

STATE OF ILLINOIS
IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

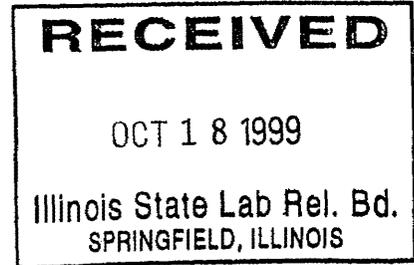
COUNTY OF McHENRY and
McHENRY COUNTY SHERIFF

and

ILLINOIS FRATERNAL ORDER OF
POLICE LABOR COUNCIL

APPEARANCES:

Bruce Beal on behalf of the County
Gary Bailey on behalf of the Labor Council



The Union and Employer were parties to a collective bargaining agreement effective through November 30, 1996. The employees represented by the Union are correction officers working for the County Sheriff. There are two other bargaining units in the Sheriff's Department represented by the same Union, one composed of civilian employees and the other composed of patrol/road deputies.

After unsuccessful negotiations for a successor agreement, the Union filed for interest arbitration pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1, et seq., after which the parties selected the undersigned to serve as arbitrator. The undersigned thereafter met with the parties on several occasions during the course of which mediation services were provided. During the course of said mediation sessions, the parties resolved all outstanding issues except one, and have since incorporated their agreements into a current collective bargaining agreement which will remain in effect through November 30, 2001.

The parties agreed to submit the one unresolved issue to the undersigned for binding resolution. Said issue involves vacation scheduling procedures, rights, and responsibilities. The parties stipulated that said issue is a non economic issue for purposes of this arbitration proceeding.

The record in this matter was submitted by the parties without a hearing, by exchanges of exhibits and briefs between the parties

through the mail. The record was completed and closed on October 4, 1999.

Both parties have opted to retain the following language from their prior agreement in their final offers:

"Except for an occasional day which is taken as vacation leave, all Employees must submit in writing, to the Sheriff, or his designee, a schedule of desired vacation prior to March 1st of each year. Conflicts in scheduling will be resolved in favor of the Employee with the most Unit seniority."

The Union proposes to retain the following notice language: "At least one day's notice shall be given for a one day's leave." The Employer proposes the following modification: "At least a fourteen (14) day's notice shall be given for a one day's leave."

The Union proposes the following new language: ". . ., all vacation requests will be granted for up to four (4) employees on the day shift, up to three (3) employees on the afternoon shift and up to (3) employees on the night shift."

The Employer proposes the following new language: ". . ., a combination of vacations, personal days and compensatory time requests will be granted for up to four (4) employees on the day shift, up to three (3) employees on the afternoon shift and up to three (3) employees on the night shift."

UNION POSITION:

One of the traditional factors considered by arbitrators when determining the reasonableness of a proposal in interest arbitration is the disruption of the status quo. (Citations omitted)

In this matter the Employer seeks to change the status quo, which is one day's notice for any vacation request. The burden should thus be on the Employer to prove that its proposed change should occur.

The Employer has failed to demonstrate that the one day notice provision has been a source of scheduling problems or disputes under the parties' prior agreement. In fact, there is nothing indicating why the Employer needs this change.

Furthermore, the Employer has not even brought this issue to the Union's attention, nor has it sought to find a solution to its concerns in this regard through negotiations with the Union.

In spite of this fact, the Employer has taken advantage of this litigation opportunity to attempt to diminish an important employee benefit.

Arbitrators who have previously faced parties' last minute strategies have rejected such attempts, or, at the very least, imposed a greater burden on parties seeking a departure from previous bargaining proposals. (Citations omitted)

Interest arbitration is part of the negotiation process. If the arbitrator were to allow the Employer to bring a new issue to the table at this stage of the process, the impact upon future negotiations between the parties would be disastrous.

The Employer's notice proposal is also unreasonable when viewed in the context of comparability.

The parties' road deputies and civilian employees Agreements both provide for at least one day's notice for vacation requests.

Another arbitrator has held that a party seeking to break up a benefit that has parity with other employee groups of the same employer must demonstrate a substantial and compelling need to overturn the parity relationship. (Citation omitted) The Employer has clearly failed to meet that burden here.

An examination of agreements in comparable jurisdictions indicates that there is no uniform pattern as to how vacations are scheduled among comparable employees.

Though the parties' prior agreement does not limit the right of deputies to request vacation time, a practice in that regard did exist. Under that practice the Employer granted vacation requests made prior to March 1 each year from up to four employees on the day shift, up to three employees on the afternoon shift, and from up to three employees on the midnight shift. Such requests were granted even if they necessitated overtime callbacks to meet shift minimums. After March 1st of each year, vacation requests were denied if they caused overtime call backs due to staffing minimums.

Both of the parties propose changing this practice. Both propose additional language limiting the approval of vacation requests where there are other employees on the shift with approved time off on the same day. The Union submits that the number of such employees should be limited to those on approved vacation, as is the current practice, while the Employer wishes to include employees utilizing personal days and employees taking compensatory time off. The Employer thus is proposing dropping the current standard of minimum staffing (for requests made after March 1), replacing it with a number representing a total number of employees taking a day off.

What the Employer is attempting to do here is add to the conditions limiting the use of compensatory time and personal days already set forth in the Agreement, which is patently unfair. Again, the Employer made no reference to such restrictions during bargaining. And again, the Employer is attempting to take advantage of this litigation opportunity to diminish an important employee benefit.

The Union seeks to change the current practice and replace it with the practice implemented for the road deputies. In addition, the Sheriff's civilian employees do not have similar restrictions on vacation requests.

This limitation is unnecessary and unreasonable. These corrections officers should have the same ability to use their vacation time as other employees in the Sheriff's Department.

The problem that has confronted correction officers regarding vacation requests after March 1 is that there is an overall manpower problem in the corrections facility which has restricted the ability of such officers to use their earned vacations.

The Union's proposal merely extends a system in place for vacation requests prior to March 1.

Though the Employer has expressed concern about the economic consequences of the Union's proposal, i.e., the cost of overtime to meet minimum staffing requirements, the parties have stipulated that the issue is a "non-economic" one.

Though the Union's proposal may have economic consequences, they are the same as those the Employer has experienced for requests previously made prior to March 1.

Most importantly, the burden of such economic consequences is totally speculative. The Employer has not demonstrated that the Union's proposal will increase overtime costs with any exactness or certainty, nor has it demonstrated that it has incurred significant costs under the prior practice.

EMPLOYER POSITION:

Facts relevant to the outcome of this proceeding include, but are not limited to the following:

In April, 1999 the parties agreed to the following shift minimums: 13 on the midnight/first shift, 18 on the day/second shift, and 16 on the afternoon/third shift.

The Department is also required by a Justice Department Consent Decree to staff at least two female correctional officers on each shift.

Non unionized County employees must request vacations at least two weeks in advance, and must receive approval from their Department Head.

Over a four year period sixteen unit employees have been required by the Sheriff to present a doctor's excuse when they utilize sick leave because of their extensive use of sick leave.

In Units 1 and 3 (patrol/road deputies and civilian employees), requests for vacation received prior to March 1 are approved, and requests thereafter are only approved if staffing permits.

....

Arbitral precedent supports the proposition that there should not be any substantial "breakthroughs" in the interest arbitration process. (Citations omitted). What the Union is proposing is such a breakthrough.

Another set of arbitral precedents suggest that a party seeking change through the interest arbitration process needs to demonstrate that the old system or procedure has not worked as anticipated when originally agreed to; that the existing system or procedure has created operational hardships (for the employer) or equitable or due process problems (for the Union); and that the party seeking preservation of the status quo has resisted attempts to address such problems. (Citation omitted)

The Sheriff has attempted to fairly and reasonably address the vacation scheduling concerns expressed by the Union in support of its proposal. In that regard the Department reached an agreement on staffing minimums with the Union in April. It also obtained a reduction in the number of female correction officers it must have on each shift pursuant to a Justice Department consent decree.

If the Union's proposal were awarded, the Department would be required to call individuals back at overtime rates to meet agreed upon minimum staffing requirements, which would increase the current costs of operating the Department.

The problem the Union asserts it is trying to correct is attributable to the fact that the deputies all want to take their vacations at the same time. Less than 2% of vacation requests in 1999 have been denied to date--14 out of 949 days.

Under the Union's proposal all of these requests would have had to have been approved, and all would have resulted in overtime callbacks.

Under the old procedure and under the Sheriff's proposal, employees can select their vacation by seniority regardless of shift minimums, so long as they turn them in by March 1.

Lastly, the vast majority of comparable agreements require approval before vacation may be taken unless requests are made at the beginning of the year where employees are allowed to bid by seniority to select their vacation.

DISCUSSION:

Since the parties have stipulated that the issue in dispute is a non economic one, the undersigned has the discretion under the Statute

to award either of the parties' proposals, or to fashion a more reasonable alternative based upon the statutory criteria.

The undersigned agrees with the cited arbitral precedent in this proceeding that those who propose changes in benefits/rights in matters such as this have the burden of demonstrating that such changes are reasonable responses to legitimate problems, and that said parties have not been successful in the bargaining process in getting the other party in that process to address the resolution of such problems in a reasonable manner.

In the undersigned's opinion neither of the parties have met this burden in support of the vacation scheduling changes they have proposed.

In that regard the Department has not persuasively demonstrated that serious problems have occurred because of the one day notice requirement, or that it gave the Union an opportunity to address such problems in the negotiations process. Furthermore, the agreements in the two other bargaining units in the Department provide for at least one day's notice, and, in the undersigned's opinion, these are clearly the most important comparables to look at on an issue such as this. Accordingly, the undersigned is unwilling, based upon the evidence in this record, to change the status quo in this regard, which provides for at least one day's notice.

Similarly, neither party has persuasively demonstrated that the status quo with respect to vacation scheduling procedures and rights should be changed through the interest arbitration process. In this regard as well the record does not indicate that either party has experienced serious problems arising out of the current arrangement, and/or that they have not been successful in getting the other party to address such problems in the negotiations process. Though the Union would prefer that its unit members have more rights in the selection of their vacation dates, it has not been demonstrated that they have inordinately been denied vacation requests, or that they have been denied their vacation preferences more than have other employees in the Department. Similarly, the Department has not demonstrated that the current arrangement has caused it to experience significant staffing and or overtime related problems, either in an isolated context, based upon objective standards, or relative to the other two bargaining units that exist in the Department. Absent such evidence, again there is no reason to

change the status quo in this regard through the interest arbitration process.

For the foregoing reasons the undersigned is of the opinion that the status quo should prevail in this proceeding. In that regard however, in order to attempt to prevent future disputes over what the status quo means, the undersigned believes that it would be desirable to clarify the pertinent language that existed in the parties' prior agreement. Toward that end, this arbitration award contemplates that the vacation scheduling practices that existed under the parties' prior agreement shall be spelled out and incorporated into the parties current Agreement. In that regard, the language in what was formally Article XIX Section 3 should now include a proviso indicating that vacation requests submitted prior to March 1 will be granted for up to four (4) employees on the day shift, up to three (3) employees on the afternoon shift, and up to three (3) employees on the night shift, and that at the Employer's option, additional vacation requests may be granted provided shift minimums are met.

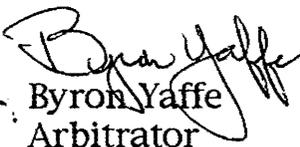
Though it may not be necessary to incorporate the following into the parties' Agreement, it should also be understood that vacation requests submitted after March 1 will require Employer approval, and that generally such requests will not be approved if they would require overtime call backs in order to meet agreed upon minimum staffing requirements.

Based upon the foregoing considerations the undersigned hereby renders the following:

ARBITRATION AWARD

Vacation requests/scheduling rights of the parties shall remain unchanged from the parties' prior agreement, except to the extent that they are to be clarified in accordance with the suggested language set forth in the discussion above.

Dated this 13th day of October, 1999 at Chicago, IL 60640


Byron Yaffe
Arbitrator