

ILLINOIS STATE LABOR RELATIONS BOARD
INTEREST ARBITRATION

In the Matter of the Arbitration

between

THE COUNTY OF COOK and THE
SHERIFF OF COOK COUNTY

and

TEAMSTERS LOCAL UNION 700

Before

HARVEY A. NATHAN
Neutral Arbitrator

J. STUART GARBUTT
Employer Arbitrator

KEVIN P. CAMDEN
Union Arbitrator

COOK COUNTY CORRECTIONAL OFFICERS
ILRB No. L-MA-09-016

Hearing Held: June 17, 2011
July 5, 2011

Briefs Exchanged: August 12, 2011

For the Employer: J. Stuart Garbutt,
Meckler Bulger Tilson Marick & Pearson
Attorneys

For the Union: Kevin P. Camden
Counsel

O P I N I O N A N D A W A R D

I. INTRODUCTION

A. Background

This is an interest arbitration proceeding held pursuant to Section 14 of the Illinois Public Labor Relations Act (5 ILL 315/14), hereinafter referred to as the "Act," and the Rules and Regulations of the Illinois State Labor Relations Board ("Labor Board"). The parties are The County of Cook and The Sheriff of Cook County, Illinois, as Joint Employers ("County" or "Sheriff"), and Teamsters Union, Local 700 ("Union").

The County employs about 25,000 people some of whom are jointly employed by the Sheriff. The County and Sheriff are the joint employers of employees in three large departments.¹ The bargaining unit involved in this case is referred to as the Department of Corrections ("DOC") unit. It consists of approximately 3,500 sworn personnel, most of whom work in or around the Cook County Jail. The Jail is the largest self-contained institution of its type in the country, and consists of several buildings allocated to specific prison needs. Between 10,000 and 12,000 inmates are incarcerated at the jail at any one time.

¹ The County is responsible for the economic aspects of employment, *i.e.* wages and benefits. The Sheriff is responsible for the day to day operations of the Department and controls the non-economic features of employment, *i.e.* hiring, supervision, discharge, etc.. The three large departments are Corrections, Court Services or Deputy Sheriffs(1400 sworn personnel) and Police Department (470 sworn personnel).

The DOC consists of Correctional Officers, Electronic Monitoring Investigators (“EMI”) and Canine Specialists. Correctional Officers include those personnel assigned to the prison tiers, and external units such as Transportation Officers (transfer of inmates to and from the jail), Boot Camp Officers (intensive rehabilitation program for young offenders), “Furlough” Officers (Sheriff’s Female Furlough Program in the Department of Women’s Justice Services) and officers in the Emergency Response Team (“ERT”). The Emergency Response Unit consists of personnel performing special operations with high risk inmates including cell extraction, jail disturbances and transfers.

The Electronic Monitoring Unit is involved in the management of pretrial detainees released to their communities wearing electronic ankle bracelets. The EMIs set up the electronic monitoring devices at the detainees’ residences, monitor them and patrol for any who leave their home environments.²

The Canine Unit includes eleven dog and handler teams. These employees are neither Correctional Officers nor Investigators. They were added to this bargaining unit by the Labor Board in 2007. They are “external operation” employees and work with Transportation Officers and the ERTs. The Dog

² The EMI unit had been contained in another County/Sheriff department, Department of Community Supervision (“DCSI”). Employees in this department were paid pursuant to a wage scale different from that for the Correctional Officers. In 2011 DSCI was dissolved and the EMI employees were assigned to Department of Corrections. Two other former DSCI units exist within the DOC but are not part of the bargaining unit here at issue. The Day Reporting Unit is represented by Fraternal Order of Police. The Fugitive Unit Investigators are separately represented by Teamsters Local 700. All three of these investigative units are not entry level positions but are promotional opportunities for Correctional Officers.

Handlers are responsible for their dogs and they transport them to and from home and assignments.

The DOC bargaining unit was previously represented by Metropolitan Alliance of Police Chapter 222, which was the bargaining agent for the prior collective bargaining agreement. The prior agreement was effective December 1, 2004 through November 30, 2008. The Teamsters have been the bargaining representative for the employees in this case. According to the Union the pace of negotiations has been excruciatingly slow. Prior to the first session of this arbitration hearing the County had yet to make a wage proposal. The effect of this slow process is that this Award will be issued near the end of the third year of a four year agreement.³

The parties have had a full and complete hearing with the admission of volumes of evidence, testimony and oral presentations by counsel. Thereafter, final offers were exchanged and voluminous briefs were filed. The arbitrator has promised the parties that this Award will not be an exegesis on Illinois interest arbitration; nor will there be a review of the lengthy tomes submitted by my colleagues over the last several years.

³According to the Joint Employer the delay on the financial issues was related to the change of the leadership of the County Board and the sinking economy that has resulted in limited revenue. On the day prior to the scheduled start of this hearing, Standard and Poor lowered the County's financial rating, further exacerbating an already weak financial position. and causing a further delay.

B. Statutory Factors

Section 14(h) of the Act provides that the arbitrator shall base his findings, opinions and order upon the following factors, as applicable:

"(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, and 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 private employment."

II. THE ISSUES

Generally speaking, there are four areas in dispute: Wages, Specialty Pay, Overtime and Uniform Allowance. The parties have stipulated that Specialty Pay should be three separate issues because of the different factors to be considered within the specialty groups. The Final Offers are as follows:

1. Wages

Wage rates are effective the first full pay period after the commencement of the fiscal year. The County's fiscal year begins on December 1st. The issues in this case are for a contract period covering the 2009 through 2012 fiscal years.⁴

<u>Fiscal Year</u>	<u>Date</u>	<u>Union Proposal</u>	<u>Employer Proposal</u>
2009	December 1, 2008	3%	----
	June 1, 2009	-----	1%
2010	December 1, 2009	1.75%	----
	June 1, 2010	-----	1%
2011	December 1, 2010	3.2%	0.5%
	June 1, 2011	-----	1.5%
2012	December 1, 2011	3.25%	2%
	June 1, 2012	-----	2.5%

⁴ December 1, 2008 through November 30, 2012. The parties have agreed that wage offers are effective as of the first pay period after the dates specified.

2. Specialty Pay- Canine Specialists

<u>Union</u>	<u>Employer</u>
Effective 12/1/08 pay at CO 1 rate	Upgrade to CO1 wage scale effective June 1, 2009
Effective 7/01/11 pay at CS2 rate	

3. Specialty Pay - ERT, Transportation, Furlough, Boot Camp

<u>Union</u>	<u>Employer</u>
Effective 7/01/11 pay at CS2 rate	----

4. Specialty Pay - Electronic Monitoring Investigators

<u>Union</u>	<u>Employer</u>
Effective 7/01/11 4% increase on CS 2 rate (Employees currently at CS 2)	----

5. Uniform Allowance (Currently \$650 per year)

<u>Union</u>	<u>Employer</u>
Effective 7/01/11 uniform allowance - \$800	----
Effective 7/01/12 uniform allowance - \$850	----

6. Overtime

<u>Union</u>	<u>Employer</u>
Section 3.4 Overtime Compensation	----

Overtime which has been duly authorized or approved shall be compensated as follows: All hours actually worked in excess of ~~eighty (80)~~ forty (40) hours ~~per biweekly pay~~

~~period~~ regular work week by an Employee shall be compensated at the rate of one and one-half (1-1/2) times the regular hourly rate. For purposes of calculating overtime, all compensated hours shall be counted, except sick leave, during a fourteen (14) day period.

Effective June 1, 2011, but no retroactivity for hours already worked.

III. ANALYSIS OF THE RELEVANT STATUTORY FACTORS

The Act identifies eight standards to be used in determining an appropriate award for each issue. All of the factors are to be considered, although the facts and circumstances of the particular case impact some factors more than others. Nonetheless, the award must show consideration of all of the factors within the context of the peculiar circumstances that the case arose.⁵

In this case, there is no issue as to the Joint Employer's authority. They have long standing contractual relationships with a variety of bargaining units relating to law enforcement.

Stipulations of the parties include the parties' agreement to divide the specialty pay (sometimes referred to as "supplemental pay") into three parts. The parties have also agreed that any increases in money items are retroactive to the first pay period after the dates specified in the offers.⁶ The parties have

⁵ These factors are referred to as: (1) Employer authority, (2) Stipulations, (3) Public interest and ability to pay, (4) Comparability, (5) Cost of living, (6) Overall compensation and stability of employment, (7) Changes in these factors during these proceedings, (8) Other factors traditionally taken into consideration.

⁶ The one exception is with the Union's Overtime proposal. Although the Union seeks an effective date of July 1, 2011, it excludes retroactivity for hours worked prior to the actual date

also stipulated, and the arbitrator also finds, that the matter is properly in arbitration pursuant to the law.

The interests and welfare of the public, and the ability to pay, are major issues in this case because of the weak economy. As has been discussed by others *ad nauseam*, the economy is in a hole and having trouble crawling out. Indeed, some arbitrators, including the undersigned, had expressed the opinion in earlier cases that by now the economy would have improved. Instead, we have witnessed the reduction in the valuation of the County's debt, as well as that of the United States. Unemployment continues to be an infection, and those not unemployed, especially in the public sector, should be concerned about their future. We have witnessed debacles in Ohio and Wisconsin, and in Illinois certain teacher bargaining rights have been compromised. Rightfully or wrongfully many people blame the current economic problems in the public sector on labor unions.

It is this arbitrator's opinion, and that of many professional economists, that there will be no meaningful improvement in the economy until after the November, 2012 elections. (Citations omitted.)

Comparability is another big issue in this case. The Joint Employers have several bargaining units in each of its three divisions (Police, Corrections and Deputy Sheriffs). The units in each of these divisions have had a long and

the new contract is implemented, or to some other date later than July 1, 2011. The exact date is not part of the proposal.

somewhat competitive relationship with units in the other divisions regarding wages. Traditionally the Police were the highest paid division. Corrections was next and Court Services was just below. In recent years, because of the fortuities of the dates of the respective contracts and their proximity to the recession, there have been some shifts in the wage hierarchy. Without a doubt the parties' wage proposals in this case are driven by these comparability concerns.

What has further complicated the assessment of comparability is the award issued in September, 2010, for the Police Officers. As a result of that award the Police Officers will remain well ahead of the rest of the pack. However, that September, 2010, award also included the bargaining units for Correctional Sergeants and Correctional Lieutenants. Represented by the same labor organization as the Police Officers (AFSCME Council 31), the Sergeants and Lieutenants are the supervisors for the employees in this DOC unit (including the COs, Investigators, and Dog Handlers). The outsized award in the "AFSCME" case creates an immediate distortion with regard to comparability with almost all of the other of the Joint Employer's bargaining units, particularly with regard to COs in this case and their supervisors. In effect, the AFSCME award whipsaws the Joint Employers because of its impact. It not only gives AFSCME a huge increase in wages but pressures the Joint Employers to match those

wages in other units or destroy traditional comparability.⁷

The AFSCME award gives the employees increases of 2% (retro to 12/1/08), 1.5% (retro to 12/0/09), 2% as of 12/1/10 (3 months after the date of the award), 2% effective 12/1/11 and 1% six months later on 6/1/12. The award labels this as an 8-1/2% wage increase. However, if the increases are compounded the total increase exceeds 9%. Stated another way, over the course of little more than a year employees in the bargaining units affected by the AFSCME award will find that their wages have increased almost 9%. The undersigned arbitrator considers such an increase in these troubled times as an aberration.

The next statutory factor is "the average consumer prices for goods and services, commonly known as the cost of living." The CPI is a barometer of the economic environment in a particular region. It is a general measurement and its rise or fall in any limited period does not specifically reflect what has affected employees in the bargaining unit. The elements considered, such as the cost of housing, may not have an impact on most of the employees in the DOC bargaining unit. In other cases this element could have a major impact on employees required to change residences. The CPI is not a litmus test-type gauge and cannot be applied literally for the measurement of wages and benefits

⁷ Some arbitrators suggest that comparability must take a back seat in interest cases because the circumstances in which the parties find themselves in difficult times cannot be compared to what other units have bargained in better economic times. (Citations omitted.)

in a collective bargaining agreement.⁸

The sixth factor is the overall package of wages and benefits, and the overall stability of the workforce. In this case, it is undenied that employees receive very favorable health and hospitalization benefits. This will not be changed in the new agreement. Likewise, employees here enjoy ample vacations, time off, pensions and other benefits that are the product of years of collective bargaining. Additionally employees get step increases of 4%. Nor is there any threat of a diminution in the size of the bargaining unit. The staffing of prisons is an intense proposition. In Cook County the Joint Employers have been ordered by a federal court to increase its CO staff. There is a high level of job security for this bargaining unit.

The next statutory factor is the consideration of any changes in the foregoing factors which have occurred since this arbitration case began. The arbitrator notes the reduction in the valuation of the County's debt, although that came before final offers were submitted. Additionally, the unemployment rate for September, 2011, has remained at 9% and the creation of new jobs this month has been lower than expected. If the gross domestic product continues to decrease, as this arbitrator believe to be the case, and continues for two

⁸ One might argue that the slight decrease in County sales tax should be factored in, or, for Chicago residents, the anticipated increase in real estate taxes. For this bargaining unit, the cost of uniforms may be a significant factor in the cost of living. That is not going to be reflected in the general assessment made by the Department of Labor in establishing a CDI. for Cook County generally.

consecutive quarters, we will be back in a recession.⁹

The last factor are the other considerations traditionally used in collective bargaining or in impasse proceedings in public service or private employment. The factor considered by this arbitrator is bargaining history. This would include an overview of past negotiations and awards, the history of a particular proposal for a change, and an assessment of the maturity of the parties' relationship . In this case, this consideration of bargaining history dovetails with the comparability issue. The arbitrator finds that the parties' bargaining history is largely the product of the competition between the Joint Employer's bargaining units and the circumstances that have been altered by the "long gray line" of labor arbitrators. Finally, the arbitrator makes note of the fact that the employees in this case, as with other DOC bargaining unit employees, received a 4.5% basic wage increase for the period of December 1, 2007 through November 30, 2008.

IV. CONSIDERATION OF THE ISSUES

1. Wages

To understand the difficulty facing the arbitrator with this issue it is

⁹ Because of the complexity of measuring GDP the actual finding of a recession does not occur until well after it has started. Obviously, the arbitrator's assessment is an educated guess. What the arbitrator may conclude is that the predictions in prior awards issued in the last year that "happy days are here again" are simply wrong.

necessary to consider the bargaining history for four DOC bargaining units.¹⁰ The chart below shows that Correctional Officers, Sheriff's Police and Correctional Officer Sergeants received substantially the same wage increases over the years. For reasons not clear in the record the Deputy Sheriffs (the courtroom unit), traditionally received higher increases.

	<u>Correction Officers</u>	<u>Correction Sergeants</u>	<u>Sheriff's Police</u>	<u>Deputy Sheriffs</u>
1992	5%	5%	5%	5%
1993	5%	5%	5%	5%
1994	5%	5%	5%	8%
1995	4.5%	4.5%	4.5%	6.5%
1996	3%	3%	3%	6%
1997	4%	4%	4%	5%
1998	3.5%	3.5%	3.5%	5.5%
1999	4%	4%	4%	5.5%
2000	3%	3%	3%	5.5%
2001	5%	5%	3%	5.5%
2002	2.5%	2.5%	2.5%	5.5%
2003	3%	3%	3%	5.5%
2004	3%	3%	3%	4.5%
2005	1%	1%	1%	4.5%
2006	3%	3%	3%	4.5%
2007	4%	4%	4%	4%
2008	4.75%	4.75%	4.75%	4.75%
2009		2%	2%	3%
2010		1.5%	1.5%	3%
2011		2%	2%	
2012		3%	3%	

This chart shows that while there has been an historical consanguinity among the COs, their Sergeants and Sheriff's Police, this has not been true with

¹⁰ In this case “bargaining history” is a misnomer. Many of the wage increases over the last 15 years were the product of interest arbitration.

the Deputies. From 1994 through 2006 the Deputies generally received a higher percentage increase than the other three units. Thus, while the Joint Employer argues that Deputies have avoided the effects of the recession by settling for 2008 and 2009 just before the effects of the recession were felt, and therefore moved ahead of the COs, in fact this was a continuation of a pattern established years ago.¹¹ Accordingly a wage comparison with the Deputies is not appropriate in this case. Their bargaining history sharply differs from the Police and COs.

The question remains, however, whether the COs should be receive similar percentage increases to what the Police received. They received a total increase of 8.5%, receiving 2%, 1.5%, 2% and 2% at the beginning of each year, respectively. Then they receive an additional 1% on June 1, 2012.

The Union proposes wage increases of 3% for the 2009 fiscal year, 1.75% for FY 2010, 3.2% for FY 2011 and 3.25% for FY 2012. Because FY2011 is nearly over, the effect of this proposal would be to grant immediate cash payments of back pay equal to almost 8% of he employees' 2008 wages. The employees would then receive another 3.25% of the new wage rate on December 1, 2011. The total increase would be 11.20%.

¹¹ That this pattern was established by arbitrators is beside the point. The fact is that there was no pattern between the Deputies and the other two main units (Police and COs) Likewise, the Union cannot argue that the 2009 and 2010 increases given to the Deputies requires corresponding increases for the COs because historically the deputies percentage increases have almost always been higher. (See chart on p. 14,)

The Joint Employer proposes a total of 8.5%, obviously in response to the Sheriff's Police award. But the 8.5% comes in small bits and pieces until the final year of the contract, during which the employees would receive a 4.5% increase.¹²

Based upon this arbitrator's analysis of the record, and his consideration of all of the factors, neither proposal is satisfactory. The Union's proposal for an 11.2% increase is not supported by the realities of the present economy nor the increase in the Police award, the primary comparable bargaining unit. The Joint Employer's proposal is acceptable for the first three years but a 4.5% increase on December 1, 2011, is simply excessive. It appears as if the Joint Employer was guided solely by the Police award even though that award, acknowledging the financial crisis gripping the County, is based almost entirely on the Consumer Price Index, a theoretical concept based on broad generalities.

Comparability is an important factor in all interest arbitration cases because it is the factor most often considered by other arbitrators. In this case, where past arbitration awards are a large part of bargaining history, comparability and bargaining history are inextricably tied together. But comparability is also difficult in this case because, except for the Police unit, other bargaining groups have had such different wage rate histories. With no relevant external comparability group and only one internal unit, comparability

¹² See p. 6, above.

has a lesser role to play in this case.

The CPI is a factor, but as discussed above, it is very general gauge and should not be used as a literal measurement for a specific wage increase.

Another factor, referred to earlier in this award, is the evaluation of the overall compensation. The unit's benefit package including, no changes in medical benefits, is highly attractive. The arbitrator also notes that in the last 15 years the wages for COs has gone up approximately 65%.

This arbitrator finds that a critical factor not often addressed in arbitration awards is, "the interests and welfare of the public and the financial ability of the unit of government to meet these costs." It is the arbitrator's judgment that the interests of the public dictate restraint in awarding wages and benefits in the economic environment that exists in Cook County today. There is a need for a pause. It is not that the employees have not earned an increase. Rather it is a matter that these are public employees and the "public" wants reassurance that prudence is being exercised. Nor is it that the Joint Employer is "unable to pay" if the question is posed in terms of the ability to generate the dollars to meet the payroll. The Joint Employer can generate more revenue from the public, but "ability to pay" also means the practicality in doing so. The bottom line is that it is politically inappropriate to grant less than the minimum needed to maintain an efficient workforce.

The employees in this bargaining unit have enjoyed many years of

generous and well earned wage increases. These years will return. But not during the term of this collective bargaining agreement.

Quite obviously, the arbitrator selects the Joint Employer's proposal. The law requires that one proposal or the other must be selected. There is no room for the arbitrator to modify any proposal. However, given that there will be a the 4.5% increase going into effect in a matter of weeks, and that this 4.5% increase will be on top of a 4% increase, and that the 4% increase, albeit for a three year period, will be paid in cash to the employees as back pay, no other increases are appropriate in this case. With a 4.5% increase being paid for the year starting in just a few months, it is unfathomable for the arbitrator to increase any benefits. In other words, as will be discussed below, the arbitrator finds that by conventional tests an increase in uniform allowance must seriously be considered. It is not possible in this case because of the excessive 4.5% increase the arbitrator is required to accept for the fiscal year about to begin.

2. Rate of Pay for Canine Specialists

The Canine Specialists were added to the bargaining unit near the end of the last contract. The parties were unable to negotiate an appropriate rate for this classification. The affected employees continued to be paid at a rate lower than Correctional Officers. With the continuing impasse for a new agreement, the Canine Specialists continue to be paid less than CO specialists. The Employer proposes putting these employees on the CO1 wage scale. This upgrade will

provide the employees with a 4% to 9% increase on top of the general wage increase awarded in this case. The Union's proposal of also moving the Canine Specialists to the higher (4%) CS2 wage scale effective July, 2011, is inappropriate for the reasons discussed above. The Joint Employer's proposal is selected.

3. Rate of Pay for ERT, Transportation, Female Furlough and Boot Camp COs

The Union seeks in an increase in pay grade for the other CO specialists. These employees are currently paid on the CO1 scale. The Union proposes upgrading their pay to the CS2 scale. The CS2 scale is approximately 4% higher than the CO1 scale. The Joint Employer opposes any change.

The arbitrator selects the Joint Employer's proposal. The reasons are as follows: (1) Too expensive. (2) Having previously been rejected by arbitrators in earlier cases, the Union has offered no new evidence justifying this change. (3) The Union has failed to prove that the work at issue involves true specialties and not simply different skill sets than needed for working inside the Jail on a tier. The Union has not shown that the difference in the duties entails significant specialized knowledge and greater risks than what is required of other COs. Performing a different job is not necessarily working in a "specialized" position. It might be, but that needs much more evidence than was presented in this case.

4. Rate of Pay for Electronic Monitoring Investigators

The EMIs are "Investigators" and are paid on the CS2 scale. This CS2 scale was created after the DSCI was disbanded and the EMIs moved to the DOC unit. The CS2 scale, as noted above, is 4% higher than the CO1 scale. The Union is seeking an additional 4% increase for these employees above the general wage increases. The Joint Employer resists this increase.

It is long-settled that the EMI possess sufficient skills to warrant the CS2 wage rate. What is unclear is what has happened to justify a pay grade increase. This is not a "Will County" situation because the Union simply wants a wage increase for this position and not the imposition of a new system. But it not shown what justifies a special increase over and above the standard CS2 rate.

Given the circumstances in which this case is being arbitrated, the Union has not persuaded the arbitrator that this increase is appropriate.

5. Uniform Allowance

The Union is proposing an increase in the uniform allowance from \$650 a year to \$800 a year as of December 1, 2010 and \$850 effective December 1, 2011. The current amount has been in place since 1998. The Joint Employer opposes the increase, noting that previous arbitrators (McAllister, 2003, Fletcher, 2006) rejected similar proposals.

It is difficult to assess a prior arbitrator's award on one isolated fringe

benefit such as uniform allowance. As in this current case, arbitrators balance their decisions, particularly regarding money issues. It may be, and the arbitrator here does not suggest that this was the case, that the earlier arbitrators found that their wage findings or those for other economic issues provided a satisfactory financial result when their respective awards were viewed as a whole. You can read an arbitration award focusing on one fringe benefit without considering the whole award.

The second problem with the Joint Employer's argument is that it relies on the prior awards as if they were based on the same facts as are present here. But those prior cases were heard several years ago. The evidence in this record demonstrates, what should be obvious to all, that the price of clothing and equipment has risen since 1998. The Union presented evidence of the prices for this clothing and equipment using price sheets from the companies that sell it. The Joint Employer does not challenge the accuracy of the lists but argues that there was no evidence that a typical employee has to spend even the \$650 each year. It argues that the Union should have brought in receipts showing actual purchases. However, that would prove nothing unless the Joint Employer is suggesting that the Union also produce the old clothing and equipment at the arbitration hearing so that the arbitrator can decide if they should have been replaced. Otherwise, an employee might show up at a hearing with receipts for thousands of dollars of clothing and equipment.

Chief Union Steward Mark A. Robinson testified about the wear and tear on uniforms in a jail setting. According to Robinson, while he tries to have current clothing mended, he ends up buying two or three sets clothing (depending on the item) each year. According to Robinson, when he was assigned to a tier he spent on average about \$1,200 a year. Now, with a desk job, he still spends about \$800 annually. None of this evidence was rebutted by the Joint Employer.

The Joint Employer incorrectly relies on the an early public sector arbitration case where the Sheriff of Will County was proposing major changes in an established grievance procedure. (*Will County Board and Sheriff of Will County and AFSCME Local 2961, S-MA-88-9* (Nathan, 1988)). The arbitrator, in denying the Sheriff's request for a change, set forth certain rules for altering a contractual system already in place. Essentially, the party seeking a change of a negotiated contract procedure has a heavy burden to prove that there should be a change. This principle does not apply to the amounts to be paid for benefit programs already in place. In that regard the issue is simply a matter of money. Thus, where the parties already have a uniform allowance in place and the Union wants to increase that allowance the tests are no different than in seeking a wage increase. There is no extra burden when the system, or program, is already in place. Having already agreed to a uniform allowance as a benefit, the only burden on the Union is to show that the amount is insufficient to meet the

needs of the benefit. If the Joint Employer is going to argue that its intention is never to pay more than the \$650, regardless of actual costs, then it is the Joint Employer who is changing the nature of the benefit.

A better application of the Joint Employer's argument would be with specialty pay for the Correctional Officers who have special assignments such as the ERT or Transportation Officers. There the concept of specialty pay for COs is a new concept, a new system.¹³

The finding here is that the Union has proven that the amount being paid as a uniform allowance is insufficient. While there is still the issue of comparability with other bargaining units, it seems more likely than not that Deputies serving subpoenas and Police patrolling in squad cars will not wear out their uniforms as fast as Correctional Officers.¹⁴ In any event, the arbitrator cannot award the Union an increased uniform allowance because the wages that already been awarded are excessive.

The Joint Employer's proposal, which under the circumstances of this case I must accept, is excessive at 4.5% for the coming fiscal year. It should be clear, however, that the Union's proposal for the uniform allowance is being

¹³ That argument could not be used with the EMI request for additional wages because their specialty has already been recognized by their being in the CS2 schedule. There the issue is just a matter of whether the job deserves additional pay.

¹⁴ This is not to say that some Police Officers and Deputies will not be involved in physically stressful situations that cause premature damage to their uniforms. Rather this a generality based upon the arbitrator's experience.

denied solely because of the size of the wage increase for the coming year. But for the burdensome increase in the upcoming fiscal year, the Union's proposal for a uniform allowance would be selected by the arbitrator.

6. Overtime Pay

The Union proposes a change in the calculation of overtime hours. At present, and for many years previously, overtime has been calculated at the rate of time and one-half after eighty (80) hours in a two week period.¹⁵ The Union proposes that effective July 1, 2011 all bargaining unity employees be paid overtime rates after forty (40) hours in a single work week. The Joint Employer opposes this change.

The record indicates that overtime payments to DOC employees amounts to many millions of dollars annually. A change in the computation of overtime as here proposed would have a stunning effect on the Joint Employer's bottom line. The Union has shown no reason for this change and, from the arbitrator's perspective, could not chosen a worse time to propose such a breakthrough change. The Employer's proposal of no change in overtime rates is selected.

¹⁵ The Fair Labor Standards Act allows public employers to compute overtime for uniformed personnel on bases different from the 40 hour standard used in the private sector.

A W A R D

1. The Joint Employer's proposal for wages is selected.
2. The Joint Employer's proposal for Canine Specialist is selected.
3. The Joint Employer's proposal for specialty pay for ERT, Boot Camp, Transportation and Furlough employees is selected.
4. The Joint Employer's proposal for specialty pay for Electronic Monitoring Investigators is selected.
5. The Joint Employer's proposal for Uniform Allowance is selected.
6. The Joint Employer's proposal for Overtime Compensation is selected.
7. Any tentative agreements reached by the parties during negotiations are incorporated into this Award

Respectfully submitted,

HARVEY A. NATHAN
Neutral Arbitrator

J. Stuart Garbutt
Employer Arbitrator
Concurring

Kevin P. Camden
Union Arbitrator
Dissenting

Chicago, Illinois
September 14, 2011

UNION DISSENT

Teamsters Local 700 respectfully dissents from the neutral's decision in this matter.

First, the neutral argues for strong internal comparability, vis-a-vis the Sheriff's Police award issued in September 2010. However, the Joint Employer's offer, while having the same percentage increase, is not the same as previously awarded. Specifically, it delays the increases in salary for the members at a time when, as noted by the neutral in his award, the economy is in "troubled times". (Award, pg. 11) The fact that over a four-year period dating back to December 2008 a wage increase of 8.5% is awarded does not salve the delayed increases in wages for approximately 2.5 years; the problem is further compounded by loss of retro-active wage increases on the significant overtime the members must work in the jail.

Second, the CPI cannot be discounted so quickly. If this case dealt with only prospective wage increases, it is more understandable that concerns about forecasting and economic speculation could be inaccurate, but the Bureau of Labor Statistics has hard data showing what the CPI increases were back to the expiration of this agreement in 2008. Consequently, over half of this award can be compared to hard data reflecting the actual cost of living increase the members were forced to absorb, absent a pay increase at the time the costs were increasing.

Third, the union is gravely concerned that by adopting the Joint Employer's argument about "interest and welfare of the public" and linking it to benefits awarded in prior contracts, all of which were the result of interest arbitration proceedings, the status quo ante is used as a sword against the unit. Certainly the historical placement of this unit among Cook County Sheriff's law enforcement units is relevant, but what is troubling is that the argument has been twisted such that prior wage increases that were awarded in interest arbitration are now being used against the unit. Such review of "other factors" as the neutral writes seems to open the door to a review of the historically gains the unit has made as a mitigation for current economic benefit increases; this appears to thwart the bargaining process moving forward and is contrary to one of the most basic tenets of interest arbitration--that a party should not be awarded a benefit from interest arbitration that it could not have obtained at the table for itself.

Fourth, regarding the uniform allowance, the union has difficulty comprehending how the neutral opines, "forgetting about what the charts on CPI say, I now as a matter of common sense, I can't walk into a store and buy clothes and pay what I paid in 1998". (TR 313) Furthermore, the neutral writes in the award, "The finding here is that the Union has proven that the amount being paid as a uniform allowance is insufficient". (Award, pg. 23.) However, because of another, independent economic issue of wage increase, the neutral will not award a uniform allowance increase. The union disagrees that the two can be inherently linked in the context of an interest arbitration proceeding.

Finally, the union believes that by looking at the status quo ante on wages, the door is opened for, as other arbitrators have written, the union to come back for “catch up” in better economic times. However, the throwback period will continue to extend the longer negotiations continue between the parties in these difficult economic times. To put it another way, the union feels as a result of looking to prior economic benefits awarded to a bargaining unit, the employer is being given a basis to prolong the bargaining and rest upon what economic increases were granted before the current depressed or recessed economic condition started and in so doing, compromising the ability of employees in such units to effectively bargain. Such is a slippery slope to have the parties start sliding down....

For the foregoing reasons, the union respectfully dissents from the neutral’s award.

A handwritten signature in blue ink that reads "Kevin P. Camden". The signature is written in a cursive, flowing style.

Kevin P. Camden, General Counsel
Teamsters Local 700, union representative

I N A R B I T R A T I O N

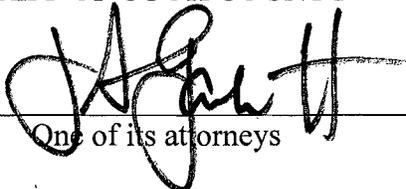
BETWEEN:) ILRB No. L-NA-09-016
)
TEAMSTERS LOCAL 700,) **Cook County Correctional Officer**
) **Interest Arbitration**
Labor Organization,) **(FY 2009-2012)**
)
and)
) **Arbitrator Harvey A. Nathan**
THE COUNTY OF COOK and THE SHERIFF) **Neutral Arbitrator**
OF COOK COUNTY,)
)
Joint Employers.)

JOINT EMPLOYERS' CONCURRENCE

The Joint Employers fully concur in the Arbitrator's award and reasoning. The Joint Employers merely point out that, insofar as the Arbitrator characterizes even the Joint Employers' wage offer in this case as seeming "excessive," because it calls for a total of 4.5 percent in wage increases during the last year of the contract (fiscal year 2012), only part (2 percent) of the Joint Employers' proposed increase is for the full fiscal year, with the other 2.5 percent effective only midway through the year, in June 2012. These large increases admittedly appear excessive but are necessary to keep the bargaining unit employees, at the conclusion of the contract, in the same relative wage parity with their supervisors whose wages were increased (over the Joint Employers' objections) by the September 2010 "Police Award" mentioned by the Arbitrator.

Respectfully submitted,

COUNTY OF COOK and
SHERIFF OF COOK COUNTY

By:  _____
 One of its attorneys

Date: September 23, 2011

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