AWARD OF INTEREST ARBITRATOR

In the Matter of Interest Arbitration Between County of Tazewell/Tazewell County Sheriff's Department and the Illinois Fraternal Order of Police Labor Council	Opinion and Analysis, Findings of Fact, and Award by Arbitrator Peter Feuille in ILRB No. S-MA-12-051

Date of Award: July 10, 2014

APPEARANCES

For the Employer:

Ms. Sonni Fort Nolan, Husch Blackwell LLP, Attorney
Mr. Robert M. Huston, Sheriff
Mr. Kurt T. Ulrich, Jail Superintendent

For the Union:

Mr. Rob Scott, Attorney
C.O. Charles Tyson May, Tazewell County
C.O. Trent Strunk, Tazewell County
C.O. Rhonda Spracklen Randolph, Tazewell County
C.O. Lisa Linton, Tazewell County
C.O. Sara VonDerHeide, Tazewell County
C.O. Michelle Moretto, Tazewell County
C.O. Marissa Force, Tazewell County

INTRODUCTION AND BACKGROUND

The County of Tazewell and the Tazewell Sheriff's Department ("Employer") and the Illinois Fraternal Order of Police Labor

Council (“Union”) negotiated to generate a successor collective bargaining agreement (“CBA”) to succeed the 2008-2011 CBA that expired on November 30, 2011 (Union Exhibit 1 (“UX 1”)). During their negotiations, which included mediation, the parties reached agreement on many issues (UX 4) but were not able to reach agreement on four issues. Accordingly, the Union invoked the interest arbitration procedure specified in Section 14 of the Illinois Public Labor Relations Act ("Section 14," “Act”). The parties selected the undersigned as Arbitrator, waived the tripartite arbitration panel format and agreed that I would serve as the sole Arbitrator, and the Illinois Labor Relations Board ("Board," “ILRB”) appointed me as the interest arbitrator in this matter.

Additionally, the parties waived the Act’s requirement in Section 14(d) that the hearing in this matter must commence within 15 days of the Arbitrator’s appointment, and the parties agreed to waive/extend Section 14(d)'s hearing and other timelines to accommodate the scheduling needs of the participants in this matter (UX 1). I am most grateful for the parties’ willingness to modify the arbitration process timelines contained in Section 14, including providing me with 60 days from my receipt of post-hearing briefs to issue this Award.

By mutual agreement, the parties held an arbitration hearing on February 24, 2014, in Pekin, IL. This February 24 hearing was

stenographically recorded and a transcript was produced. The parties waived oral closing arguments at the hearing and instead submitted written post-hearing briefs. With the Arbitrator's final receipt of these briefs and other post-hearing materials on June 2, 2014, the record in this matter was closed.

STATUTORY DECISION CRITERIA

Section 14(g) of the Act mandates that interest arbitrators "shall adopt the last offer of settlement [on each economic issue] which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Subsection 14(h) of the Act requires that an interest arbitrator or arbitration panel base the decision upon the following Section 14(h) criteria or "factors," as applicable. These factors, in their entirety, are:

(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.

The Act does not require that all of these factors or criteria be applied to each unresolved item; instead, only those that are "applicable." In addition, the Act does not attach weights to these decision factors, and therefore it is the Arbitrator's responsibility to decide how each of the applicable criteria should be weighed. We will use the applicable criteria to make decisions on the issues presented in this proceeding.

However, the Act provides arbitrators with more decision flexibility on non-economic issues. In particular, the parties agreed on the record that the shift bidding issue below is a non-economic issue (Transcript, page 46 ("Tr. 46")). I find that the other three issues on the arbitral agenda (light duty, sergeants, and duty sweaters) also are non-economic as well. The primary indicator of the non-economic status of these issues is the

complete absence of any budgetary and/or monetary data in both parties' exhibits pertaining to all four issues. On each non-economic issue, Section 14(g) allows the arbitrator the latitude to adopt an outcome that is based upon the Section 14(h) factors without any requirement that such an outcome is limited to a choice between the two "last offers of settlement."

ANALYSIS, OPINION, AND FINDINGS OF FACT

The Parties

Employer. The County of Tazewell is a general purpose county government that provides governmental services to Tazewell County citizens, including law enforcement and public safety services via its Sheriff's Department.

Union. As of the date of the hearing in this matter, the instant bargaining unit included about 40 employees (Union Exhibit 2, Tab 12 ("UX 2, T. 12")), all of whom work in the Sheriff's Department as Correctional Officers ("COs"). As we will see below, the parties dispute the status of the Correctional Sergeants. The County Sheriff's deputies are located in a different bargaining unit.

Issues and Final Offers

The record shows that the parties are at impasse over, and have submitted final offer proposals on, four unresolved issues

(shift bidding, light duty, removal of sergeants language, and duty sweaters). The record also shows that the parties have agreed upon a three-year duration for their successor contract (UX 2, T. 4), so the successor CBA will commence on December 1, 2011 and expire on November 30, 2014.

As mentioned previously, I find that all four of the unresolved issues are non-economic issues within the meaning of Section 14. As mentioned, neither party submitted any budgetary or monetary evidence in support of its position on any of these four issues. As a result, this means that I have the latitude on each issue to promulgate a ruling that is not limited to only a choice between the Employer's final offer and the Union's final offer.

The parties referred to a set of comparable counties as comparison jurisdictions in this proceeding. These comparators apparently were established with the assistance of Arbitrator Peter Meyers in a prior interest arbitration proceeding between the instant parties (UX 1, T. 1; Tr. 13). These comparison jurisdictions include Champaign, Kankakee, LaSalle, Macon, McLean, Peoria, Sangamon, and Woodford Counties (UX 1, T. 1). The Union indicated that it would use only these eight comparison jurisdictions (Tr. 106), but the Employer partially demurred and indicated it would also submit information from additional jurisdictions on the shift bidding issue (Tr. 106).

Because neither party submitted any economic or monetary evidence in support of any of its final offers, decision factors (3), (5), and (6) specified above were not used in the analyses below and played no role in the issuance of any of the selection decisions presented in this Award.

1. Shift Bidding (Section 13.9)

Current. CBA Section 13.9 provides that Correctional Officers may select regular days off and shifts twice per year by seniority. Additionally, Section 13.9 mandates that a minimum of three female COs will be bid on each shift ("There will be a minimum of three (3) female correctional officers, excluding classification officers, bid on each shift. At no time will any female correctional officers on the same shift have exact common days off.").

Union Final Offer. The Union seeks to have COs select shifts by straight seniority bidding, and its final offer proposes to accomplish this objective by deleting from the CBA the language requiring that three female COs be bid on each shift.

Employer Final Offer. The Employer proposes in its final offer to modify the just-quoted language in Section 13.9 so that it will be gender-neutral, as follows: "There will be a minimum of three (3) female and three (3) male correctional officers, excluding classification officers, bid on each shift."

Analysis. The Union is the moving party on this issue, as it represents the interests of the female COs in the bargaining unit, many of whom are strongly opposed to the requirement that three female officers must be assigned to each shift.

The Union is strongly opposed to the current gender-based shift bidding language in Section 13.9 because it restricts the opportunities for female COs to obtain their desired shifts and days off compared to what they would be able to obtain without the restrictive Section 13.9 language. The Employer's requirement that at least three female COs must be bid on each shift places the female COs at a distinct shift selection disadvantage compared to male COs in light of the fact that men constitute the large majority of individuals in the bargaining unit (UX 2, T. 12). Additionally, the Union argues that this three-female-COs-per-shift language is discriminatory on its face.

On the external comparability dimension, the Union calls attention to the fact that none of the eight comparable counties have similar language in their CBAs (UX 2, T. 11).

The Union presented proffered testimony from several female COs that each of them was unable to bid onto their desired shift and/or days off, on multiple occasions, due to the existing gender-based staffing requirement in Section 13.9 (CO Sara VonDerHeide, CO Lisa Linton, CO Rhonda Spracklen Randolph, and CO Marissa Force, Tr. 22-28).

The Union additionally argues that it is not necessary for each and every shift to be staffed by multiple female COs. The only gender-specific tasks that female COs are required to perform are strip searches of female inmates. The Union argues that the current practice of placing female inmates in a holding cell while awaiting the arrival of a female CO (for example, a CO who is scheduled to work the next shift) allows the inmate to be properly searched, and any disruption to the inmate, the CO, or the jail schedule is minimal. The Union also points out that strip searches do not occur at all hours of the day and night. Additionally, as noted in CO Michelle Moretto's testimony, an off-duty female officer can be called in to conduct a strip search when needed (Tr. 24-25).

Further, and contrary to one of the Employer's arguments, the Union contends that strip searches do not constitute a bona fide occupational qualification ("BFOQ") in light of the fact that the Employer has allowed numerous shifts to be worked with no female COs assigned to such shifts. For instance, CO Trent Strunk delivered proffered testimony that he worked three times in the six months preceding the instant hearing without a female CO being assigned to his shift (which was the third shift), and that if a strip search was needed the staff placed the female inmate in a holding cell until the next shift (Tr. 25). Strunk similarly testified that he also has worked the second shift with no female

COs present (Tr. 26). CO Charles May delivered proffered testimony that he, too, also worked the second shift with no female COs present (Tr. 27). The Union argues that the testimony of these two male COs, that many shifts are worked with no female COs present, calls into question the Employer's claim that sex is a BFOQ for staffing the shifts in the jail.

The Union also notes that the Employer could utilize another jurisdiction's female officers if a strip search is needed, and says that Sheriff Huston admitted as much in his testimony (Tr. 62). The Union points out that the Tazewell County Justice Center exists in the heart of Pekin and is located directly adjacent to the Pekin Police Department, which facilitates such interdepartmental usage of staff.

The Union pulls this evidence together by arguing that it establishes that there is no absolute need for a female CO to be assigned to each shift. In particular, the evidence demonstrates that there are non-discriminatory alternatives for scheduling, such as calling in a female CO to conduct a strip search or placing a female detainee in a holding cell until a female CO is available. In short, the Union argues that the persuasive evidence on this shift bidding issue provides no support for the Employer's offer.

For its part, the Employer argues that the Union seeks to eliminate the offending language for two reasons: (1) several

female COs did not get their first shift choice when bidding, and (2) the Union claims that this provision is discriminatory.

The Employer points to the external comparables and notes that many of them regularly use gender-based shift bidding. Looking first at the jurisdictions the parties agreed were comparable, the Employer calls attention to the following:

- Kankakee County assigns employees to shifts based upon "manpower needs and [to] maintain the reasonable operating need of the Department of Corrections Division . . . seniority and prior denials of shift preferences shall be additional considerations" (UX 2, T. 11). The Employer points out that this language provides that seniority is only one of the factors taken into consideration for shift assignments, and thus the Kankakee County CBA does not support going to a straight seniority system like the one proposed by the Union.
- The Employer points to the recent arbitration award issued by Arbitrator Anita M. Rowe in a grievance filed by the Union challenging gender-based shift assignments in the Macon County jail (Employer Exhibit 6 ("EX 6")). Those parties' CBA called for shift assignments to be filled by straight seniority, with no contractual reference to gender (EX 6). The Union grieved Macon County's practice of staffing selected CO positions in its jail by gender. The Employer

points out that Arbitrator Rowe denied this grievance, finding that the gender-based staffing practice had become a binding past practice after being in effect for more than 20 years (EX 6).

- McClean County's CBA also provides for shift bidding by seniority, and makes no reference to gender (UX 2, T. 11). However, the Employer points to an email message from McLean County Sheriff Mike Emery to Tazewell County Sheriff Robert Huston in which Sheriff Emery reports that in McLean County one female CO "shall be on duty on all three shifts," and that this aspect of staffing is not addressed in their CBA (EX 5).
- Peoria County's CBA specifies that seniority shall be a consideration in assignments and days off. The contract also provides that "Moves under this 6.1 may be limited by the necessity of maintaining the proper number of male and female corrections and court security officers on duty on any shift" (UX 2, T. 11). The Employer notes that this language clearly permits gender-based staffing.
- Sangamon County's CBA provides for shift bidding by seniority (UX 2, T. 11), and neither party submitted any evidence about how shift assignments are handled in practice.
- Woodford County's CBA allows COs to bid for shifts by seniority, subject to "the Employer's right to staff each

shift with a sufficient number of experienced and qualified employees, or otherwise demonstrate an operational need" (UX 2, T. 11). The Employer says this language allows Woodford County to assign females to every shift.

Taken together, the Employer says the evidence from these comparable counties provides significantly more support for the Employer's offer than for the Union's offer. This contractual support may not be readily apparent just from reading the applicable CBAs in these jurisdictions. However, with a little digging into actual assignment practices, the Employer has collected valuable information about actual shift assignment practices in these comparison counties, and this evidence shows that in some of the comparison jurisdictions employers assign at least one female CO to each shift even if there is no language specifying this practice in the CBA.

The Employer also argues that applicable case law supports the Employer's position. The Employer notes that to properly make a claim of gender discrimination, a plaintiff must present a prima facie case they were discriminated against, which requires showing that they suffered an adverse employment action. An adverse employment action includes a significant change in employment status. The Employer notes that courts will not consider a "mere inconvenience or an alteration of job responsibilities to be an adverse employment action," *Piercy v. Matejka*, 480 F.3d 1192 (10th

Cir. 2007)(in which a CO complained about gender specific bidding). The *Piercy* Court found that the jail's shift bidding policies that required a certain number of female and male guards to be available were a mere inconvenience and did not constitute an adverse employment action. Accordingly, the Employer argues that there is nothing discriminatory about its contractual requirement for gender-specific shift assignments.

The Employer also points to applicable state law in support of its final offer. State law, in Administrative Code Title 20, Chapter I, County Standards Part 701 County Jail Standards, calls for the following:

- 701.20: Requires supervision when feasible by same sex personnel during personal hygiene activities such as showering and toileting.
- 701.40: Requires that strip searches *shall* be performed by a person of the same sex, and the Employer notes that the Union agrees this is a requirement.
- 701.140: Specifies that inmates must be thoroughly searched when leaving or returning to the jail. The Sheriff testified that a female on female search is more thorough than a search of a female detainee performed by a male CO (Tr. 58-59).

- 701.60: Final release search states that a physical inspection by a person of the same sex should be done where possible.
- 701.100: Detainees must be allowed to shower three times a week.

This list indicates the specific duties that the State specifies should or must be performed by a CO of the same gender. The Employer argues that the current shift bidding provision the Union is trying to remove from the CBA would require the Employer to fulfill the above guidelines they must operate under at a greater expense (such as calling in a female CO at an overtime pay rate) and with increased scheduling difficulties.

The Employer also points to the federal Prison Rape Elimination Act ("PREA") as additional justification for the selection of its offer. Among other things, when it goes into effect in August 2015, PREA will prohibit cross-gender pat-down searches in jails. In addition, PREA will require jails to have policies and procedures that will enable inmates to shower, perform bodily functions, and change clothing without members of the opposite gender viewing their private body parts. The Employer argues that the selection of the Union's final offer will place another roadblock in the path of Tazewell's compliance with PREA.

So, what do we have when we pull together all of the evidence on gender-based shift bidding? I find that this body of evidence, particularly the external comparability evidence under Section 14(h)(4) of the Act, does not support the Union's offer to eliminate all contractual reference to gender-based shift bidding. Instead, the Employer's evidence indicates there is clearly a need for some amount of gender-based staffing. At the same time, I also find that the evidence does not indicate that the Employer needs to have three female COs working on each shift. I note, for instance, that McClean County has one female CO on each shift (EX 5), and I take arbitral notice of the fact that McClean County is a more populous county than is Tazewell County.

Accordingly, I find that the appropriate resolution of this non-economic issue is to have the first sentence in the last paragraph in CBA Section 13.9 drafted as follows: "There will be a minimum of one (1) female correctional officer and one (1) male correctional officer, excluding classification officers, bid on each shift." The other parts of Section 13.9 shall continue unchanged. This new language is gender-neutral, and the presence of a female CO on each shift should provide adequate coverage for the gender-specific services to be provided by female COs. This new language shall be referred to as the Arbitrator's final offer.

Finding. After considering the applicable Section 14(h) decision factors, I find, for the reasons explained above, that

the Arbitrator's final offer on shift bidding more nearly complies with the applicable Section 14(h) decision factors than does the Employer's final offer or the Union's final offer on shift bidding. Accordingly, I select the Arbitrator's final offer on shift bidding to resolve this issue.

2. Light Duty (Section 19.8)

Current. CBA Section 19.8 is the contract provision that specifies light duty. CBA Section 19.8, in its entirety, reads as follows: "The Sheriff shall fairly determine whether other light duty opportunities are appropriate and what light duties an employee may be assigned to, if any."

Employer Final Offer. The Employer proposes to eliminate Section 19.8 in its entirety from the contract.

Union Final Offer. The Union proposes to maintain the status quo on the light duty issue, and thereby retain Section 19.8 unchanged.

Analysis. The Employer is the moving party on this issue. The Employer notes that there are no light duty assignments in this unit (Tr. 73, 75-76), and there have been no light duty assignments during the period Section 19.8 has been in effect (Tr. 64-65). The Employer notes that this provision was negotiated into the CBA during the negotiations for the 2008-2011 CBA, and the Employer has not identified any light duty jobs. Accordingly,

because there have not been light duty jobs in this unit, the Employer argues that its proposal does not call for any existing benefit to be taken away from unit members.

The Employer points out that the detention model followed at the County's correctional facility is direct supervision (Tr. 66-67). This means that COs are in direct contact with the inmates during their shifts, and those inmates are not behind bars. As this indicates, Tazewell COs do not monitor inmates on TV screens. As a result, COs must be able to perform 100 percent of the requirements of their position whenever they are on duty.

Moreover, the Employer says that a check of the truly comparable CBAs from the eight comparison jurisdictions, meaning those CBAs that cover only correctional officers and no other classifications, shows that none of these contracts provide for light duty (EX 3).

In response to the Union's argument that several COs with injuries worked during the life of the expiring contract (Tr. 67-74), the Employer points to the testimony of Jail Superintendent Kurt Ulrich. Ulrich testified that if a CO presents with an injury, that CO is tested to determine if s/he can perform the job (Tr. 78-81), and if the CO can pass this test and perform the job s/he is allowed to work. This Employer testimony indicates there is a practice of allowing injured COs to work if they can perform all of the job requirements. As the Employer notes, "If they

[unit members] can do the work, they are allowed to work. Because they cannot run a marathon or lift 100 lbs. does not mean they cannot perform the job requirements" (Employer Brief, page 9 ("Er.Br. 9")). In sum, I note that the Employer's unrefuted evidence establishes that COs with various kinds of injuries are allowed to work if they are able to perform the functions of the job, and this practice exists not because of the language in Section 19.8 but because COs are able to perform their assigned duties. In turn, the key dimension of the status quo on this issue is not the contract language in Section 19.8, but the complete absence of any light duty jobs in this unit.

The Employer says that its key reason for seeking the elimination of Section 19.8 is to not provide false hope to employees. The Employer notes that if an employee seeks to be placed on light duty and uses Section 19.8 as justification for such a request, an Employer response along the lines of "we don't have light duty assignments" is quite likely to generate anger and/or ill will. Eliminating Section 19.8 encourages the parties to deal with the reality of their situation instead of focusing on contract language that can easily be misinterpreted.

In contrast, the Union proposes that Section 19.8 continue in the contract unchanged. The Union points out that the Employer's proposal to depart from the status quo must be fully justified, and must be supported by strong reasons and a proven need. The

Union contends that the Employer demonstrated none of these factors. Similarly, the Union notes that the Employer has not offered a quid pro quo for the removal of this contractual benefit. In sum, the Union argues that this Employer offer must fail because of the Employer's failure to justify this proposed change and the Employer's failure to offer a quid pro quo for the removal of the Section 19.8 language.

I find that the Union's argument is neither compelling nor persuasive. Supt. Ulrich's testimony establishes that the Employer's longstanding practice has been to allow COs to work if they present with an injury that permits them to continue to perform their job duties (Tr. 78-81), and I find Ulrich's testimony to be credible. Similarly, I note that Sheriff Huston testified that there are no light duty jobs in this unit now and there have never been none in the past (Tr. 75-76). As a result, the Employer's proposed removal of Section 19.8 from the CBA is not taking away an actual contractual benefit that is used by unit members. As noted, the Employer's evidence establishes that no light duty jobs have been identified in this unit.

After applying the applicable factors under Section 14(h), I find that the evidence more strongly supports the Employer's final offer than the Union's final offer. The Employer's bargaining history evidence shows that COs have not been placed on light duty status in this bargaining unit. The Employer's external

comparability evidence shows that CO-only bargaining units in comparable jurisdictions do not contain light duty contract provisions (EX 3). That being the case, Section 19.8 is not providing any sort of actual benefit to unit members, and thereby is not serving any useful purpose.

Finding. For the reasons expressed above, I find that the Employer's final offer on the light duty issue more nearly complies with the applicable Section 14(h) decision factors than does the Union's light duty offer. Accordingly, I select the Employer's last offer of settlement on the light duty issue.

3. Sergeants (throughout)

Current. The parties' 2008-2011 CBA covered Correctional Officers and Correctional Sergeants. In January 2012 the Tazewell County Board, at the Sheriff's request, approved the elimination of sergeants from the instant unit (EX 15), and the sergeants were removed. The Union grieved this action, and this grievance was arbitrated. The Arbitrator sustained the grievance in an award issued in November 2013 (UX 2, T. 20). However, the Employer appealed this award to the Tenth Judicial Circuit Court, and the Circuit Court issued its ruling in December 2013, reversing the arbitrator (UX 2, T. 21). I note that the Tenth Circuit's analysis and ruling was based primarily on language in the CBA's management rights clause (UX 2, T. 21). The Union has

subsequently appealed this lower court decision to the Illinois Appellate Court – Third District (UX 2, T. 22), and this sergeants matter is currently pending at that level.

Union Final Offer. The Union's final offer proposes to maintain the status quo on this issue, and thereby retain the existing sergeants language in the CBA.

Employer Final Offer. The Employer's final offer proposes to remove "all language regarding Sergeants throughout the CBA and memorializing the premium pay for Sergeants in case the classification is once again used" (Er.Br. 1).

Analysis. The Employer is the moving party on this issue. The Employer emphasizes that sergeants are no longer in the instant bargaining unit, sergeants have not been in the unit for almost 2.5 years, and accordingly there is no need for language about sergeants to remain in the contract.

As the Union correctly notes, however, this matter is on appeal and is the subject of ongoing litigation. The Union advanced multiple arguments for retaining this language, including that the CBAs from comparable jurisdictions overwhelmingly support the retention of the sergeants language (UX 2, T. 19), and also that the Illinois Public Labor Relations Act ("Act") and contracts negotiated under this Act have supremacy over county ordinances.

This language retention issue is before us because the Employer unilaterally removed sergeants from the bargaining unit.

The Employer did so because the Sheriff was very displeased by the alleged poor quality of supervision provided by the sergeants in this unit (see UX 2, T. 20; EX 16). This Employer action was twice appealed, the first time by the Union to arbitration, and the second time by the Employer to Circuit Court. This Employer action now awaits the outcome of a third appeal, this time by the Union to the Third District Appellate Court.

I find that whether or not the sergeants language should be retained in the parties' CBA is a corollary of the decision about whether or not sergeants will be retained in the bargaining unit, a matter that has not been the subject of a final adjudication and which is not before us in this proceeding. Because this matter is still pending in the judicial decision hierarchy, it would be premature for me to issue a ruling that impinges upon the status quo. Accordingly, I issue the following ruling on this sergeants language issue, as follows.

The status quo on the existing sergeants language shall be maintained while the litigation on this issue continues forward to a final resolution. The Employer presented no evidence that the retained sergeants language in the CBA has caused, or is causing, any problems. In addition, I note that the heavy majority of the agreed comparable jurisdictions include sergeants in their bargaining units (UX 2, T. 19).

Finding. For the reasons expressed above, I find that the Union's final offer on the sergeants issue more nearly complies with the applicable Section 14(h) decision factors than does the Employer's offer on this issue. Accordingly, I select the Union's last offer of settlement on the sergeants issue.

4. Duty Sweaters (Appendix C)

Current. Appendix C specifies a list of articles of clothing and equipment that the Employer will supply to COs under the heading of "Uniforms." Duty sweaters are not included in Appendix C.

Union Final Offer. The Union proposes to add the following sentence to Appendix C: "Duty sweaters may be worn as part of the approved uniform." With the addition of this language, unit members may purchase and wear duty sweaters with their annual uniform allowance.

Employer Final Offer. The Employer proposes that the status quo be continued unchanged on this issue, which means that duty sweaters will not be added to Appendix C and may not be worn by unit members.

Analysis. The Union is the moving party on this issue. The Union proposes adding duty sweaters to the list of approved uniform items because during the cold weather months the Union notes that the inside temperatures in the Tazewell County

Correctional Facility can become rather chilly. In addition, the Union points out that the Employer's deputy sheriffs are allowed to wear duty sweaters while they are on the job. Further, the Union says its final offer on this issue is a no-cost item, in that its proposal does not call for duty sweaters to be mandatory, but only an item that COs may purchase via their contractual uniform allowance.

The Employer responds by noting that that the Sheriff already permits COs to wear white clothing underneath their uniforms, which allows COs to be more comfortable during cold weather months. The Employer also notes that the inmates in the facility wear short sleeve shirts, which requires a controlled temperature environment that makes indoor temperatures more moderate. More importantly, the Employer argues that the Union's sweater proposal allows the COs on duty on any given day to wear something different to work (sweater or no sweater, at the employees' choice), and when that occurs they are no longer attired in a consistent (i.e., "uniform") manner (Er. Br. 12).

I find that both proposals are reasonable. I also find that the Employer's proposal is more reasonable. The Union's use of the Employer's sweater-wearing deputy sheriffs as a comparable on this issue is not at all effective, as deputies perform very different tasks than do COs, and deputies perform many of their duties outside while COs work inside. The Employer notes that

there are no CO bargaining units that permit duty sweaters among the comparable eight counties (Tr. 97). Further, there is currently a practice in place of allowing unit members to wear white clothing under their uniforms (Tr. 97). As a result, the Union has not presented evidence demonstrating a need for duty sweaters that overcomes the Employer's strong preference for having all unit members on duty be dressed in a uniform manner, rather than some in duty sweaters and others not.

Finding. For the reasons expressed above, I find that the Employer's final offer on the duty sweater issue more nearly complies with the applicable Section 14(h) decision factors than does the Union's duty sweater final offer. Accordingly, I select the Employer's last offer of settlement on the duty sweater issue.

Tentative Agreement Provisions

As noted above, the parties resolved several issues during their negotiations. Consistent with widespread terminology, they referred to these items as TA'd (tentatively agreed to) issues. Several of these TA'd items are found in UX 2, T. 4. Accordingly, I hereby incorporate into this Award all of these TA'd issues and provisions by reference.

AWARD

Under the authority granted to me by Section 14(g) of the Illinois Public Labor Relations Act, I find that the following outcomes more nearly comply with the applicable decision factors prescribed in Section 14(h) of the Act. Accordingly, I select and award these outcomes on the issues on the arbitral agenda:

1. Shift Bidding (Section 13.9)

   The Arbitrator's offer (p. 16) is selected.

2. Light Duty (Section 19.8)

   The Employer's offer (p. 17) is selected.

3. Sergeants Language (throughout)

   The Union's offer (p. 22) is selected.

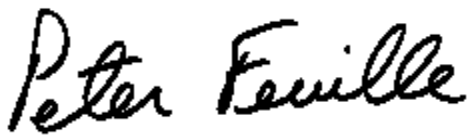
4. Duty Sweaters (Appendix C)

   The Employer's offer (p. 24) is selected.

In addition, all of the parties' TA'd issues are incorporated by reference into this Award.

It is so ordered.

Respectfully submitted,



Champaign, IL
July 10, 2014

Peter Feuille
Arbitrator