

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Contract Between  
**DELAWARE COUNTY (SHERIFF'S DEPARTMENT)**

and

**AFSCME COUNCIL 61, LOCAL 1835**

IOWA PERB

CEO 880/Section 2

(2014-2015 Agreement)

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**Appearances:**

**Ms. Robin White**, Union Representative, AFSCME Council 61, 1633 265<sup>th</sup> Avenue, Earlville, Iowa 52041-8669, on behalf of the Union.

Simmons Perrine Moyer Bergman, P.L.C., by **Mr. James M. Peters, Esq.**, 115 Third Street SE, Suite 1200, Cedar Rapids, Iowa 52401-1266, on behalf of the County.

**ARBITRATION AWARD**

Pursuant to the terms of the parties' current 2014-15 labor agreement effective from July 1, 2012 through June 30, 2015, which contains a wage and insurance reopener provision, the parties jointly selected Arbitrator Sharon A. Gallagher through the Iowa P.E.R.B. to hear and resolve their 2014-15 reopener dispute over shift differential for County Deputies and Jailers under Chapter 20 of the Iowa Code. There were no negotiability disputes between the parties regarding this case. The parties have an independent impasse resolution procedure in their contract and they executed a modification thereof for 2014-15 which they have fully followed herein. The modified procedure requires that this Award issue by close of business on March 31, 2014.

The hearing was held by agreement of the parties on March 17, 2014 at Manchester, Iowa. The parties had a full and fair opportunity to make opening statements, submit documentary evidence, and to make arguments and objections. The Union submitted 32 exhibits (U. Exhs. A-I and K-Z); the County submitted 6 exhibits (Er. Exhs. 1-6). All exhibits were reviewed/described by the advocates and each advocate questioned the other about their exhibits.. Two witnesses were also called – one by each party – who were sworn by the Arbitrator on oath or affirmation. As required by law, the Arbitrator recorded the proceedings.

The parties chose not to orally argue at closing or to submit written briefs. The record in the case was closed on March 17, 2014.

### **STATUTORY CRITERIA**

This case is controlled by Section 20.22 (9) of the Iowa Code. That Section reads as follows:

9. The panel of arbitrators shall consider, in addition to any other factors, the following factors:

*a.* Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

*b.* Comparison of wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

*c.* The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

*d.* The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

Section 20.22 (11), stats., also requires the Arbitrator to select the "most reasonable offer of the parties' final offers on each impasse item.

Neither party made any arguments that the County could not finance the Union's offer if selected (Factor (c)) or that the County would lack the power to levy taxes/funds for the conduct of its operations if the Union's offer were chosen (Factor (d)). in addition, no arguments were made that there were any "other factors" or that there were any factors "peculiar to the area" involved in this case. Therefore, only Factors (a) and (b) are at issue herein.<sup>1</sup>

### **FINAL OFFERS**

The sole issue before the Arbitrator in this case is whether County Deputies and Jailers should receive a new benefit, Shift Differential, if they work any shift hours from 6 P.M. to 6 A.M. All other items in this wage and insurance reopener were settled.

#### **Union Offer**

Sergeant, deputy sheriffs, and jailers will receive a shift differential of \$0.35 for every hour worked from 6:00 p.m. to 6:00 a.m.

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<sup>1</sup> The Union has argued that Shift Differential would improve deputy/jailer health and safety apparently under the public interest portion of Factor (c). The Union did not argue that shift differential or the lack thereof would effect the "normal standard of services."

1. Sergeant, deputy sheriff will be  $\$0.35 \times 13,140 \text{ hours} = \$4599$ 
  - a. 365 days in a year  $\times 12 \text{ hours} = 4380 \text{ hours}$
  - b.  $4380 \text{ hours} \times 3 \text{ officers} = 13,140 \text{ hours}$
2. Jailers will be  $\$0.35 \times 4380 \text{ hours} = \$1533$ 
  - a. 365 days in a year  $\times 12 \text{ hours} = 4380 \text{ hours}$
  - b.  $4380 \text{ hours} \times 1 \text{ Jailer} = 4380 \text{ hours}$

Total cost to the county: \$6132 per fiscal year at current schedule

### **County Offer**

*Status Quo* – no shift differential

### **TENTATIVE AGREEMENTS**

The parties agreed to increase the employee monthly contributions for single and employee/spouse or children and family health insurance premiums from \$20/\$40/\$50 per month to \$30/\$50/\$60 per month respectively for 2014-15. The parties also agreed to increase Jailer wages from \$14.30 to \$14.69 effective July 1, 2014 for 2014-15. This 39 cents is worth 2.75% to the County Jailers.

At the hearing, the County indicated that on March 3, 2014, the County Board approved a 3% salary increase for the Sheriff in 2014-15. Therefore, under the 2012-15 contract (Appendix A, page 43), County Deputies will automatically receive a percentage (from 72.5% to 79% for deputies with 3 years' tenure) of the Sheriff's 2014-15 salary (\$69,424) effective July 1, 2014 (U. Exh. C).

The County's only other bargaining unit, Secondary Roads (with 25 unit employees), settled with the County completely for 2014-15. The Roads unit, also represented by AFSCME Council 61, agreed to the \$30/\$50/\$60 employee health insurance premium payments (the same as the Sheriff's unit agreed to) and to a 2.75% ATB wage increase (expressed in cents per hour). One position, Shop Mechanic, was upgraded to the Head Mechanic rate (a \$1.00/hr. increase). Also, the Roads unit agreed on language regarding how to use personal days<sup>2</sup> (U. Exh. D).

### **BACKGROUND**

Delaware County is located in the northeastern quadrant of Iowa counties close to the eastern (Mississippi River) border of the state. The County has a population of 17,574 according to the 2012 census<sup>3</sup> (U. Exh. O, p. 1). Manchester is the County seat. The County Sheriff's

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<sup>2</sup> The Union described the agreements in Roads regarding the position upgrade and personal day usage as insignificant.

<sup>3</sup> The County listed Delaware's population as 17,764 (Er. Exh. 2).

Department (Sheriff's unit) is the only 24/7-365 County operation. Currently, the County employs approximately 12 deputies and 10 jailers (U. Exh. FF).

County Jailers work regular 8-hour shifts five days and 40 hours per week. (One Jailer works nights.) The twelve Deputies are assigned to 10 different 12-hour shifts, beginning at 6 A.M., 7 A.M., 8 A.M., 11 A.M., 2 P.M., 4 P.M., 5 P.M., 6 P.M., 7.P.M. and 8 P.M. Deputies work 14 days in a 28-day period, 40 hours in a calendar week, usually 4 days on and 3 days off and 5 days on and 2 days off. The schedule is an 8 week rotating schedule so employees have rotating weekends off. Some off weekends are 4 days and some are 5 days.

### **History of Collective Bargaining/Prior Contracts**

The Union and the County have had a collective bargaining relationship since the 1970's. Only two certified collective bargaining units have existed in the County-Secondary Roads and the Sheriff's Department. The city of Manchester runs the 911 Center in the County on a 24/7 365 basis but the city hires and employs all dispatchers. The county pays for 60% of the costs for the 911 service. The County employs many other employees, all non-union, in various departments (U. Exh. M).<sup>4</sup>

The parties have been to interest arbitration many times in the past. The parties went to interest arbitration on wages and/or health insurance in one or both of these units in 1994, 2000, 2005, 2012 and 2013 (U. Exh. FF, Weatherly Award and U. Exh. GG, Loeschen Award). The County and the Union went to interest arbitration over wage and insurance reopeners for 2013-14 before Arbitrator Weatherly in both the Roads and Sheriff's units.<sup>5</sup> For the 2012-13 wage and insurance reopener, the County and the Union settled in the Sheriff's unit, while the Roads unit went to interest arbitration on its 1-year reopener before Arbitrator Loeschen.

For the 2013-14 contracts, Arbitrator Weatherly selected the Union wage (83¢/hr. or 4% ATB) offer and its bargaining unit work language while Weatherly selected the County's offer on health insurance, which included increased employee co-pays and premium payments. Weatherly also selected the County's definition of temporary employees. Weatherly used 8 of the 10 counties used by prior arbitrators.<sup>6</sup> But Weatherly specifically rejected the use of Tama, Poweshiek and Hardin counties based on their distance from Delaware County and their proximity to central Iowa (U. Exh. FF, p. 8). As stated above, the Deputies' increase for 2013-2014 was tied to the Sheriff's salary increase (3%), while Roads employees and Jailers received the 4% (expressed in cents per hour) that Weatherly ordered.

For the 2012-13 Roads contract, Arbitrator Loeschen added Tama county to the 10 counties used by prior arbitrators because it had virtually the same population as Delaware and

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<sup>4</sup> Union Exhibit M was offered as background. Neither party argued the internal comparability of County non-union employees.

<sup>5</sup> Weatherly had both units before her except that the Deputy's wage was set by the Sheriff having received 3% in 2013. Weatherly's award resulted in the Jailers receiving 4%.

<sup>6</sup> Benton, Buchanan, Fayette, Jackson, Jones, Cedar, Clayton, Grundy. These counties plus Bremer and Winneshiek were also used in 3 arbitrations in 2000, 2005 and 2010 and six of these counties were used in 1994 (Er. Exh. 1).

because it is as close to Delaware county as Winneshiek county, but he also rejected Hardin and Poweshiek counties. (U. Exh. GG, p. 7).

Loeschen selected the County's wage offer (2%) and the Union's health insurance offer (*status quo*). Loeschen found that Delaware County was a wage leader, that the comparable's average wage increase for 2012-13 was 2.3% and that the County would not slip on the benchmarks or rankings with a 2% ATB increase (U. Exh. GG, p. 17-18). Regarding the County's "radical" health insurance change, Loeschen noted that the County had failed to prove a compelling need for the change, an inability to pay or that the *status quo* plan would put a high burden on the County. Loeschen also observed that historically, Delaware County has settled health insurance<sup>7</sup> and offered its employees better insurance than the comparables (U. Exh. FF, pp. 11-12).

Concerning the relevant events during bargaining over the 2014-15 reopener between these parties, the facts showed that there was only one bargaining session between the parties, the initial session where proposals were exchanged. Impasse was reached at the first meeting. The second meeting between the parties was actually mediation conducted by the P. E. R. B. mediator. At neither meeting did either party exchange wage and shift differential comparables information. Although Union Representative White recalled orally describing the health risks of shift work, it is undisputed that the Union did not give the County the documents in the record here (U. Exhs. CC, DD, EE) concerning the health risks and effects of shift work on employees. The Union did indicate its reasons for wanting shift differential at bargaining: because it had never had the benefit, and because shift work is inconvenient for employees and shift work affects employees' family life.

The record also showed that in 2007 and 2009 the Union proposed (and dropped) shift differential. The proposals made in 2007 and 2009 were quite different from the one offered here. The Union's 2007 proposal was to pay \$1.75/hour to employees if the majority of their shift hours were after 12:00 A.M. and \$1.50/hour to employees, the majority of whose hours were after 4:00 P.M. (U. Exh. I). The Union's 2009 proposal was \$0.75/hour for weekend hours worked from 3:00 P.M. on Fridays to 6:00 A.M. on Mondays (U. Exh. H).

Regarding the proper weight of this Factor (a), I find that this case is not controlled by this Factor and that the evidence garnered under Factor (a) constitutes helpful background and that it weighs in favor of neither party's final offer.

### **Interest and Welfare of the Public**

The Union submitted three exhibits (U. Exhs. CC, DD and EE), all articles about the effect of shift work on the health of employees.<sup>8</sup> It should be noted that the Union did not give any of these articles to the County during bargaining. The major points in these articles can be summarized as follows:

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<sup>7</sup> Loeschen observed that the parties had previously gone to interest arbitration only twice on health insurance.

<sup>8</sup> "WebMD Feature": Coping with Excessive Sleepiness, The Health Risks of Shift Work (2/20/14). "Western Journal of Medicine": Health Effects of Shift Work, J. LaDou, M.D. (1982, Dec.); NIOSH Booklet: Plain Language About Shiftwork (DOL/CDC, 1997).

- 1) There is evidence that shift workers are at greater risk for diabetes, cardiovascular disease; the risks of contracting these illnesses are increased by 40% to 50%.
- 2) Shift work has been linked to obesity, sleep disturbances, sleep loss and stomach problems, ulcers, depression, feelings of isolation and increased risk of accidents/injuries.
- 3) Short-term health effects: Stress and fatigue due to less sleep, gastrointestinal symptoms, insomnia, decreased quality of life.
- 4) Long-term health effects: Heart disease, diabetes, depression, gastrointestinal problems, fertility and pregnancy problems, cancer.
- 5) It may take 15 to 20 years of shift work for stroke and cancer to manifest in shift workers (U. Exh. CC).
- 6) Study findings on shift work have been inconclusive on the health/performance and safety effects (U. Exh. DD, p. 529; U. Exh. EE, p. 17-18).
- 7) Age appears to increase susceptibility of shift workers to these problems and health effects of shift work.

Although this factor weighs in favor of the Union's final offer, this factor does not have decisive weight in deciding this case. This is so because the Union failed to give these articles to the County during bargaining<sup>9</sup> so that the County could weigh them against its stated concern in bargaining that, if granted, shift differential would have to be calculated and entered by payroll by hand for each employee for each pay period, a burdensome, on-going endeavor.

### **Comparison of Comparable Law Enforcement Units**

Regarding the appropriate comparables to use in this case, as a general rule, subsequent arbitrators do not disturb the group of comparables determined in prior cases, unless the party seeking the change submits significant evidence of changed circumstances or the prior cases were inconsistent or clearly poorly reasoned. This hands-off approach lends stability and predictability to the collective bargaining process and it discourages parties from engaging in time-consuming, repetitive and usually unsuccessful arguments that can prevent voluntary settlement.

Here, the Union has used nine of the ten counties that three prior arbitrators (Benz, Stone and Perry) have used in the parties' past interest arbitration cases. The Union excluded Grundy County and it added Tama, Poweshiek and Hardin herein. There is a long history of bargaining and great frequency of use of the interest arbitration process by these parties. It is significant that

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<sup>9</sup> The oral presentation on this subject presented by Ms. White at bargaining could not have covered this material (more than 50 printed pages) in as much depth as the record articles do.

Arbitrator Weatherly refused to use Poweshiek and Hardin Counties in her 2013 award and that Arbitrator Loeschen also rejected those counties in his 2012 award. No other arbitrators have used Hardin and Poweshiek as comparables in cases between these parties.

In this case, the Union submitted no evidence showing a change in population or other circumstances, that would demonstrate that Poweshiek and Hardin Counties are now comparable to Delaware when they were not before. Poweshiek and Hardin are located in different quadrants than Delaware County. Hardin County is located in central Iowa, south of Highway 20, closer to Fort Dodge than to Delaware County. Poweshiek County is located south of I-80 in the southeastern quadrant of Iowa, closer to Des Moines than to Delaware County (U. Exh. O-2). The fact that Poweshiek and Hardin have similar populations to Delaware<sup>10</sup> is insufficient reason, standing alone, to include Poweshiek and Hardin in the comparisons here. Therefore, the Union's evidence concerning Hardin and Poweshiek Counties has not been considered.

Concerning the use of Tama County, I note that both the County and the Union both used this county in arguing this case. I note that Loeschen included Tama while Weatherly rejected it. This lack of clear support for the use of Tama normally would have caused this Arbitrator to reject it as well, given the fact that no supporting evidence or evidence of changed circumstances was submitted herein. However, in this case as both parties used Tama, I have used it in reaching this Award (Er. Exh. 2-3).

One more observation must be made. The County submitted Henry, Floyd and Chickasaw Counties as "other comparables" (Er. Exh. 2, p. 1). The County offered no evidence to show on what bases these counties could be found comparable to Delaware County. The County's only apparent reason for offering these was that the Sheriff had gotten information from them to include here. There is no information regarding the population of these counties or their economic circumstances. I note that Floyd and Chickasaw are in the northeastern part of Iowa while Henry County is in the far southeastern part of Iowa. In these circumstances, as there is no basis for the use of Floyd, Henry and Chickasaw and I have rejected them.

I turn now to the narrow issue before me in this case: Which of the parties' final offers is "the most reasonable" on shift differential? The difficulty with this case is that the summary wage documents submitted by the Union contain very different wage rates than the County document and the Union's documents add longevity (an issue not before me), shift differential and wages together for the Union's comparables (U. Exh. R2-3, R5-6). In addition, the County's Exhibit is inaccurate on which counties have shift differential (Er. Exh. 3). This is not helpful. Nonetheless, this Arbitrator has studied the evidence and the data regarding Deputy and Jailer shift differentials submitted by both sides can be understood and summarized as follows:

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<sup>10</sup> The Union listed Delaware's 2012 population as 17,574, Hardin as 17,302 and Poweshiek as 18,736 (U. Exh. O-1). And as the Union gave no reasons for rejecting Grundy, it has been used in reaching this Award.

Shift Differential				
County	Deputies	Jailers	Type	Amount/Hour
Bremer	YES	NO	NIGHT WEEKEND	\$0.50 \$0.75
Jackson	NO	YES	2 <sup>ND</sup> + SWING 3 <sup>RD</sup>	\$0.20 \$0.30
Winneshiek	YES	NO	4 P.M. – 8 A.M.	\$0.30
Cedar	NO	YES	NIGHT WEEKEND	\$0.10-\$0.25 \$0.50-\$0.75
Clayton	NO	YES	8 P.M. – 6 A.M.	\$0.30
Jones	NO	YES	3 <sup>RD</sup>	\$0.10
Benton	YES	NO	NIGHT WEEKEND	\$0.50 \$0.75
Fayette	NO	NO		
Tama	YES	NO INFO	4 P.M. – 8 A.M.	\$0.20
Buchanan	YES	YES	2 <sup>ND</sup> 3 <sup>RD</sup>	\$0.10 \$0.15
Grundy	NO	NO INFO		

What is clear from the above table is that five of eleven comparable counties have shift differential for their deputies and five out of eleven counties have shift differential for their jailers.<sup>11</sup> Furthermore, it is clear that six of nine counties with shift differential have differentials of from 10 cents to 30 cents per hour; and one county, Cedar, is mixed, with 10 cents to 25 cents on the night shift and 50 cents to 75 cents on weekends. Only two counties have shift differentials of more than 30 cents per hour.

In addition, even assuming for the sake of argument that the Union's calculations and rankings are accurate and appropriate, if the Union's offer were chosen here, it would result in the Deputies moving up on the benchmarks in compensation, from 6th to 5th. and although the Jailers would maintain their ranking of 13th among the 13 Union comparables, such a change of ranking for the Deputies demonstrates that the Union's offer is outside the mainstream for this benefit and not preferred.

In sum, the record evidence does not support selection of the Union's offer on Shift differential. Absent a clear showing that a majority of the comparables have this benefit, the Union would normally have had to offer a *quid pro quo* for this new benefit or show a compelling need for a change in this area. The Union has failed to submit evidence of an offered *quid pro quo*. In addition the has failed to submit evidence of a compelling need for the addition of this new benefit. Nor has the Union shown that the County has been intransigent in the face of repeated requests for shift differential - the Union here has only proposed shift differential twice, 7 and 5 years ago, and the Union has never gone to interest arbitration over this issue.

<sup>11</sup> The County put no evidence into the record regarding jailer shift differentials and its evidence on deputies wage and shift differential come from websites or personal contacts by the Sheriff. The Union's evidence used the 5-year deputy and jailer rates for its comparables. Comparisons were therefore made more difficult. However, as the sole disputed item here is shift differential so these problems with the parties' offers were overcome.

The County showed that its payroll employees would have to figure and enter, by hand, shift differential amounts for all entitled Sheriff's unit employees each pay period and that it would have to pay overtime on these amounts under the FLSA. The County argued this would be burdensome and actually cost more than the Union's offer indicates (Er. Exh. 6). These are reasonable arguments. The Union has argued that it wants shift differential because of the health effects and inconvenience caused employees and the negative effects on their family life. These arguments are also reasonable. In future bargaining, one would hope that the health effects of shift work would be fully shared, discussed and considered by these parties if the Union chooses to propose shift differential again.

In these circumstances, where a new benefit has been requested, the comparables are not strongly supporting, no *quid pro quo* has been offered, and there is insufficient evidence of a compelling need for this change, the Union's offer on shift differential is not the most reasonable and it cannot be selected. Based on the above analysis and after full consideration of the evidence and the Section 20.22(9) factors, the County's offer of the *status quo* on shift differential is the most reasonable and it is selected.

### **AWARD**

#### **Shift Differential**

The County's final offer is selected: Current collective bargaining agreement.

Dated this 26th day of March, 2014 at Oshkosh, Wisconsin.

  
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Sharon A. Gallagher, Arbitrator

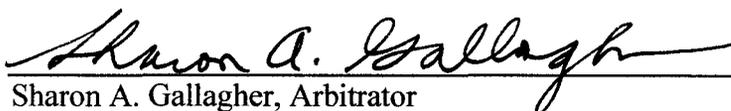
**CERTIFICATION OF MAILING**

I hereby certify that on the 26th day of March, 2014, I served the foregoing Opinion and Award on the following parties, at their respective postal addresses, by USPS mail.

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Sharon A. Gallagher, Arbitrator

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