BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL

and

COUNTY OF TAZEWELL and TAZEWELL COUNTY SHERIFF'S DEPARTMENT

No. S-MA-15-055

Appearances:

Mr. Bob Scott, Attorney, Illinois Fraternal Order of Police Labor Council, on behalf of the Union.

Husch Blackwell by Ms. Sonni Fort Nolan, and by Quinn, Johnston, Henderson, Pretorius & Cerulo, by Mr. Stephen M. Buek, on behalf of the Employer.

ARBITRATION AWARD

The above-entitled parties, herein "Union" and "Employer," engaged in negotiations for a successor collective bargaining agreement to replace the contract, ("CBA"), which expired on November 30, 2014. They reached agreement on a four-year contract which runs from December 1, 2014, to November 30, 2018, and on all issues except for wages; retroactive pay; retiree health insurance; capping compensatory time; gender based shift assignments; and Merit Commission language.

Pursuant to Section 14 of the Illinois Public Labor Relations Act, herein "Act," the parties selected Amedeo Greco to serve as the Arbitrator. A hearing was held on October 12, 2016, in Pekin, Illinois. The hearing was transcribed and Briefs were received by December 26, 2016.

BACKGROUND

The Union represents for collective bargaining purposes a collective bargaining unit of about 37 Correctional Officers, ("CO's"), employed by the Tazewell County Sheriff's Department which operates a jail.

The parties have agreed that all Tentative Agreements agreed to by the parties shall be incorporated in this Award, (Joint Exhibit 1).

FINAL OFFERS

I. WAGES

A. The Union's proposal is as follows:

Effective 12/1/14	2%
Effective 12/1/15	2%
Effective 12/1/16	2.25%
Effective 12/1/17	2.5%

B. The Employer's proposal is as follows:

- (a) The Employer proposes a 4 year contract that begins on December 1, 2014.
- (b) The Employer proposes the following for wage increases: 1.5% for the first year of the contract, 1.75% for the second year of the CBA, 2% for the third year of the CBA; and 2.25% for the fourth year of the CBA.

NOTE: The Employer and Union reached a Tentative Agreement on the Shift Differential component of the Employer's Wage Offer, and agreed to submit the issue of who will be eligible for retroactive wages to the Arbitrator. See Issue 5 herein. The Employer's offer of retroactive wages is subject to Issue 5.

II. **RETROACTIVE PAY**

A. The Union's proposal is that Section 27.1 is no longer part of the CBA but that if it is part of the CBA, the Status Quo on Section 27.1 should remain.

B. The Employer's proposal is as follows:

Sub-Issue A:
It is the position of the Employer that the language addressing payment and eligibility for retroactive pay contained in Section 27.1 of the CBA was not removed from the contract by agreement of the parties or otherwise, such that the status quo on retro pay is that the following language on eligibility remains in Section 27.1 of the CBA and need only be updated by date:

> *It is agreed that all employees on the payroll as of the date of ratification by the bargaining unit and any employee who has retired in good standing since December 1, 2008 shall be eligible for and receive a retroactivity pay check for all hours paid since December 1, 2008.*

Sub-Issue B:

ADD TO Section 30.3: In order to be eligible for retro pay, an employee must be employed at the time the union and the employer agree to the terms of the agreement and ratification or must be employed 20 days after an interest arbitration award that is adopted by vote or statute. Any employee terminated for just cause or who voluntarily quits, other than for retirement, prior to payment will no longer be eligible for retro pay.

III. **RETIREE HEALTH INSURANCE**

A. The Union's proposal is Status Quo on Section 22.2 of the CBA which states:

"Any employee covered by this Agreement who is retired or retires before Dec. 1, 1993, will be provided the same medical and life insurance on the same terms and conditions as active employees with the exception of the 25% family dependent premium payment by the Employer which the retired employee shall pay, except that a retiree who has qualified for IMRF benefits reaches age sixty-five (65), the County's contribution toward the medical insurance premium will be applied to a supplemental Medicare policy."

"Any employee covered by this agreement who retires after November 30, 1993, will be provided the same medical and life insurance on the same terms and condition as active employees, but shall pay fifty percent (50%) of the premium

costs for the employee only. No dependent coverage will be paid by the Employer and should the retired employee elect dependent coverage they shall pay all of the same. Any retired employee who qualifies for IMRF benefits, the County's contribution toward medical insurance premiums will be applied to a supplemental Medicare policy to which the employee will pay fifty percent (50%)."

"If a correctional officer retires prior to November 30, 1993 and accepts employment that offers another health plan for which the retiree qualifies, the retired employee must enroll in the new plan. The County's policy will become the secondary provider until such time as the retiree is no longer covered by a health care plan of another employer."

B. The Employer's proposal is as follows:

Article 22, Section 22.2: Remove current language and add the following new language:

"Retirement will be subject to the IMRF. In addition, any Corrections Employee who is not at least fifty-five (55) years of age, has twenty (20) years or more years of continuous service as a Tazewell County Corrections Officer Employee, and retires, shall have $12.50/month for each year of service completed, up to twenty-five (25) years credit, paid on the Employee's behalf by the Employer for county health insurance coverage until the Employee reaches the age of eligibility for Medicare coverage. However, in the event an Employee becomes eligible for health insurance coverage elsewhere due to the Employee's future employment or spouse's employment, the Employee shall notify the Employer and the Employee's eligibility for this benefit shall end. All benefits are subject to the plan documents which govern eligibility for benefits. In the event of a conflict, the summary plan description will control.

Any employee who has 15 years of service completed at the time of ratification would be grandfathered in and their benefits would be governed under the previous language. All other employees would be subject to this language."

IV. CAPPING COMPENSATORY TIME

A. The Union's proposal is as follows:

Amend Section 14.4-Comp Time Pool

"Each employee will be allowed to assign up to three (3) hours comp-time to a comp-time pool for authorized use by any Labor Council member for the purpose of conducting Labor Council or Labor business. Use of the comp-time pool shall not cause overtime to the Department nor count toward the maximum ~~forty (40)~~ eighty (80) hour comp-time accumulation."

Amend Section 15.2-Overtime Pay

"Compensatory time to a cap of ~~forty (40)~~ eighty (80) hours per fiscal year may be taken by an employee in lieu of compensation for overtime hours worked, at the election of the employee; however the Sheriff has discretion to allow more than ~~forty (40)~~ eighty (80) hours in a fiscal year."

B. The Employer's proposal is Status Quo on Article 15, Section 15.2 of the CBA regarding the cap on Compensatory Time which states in pertinent part:

. . .

Compensatory time to a cap of forty (40) hours per fiscal year may be taken by an employee in lieu of compensation for overtime hours worked, at the election of the employee; however, the Sheriff has discretion to allow more than forty (40) hours in a fiscal year. Compensatory time for overtime shall be calculated at the rate of one and one-half (1½) hours for each hour worked. Compensatory time to a cap of sixteen (16) hours may be carried over to the next fiscal year. Any hours above the sixteen (16) may not be carried over to the next fiscal year and will instead be paid to the bargaining unit member at the appropriate hourly base rate.

Overtime shall continue to be distributed according to the current practice. See attached Guidelines in Appendix E.

. . .

V. GENDER BASED SHIFT ASSIGNMENTS

A. The Union's proposal is Status Quo on Section 13.9 of the CBA which states in pertinent part:

. . .

There will be a minimum of one (1) female correctional officer and one (1) male correctional officer, excluding classification officers, bid on each shift. At no time will any female correctional officers on the same shift have exact common days off. Days off may overlap; i.e. Friday/Saturday and Saturday/Sunday but will not be exact. The Employer maintains the right to reassign probationary employees as necessary for the effective operation of the jail.

B. The Employer's proposal is as follows:

- **Article 13-Section 13.9 of the CBA**: Add the following language at the end of the Section: "The Employer retains the right to reassign the most junior employee to a different shift if both genders will not be present on every shift, regardless of the reason for the absence. The Employee will be given seven (7) days' notice of any reassignment pursuant to this paragraph."

VI. MERIT COMMISSION RULES

A. The Union's offer is Status Quo on Art. 28, Section 28.1 of the CBA which states: "Work Rules and Personnel Policies":

"To the extent that the Tazewell County Sheriff's Work Rules, Merit Commission Rules and Regulations and Procedures, the Tazewell County Employees Personnel Policies Handbook does not conflict with the provisions of this Agreement, such policies shall continue in full force and effect." (The Union would note there are several sections which refer to the Merit Commission rules and for whatever reason, although our position is status quo, the Union did not detail every single one in the proposal. That being said status quo would cover them all.)

B. The Employer's offer is as follows:

- Remove all references to the Merit Commission for all uses.

DISCUSSION

The statutory criteria in Section 14(h) of the Act provides:

. . . As to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more clearly complies with the applicable factors prescribed in subsection (h). The findings, opinion and order as to all other issues shall be based upon the applicable factors prescribed in subsection (h).

5 ILCS 315/14(h)

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its 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, 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 in private employment.

There are no issues under Factors (1), (2), 4(B), and (8) relating to the lawful authority of the employer; the stipulations of the parties; the comparison of the wages, hours, and conditions of employment of the employees herein with employees in private employment; and other factors.

The internal comparables consist of the Deputies who perform significantly different duties on the road as opposed to the CO's who take care of inmates in the jail. In addition, there is no evidence showing where the Deputies stand vis a vis the deputies in the external

comparables and whether they deserved higher wages in order for them to catch up or to retain their relative rankings among those comparables. The external comparables involving other Correctional Officers therefore shall be given more weight than the internal comparables.

The parties have agreed to the following counties as external comparables: Champaign, Kankakee; LaSalle; Macon; McLean; Peoria; Sangamon; and Woodford.

The Union's wage proposal calls for increases of 2%, 2%, 2.25% and 2.5% effective December 1, 2014, December 1, 2015, December 1, 2016 and December 1, 2017.

The Employer's wage proposal calls for 1.5%, 1.75% 2% and 2.25% on December 1, 2014, December 1, 2015, December 1, 2016 and December 1, 2017.

The Union states that its wage offer should be selected because the Employer is not claiming an inability to pay and that it has failed to prove its "doomed financial scenario." It also asserts that its proposal is supported by the external comparables; that the bargaining unit otherwise will slip in the comparable rankings; and that the Tazewell County Sheriff's Deputies, ("Deputies"), will receive higher yearly wage increases of 3.25%; 2%; 2.25%; and 2.5% between 2014 and 2018.

The Employer states that its wage proposal should be adopted because it "is already better than the coverage of all the comparable jurisdictions" except for "top pay," and because its proposal goes "beyond the cost of living." It further states that the Union's proposal would "further strain" the Employer's budget which is facing a shortfall, and that the Deputies are not a proper comparable because of their different duties "working outside in all kinds of elements and circumstances."

The external comparables, (Union Exhibit 3), show that the CO's for 2014 under the Union's proposal would be $2,636, $939, $228, $1,016, $1,998 and $2,820 above the average yearly salaries from the start step to various steps up to after 20 years, and that they would be $1,531 below the average yearly salary at top pay.

Under the Employer's proposal, the CO's would be $2,430, $729, $1,766, $1,726 and $2,531 above the average yearly salaries from the start step to various steps up to after 20 years, and they would be $1,819 below the average yearly salaries at top pay.

For 2015, the CO's under the Union's proposal would be $3,001, $1,262, $529, $1,329, $2,202 and $3,157 above the average yearly salaries from the start step to various steps up to after 20 years, and they would be $1,319 below the average at top pay.

Under the Employer's proposal, the CO's would be above the average yearly salaries by $2,688, $942, $182, $947, $1,787 and $2,716, from the start step to various steps up to after 20 years, and they would be $1,759 below the average top pay.

For 2016, the CO's under the Union's proposal would be $2,993, $1,207, $443, $1,250, $2,267 and $3,099 above the average yearly salaries from the start step to various steps up to after 20 years, and they would be $1,516 below the average top pay.

Under the Employer's proposal, the CO's would be above the average yearly salaries by $2,566, $771, $731, $1,702 and $2,499 at various steps and $30 below the average yearly salaries after five years and $2,116 below the average top step.

For 2017, the CO's under the Union's proposal would be $3,109, $1,278, $490, $1,319, $2,360 and $3,211 above the average yearly salaries from the start step to up to after 20 years, and they would be $1,548 below the average top pay.

Under the Employer's proposal, the CO's would be above the average yearly salaries by $2,563, $720, $655, $1,638 and $2,445 at various steps and they would be $114 below the average comparables after 5 years and $2,314 below the top pay.

These external comparables support the Employer's proposal because the CO's under its proposal will remain above the average comparable wages at almost all steps of the salary grid except for top pay and a few exceptions.

The Union points out that there will be some slippage in the CO's rankings among the comparables starting in 2015 under the Employer's proposal. That, though, is not enough to offset the fact that the CO's are above the average comparables at almost all steps and that this Factor strongly supports the Employer's proposal notwithstanding any small drop in the rankings for some steps.

The Union also points out that the Employer is not making an inability to pay argument, and thus argues that the Employer can afford to meet the Union's proposal.

That is true. However, it also is true that the Employer is facing difficult economic straits as shown by a reduced fund balance; the closing of the Mitsubishi plants; the significant layoffs at the Caterpillar plant; and the $700,000 decline in jail revenues, all of which have resulted in 10 percent across-the-board budget reductions in all County departments. The Employer thus is not in a position to pay more than is required under the statutory Factors.

The Employer's wage proposal also is supported by Factor 5 above relating to the CPI, as the Midwest Region CPI in 2016 rose about 1.2% which is closer to the Employer's 2016 wage offer of 1.75% than the Union's offer of 2%.

Given all of the above, I find that the Employer's wage proposal is more reasonable and should be adopted. [1]

There are two sub-issues involving retroactivity of the wage increases: whether the parties in the past contract negotiations agreed to delete Section 27.1 of the CBA and whether that language should be contained in the new agreement.

The Union maintains that Section 27.1 was dropped by the parties in the last contract negotiations. The Employer states that Section 27.1 was not dropped.

Both parties have presented considerable evidence regarding their respective positions and what transpired in the last round of contract negotiations.

This conflicting evidence is murky, as it appears that the parties had a good faith misunderstanding over what was then being agreed to. Given this missing of the minds, I find that there was no clear agreement over whether the language in Section 27.1 was deleted.

As for whether that language should be in the new agreement, the Union states as a back-up position that it should be retained and that wages should be paid "to the effective date of the awarded wage increases for whichever wage offer is adopted" for "all hours worked," which would include CO's who no longer are employed. The Union adds that the Employer "has provided no reason for a change," and that its proposal is supported by the external comparables because Champaign County, Kankakee County, LaSalle County, Macon County, Peoria County and Sangamon County. The Union asserts that they "all provide full retro to the effective date of

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[1] The Union's proposal also calls for updating the dates in Section 27.1 "to reflect the term of this agreement . . .," and the new agreement shall be so updated.

the wage increase and there is no language which qualifies who may receive retro pay," except for McLean and Woodford Counties who respectively provide retro pay to the time the contract is executed and to contract ratification.

The Employer asserts that its proposed change is needed because it "is consistent with the entire history of the parties regarding eligibility for retro pay," and because the Union's position "is completely contrary to the position the parties have taken over the past two decades." It also states that the Union has failed to meet its burden of proving that the status quo should be changed; that the Employer's proposed change is needed to avoid the past confusion over when retro pay will be given; and that "the only comparable units" are the Deputies who have the Employer's language.

The Deputies' contract provides wage increases for those on the payroll as of the date of ratification and who retired in good standing on or after December 1, 2015. That contract, though, kicked in on December 1, 2015, which means that retroactivity was not an issue.

Furthermore, the Union's proposal is supported by six out of the eight external comparables which deserve greater weight than the Deputies' comparable. In addition, it is unfair to deny retro pay to employees who were working on the dates the wage increases went into effect regardless if they are still employed by the Employer.

I therefore find that the Union's proposal regarding retro pay for all hours worked, which includes CO's who have left employment, is more reasonable and should be adopted.

Turning to retiree health insurance, the Employer proposes to delete the current contract language in Article 22, Section 22.2, of the CBA which requires the Employer to pay 50% of the health insurance employee premium and to, instead, provide for a flat dollar amount for each year of service until a CO reaches the age of eligibility for Medicare coverage (CO's with more

than 15 years of service are grandfathered). The proposal also states that CO's who leave employment and obtain employment elsewhere where insurance is provided are no longer eligible for the Employer's insurance.

The Employer asserts that its proposal is needed to cut medical and pension expenses in order to avoid a possible financial "catastrophe," and that its proposal is supported by the external comparables because it pays the second highest level of benefits. It also argues that it has offered wage increases and shift differential increases in return; that it is in the public interest to adopt this limitation; and that its proposal is needed to avoid "unknown liabilities" and to "assist in covering the future costs of this benefit."

The Union counters that the Employer's proposal is unreasonable because it would no longer provide for dependent coverage (at no cost to the Employer); because it would do away with secondary health insurance; and because it would do away with the Employer's life insurance plan. The Union also states that the Employer's proposal represents "a drastic change to the status quo"; that the external comparables do not favor either party; and that "the Employer has no true issue that needs fixing . . ." The Union adds that the Employer has failed to establish the need for changing the Employer's current percentage premium contribution to a flat dollar amount.

It is understandable why the Employer wants to reign in its costs for retirees' insurance.

However, the record shows that no retired CO's have taken health insurance and that only one CO is eligible for such benefits in 2017. The Employer therefore has not yet suffered any financial consequences under the current language, and it also has failed to establish how much it

will have to pay in the next several years. The Union therefore correctly points out that "The Employer's rationale is speculative at best and there is no evidence that it will remedy the dilemma claimed by the Employer."

Furthermore, the Employer wants to delete the existing life insurance and dependent coverage for CO's even though that benefit is provided in the Deputies' contract. It also wants to convert its current percentage contribution to a flat dollar amount even though the Deputies' contract provides for a percentage contribution.

The Employer's proposal regarding dropping secondary insurance if a retired CO finds other employment which provides insurance is more reasonable because the Deputies' contract already provides for that and because the Employer should not be burdened with providing insurance when it is offered elsewhere.

As for the external comparables, there is no specific contract language regarding retirees' health insurance in Peoria, Sangamon and Woodford Counties even though retiree health insurance is offered. Employees pay 100% of the insurance premium in Sangamon County and Peoria County, and it is unknown what they pay in Woodford County. Employees pay 100% of the insurance in Macon and Champaign Counties. In McLean County the Employer pays 82% for the retiree only; 56% for the employee/spouse; 60% of employee/child; and 56% of family coverage. Kankakee County has language providing for a flat dollar contribution of $12.50 for each year of service by the employer which is similar to the Employer's proposal. LaSalle County requires retirees "to contribute for single/family coverage in the amount equal to that contribution for all retired employees of LaSalle County."

These comparables support the Employer's proposal because they show that the current retiree plan exceeds what is found elsewhere.

On balance, however, the Union's proposal is more reasonable and should be adopted because the Employer has not established the need for change, and because the Deputies' contract currently provides for dependent coverage, life insurance coverage, and percentage contributions, all of which the Employer wishes to take away here.

The Union proposes to raise the current 40 hours comp time cap to 80 hours, stating that the 40-hour cap was a rolling cap up until July 23, 2015, and that the Employer's decision to then abolish it has had a detrimental effect because CO's must work so much overtime because of understaffing. It also argues that the Employer has vastly over-estimated the cost of raising the cap; that the comparables support its proposal; and that the jail "has been consistently understaffed" which has resulted in "massive amounts of overtime."

The Employer states that the status quo should continue because the Union has not offered a quid pro quo or a means to pay for the change; because overtime is not excessive; and because the current cap limits banking to a reasonable level. It also asserts that overtime went down nearly $200,000 in overtime pay and comp pay in one year after it abolished the rolling cap; that some CO's were able to previously bank about 300 hours under the rolling cap; and that employees "still get and use comp time at the same rate as anywhere else."

The prior rolling cap certainly greatly increased the Employer's overtime costs because of the need to fill so many vacant shifts. The Employer thus had good reasons to abolish it in favor of the clear contract language limiting comp time at 40 hours.

It is less clear, however, how much of the Employer's savings were directly attributed to abolishing the rolling cap. But that savings is not the real issue here. Rather, the key question is

what would the Union's proposal cost the Employer. The Union claims that raising the cap to 80 hours for the 37 CO's would generate an additional 1,480 hours worth of compensation that would cost the Employer about $51,430.

While the Union has not offered a quid pro quo for its proposal, that is immaterial since there is no evidence that the Employer in negotiations ever offered the Union a quid pro quo in exchange for the Employer's proposals regarding retiree health insurance, gender based shift assignments, and the Merit Commission.

The external comparables support the Union's proposal. Kankakee County has a 90 hours cap; Macon County has an 80 hours cap; McLean County has a 100 hours cap; Peoria County has a 64 hours cap; Sangamon County has a 90 hours cap; and Woodford has a 60 hours cap. Only Champaign County has a 40 hours cap. The internal comparables also support the Union's proposal, as the Deputies have a 60 hour rolling cap.

Given the overwhelming weight of these comparables, I find that the cap should be lifted and that the Union's proposal should be adopted because it is more reasonable.

The Employer proposes to amend Article 13, Section 13.9 of the CBA by providing for gender based shift assignments.

It states that this proposal is "necessary and appropriate" and represents the "least intrusive method to cover" long-term absences, and it cites a prior arbitration award issued by Arbitrator Peter Feuille [2] which it states "held that each gender should be present on each shift."

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[2] County of Tazewell/Tazewell County Sheriff's Department and the Illinois Fraternal Order of Police Labor Council, ILRB Nos. MA-12-051, (2014), ("Feuille Award"). There was litigation between the parties regarding the Feuille Award and the Employer's placement of Sergeants and the newly created position of Jail Operations Supervisors, ("JOS"), outside the bargaining unit.

It also argues that its proposal is not about overtime, and that the Union has not provided a realistic solution to this problem. It further states that it needs to assign both genders to a shift because its proposal is the least intrusive method for doing so, and because "common sense" and state and federal law supports its position. It adds that "The Union has not provided a solution that comports with reality and the law," and that its proposal is not about overtime.

The Union maintains that the status quo should remain because Arbitrator Feuille did not rule that the Employer needed females on each shift; because the Employer has not met its burden of proving that change is needed; and because the Employer's proposal is over-broad since "it is not limited to a vacancy of seven or more days . . .," thereby enabling the Employer "to fill a single shift on any particular day provided notice was given." The Union adds that the Employer's proposal enables the Employer to transfer CO's of either gender, and that there is no reference to the "length of change or if one has a right to go back." It also states that "the payment of overtime is what is driving this issue"; that the Employer under the CBA and the law can make accommodations without changing the contract language; that the comparables do not support the Employer's position; and that sex-based shift building is discriminatory.

Contrary to the Employer's claim, Arbitrator Feuille rejected the Employer's offer in that case and ruled: "There will be a minimum of one (1) female correctional officer and one (1) male correctional officer, excluding classification officers, bid on each shift. Id. at 16."

Such bidding on each shift does **not** guarantee that there will be females on each shift after that bidding occurs. That is why Attorney Sonni Fort Nolan on behalf of the Employer had a conference call on July `18, 2014, with Arbitrator Feuille and Union Representative Bob Scott wherein she asked Arbitrator Feuille to rule that females had to be on each shift, a request he denied.

The external comparables are mixed since Macon County, McLean County and Peoria County have gender based shifts, whereas other counties do not.

The record shows the Employer has been able to sometimes staff shifts without a female officer, but that it has done so with difficulty because CO's sometimes do not answer the telephone for overtime assignments, thereby leaving the Employer short-handed for unscheduled absences. The Employer also points out that "It simply isn't feasible to call overtime every day . . ." for months at a time when long-term absences occur. Such ad hoc assignments also make it difficult for CO's to make adjustments for such overtime assignments. Giving them a week's notice for long-term absences will help alleviate that problem.

The Union claims that the JOS are able to fill in for absent female CO's. That, though, is sometimes impracticable because they must perform their regular supervisory duties and thus are not always immediately available to perform a female CO's job duties. In addition, grievances were filed in the past when a JOS did so and when a JOS was called in to fill in for a CO. Providing gender based shift assignments should help alleviate such concerns.

Both parties have cited state and federal law, including the Prison Rape Elimination Act, ("PREA"), in support of their respective positions with the Employer claiming, and the Union denying, that the law requires a female CO to always be present to perform certain tasks.

The Employer's position is supported by Piercy v. Maketa, 480 3d 1192, (10th Cir. 2007), where the Court ruled that a gender based shift policy was not discriminatory because:

. . .

> all of the shifts had similar duties and responsibilities, and on this record, cannot be seen as substantially different than one another. Piercy, however, was eligible for different shifts, it was only the frequency with which she succeeded in her bids that was at issue. In this context, the district court properly found EPSOs

> shift-bidding policies that required certain members of female and male guards to be available at CJC were a "mere inconvenience" and did not constitute an adverse employment action. Id.
>
> . . .

Given the Employer's difficulties in properly manning the Jail with female officers, I find that the Employer has proven the need for change.

However, the Union rightly complains that the Employer's proposal is "overbroad" because shift assignments are not limited to a vacancy of seven days or more; because the proposal enables the Employer to transfer CO's of either gender; and because there are no references to either the length of the new shift assignments or if CO's have the right to return to their prior shifts. In addition, there is no reference in the Employer's proposal regarding the shift differential provided for in the CBA.

I therefore find that the Employer's proposal should be adopted subject to the following amendment which shall be incorporated in Article 13, Section 13.9 of the new agreement:

> Such employees must be of the same gender as the absent employees whose shifts must be filled. Such shifts must last seven or more calendar days, [3] and transferred employees shall receive the shift differential provided for in Section 27.3 of the agreement. No such transferred employees shall be required to work on different shifts totaling more than one hundred twenty (120) work days in a calendar year unless they volunteer to work longer on such shifts. Transferred employees at the end of each changed shift assignment lasting seven (7) or more calendar days retain the right to transfer back to their original shifts. [4]

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[3] The Employer has stipulated that its language was "drafted to only address the long-term absences . . ." (Transcript, p. 52.

[4] The parties have agreed that while there is an economic component to this issue, it shall be treated as a non-economic issue. See Transcript of October 12, 2016, hearing, p. 35.

The Union proposes the status quo regarding keeping the references to the Merit Commission in the CBA because "there is no basis" for changing it and because the external comparables support its proposal.

The Employer maintains that it has the legal authority to remove the CO's from the Merit Commission's jurisdiction, and that it has done so lawfully. It adds that there is no need for the current CBA language referring to the Merit Commission; that the Union has not identified any real harm arising from the removal of the current language; and that the external comparables "are of limited value" given the statutory right of Illinois counties to include or remove CO's from the Merit Commission systems.

There are four references to the Merit Commission in the CBA.

Section 13.1, entitled "Probation," refers to promotions and states that at the election of the employee, discipline may be appealed or grieved through either the Article 11 Grievance Procedures or through the Merit Commission. Sections 27.4 and 27.5 entitled, "Regularly Hourly Adjusted Base Rate" and "Upgrade Pay" respectively, provide that the position of Correction Sergeant shall be assigned by the Sheriff from a list certified by the Merit Commission, and Section 28.1, entitled "Work Rules and Personnel Policies," provides that to the extent not in conflict with the CBA, the Merit Commission Rules, Regulations and Procedures shall continue in full force and effect.

The parties in their Tentative Agreements have agreed that "Sergeants are no longer part of the bargaining unit and therefore all references to Sergeants will be removed from the Collective Bargaining Agreement." In addition, the JOS's are not in the bargaining unit.

As a result, CO's no longer can be promoted out of the bargaining unit, and the language in Section 13.1 relating to promotions and the language in Sections 27.4 and 27.5 relating to Sergeants are no longer operative and thus should be removed from the new agreement.

That leaves the Union's objection that the Employer's proposal calls for doing away with the Merit Commission's role in the hiring process and the language in Section 13.1 of the CBA which gives CO's the choice of either going before the Merit Commission for disciplinary matters or going to arbitration.

The Union argues that CO's need that choice because the Merit Commission has successfully handled disciplinary matters in the past, and because the Merit Commission creates "stability" and "continuity" since it "defines the expectations" and "establishes the parameters."

The Merit Commission certainly constitutes a valuable vehicle for addressing personnel issues.

However, Illinois law expressly gives county boards the authority to both place and remove CO's from a Merit Commission's jurisdiction. See 55 ILCS 5/3 – 8007; Goodwin v. McHenry County Sheriff's Department Merit Commission, 316 Ill. App. 3d 1238, 1243, (2nd Dist. 2000); Winstead v. The County of Lake, 111 Ill. App. 3d 323, 327, (2nd Dist. 1982).

In addition, the current contract language enabling CO's to appeal disciplinary matters to the Merit Commission is redundant since CO's also can do so through the contractual grievance arbitration procedure provided for in Article 11 of the CBA. Articles 7 and 10 of the CBA also provide for investigatory rights and a just cause standard.

Furthermore, the Employer under Article 2 of the CBA, entitled "Management Rights," gives the Employer the right to "establish the qualifications for employment and to decide which

applicants will be employed" and to hire employees. The Employer therefore is free to hire employees in any manner it chooses, even if it does so without a Merit Commission hiring list.

I therefore find that the Employer's proposal is more reasonable and should be adopted.

Based upon all of the above, I issue the following

AWARD

1. The Employer's Final Offer regarding wages is selected and shall be incorporated in the new agreement.

2. The Union's Final Offer regarding retroactive pay is selected and shall be incorporated in the new agreement.

3. The Union's Final Offer regarding retiree health insurance is selected and shall be incorporated in the new agreement.

4. The Union's Final Offer regarding capping compensatory time at 80 hours is selected and shall be incorporated in the new agreement.

5. The Employer's Final Offer, as amended on p. 19 above, regarding gender-based shift assignments is selected and shall be part of the new agreement.

6. The Employer's Final Offer regarding the Merit Commission is selected and shall be incorporated in the new agreement.

7. All Tentative Agreements shall be incorporated in the new agreement.

Dated: February 18, 2017

Amedeo Greco /s/

Amedeo Greco, Arbitrator