals and breaks are not taken uninterrupted. In these circumstances, the workday length is altered to become seven or eight hours in work time length.

It is a commonly held principle in the culture of peace officers and other essential service public service duty personnel, as security officers who perform their duty in accordance with a professional code which holds that a peace officer or sworn police security personnel will not quit, nor leave their post, or duty station until properly relieved. This means that a peace officer or sworn police security guard does not leave his/her assigned duty station without someone else

properly performing those duties. It is in the very nature of the work. That is why it is considered essential. Accordingly, it is reasonable that both parties interpret the contract as requiring the payment of premium payment when the peace officer and/or dispatchers are unable to take an uninterrupted scheduled meal and break periods.

This concept of continuous duty and uninterrupted protective and emergency service coverage is also why a public strike is not tolerated by State legislative policy. Both parties agree the language requires the payment of premium time when a peace officer or even a dispatcher and / or jailer is not permitted to take their uninterrupted meals and break time. This is the practice, now.

The employer argues that it has paid too much in premium time payments for interrupted meal and break time, it seeks relief from this requirement and previously agreed to provision by curtailing the lunch break option to one thirty (30) minute uninterrupted period. (Co.Ex. 12, p. 1)

The union seeks that the language and practice be left intact. (un. PHB p.44).

The employer offers as evidence supportive of thirty (30) minute lunch hours, the fact that six (6) out of twelve (12) of their comparable jurisdictions have thirty (30) minute lunch hours with no mention of *uninterrupted or paid overtime provisions*.

The union, on the other hand, contends that the employer made a bargain and should not use impasse arbitration to nullify the bargain. Silent on the comparability issue, the Union in its post hearing brief cites Arbitrator Harvey Nathan for a criterion standard in an interest arbitration case that involved no economic issues and says:

In changing the benefit balance or in altering a previously negotiated labor relations scheme, the neutral must consider the factors which went into that previously agreed to contract. The parties may have traded dearly to secure the benefit now being challenged. It may have been part of a larger bargain or an integral portion of an overall settlement scheme. The arbitrator must examine how the old system operated, whether there were administrative problems whether inequities were created, or unforeseen dilemmas. In each instance, the burden is on the party seeking change to demonstrate, at a minimum: (1) that the old system or procedure has not worked as anticipated when originally agreed to or (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems. Without first examining these threshold questions, the arbitrator first should not consider whether the proposal is justified based upon other statutory criteria. These threshold requirements are necessary in order to encourage collective bargaining. Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.²

Arbitrator Nathan is discussing an interest arbitration that unlike this case involves no economic issues. Aware of this, and the Illinois Labor Relations statute, Arbitrator Nathan carefully chooses his words acknowledging the existence of the scenario where the conditions

require compliance with statutory requirements. Such a case is the instant interest arbitration wherein all the issues are economic.

What the union in this instant case has not done is address the statutory criteria applicable to this issue, an economic issue (Er. Ex. 12 p. 12). The employer argues that it has the right to expect the interest arbitrator resolving economic issues under the Illinois labor relations statute.

This Arbitrator is inclined to accept arbitrator Nathan's threshold criteria in non economic issues. However, the statutory criteria in the instant case call for handling economic issues at impasse (Er. Ex. 12 p. 1) by the application of a criteria of jurisdictional comparability. The statutory process in lieu of strike is a *last best offer interest arbitration* process. This means that the Arbitrator must presume good faith standards of negotiations have preceded the interest arbitration process. The change of previous bargaining agreements is what the negotiations is all about. The statutory requirement does not make previous gains non mandatory issues and when they become issues bargained to an impasse and are economic issues --- the statute mandates that the comparability criteria be applied.

Voltz and Goggin in the fifth edition of Elkouri and Elkouri's famed book **How Arbitration Works** discussing comparability data under statutory schemes providing for *last best offer* state:

Good faith standards are presumed in a last-best offer approach. If not, the incentive to reach agreement item by item, word by word is lost and bargaining becomes a chrade. The last-best-offer process should be the arbitrator's final dressing of the corpus of the parties' agreement, not the creation of skeleton and flesh. Proposals withdrawn, or beyond the scope of required bargaining should not be weighted in the balancing process of the last-best-offer.

Ergo, an arbitrator's review of the historical scenario of the parties collective bargaining history, as submitted in evidence before this arbitrator, indicates that the employer has several means to test the language of a bargaining agreement. It could test the language in the normal grievance process by seeking contract interpretation. It could allegedly exercise management right to change the process by altering the hours of work, by making all shifts eight (8) hours in length before any overtime or premium pay eligibility criterion is fulfilled. This would result in at least a grievance and probably an unfair labor practice. This employer has not sought an aggressive and antagonistic routes, rather it seeks to negotiate the change as it must with the lawfully elected and exclusive collective bargaining representative. Furthermore, it has negotiated the economic issue to impasse. It has demonstrated in impasse hearing, there are no comparable jurisdictions with one hour uninterrupted meal and break provisions.

Accordingly, the arbitrator finds in favor of the Employer and the language of the last best offer, and the parties past practice. The uninterrupted meal period is changed from one (1) hour to thirty (30) minutes. (Er. PHB p.7).

In regards breaks, which the employer's post hearing brief language is silent, but the final offer ~~are~~ specifies, "two (2) fifteen minuite breaks during the shift." This leaves unchanged the practice of two paid fifteen minuite breaks, during the shift before and after the meal. No ruling is made in regard scheduling the shift breaks, because scheduling the breaks is not an issue at impasse. No evidence nor argument was heard in regards scheduling of breaks of meal time. Past practice of the collective bargaining parties and and management rights of the work place shall prevail.

Any interpretation of this ruling should be presented to the undersigned Arbitrator for immediate scheduling of an interpretative hearing.

LANGUAGE ON SHIFT DIFFERENTIAL

The union seeks a shift differential wage for addition to the base. (Un. PHB p.41) The County Sheriff's department currently has a shift differential for second and third shift. They are \$3.00 and \$5.00 respectively. (Co. Ex. 5) Otherwise, stated the shift differentials are \$.0375 and \$0.50 per hour respectively. (Co. PHB p.12)

In regards comparability, the union acknowledges both parties recognize the additional stress and inconvenience associated with working the afternoon and evening shift (particularly on a rotating basis) when they mutually agree to provide additional compensation for work performed on those shifts.

While shift differentials are common in police work, surprisingly the majority of the Union's comparables do not provide such a shift differential. Absent the history of negotiations in those jurisdictions, it is impossible to ascertain the absence of a differential.

The union further asserts only one (1) comparable jurisdiction that has a shift differential, includes that shift differential in its base wage rate. (Un. PHB p.40, & 41) The arbitrator believes for a shift differential to be a shift differential it must fulfill the criterion of being an employer paid benefit or compensation directly related to the working condition requirement to perform assigned work during a specific period of time (shift) also designated by the employer or negotiated. Generally, shift differential is paid when work is performed during a time period different than the most preferred day time shift. If a shift differential is a part of the general wage package, or basic wage then it is compensation for the overall condition of employment. Shift differential is payment in form of compensation and wages above the step base for performing normal duties during an other than normal day time shift. This same confusion in nomenclature often occurs when negotiated special assignment pay, like hazardous duty pay. The big exception is that hazardous duty pay usually requires special training and involves special pay when the duty is required to be performed. Shift differential and hazardous duty pay can be paid at the same time on top of any base pay due for performing an assigned duty. If hazardous duty and shift differential pay are defined as a part of the basic pay they no longer are conditioned on the performance of that designated duty at a specific time. The duty has become a condition of all employees in that payroll title and the training requirement, if necessary, a condition of employment and is a function of the the management controlled payroll classifications. The arbitrator finds interesting the negotiations history noted by the union wherein the shift differential consideration is a part of the conditions of work and compensated into the base pay for union cited comparable

jurisdictions, but this is not the common meaning for the term of the negotiated benefit referred to as *shift differential*.

The employer, on the other hand, reports that in addition to the one union selected comparable county, two (2) other counties have shift differentials. The Employer is quick to point out in its post hearing brief: the other Sheriff's departments comparables shift differentials are less than Massac county's current shift differential. (Co Ex. 8 p.1, and Co PHB p. 12).

Accordingly, the arbitrator finds insufficient comparable evidence to support the union's negotiating position, and must find in favor of the Employer's final best offer.

The shift differential language shall remain the same as proposed by the employer in its final offer. (Co. Ex. 1, p.1, item 6) and further clarified in (Co. Ex. 8, p. 1, col.5, row 1) which states the shift differential to be \$3.00 and \$5.00 for the second and third shifts respectively.

4.) Wages and Longevity Issue

After hearing the evidence and reviewing the record made by the parties, the Arbitrator is inclined to accept the Union's final offer. (Tr.p.38 - 52) When the union presented their final offer, the appropriated budget from past years supported a wage increase. The employer in its post hearing brief (ER.PHB p.9) contends the EAV in Massac County is declining and the Sheriff's office did exceed the budget in 1993, 1994, and 1996 by \$10,843, \$16,458, and \$4,461 respectively. Furthermore, the employer argues in their post hearing brief wages were settled in 1994, 1996, and 1996 for previous years.

Upon careful and detailed analysis of the comparative salary evidence presented, the arbitrator is persuaded by the Union's case for wages. The Data collection procedures of the employer, Massac county strongly indicate that an attempt to present 1995 survey data and apply it to a negotiations scenario with out regard for the intervening gap in comparison is sufficient to dissuade this neutral arbitrator from crediting any of the employer data for comparability as mandated by the statute. The employer's comparable data for working conditions, is acceptable for comparable jurisdiction wherein it is accurate for the three year term of the negotiated contract. Salary issues are different than non wage benefit issues, albiet both are economic issues, the salary data need to reflect time of the pay increase in discussion of comparability. The arbitrator finds this prevalent in the argument and justification discussions of the union final offer (tr. p.41-52). On the other hand, the employer has not indicated that it has considered the dynamics of the salary increases during the course of the contracts of the comparable jurisdictions upon which it based its final best offer. Similarly, no persuasive, nor vehement *inability to pay* argument from current, 1996 and 1997 appropriations was persuasively asserted by the employer (Tr.p.79-90). The employer focused on the restrictedness of funds compensating other bargaining units of the employer, Massac County. (Tr. p. 86-90) Therefore, the union's last and best offer for wages and longevity is selected in whole, as stated in its final offer (Un. PHB p.7). The police officers in this unit of collective bargaining contract are *essential employees*, they do not have the right to strike. This arbitrator agrees with others their pay priority needs to reflect this essential nature of work in their situation.

Any dispute that arises from the interpretation of this Interest Arbitration Decision and Award may be submitted in writing to the undersigned arbitrator for immediate interpretive resolution within ten days, during the duration of the contract.

VI.

Award

Based on the forgoing, the Arbitrator orders the parties to the negotiated contract to include in their bargained agreement the following provisions:

- 1.) Two (2) non accumulating personal business days.(EMPLOYER)
- 2.) The shift differential pay shall remain unchanged at \$3.00 and \$5.00 per second and third shift respectively.(EMPLOYER)
- 3.) The Meal and break language is changed. Reflecting the Employer's position substantiated by statutorily mandated comparable jurisdiction in evidence. It will read:
Uninterrupted meal period of thirty minutes (30) with two fifteen (15) minute breaks during the shift. (EMPLOYER)
- 4.) The union's wage and longevity package stated in their final offer is selected for the reasons stated herein.(Union)

The foregoing thus, resolving the negotiations impasse over interest disputes of the parties to this labor contract.



DAVID A. LOEBACH ED. D.
Arbitrator

Signed and dated 10 June 1997
at Springfield, Illinois