

ARBITRATION

ILRB NO. S-MA-18-083

**COUNTY OF MCLEAN AND
MCLEAN COUNTY SHERIFF**

JOINT EMPLOYERS

**INTEREST ARBITRATION
DEPUTY UNIT**

AND

**ILLINOIS FRATERNAL
ORDER OF POLICE
LABOR COUNCIL**

UNION

**JAMES A. MURPHY
ARBITRATOR**

DECISION AND AWARD

APPEARANCES:

FOR THE EMPLOYERS: JESSICA WOODS

FOR THE UNION: JAMES DANIELS

SEPTEMBER 10, 2019

BACKGROUND

McLean County (County or Employer) is located in north central Illinois and has a population of approximately 170,00, most of which is located in the cities and villages in the County. The County employs 679 full time employees, of whom 514 are unrepresented while 165 are represented among three unions (FOP, Laborers, and AFSCME.) The Deputy unit involved here has 45 members composed of Patrol Deputies, Deputy Investigators, Deputy Patrol Sergeants, and a Lead Process Server. The Deputies are represented by the Fraternal Order of Police Labor Council (FOP or Union) and have been for some time including the current CBA. The only other public safety unit for the County is the Corrections officers – also represented by FOP.

The current CBA expired December 31, 2017. The Parties began negotiations for this successor contract in November 2017, and reached agreement on a number of issues (the TAs of which are incorporated in this Award), but came to impasse on five issues. Two of those five were resolved during the Arbitration Hearing.

A Hearing was held on May 22, 2019 at the McLean County Government Center. The Parties stipulated that the Arbitration was properly convened, and that the Arbitrator had authority to rule on the issues submitted, including authority to award wage increases retroactive to January 1, 2018. 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 the Parties

submitted their Briefs on July 19,2019. This Decision and Award is submitted on September 10, 2019.

RELEVANT STATUTE

5 ILCS 315/14(h)

THE STATUTORY FACTORS

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.

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.

COMPARABLES

External

The Parties have executed a written stipulation that their historically recognized comparable counties of Champaign, Macon, Peoria, Rock Island, Tazewell, and Sangamon shall be referenced by the arbitrator in this matter. The County, at Hearing sought to have Macon and Sangamon Counties removed as comparables.

Among the statutory factors in Section 14(h) upon which the arbitrator is to base his decision is (2) "Stipulations of the parties". With such a stipulation in place, it would be only in extreme circumstances that an arbitrator would disregard it. No such circumstances appear in this case. In any event, if a Party did seek to repudiate a stipulation it had entered into, that would have to be raised as a separate issue at the outset of the arbitration; and that Party would bear a very heavy burden to show a valid reason why the issue was not bargained at the time the stipulation was proposed and signed.

Even in the absence of a valid stipulation a Party seeking to alter the established comparables bears a heavy burden to show the need for it. In this case, that is lacking. Adjustments to sick leave buy back, insurance adjustments, etc. are not compelling reasons to disqualify Macon County as a comparable. Virtually all contract bargaining

involves adjustments to other benefit items in addition to wage rates. Two tier wage systems such as Sangamon County, while not common, are not an aberration that defies comparison. In fact, comparing percentage increases obviates the potential problem. Further, I note that these arguments were raised in the arbitration for the existing Contract; and were rejected there as well.

Sangamon County and Macon County remain as comparables.

Internal

It is well settled that comparison of unrepresented jobs to Union jobs as well as comparison of non-sworn jobs to public safety jobs are not valid comparisons. Unrepresented employees do not have the right to bargain for their wages and benefits; and non-sworn employees' job duties are so dissimilar to those of public safety employees, they are traditionally not considered comparable. Finally, there is no evidence of lock step parity with any of these other employee groups. Hence, the only internal employee group that could be looked to as comparable is the Corrections Officers because they are also engaged in law enforcement, but they are not raised by either Party since they have not settled their Contract and are also scheduled for arbitration.

The County argues the disparity between the Deputies and the unrepresented employees. Granted the disparity of wage increases between this Unit and the County's

unrepresented employees is significant. But, as addressed above, comparison of unrepresented jobs to Union jobs is not valid.

No internal non-represented or non-sworn employee Groups will be considered as comparables.

WAGES

General Increase

The Union proposes retroactive wage increases of:

2018 – 3%
2019 – 3%
2020 – 3%

The County proposes retroactive wage increase of:

2018 – 2.5%
2019 – 2.75%
2020 – 2.75%

The Union's position is that its offer is the more reasonable because it makes steady incremental gains in Deputy's wages which are below average. The County maintains that its offer is the more reasonable because it also makes incremental gains only slightly less than the Union's, and it is more in line with the comparables' wage increases.

The Union makes the point that its offer incrementally improves the Deputies' ranking vis a vis the comparables better than the County's. It appears that the McLean County

Deputies' ranking is pretty much in the middle of the pack (4 of 8 or 5 of 8 at most comparison points) under either offer, and will likely continue or improve as wage increases among the comparables lag behind either offer here. The Deputies made steady incremental gains in the last Contract, and continue to make incremental gains under either offer in this Contract. The County argues that the position in the middle of the pack is supported by the County population, which is in the middle of the population of the comparables. While population is one of many factors traditionally considered in choosing comparables, I do not find it particularly relevant as an isolated factor in judging wage rates for Patrol Deputies here. For one thing, the relationship of the Patrol Deputies' duties vis a vis the county population can be skewed significantly by the percentage of the population residing in cities and towns where local police rather than county deputies have primary patrol, prevention, and enforcement responsibility in each comparable county.

Although not claiming an inability to pay, the County makes the argument in support of its offer that it has serious financial problems, and cites as an example the fact that non-represented employees received no pay raise in 2018 because there was only a finite amount of money available in the budget. A review of the financial data in evidence, does not seem to support such a dire financial situation for the County. For instance, County Exhibit 8 at page 3, purports to show a reduction in the 12/31/2017 Unrestricted General Fund Balance of approximately 52% for the cost to provide non-union employees equivalent wage increases in the Union's offer. This is illusory, of course, because such

increases did not take place. The overall financial data in evidence shows a well-run County in good financial condition, and quite able to pay either offer.

While it is not really an ability to pay argument, the interest and welfare of the public does require consideration whether the Union's proposed increases provide a benefit to the public beyond those proposed by the County. It is well settled that interest and welfare of the public suggests that just because the County can pay more, it should pay more unless there is a benefit to the public to do so. One of the primary charges of elected government office holders is to be good stewards of the tax money of their constituents. Paying a fair wage to their employees (who are generally their constituents as well) is, of course, an important part of their responsibilities, but not the exclusive part. It should be noted that both offers here are above CPI.

Analyzing the percentage wage increase data among the external comparables, it is clear that both offers are also above the average. For 2018, the average percent increase for all of the comparables is 2.125% while the County offer is 2.75% and the Union offer is 3.00%. For 2019, adopting the Union's methodology of averaging the previous three year's increases for the two counties that did not have 2019 data available (Macon County -- 3.00% and Tazewell County -- 2.25%) the average percent increase for all of the comparables is 2.375% while the County offer is 2.75% and the Union offer is 3.00%.

Thus, both offers here advance the McLean County Deputies above the average increases for the comparables for each year.

The question then is whether that extra 1.00% difference over the life of the contract brings a benefit to the public that justifies the extra expenditure where even without that 1.00%, the County remains competitive in the labor market. The County offer is well above CPI, and the Deputies continue to make incremental progress in wages relative to their peers. In other words, is the 1% difference in County's offer inadequate to address the perceived disadvantage of below average wage rates vis a vis the comparables so that it might cause operational problems in retention, recruiting, or morale which clearly would be an issue of benefit to the public.

The Parties differ on their views of the significance of wages on the attrition rate in this Unit. The Union argues that the lower wages payed by the County contribute to a high attrition rate. The undisputed testimony of Lt. Wick indicates that there have been three voluntary separations (not counting retirements) over the past five years. Two of these deputies left for other law enforcement agencies (Bloomington Police Department and Illinois State Police) and the other to private industry. While higher wages may have been one factor in these decisions to move to other law enforcement agencies, there were additional considerations such as the significant differences in the job duties and chances for advancement in both large municipal and state police departments. This is reflected in the fact that municipal or state police departments are not traditionally considered comparable with county departments.

The Union cites the decision in the *City of Colona S-MA-10-289* in support of its position that there is a retention problem. That case involved the separation of 3 officers in 2 years from a 6-member Unit. I do not find that 3 voluntary separations over five years in a unit of 45 Deputies is a similar situation. Nor do I find it symptomatic of a problematic turnover rate. This appears to be a stable workforce.

The Union also references the fewer number of applicants for Deputy positions than in the past as evidence of a problem with lower wages. Lt. Wick acknowledged that the numbers of applicants have decreased over time, but testified that there are still adequate numbers of candidates who successfully qualify for hire to maintain the strength of the department. It was opined by Lt. Wick without dispute, and is common knowledge in the industry, that this phenomenon of fewer candidates for law enforcement jobs is a national trend, and not unique to McLean County.

Lt. Wick further testified that the Department can reasonably expect four to five retirements in the next few years; but this appears to be something of an aberration caused by the fact that there was a large expansion of the force at one time, and that group is reaching retirement age together. In any event, he testified that recruitment and hiring is expected to be able to accommodate this peak in replacing retirements in the Sheriff's office.

No evidence was introduced of a wage related morale problem in the Sheriff's Department.

I find that, balancing the duties and needs of the Parties, that the County's offer is the more reasonable.

The County's General Wage Increase is Awarded.

SERGEANTS PAY ADJUSTMENT

The Union proposes retroactive increases to Sergeant pay:

- 2018 - \$650 added to current salary
- 2019 - \$650 added to 2018 salary
- 2020 - \$650 added to 2019 salary

The County proposes retroactive increases to Sergeant pay:

- 2018 - \$400 added to current salary
- 2019 - \$400 added to 2018 salary
- 2020 - \$400 added to 2019 salary

Both Parties acknowledge that Sergeant pay is lagging behind Deputy pay when compared to external comparables, and both recognize that an adjustment to Sergeant pay is called for. The question is how much.

Although the data submitted is somewhat limited, it does appear that the Sergeants were significantly further behind pay scales in the comparable counties than were the Deputies.

While the increases in both the prior contract and the base pay award in this contract do benefit the Sergeants as well as the Deputies, that does not address the disparity that prompts both Parties to propose equity adjustments for the Sergeants. Both proposals

are relatively modest, and are not that far apart. Based on the factors and considerations discussed above, I believe that the Union proposal of \$650 more effectively deals this disparity.

The Union's Sergeant Pay Adjustment is Awarded.

VACATION CARRYOVER

Currently a Deputy can accrue and maintain one- and one-half times his allotted annual vacation hours for vacation carryover. Only if the Deputy has requested but is unable to take the requested vacation day(s) by "circumstances beyond his control", can there be additional carryover or payment for that vacation time required. Otherwise, the Deputy loses any vacation time above the one- and one-half restriction.

The Union argues that a Deputies may have to take off days when they don't really want the day off and have nothing to do rather than lose it. However, "use it or lose it" is common practice in most employment situations I am familiar with. It is a function of that system that if you keep your vacation picks till near the deadline, you run the risk of having to take a less preferable day than you could have had you chosen or requested earlier. The closer you run to the deadline the narrower your chances of getting a prime day.

The evidence does not indicate that this has been a significant problem. The only example detailed was a case where a Sergeant lost accrued vacation time because he

“miscalculated his accrual levels” – twice; and he did not request the time off. It would be a stretch to say that fits within “circumstances beyond his control” or that the vacation time was “denied”. Although two other individuals were mentioned as having lost vacation time, there were no details as to how that occurred. That is not to say that there couldn’t be such situations, but there is no evidence that there have been any number of them which have been problematic.

The argument that there is a savings to the County by paying out the vacation accrual rather than the County having to pay time and a half to fill their slot, minimizes the fact that under the current system it is rare that vacation absences cannot be filled by on duty shift personnel without having to hire extra to fill the slots. Sgt Lane testified that it is rare that the position had to be filled with overtime (twice in past year that he knows of) and the Deputy got his time off.

On other hand, the Union’s proposal could create a serious problem in that it allows Deputies who just want to earn extra pay in lieu of vacation to game the system by holding all or a part of their vacation picks until so late in the year that the days off cannot be reasonably accommodated, and must be denied. The whole rationale for having the vacation benefit is that it gives the employees a necessary break from the demands of the job. In today’s high stress job as a peace officer, where disrespect for and attacks on peace officers is becoming increasingly frequent, the vacation break is more crucial than

ever. Simply allowing the Deputy to make more money is not a viable substitute for that break.

The County's Final Offer is Awarded.

SECONDARY EMPLOYMENT

Although the Union did not address this issue in its Brief, it was stated by the County in the Hearing that the Union had withdrawn its proposed language, and opted for status quo. The Union did not take issue with that characterization of its position, so for purposes of this discussion, it will be considered that the Union's position is status quo. In any event, the Union's previous proposal singling out workers comp injuries would not be viable in this situation. There does not appear to be a rational basis for singling out workers comp injuries from other lost time injuries when considering eligibility for secondary employment during the time off from work.

It would seem a common sense concept that if any injury is such that a Deputy cannot work his/her regular job assignment, they should not engage in secondary employment that requires similar job duties; or which may aggravate the injury or inhibit the recovery to be able to return to full duty. Current contract language on secondary employment does not directly address the situation where a Deputy is unable to perform the duties of the assigned position due to injury, although it could be argued that the requirement that Secondary employment "not affect the performance of his/her duties" would cover the situation of an injury.

The County's proposal clarifies that such considerations are indeed applicable to the injury scenario; and the procedure appears consistent with the standard practice for considering the renewals of existing secondary employment, while addressing the concerns of not adversely affecting the recovery and return to full duty of the Deputy. There was no evidence that the Sherriff has been unreasonable in approving secondary employment.

The one tweak I would make is to include new requests for secondary employment during the time of the injury restriction:

If an employee is unable to work due to an injury of any kind which is expected to last more than three days, the employee shall seek permission of the Sheriff to engage in new or previously approved secondary employment. The Sheriff shall take into account the nature of the work required at the secondary employment in relation to the type of injury which requires the employee to be off work. The Sheriff shall not unreasonably deny an employee permission to begin or continue working at the secondary employment.

The County's Final Offer as Modified is Awarded

SUMMARY OF AWARD

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|-----------------------------|--|
| 1) GENERAL WAGE INCREASE | THE COUNTY'S FINAL OFFER IS AWARDED |
| 2) SERGEANTS PAY ADJUSTMENT | THE UNION 'S FINAL OFFER IS AWARDED |
| 3) VACATION CARRYOVER | THE COUNTY'S FINAL OFFER IS AWARDED |
| 4) SECONDARY EMPLOYMENT | THE COUNTY'S FINAL OFFER AS MODIFIED
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

SEPTEMBER 10, 2019

