Policemen’s Benevolent Labor Committee

and

County of Kane and Sheriff of Kane County

I.LRB No. S-MA-09-127
Corrections Officers and Sergeants

OPINION AND AWARD

of

John C. Fletcher, Arbitrator

July 16, 2010

I. Procedural background:

This matter comes as an interest arbitration between the County of Kane and the Sheriff of Kane County as Joint Employers ("the Joint Employer") and the Policemen’s Benevolent Labor Committee ("the Union") pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314. The Parties selected the undersigned to serve as a single arbitrator in this matter, waiving their right to a three-person panel. The bargaining unit represented by the Union consists of approximately 100 sworn Corrections Deputies and Sergeants who serve at the Kane County Jail. This dispute arises from the parties’ impasse in the negotiation of a successor agreement to the Collective Bargaining Agreement ("the Agreement") that was effective December 1, 2005 through November 30, 2008.

Pursuant to section 14(c) of the Act, the undersigned met with the Parties on May 13, 2010 and again on July 16, 2010 in an informal proceeding, the purpose of which was to define and narrow the issues in dispute. After considerable further mediated negotiations between the
Parties, five issues remained in dispute: (1) Wages; (2) Holiday Pay; (3) Health Insurance Benefits for Retirees; (4) Drug and Alcohol Testing Policy; and (5) Conversion of Holidays into Pay.

With the consent of the Parties, based on upon said exchange, the undersigned, after taking into consideration the factors set forth in Section 14 of the Act, made recommendations for the resolutions of the five issues that remained in dispute, believing that said recommendations were supportable based upon the statutory factors.

After due consideration, the Parties agreed to permit the undersigned to issue an award resolving all issues in dispute without further hearing. The undersigned now issues the following Mediated Arbitration Award.

The Union was represented by:

Timothy O’Neil
Foote, Meyers, Mielke & Flowers, LLC
3 North Second Street
Suite 300
St. Charles, Illinois 60174

The Joint Employer was represented by:

Carl S. Tominberg
Antonio Caldarone
Laner, Muchin, Dombrow,
Becker, Levin and Tominberg, Ltd.
515 N. State Street
Suite 2800
Chicago, Illinois 60610
(312) 467-9800
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Attorneys for the County of Kane

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100 S. Third Street, 4th Floor
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(630) 208-5325
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Attorney for the Sheriff of Kane County
II. **Wages and Duration**

**The Position of the Union**

The Union offered a two-year Agreement with wage increases as follows: 3% (2008) and 3% (2009).

**The Position of the County of Kane**

The County of Kane offered a two-year Agreement with wage increases as follows: 0% (2008) and 0% (2009).

**Order**

This matter presents the undersigned with unique circumstances. For instance, the Parties have been without a successor Agreement for two years, and the Parties should have negotiated the successor Agreement in 2007 (prior to the expiration of the original Agreement). The undersigned recognizes that this delay in negotiating may have been caused, in part, by the fact that the Union was certified one month after the predecessor Agreement expired. Given the unique circumstances existing at this time, and the fact that the Parties have consented to the undersigned fashioning an appropriate economic award based on the evidence, it is hereby ordered that both wage offers are rejected. Instead, the successor Agreement shall be a two-year Agreement commencing on December 1, 2008 through November 30, 2010. Wages shall be increased as follows: 2% on December 1, 2008; 2% on December 1, 2009; and 1% on June 1, 2010. The aforementioned wage increases shall be retroactive.

III. **Holiday Pay**

**The Position of the Union**

Modify the language of Article 15, Section 4 of the CBA so that bargaining unit employees receive double (2x) the regular rate of pay for all hours worked on certain holidays identified in the Agreement.
The Position of the Joint Employer

Status quo.

Order

The internal comparables support a finding that bargaining unit employees should receive double (2x) pay for all hours worked on certain holidays recognized in Article 15, Section 4 of the predecessor Agreement. For example, the Sheriff’s Deputies and Sergeants receive double (2x) the regular rate of pay for all hours worked on certain holidays. Accordingly, the Union’s proposal is accepted, and bargaining unit members shall be paid double (2x) the regular rate of pay when the employee is required to work on the following four holidays: Christmas, Easter, Thanksgiving and/or New Year’s Day. Employees shall be paid their regular rate of pay when they are required to work any other holiday as set forth in Article 15, Section 4 of the predecessor Agreement.

IV. Health Insurance Benefits for Retirees

The Position of the Union

The Union proposed to add the same language for Health Insurance Benefits for Retirees that is contained in the current agreement covering Kane County Sheriff Deputies and Sergeants.

The Position of the Joint Employer

Status quo because the Joint Employer currently provides the benefit.

Order

The Joint Employer’s position is to maintain the status quo relating to Health Insurance Benefits for Retirees because no changes are needed since this benefit is currently provided pursuant to Kane County’s existing practice. The Union’s position is that it seeks language in the successor Agreement explaining the policy with respect to Health Insurance Benefits for Retirees and which also appears in the current agreement with the Union covering Sheriff’s
Deputies and Sergeants. Accordingly, the language attached hereto governing Health Insurance Benefits for Retirees should be made part of the successor Agreement. This language is not a departure from the Joint Employer’s existing practice, but is merely language memorializing the Joint Employer’s existing practice into the successor Agreement.

V. Drug and Alcohol Testing Policy

The Position of the Union

Status quo.

The Position of the Joint Employer

Add a proposed Drug and Alcohol Testing Policy to the successor Agreement.

Order

The undersigned finds that the considerations of health and safety and internal comparables support a finding that a Drug and Alcohol Testing Policy for bargaining unit employees should be adopted. Accordingly, the Joint Employer’s position is adopted and the Drug and Alcohol Testing Policy attached hereto shall be made part of the successor Agreement. In order to provide the Parties ample time to discuss the implementation of this new Drug and Alcohol Testing Policy, the Drug and Alcohol Testing Policy is not effective until November 30, 2010.

VI. Conversion of Holidays into Pay

The Position of the Union

Status quo.

The Position of the Joint Employer

Modify the language of Article 15, Section 7 of the CBA to reflect that bargaining unit members may convert a maximum of nine (9) unused holidays into pay, provided the remainder of the conditions in Article 15, Section 7 are met, and to further provide that in fiscal year 2010,
the Joint Employer will not incur liability for more than a total of ninety (90) days of holiday pay for all bargaining unit members. The remaining terms and conditions of Article 15, Section 7 of the predecessor Agreement will remain unchanged in the successor Agreement.

Order

The internal comparables support a finding that a cap should be placed on the number of unused holidays bargaining unit employees may convert into pay under Article 15, Section 7 of the predecessor Agreement. For example, the Sheriff’s Deputies and Sergeants have no ability to convert unused holidays into pay under their CBA. Accordingly, the Joint Employer’s proposal is adopted. Article 15, Section 7 of the successor Agreement shall provide that bargaining unit employees may convert up to nine (9) unused holidays into pay and shall further provide that in fiscal year 2010, the Joint Employer shall not incur liability for more than a total of ninety (90) days of holiday pay for all bargaining unit members. The remaining terms and conditions of Article 15, Section 7 of the predecessor Agreement shall remain unchanged in the successor Agreement.

VII. Conclusion and Award

The foregoing Orders represent the final and binding determination of the Neutral Arbitrator in this matter and it is directed that the Parties’ Collective Bargaining Agreement be amended to incorporate their previously agreed-upon tentative agreements along with the specific determinations made above.

[Signature]
John C. Fletcher, Arbitrator
Popular Grove, Illinois, 16, 2010
Section 7. **Retirees**

The County shall pay 10% of the cost of continued medical insurance benefits under the same terms and coverage for the non-Medicare eligible retired employee as the employee received for the 12 months preceding retirement.

Employees retiring under regular IMRF must be at least 55 years of age with at least eight (8) years of service. Sheriff's Law Enforcement Personnel (SLEP) members who retire (at any age) must have at least 20 years of SLEP credit.

In order to be eligible for the 10% premium reduction, an employee must have been employed by the County for 15 or more consecutive years.

Retired employees who wish to take advantage of this medical insurance must pay 90% of the premium for either single or dependant coverage. The premium is due on the 1st of each month and must be submitted to Human Resources in order for coverage to be maintained.

Section 8. **Medicare Eligible Retirees, Disabled Employees and Surviving Spouses**

Kane County offers a reduced benefit PPO health care plan to Medicare eligible retirees, disabled employees and surviving spouses. The PPO plan includes a separate deductible of $500.00 for outpatient drugs to be paid at 80% (coinsurance does not go towards the outpatient prescription maximum). The full amount of the premium that must be paid is established by the County Board each year.
SHERIFF’S PROPOSAL

APPENDIX

DRUG AND ALCOHOL TESTING

Section 1. Statement of Policy

It is the policy of the Employer that the public has a reasonable right to expect the employees of the Sheriff’s Department to be free from the effects of drugs and alcohol and have the physical stamina and emotional stability to perform their assigned duties. The Employer has the right to expect its employees to report for work fit and able for duty. The purposes of this policy shall be achieved in such manner as not to violate any rights of the employees established in this Agreement. Unlawful use of drugs as well as being under the influence of alcohol or the unauthorized consumption of alcohol while on duty shall be cause for discipline, up to and including discharge.

Section 2. Prohibitions

Unless assigned to an investigative unit which requires the conduct set forth below, Sheriff employees shall be prohibited from:

(a) being under the influence of alcohol or illegal drugs during the course of their workday;

(b) consuming or possessing alcohol, except as may be necessary in the performance of their duty, at any time during the workday, or anywhere on the Employer’s premises or work sites, buildings or properties or any vehicle owned by the Employer or any vehicle not owned by the Employer but used in service to the Employer;

(c) the unlawful manufacture, possession, use, sale, purchase, dispensation, or delivery of any illegal drug at any time and at any place except as may be necessary in the performance of duty;

(d) failing to report to their supervisor any known adverse side effects of medication or prescription drugs which they are taking;

(e) intentionally tampering with, substituting for, or causing another person to tamper with, substitute for a urine and/or blood specimen.
Section 3. **Drug and Alcohol Testing Permitted**

Testing is permitted where the Employer has reasonable suspicion to believe.

(a) that an employee is under the influence of alcohol or illegal drugs during the course of the workday;

(b) has abused prescribed drugs; or

(c) has used illegal drugs.

(d) employee appears to be unable to perform his/her job safely.

The Employer shall have the right to require the employee to submit to alcohol or drug testing as set forth in this Agreement. The Employer may also require an employee to randomly submit to alcohol or drug testing where the employee is assigned to a departmental drug enforcement group for a period of at least thirty (30) days and where such employee's duties are primarily related to drug enforcement. The Employer may require any employee accepting an assignment requiring a commercial driver's license to submit to alcohol or drug testing as may be permitted by law. At least two supervisory personnel must state their reasonable suspicions concerning an affected employee prior to any direction to submit the employee to the testing authorized herein. The foregoing shall not limit the right of the Employer to conduct any tests it may deem appropriate for persons seeking employment with the Sheriff's Office, transfer or upon promotion to another position within the Office.

Section 4. **Order to Submit to Reasonable Suspicion Testing**

At the time an employee is directed to submit to testing as authorized by this Agreement, the Employer shall provide the employee with oral notice briefly outlining the reasonable suspicion leading to the request. Within seventy-two (72) hours of the time an employee is ordered to submit to testing authorized by this Agreement, the Employer shall provide the employee and the Union with a written notice setting forth the facts and inferences which form the basis of the order to test. Refusal to submit to such test may subject the employee to discipline, but the employee's taking of the test shall not be construed as a waiver of any objection or rights that he may possess.
FIRST PROPOSAL

Section 5. **Random Drug Testing**

(a) All employees of this bargaining unit will be subject to Random Drug Testing. Such testing will be during an employee’s regularly scheduled shift.

(b) Upon notification that an employee is scheduled for Random Drug Testing, such employee will appear at the required location specified for the drug testing. *(See Appendix A)*

(c) The employee must appear at the required location during their regularly scheduled shift, but not later than 6 hours from the time they receive the notice.

(d) The employee will be required to show a photo identification card to the testing agency upon their arrival to verify their true identity before the testing procedure will begin. If the employee does not have a photo ID then the on duty supervisor will be required to go to the location and verify the identity of the employee.

(e) The random selection process shall be by computer generated numbers for each sworn officer of the department. Such computer generated program shall be performed by an outside contractor hired by the County after consultation with the Union. The outside contractor shall be one that specializes in such functions.

(f) The outside contractor shall not select more than four (4) Sheriff’s employees from the computer generated list per month for random drug testing.

(g) The dates for said tests shall also be chosen at random by the same outside contractor. To maintain the security of the selection process, the contractor shall deal only with the Sheriff or, in the Sheriff’s absence, a designee for purposes of notifying the Sheriff of testing dates and individuals selected. The list of selected member(s) shall be provided to the Union after the testing dates for the affected member(s).

(h) On the same day the employee has been given notice for testing, the Union representative will also be notified that the employee has been selected. The Union representative shall insure only those employees originally selected were actually tested. The Sheriff or designee shall assist the Union representative in understanding any discrepancies.
FIRST PROPOSAL

(i) Immediately after being ordered, refusal to report for testing shall constitute insubordination and will result in the imposition of statutory and departmental rules, regulations and procedures concerning the imposition of discipline.

(j) An employee who tests positive after a random drug test shall be subject to the same conditions as those who test positive under “reasonable suspicion” drug test.

(k) The random selection of a member will not result in the member’s name being removed from any future selection process.

(l) If an officer is selected for a random test, but is unavailable due to extenuating circumstances, no disciplinary action will be taken (e.g., in court, on a surveillance, engaged in a police activity that the employee is participating in such as a drug raid, hostage situation, etc.). The test will be administered as soon as practicable after the employee is available.

Section 6. Tests to be Conducted

In conducting the testing authorized by this Agreement, the Employer shall:

(a) use only a clinical laboratory or hospital facility that is licensed pursuant to the Illinois Clinical Laboratory Act that has or is capable of being accredited by the National Institute of Drug Abuse (NIDA) and Department of Transporations (DOT)

(b) select a laboratory or facility that conforms to all NIDA standards and DOT;

(c) establish a chain of custody procedure for both the sample collection and testing that will ensure the integrity of the identity of each sample and test result;

(d) collect a sufficient sample of the bodily fluid or material from an employee to allow for initial screening, a confirmatory test and a sufficient amount to be set aside reserved for later testing, if requested by the employee;

(e) collect samples in such a manner as to preserve the individual employee’s right to privacy, ensure a high degree of security for the sample and its freedom from adulteration;
FIRST PROPOSAL

(f) confirm any sample that tests positive in the initial screening for drugs by re-testing the second portion of the same sample by gas chromatography mass spectrometry (GCMS) or an equivalent or better scientifically accurate and accepted method that provides quantitative data about the detected drug or drug metabolites;

(g) provide the tested employee with the opportunity to have an additional sample tested by a clinical laboratory or hospital facility of the employee’s own choosing, at the employee’s own expense; provided the employee notifies the Employer within seventy-two (72) hours of receiving the results of the tests;

(h) require that a laboratory or hospital facility report to the Employer that a blood or urine sample is positive only if both the initial screening and the confirmation tests are positive for a particular drug. The parties agree that should any information concerning such testing or the results thereof be obtained by the Employer inconsistent with the understandings expressed herein (e.g., billings for testing that reveal the nature or number of the tests administered), the Employer will not use such information in any manner or forum adverse to the employee’s interest;

(i) require that with regard to drug testing, for the purpose of determining whether the employee is under the influence of drugs on a 5 panel drug test with test results higher than the following:

Amphetamines 1000ng/ml
Cocaine Metabolites 300ng/ml
Marijuana Metabolites 50ng/ml
Opiates 2000ng/ml
Phencyclidine 25ng/ml

those testing higher will be removed from safety sensitive positions.

(j) require that with regard to alcohol testing, for the purpose of determining whether the employee is under the influence of alcohol, test results showing an alcohol concentration of .04 or more based upon the grams of alcohol per 100 milliliters of blood be considered positive (Note: the foregoing standard shall not preclude the Employer from attempt to show that test results between .02 and .04 demonstrate that the employee was under the influence, but the Employer shall bear the burden of proof in such cases); those testing .04 or higher, will be removed from safety sensitive positions.
FIRST PROPOSAL

(k) provide the employee tested with a copy of all information and reports received by the Employer in connection with the testing and the results;

(l) ensure that no employee is the subject of any adverse employment action except emergency temporary assignment or relief of duty during the pendency of any testing procedure. Any such emergency reassignment or relief from duty shall be immediately discontinued in the event of a negative test result.

Section 7. Right to Contest

The Union or the employee, with or without the Union, shall have the right to file a grievance concerning any testing permitted by this Agreement, contesting the basis for the notice to submit to the tests, the right to test, the administration of the tests, significance and accuracy of the tests, the results or any other alleged violation of this Agreement. Such grievances shall be commenced at Step 2 of the Grievance Procedure. It is agreed that the parties in no way intend or have in any manner restricted, diminished or otherwise impaired any legal rights that employees may have with regard to such testing. Employees retain such rights as may exist and may pursue the same in their own discretion, with or without the assistance of the Union.

Section 8. Voluntary Requests for Assistance and Discipline

The Employer shall take no adverse employment action against any employee who voluntarily seeks treatment, counseling or other support for an alcohol or drug related problem, other than the Employer may require reassignment of the employee with pay if he is then unfit for duty in his current assignment. All such requests for assistance and/or referral to treatment shall remain confidential and any information received by the Employer concerning counseling, referral, and/or treatment shall not be used in any manner adverse to the employee’s interest, except as described in this Agreement.

The foregoing is contingent upon:

(a) the employee agreeing to the appropriate treatment as determined by the physician(s) involved; and

(b) the employee discontinues his use of illegal drugs or abuse of alcohol; and
FIRST PROPOSAL

(c) the employee completes the course of treatment prescribed, including an "after-care" group for a period up to twenty-four (24) months; submits proof of completion; and

(d) the employee agrees to submit to random testing during hours of work during the period of "after-care."

Employees who do not agree to or who do not act in accordance with the foregoing, or test positive a second or subsequent time for the presence of illegal drugs or alcohol during hours of work shall be subject to discipline, up to and including discharge.

The foregoing shall not be construed as an obligation on the part of the Employer to retain an employee on active status throughout the period of rehabilitation if it is appropriately determined that the employee's current use of alcohol or drugs prevents such individual from performing his duties or whose continuance on active status would constitute a direct threat to the property or safety of others. Such employees shall use accumulated paid leave or take unpaid leave of absence, pending treatment.
FIRST PROPOSAL

SHERIFF’S PROPOSAL

APPENDIX

DRUG TESTING LOCATIONS

Provena Mercy Occupational Center
1320 N. Highland Ave
Aurora, IL 60506
Monday thru Friday
Hours: 0730 Hrs. to 1800 Hrs.
630-859-8159

Provena St. Joseph Occupational Center
87 N. Airlite St. Suite 130
Elgin, IL 60123
M,W,F, 0700 Hrs. to 1700 Hrs.
T & Th, 0700 Hrs. to 1800 Hrs.
847-931-5555

Testing Locations After Hours
Provena Mercy Medical Center (Emergency Room)
1325 N. Highland Ave
Aurora, IL 60506
Monday Thru Friday
1800 Hrs. to 0730 Hrs.
Saturday & Sunday
24 Hours
630-801-2800

Provena Med-Care
2250 West Algonquin Rd.
Lake in the Hills, IL 60156
24 Hours 7 Days a Week
847-854-5511