

ARBITRATION
ILRB NO. S-MA-18-040

COUNTY OF JEFFERSON ILLINOIS
SHERIFF EMPLOYER

INTEREST ABITRATION
CORRECTIONS UNIT

and

ILLINOIS FRATERNAL ORDER OF
POLICE LABOR COUNCIL
UNION

JAMES A. MURPHY
ARBITRATOR

DECISION AND AWARD

APPEARANCES:

For the Employer: Anthony B. Byergo

For the Union: James Daniels

May 4, 2019

BACKGROUND

Jefferson County (County or Employer) is located in southern Illinois has a population of approximately 38,000 with the county seat located in the City of Mount Vernon. The Sheriff, in addition to many other duties is responsible for operating the County jail. Because the relatively new jail has more capacity than required for local inmates, the Sheriff contracts with other agencies to house some of their inmates, which turns a profit for the County. The bulk of the day to day operation of the jail is performed by a cadre of around 22 Correctional Officers. These Officers and the maintenance operation are (and have been for a number of years) represented for collective bargaining, by The Illinois Fraternal Order of Police Labor Council (Union or FOP). The latest prior contract expired November 30, 2017, and negotiations for this successor contract began October 19, 2017. The Parties reached agreement on a number of issues (the TAs of which are incorporated in this award); but came to impasse on nine issues which will be address herein.

A Hearing was held on October 17, 2018 in the Jefferson County Board Room. The Parties stipulated that the arbitration was properly convened, and that the arbitrator had authority to rule on the issues submitted, including the authority to award wage increases retroactive to December 1, 2017. Both Parties were ably represented by counsel who introduced written and oral evidence in narrative form and through witnesses and argued issues in their turn. The Hearing was adjourned, and after an extension to the Parties, briefs were submitted on January 7, 2019. After an agreed extension to the Arbitrator, this Decision and Award was submitted on May 4, 2019.

RELAVENT STATUTE

The IPLRA Section 14(h) sets forth those factors which the Arbitrator is to consider (as appropriate). Not all factors are relevant to every case; and the weight given to each will vary depending on the facts and circumstances of each case.

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

- (1) The lawful authority of the Employer;
- (2) Stipulations of the parties;
- (3) The interest 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 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 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 private employment.

COMPARABLES

External

The Parties historically have a stipulated set of external comparable counties (Clinton, Effingham, Franklin, Marion, and Randolph) which have been established in prior interest arbitrations. The County proposes to add to that list of external Comparables, the City of Mount Vernon police officers. It is axiomatic that a stable set of comparables is favored in interest arbitration; and a Party seeking to add to that list bears the burden of proving the comparability of that unit and the appropriateness of adding it. In this case no proof is offered beyond a conclusory assertion that Jefferson County Corrections Officers, Jefferson County Deputies and Mount Vernon City Police Officers all do law enforcement work; and that the the City of Mount Vernon is located in Jefferson County. It is acknowledged that the road deputies and city police officers do work that is different and at higher rates of pay than corrections officers. While corrections officers do work with criminals and suspected criminals, and that work can be hazardous, it is different in kind from the work done by road deputies or city police. Additionally, this arbitrator is unaware of any interest arbitration award in Illinois where municipal police officers and county deputies, let alone corrections officers, were found to be comparable. Accordingly, the external comparables for this arbitration shall remain the counties of: Clinton, Effingham, Franklin, Marion, and Randolph.

For some analyses, the County seeks to exclude Clinton County's wage scale because it is substantially higher than the other comparables, and throws off the comparisons to average. The fact is that all five counties were stipulated as comparables without reservations. There appears no legitimate reason to exclude some data from one of the agreed comparables to bolster the argument of one side or the other.

INTERNAL

It is agreed that the Jefferson County deputy sheriffs are the best internal comparables because their duties are the more similar to the duties of the corrections officers than any other County

employees and they are employed within the same department. There is no claim of lock step parity between the units

WAGES:

COUNTY FINAL OFFER: FY18: 3% FY19: 3% FY20: 3% (Fully Retroactive)

Union FINAL OFFER: FY18: 5% FY19: 5% FY20: 3% (Fully Retroactive)

The Union proposal of 5%, 5%, 3% far exceeds any external comparable package percentage increase. It also exceeds the agreed primary internal comparable, the Deputies. It also far exceeds the CPI. The County's proposal of 3%, 3%, 3% matches the wage settlement with the primary internal comparable; and exceeds any package increase among the external comparables. The County proposal also exceeds CPI. Additionally, the wage increases for this unit have exceeded CPI in 8 of the last 10 years, and it appears that it will again this year.

It appears that there has been relative parity between the Correctional Officers and the Deputies, but no evidence that there has been lock-step parity. Although Deputies won certification pay stipend of \$70 per month not added to base pay, Corrections Officers have enjoyed the same insurance coverage as the deputies, yet avoided the \$800 increased deductible and the \$10/\$15 per month premium increases pending this arbitration award. The Union proposal would award 5% increase to base salary retroactive to 11/30/17 and another compounded 5% retroactive to 11/30/18 while the increase in insurance premiums and deductibles would not take effect until the effective date of this Award – nearly 18 months later. Union concedes that the retroactive raises are not required to offset a non-retroactive cost increase.

The Union argues that the arbitrator should accept its proposal because the Jefferson County pay scale is substantially behind the average of the comparables, yet the County operates a larger jail. Furthermore, the population of the jail is more dangerous and difficult to control because of the imported inmates, especially the ones from Cook County. Therefore, it is appropriate that the Union's proposal should be awarded to substantially improve this unit's ranking among the comparables.

Granted that in comparative ranking, the Jefferson County pay scale ranks fifth out of six comparable jurisdictions for years 1 thru 10, but fourth at start, and third at 15 years and above. The Union proposal would improve the ranking at every benchmark except the five-year mark – where it would remain the same. The County proposal would preserve the current ranking at every benchmark except for starting and top where it would improve the ranking of starting pay from fourth to third; and top pay would improve from third to second. So, the County's proposal would also improve the comparative ranking incrementally, although not as dramatically as the Union's proposal.

The Union's argument about relative workloads and hazards and the fact that the jail is a source of significant income to the County may have some merit; but that would be a matter better dealt with at the bargaining table.

There was a large amount of financial data, including discussion of the public safety tax, introduced, presumably to demonstrate whether the County could afford the Union's proposal. This county, like most local governments, faces difficult financial times, but that alone does not translate to inability to pay. The County makes no inability to pay claim. Nor was there any evidence of negative impact on the interest and welfare of the public as a result of either offer other than the obvious that the Union's offer would cost more. There was no evidence that services would have to be curtailed or dollars be taken from other County functions to fund the Union's offer.

A high turnover rate such as shown in this Unit is frequently argued as evidence of an unstable workforce which impacts the interest and welfare of the public in an experienced and

competent workforce. In this case, it appears that the turnover is likely more a result of the fluctuations in the program of importing inmates than a problem with wages and working conditions. It is also true that corrections positions generally have a higher turnover rate than other positions in a sheriff's department.

This being an economic issue, I am constrained to choose one offer or the other. Based on all of the foregoing, I find that the County's final offer best addresses the statutory factors.

The County's final offer is awarded.

USE OF DISCIPLINARY FILE MATERIAL

The current contract language provides that after 12 months no past discipline can be used as a basis for any future discipline unless the parties agree or the offender has committed a similar offense within 12 months following the first offense. The County seeks to extend the period to 24 months. The County argues that an experienced arbitrator is able to judge the relevance of a disciplinary record, and should be allowed to do so. Furthermore, the County argues that this 12 month provision frustrates the concept of progressive discipline by making every repeat offense a first offense unless it occurs within a year following the first offense.

That is the downside of any restriction on the use of prior discipline. The upside is that an Officer who has made one mistake need not be haunted by it for the rest of the Officer's career. The County's proposal does not totally eliminate their concern, but does double the "quasi probation" period for, in theory, a better chance of curtailing recidivism. The County voluntarily agreed to the concept of restricting the use of prior discipline to 12 months in the last contract, knowing that it was more lenient than any of the external comparables; and matched only by the internal comparable of deputies in the Sheriff's office, but not for the

corrections supervisors' unit. That does not mean, however, that the provision is set in stone. The decision here is balancing the interest of the Officers in clearing their disciplinary records versus the interest of the Sheriff in maintaining an effective progressive discipline system of dealing with repeat offenders in the correctional officer's unit and the interest and welfare of the public in having a disciplined workforce in the very sensitive position of a correctional officer. One can easily visualize the scenario where an Officer has multiple incidents of mistreating or neglecting prisoners throughout a career, but each separated by at least 12 months and none that would justify discharge if a first offence; but cumulatively show a pattern of dangerous conduct which could eventually lead to serious injury to an inmate. A further downside is that where an Officer's misconduct is marginal between suspension and termination, the Sheriff would be more inclined towards discharge because of the risk of repeat misconduct after the 12 months which would still have to be treated as a first offense. The countervailing consideration is the Officers' interest in keeping a clean record into the future for a relatively minor and perhaps inadvertent offence. Although the County offers no evidence of any problems as a result of the 12-month restriction in the four years since it was initiated, it is not always necessary to await serious and foreseeable consequences before taking appropriate preventive action. It is also noteworthy that none of the comparables have such a lenient time line, if any.

The following amended language is awarded: The second sentence of Section 8.4 shall be amended to read "Furthermore, after twelve (12) months, all past discipline **less than suspension** shall not be considered as the basis for future discipline, unless the parties have agreed otherwise, or unless the employee has in the twelve months subsequent to the discipline engaged in similar misconduct."

PROBATION PERIOD

The current probation period for Corrections Officers is 12 months. The County proposes to extend the probation for new hires from 12 months to 18 months. The County argues that this

extended period gives them a better chance to monitor and review the performance of a new hire who may appear to be marginal. The Union proposes status quo contending that this extension of the probation period is unnecessary and burdensome.

It appears that the Sheriff and the Union have come to a common sense resolution of the situation where the 12 months cut off could be problematic. As pointed out by the Union, when the Sheriff wants to extend probation, they have no real leverage since the alternative is to fire the probationer. So, they routinely agree to the extension of probation. It seems that this system is working, and allows probationers who do not have performance issues to still achieve permanent status earlier. Further, the 12 month probation period is uniform among the comparables.

The Union's final offer is awarded.

PROMOTION OUTSIDE THE BARGAINING UNIT

The current contract defines seniority as continuous service in any position covered by this agreement. That, for our purposes, is the position of Correctional Officer. The issue here only concerns an Officer who takes a promotion to lieutenant then returns to the bargaining unit. Lieutenant is the only position a Correctional Officer can be promoted to, and all lieutenants come from the Correctional Officer unit. Under this provision, a lieutenant who returns to the bargaining unit would be placed at the bottom of the seniority list. Leaving the bargaining unit for any other position within the Sheriff's office or the County would not be a "promotion", and would not be covered by this language.

The County proposes that in that situation, the lieutenant returning to the Correctional Officer Unit be credited with his prior seniority as a Correctional Officer, but not get credit for his time as a lieutenant. The Union counters that allowing returns like that would destabilize the seniority system because people would not know where they stood on seniority. Besides, it has never been done that way. The County argues that this provision discourages more experienced

Correctional Officers, who would generally make better supervisors, from seeking promotion because of the risk involved. Just such a scenario took place in the recent past. At a time of massive lay-offs when the ICE contract was lost, a lieutenant with long tenure as a Correctional Officer had been promoted to lieutenant and was in that position for one week before he was laid off. Upon his return to the Correctional Officer rank, he was placed at the bottom of the seniority list. Consequently, not only did he lose his seniority rights for shift bidding, vacation etc. but he was the first officer subject to lay off from that Unit as well. The result is that a trained, experienced officer would be let go in preference to the next most junior Correctional Officer. This would a detriment not only to the Sheriff and the interest and welfare of the public, but also to the Correctional Officers as a group who have to rely on the experience of veteran officers to deal with some of the difficult and dangerous situations that occur in a jail. While no one likes to see any Officer laid off, it would be preferable to retain an experienced Officer. With this recent real-world scenario in mind, there is a strong disincentive for more experienced Correctional Officers to apply for the lieutenant position. Notably, in the primary internal comparable, Deputies who have been promoted up to Chief Deputy/Major are allowed to retain their previous seniority upon return to the Deputy Unit. The external comparables are split on this issue.

The Sheriff testified that although the present lieutenants perform adequately, he believes that in the case of a lieutenant or two, better selections could have been made had other Correctional Officers applied. Furthermore, the scenario cited above evidences that the current system is not working well.

The County's final offer is awarded

SICK LEAVE ABUSE SANCTIONS

The County proposes adding language to clarify that investigation into sick leave abuse can include looking at the percentage of sick days were taken to coincide with holiday, vacation and other benefit time. The County contends this already can be looked at in an investigation, and

that adding this language is meant merely to emphasize to employees that such a pattern of tying sick days to other benefit time off can be considered. The Union does not disagree that the Sheriff already has the ability to analyze the tying of sick days to other benefit time the same as any other potential abuse. The Union then speculates a number of nefarious motives the County might have, but there is no evidence of such, and the language does not support it. This is not really a seriously disputed issue.

The County's final offer is awarded

WORK WEEK

The Union proposes adding a provision that grievances over the administration of the shift bid process be subject to expedited arbitration with an award within 30 days. It does not propose any change to the current contract provisions regulating shift bidding. It simply adds a provision for expedited arbitration of the shift bid process grievances which tracks the existing contract provision for expedited arbitration of grievances involving changes in shift times and length. The Union contends that this is not just a theoretical issue, but an actual problem; and cites a grievance that was filed in September 2017 regarding shift bidding that was still pending at the time of this Hearing in October 2018. The Union points out that shift bidding is a thing which has a day to day impact, and lengthy delays are not acceptable. The County contends that the expedited procedure is unnecessary since the shift bidding process that triggered the cited grievance was caused by the influx of new hires to deal with the imported inmate program, and is unlikely to happen again.

The grievance cited by the Union evidences the potential for a serious problem with the shift bidding process whatever the cause. Providing the expedited arbitration imposes no financial or other burden on the County; and if the County is correct that the shift bidding problem will not happen again, it is a moot point.

The Union's final offer is awarded

COMPENSATORY TIME

Compensatory time was first introduced in this Unit in by a Side Letter in 2015 with the provision that “the Sheriff may deny requests to use comp time if such requests would require the department to run overtime to fill the vacancy created by its use.” Since the beginning, when compensatory time was requested, management would check if there was adequate staffing on the shift; and if there was, the time would be approved. In August 2018, management issued a memo stating that compensatory time would not be approved until two hours before the shift to account for the possibility that an unexpected sick call-in might reduce the shift below minimum staffing and require overtime to fill the minimum. Management also provided a mechanism whereby an Officer could schedule a vacation or personal day (if the Officer had one) in advance to hold the time off. Then if two hours prior to the shift, nothing had happened to cause the staffing to go below minimum, the Officer could ask that the time off be reassigned as compensatory time. The primary problem, of course, is where an officer has exhausted both personal and vacation time. Additionally, depending on how the Officer planned to spend the time off, it might not be convenient or reasonable for the Officer to contact the Department two hours before the shift was to begin.

The language in the Side Letter quoted above could be considered ambiguous in this circumstance and could support either position. The Union contends that there was never any mention of a two hour scheduling requirement before the August 2018 memo; and, more importantly, the uncontroverted evidence is that the program has been run since its inception with requests approved if there was no minimum manning issue at the time of the request. The Union also makes the legalistic argument that once the compensatory time has been approved and then someone calls off sick, it is the sick day, not the compensatory time that caused the overtime. The County argues that it was understood from the inception that the use the use of compensatory time absolutely could not cause overtime, and apparently, that there can be no restriction.

A review of the comparables discloses no provision for withholding approval of compensatory time request until two hours before it is to be used, and in my experience, I am not aware of any contract that provides such a tight schedule for approving time off.

For the grievance part of the arbitration, I find that the unilateral stoppage of the established past practice was in violation of the Side Letter. For the contract part of the arbitration, I find that the Union's final offer, to add the wording "at the time the request is made", is necessary to confirm the existing practice. The matter can, of course, be brought to the table again in the future

The Union's final offer is awarded

HOLIDAY DURING VACATION

The County seeks to delete Section 20.5 which provides for treatment of a holiday during an Officer's vacation. The Union offers status quo. That Section provides that if a holiday falls on a regularly scheduled workday, the Officer is paid the regular holiday pay but does not get the double time pay as if he actually worked the holiday but he does retain the vacation day. If the holiday falls on a regularly scheduled day off during vacation, the Officer is paid the regular holiday pay, but does not get the double time pay because he was not scheduled to work that and he does not retain the vacation day. The County views retaining the vacation day as double dipping, and points out that none of the comparables provide such a benefit. The Union counters that this simply preserves the benefit the Officer would have been entitled to since, if he had not been on vacation, he would have worked the holiday and gotten the benefit of the double time. It is a tradeoff – a vacation day for the loss of the premium pay.

Regardless how one looks at it, the fact remains that it is a financial benefit that was negotiated between the Parties, and has been the status quo. The County points out that none of the comparables have such a provision, but introduces no evidence that the status quo has a negative impact other than the payment of the benefit which was negotiated.

The Union's final offer is awarded

COUNTY TO REPLACE PERSONAL EFFECTS

The County seeks to place a limit on the cost of repair or replacement of an Officer's personal equipment damaged in the course of the Officer's duties. The current contract provides for repair or replacement at current replacement cost. It does not distinguish between necessary equipment such as prescription glasses and other personal items. The County proposes to cap the reimbursement at \$200 annually. (Presumably, that would be \$200 per item annually – not a flat \$200 for all of an Officer's property damaged during the course of the year.)

The County's concern is Officers bring in excessively expensive personal items which would then incur unreasonable expense to repair or replace. Although the majority of the comparables do have some caps on cost to repair or replace a personal item, none is as severe as the \$200 annual cap offered by the County here, which would apply to prescription eyeglasses and similar necessary assistive items as well as other personal property.

The Union counters that there is no evidence that the current system has been abused, and offers status quo. The County has not made a case for compelling need impose such a stringent cap.

This being an economic item, I am constrained to award one final offer or the other. Although I believe that in principle there is good reason to have caps on replacement of personal items, I

find that the County's final offer of \$200 annually is unreasonable. So, I must award the Union's status quo offer.

The Union's final offer is awarded

SUMMARY OF AWARD

GRIEVANCE

The Grievance is sustained.

CONTRACT

- | | |
|--|-------------------------------------|
| 1) WAGE INCREASE | THE COUNTY'S FINAL OFFER IS AWARDED |
| 2) USE OF FILE MATERIAL | NEW LANGUAGE IS AWARDED |
| 3) PROBATION PERIOD | THE COUNTY'S FINAL OFFER IS AWARDED |
| 4) PROMOTION OUTSIDE
OF BARGAINING UNIT | THE COUNTY'S FINAL OFFER IS AWARDED |
| 5) SICK LEAVE ABUSE | THE COUNTY'S FINAL OFFER IS AWARDED |
| 6) WORK WEEK | THE UNION'S FINAL OFFER IS AWARDED |
| 7) COMP TIME | THE UNION'S FINAL OFFER IS AWARDED |
| 8) HOLIDAY DURING VACATION | THE UNION'S FINAL OFFER IS AWARDED |
| 9) REPLACE PERSONAL ITEMS | THE UNION'S FINAL OFFER IS AWARDED |

ALL OF THE TENTATIVE AGREEMENTS REACHED BY THE PARTIES ARE ADOPTED.

AS AGREED BY THE PARTIES, I SHALL RETAIN JURISDICTION FOR 90 DAYS IN THE EVENT OF IMPLEMENTATION PROBLEMS.

/s/ JAMES A. MURPHY

MAY 4, 2019

4200 is

The Union's final offer is awarded

