ILLINOIS LABOR RELATIONS BOARD

INTEREST ARBITRATION

In the Matter of the Arbitration

between

COUNTY OF COOK and
COOK COUNTY SHERIFF
(Dept. of Court Services)
Employer

and

POLICEMEN'S BENEVOLENT
LABOR COMMITTEE
Union

Before

HARVEY A. NATHAN,

Sole Arbitrator

ISLRB No. L-MA-03-004

Hearing Held: May 17, June 14, 28, 29, July 27, August 1, 9, 15, 16, 17, September 19, 27, October 6, November 30, 2005

Final Offers Exchanged: October 11, 2005

For the Employer: Cook County Board of Commissioners
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Hon. Michael F. Sheahan
Sheriff of Cook County
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For the Union: Joel A. D'Alba
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O P I N I O N A N D A W A R D

I. INTRODUCTION

This is an interest arbitration proceeding held pursuant to Section 14 of the Illinois Public Labor Relations Act (5 ILCS 315/14), hereinafter referred to as the "Act," and the Rules and Regulations of the Illinois Labor Relations Board ("Board"). The parties are County of Cook and Sheriff of Cook County, as joint employers (“Employer"), and Policemen’s Benevolent Labor Committee (“Union”).[1]

[1] Cook County employs about 27,000 people either directly or jointly with elected officials. There are about ninety (90) different collective bargaining units (68 different collective bargaining agreements) encompassing about 80% of the employees. About 6,000 employees occupy law enforcement positions, mostly within the jurisdiction of the Cook County Sheriff.

The office of the Sheriff of Cook County is divided into four major law enforcement departments: Police Department, Department of Corrections, Department of Court Services and the Department of Community Supervision and Intervention ("DCSI"). The Department of Corrections ("DOC") has about 3,000 employees, the Court Services Department about 1,600 employees, the Sheriff's Police Department about 500 employees and DCSI has about 400 employees.[2] The Union represents a unit of approximately 26 lieutenants in the Sheriff's Department of Court Services. Lieutenants are sworn peace officers appointed to their positions by the Sheriff's Merit Board. They have the authority to effect arrests and may carry firearms as required.

The Court Services Department is responsible for securing and facilitating the operation of all courtrooms in the County; executing and enforcing all lawful orders including evictions, levies, seizures, writs, warrants, and decrees; providing education programs regarding safety issues; and child support payment enforcement. The Department is headed by Chief Deputy Sheriff Robert E. Beavers who reports to Sheriff Michael Sheahan through the Undersheriff, Zelda Whittler. There are three operational divisions in the Court Services Department.

(1) In the Courtroom Services Division the Chief of Courts reports directly to Chief Deputy Beavers. Under him there are two Deputy Chiefs and 13 Assistant Chiefs each of

[2] These departments are frequently cross-referenced by the parties for comparability purposes. They also have certain unique characteristics which differentiate their bargaining histories. It is the clash between the commonality of these units, and their subdivisions, and their unique features which has given rise to this and other bargaining impasses.

whom is in charge of an area or facility, generally a courthouse. Lieutenants are assigned to 12 of the facilities and report directly to the Assistant Chiefs. The task of this division is the security of courtrooms including protecting judges , juries and grand juries, and the maintenance of prisoner control before, during and immediately after court appearances. Some of the facilities are staffed 24 hours a day, seven days a week. The lieutenants supervise sergeants who supervise deputies.[3]

(2) The Civil Process Division is headed by a Chief who has two Assistant Chiefs (Civil Process Unit and Warrants, Levies and Evictions Unit). There are three lieutenants assigned to the Civil Process Unit. This unit operates out of four locations, three of which have a lieutenant in charge. It is responsible for the service of summons, subpoenas, garnishments, forcible detainers and other documents. The lieutenants in this unit monitor and supervise the efficiency and accuracy of the work performed by sergeants and deputies and also handle complaints from the public. In the Warrants, Levies and Evictions Unit there are two lieutenants, plus sergeants and deputies. The Warrants, Levies and Evictions Unit operates out of two locations. Similar to the lieutenants in the other unit, the lieutenants in Warrants, Levies and Evictions are responsible for the accuracy of the returns and all of the

[3] As established by the Illinois Labor Relations Board in Case No. L-RC-99-028, the primary functions of Courtroom Services Lieutenants are the implementation of security procedures established by the Assistant Chiefs at the respective facilities and to ensure that the sergeants are performing their duties which is the deployment of deputies for enforcement of security. Although lieutenants do make rounds, most of their workday involves administrative duties, reports and other paperwork.

paperwork generated by the unit.

(3) The Child Support Enforcement Division is headed by a Chief. There is unit in this division (Civil Process) commanded by an Assistant Chief who has one lieutenant under him (plus a complement of sergeants and deputies). The Child Support Enforcement Division performs similarly to the Civil Process Division except that its work is limited service of process related to child support enforcement. The Child Support Enforcement Division operates out of two locations.

In each of the divisions within the Court Services Department the lieutenants oversee the daily work activities of the employees in the subordinate ranks. They do not officially evaluate the work performance of their subordinates nor discipline or adjust grievances, but they act as resources for Assistant Chiefs and participate in approving vacation and leave requests. They may instruct or counsel subordinate employees in the proper performance of their duties. The rank of lieutenant was established in the Department of Court Services in October, 1995. The lieutenants organized an association for collective bargaining purposes in January, 1996 and met with Sheriff Sheahan at that time to discuss their goals and purposes. Thereafter the association met with the Sheriff's representative until January, 1999. In April, 1999 a Petition for Representation was filed by the Union with the Labor Board. In November, 2000 the Labor Board ordered a representation election and, following an election, the Union was certified as the bargaining representative for the lieutenants in the Court Services Department on February 19, 2001. The Employers appealed the Labor Board's decision and on June 28, 2002, the Appellate Court affirmed the Board's certification of the Union.

Collective bargaining for the parties' first contract has been a long and arduous

process partly because the parties had to craft an entire agreement and in part because the applicability of terms and conditions of lower ranked peace officer employees was a matter of considerable dispute. Numerous bargaining sessions were held beginning in 2002 and in October, 2004 the arbitrator was selected to assist the parties in resolving this matter. At that time several dozen sections of the proposed agreement remained at issue. After several mediation sessions the hearing was formally commenced and the parties were able to narrow their differences to nine issues.

II. Statutory Factors

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

> "(1) The lawful authority of the employer.
>
> "(2) Stipulations of the parties.
>
> "(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
>
> "(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
>
> > "(A) In public employment in comparable communities.
> > "(B) In private employment in comparable communities.
>
> "(5) The average consumer prices for goods and services, commonly known as the cost of living,
>
> "(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, and the continuity and stability of employment and all other benefits received.
>
> "(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

> "(8) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding arbitration, or otherwise between the parties, in the public service or private employment."

Some factors are more relevant in particular cases than in others. Thus, for example, the ability to pay wages and benefits for 26 lieutenants among a workforce of many thousands of employees cannot be a critical factor in the determination of the appropriate level of wages, benefits and working conditions. Resolution of the issues in this case does not involve the employer's ability to pay while it also maintains appropriate levels of public services. Although ability to pay factors may arise with small bargaining units when ground breaking changes pose the risk of a domino effect on the many other closely related bargaining units, none of the economic issues in this case pose that risk. Likewise, bargaining history, that is, the trail of bargains and trade-offs that are significant in assessing the appropriateness of changes in a new contract, are not an issue here because this is the parties' first agreement.

Despite the hard work and countless hours devoted to the negotiation of this first agreement the final results are largely controlled by the intense bargaining history of deputies and sergeants in the Court Services Department and in other similar bargaining units within the structure of the Sheriff's office. What is critical here is that officer ranks in the Court Services Department work on an integrated level. Within their respective departments they perform different aspects of the same basic tasks. To this extent of similarity, the

bargaining history for this unit has already been forged by the bargaining history of the other units.

Because of the integration of functions and the close working relationship among sworn employees in Court Services, the overriding Section 14 factor in this case is internal comparability. This is particularly true in this case because the appropriateness of terms and conditions of employment were crafted on several occasions by several impasse arbitrators over a multi-year period. The results, particularly with wages, represent the judgment of several other arbitrators. Over the long period of time, from 1999 to the present, that this matter has been in process, a pattern was set with other bargaining units. This pattern, the result of several awards in similarly situated bargaining units, largely controls the outcome of this case. Generally speaking, in the absence of very persuasive arguments to the contrary, I have attempted to bring this bargaining unit within the pattern of settlements enjoyed by the other units of Sheriff's peace officers.[4]

III. THE ISSUES

A. Economic Issues

1. Wages

[4] In this regard, cost of living, *e.g.* the movement of the C.P.I. as well as external comparables are secondary considerations except to the extent that they were considered as support for the increase in wages and benefits awarded to the other bargaining units.

Under the County's pre-collective bargaining salary schedule the top step for the lieutenants' wage grade was Step 9. Because most members of the lieutenants' bargaining unit are senior employees a review of wages at this step is appropriate. From December 1, 1995 to December 1, 1999, the annual lieutenant's salary for Step 9 increased from $34,386 to $50,835. The average annual increase was about 11% a year. During this same period the Court Services lieutenants maintained a differential with their counterparts in the rank of sergeant ranging from 11.29% to 15.03%. In December, 1999, the differential was 11.29%.[5]

[5] During this period, Court Services sergeants were represented by the Illinois FOP. Sergeants' salaries went from $38,165 on 12.1/96 to $45,676 on 12/1/99. During the period from 12/1/95 to 12/1/99, the Step 9 salaries for Court Services deputies, represented by Local 714, Teamsters, went from $34,432 to $42,508, an average increase of about 5.7% a year. Many of these increases, even those prior to 1995, were the result of arbitration awards by Arbitrators McAlpin, Goldstein, Berman and Benn. During this time period there were arbitration awards by a number of other arbitrators for units of deputies in the Police, DOC and DCSI units. In addition to a modified leap frog among the arbitrators in their internal comparability computations, the arbitrators relied upon a list of 22 large counties nationally. With both internal and external comparability as the primary consideration, in most cases the unions' demands for wage increases were found to be the more appropriate.

What is significant in the development of this wage history is the frequent reference by the arbitrators to other units of sworn officers employed in the Sheriff's office. While the arbitrators often cite the competitive rates paid in other jurisdictions, both within and outside of Illinois, the driving force seems to have been the maintenance of uniformity in salaries and benefits within and among the ranks of the Sheriff's sworn officers.[6] Blended into the strong practice of maintaining uniformity among the internal comparables, past arbitration awards have articulated a need for catch-up among the Sheriff's ranks. This has occurred either because of a sharp disparity between Cook County sworn officers and those of other jurisdictions, or, in many cases because the arbitrators perceived an imbalance among personnel in different departments in the Sheriff's office. Thus, in 1995 Arbitrator Goldstein referring to the higher wages paid to Sheriff's Police spoke of a "proven need" for a catch-up for deputies. (Case No. L-MA-95-001.) Arbitrator Berman cited a "proven need for some catch-up under statutory criteria." (Case No. L-MA-97-005.) Yet, despite the catch-up accommodations made in the Goldstein and Berman awards, in 1999 Arbitrator Benn awarded the deputies 5.5% increases for each year effective December 1, 1997, December 1, 1998 and December 1, 1999. (Case No. L-MA-99-003.)

In 2001 the Court Services deputies again went to interest arbitration for their next

[6] See, for example, Arbitrator Edwin Benn's comment in Case No. L-MA-99-03 (Cook County/Sheriff and Teamsters Local 714) involving Court Services deputies. "In the past, the parties have routinely had to resort to interest arbitration as the vehicle for determining the wages for deputies. [citations omitted] Several findings in those awards *serve as guides for the wage* determination in this matter." (Emphasis added.)

contract. The case was heard by Arbitrator Peter Meyers. Notwithstanding the above recited history of awarding wage increases which the arbitrators characterized as at "catch-up" levels, Arbitrator Meyers found that the deputies were still "near the bottom of the range of wages paid to similar court services and civil process employees in the major metropolitan counties ***." (L-MA-01-001.) Meyers awarded the deputies their union's proposal of 5.5% across the board wage increases for each year from December, 2000 to December, 2002.

All of these "catch-up" increases for the deputies had the effect of creating a disparity with the Court Services sergeants. Shortly after Meyers issued his award, Arbitrator John C. Fletcher , in Case No. L-MA-01-002, found that the 120 Court Services sergeants were in the anomalous position of earning less that the deputies they supervised. In his award, Arbitrator Fletcher gave the sergeants the same 5.5% increase received by the deputies but also a multi-year rank differential adjustment.[7] The increases for the sergeants were as follows:[8]

[7] There is evidence of a policy within the County system to pay employees of higher rank more than their subordinates. Thus, for example, lieutenants received an equity adjustment in 1997 in order to maintain a rank differential above lower ranked sworn personnel. See letter from James Ryan, Legal Advisor, to Steve Klem, HR Director, dated July 2, 1997.

[8] This amounts to a 23% increase over the life of the contract.

Effective December 1, 1999	5.5% across the board wage increase
Effective November 30, 2000	4% “rank differential” increase
Effective December 1, 2000	5.5% across the board wage increase
Effective December 1, 2000	1.25% “rank differential” increase
Effective December 1, 2001	5.5% across the board wage increase
Effective December 1, 2001	1.25% “rank differential” increase

The Employers appealed the Fletcher award to the Circuit Court of Cook County. On March 18, 2003 the Court denied the petition for review and enforced the award. The court also ordered the Employers to pay statutory interest of 12%. Thereafter cross appeals were taken to the Appellate Court.(Case No. 1-03-3240.) On June 30, 2005 that Court affirmed the decision of the Circuit Court and enforced the award.

In October, 2004, Arbitrator Marvin Hill issued his award for the Court Services deputies. (Case No. L-MA-04-001.) As with the arbitrators before him, Hill began his analysis of the wage history with reference to Arbitrator Goldstein’s comparison with the Sheriff’s Police and the need to “narrow the pay gap.” Arbitrator Hill found that the Union’s proposal of 4.5%, 4.5% and 4.5% for the three years ending November 30, 2006 was more appropriate than the Employers’ proposal of lesser amounts which Hill characterized as “directly against the notion of “catch-up,” a position by the County which Hill found to be true

in every case since interest arbitration proceedings began in 1995.[9]

On December 1, 2005, Arbitrator Byron Yaffe issued his award for the Court Services sergeants for the years beginning December 1, 2002, 2003 and 2004. The award indicated that the parties had previously agreed to increases of 5.5%, 4.5% and 4.5%. (The dispute involved term and rank adjustment.)

In summary the awards for Court Services have been as follows:

Date of Wage Increase	Amount	Rank Affected - Arbitrator	
December 1, 1997	5.5%	Deputies	Benn, Arb.
December 1, 1998	5.5%	Deputies	Benn, Arb.
December 1, 1999	5.5%	Deputies	Benn, Arb
November 30, 2000	4.0% rank differential	Sergeants	Fletcher, Arb.
December 1, 2000	6.75% including 1.25% rank differ.	Sergeants	Fletcher, Arb.
December 1, 2001	6.75% including 1.25% rank differ.	Sergeants	Fletcher, Arb
December 1, 2000	5.5%	Deputies	Meyers, Arb.
December 1, 2001	5.5%	Deputies	Meyers, Arb.
December 1, 2002	5.5%	Deputies,	Meyers, Arb.
December 1, 2003	4.5%	Deputies	Hill, Arb
December 1, 2004	4.5%	Deputies	Hill, Arb
December 1, 2005	4.5%	Deputies	Hill, Arb
December 1, 2002	5.5%	Sergeants	Yaffe, Arb
December 1, 2003	4.5%	Sergeants	Yaffe, Arb
December 1, 2004	4.5%	Sergeants	Yaffe, Arb

[9] As a result of Arbitrator Hill's award the top annual salary for deputies as of December 1, 2005 is $61,886. This rate is for the D2B deputies at the tenth step. Both the deputies and the sergeants have10 steps, as opposed to the lieutenants' 9 steps in their agreements. The Union's proposal in this case includes a 10th step.

The Union's proposal in this case is as follows:

14.2 Wages

1. Equity Adjustments

11/30/00	4.00%
12/01/00	6.75%

2. Retroactive Wage increases

12/01/01	6.75%
12/01/02	5.5%
12/01/03	4.5%
12/01/04	4.5%
12/01/05	4.5%

3. Institution of Longevity Wage Schedule

Step One	After 1 year of County service
Step Two	After 2 years of County service
Step Three	After 3 years of County service
Step Four	After 4 years of County service
Step Five	After 5 years of County service
Step Six	After two (2) years at Step 5
Step Seven	After 1st year at Step 6 and 10 years of County service
Step Eight	After 1st year at Step 7 and 15 years of County service
Step Nine	After 1st year at Step 8 and 20 years of County service
Step Ten	After 1st year at Step 9 and 25 years of County service

4. Step Ten

Step 10 longevity wage schedule shall be 11.29% more than the Step 10 longevity wage for Cook County Sheriff Deputy Sergeants.

The County/Sheriff's proposal for wages is as follows:

Section 14.2 Wages

Effective Date	Percentage Increases
12-01-01 to 05-31-02	Bonus of 2.0% based on wages earned from 12-01-01 to 05-31-02
06-01-02	2.5%
12-01-02	2.0%

06-01-03	1.0%
12-01–03	3.0%
12-01-04	2.5%
12-01-05	2.8%

The Union proposes multi-structured changes in lieutenants' salaries. First, it seeks a two-pronged equity adjustment to compensate for the loss of increases during the pendency of its pursuit for representation and because of the equity adjustments received by other ranks. The Union does not seek retroactive pay as of the effective date of the equity adjustments. Rather, it proposes that these adjustments be used to modify the base against which the wage increases will be applied when the contract becomes effective. In a sense these are phantom adjustments because the employees do not receive any additional wages in the years affected by the adjustments. There is no economic impact in these equity adjustments until the effective date of this contract, December 1, 2001.

Second, the Union seeks annual across the board wage increases for the period of 12/1/01 to 12/1/05. In accordance with the equity adjustment proposal, the increases would be computed against the existing base except at Step 10 where they would be computed against the base as augmented by the equity adjustments.

Third, the Union seeks a tenth step, which is an additional longevity step to be effective after an employee has been at the prior longevity step for one year and has at least 25 years of service. The value of this step will be keyed against the 10^{th} step of the sergeants' wage scale. As explained by the Union, on December 1, 1999, all employees who have been on Step 9 for one year and have 25 years of service will be placed on a hypothetical Step 10 for record keeping purposes only. The value of this step is 11.29%

above what the Court Services sergeants were paid on that date.[10] No additional pay would be received for this movement. On 11/30/00 the value of this hypothetical Step 10 would be increased in value by 4%. The following day, December 1, 2000, it would be increased by an additional 6.75%. As soon as employees reach 25 years of service and have been on the prior step for one year they would move along the hypothetical Step 10. However, no employee would be paid for placement on Step 10 until the start of the contract term of December 1, 2001. At that time they would be paid the rate of the hypothetical Step 10 plus a 6.75% increase.

Considering the long history of "catch-up" increases provided to the deputies and sergeants, which all began when neutrals gave credence to the comparison between the Court Services Department and the Police Department, the cumulative effect on the wages of the lower ranks has been significant. Acceptance of the Employer's proposal would leave the lieutenants with wages below those of the employees they supervise. Those ranks have enjoyed years of compounded 4.5% and 5.5% annual increases and the sergeants have benefitted from a wage differential adjustment which placed them head and shoulders above the deputies. To ignore these historical facts, regardless of whether this arbitrator would have made them at the time, would not only be inconsistent with County policy, but would have a negative effect on morale and productivity. Additionally, due to the operation of the bargaining act and the delay in securing an agreement in this matter, the lieutenants will lose two years of back pay and the County will

[10] According to the Union, the actual annual pay at this step would be $52,862, or 3.99% above the 1999 rate for Step 9.

have enjoyed the use of the employees' back salaries for a number of years.

In this context this arbitrator does not consider the Union's proposal to be at all extravagant. Given the history of the numerous earlier contracts for the other bargaining units, the Union's proposal in this case is merely the maintenance of a traditional grade differential that lieutenants traditionally have experienced in Cook County and in other jurisdictions. In other words, the equity adjustments affecting the base for wage increase computations merely restores the differential. The 5.5% and 4.5% increases proposed by the Union are the same as given to the deputies and the sergeants. The additional longevity step makes the lieutenants' schedule consistent with the other ranks. No new ground is being broken with the acceptance of the Union's proposal. It merely restores the lieutenants to their proper place in the overall context of Cook County peace officer wages. The Union's final proposal on wages is adopted.

2. Overtime - Application of Seniority

Section 8.1 of the tentative agreement provides that seniority is defined as an employee's date of appointment to the rank of lieutenant. Section 8.4A states that seniority "governs" in the selection of vacations, other time off choices and shall be considered when employee requested transfers are made.

The parties disagree as to the language of Section 8.4B(1), the application of seniority in the scheduling of overtime. The respective proposals are as follows:

Employer Final Proposal

Overtime scheduled at least seven (7) days in advance will be offered to employees on the basis of seniority and will be equitably distributed among employees who request such work provided the employee has the ability to perform the necessary work. Each employee shall be selected in turn according to his or her place on the seniority overtime list, by rotation.

Union Final Proposal

Overtime scheduled at least seven (7) days in advance will be offered to employees on the basis of seniority and will be equitably distributed among employees who request such work. Each employee shall be selected in turn according to his or her place on the seniority overtime list, by rotation.

The difference in the proposals is the inclusion of the phrase "provided the employee has the ability to perform the necessary work" in the Employers' proposal. Neither the sergeants nor the deputies contract contains this language. Nothing in the record supports the implication that lieutenants are now receiving overtime for which they are not competent, or that errors were made by assigning unqualified lieutenants to overtime. Nor has there been any evidence that the language without the proviso has caused problems within the deputies or sergeants units. While it might be argued that it is good management to require that only competent employees receive overtime, the arbitrator assumes that by the time officers reach the rank of lieutenant they are capable of performing all the duties in the department. This is further implied by the fact that lieutenants regularly substitute for assistant chiefs without consequences due to incompetence. Finally, at the rank of lieutenant competency is an amorphous concept which as a threshold for overtime can create more problems than it solves. The Union's proposal is adopted.

3. Subcontracting

Almost all of the bargaining unit contracts within the Sheriff's Office contain provisions recognizing the right to subcontract. The one agreement where the argument is made that subcontracting is limited is with the Court Services sergeants. The Union proposes the sergeants language. The Employer proposes the deputies language which more clearly permits subcontracting. The two proposals for Section 12.4 appear as follows:

Employer

It is the general policy of the Employer to continue to

utilize its employees to perform work they are qualified to perform. The Employer may, however, subcontract where circumstances warrant. The Employer also reserves the right to enter into mutual aid and assistance agreements with other units of government.	It is the general policy of the Employer to continue to utilize its employees to perform work they are qualified to perform. The Employer may, however, subcontract where circumstances warrant. The Employer also reserves the right to enter into mutual aid and assistance agreements with other units of government. **The Employer agrees not to subcontract bargaining unit work or replace bargaining unit employees. This provision is not intended to prevent the Employer from reducing the work force in the event mutual aid or police service provided by the Employer to other governmental entities cease.** (Emphasis added)
The Employer will advise the Union at least three (3) months in advance when such changes are contemplated and will discuss such contemplated changes with the Union, pursuant to the Illinois Public Labor Relations Act of 1984. The Employer will work with the Union in making every reasonable effort to place adversely affected employees into other bargaining unit positions.	In the event the bargaining unit positions will be affected, the Employer will advise the Labor Committee at least 3 months in advance when such changes are contemplated and will discuss such contemplated changes with the Labor Committee, pursuant to the Illinois Public Labor Relations Act. The Employer will work with the Labor Committee in making every reasonable effort to place adversely affected employees into other bargaining unit positions. The Labor Committee reserves all rights granted by this Agreement and the Act.
Union	
It is understood by the parties that the right to contract or subcontract shall not be used for the purpose or intention of undermining the Union.	

The language in the sergeants' contract is oblique. The section begins with the statement that it is the Employer's policy to utilize its employees where they can perform the work. It then states that it may "subcontract where circumstances warrant." In the next sentence the Employers reserve the right to enter into mutual aid and assistance agreements with other government units but it then contains the sentence, "The Employer agrees not to subcontract bargaining unit work or replace bargaining unit employees." The language continues with the statement that the work force can be reduced if the need for service to other governmental agencies ceases.

In other words the paragraph both permits and prohibits subcontracting. The parties must have had certain limitations in mind, such as where the provision specifically allows

subcontracting if assistance to other entities ceases. But there is no explanation for the statement that subcontracting is allowed "*where circumstances warrant*" (Emphasis added) and the statement that the Employers have agreed not to subcontract.

There was some suggestion at the arbitration hearing that the paragraph as printed in the sergeants' contract was misprinted. That rationalization offers no assistance to the Union which is proposing this language. The arbitrator cannot select language which the parties apparently admit they do not understand. There is no evidence that the deputies language has not worked well. The Employer's proposal for subcontracting shall be adopted.

4. Health Insurance

The parties have agreed that the terms of the medical benefits should be resolved through re-opened negotiations to occur after the Cook County Board completes negotiations with either of its largest unions, AFSCME or SEIU. The parties agree that following ratification of either the new AFSCME or SEIU agreements the Employer and the Union will commence bargaining and if they cannot negotiate a settlement they may go to interest arbitration for final and binding resolution. It is implied in the agreed-upon wording that the Employer's position will be to apply whatever the settlement is for the AFSCME or SEIU units to the employees in the lieutenants bargaining unit.

There are some differences in the actual wording of the respective proposals. They are as follows: (1) The Union seeks to make it clear that the ratification of the AFSCME or SEIU agreement is one that contains health care provisions. (2) The Employer seeks to limit the re-opener to changes made in the "current hospitalization insurance." The Union wants the re-opener to cover any adjustment in the current insurance article, *i.e.* the current

medical benefit program. This would include an insurance opt-out provision. (3) The Union proposes that any changes will not be implemented until after the lieutenants will have received their wage increase and their back pay.

With an economic issue, the arbitrator is restricted to either the Employer's or the Union's final offer. The arbitrator must choose the one which best satisfies the standards set forth in Section 14 (h)of the bargaining statute. This all or nothing approach sometimes requires that less than perfect language be accepted because the alternative is more problematic. The health care issue in this case has been a difficult one for the parties because the Employer has previously initiated changes in the terms unilaterally. Furthermore, there have been a number of questions regarding opt-outs and other details. The Union seeks to make sure that all of the presently structured health insurance benefit is on the table. Finally, the Employer has had a history of challenging arbitration awards in court which delays the implementation of otherwise appropriate wage increases. Considering that the employees involved in this case have already gone without wage increases for several years it would be unduly burdensome to implement higher costs for health care, if that should occur, before the employees get the new wage rates to pay for the more costly benefits. The Union's proposal appropriately delays any implementation of new rates and benefits until after the wage portion of the new agreement is implemented. Accordingly, despite the somewhat awkward reference in the Union's proposal to the "current insurance Article," its proposal taken as a whole is more consistent with the historical patterns for this Employer. The arbitrator interprets the words "current insurance Article" to refer to the present coverage and costs of the medical insurance benefit for the lieutenants. The accepted language, as proposed by the Union, reads as follows:

17.1 Hospitalization Insurance
17.2 Insurance Opt-Out

The parties agree that any change, revision, modification or adjustment in the current Insurance Article resulting in increased costs (including but not limited to increases in co-payments, premiums, and/or deductibles) and/or decreased benefits to bargaining unit employees as a result of negotiations between the County, AFSCME and/or SEIU will apply to the bargaining unit only after good faith negotiations with Labor Committee or its successor or an interest arbitration award, whichever is later. Such negotiations shall commence no later than ten (10) days after the Labor Committee has been informed of the ratification by the Cook County Board of Commissioners of any such agreement between the County, AFSCME or SEIU containing health care provisions. If the parties are unable to reach an agreement and an impasse is reached, a party desiring interest arbitration shall notify the other party within five (5) days after the commencement of negotiations. Any interest arbitration shall be completed within forty-five days after said notification.

Any change, revision, modification, or adjustment in the current Insurance Article resulting in increased costs (including but not limited to increases in co-payments, premiums, and/or deductibles) and/or decreased benefits to bargaining unit employees shall be retroactive to the implementation date of any change, revision, modification or adjustment in the current Insurance Article as a result of negotiations between the County, AFSCME and/or SEIU. However, any such change shall only be implemented after bargaining unit members have received any wage increases and retroactive payments pursuant to the interest arbitration award addressing wages.

B. Non-Economic Issues

5. Bargaining Unit Members and Command Structure

The parties sharply disagree as to the terms of **Section 4.2** of the new agreement. The difference relates to the first sentence. The Union proposes the following language:

> The Employer recognizes that only bargaining unit employees may occupy the merit position of Deputy Lieutenant within the Court Services Department, consistent with the Rules and Regulations of the Cook county Sheriff's Merit Board.

This is the language which is included in the sergeants' agreement. The Union argues that this language has worked for the sergeants and there is no reason to avoid it with lieutenants. The Union has expressed a concern that as a previously exempt position, the rank of lieutenant was assigned to various persons who have not come up through the ranks and were assigned the title without regard to their protective service skills and abilities.

From the arbitrator's perspective the significant factor here is that Court Services lieutenants are now "rank and file" employees, albeit in a leadership capacity, and they will be judged based on skills and abilities as sworn sheriff's deputies and not merely for their administrative capacities. The integrity of the collective bargaining process, and the recognition that these employees now have rights under labor relations statutes, requires that the merit rank of lieutenant be kept within the ambit of the bargaining unit. In this regard the Union is correct when it argues that its status as bargaining agent for the lieutenants in Court Services should be no different than the bargaining agent for sergeants. Were it otherwise, the rank of lieutenant could be diluted with persons unqualified in their law enforcement capabilities, and unrepresented by the Union, who would be competing with the Union for terms and conditions of employment. In a nutshell, the presence of non-bargaining unit lieutenants undermines the bargaining unit. The Union's proposal is awarded. Section 4.2 in its entirety will be as follows:

> The Employer recognizes that only bargaining unit members may occupy the merit position of Deputy Lieutenant within the Court Services Department, consistent with the Rules and Regulations of the Cook County Sheriff's Merit Board. In the event the employer wishes to reclassify any bargaining unit position, the Employer shall make written notification to the Labor Committee at least sixty (60) days prior to implementation; the Labor Committee reserves the right to file a demand to bargain over the impact and effect of such proposed change, with any impasse resolved in accordance with the provisions of this Agreement.
>
> It is understood and agreed that the Employer's right to reclassification as defined in Article III Section 3.1(E) shall not be used for the purpose or intention of undermining the bargaining unit.

6. Reduction in Work Force, Layoff and Recall and 7. Termination or Suspension of Seniority

This issue, involving **Section 8.5 and 8.6** of the new Agreement, are interrelated.

The two sections share a closely related bargaining history involving the seniority status of exempt management personnel who return to the unit. These two issues will be discussed together. They are both "language" issues and the arbitrator is not bound to select either of the proposals.

The differences in the proposals relate primarily to the rank of Assistant Chiefs, who supervise the lieutenants. Assistant Chiefs are also selected from the lieutenant rank. As an exempt rank, Assistant Chiefs are not subject to civil service type protections and are employed at the Sheriff's pleasure. If they are removed from the Assistant Chief position, there are issues as to their respective rights of returning to the lieutenant rank.[11] The parties are in dispute as to the seniority status of returning Assistant Chiefs, *i.e.,* whether they kept the seniority they had as lieutenants at the time of promotion, whether they accumulated additional seniority while in an exempt rank, and what effect a possible return would have on the existing lieutenants. During collective bargaining, the parties made several proposals in terms of layoffs, bumping rights and accumulation of seniority while in a supervisory position. These proposals appeared in several forms in the language of Sections 8.5 and 8.6. The respective proposals are as follows:

Employer

8.5 Reduction in Work Force, etc.

Should the Employer determine that it is necessary to decrease the number of employees within the job classification of the bargaining unit, due to lack of funds or lack of work, the employees to be laid off in that classification shall be removed in inverse order of seniority (e.g. last promoted, first laid off). Affected employees and the Labor Committee shall be given notice thereof at least two (2) weeks prior to the

[11] This is a distinct possibility because the present Sheriff has announced that he will not run for re-election. As of September, 2005 there were 15 former lieutenants serving in exempt ranks.

effective date of such layoff. Employees laid off as a result of this procedure shall be subject to recall in order of seniority, before any new employees are hired or promoted into the job classification held by them at the time of the reduction in force.

Union

8.5 Reduction in Work Force, etc.

(A) Should the Employer determine that it is necessary to decrease the number of employees within the job classification of the bargaining unit, due to lack of funds or lack of work, the employees to be laid off in that classification shall be removed in inverse order of seniority (e.g. last promoted, first laid off). Affected employees and the Labor Committee shall be given notice thereof at least two (2) weeks prior to the effective date of such layoff. Employees laid off as a result of this procedure shall be subject to recall in order of seniority, before any new employees are hired or promoted into the job classification held by them at the time of the reduction in force.

(B) An employee laid off pursuant to this Section may bump the employee with the least seniority in the bargaining unit of successive lower merit ranks within the Court Services Department, if the bumping employee has more court services than the employee he/she will bump.

(C) A lieutenant in an exempt position who is transferred to the bargaining unit may bump the lieutenant in the bargaining unit with the least seniority if the bumping lieutenant has more seniority than the lieutenant he or she will bump. A lieutenant laid off as a result of such bumping may bump the employee with the least seniority in the bargaining unit of successive lower ranks within the Court Services Department, if the bumping employee has more court services seniority than the employee he or she will bump.

Section 8.6 Termination or Suspension of Seniority has been tentatively agreed to, with the exception of one paragraph, or subsection. Both proposals begin with the following language:

> An employee's seniority with the Employer shall be suspended or terminated, as may be appropriate, upon the occurrence of the following:

The Union proposes a subsection A, as follows:

> A. Promotion to an Exempt Rank (suspension of seniority only):

The Union's proposal for Section 8.6 then continues with subsections B through H, the text of which is agreed. The Employer's final offer does not refer to promotions to an exempt rank as a basis for a suspension of seniority. The Employer's proposal, subsections A through G are the same as the Union's subsections B through H. The agreed upon language, following the Employer's lettering, are as follows:

> A. Resignation or retirement;
>
> B. Discharge for just cause;
>
> C. Absent for three (3) consecutive work days, without notification during such period to the department head or a designee, of the reason for the absence, unless the employee has an explanation acceptable to the Employer for not furnishing such notification.
>
> D. Failure to report to work at the termination of a leave of absence or vacation, unless the employee has a reasonable explanation for such failure to report to work.
>
> E. Failure to notify the Sheriff/Designee in writing within ten (10) calendar days of the employee's intent to report for work upon recall from layoff, or failure to report for work within ten (10) calendar days, after notice to report for work is sent by registered or certified mail or by telegram, to the employee's last address on file with the Department personnel Office;
>
> F. Engaging in gainful employment while on an authorized leave of absence, unless permission to engage in such employment was granted in advance by the Sheriff/Designee in writing;
>
> G. Absence from work because of layoff or any other reason for six (6) months in the case of an employee with less than one (1) year of service from when the absence began, or twelve (12) months in the case of all other employees, except that this provision shall not apply in the case of an employee on an approved leave of absence, or absence from work because of illness or injury covered by duty disability or ordinary disability benefits.

The issues here are important ones for the parties. Lieutenants are the highest civil service rank in the Department. From this rank employees may be selected to hold a supervisory position, usually the rank of Assistant Chief. Because these supervisory

positions are held “at the pleasure of the Sheriff,” there is little job security for supervisors. In the past a change of Sheriffs has resulted in major reorganizations of the management ranks. Displaced supervisors often return to their civil service rank. The Union does not object to this practice and its proposal for Section 8.5(C) addresses the return of exempt employees to the bargaining unit. This proposed subsection provides that a returning exempt employee bumps the least senior lieutenant provided the returning employee has more seniority than the employee being bumped. Lieutenants who are displaced from this rank may bump into lower ranks based upon departmental seniority. The Employer does not support this proposal because it does not want any restrictions on the movement of exempt employees back into the non-exempt ranks. It maintains that it has always operated without such restrictions.

The issue with Section 8.5 is not whether Assistant Chiefs can return to the bargaining unit but, rather, what job security will be provided for the existing lieutenants. Employment security through the accrual of seniority is basic to labor relations. It is certainly the norm in other bargaining agreements the Sheriff has entered into. Requiring that exempt employees entering or re-entering the rank of lieutenant ought not displace more senior lieutenants is standard procedure and should apply to this bargaining unit. Employees who have advanced to the rank of lieutenant should not lose their positions to incoming former supervisors who have less seniority than the bargaining unit employees. The Union’s proposals for bumping as set forth in subsections 8.5(B) and 8.5(C) are selected. (The language Section 8.5 (A) has been agreed to.)

The issue with Section 8.6 involves a different, although related, problem. The current practice is for officers promoted to non-exempt ranks to continue accruing seniority in the

rank which they left. Thus it is conceivable for an employee to serve in the rank of lieutenant for a relatively short time before being promoted to an exempt position. Under current practice that exempt employee would continue to accrue seniority in the rank he or she came from. A long-time exempt employee with hardly any experience as a lieutenant, who is later displaced due to a change of administrations, might be able to bump a lieutenant who has continuously served in that rank while the exempt employee served in a supervisory position.

The Union seeks to curb this practice with its proposal for a new Section 8.6(A). That proposal is to suspend (not eliminate) the accrual of seniority while a former lieutenant is serving in an exempt capacity. In that way the exempt employee might still return to the bargaining unit if displaced (he or she would retain their seniority accrued up to the promotion) but would not be credited with additional seniority while in the exempt rank, which is now the practice. The Union argues that it is wrong to penalize employees who are working in the position of lieutenant and gaining experience in favor of employees who are not improving their abilities as lieutenants, regardless of how well they are performing in their exempt position. According to the Union, seniority is based upon a premise that experience results in greater abilities, and this increases the worth of an employee as well as his/her investment in that job. An employee gaining experience in an exempt position should not be credited the same way as one who is accruing experience on a daily basis as a lieutenant.

The Employer argues that the inability to continue to accrue seniority while working in an exempt rank would have a chilling effect on employees' willingness to serve in appointed (exempt) positions. According to the Employer, a Sheriff must have the ability to reach

down into the ranks and promote those employees he or she believes to be the best managers for his/her administration, without regard to their seniority status in the bargaining unit. If the latter were a factor, employees would be reluctant to accept promotions because job security would last only until the next general election.

The arbitrator finds that the Employer's proposal is the most appropriate for this first contract. First, the Union has not shown that similar language such as it proposes here exists in any other of the Sheriff's many bargaining units. Nor has it shown that the absence of such provisions in other collective bargaining agreements has unduly prejudiced employees affected by returning supervisors. The record is such that the Union's claim is based upon speculation of a worst case scenario. The question for the arbitrator is whether the interests of the Sheriff to have a broad range of choices for exempt positions should be restricted because of the mere possibility that numerous exempt employees will be out of work after the next election and will displace much of the present bargaining unit. While admittedly that might occur, that is an issue for the next round of collective bargaining, not for this first contract. The Employer's proposal for Section 8.6 is selected.

8. Publication of Personnel Changes

With **Section 8.10** the parties have agreed to include a provision requiring the notification of the Union of personnel changes, such as transfers, demotions or the like. They disagree as to whether the Employer must demonstrate that notice was received or whether it only be required to send the notice. Additionally, the Union seeks to have the new language appear in the body of the contract as Section 8.10. The Employer wants the provision in a side letter. The Union appears to accept the concept of a side letter but only if

its language proposal is accepted. The parties agree to the following language:

> The Employer on a monthly basis will notify the Labor Committee designee in writing of the following personnel changes involving bargaining unit employees: transfers, demotions, promotions, appointments, retirements, details and assignments of more than thirty (30) days.
>
> Any alleged violation of this side letter [of this provision] will be subject to the grievance and arbitration provision of the parties ' collective bargaining agreement.

The Union proposes the following additional language:

> The time for filing of grievances related to transfers, demotions, details and assignments will not begin to run until such time that the Labor Committee receives notification pursuant to this provision.

The Union's proposal is ambiguous and invites disagreements because the Union which has no obligation to act until notice is actually received is, in a sense, in control of determining actual receipt. This is perhaps compounded by the failure to agree upon a form of notification and a location. While the arbitrator is not suggesting a temptation for mischief, the underlying issue here, the reassignment of lieutenants has been a sensitive subject for the parties. While it is true that the arbitrator has the authority with a non-economic issue to adjust the language, on this issue the parties should work this out for themselves. Nonetheless, the arbitrator cannot ignore that there have been occasional miscommunications in the past. Accordingly, the proposal will be slightly modified so that the first paragraph has the words "*pursuant to an agreed upon method"* will be inserted in the first paragraph after the word "designee" and before the words "in writing." The parties will have to agree upon the method to be used for notification. This will give the Union the opportunity to assure that the notice is specifically given to the Union's designee. This approach will better address the Union's concern that notice will be given in an obscure, anonymous or indirect method. The arbitrator finds this to be a better system than requiring

the Employer to prove that notice was received. Additionally, the Employer's request to have this provision in a side letter to avoid highlighting its special nature will be accepted. The side letter will read :

> The Employer on a monthly basis will notify the Labor Committee designee pursuant to an agreed upon method, in writing, of the following personnel changes involving bargaining unit employees: transfers, demotions, promotions, appointments, retirements, details and assignments of more than thirty (30) days.
> Any alleged violation of this side letter will be subject to the grievance and arbitration provision of the parties' collective bargaining agreement.

9. Regular Work Periods

The underlying problem involving **Section 13.2** of the Agreement is emblematic of the dispute which brought this case to arbitration. It relates to whether the employees, through their collective bargaining agent, will have a meaningful say in essential terms and conditions of their working life with the Employer. The issue here is the structure of the workday and the workweek, the scheduling of lieutenants by location and the Union's right to bargain over changes in work schedules, other than minor adjustments. Except for the particular staffing placements, as reflected in its proposed schedule, the Union is proposing substantially the same language as agreed to for the sergeants' contract. The two proposals are as follows:

Employer	
Hours worked and schedules in effect at the time of this contract shall remain in effect. Any changes will be discussed with the Union prior to implementation.	one (1) hour paid lunch break.
Except as provided elsewhere in this agreement, an employee's normal work hours shall generally consist of eight (8) consecutive hours of work. Each eight (8) hour day shall be interrupted by a	

b)

The normal work day shall consist of eight (8) consecutive hours. The normal work week shall consist of forty (40) hours in a seven (7) day work week (Sunday through Saturday), with a one (1) hour lunch and two or more consecutive days off. Employees shall be assigned to the schedule attached which shall remain substantially similar in numbers subject to minor changes to meet the Employer's needs. The labor Committee shall be provided at least thirty (30) days notice prior to any proposed change in the hours worked or work schedules from those which existed at the time of the submission of the final offers or October 11, 2005, and may, in the Labor Committee's sole discretion, issue a demand to bargain over any such change. In the event no agreement is reached on the contemplated changes in the hours worked or work schedules, the Labor Committee reserves the right to move the issue directly to impasse arbitration, pursuant to the provisions of the Illinois Public Labor Relations Act.

Lieutenant Assignment Locations including Watch

ASSIGNMENT	WATCH	ASSIGNED
Daley Center Courts	2	1
Traffic Court	2	1
District 2 Courts (Skokie)	2	1
District 3 Cts (Rolling Meadows)	2	2
District 4 Courts (Maywood)	1-2-3	3
District 5 Courts (Bridgeview)	2	1
District 6 Courts (Markham)	1-2-3	3
Michigan Avenue Courts	2	1
Juvenile Courts	2	1
Criminal Courts	2-3	3
Police Courts North	2	1
Police Courts South	2	1
Civil Process-Dist 2 (Skokie)	2	1
Civil Process-Dist 4 (Maywood)	2	1
Civil Process-Dist 5 (Bridgeview)	2	1
Warrants, Levy, Evictions	2-3	2
Child Support Enforcement	2	1
S.W.A.P. (DCSI)	2	1

In mediation and at arbitration the parties spent considerable time discussing this

issue. The Employer insisted that it needed the flexibility to move employees around the various court locations on short notice and without bargaining restraints. The Union argued for stability, certainty and the same working conditions as exist in the sergeants' bargaining unit. Eventually, the parties reached an understanding that the assignments then in existence would remain substantially unchanged. On October 6, 2005, at the parties' last arbitration session, the parties informally agreed, *e.g.* not memorialized in writing, that as of October 11, 2005, the date the final offers were due to be submitted, the Employer's then current staffing was acceptable and met its needs for the immediate future. The understanding was that the current staffing schedules would be the benchmark and that major changes were not anticipated for a reasonable period thereafter.[12] It was the arbitrator's understanding that whichever proposal was accepted, or one of the arbitrator's own design, the patterns would be based upon the status quo of October 11, 2005.[13]

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[12] The arbitrator understood this representation to be an argument by the Employer in favor of its proposal in that it was representing that its reservation of authority stated in its proposal would be exercised with restraint and that the current schedules were adequate. In this way the arbitrator could select the Employer's proposal without concern that on or soon after the effective date of the new contract the Employer would make wholesale changes in the schedule.

[13] On November 30, 2005, more than six weeks after the submission of final offers and the

closing of the record, upon motion of the Union, the arbitrator met with the parties to address the realignment of schedules which the Union alleged were contrary to the representations made at the last day of hearing and upon which the final offers were based. At that time the arbitrator noted that this additional information was timely and appropriate under Section 14(h)(7) of the bargaining statute.

The critical factor for the arbitrator is the Employer's ability to operate its sergeants' unit under substantially the same language at issue here. Sergeants perform similar administrative duties as lieutenants, albeit that the scope is more limited. Nonetheless, the supervising of work by sergeants is not that different from that of lieutenants. Admittedly, management will lose some of its discretion. It will have controls and limitations as occur whenever there are collectively bargained restraints. The Employer will have to make adjustments to manage under a collective bargaining agreement. But there is no objective evidence that the Employer's amorphous need for control outweighs employees' needs for stability in job assignments. The geographic area covered by this unit is simply too vast to allow the Employer unfettered control over daily assignments.

The Union's proposal for regular work periods, setting a normal workweek of 5 consecutive days of 8 hours each, and providing for 30 days notice, subject to arbitration, for significant changes in schedules is appropriate. The language is substantially the same as exists in the sergeants' agreement and there no evidence that this language has not worked with that bargaining unit. Work schedules shall be those in existence on October 11, 2005. The schedule submitted by the Union, as recited above, shall be an attachment.

A W A R D

1. The Union's final proposal for wages is adopted.
2. The Union's proposal for overtime is adopted.
3. The Employer's proposal for subcontracting is adopted.
4. The Union's proposal for health insurance is adopted.
5. The Union's proposal for bargaining unit members and command structure is adopted.
6. The Union's proposal for reduction in work force is adopted.
7. The Employer's proposal for termination or suspension of seniority is adopted.
8. The Employer's proposal and the Union's proposal for publication of personnel changes are each accepted in part.
9. The Union's proposal for regular work periods, as amended by the arbitrator, is adopted.

Respectfully submitted,

HARVEY A. NATHAN

May 1, 2006