INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD

Illinois Fraternal Order of Police Labor Council

and

County of Cook, Illinois/ Sheriff of Cook County
(Joint Employers)

ILRB No. L-MA-05-007
Fugitive Investigators – Department of Community Supervision and Intervention

OPINION AND AWARD
of
John C. Fletcher, Arbitrator
February 1, 2007

I. Procedural Background:

This matter comes as an interest arbitration between the County of Cook and the Sheriff of Cook County as Joint Employers ("the Joint Employer") and the Illinois Fraternal Order of Police Labor Council ("the Union") pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). The bargaining unit represented by the Union consists of approximately 25 sworn Investigators who serve in the Department of Community Supervision and Intervention ("DCSI"). This dispute arises from the parties' impasse in the negotiation of the Collective Bargaining Agreement ("CBA") effective December 1, 2001 through November 30, 2004. The parties' stipulations are set forth in Section V herein below.

A hearing before the undersigned Arbitrator was held in this matter on August 21, 2006 in the offices of Counsel for the Joint Employer. At the hearing, the Union was represented by:

Gary L. Bailey, Esq.
Illinois F.O.P. Labor Council

5600 S. Wolf Road
Western Springs, Illinois 60558

Co-counsel for the Joint Employer were:

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Post-hearing briefs were filed with the Arbitrator and exchanged on November 28, 2006. The record was closed on that date.

II. Factual Background

The County of Cook employs approximately 25,000 persons, about 20,000 of whom work in some 90 different unionized units for purposes of collective bargaining. (Tr. 95.) The record establishes that about 6,000 represented employees hold law enforcement positions in various departments of the Cook County Sheriff's Office. The 25 members of the bargaining unit represented by the Union in this particular case, are "jointly" employed by the County of Cook ("the County") and the elected Cook County Sheriff ("the Sheriff"). The County is responsible for the resolving and managing all issues having economic impact on the bargaining unit, including but not limited to those concerning wages and benefits, while other administrative responsibilities, such as the hiring, firing, and supervising of Sheriff's Department employees, are relegated to the Sheriff.[1]

The record before the Arbitrator establishes that the majority of the Joint Employer's law enforcement personnel are employed in four large departments. Chief among them is the Department of Corrections, which staffs the largest single-site jail of

[1] Joint Employer brief at page 6.

its kind in the United States, and employs approximately 2,600 sworn Correctional Officers. The Court Services Department employs some 1,600 sworn personnel who are responsible for securing Cook County court facilities, and also for serving writs and warrants as ordered by the courts. The Sheriff's Police Department employs approximately 500 sworn personnel who perform police patrol work throughout the unincorporated areas of Cook County and also assist other community police departments with police specialty functions. The Department of Community Supervision and Intervention ("DCSI") employs approximately 400 persons, including the 25-member Fugitive Investigators unit party to this arbitration.

DCSI was established in 1992, and administers four major programs involving criminal detainees who would otherwise be incarcerated at Cook County Jail.[2] These programs are the Electronic Monitoring Program (EM), the Day Reporting Center (DRC), the Pre-Release Center (PRC) and the Sheriff's Work Alternative Program (SWAP). The Fugitive Investigators party to this arbitration are primarily responsible for locating and apprehending fugitives from DCSI programs, the majority of whom are participants in either the EM or DRC programs.

According to the record, the Electronic Monitoring program is reserved for non-violent offenders, the majority of whom are awaiting trial for their alleged crimes. EM participants are confined to their homes rather than Cook County Jail, and wear non-removable ankle transmitters for purposes of monitoring. The Day Reporting Center

[2] Inmates incarcerated at Cook County Jail are, as a rule, awaiting trial on pending criminal charges. Some, however, have been convicted and sentenced to incarceration for a period of one year or less. See; Metropolitan Alliance of Police (Cook County Department of Corrections) and The County of Cook, Illinois/Sheriff of Cook County; ILRB No. L-MA-04-006, (Fletcher, 2006).

serves an average of 500 detainees per day, most of whom are EM participants facing drug-related charges. While residing at home on electronic monitoring equipment, DRC participants report daily to the Department of Corrections for drug treatment and/or for vocational, educational, and life skills training.

This bargaining unit of Fugitive Investigators was formed in May, 1995 when the Illinois Labor Relations Board certified the Union to represent the "full time Investigator IIs" in the DCSI. The EM and DRC programs also employ Investigators who were organized for purposes of collective bargaining around the same time. The EM Investigators are presently represented by the Metropolitan Alliance of Police (MAP) as part of the Cook County Correctional Officers bargaining unit. Like the Fugitive Investigators, the Day Reporting Investigators are represented by the Illinois Fraternal Order of Police, albeit in a different bargaining unit.

Bargaining history is germane to the matters at bar, because, pursuant to the applicable statutes, internal comparability has taken front and center in this and other similar interest arbitrations since the Investigator bargaining units were organized. The record establishes that when the DCSI Investigator units were first created, they were, for the most part, staffed from the ranks of Cook County Correctional Officers. At that time, newly-installed Investigators were placed on a higher "Investigator II" pay scale, though they remained on the County's Schedule I pay plan with AFSCME-represented employees in Court Services and also a number of other unrepresented employee groups. Later, when the DCSI Investigators were organized into separate bargaining units, all of their initial collective bargaining agreements incorporated wage increases which placed them on the internally comparable (identical) "IS2" pay scale. DCSI

Fugitive Investigators, as do the Day Reporting Investigators and Internal Affairs Investigators in the Department of Corrections and the Court Services Department, receive IS2 pay to the present day. In contrast, EM Investigators in the DOC (who also started at the IS2 scale with other DCSI Investigators when the bargaining units were first formed) now receive a 2% higher "CS2" wage rate as a result of Arbitrator Byron Yaffe's interest arbitration with the Correctional Officers bargaining unit in 2000.

III. The Bargaining History of The Fugitive Investigators

Since its certification, this bargaining unit of Fugitive Investigators has been covered by three successive collective bargaining agreements, all of which were ultimately *finalized* in interest arbitration. The first contract, in effect from December 1, 1995 through November 30, 1998, was resolved by this Arbitrator in his Opinion and Award dated September 15, 1998. The sole issue before him then, unlike now, concerned wages which the Union asserted lacked essential internal parity with members of the Cook County Sheriff's Police bargaining unit.[3] In pertinent part, this Arbitrator concluded as follows:

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> The thrust of the Union's evidence in this case goes to its assertion that the Fugitive Investigators should be compared with Sheriff's Police Officers, while the Employers argue they are more appropriately compared with Investigators in the DCSI Electronic Monitoring and Day Reporting Units.
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> While the Employers acknowledge there is the possibility of human error, it is evident efforts are made to limit participation in the Electronic Monitoring and the Day Reporting Programs to persons who are not likely to be violent … . The evidence further shows that these persons, when

[3] There is no dispute that the Cook County Sheriff's Police are presently, and have always been, the highest paid law enforcement group in Cook County.

> they are fugitives as a result of being AWOL from the program, generally seek to elude the Investigators rather than resist arrest … .
>
> In contrast, the Sheriff's Police Officers regularly deal with offenders of various sorts, from traffic violators to violent criminals. They are regularly involved in crimes in progress. While the Fugitive Investigators might be exposed to the same risks as the Police Officers, the Panel finds the frequency of such exposure to be a distinguishing characteristic … .
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> It is additionally relevant that the Fugitive Investigators have historically been paid at the same rates as the EM Investigators and the Day Reporting Investigators. Both of those units have reached collective bargaining agreements with rates of pay that are identical to each other, as well as identical to the pay schedule proposed by the Employers in this case. As noted by Arbitrator Goldstein in *County of Cook/Sheriff of Cook County and Teamster Local Union No. 714*, L-MA-95-001 (1995), the Panel should not award "breakthroughs" that would substantially change the *status quo* in the absence of substantial and compelling justification. In this case, there is insufficient justification to warrant discontinuing the parity that has existed between the Fugitive Investigators and the other two [EM and Day Reporting] units … . (Emphasis in the original.)[4]

The subsequent collective bargaining agreement between these parties was in effect from December 1, 1998 through November 30, 2001, and the matter of wages was again settled at interest arbitration by Arbitrator Herbert Berman in his Opinion and Award dated November 14, 2001. Before Arbitrator Berman, the Union again argued in favor of internal parity with Cook County Sheriff's Police, and was again rebuffed on the following pertinent basis:

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> In the end, however, I concur with the Employer that the overall scope of the job of the Sheriff's Police, coupled with their more advanced training and risk of danger in apprehending violent offenders, distinguishes them from Fugitive Unit Investigators … .
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> One can only applaud the work of the Fugitive Investigators. The evidence presented here shows that they have consistently apprehended most, if not all, AWOLs. Nevertheless, the evidence regarding Fugitive

[4] Joint Employer Exhibit 19.

> Investigators' training and dangerous, or potentially dangerous, working conditions is not substantially distinguishable from similar evidence presented to arbitrator Fletcher … .
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> As the Employer pointed out, much of the evidence produced by the Union dealt with incidents that occurred before fiscal year 1998-99, the final year of the three-year contract reviewed by arbitrator Fletcher. Although it is unclear whether evidence related to these incidents was presented in some form to arbitrator Fletcher, it is clear that the exhibits submitted here (UXs 21-42) were not presented to him. Under these circumstances, I am reluctant to credit evidence that could have been presented to and considered by arbitrator Fletcher. In a sense, the Union would impeach arbitrator Fletcher's Award by reason of evidence that would have been material and relevant had it been – although it was not – submitted to him. To concur in this approach would imperil the viability of virtually any award made by any arbitrator. In a later proceeding involving the same or similar issue, either party could attack the opinion underlying the initial award simply by presenting arguably material and relevant evidence it had withheld, overlooked, or failed to discover. In short, I do not consider it appropriate to consider new evidence relevant to issues raised and considered in a prior award. In any event, the pre- and post-1998 evidence relating to arrests made by Fugitive Investigators does not persuade me that the work of Fugitive Investigators is significantly comparable to the work of police officers … .
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> … [The] distinctions between Fugitive Investigators and other investigative units are insufficient to set aside the "internal consistency of the investigatory units of the Sheriff's Office".[5]

On January 30, 2002, the Union petitioned the Circuit Court of Cook County to vacate Arbitrator Berman's award on the basis that it was "arbitrary and capricious", and on February 13, 2003, the Court ruled from the bench as follows:

[5] Here, Arbitrator Berman quotes from the Joint Employer's brief at page 21 in that case. His decision in its entirety is Union Exhibit 11. Of particular note in light of subsequent events, is the fact that Arbitrator Berman sustained this Arbitrator's prior conclusion that, given the evidence (or lack thereof) before both of us, Fugitive Investigators were not deserving of proposed wage increases on the sole basis that their duties were more comparable to those of Sheriff's Police Officers than those of EM and Day Reporting Investigators. It is clear that Arbitrator Berman was not asked to, nor did he, expressly compare the duties of one group of Investigators to another. In distinct contrast, he found that there was insufficient evidence to support departing from historical parity between groups of Sheriff's Department Investigators in the matter of wages. While this may be a fine point, it does matter in view of Arbitrator Harvey Nathan's relevant conclusions in a subsequent interest arbitration between these same parties.

> [W]ith all due respect to arbitrator Berman, I think that probably your fugitive investigators face more danger more often than a policeman out there patrolling stop lights and stop signs.
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> They go and pick up somebody who doesn't want to be captured. They don't know what they are going to find behind the door. If it's a matter of not having as much training as the police officers on beat, they should not denigrate the fugitive investigators. They should give them more training and bring them up to speed.
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> This Court is going to vacate the arbitrator's opinion. Draw the order.[6]

On March 12, 2002, the State's Attorney of Cook County appealed the Circuit Court's decision, and thus, the Joint Employer neither implemented the terms of Arbitrator Berman's decision with respect to wages, nor convened negotiations for new ones. (Id.) In the meantime, obviously, the term of the "Berman contract" (December 1, 1998 – November 30, 2001) expired, and so the parties began negotiations for a third three-year collective bargaining agreement. Hardly surprising, the parties soon reached an impasse on the matter of wages, and their last best offers were submitted to Arbitrator Harvey Nathan for binding resolution under the statutes.

On May 30, 2003, the record establishes, Arbitrator Nathan refused to entertain the parties' respective arguments for a new collective bargaining agreement until such time as the Berman decision was resolved in the courts. Thus, without prejudice and in order to advance the subsequent process, the Union agreed to "reduce [Berman's decision] to writing despite the fact that it had already expired."[7] Arbitrator Nathan accordingly reconvened interest arbitration for the successor contract on June 14, 2004, and rendered his Opinion and Award with respect to wages in effect from December 1, 2001 to November 30, 2004 on September 15, 2004.

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[6] Union Exhibit 12.

[7] Union brief at page 5.

In June of 2000, during the term of the contract these parties submitted to Arbitrator Berman for resolution, Arbitrator Byron Yaffe issued an interest arbitration award involving the Cook County Correctional Officers bargaining unit (represented by MAP), in which he concluded in pertinent part as follows:

> The record supports a conclusion that internal comparability considerations justify continuation of a difference in the pay of Correctional Officers and Police Officers, based, at least in part, on a difference in training, required experience, and duties/responsibilities. However, when one examines the history of the pay relationship between these two units, it becomes apparent that the pay gap between these two units has widened over time based upon identical percentage increases which have been imposed upon different pay schedules with different pay ranges. In the undersigned's opinion, more of the same would only widen that gap, unjustifiably. Therefore, in order to maintain some stability in the pay relationship between these two units, the undersigned believes that it would be fair and appropriate to grant the Employer's pay proposal for the first two years of the Agreement affected by this award, and the Union's wage proposal for the third year of said Agreement. Granting the Union's proposal in the third year of the Agreement will hopefully help return the parties' pay relationship to what it previously has been, while at the same time minimizing the financial/cost impact on the Employer ... .[8]

The result of Arbitrator Yaffe's above decision, which in the end proves important to the current case before the Arbitrator, was that Correctional Officers and EM Investigators represented by MAP received an additional 2% wage increase in 2002, the third and final year of the contract at bar in that case. Thus, obviously, previous internal parity between all law enforcement Investigator units in the Sheriff's Department with respect to wages was effectively compromised, and the [2%] higher "CS2" rate for DCSI EM Investigators represented by MAP was born. Later in 2000, interestingly, Arbitrator Yaffe confronted the very issue of that disparity when interest arbitration over wages was convened with the Day Reporting Investigators bargaining unit represented

[8] Joint Exhibit 20.

by the FOP. In denying the union's petition for a parallel 2% wage increase in that case, Arbitrator Yaffe reasoned in pertinent part as follows:

> The undersigned's recent interest arbitration award in the Correctional Officers' (CO) unit was intended to prevent an increasingly widening gap between the pay ranges of County Sheriff Police Officers and Corrections Officers which appeared to have occurred over a significant period of time as a result of recurring similar percentage increase settlements which were applied to both units. In effect, the third year component of the award amounted to a catch up award intended to maintain the pay relationship which existed between the two units over time. It was not justified based upon other considerations.
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> Because of the final offer nature of IL Statute under which the award was issued, the undersigned had no choice by to award the same 3rd year increase to the EM Investigators in the CO unit, even though the record did not support the need for, or in fact, a basis for that much of an increase for said employees, based upon comparability and/or other relevant statutory criteria. As a result, in the undersigned's opinion, the EM Investigators in the CO unit experienced a somewhat unjustified windfall. (Emphasis added.)
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> The undersigned is thus confronted with the dilemma of either exacerbating the consequences of that unjustified windfall by awarding the FOP's third year proposal herein, or creating a disparity between the pay of EM Investigators and Day Reporting Investigators, who the parties at one time apparently believed should be paid similarly. In this regard the undersigned believes the latter consequence is the lesser of two evils. This is so since the Employer's offer here is more consistent with what other Investigators in the County are being paid, what many other County Sheriff employees have settled for, and cost of living considerations. In addition, although external comparability evidence in this proceeding cannot be deemed determinative because of both reliability and comparability considerations, it is apparent from the record that the Day Reporting Investigators are relatively well paid based upon such considerations. (Emphasis added.)
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> Though it must be conceded that the undersigned's awards in this matter and in the CO unit have created some potential problems for both the Employers and affected employees, the difference in wages between the two sets of employees will only be in effect for one year, and the parties will soon have an opportunity to address the issue of the comparability of EM, Day Reporting, and other Investigators in the next round of negotiations, and if necessary, in the interest arbitration process. It should be noted in this regard that the instant record contains little evidence, or for that matter argument, pertinent to the comparability of the various types of investigators employed by the Sheriff and the County.

> Perhaps it is time for the parties to look at that issue, and its consequences, seriously. (Emphasis added.)[9]

As will be discussed in further detail below, the Arbitrator "digressed" to discuss the matter of the 2% disparity between the CS2 wage rate awarded to MAP-represented EM Investigators by Arbitrator Yaffe in 2000 (effective fiscal 2002) and the IS2 wage rate presently earned by other Sheriff's Department Investigators (including the Day Reporting Investigators addressed by Arbitrators Yaffe and Benn, and the Fugitive Investigators addressed by this aribitrator and Arbitrators Berman and Nathan), mainly because the matter of the 2% "EM" differential was raised before Arbitrator Nathan, and has again been broached in this case.

In the interest arbitration between these parties immediately preceding the instant one, Arbitrator Nathan described the impasse as to wages in pertinent part as follows:

> This case arises because the parties cannot agree whether the work of the Fugitive Investigators is more comparable to those law enforcement units that are paid on a higher wage scale than the Fugitive Investigators, or to the other units also on the IS2 wage scale. The Union has proposed putting the Fugitive Investigators on a new pay scale, which it refers to as the "IS2B" scale. This scale is proposed at 4% more than the existing IS2 scale. Other than this structural change the parties agree that all wages should be increased according to the formula accepted by other law enforcement bargaining units for the 2001 through 2004 contract years … .
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[9] Union Exhibit 31. The record establishes that the Joint Employer and the Day Reporting Investigators' bargaining unit returned to interest arbitration before Arbitrator Edwin Benn as an extension of the "next round of negotiations". Before Arbitrator Benn, the Union argued for "larger than pattern" wage increases for Day Reporting Investigators. However, in ultimately awarding the Joint Employer's final offer, Arbitrator Benn made no specific reference to the parallel 2% increase denied by Arbitrator Yaffe in 2000. Instead, he reasoned in part that, "Based on the above discussion and considering the relevant statutory factors, external comparability is not an issue; internal comparability favors the Employer's wage offer; cost-of-living favors the Employer's wage offer; and other factors do not change the result. The Employer' wage offer is therefore adopted." (Id.)

The Employer maintains that except for the Court Services units which are on a different contract cycle, all other units have received [the pattern] wage increase formula for the 2001-2004 contract period … .

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According to the Employer this has been the historical pattern with only a few exceptions. One of those exceptions has been with the EMU Investigators who received an additional 2% from Arbitrator Yaffe because they were part of the Correctional Officer unit and Yaffe agreed that this unit deserved the additional 2% as a "catch-up" to maintain an historical relationship with the Sheriff's Police.

Thus, despite the Employer's argument that it is seeking to preserve similarity in wage structure among all employees doing similar work, the EMU Investigators are paid on a different scale from the Fugitive Investigators…

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… Indeed, the thrust of the Union's case in seeking a new wage scale for the Fugitive Unit Investigator unit is that the County agreed with Teamsters Local 714, the labor organization representing the Court Services employees, that those deputies working outside the courtrooms, referred to as the "street units", should be paid a differential over the wages received by the "inside" deputies. In 2000 the County and Local 714 agreed to a new wage schedule for the street units within that bargaining unit which gave them 4% more than the inside employees. This scale is called the "D2B" grade. The Union argues in this case that just as street units in Court Services are different from other employees in the division based on the nature of the work performed interacting with offenders and others on the streets of the County, so, too, the Fugitive Investigators should be differentiated for salary purposes from the other units within DCSI. That is the reason for the IS2B wage scale proposal. The Union argues that if the County is sincere in its attempt to maintain uniformity in wages among employees performing similar tasks, it should pay the Fugitive Investigators a 4% differential just as it pays the street unit employees within Court Services a 4% differential.[10]

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[10] Arbitrator Nathan's summary of the parties' contentions in 2004 are material here, because in this case, the Union is (over and above its proposed wage increases) pursuing both a 2% "EM Differential" and a 4% "Street Differential". As will be discussed later herein, the Arbitrator observes that the 2% increase proposed by the Union is apparently designed to "catch up" with DCSI EM Investigators who were awarded the "unjustified windfall" by Arbitrator Yaffe in the cited Correctional Officers case. Obviously, then, the additional proposed increase parallels the true 4% "differential" previously approved for Court Services personnel working "in the field" rather than in court.

> The Union also points out that the County has always argued that the Fugitive Investigators could not compare themselves with the Sheriff's Police and that is why the Fugitive Investigators could not be paid more. Now a Circuit Court judge has disagreed and while that decision is without precedent, it does provide guidance to the arbitrator in making his analysis in the present case.
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> The County responds that the differential among the Court Services employees has been an historical practice which was temporarily abandoned during the early years of collective bargaining. The agreement to restore the differential was not a breakthrough or a new concept. The parties simply restored what had been a long historical practice. According to the County, that the parties mutually agreed to restore the *status quo ante*, and that this was not imposed by an arbitrator, distinguishes the Court Services wage structure from that sought by the FOP in this present case. Additionally, the County argues that there really is a distinction between the work performed by the street units and the inside Court Services employees that does not exist between Fugitive Investigators and the other FOP represented employees in DCSI… (Emphasis original.)[11]

In material part, then, Arbitrator Nathan concluded that the Joint Employer's wage offer should prevail for the following reasons:

> The Union is in a difficult position because two arbitrators have determined that the work of Fugitive Investigators is not so fraught with risk that they should be paid a premium over what is paid to other Investigators.[12] While the Union and the employees genuinely believe that these prior arbitrators were wrong, their findings resolve the issue unless the Union can show either that there was some egregious error or a mistake of law or that the facts and circumstances have so changes as to render the prior awards inapplicable. That another arbitrator might disagree with the prior conclusions is insufficient to unsettle the caselaw … .
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> I find that there was, and continues to be, substantial evidence to support Fletcher's and Berman's findings that Fugitive Investigators are

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[11] Union Exhibit 14.

[12] Arbitrator Nathan's observation here is technically correct. However, this Arbitrator, because he was the first of the two arbitrators cited to so conclude, is compelled to emphasize that while the end result with respect to wages was just as Arbitrator Nathan described, actual comparisons in both prior cases were made to Sheriff's Police Officers, and not to "other investigators." This is demonstrated not only in the text of both prior decisions, but in the Circuit Court's decision to vacate Arbitrator Berman's award on the basis that, "Probably your fugitive investigators face more danger more often than a policeman out there patrolling stop lights and stop signs…" (Union Exhibit 12; *supra*)

not sufficiently distinguishable from other Investigators so as to justify premium pay.[13] Nothing submitted by the Union demonstrates that the facts and circumstances of the work of these employees have changed since the issue was last addressed by Arbitrator Berman. Both Berman and Fletcher articulated their understanding that the work in question is dangerous and has some kinship to other street work. Nonetheless, they found that, in their judgment, the level of risk did not justify additional wages. The parties "bargained"[14] for the judgment of these arbitrators and the undersigned will not alter those findings without a strong showing of a change in circumstances, egregious error or mistake of law. None of these factors appear in the record of this case.

The Union argues that what has changed is that the Employer has now agreed to pay Street Deputies in the court Services Department a 4% wage premium over "Inside Deputies". It argues that this upsets the Employer's prior justification against agreeing to a premium for some employees in a single classification in a single department. In principle, without other considerations, the Union has a point…

The Employer argues that it was only restoring what existed before collective bargaining. But, the fact is, the parties negotiated that variance away. That this might have been a restoration of an old benefit only weakens the Employer's argument of principle. In other words, the Employer is conceding that there has been a practice of recognizing that some employees with special risks get higher pay even though they are in the same classification as employees who do not get the premium.

But the argument cannot be considered in a vacuum. If the principle behind the splitting of the wage schedules for Court Service employees is to be applied to DCSI employees there must be a similarity of circumstances. With Court Service employees there is a clear dichotomy of functions. Some deputies do not go on the street at all. Others are always on the street. Regardless of whether their street work is as dangerous as Fugitive Investigator street work (it is not), the comparison must be made with the other employees in the respective departments. With Investigators, almost everyone is out on the street sometimes and inside at other times. The split in responsibilities is not as clear cut as it is within the Court Services. Thus, the argument comes full

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[13] Again, the Arbitrator notes for the record that neither he nor Arbitrator Berman so concluded in express terms. Instead, we concluded that Fugitive Investigators were not sufficiently like Sheriff's Police Officers in terms of internal comparability so as to justify increases which would narrow or eliminate the wage gap between those two groups. In the end, of course, parity was thus maintained between the Fugitive Investigators in this bargaining unit and other Sheriff's Department Investigators (that is until Arbitrator Yaffe abolished that internal consistency with his 2000 award in the Correctional Officers case).

[14] " 'Bargained' for their judgment" is not factually correct, as these cases do not result from the typical process of *voluntary* arbitrator selection, but, instead is manditory interest arbitration under Illinois law when impass results.

> circle. Are the Fugitive Unit Investigators that materially different from other Investigators so as to justify a special wage schedule[?] That is the question that Arbitrators Fletcher and Berman resolved. Insufficient evidence has been presented to disturb those findings.[15]

Thus, the stage is now set for the Arbitrator's consideration of the issues currently at bar, particularly those concerning both parties' proposed general wage increases, and the Union's additional bid for a 2% "EM Differential" and a 4% "Street Differential".

IV. Statutory Authority and the Nature of Interest Arbitration

The statutory provisions governing the issues in this case are found in Section 14 of the Illinois Public Labor Relations Act. In relevant part, they state:

> 5 ILCS 315/14(g)
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> On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute… the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive… As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).
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> 5 ILCS 315/14(h) – [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]
>
> (1) The lawful authority of the employer.

[15] Here, finally, the Arbitrator is compelled to correct Arbitrator Nathan, because the Union's argument with respect to the 4% premium paid to Court Services "street" personnel has not, in fact, come "full circle". First and foremost, neither this Arbitrator nor Arbitrator Berman resolved the question as to whether or not Fugitive Investigators were "materially different from other Investigators so as to justify a special wage schedule." Again, both prior decisions were expressly based upon evaluation of Fugitive Investigator duties and responsibilities as compared to those of Sheriff's Police Officers. Moreover, though perhaps less importantly, while some Court Services personnel do perform "street duties" and are paid a premium because of it, they are not, nor have they ever been, considered "Investigators". The entirety of Arbitrator Nathan's Opinion and Award is Union Exhibit 14.

(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.

As have been rightly observed by other arbitrators, certain basic principles underlie this interest arbitration award. First, interest arbitration in general is intended to achieve resolution to an immediate impasse, but not to usurp, or be exercised in place of, traditional bargaining. Some arbitrators have characterized the unique function of interest arbitration, as opposed to that of grievance arbitration, as avoidance of any gain on the part of either party which could not have been achieved through “normal” negotiations. Otherwise, some have reasoned, the entire collective bargaining process could be undermined to the extent that many parties, at the first sign of impasse, might

immediately resort to interest arbitration.[16] Pursuant to this theory, then, there should be no substantial "breakthroughs" in the interest arbitration process, and the Arbitrator understands the premise supporting this point. Certainly, were he (or any arbitrator for that matter) to award an economic advantage significantly superior to that which either party might have gained through traditional bargaining, how likely is it that the "victor" would by-pass future good-faith bargaining in the hope of a repeat boon? Traditional wisdom dictates that the answer is, "very likely", and perhaps this is true. However, this Arbitrator has examined all of the issues and authorities directed to his attention by both parties to this particular dispute, and has also carefully considered their articulations concerning the proper role of impasse interest arbitration in that context. Given the record before the Arbitrator in this case, there is little doubt, even in the face of a patent history of past impasse arbitrations, that good faith bargaining did occur.

This fact speaks with clarity on two points. First, it demonstrates that prior interest arbitrations between these parties have not, in fact, produced so unreasonable an outcome that the process of bargaining was at best undermined, and at worst entirely rendered useless. Second, the process, at least in this case, was not abused to the extent that either party is now seeking an absurd result or an unreasonable advantage. On the preeminent issue of wages, for example (which is discussed in

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[16] "If the process [of interest arbitration] is to work, it must not yield substantially different results than could be obtained by the parties through bargaining. Accordingly, interest arbitration is essentially a conservative process. While, obviously value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it his function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse…" *See*; Will County Board and Sheriff of Will County; (Nathan, 1988); quoting Arizona Public Service; 63 LA 1189, 1196 (Platt, 1974); accord; City of Aurora; S-MA-95-44 at pages 18-19 (Kohn,1995).

detail below), both the Joint Employer's final offer and the Union's final offer, while manifestly important to each for different reasons, are relatively close in the second year of the proposed Agreement and identical in the third. The Arbitrator duly notes here that the issue of contract duration is on the table, and as such, a like comparison is impossible for a potential fourth year. However, the Union stipulates that if the Arbitrator does award a four-year contract in this case, the general wage increase proposed by the Joint Employer "will be adopted".[17]

Thus, without a crystal ball, determining which proposal the parties "would likely have achieved on their own" is somewhat problematic.[18] When all is said and done, "last best offer" arbitration is the only self help alternative available to the parties under applicable Act provisions when true impasse occurs, and thus must be viewed as an extension of, and not a replacement for, the collective bargaining process. As the Arbitrator has previously observed, there is no evidence that either party to this particular dispute has viewed the instant arbitration any other way, even though in the

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[17] Union brief at page 24.

[18] The Arbitrator's opinion on this matter does not depart from the following pertinent (and long-held) opinion he expressed in Village of Downers Grove and the Downers Grove Professional Firefighters; Case No. S-MA-94-246, December 6, 1994: "For instance, explore the notion that impasse arbitration had ought not award either party a better deal than that which it could have expected to achieve through negotiations at the bargaining table. Without a crystal ball, who can tell with any degree of certainty what the expectations of either party were. Going in, both sides know that the final option available, if impasse occurs, is last best offer arbitration. The bargaining table, in most negotiating environments, is not the final available stop. Mediation, fact-finding, emergency boards, arbitration, strike, lockout, blue flu, discharge, bankruptcy, discontinuance of the enterprise, decertification, as well as legislative lobbying and court action, may also be viable pursuits for negotiating objectives. Moreover, and importantly, under the IPLRA, impasse arbitration, with its last best offer approach, is an essential ingredient of the labor relations process for Illinois security employees, peace officers and firefighters. The Act is designed to substitute self help and other traumatic alternatives, resources available in some other environment, (and also the threat of self help which may hang as a sword over the negotiating table), with a less disruptive procedure to produce settlement. The concept that arbitrators should do no more than the parties would do themselves is patently circuitous since in fact the parties were not able through negotiations to do it themselves…" (Page 24, emphasis added.)

end, they were unable to settle their differences face-to-face with respect to the issues that follow.

Holding the above truth (that the Arbitrator does not, in fact, enjoy the advantage of a crystal ball) in tension with the task at hand, it is also important to note that it is not entirely impossible to obtain a change, or a departure from the "*status quo*", through the process of interest arbitration. Here, three tests (and an additional observation) noted by Arbitrator Nathan, this time in Will County Board and Sheriff of Will County and AFSME, Local 2961; S-MA-88-9 (1988), prove particularly useful. Arbitrator Nathan rightly concluded that in order to obtain a change through interest arbitration, the party seeking the change must, at a minimum, demonstrate the following:

- That the old system or procedure has not worked as anticipated when originally agreed to;
- That the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union); and
- That the party seeking to maintain the *status quo* has resisted attempts at the bargaining table to address these problems.

It is the party seeking the change that must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process.

Arbitrator Raymond McAlpin established the following additional (and equally helpful) principles in an interest arbitration involving the Cook County Deputy Sheriff Sergeants:

> [W]hen one side or the other propose[s] significant changes to the status quo, there is a special burden placed on that party. When one side or another wishes to deviate from the status quo of the previous Collective Bargaining Agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This panel

recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship. The party desiring the change must show that:

1. There is a proven need for the change
2. The proposal meets the identified need without imposing an undue hardship on the other party.
3. There has been a quid pro quo offered to the other party of sufficient value to buy out the change or that other comparable groups were able to achieve this provision.[19]

This Arbitrator finds the guidance of Arbitrators Nathan and McAlpin (among others) on this subject to be a reasonable alternative to the "crystal ball" approach. The Arbitrator will thus examine each of the parties' proposals on the issues at bar in the context of the above "tests" where applicable, and equally importantly in light of their promulgated proofs.[20]

V. The Stipulations of the Parties

1) The Arbitrator in ILRB Case No. L-MA-05-007 shall be Arbitrator John Fletcher. The parties stipulate that the procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on those mandatory subjects of bargaining submitted to him as authorized by the Illinois Public Labor Relations Act, including but not limited to the express authority and jurisdiction to award increases in wages and all other forms of compensation retroactive to December 1, 2004. Each party expressly waives and agrees not to assert any defense, right or claim that the arbitrator lacks jurisdiction and authority to make such a retroactive award; however, the partied do not intend by this Agreement to predetermine in any award of increased wages or other forms of compensation in fact should be retroactive.

2) The hearing in said case will be convened on August 21, 2006 at 10:00 a.m. The requirement set forth in Section 14(d) of the Illinois Public Labor Relations Ace, requiring the commencement of the arbitration hearing within (15) days following the Arbitrator's appointment, has been

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[19] County of Cook /Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council; LLRB Case No. L-MA-96-009 (McAlpin, 1998.)

[20] *See also*; City of Burbank and the Illinois Fraternal Order of Police Labor Council; ISLRB Case No. S-MA-97-56 (Goldstein, 1998.)

waived by the parties. The hearing will be held at the law offices of Meckler, Bulger & Tilson, 123 N. Wacker Drive, Chicago, Illinois.

3) The parties have agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the employer and exclusive representative and agree that Arbitrator Fletcher shall serve as the sole arbitrator in this dispute.

4) The hearing will be transcribed by a court reporter or reporters whose attendance is to be secured for the duration of the hearing by agreement of the parties. The cost of the reporter and the Arbitrator's copy of the transcript shall be shared equally by the parties.

5) The parties are in agreement as to the issues that remain in dispute and that these issues are mandatory subjects of bargaining submitted for resolution by the Arbitrator. The parties however disagree as to the number of issues before the Arbitrator. The parties' respective positions regarding the number of issues are set forth in the Appendix to this Joint Submission. The parties agree that the Arbitrator has the authority to determine the number of issues before him. The parties further agree that all the issues are "economic" within the meaning of Section 14(g) of the Illinois Public Labor Relations Act.

6) The tentative agreements reached in these negotiations shall be adopted by the Arbitrator in his Award.

7) Final offers shall be exchanged no later than the start of the arbitration hearing on August 21, 2006. Thereafter, such final offers may not be changed except by mutual agreement of the parties.

8) Each party shall present its evidence in the narrative format. The Labor Council shall proceed first with the presentation of its case-in-chief. The Joint employers shall then proceed with their case-in-chief. Each party shall have the right to present rebuttal evidence.

9) Post-hearing briefs shall be submitted to the Arbitrator, with the copy for the opposing party sent through the Arbitrator, no later than thirty (30) days from the close of hearing (which shall be the receipt of the hearing transcript), or such further extensions as may be mutually agreed to by the parties or as granted by the Arbitrator. The post-marked date of mailing shall be considered to be the date of submission of a brief.

10) The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator shall issue his award within sixty (60) days after submission of the post-hearing briefs or any agreed upon extension requested by the Arbitrator.

11) Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.

12) Except as specifically modified herein, the provisions of the Illinois Public Labor Relations Act and the rules and regulations of the Illinois Labor Relations Boards shall govern these arbitration proceedings.

13) The parties represent and warrant to each other that the undersigned representatives are authorized to execute on behalf of and bind the respective parties they represent.

14) The Arbitrator shall retain the official record of the arbitration proceedings until such time as the parties confirm that the award has been fully implemented.

VI. Outstanding Issues

Pursuant to the above stipulations, the record indicates that the parties remain in dispute as to the number of issues before the Arbitrator. The Union asserts that there are nine issues, while the Joint Employer argues that there are only five. At the heart of the matter is conflict over the essential structure of the parties' respective general wage proposals, and the Union's additional bid for "EM" and "Street Unit" differentials. The Union poses each of its three general wage increase proposals (for a three-year contract in effect from December 1, 2004 through November 30, 2007) as separate "issues". Also, the Union tenders two additional "issues" concerning the disputed differentials noted above.

The Joint Employer, on the other hand, accuses the Union of "fragmenting" the issue of wages, and thus frustrating the "final offer" design of statutory criteria which "foster[s] private settlement by forcing parties to get realistic and make an offer on each subject that is sufficiently reasonable that the arbitrator is likely to adopt it 'as is'**…"**[21] In particular, notes the Joint Employer in support, Section 14(h) of the Act stipulates that certain statutory criteria should be duly considered "when… wage rates or other conditions of employment… are in dispute." That language, reasons the Joint

[21] Joint Employer brief at page 36.

Employer, clearly contemplates that the subject of "wage rates" is a single issue for purposes of interest arbitration under the Act, and does not authorize the Arbitrator to consider "wage components" as separate issues subject to prescribed statutory factors."[22] Accordingly, opines the Joint Employer, Section 14 instructs that because the parties have reached impasse as to wage rates over the full term of this proposed contract, final "wage packages" should be considered in their entirety.

The Joint Employer also argues that there is "overwhelming arbitral authority" supporting its position on this point, including this Arbitrator's prior finding as follows:

> Arbitrators do not have the right under the Statute or by the parties' stipulation to essentially provide that the neutral can defeat the statutory requirement of "last best offer" in Section 14 of the Act by the device of permitting an arbitrator to structure a pay settlement by selecting from the parties' offers for each year of the agreement… (Emphasis added by the Joint Employer.)[23]

Moreover, argues the Joint Employer, other arbitrators agree. For example, notes the Joint Employer, Arbitrator Elliott Goldstein ruled that subdividing economic issues by years (or into other subparts) improperly permits "splitting the baby", and thereby encourages one or both parties to behave contrary to the purposes established under Section 14 of the Act by including at least some unreasonable demands as a means of circumventing the normal "all or nothing" approach from the arbitrator's

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[22] Id.

[23] Joint Employer brief at page 37, ref. Village of Alsip, No. S-MA-93-110 (Fletcher, 1995.) However, that is not *actually* what this Arbitrator stated in Village of Alsip. What this Arbitrator wrote on this point in Village of Alsip was:

> Although the Village had suggested that each year of the contract be considered as a separate and distinct issue to be decided, the Union did not concur. In the absence of a clear concurrence by the parties, the Arbitrator is not satisfied that the parties' stipulaton or the statute grant him the authority to structure a pay settlement by selecting from the parties' offers for each year of the agreement. The offers were made as a package and they must either stand or fall that way.

Award at page 20.

perspective.[24] However, observes the Joint Employer, Arbitrator Goldstein explained in *Crest Hill* that he split the years of the parties' wage proposals in the 1995 arbitration involving the Cook County Court Services Deputies, only because it was clear to him at the time that the parties had agreed to submit their wage proposals on a year-by-year basis. Thus, reasons the Joint Employer, "wage packages" can only be subdivided by mutual agreement and, because no such agreement is evident here, the Arbitrator is constrained to consider them, one against the other, as entire entities.

The Joint Employer also argues that the Union's proposed "EM" and "Street Unit" differentials, because they impact the wages of the entire bargaining unit, cannot be separated from the issue of general wages. In other words, argues the Joint Employer, the impact of all wage increases proposed by the Union must be considered as a whole, and thus "taken or left" as a whole pursuant to the eight statutory criteria set forth above. "Rather than 'biting the bullet' and proposing outright that the arbitrator award the employees a more than 9.5 percent wage increase effective as of December 2004," says the Joint Employer, "the Union fragments its proposal for just that one effective date into three separate components, totaling 9.25 percent before compounding, in the hope the Arbitrator will be fooled by the smaller numbers, or at least will take what he finds reasonable and discard the rest."[25]

The Arbitrator assures the Joint Employer at this juncture, that after all his experience in this particular forum, he is not "fooled" by any structural device, legitimate under the statute or otherwise, which might be exercised by either party with respect to wages in this case. He is well-aware of widely respected case law on the subject, and

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[24] See; City of Crest Hill, Illinois, No. S-MA-97-115 (Goldstein, 1998).

[25] Joint Employer 39.

is entirely capable of applying it (and all relevant statutory criteria) so that any subsequent review under an "arbitrary and capricious" standard is not likely produce a contrary result. That being said, the Arbitrator understands both parties' need to vigorously defend their respective positions on the matter (and their potential motives for doing so), given that Stipulation No. 5 provides that, "The parties agree that the Arbitrator has the authority to determine the number of issues before him."

Upon the whole of this record, the Arbitrator is convinced that there are, in all, seven (7) essential issues before him. The Arbitrator adopts conventional wisdom that proposals with respect to general wage increases should, absent agreement between the parties to the contrary, be considered as total "packages". Clearly, the Union deliberately promulgated its general wage proposal as three separate "issues" in this case, so the Arbitrator could consider them separately without running afoul of conventional wisdom on the subject. However, even if he were inclined to do so, which he is not, the Arbitrator does not find this structuring device helpful in light of the Joint Employer's full 4-year "package" wage proposal. In other words, if for example the Arbitrator were inclined to accept the Union's general wage proposal for the first year of the contract, he would still be forced to adopt its second and third year proposals in order to avoid "cherry-picking" from the Joint Employer's "package" offer for subsequent years. Because this record establishes no express permission for the Arbitrator "split the baby" such a manner, it is right, in the Arbitrator's opinion, for him to examine both general wage proposals in their entirety and then select whichever "last best offer" is more suitable according to established statutory criteria.

In light of Arbitrator Yaffe's apparently conflicting opinion on the propriety of "cherry-picking" as established in his 2000 interest arbitration award concerning the Correctional Officers, the Arbitrator offers a couple of additional observations. First, as previously noted, the now well-known overarching purpose of interest arbitration is to achieve a result which, as closely as possible (absent a crystal ball), resembles something the parties themselves would likely have agreed to. Especially with respect to wages, the Arbitrator observes, both parties to a collectively bargained agreement usually have strong and generally unrelated reasons for structuring earnings proposals the way that they do. Logically, unions pursue the highest possible wages for their members, while employers, expectedly, endeavor to keep fixed costs that directly impact their bottom line (such as wages and benefits), as low as "the market will bear". Obviously, then, implementing the "cut and paste" approach in binding arbitration (as opposed to mediation or negotiation) is inappropriate under the vast majority of circumstances, even when neither offer is patently unreasonable, because in doing so, the arbitrator naturally embarks upon a unilateral journey to fashion his own version of agreement language (and thus its effect) by using only bits and pieces of each proposal. In the end, absent the parties' express permission for him to do so, the result is likely to be a binding "fruit basket" which has little (or no) tie to the original plan and purpose of either entire proposal. Of course, this *quid pro quo* happens all the time in the normal course of bargaining. However, as the Arbitrator has often noted, he is the least informed person in the room at the start of any arbitration proceeding. The parties' representatives, on the other hand, have lived (if not actually shaped) the bargaining history, and thus enjoy the nuances of relationship, context, and original intent as the

contemporaneous (and sometimes complex) process of negotiating unfolds. As a consequence, then, the Arbitrator is faced with no small task when the baton is passed to him at interest arbitration. In other words, this Arbitrator is convinced that other arbitrators have endeavored to recognize and protect this profound responsibility in the now widely-accepted instruction that the ultimate goal of interest arbitration is to achieve, as closely as possible, a result the parties themselves would have agreed to had bargaining produced its intended fruit; a viable and complete contract. With that in mind, then, it is clear that "last best offer" arbitration under this statute is the parties' only way of communicating to an arbitrator where they stand on any particular economic issue at the time of "hand-off". As has also been observed in other similar proceedings, this reality encourages both parties to approach interest arbitration with the respect it deserves, by proposing reasonable offers that are backed by demonstrable evidence.

Moreover, if "cherry picking" is not expressly sanctioned by the parties prior to arbitration, or in other words if the parties have not authorized the Arbitrator to fashion his own solution by cutting and pasting from each of the economic proposals before him (which again may or may not effectuate a reasonable or equitable result), doing so anyway could have future undesirable or unexpected consequences. This, the Arbitrator is convinced, is exactly "the dilemma" Arbitrator Yaffe faced with Day Reporting Investigators after he awarded the "somewhat unjustified windfall"[26] of 2% to EM Investigators in the Correctional Officers bargaining unit. In the Correctional Officers case, Arbitrator Yaffe apparently determined that neither of the parties' complete proposals adequately addressed the perceived disparity between members of

[26] Arbitrator Yaffe's chacterizaton.

that bargaining unit and Sheriff's Police. Thus, according to the record, he opted to accept the Joint Employer's wage proposal for the first two years of the contract, and the Union's for the third. The end result, as previously noted, created the problem he later confronted with the Day Reporting Investigators, and the one this Arbitrator faces now; a deviation from internal wage parity between all Sheriff's Department Investigator units, which was (at least originally) intended and subsequently respected by this Arbitrator in the very first interest arbitration between these parties. Even Arbitrator Yaffe recognized the less-than-desirable result of awarding the 2% increase to EM Investigators in the Correctional Officers case (after selecting the Union's proposal for the final year of that contract), by characterizing it as an "unjustified windfall" and a "dilemma" which, even now, some 7 years later, is still prompting the advance of parallel issues in other Investigator units.

When all is said and done, then, conventional wisdom must prevail here with respect to the parties' general wage proposals. There is absolutely no evidence in this record that the parties have expressly authorized this Arbitrator to "cut and paste" as Arbitrator Yaffe apparently did in the Correctional Officers case. In fact, the record, by virtue of a clear disagreement as to the actual number of issues before the Arbitrator in this case, manifestly proves that no such mutual license exists. Thus, as far as general wage increases are concerned, the parties' proposals will, for all the foregoing reasons, be evaluated in their entirety. Obviously, the matter of the contract's duration will be taken into account in the process, and will be addressed as a separate issue in more detail below.

As to the proposed "differentials", the Arbitrator is convinced that they should be considered separately, for indeed they really are two distinct issues. As previously noted, the Arbitrator is not "fooled" by the structure of the Union's wage offer with respect to its potential impact on the overall earnings of Fugitive Investigators, and of course is not oblivious to the reality that his decision will not only produce an outcome both parties will be bound to, but might also influence future bargaining (if not interest arbitration) in other Sheriff's Department Investigator units.

That being said, the Arbitrator is convinced that the two "differentials" proposed by the Union are not principally alike. In other words, in the Arbitrator's opinion, one represents a true "differential" and the other does not. The proposed "EM Differential" cannot logically restore parity between EM Investigators and Fugitive Investigators because of what they do, because a lack of comparability between the two groups in terms of duties (and thus appropriate pay) was not the basis for higher "CS2" rate in the first place. It is crystal clear that Arbitrator Yaffe intended to make no such distinction when the increase was awarded to EM Investigators, because in later denying a parallel increase to Day Reporting Investigators, he called it an "unjustified windfall" which he was forced to give both Correctional Officers and EM Investigators as a consequence of the "final offer nature of IL Statute under which the award was issued." [27] Thus, because Arbitrator Yaffe clearly did not award a true "differential" to EM Investigators for lack of similarity with other Investigator units in general and Fugitive Investigators in particular, none, in reality, exists now. The Arbitrator accordingly considers the proposed "EM Differential" a parity increase rather than a real differential in the accepted sense.

[27] Union Exhibit 31; *supra*.

In contrast, the proposed 4% "Street Unit Differential" is precisely that; a true differential. At the heart of this issue is the creation of the D2B pay grade for "Street Unit" Deputies in the Sheriff's Court Services Department in the year 2000. That 4% increase, as distinguished from the one awarded to EM Investigators by Arbitrator Yaffe that same year, was based on merit; in other words, the fundamental duties and responsibilities of "Street Unit" Deputies as compared to those of Deputies who spent (and still spend) the majority of their time inside, "merited" or "warranted" a higher rate of pay. Thus, the Union's proposal with respect to the "Street Unit Differential" will be examined in that context, and adopted or denied on the basis of promulgated evidence.

Accordingly and for all the foregoing reasons, the outstanding issues as determined by the Arbitrator pursuant to Stipulation No. 5 are:

1. Contract Duration
2. Wages
3. EM Differential (EM Parity Increase)
4. Street Unit Differential
5. Health Insurance
6. Paid Leave
7. Uniform Allowance

VII. Comparables

In this case, the parties do not urge the Arbitrator to consider external comparables. As observed by Joint Employer counsel at arbitration, "The employees in this unit perform relatively unique functions within the unique constellation of corrections-related programs in Cook County, and it's nearly impossible to try to identify external units in other jurisdictions that do similar things. And for that reason, Arbitrator Berman in 2001 … as well as Arbitrator Nathan in the last round of interest arbitration in

this unit … just dispensed altogether with external comparisons. The crucial comparisons for this unit are internal … ." [28] It is clear from the record that the Union shares this particular viewpoint, as it has not challenged the Joint Employer's position with respect to external comparables, nor has it unilaterally proposed any external comparables for the Arbitrator's consideration.

For purposes of internal comparison, then, the parties are in essential agreement that the DCSI bargaining units of Day Reporting Investigators and Electronic Monitoring Investigators, and the Court Services "Street Unit" Deputies, are valid comparables. There is no evidence in this record that the Union meaningfully urges comparison with Cook County Sheriff's Police as it has in the past. Throughout the record, the Arbitrator observes, reference is also made to certain Internal Affairs Investigator groups in the Sheriff's Department, but only for purposes of demonstrating the existing wage parity between them and this bargaining unit, whose members also currently receive the IS2 rate of pay.

VIII. – The Issues

Section 19.1 – Term of Agreement

The Union's Final Proposal

The Union proposes a three-year agreement effective from December 1, 2004 through November 30, 2007. (As to term, the Union's proposal represents the *status quo*.)

The Joint Employer's Final Proposal

The Joint Employer proposes a four-year agreement effective from December 1, 2004 through November 30, 2008.

The Position of the Union:

[28] Tr. 109.

At the outset, the Union argues that the Joint Employer has departed from the *status quo* of a three-year agreement "solely on the basis that the change fits its new "pattern bargaining proposal".[29] All three of the predecessor agreements between these parties, argues the Union, have been an "agreeable" three years in duration, and, pursuant to applicable case law, the burden is now upon the Joint Employer to demonstrate why a departure from that "historical practice" is reasonable. No such evidence has been presented, the Union maintains.

The Union notes that Arbitrator Byron Yaffe decided this very issue in a 2005 interest arbitration with the Cook County Deputy Sheriff Sergeants in Court Services and this Joint Employer. In pertinent part, the Union observes, Arbitrator Yaffe concluded as follows:

> First and not unimportantly, it is unrefuted that the Union did not have the opportunity to negotiate the consequences of the Employers' four year proposal, since it was first brought to the table in the instant proceeding… The three year agreement is also supported by comparability considerations, both historical and current.[30]

The case before Arbitrator Yaffe is similar to the one at bar, argues the Union, because in both instances the Joint Employer "made no effort to negotiate over this issue." While "some persuasive arguments can be made to extend the duration of a collective bargaining agreement," the Union states, none are evident here. "As soon as [the Joint Employer] determined its 'pattern'," states the Union, "it headed to interest arbitration without so much as a discussion over this major change." [31] Based on the

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[29] Union brief at page 24.

[30] Union Exhibit 29; County of Cook and the Sheriff of Cook County and the Illinois Fraternal Order of Police Labor Council, L-MA-03-003 (Yaffe, 2005).

[31] It is common, notes the Union for interest arbitrators to maintain consistency as to contract duration, and in support cites: City of Calumet City and the Illinois Fraternal Order of Police Labor Council, S-MA-99-128 (Briggs, 2000); City of Carbondale and the IAFF, Local

evidence in this record, opines the Union, the Joint Employer failed to satisfy its burden to demonstrate that a departure from the *status* quo of a three-year contract is warranted and appropriate. The Union accordingly urges the Arbitrator to deny the Joint Employer's proposal.

The Position of the Joint Employer:

Under present circumstances, maintains the Joint Employer, only a four-year contract is reasonable. It is true, admits the Joint Employer, that its proposal departs from the *status quo*. However, notes the Joint Employer, the Union has "candidly acknowledged" that, across the board, there have been more and more four-year collective bargaining agreements in the State of Illinois in recent years, thanks to changes in applicable statutes.[32]

Moreover, argues the Joint Employer, Arbitrator Yaffe's reasons for preserving a three-year contract between the Deputy Sergeants and the Joint Employer were clearly based on facts unlike those before this Arbitrator. In particular, notes the Joint Employer, the parties in that case proposed identical wage increases for each year of the agreement at issue, whether it was three or four years in duration. The only issue between the parties in that case, argues the Joint Employer, was that management wanted fourth year (fiscal 2006) wages "locked in" while agreeing to re-open the matter of health insurance for that year. In rejecting the Joint Employer's proposal and

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1961, S-MA-94-128 (Doering, 1994); and City of North Chicago and the Illinois Fraternal Order of Police Labor Council, S-MA-96-62 (Perkovich, 1997).

[32] Here, the parties refer to Section 9(h) of the Illinois Public Labor Relations Act concerning representation. In pertinent part, it states, "Where more than 4 years have elapsed since the effective date of the agreement, the agreement shall continue to bar an election, except that the Board may process an election petition filed between 90 and 60 days prior to the end of the fifth year of such an agreement, and between 90 and 60 days prior to the end of each successive year of such agreement."

awarding a three-year contract, argues the Joint Employer, Arbitrator Yaffe made it clear that he did so in large measure because he concluded that reopening the entire contract as of fiscal year 2006 would "most likely afford the Union a meaningful opportunity to participate in the negotiations of the County-wide health insurance plan that are currently in progress" and make the Union a "genuine stakeholder" in those negotiations. Consequently, concludes the Joint Employer, Arbitrator Yaffe's reasoning in the Deputy Sergeants case "is not authority for the Union's argument that this Arbitrator should refrain from adopting a four-year contract in this case**."**[33] Here, argues the Joint Employer, management does not seek to "lock in" fourth year wages while at the same time leaving health insurance "up in the air". Instead, argues the Joint Employer, "[The] pattern four-year agreement that the Join Employer proposes will resolve *both* wages *and* health insurance for the fourth year (fiscal 2008), in a trade-off that has been intensely bargained with and accepted by the great majority of Cook County's unionized employees … ." (Id., emphasis original.)

The "overall compensation" factor under Section 14 of the Act, notes the Joint Employer, also favors its four-year proposal, because the health insurance program has always been, "and must remain", the same for all comparable Cook County employees. "By proposing just a three-year duration, argues the Joint Employer, "what the Union in this case seeks is an Agreement that stops short of even addressing the universal health insurance changes for 2008 that the other Cook County bargaining units have or will be accepting." At the same time, notes the Joint Employer, the Union seeks

[33] Joint Employer brief at page 42.

substantially more than the total "pattern" wage increases that it has proposed.[34] Thus, reasons the Joint Employer, the parties' offers on the duration of the Agreement are "powerfully linked" to their proposals on wages and health insurance. If a three-year agreement is adopted, argues the Joint Employer, "it automatically follows" that this bargaining unit will not participate in the health insurance reforms so vigorously fought for in other bargaining units and so necessary to the fiscal health of Cook County.[35] Moreover, notes the Joint Employer, awarding this unit a three-year contract necessarily means that it will not participate in necessary health insurance reforms until well after 2008, if successor negotiations continue as they have in the past. Indeed, opines the Joint Employer, "[S]talling those health insurance changes well beyond their effective dates for the other bargaining units apparently is one of the Union's objectives in this arbitration, and itself represents a 'breakthrough' that the Arbitrator should not award absent compelling justification."

In the end, concludes the Joint Employer, "[These circumstances] preclude awarding this unit just a three-year agreement, since it is inconceivable that the Joint Employer would (or could) agree in negotiations with this 25-person bargaining unit to let the unit evade the health insurance reforms that have been agreed to as a top priority in this round of labor negotiations with all unions." "In addition," argues the Joint Employer, "awarding this unit just a three-year agreement that excludes the unit from

[34] Here, the Joint Employer is not just referring to the Union's proposed general wage increases. Pursuant to its prior argument that the two proposed "differentials" cannot be separated from the issue of wages, the Joint Employer maintains that the Union's demands with respect to total earnings (including the "differentials") significantly exceed the established "pattern" wage increases.

[35] The Joint Employer's reasoning is based upon the fact that proposed health insurance reforms with respect to co-pays and premium contributions do not take effect until the fourth year of its proposed four-year agreement.

the universal health insurance reforms dramatically impacts the wage proposals, since the Joint Employer's wage package is carefully calibrated to dovetail with and provide consideration for those year-four health insurance reforms." "Even if the Arbitrator were to award the unit a three-year agreement but with the Joint Employer's wage package for those three years," maintains the Joint Employer further, "that bargain would represent something that clearly never would have been agreed to by the Joint Employer in negotiations**."**[36]

For all the foregoing reasons, then, the Joint Employer urges the Arbitrator to adopt its proposal for a four-year agreement term.

Discussion:

The matter of contract duration in this particular case is a somewhat complicated one, and the Arbitrator has considered it carefully outside the context of the Joint Employer's existing "pattern" with other bargaining units. Indeed, the Arbitrator did not find the Joint Employer's argument on this point particularly persuasive in light of previously cited instruction that *any* proposed departure from the *status quo*, or what the parties last agreed to on any given subject, must be examined and tested for genuine merit. As noted by Arbitrator Nathan in Will County; *supra*, the party seeking change must, at a minimum demonstrate that the old system or procedure has not worked as anticipated when it was originally agreed to, and/or the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union). Arbitrator McAlpin further instructed that the "extra burden of proof" on the party seeking change included a natural requirement that it demonstrate a

[36] Joint Employer brief at page 43.

"proven need for the change", and that the proposed change "meets the identified need without imposing an undue hardship on the other party**."**[37] In this particular case, the Arbitrator is satisfied that the Joint Employer's evidence satisfies the tests established by both Arbitrators Nathan and McAlpin.

"Pattern" not withstanding, the Arbitrator is persuaded by the Joint Employer that because its wage proposal, and more particularly its proposed health insurance reforms are so "powerfully", indeed inextricably, linked to a four-year contract, one cannot be reasonably examined absent the presence of the other two. In other words, the Joint Employer's wage proposal does not make sense (in that the proposed wage increase in the fourth year of the contract is larger than the other three to accommodate increased employee health care cost obligations) without health insurance reform, and timely health insurance reforms cannot be implemented in this bargaining unit without a four-year contract. Even if the Arbitrator maintained the *status quo* of a three-year contract, and there is certainly precedent for doing so as the Union suggests, necessary health insurance reforms would, from a purely practical perspective, likely be delayed well beyond the expiration of this Agreement. While there is no real guarantee that this would occur, history in this bargaining unit (as in most others in the Cook County Sheriff's Department) demonstrates that interest arbitration well after expiration of predecessor agreements is the norm. Indeed these particular parties have not been able to reach agreement as to wages since the inception of their bargaining relationship, and even Arbitrator Berman was unable to resolve the matter of wages to the parties' satisfaction. (As previously noted, his 2001 interest arbitration Award was appealed to

[37] County of Cook/Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council; L-MA-96-009 (McAlpin, 1998); *supra*.

the Circuit Court of Cook County, vacated, and ultimately, albeit grossly belatedly, reinstated by memorandum of agreement.) It is obvious to the Arbitrator for reasons attendant to the express issue of hospitalization insurance (which are discussed in more detail below), that health care reform is absolutely necessary in Cook County Sheriff's bargaining units. The Arbitrator's conclusion on this point should come as no surprise, given his very recent findings in the December 27, 2006 Cook County Correctional Officers interest arbitration.[38] It is obvious from the parties' firmly established bargaining history, that the "existing system" of a three-year contract will inevitably create a bona fide "operational hardship" on the Joint Employer by unduly delaying crucial reforms already being implemented county-wide, because successor agreements between these parties have never been well-timed. (*Nathan; supra*.)

In light of necessary health insurance reforms, and because consideration of the Joint Employer's wage package (which incorporates general increases attendant to employee health care cost obligations) is impossible to evaluate outside the framework of a four-year agreement, the Arbitrator is convinced that the Joint Employer has adequately demonstrated a "genuine need" to resort to a four-year contract, and has moreover proven to the satisfaction of the Arbitrator that the proposed departure from the *status quo* to that end meets that need without imposing undue hardship on the Union. This is true, the record demonstrates, for a number of reasons.

First, it is crystal clear in this record that the Union entered negotiations for this Agreement fully expecting to encounter proposed increases in health insurance costs to members of this bargaining unit. At page 66 of the hearing transcript, Union counsel

[38] See; Metropolitan Alliance of Police (Cook County Department of Corrections) and The County of Cook, Illinois/Sheriff of Cook County; ILRB No. L-MA-04-006, (Fletcher, 2006).

Bailey states in no uncertain terms that, "We didn't come to these negotiations asking for [an insurance] freeze. We came to these negotiations expecting to see increases." In fairness to Mr. Bailey, his comment in context was intended to demonstrate that because the Joint Employer had proposed no such increases in the first three years of the contract, management had in effect offered to "maintain *status quo*" as far as the Union was concerned (given its proposed three-year term). Nevertheless, were the Union to cry "undue hardship" with respect to the impact of a four-year contract on employee health care costs at this late date, the Arbitrator is convinced that it would have an uphill battle in light of that statement. Obviously, the Union expected employee health care costs to go up, and this becomes quite clear later in the record.

At page 148 of the transcript, Union counsel agrees that if the Union were to prevail and win the *status quo* of a three-year contract, the Joint Employer's proposed reforms would "certainly" take effect in the first year of the subsequent contract. This, then, further demonstrates to the Arbitrator that, while not conceding to the legitimacy reforms themselves, the Union obviously recognized that they were coming, and coming soon. However, Mr. Bailey's acknowledgement is of little practical use to the Joint Employer with respect to actual health insurance reform, because, as previously noted, "the first year of the next contract" would likely not mesh with reality given the parties' inescapable history of belated interest arbitration. Because the Union's proposed three-year contract would expire on November 30th –of this year (fiscal year 2007), the likelihood that the parties could come to terms on health insurance reform (and concurrent wage increases) before then is remote indeed.

The Union, in the opinion of the Arbitrator, is not exposed to undue hardship under the Joint Employer's proposal for a four-year contract for another reason, and that has to do with wages. Though both parties' wage proposals will be addressed in more detail below, they bear mentioning now because they, as in the case of health insurance, are inextricably linked to contract duration. The Union, of course, has not proposed wage increases for fiscal year 2008, because it has proposed an agreement that expires on November 30, 2007. However, the Joint Employer's 4th year wage proposal contemplates total general wage increases of 4.75 % for 2008, which the Union has agreed to accept if the Arbitrator adopts the Joint Employer's proposal for a four year contract. In his argument concerning wages at page 24 of the Union's post hearing brief, Union counsel comments that, "The Union concedes that if the Arbitrator selects a four-year term for the agreement, the numbers proposed by the Joint Employers in the fourth year will be adopted." In so stating, it is likely because of context that the Union considered the Joint Employer's 4.75% increase for fiscal 2008 a fitting addendum to its own higher overall wage proposal for the first three years of the Agreement. Nonetheless, the Union notably expressed no objection to the Joint Employer's proposed 2008 wage increases either way. Certainly, pursuant to the vast majority of teaching with respect to splitting wage proposals, the Union must have anticipated that the Arbitrator would be reluctant to "cherry-pick" from both wage proposals for all the reasons expressed herein above. Indeed, he is. Thus, the Union could easily have rejected the Joint Employer's proposal for a four-year contract on the sole basis that the Joint Employer's attendant wage package "placed an undue hardship" on members of this bargaining unit. Because the Union did not, the Arbitrator

reasons that no such hardship, by sole and exclusive reason of a four-year contract, exists.

Third, from a purely practical standpoint, the record establishes that if the Arbitrator were to adopt the Union's proposal for a three-year contract, the ink would barely have time to dry before its expiration date. There is something to be said for management's position as to bargaining cycle, but the Arbitrator is not seeing this obvious advantage from a "pattern" point of view. If interest arbitration is to function as a natural extension of the collective bargaining process, surely a goal must be to promote the fundamental process itself. Like it or not, timing matters, and perhaps in this case, the additional year will give the parties time to engage in meaningful negotiations for a timely successor contract. When all is said and done, and the Arbitrator is certain both the Union and the Joint Employer would agree, issue resolution is best accomplished at the bargaining table where healthy give and take can occur and sound working relationships may be built. Interest arbitration is, at its barest, risky, and thus should be a last rather than a first resort. Whether or not the extra bargaining time supplied by a four-year agreement term will prompt these parties to resolve their future differences short of arbitration remains to be seen. Nevertheless, pursuant to the above tests, it is reasonable under these particular circumstances, and, in the opinion of the Arbitrator, causes no undue hardship on the Union.

For the foregoing reasons, the Arbitrator is persuaded that the *status quo* should not be maintained in this case. The Joint Employer's proposal is thus adopted, and the Arbitrator's Order to that end follows.

Order

The Joint Employer's proposal is adopted.

Section 14.1 – Wage Rates

The Union's Final Proposal

The Union's final general wage offer is as follows for the term of three (3) years:

- Effective the first full pay period after December 1, 2004 3.25 % wage increase
- Effective the first full pay period after December 1, 2005 2.0 % wage increase
- Effective the first full pay period after June 1, 2006 2.0 % wage increase
- Effective the first full pay period after December 1, 2006 1.5 % wage increase
- Effective the first full pay period after June 1, 2007 2.5 % wage increase

The Joint Employer's Final Proposal

The Joint Employer's final general wage offer is as follows for the term of four (4) years:

- Effective the first full pay period on or after December 1, 2004 1.0% wage increase
- Effective the first full pay period after December 1, 2005 1.0% wage increase
- Effective the first full pay period after June 1, 2006 2.0% wage increase
- Effective the first full pay period after December 1, 2006 1.5% wage increase
- Effective the first full pay period after June 1, 2007 2.5% wage increase
- Effective the first full pay period after December 1, 2007 2.0% wage increase
- Effective the first full pay period after June 1, 2008 2.75% wage increase

The Position of the Union:

At the outset, the Union contends that the wage issue before the Arbitrator in this case is "unique", in that Arbitrator Yaffe adopted the uncommon "each year is a separate wage issue" approach in his 2000 interest arbitration award involving Cook County Correctional Officers. In particular, opines the Union, Yaffe awarded EM Investigators in that bargaining unit a 2% "over pattern" wage increase in the final year of the agreement at bar, which subsequently brought about disparity between Cook County Investigator units in terms of wages. As a remedy, the Union urges this Arbitrator to take the same approach, and consider each year's proposed general wage increase as a separate issue, and further that he consider the proposed "EM Differential" and "Street Unit Differential" as separate issues.

The Union acknowledges that Arbitrator Yaffe's approach is "normally not preferable", but argues that it is justified in this case solely in response to the resulting disparity with this bargaining unit.[39] "To be fair," notes the Union, "the Arbitrator should be permitted to examine the cumulative effect of economic benefits proposed by the Union", and so compares historical wage increases in this bargaining unit with those of Court Services Deputies, Correctional Officers, Sheriff's Police, and DCSI Electronic Monitoring Investigators from 1999 through 2004 as follows:

[39] Union brief at page 18.

Year	Court Deputy	Corrections	Police	EMU	Ave.	Fug Unit
1999	5.5%	4.0%	4.0%	4.0%	4.38%	4.0%
2000	5.5%	3.0%	3.0%	3.0%	3.63%	3.0%
2001	5.5%	5.0%	3.0%	5.0%	4.63%	3.0%
2002	5.5%	2.5%	2.5%	2.5%	3.25%	2.5%
2003	5.5%	3.0%	3.0%	3.0%	3.6%	3.0%
2004	4.5%	3.0%	3.0%	3.0%	3.63%	3.0%
Total	**32.0%**	**20.5%**	**18.5%**	**20.5%**	**23.05%**	**18.5%**

Pursuant to the above comparison, then, the Union concludes that, "[O]ver the past six years, the IS2 Investigators in the Fugitive Unit have received the smallest wage percentage increase, with the sole exception of the Police, who remain far and above the highest paid law enforcement officers employed by the Joint Employers."[40]

As to its proposal for the first year of the Agreement at bar, the Union proposes a general wage increase of 3.25 %, which differs from that of the Joint Employer by 2.25 %. The Union argues that its proposed retroactive increase for fiscal year 2005 was derived from cost of living data for that year, while the Joint Employer's final offer "is based upon its 'pattern' bargaining proposal for all other employees in the County." The Union rejects the Joint Employer's mere 1% proposed increase for 2005, noting that, "It does not take a psychic to predict that the Joint Employer's first-year wage offer is a 'loss' for bargaining unit personnel." In contrast, argues the Union, there is ample evidence in this record to establish that the change in the Consumer Price Index for

[40] At this juncture, the Union urges the Arbitrator to correct this perceived injustice by adopting its proposals for "EM" and "Street Unit" differentials in addition to general wage increases. This argument will be addressed in detail below.

U.S. Cities averaged 3.4% in 2005.[41] Moreover, argues the Union, analysis of CPI-U and CPI-W data for the Chicago-Gary-Kenosha and Midwest Urban areas shows escalation on average of 3.5% and 4.3% respectively.[42] Thus, reasons the Union, "While the Union's final offer [for 2005] is shy of that goal, it is much closer than the final offer of the Joint Employer." The Union argues that interest arbitrators have rejected employer wage offers where employees have "lost to the cost of living", and in support cites County of Lee and the Sheriff of Lee County and the Illinois Fraternal Order of Police Labor Council, S-MA-03-142 (Benn, 2004.)[43] In the present case, argues the Union, the Joint Employer's first year wage offer falls extremely short of actual cost of living increases in 2005. Thus, maintains the Union, the record supports adoption of the Union's final offer for the first year of the Agreement.

The difference between the final offers of the parties in the second year of the Union's proposed three-year contract, notes the Union, is 1%. Again, argues the Union, its proposed 4% overall increase for fiscal year 2006 was based upon available cost of living data for the first half of the year. The record establishes, argues the Union, that the change in the Consumer Price Index for U.S. Cities averaged 3.8% during that period, which is more adequately addressed by its proposed 4.0% cumulative increase than the Joint Employer's proposed 3% cumulative increase.[44] Pursuant to previously cited authority, maintains the Union accordingly, "it is clear that the factor of cost of

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[41] Union Exhibit 23; U.S. Department of Labor (Bureau of Labor Statistics), U.S. City Average.

[42] Union brief at page 21, ref. Union Exhibit 24.

[43] See also; City of Rock Island and the Illinois Fraternal Order of Police Labor Council, S-MA-04-136 (Perkovich, 2005) (The union's final wage proposal was adopted even though it exceeded cost of living data, because the employer's offer failed to keep with the rate of inflation.)

[44] Union Exhibits 23 and 24.

living supports the adoption of the Union's final offer in the second year of the agreement."

As to the third year of its proposed three-year contract, the Union notes that both final offers are identical; that is, both parties have suggested a 1.5% general wage increase for members of this bargaining unit "effective the first full pay period on or after 12/01/06", and an additional 2.5% increase "on or after 6/01/07". The Union comments, however, that should the Arbitrator adopt the Joint Employer's argument that the Union's five proffered wage issues (the three separate proposed general wage increases and two proposed differentials) are actually a single issue, it would nonetheless prevail. The Union maintains that its final offer, "even when considered in a cumulative manner" is the more reasonable of the two according to established statutory criteria, and thus also urges the Arbitrator to adopt them in their entirety.

The Union acknowledges that it has not proposed general wage increases for fiscal year 2008, because it urges the Arbitrator to adopt a three-year contract term. Here, then, "The Union concedes that if the Arbitrator selects a four-year term for the agreement, the numbers proposed by the Joint Employers in the fourth year will be adopted."[45]

The Position of the Joint Employer:

As previously noted above, the Joint Employer urges that its 4-year wage proposal be considered in its entirety as a "package", and argues at the outset that, as a whole, it "continues the Investigators' status as very generously and fairly paid

[45] Union brief at page 24.

employees."[46] The record establishes, argues the Joint Employer, that most of the members of this Fugitive Investigators bargaining unit came from the ranks of Cook County Correctional Officers, and continue to be paid significantly more than that group today. Since management has proposed identical "pattern" wage increases in the Correctional Officers' bargaining unit for the same years of this proposed contract, argues the Joint Employer, Fugitive investigators' advantageous position with respect to wages will be maintained. In addition, argues the Joint Employer, the Investigators' annual across-the-board wage increases have surpassed local cost of living increases "through the years leading up to this Agreement", and will continue to do so over the course of its subsequent four-year term. Several Cook County Sheriff's bargaining units have already accepted the proposed "pattern" increases and the same health insurance reforms for the term of the instant Agreement, argues the Joint Employer, which is important in light of prior arbitral opinion that historical precedent with respect to wage increases contributes to the stability of collective bargaining in Cook County. Even though the Sheriff's Court Services Deputies won slightly larger increases for 2005 and 2006, notes the Joint employer, those larger increases were awarded in arbitration because the wages of Court Services Deputies needed to be brought closer to those of Correctional Officers. That is to say, argues the Joint Employer, past interest arbitrators deliberately set the Court Services Deputies apart in terms of wages, because of a distinct deficit in internal parity. Even so, argues the Joint Employer, the Court Services employees could well receive future "pattern" increases (or less) when terms for 2007 and 2008 wages are ultimately settled in that bargaining unit. Thus, argues the Joint Employer, prior interest arbitration decisions concerning the wages of Court Services

[46] Joint Employer brief at page 45.

Deputies cannot be relied upon by this Union is support of the "larger-than-pattern" general increases it has proposed here.

Neither, argues the Joint Employer, can the Union rely on "pay plan adjustments" in certain AFSCME-represented bargaining units in the Sheriff's Department. It is true, acknowledges the Joint Employer, that some AFSCME employees will indeed receive increases over and above the prescribed "pattern". However, explains the Joint Employer, this was done because they were "being taken off Cook County's Schedule I pay plans". The record establishes, notes the Joint Employer, that this and other DCSI Investigator units were taken off Schedule I and awarded the "IS2" rate of pay more than ten years ago. The record also shows, argues the Joint Employer, that the Investigators' pay plan transfer in 1996 not only secured larger longevity step increases, but also provided for an additional 1% across-the-board general wage increase. Thus, reasons the Joint Employer, the members of this bargaining unit have, over time, received at least the equivalent of the 2% increases awarded to AFSCME as a result of similar (albeit more recent) pay plan adjustments.

Importantly, argues the Joint Employer, the only year in which DCSI Investigators *did not* receive percentage increases identical to those of all other non-Court Services units was fiscal year 2001, when, as previously mentioned, Arbitrator Yaffe awarded EM Investigators the "somewhat unjustified windfall" of 2% along with DOC Correctional Officers.[47] In point of fact, notes the Joint Employer, uniform pattern wage settlements within comparable Cook County bargaining units has been heralded as legitimate by

[47] Here, the Joint Employer distinguishes Court Services units from the others, because, as previously mentioned, prior interest arbitrations involving the Court Services Deputies resulted in larger-than-pattern "catch-up" increases expressly designed to close the wage gap between Court Services Deputies and Correctional Officers in the Sheriff's Department.

prior interest arbitrators. In support, the Joint Employer cites The County of Cook/Sheriff of Cook County and the International Brotherhood of Teamsters, Local Union No. 714, Case No. L-MA-95-001, in which Arbitrator Elliott Goldstein noted in pertinent part as follows:

> When the limited role of this Panel is considered, standing as it does as a substitute for genuine or arm's length negotiations, it seems advisable to maintain the historical negotiated percentage salary increase between the deputies and other law enforcement personnel working for the Joint Employers … .[48]

Indeed, argues the Joint Employer, Arbitrator Goldstein went on to call internal parity with respect to patterned increases "one of the most important factors … to be considered" in such cases.[49] In short, argues the Joint Employer, arbitrators in prior Court Services cases (where larger-than-pattern increases were awarded), expressly recognized the importance of historical patterned wage increases across Cook County law enforcement bargaining units, and only held that the pattern had to, at least in some years, be abandoned in order to improve the Court Services Deputies wage relation to other internally comparable units. Thus, argues the Joint Employer, its final wage offer in this case is more appropriate because it will continue the pattern of equivalent wage increases among comparable Cook County law enforcement bargaining units, and will continue the longstanding Cook County law enforcement "wage hierarchy".[50]

According to the evidence, argues the Joint Employer further, "The wages of the Cook County Fugitive Investigators have more than kept pace with the local cost of

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[48] Union Exhibit 28, part 2 at page 39.

[49] Id. at page 45.

[50] Here, the Joint Employer recognizes the following undisputed wage hierarchy in the Sheriff's Department law enforcement groups in order of highest paid to least: 1) Sheriff's Police, 2) EM Investigators, 3) Fugitive, Day Reporting, and Internal Affairs Investigators, 4) Correctional Officers, 5) D2B "Street Unit" Deputies in Court Services, 6) D2 Deputies in Court Services, and 7) Hospital Security Officers.

living, and will continue to do so under [its] final wage offer in this case." Local CPI-U data in the record, argues the Joint Employer, demonstrates that from 1996 through the end of these parties' last contract in 2004, Fugitive Investigators in this bargaining unit received general wage increases totaling 30%, while the cost of living for the same period only went up 20.5%.[51] Moreover, argues the Joint Employer, the same CPI-U data indicates that, for the 12-month periods ending April 2005 and April 2006, the local cost-of-living index increased by just 3.2 and 2.3% respectively. Accordingly, notes the Joint Employer, for what will be the first two years of this Agreement, the cost of living increased less than a total of 6%. Comparable cost-of-living increases for 2007 and 2008, notes the Joint Employer, would thus suggest an increase totaling some 12% over the full four-year term of the Agreement. For those four years, argues the Joint Employer, management has proposed total cumulative wage increases of 12.75 %. Accordingly, concludes the Joint Employer, management's final overall wage "package" also adequately addresses actual and anticipated cost of living increases between 2005 and 2008.

For all the foregoing reasons, then, the Joint Employer urges the Arbitrator to adopt the proposed "pattern" wage increases for the full four-year term of the Agreement.

Discussion:

As noted by this Arbitrator in his recent decision concerning the Correctional Officers bargaining unit, comparability is crucial in the matter of wages, for it is upon this foundation that assessment of additional factors (such as cost of living, wage increase

[51] Joint Employer Exhibit 2

patterns, and employer hardship) makes sense. In this particular case, unlike the aforementioned case, the parties did not suggest a list of external comparables, but instead opted to base their arguments solely on circumstances within other "internally comparable" law enforcement bargaining units in the Sheriff's Department. In context, then, it is somewhat easier to analyze the relative standing of this bargaining unit with respect to earnings than it was in the Correctional Officers case, because actual wage information and relevant bargaining history between the Joint Employer and the various comparable units, are both readily available.

As already noted, members of this bargaining unit rank third (behind Sheriff's Police Officers and MAP-represented EM Investigators in the Correctional Officers bargaining unit) in terms of wages in the Cook County Sheriff's Department. In the very first interest arbitration between these parties, this Arbitrator expressly ruled to maintain the historical disparity between Fugitive Investigators and Sheriff's Police, on the basis that the duties and responsibilities of Fugitive Investigators more closely resembled those of other Investigators on the IS2 pay scale than those of Sheriff's Police earning higher pay. In other words, the Union's petition for larger wage increases before this Arbitrator in 1998 was based upon its contention that Fugitive Investigators deserved higher pay because of their more "police-like" responsibilities. For reasons stated in his Opinion and Award in that case, the Union's opinion failed to carry the day. That internal disparity was again maintained by Arbitrator Berman, even though the Union subsequently succeeded in getting his decision vacated. As noted, the Circuit Court of Illinois ruled "with all due respect to Arbitrator Berman", that:

> … [P]robably your fugitive investigators face more danger more often than a policeman out there patrolling stop lights and stop signs.

> They go and pick up somebody who doesn't want to be captured. They don't know what they are going to find behind the door. If it's a matter of not having as much training as the police officers on beat, they should not denigrate the fugitive investigators. They should give them more training and bring them up to speed. This Court is going to vacate the arbitrator's opinion … .[52]

Nevertheless, the Joint Employer continued to argue that disparity between these two groups should be maintained, and as noted above, the Union ultimately abandoned the fight in favor of getting successor agreement issues to Arbitrator Nathan in 2004.

In the case before Arbitrator Nathan, the parties again reached impasse as to the matter of wages, because they could not agree "whether the work of the Fugitive Investigators is more comparable to those law enforcement units that are paid on a higher wage scale than the Fugitive Investigators, or to the other units also in the IS2 wage scale."[53] In that case, Arbitrator Nathan summarized the core arguments in pertinent part as follows:

> The Union has proposed putting the Fugitive Investigations on a new pay scale, which it refers to as the 'IS2B' scale… at 4% more than the existing IS2 scale. Other than this structural change the parties agree that all wages should be increased according to the formula accepted by other law enforcement bargaining units for the 2001 through 2004 contract years … .
>
> The thrust of the Union's case in seeking a new wage scale for the Fugitive Unit Investigator unit is that the County agreed with Teamsters Local 714, the labor organization representing the Court Services employees, that those deputies working outside the courtrooms, referred to as the 'street units' should be paid a differential over the wages received by the 'inside' deputies … .
>
> The Union argues that in the past it attempted to obtain a wage differential for this bargaining unit based on the risks, responsibilities and features of the Fugitive Investigator job duties. Comparisons were made

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[52] Union Exhibit 12, *supra*.

[53] The higher-paid "law enforcement units" to which Arbitrator Nathan referred were, of course the Sheriff's Police bargaining unit, and the EM Investigators in the Correctional Officers' bargaining unit, who by virtue of Arbitrator Yaffe's 2000 interest award, were earning 2% more than other Investigators.

> with street work performed by Sheriff's Police. The County resisted because it argued that there were no internal differentiations within job descriptions. Arbitrators agreed and the Union was unsuccessful in its quest … .
>
> There has been considerable discourse on whether Arbitrator Berman examined all of the evidence because of the statement in his Award that he did "not consider it appropriate to consider new evidence relevant to issues raised and considered in a prior award." However, his discussion of the various Union exhibits demonstrates that he had a substantial grasp of the particulars of the Union's evidence … .
>
> The Union responds to Berman's findings by arguing that it does not want an equal standing with Sheriff's Police. Its proposal will not even begin to place Fugitive Investigators at the wage level of the Police. Rather, the comparison is made vis-s-vis the other investigators such as those working in the EMU. They have considerably less exposure. Thus, if Police are so highly paid because of the relative risks they take compared with other Sheriff's law enforcement employees generally, the Fugitive Investigators should be paid more because of the greater risks they take compared with other employees on the IS2 wage scale. This is not some farfetched scheme, the Union argues, because the County has agreed to do exactly this with the street units of the Court Services Deputies … .

In ultimately concluding that the Fugitive Investigators should remain on the IS2 wage scale with the County's pattern general wage increases, Arbitrator Nathan concluded, as did this Arbitrator and Arbitrator Berman before him, that internal parity with other IS2 Investigators should be maintained with respect to general wages.[54] Thus, it appears in this case that the Union is once again singing a familiar melody, albeit with different words. Based upon the duties and responsibilities of Fugitive Investigators as they have "evolved over the years", insists the Union presently, they are entitled to larger-than-pattern general wage increases and should also gain one or both of the proposed "differentials". On the exclusive matter of general wage increases at issue in this section, the Arbitrator disagrees.

[54] The EM Investigators in the Correctional Officers' bargaining unit are obviously excluded here, because they were already making (and continue to make) 2% more at the CS2 rate of pay than their IS2 counterparts in the Fugitive and Day Reporting units.

First, as prior arbitrators have reasoned and this Arbitrator affirms, pattern bargaining in the Cook County Sheriff's Department with respect to wage increases is an important factor to consider. Consistency in wage offers, as argued by the Joint Employer, does, importantly, help maintain both the parity and the disparity between Sheriff's Department bargaining units which have been so determinedly preserved by prior interest arbitrators. The "catch-up" wage increases in the Court Services Deputies bargaining unit are a case in point. In a number of prior interest arbitrations, it was determined that too great a disparity existed between Court Services Deputies and Correctional Officers represented by MAP. To correct the problem, Court Services Deputies were awarded larger-than-pattern increases that, in effect, narrowed but still maintained that gap. Thus, as a practical matter, were future interest arbitrators to adopt a cornucopia of union wage offers across bargaining unit lines without good reason for doing so (assuming Joint Employer proposals satisfied stipulated statutory criteria), that carefully maintained distance between bargaining units in the Sheriff's Department "pecking order" (solely in terms of wages) would be at risk. Conversely, carefully maintained parity between like bargaining units would be jeopardized as well.

When all is said and done, the Arbitrator is convinced that the Union understands, if not totally agrees with, the basic premise behind pattern wage bargaining. Indeed, according to the record, the Union's fundamental arguments in all past arbitrations between these parties have spotlighted "duty differentials", and not the core unacceptability of "pattern" wage proposals. As summed up by Arbitrator Nathan on this point, the Union petitioned for a 4% differential, or an entirely new wage rate, because it had already agreed to the Joint Employer's pattern wage increases. Thus,

the Arbitrator reasonably concludes that the concept of pattern wage bargaining is not necessarily what the Union objects to. Instead, it is clear that the Union, by hook or by crook, is determined to propel this bargaining unit ahead of other comparably paid Investigator units because the essential work they perform is allegedly more dangerous.

What of the Joint Employer's wage "pattern" in this case, then. Here, as noted by the Union, the parties' general wage proposals only differ significantly in the first year of the contract, fiscal year 2005. The Union proposes a 3.25% general increase, while the Joint Employer proposes a mere 1% increase. Thereafter, the two proposals are either negligibly different or identical from year to year. The Joint Employer's proposal is (cumulatively) 1% less than the Union's offer for 2006, and the two are identical for 2007. Because the Arbitrator has already concluded that a four-year contract is most reasonable under these particular circumstances, the parties' proposals for 2008 are also identical, because the Union has conceded that "if the Arbitrator selects a four-year term for the agreement, the numbers (4.75%) proposed by the Joint Employers in the fourth year will be adopted."[55]

As noted in the record, the Joint Employer's wage proposal is somewhat "back-loaded", in that a nearly 5% increase is awarded in the final year of the Agreement's four-year term. Pursuant to established cost-of-living data and a rational extrapolation of economic trends, the Arbitrator is satisfied that the Joint Employer's overall wage package is reasonable and appropriate. Indeed, as previously noted, were the Arbitrator to adopt the Union's three-year proposal, and then award the substantial 4.75 % increase on top of it for 2008, there is absolutely no doubt that internal parity

[55] Union brief at page 24, supra.

with other IS2 Investigators, carefully maintained in prior interest arbitrations, would be harmed. Additionally, overall wages would significantly exceed the general cost of living for two reasons. First, past general wage increases have already placed this bargaining unit in a favorable position with respect to the cost of living overall. Moreover, the substantive 4.75% increase in the fourth year, while certainly desirable for members of the bargaining unit, is not likely to have been something the Joint Employer would ever have considered as an acceptable addendum to the Union's three-year proposal.

The Arbitrator is satisfied that arbitral precedent supports internal parity with other Investigator Units for purposes of general pattern wage increases, and further that the Joint Employer's wage proposal satisfies statutory criteria relating to internal comparability, overall compensation, and cost of living. Thus, for all the foregoing reasons, the Joint Employer's wage proposal is adopted. The Arbitrator's Order to that effect follows.

Order

The Joint Employer's proposal is adopted.

Section 14.1 – EM Differential

The Union's Final Proposal

The Union proposes an additional 2% wage increase to bring members of the Fugitive Investigators bargaining unit into parity with DCSI Electronic Monitoring Investigators in the Correctional Officers bargaining unit.

The Joint Employer's Final Proposal

Maintain the *status quo*.

The Position of the Union:

At the outset, the Union argues, as it has consistently maintained since the inception of this bargaining relationship, that Fugitive Investigators face significant dangers on the job and should be compensated accordingly. In the very first interest arbitration between the parties, notes the Union, it argued that Fugitive Investigator duties were more similar to those of Sheriff's Police than to those of other DCSI Investigators. This Arbitrator disagreed, notes the Union, and found instead that they were more closely aligned in terms of duties with EM Investigators. In pertinent part, cites the Union, the Arbitrator commented as follows:

> It is additionally relevant that the Fugitive Investigators have historically been paid at the same rates as the EM Investigators and the Day Reporting Investigators. Both of those units have reached collective bargaining agreements with rates of pay that are identical to each other, as well as identical to the pay schedule by the Employers in this case.

Now, argues the Union, EM Investigators who have thus been deemed "internally comparable" in terms of responsibility and pay, are earning the higher "CS2" rate of pay thanks to Arbitrator Yaffe's 2000 interest arbitration with the Correctional Officers. The Union in this case is not deterred by the fact that Arbitrator Yaffe, shortly after rendering the Correctional Officers' award, denied a parallel 2% increase to IS2 Day Reporting Investigators on the basis that EM Investigators had, without merit, ridden the coattails of Correctional Officers to a higher rate of pay. In summary of this history, then, the Union "highlights" the following pertinent facts:

> 1. In the first arbitration hearing, the Joint Employers asserted that the Fugitive Unit Investigators were internally comparable to the EMU Investigators.
>
> 2. In the first arbitration hearing, the Arbitrator found that the Fugitive Unit Investigators were internally comparable to the EMU Investigators.

3. Subsequently, the EMU Investigators have received a larger wage increase than the Fugitive Investigators.[56]

The Union thus proposes in its final offer that the Arbitrator award the Fugitive Unit Investigators in this bargaining unit an additional 2% wage increase, effective December 1, 2004, to restore parity with the EM Investigators represented by MAP. The record establishes, opines the Union, that its position is not only reasonable, but is "undeniably justified" pursuant to the statutory factor of internal comparability.[57] "There is no rational basis," argues the Union, "for the Fugitive Unit Investigators to earn less than the EMU Investigators in light of these previous interest arbitration awards." Thus, opines the Union, "Traditional Factors in Collective Bargaining" (i.e. consistent application of the rationale from previous interest arbitration awards) "strongly favors application of the EMU Differential to the Fugitive Unit Investigators."

The Position of the Joint Employer

In addition to arguing that the Union's proposal for "EM Differential" cannot be separated from its overall wage package, the Joint Employer opines that the premium is "unwarranted and unacceptable". First, argues the Joint Employer, Arbitrator Yaffe, whose 2000 Correctional Officers award precipitated the EM Investigator increase in the first place, clearly stated in a subsequent decision that it was an "undeserved windfall". Likewise, argues the Joint Employer, neither Arbitrator Berman nor Arbitrator Nathan agreed with the Union that Fugitive Investigators were deserving of increases which would promote disparity among Investigator units even further.

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[56] Union brief at page 14. Here, the Union is expressly referring to the 2% "windfall" increase as a result of the *Yaffe* decision.

[57] The Union notes that if the Arbitrator awards the proposed 2% increase, members of this bargaining unit will not achieve true parity with EM Investigators on the CS2 pay scale. The Union does not seek the lost wage differential for the four years EM Investigators earned higher pay than Fugitive Unit Investigators. Instead, the Union petitions for "eventual parity".

Thus, argues the Joint Employer, this Arbitrator should not award the proposed 2% increase absent compelling justification for doing so so. The Joint Employer argues that the Union had established no such merit, and accordingly urges the Arbitrator to deny the Union's request for "EM Differential".

Discussion:

The record establishes that, over time, one fundamental principle has governed the bargaining relationship between these parties with respect to wages, even though the Joint Employer appears to have shifted gears somewhat in this case. That is; there is significant internal parity between this bargaining unit and that of DCSI EM Investigators.[58] From the beginning, the Joint Employer has argued, in the context of the Union's comparison of Fugitive Investigators with Sheriff's Police, that there is significant similarity between the duties and responsibilities of Fugitive Investigators and those of EM Investigators. This Arbitrator agreed in 1998, and so did subsequent Arbitrators Berman and Nathan. In both cases subsequent to this Arbitrator's initial opinion on the matter, Arbitrators Berman and Nathan rejected the Union's core argument that Fugitive Investigators deserve higher wages on the sole basis that their duties make them more like police officers than other Sheriff's Department Investigators. The Arbitrator is particularly satisfied that this is true in the case of Arbitrator Berman's opinion, because the Circuit Court of Cook County subsequently vacated his award only because he had incorrectly rejected the validity of the Union's comparison. (Arbitrator Berman concluded in pertinent part that, "[The] distinctions between Fugitive Investigators and other investigative units are insufficient to set aside

[58] The Arbitrator, like the parties, does not include Correctional Officers in this particular comparison.

the 'internal consistency of the investigatory units of the Sheriff's Office'". As noted herein above, the Judge disagreed, and thus set aside Berman's Award.)

In the next subsequent arbitration, Arbitrator Nathan stated, "I find there was, and continues to be, substantial evidence to support Fletcher's and Berman's findings that Fugitive Investigators are not sufficiently distinguishable from other Investigators so as to justify premium pay…" Thus, again, Arbitrator Nathan affirmed internal comparability between this bargaining unit of Fugitive Investigators and other Sheriff's Department Investigators. Interestingly, it appears in that case that both the Union and the Joint Employer were arguing the flip sides of the coin at issue here. The Joint Employer argued, and Arbitrator Nathan agreed, that the 4% premium sought by the Union was not justified because the responsibilities of Fugitive Investigators were not sufficiently different from those of other Investigators. In other words, the Joint Employer took the position that true internal parity should rule the day. In this case, however, the Joint Employer argues against the "EM Differential" strictly because Arbitrator Yaffe called it an "unjustified windfall", and so the Union's purpose to restore the very internal parity so vigorously defended by the Joint Employer in the past, is now "unwarranted and unacceptable". This, in the Arbitrator's view, is nonsensical for two main reasons.

First, the 2% increase awarded to EM Investigators by Arbitrator Yaffe in his 2000 award with the Correctional Officers was not based on merit; that is, Arbitrator Yaffe engaged in absolutely no analysis of that unit of Investigators (either in terms of duties or pay) and this one. He simply awarded an additional 2% to the Correctional Officers to narrow the apparently unacceptable wage gap between them and the

Sheriff's Police.[59] In so doing, Arbitrator Yaffe *created* a wage gap between EM Investigators and Fugitive Investigators (and other Sheriff's Department Investigators) which was never intended, at least by the Joint Employer. Remember, from the very beginning, the Joint Employer unflaggingly argued to maintain the internal relationship between Sheriff's Department Investigator units in terms of pay. Thus, for the Joint Employer to now argue that the disparity should be maintained for no good reason, is clearly self-serving.

No doubt the Joint Employer is pleased that Arbitrator Yaffe, himself, acknowledged the unsupportable side-effect of his decision in the Correctional Officers case (the "windfall" to EM Investigators), for, when all is said and done, this is the Joint Employer's sole defense in the matter. Nevertheless, this Arbitrator finds it lacking sufficient substance to overcome what has been deemed one of the most important criterion under this statute; comparability. On this point, the Arbitrator notes that evaluation of comparability is often "blind", particularly where external comparables are considered, because the *process* of how wages came to be is not always available to the outside observer. Sometimes wage concessions are gained as a result of *quid pro quo* at the bargaining table. Other times they are mandated at arbitration. Nevertheless, when comparables (internal *or* external) are deemed valid and thus available to the arbitrator for purposes of comparison, the "whys and wherefores" applicable factors are not particularly germane. *They simply exist*. In other words, either bargaining units are comparable or they are not. In this case, as already noted, the Joint Employer has absolutely insisted over the course of time that EM Investigators

[59] Union Exhibit 25, *supra*.

and Fugitive Investigators are comparable, and this and two other arbitrators have agreed.

Moreover, as these parties now know first-hand, when binding matters are removed from the bargaining table (where they truly belong) and placed in the hands of an arbitrator, a certain amount of dice-rolling is introduced into the process. Clearly, neither party meaningfully questioned Arbitrator Yaffe's authority to "split the baby" in 2000 (the inconvenient if not unforeseen consequences of which came home to roost in the Day Reporting Investigators interest arbitration shortly thereafter and are again before the Arbitrator in this case), because there is no evidence that it was ever appealed as provided for under the statute. Thus, for better or worse, the practical impact of Arbitrator Yaffe's (if passive) decision to mitigate internal wage parity in Sheriff's Department Investigator units must be dealt with head-on, whether or not he ever intended it and even though he was evidently unwilling to do so himself with the Day Reporting Investigators.

The foregoing facts establish that wage parity should be restored between Fugitive Investigators and EM Investigators to the extent proposed by the Union. The Arbitrator is convinced by the Union that a one-time "parity increase" of 2% should be granted members of this bargaining unit in the first effective pay period of the instant Collective Bargaining Agreement. No retroactive or "catch-up" wages are granted for prior pay periods in the process. The Union's proposal is thus adopted, and the Arbitrator's Order to that effect follows.

Order

For the foregoing reasons, the Arbitrator is persuaded that the Union's petition for the "EM" [parity] Differential is supported by the evidence, and the *status quo* should not be maintained. The Union's proposal is accordingly adopted.

Section 14.1 – Street Unit Differential

The Union's Final Proposal

The Union proposes a 4% "Street Unit" Differential over and above proposed general wage increases, which is representative of the difference between wages of inside Court Services Deputies and those of "Street Unit" Court Services Deputies.

The Joint Employer's Final Proposal

Maintain the *status quo*.

The Position of the Union:

Here, the Union contends that there is a distinct difference between the duties of inside Sheriff's Department law enforcement personnel and those of "street" personnel. The Joint Employer conceded to this difference, argues the Union, when the "street" D2B classification was created in Court Services, and Deputies assigned "street" responsibilities were awarded a 4% increase in pay over their "inside" Deputy counterparts. The Union cites Arbitrator Peter Meyers, who explained the distinction in pertinent part as follows:

> Pursuant to an agreement between the parties after the last interest arbitration, deputies within the Civil Division carry a higher pay classification, the "D2B" classification, than applies to the deputies in the Courtroom Services Division. These "Street Unit" deputies generally work in less secure environments than do the deputies in the Courtroom Services Division, performing such tasks as serving court orders and legal papers, arresting individuals who are the subjects of outstanding court-issued warrants, and seizing property pursuant to court judgments.

Pursuant to the above, then, the Union opines that, "The justification for the D2B classification having a higher salary is the increased dangers and insecurity attributed to working on the street as opposed to working in the confines of a courtroom**."**[60] In that case, argues the Union, the 4% "Street Differential" was not the "creative idea of union advocates", but rather a deliberate recognition on the part of the Joint Employer that "street" unit employees should receive higher pay. Here, argues the Union, there is no material dispute that Fugitive Unit Investigators are "street personnel" and thus deserving of this "street differential". Fugitive Investigators, argues the Union, "perform their duties in the field, in the presence of hostile family and gang members of the criminals that they are trying to apprehend." The Circuit Court of Cook County expressly recognized these dangers, argues the Union, by overturning Arbitrator Berman's opinion that Fugitive Investigators more closely resemble EM Investigators in terms of responsibility than Sheriff's Police. The Joint Employer, notes the Union, has never argued that Fugitive Investigators perform the majority of their work inside, because it is a well-known fact that they do not. Thus, opines the Union, "Internal comparability favors adoption of the Union's final offer applying the Street Unit Differential to Fugitive Unit Investigators."

The Position of the Joint Employer:

At the outset, the Joint Employer argues that the 4% wage differential between inside and "street" Court Services Deputies is not precedent for the "Street Unit" differential proposed by the Union in this case. First, argues the Joint Employer, Fugitive Investigators (and other Sheriff's Department Investigators) were classified at a

[60] Union brief at page 16.

higher rate of pay than Court Services Deputies from the very beginning. Moreover, argues the Joint Employer, management's decision to pay a premium to "street" Deputies only served to restore a wage gap between inside and "street" Deputies that existed prior to the time the Court Services units were unionized. In contrast, notes the Joint Employer, Fugitive Investigators have always been paid at the [higher] "Investigator" or IS2 pay rate, and even now make more than Street Unit Deputies.

Moreover, argues the Joint Employer, the sole fact that Fugitive Investigators work "on the street" does not justify a further "pay boost" as a result of this arbitration. In support, the Joint Employer notes that the Deputy Sergeants, who supervise Street Unit Deputies and thus also have "street" duties, do not receive a differential. Additionally, argues the Joint Employer, prior interest arbitrators have expressly stated that there are insufficient differences between this unit of Fugitive Investigators and the other DCSI Investigators to support the Union's present demand that they be set apart by a significant 4% increase in wages solely because they perform the same essential street duties they have from the start. Accordingly, the Joint Employer urges the Arbitrator to maintain the *status quo*.

Discussion:

Unlike the 2% "parity increase" adopted by the Arbitrator in the previous section, the Union's appeal for an additional 4% "street" differential presents an entirely different scenario. Here, the Union argues that solely because Fugitive Investigators have "street" functions, they are entitled to a differential, a true differential, similar to that which exists between the two groups of Deputies in Court Services. Certainly, the Joint Employer's decision to pay a differential to Street Unit Deputies was made in the

exclusive context of the Court Services setting, and was designed to recognize, in a material way, differences between the duties of some Deputies as compared to those of other similarly situated but not identical Deputies. That is distinctly different from the scenario here.

The essential "street" function of Fugitive Investigators has been recognized by these parties, and the Joint Employer in particular, from the beginning. There is no dispute that Fugitive Investigators have always (almost exclusively) performed street duties and have been paid at the higher IS2 rate for their work. Moreover, all Fugitive Investigators in this bargaining unit are paid at the same rate, and there is no material variance within this group as to core utility. Thus, to now apply what was expressly intended to separate two groups in the same bargaining unit (pursuant to their duties) simply because all Fugitive Investigators have "street" duties, would be entirely inappropriate. The differential was never intended to apply to every Sheriff's Department law enforcement group having some "generic" responsibility for street work. Instead, according to the evidence in its proper context and as previously noted, it was intended, it is manifestly clear, to tangibly differentiate a group of Deputies with [more dangerous] street responsibilities from another group of Deputies in the same bargaining unit without them.

Pursuant to the instruction of Arbitrator McAlpin, then, the Arbitrator is persuaded that the *status quo* should be maintained with respect to this proposed differential. The Union has not satisfied its "special burden" to prove that the proposed change is supported by evidence of bona fide and unacceptable disparity between this group of Fugitive Investigators and other groups not having street functions, for this is the context

in which the 4% "street" differential was granted in the Court Services Deputies bargaining unit in the first place. The record establishes that the inherent "street" function of this bargaining unit has been recognized all along, as they have always earned, and continue to earn, higher wages than even Street Unit Deputies.

The Arbitrator thus concludes that the *status quo* should be maintained, and his Order to that effect follows.

Order

For the foregoing reasons, the Arbitrator concludes that the *status quo* with respect to the proposed "Street Unit" Differential should be maintained. The Union's petition is denied.

Section 17.1 – Hospitalization Insurance

The Union's Final Proposal

Maintain *status quo* for the proposed contract term of three (3) years.

The Joint Employer's Final Proposal

Effective 12-1-07, change employee deductibles and co-pays as follows:

HMO Health Care

Plan Feature	Copay
Office Visit	$10
Emergency Room	$40
Inpatient Hospital	$100
Outpatient Surgery	$100
Rx Generic	$7
Rx Formulary	$15
Rx Non-Formulary	$25

Mail Order RX supply	Twice retail copay for 3 mos.

PPO Health Care

Plan Feature	Copay – Deductible
Individual Deductible	$125/$250
Family Deductible	$ 250/$500
Annual Out-of-Pocket Maximum (individual)	$1,500/$3000
Annual Out-of-Pocket Maximum (Family)	$3000/$6000
Coinsurance	90%/60%
Office Visit Copay	$25/ded plus coins.
Emergency Room Copay	$40
Rx Generic Copay	$7
Rx Formulary Copay	$15
Rx Non-Formulary Copay	$25
Mail Order Rx Copays	Twice retail copay for 3 mos. supply

Employee Premium Contribution

Effective 6-1-08

Percentage of Salary	HMO	PPO
Employee only	.5	1.5
Employee plus child(ren)	.75	1.75
Employee plus spouse	1.00	2.0
Employee plus family	1.25	2.25
Cap	0	0

The Position of the Union:

In this particular case, the Union urges the Arbitrator to maintain *status quo* with respect to health insurance solely because it has proposed a three-year contract term during which the Joint Employer has suggested no change in existing health care premium contributions, co-pays or coverage. On point, the Union notes that, “The Joint Employers have sought changes to the health insurance plan as part of the ‘pattern’

bargaining proposal, but they have not sought any change prior to December 1, 2007 … . The Union's final offer does not disturb the 'pattern'. Rather, its final offer compliments the pattern and thus is supported by internal comparability."

The Position of the Joint Employer:

The Joint Employer cites numerous reasons for the specific health care reforms it has proposed. First, maintains the Joint Employer, proposed changes will maintain the uniformity in health insurance that has been a "hallmark of Cook County labor agreements." Maintaining a "uniform" health insurance program for all Cook County employees, argues the Joint Employer, has enabled (and continues to enable) the County to negotiate better terms with health care providers on the basis of sheer numbers alone. Moreover, argues the Joint Employer, the instant proposal for reform moves toward addressing the ever-rising cost of employee health care coverage.

It is beyond disputing, argues the Joint Employer, that employers are facing a "health insurance cost crisis of epic proportion". In support, the Joint Employer cites evidence establishing that employers nation-wide expected to pay 9.9 percent more for health insurance premiums in 2006. Moreover, argues the Joint Employer, costs have already been on the rise for years, with premiums increasing 11.2 % in 2002, 14.7 % in 2003, 12.3 % in 2004 and 11.3 % in 2005.[61] Thus, observes the Joint Employer, it comes as no surprise that Cook County has also felt the effects of this nationwide trend. In fact, argues the Joint Employer, Cook County's expenditures for employee health

[61] Bailey, Gary, "Health Insurance Trends in Interest Arbitration," *Illinois Public Employee Relations Report*, Winter 2006, Volume 23, Number 1, 2-3. *See also*, *City of Chicago and Fraternal Order of Police, Lodge No. 7*, No. 04-328 (Benn, 2005). ("Insurance costs are skyrocketing… the national trend underscores the reality that employer health care costs are soaring at alarming rates and are being shifted to employees.")

insurance and prescription medications rose a full 20% between December 1, 2002 and December 1, 2004. Even so, argues the Joint Employer, not until now has the County joined the established trend among most, if not all, large employers to seek greater support from covered employees for health care. Thus, reasons the Joint Employer, undisputed evidence suggests that management's proposed health care reforms are "more than just a good idea". In fact, maintains the Joint Employer, they represent "small step[s] toward bringing Cook County's health insurance program in line with other employer's programs."[62] Moreover, argues the Joint Employer, they are "absolutely necessary to preserve the County's fiscal health, a vital concern for all Cook County employees and taxpayers."

As to its "last best offer" before the Arbitrator, the Joint Employer argues that it proposes relatively modest increases in premium contributions as compared with those recommended in the July, 2005 "Mercer Report", which evaluated Cook County's health care program against several selected benchmarks and suggested stringent reforms.[63] Additionally, notes the Joint Employer, its proposed changes in co-pay amounts are also lower across the board than those urged by *Mercer*. The Joint Employer notes that it has proposed a percentage of salary formula for employee contributions lower than that recommended by *Mercer*, and has also deferred increases in employee costs until late in the tenure of this Agreement.

In contrast, argues the Joint Employer, the Union's proposal to maintain *status quo* is "simply not viable", because it "fails to recognize that the current program is unsustainable". The cost to Cook County for PPO health insurance, argues the Joint

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62 Joint Employer brief at page 53.
63 Joint Employer Exhibit 18.

Employer, has increased some 35% between December 1, 2002 and December 1, 2004. While employee contributions also grew somewhat during the same period, acknowledges the Joint Employer, rising premiums have far outpaced them and thus have placed an "ever-increasing burden" on the County's budget. Likewise, argues the Joint Employer, HMO coverage for Cook County employees rose from $166,266,670 to 188,280,275 (approximately 13.25%) between December 1, 2002 and December 1, 2004 with no corresponding increase in revenue.

In short, maintains the Joint Employer, the Union is simply asked "to accept, as the other units and unions have, reasonable and equitable reform in the employee's health insurance, and to refrain from fracturing the traditional universality of Cook County health insurance coverage that long has existed…"

Discussion:

After reviewing the record and the arguments of the parties, the Arbitrator is persuaded that the Joint Employer's proposal with respect to Section 17.1 of the Agreement suitably addresses both a legitimate (and mutually recognized) need for health care cost reform in this bargaining unit, and the statutory requirement that the Arbitrator duly consider "the interests and welfare of the public and the financial ability of the unit of government to meet those costs". The Arbitrator recognizes that in this particular case, the Union, unlike MAP representing the Correctional Officers in another of the Arbitrator's recent interest arbitrations, has not expressly objected to the form of the Joint Employer's proposed health care reforms. This is so, because from the start, the Union has urged the Arbitrator to adopt its proposal for a "traditional" three-year contract, and the Joint Employer's proposed changes do not occur until after such an

agreement would already have expired. However, for reasons previously stated, the Arbitrator is convinced, particularly in light of critically needed health care changes in Cook County, that a four-year contract is more reasonable. In other words, the Joint Employer has demonstrated to the Arbitrator's satisfaction that it has a "genuine need" (health insurance reform) to depart from the *status quo* with respect to the term of this contract, and further that the proposed solutions, a four-year contract and the instant Section 17.1 changes, address that need without imposing undue hardship on the Union.

The record also clearly establishes that the Union was fully aware, even before bargaining began for this contract, that the Joint Employer would be pursuing increases in employee health care contributions. At page 66 of the arbitration hearing transcript, for example, Union counsel commented that, "[The Union] came to these negotiations expecting to see increases." At page 148 of the transcript, Union counsel again acknowledged inevitable insurance reforms, by agreeing that, were the Union to succeed in its bid for a three-year agreement, the Joint Employer's proposed increases in employee costs would "certainly" be applicable in the first year of the successor contract. Thus, it is not unreasonable for the Arbitrator to conclude that the Union is not dismayed by the idea of health insurance reform, nor is it at all surprised by the timing of it. Therefore, all that is left for the Arbitrator to decide is whether or not the Joint Employer's proposed reforms, absent a rebuttal proposal from the Union, are a reasonable alternative to the *status quo*. For the following reasons, the Arbitrator is persuaded in the affirmative.

First, uniformity of Agreement language (with respect to health care) among comparable bargaining units is distinctly advantageous to employee and employer alike, in that, by virtue of its sheer size, Cook County has tremendous buying power as an employer. Thus, the concept of uniform County-wide health care options is not merely convenience-driven. Nor, in this Arbitrator's opinion, is it representative of an unwillingness on the part of the Joint Employer to bargain in good faith over an important issue concerning this particular Union, even though the record clearly establishes that no such bargaining took place because of the parties' more basic disagreement over the term of this Agreement. Nevertheless, it is simply common sense that employees in general, and the Fugitive Investigators in particular (being a relatively small bargaining unit), will fair better in dealings with local and national health care giants, if they have a giant in their corner themselves.

Moreover, the skyrocketing cost of health care across the board is well known, indeed it is beyond disputing. Certainly, the Arbitrator recognizes that no employee in any industry, wants to pay more for health care, never mind for coverage identical to that which he or she has previously enjoyed for a lesser amount. However, as noted, the cost for that same level of care has risen substantively in recent years, and it is simply indefensible for modern-day employees to expect their employers to foot the entire bill for those increases. Indeed, this would put an undue hardship on any employer, and this one in particular. Cook County's financial woes are already a matter of public record.

Because the Joint Employer proposes what the Arbitrator agrees are substantively more modest increases in employee health care costs than those

suggested in the Mercer Report, and because the Union has offered no evidence to suggest that the only alternative to the *status quo* currently on the table is patently unreasonable, he has no choice but to conclude that the "pattern" reforms proffered by the Joint Employer are both justified and appropriate. The Arbitrator further observes that they are accompanied by contemporaneous wage increases in fiscal year 2008 designed to somewhat relieve the burden of increased employee obligations which take effect that same year.

For the foregoing reasons, then, the Arbitrator is convinced that the Joint Employer's proposal should be adopted. An Order to that effect follows.

Order

The Joint Employer's proposal is adopted.

Section 17.3 – Paid Leave

The Union's Final Proposal

The Union proposes a new provision that will "allow employees to use accumulated paid leave while awaiting determination of the County's position regarding the nature of injury leave."

The Joint Employer's Final Proposal

Maintain *status quo*.

The Position of the Union:

Currently, argues the Union, the Joint Employer does not permit Fugitive Investigators who have applied for duty disability to use accumulated sick, vacation, compensatory or personal time while they are waiting for management to allow or disallow their claims. Thus, contends the Union, members of the bargaining unit have, on occasion, been "economically orphaned" because it has taken weeks or even months for the Joint Employer to process claims for disability benefits. The Union acknowledges the Joint Employer's management right "to review workers compensation cases to ensure that only those eligible for such benefits receive them." However, argues the Union, its proposal in this case merely allows Fugitive Investigators who are waiting to hear one way or the other to use accrued paid time off in the interim. The Union contends that "other Illinois governmental units" can and do make such determinations in fewer than 24 hours, but such is not the case with the Joint Employer.

The Union contends that the Joint Employer has demonstrated "callous indifference" to the loss of income suffered by employees waiting for disability benefits to be approved. The Joint Employer, argues the Union, has denied the Union's allegations of undue delay, failed to explain the obvious administrative "incompetence"

causing it, failed to offer a new plan to avoid unreasonable delays, and failed to show "even the slightest interest" in the matter. On the other hand, argues the Union, it has proposed a "simple plan" to address the problem. The Union acknowledges the Joint Employer's argument that because disability benefits are retroactive, accrued time would have to be re-paid in the event of an affirmative determination. However, counters the Union, the Joint Employer routinely has to 'pay back' the use of accrued time, "and does so with ease."[64]

The Union contends that the problem in this case *should* be resolved by placing injured or ill Fugitive Investigators on "some type of administrative leave". (It is only fair that the Joint Employer should shoulder the burden of its own incompetence, opines the Union). Instead, argues the Union, the instant proposal poses a resolution that is fair and reasonable, with very little, if any, burden to the Joint Employer. It should thus be adopted, urges the Union.

The Position of the Joint Employer:

Present language in Article 17 of the Agreement, argues the Joint Employer, is standard to all Cook County Collective Bargaining Agreements. In particular, argues the Joint Employer, Section 17.3 thereof states:

> Employees incurring any occupational illness or injury will be covered by Workers' Compensation insurance benefit. Employees injured or sustaining occupational disease on duty, who are off work as a result thereof shall be paid Total Temporary Disability Benefits pursuant to the Workers' Compensation Act. Duty Disability and ordinary disability benefits also will be paid to employees who are participants in the County Employee Pension Plan; Disability benefits will be reduced by any Worker's Compensation benefits received. Duty Disability benefits are paid to the employee by the Retirement Board when the employee is

[64] Union brief at page 29.

> disabled while performing work duties. Benefits amount to seventy-five percent (75%) of the employee's salary at the time of injury, and begin the day after the date the salary stops. The employee will not be required to use sick time and/or vacation time for any day of duty disability.
>
> Ordinary disability occurs when a person becomes disabled due to any cause, other than injury on the job … . The first thirty (30) consecutive days of ordinary disability are compensated for only by the use of any accumulated sick pay and/or vacation pay credits unless the employee and the Employer otherwise agree.

Here, argues the Joint Employer, the Union has proposed language which would affirmatively state that employees will be permitted to use accrued time while awaiting the Joint Employer's decision as to whether or not they qualify for disability benefits. The Union's proposal is inappropriate for a number of reasons, opines the Joint Employer. First, argues the Joint Employer, the Union's proof of inadequacies in present Agreement language concerns only two situations (one was five years ago) in which Fugitive Investigators were required to wait more than one month for a determination as to their disability benefits. In both cases, argues the Joint Employer, there is no evidence in this record that either employee even attempted to use sick time or other benefit time while awaiting the Joint Employer's decision. Thus, argues the Joint Employer, the record does not support the Union's argument that the existing language actually bars that practice and accordingly must be corrected. The Agreement does state, notes the Joint Employer, that injured employees "will not be required" to use accrued time "for any day of duty disability". It is, however silent, argues the Joint Employer, as to whether an employee is *forbidden* to use benefit time while awaiting a workers compensation determination. Thus, reasons the Joint Employer, "Until the Union has filed and lost a grievance testing whether Section 17.3 prohibits employees from using benefit time during the early, undetermined stage of a duty disability, it is not clear there even is a need to consider changing the contract

language."[65] At arbitration, notes the Joint Employer, the Union conceded that it has never filed such a grievance. Accordingly, maintains the Joint Employer, the Union has failed to demonstrate a genuine need to depart from *status quo* Section 17.3 language.

Second, argues the Joint Employer, the Union's disability benefits proposal "seeks to impose a global unit-wide solution to what at most is an individual problem." The Union's evidence that two Fugitive Investigators were allegedly harmed because the process may have taken "longer than the Union considers appropriate", argues the Joint Employer, is "hardly compelling".

Third, maintains the Joint Employer, once an employee is found to be eligible for duty disability benefits, those benefits are awarded and paid by the Retirement Board (an independent agency) retroactive to the commencement of the duty disability. Consequently, argues the Joint Employer, an employee already using accrued time "may reap the windfall of receiving double payment for that time … ."[66] The Union's proposal, notes the Joint Employer, incorporated nothing to preclude such windfall payments, nor does it enable the County to recoup amounts it may pay under the proposal that are later duplicated by Retirement Board payments.

For the foregoing reasons, the Joint Employer urges the Arbitrator to reject the Union's proposal and thus maintain the *status quo*.

Discussion:

Upon the whole of this record, the Arbitrator is persuaded that existing Section 17.3 language should be amended pursuant to the Union's proposal. Lest the Joint

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[65] Joint Employer brief at page 59.

[66] Id.

Employer find inconsistency in the Arbitrator's conclusion in this case as compared to his recent rejection of the union's proposal in the Correctional Officers case, the Arbitrator notes a material difference. MAP's proposed remedy to this same alleged problem (that the County takes an inordinately long time processing disability claims) was quite different. In that case, the union petitioned the Arbitrator to impose a 15-day time limit on the processing of disability applications, and also proposed that employees in the "waiting period", however long, be placed on paid administrative leave. Clearly, both phases of that proposed remedy were "breakthrough", in that neither party argued that existing agreement language even contemplated them, and indeed it was clear that it did not. Here, in contrast, the Union has proffered a remedy that is substantively more reasonable, and, perhaps, is even already contemplated in existing agreement language.

First, the Union here does not propose to place a time limit on the Joint Employer as did the Union in the Correctional Officers case. (For reasons set forth in that decision, the Arbitrator found the idea ill-conceived.) Second, the Union in this case has not petitioned for paid administrative leave, which would have to be repaid <u>whether or not</u> disability benefits are eventually granted. (Under present Section 17.3 language, which the parties agree is consistent with that in other collectively bargained agreements in the Sheriff's Department, paid administrative leave would be inappropriate if a claim for disability benefits were ever legitimately rejected. "*The first thirty consecutive days of ordinary disability are compensated for <u>only</u> by the use of any accumulated sick pay and/or vacation pay credits unless the employee and the Employer otherwise agree … ." Emphasis added.*)

Given the record, the Arbitrator is satisfied that there is a bona fide need to address the problem of lost wages during the "limbo" period when disability claims are being processed. In so concluding, the Arbitrator is not even forced to examine whether or not the Union's evidence is sufficient to demonstrate that the Joint Employer's administrative procedures are inadequate or unnecessarily prolonged. Indeed, as he observed in the Correctional Officers case, this particular process often takes time. Instead, the Union proposes to close the gap by offering a solution which, in the end, costs the Joint Employer absolutely nothing *new*. Accrued time is already earned, and belongs to the employee. Moreover, as a practical matter, the Arbitrator is not only unconvinced that the "pay back" process in the event disability is approved presents an extraordinary hardship, but he reasonably assumes that "pay back" is already built into the Section 17.3 process.

For example, let us say that an employee is injured on the job, and takes the next few days off as "vacation" in order to ensure that his pay is not interrupted while he seeks treatment. His doctor tells him that he is unfit for work for an extended period of time, and he accordingly applies for disability benefits retroactive to the date of his injury. Because Section 17.3 unambiguously states, "*The employee will not be required to use sick time and/or vacation time for any day of duty disability*" (emphasis added), our employee is clearly entitled to be "paid back" the earned vacation time he used when his absence commenced. While the record in this case does not actually demonstrate such a scenario, the Arbitrator, having had many years of labor experience

in civil and industrial settings alike, is absolutely confident that it has occurred in Cook County.[67]

Thus, the Arbitrator is convinced that the proposed amendment to Section 17.3 places the Joint Employer in no worse a position than it is in now with respect to the administration of disability benefits, and, whether it "greases the wheels of progress" or not, it will nevertheless estop the Joint Employer from disallowing benefits which the employee has already earned. After all, it makes little sense to starve when there is bread in the pantry, and the Arbitrator reasonably assumes that the framers of the original 17.3 language intended no such harm.

For the foregoing reasons, the Arbitrator is convinced that the Union's proposal should be adopted. An order to that effect follows.

Order

The Union's proposal is adopted.

Section 18.3 – Uniform Allowance

The Union's Final Proposal

The Union proposes to increase the Uniform Allowance from the current $650 per year to $700 per year retroactive to December 1, 2004.

The Joint Employer's Final Proposal

Maintain *status quo*.

The Position of the Union:

The Union seeks what it deems a "fair and reasonable" increase to the uniform allowance already provided in the Collective Bargaining Agreement. According to the

[67] "There comes a point where we should not be ignorant as judges of what we know as men. " *Watts v. Indiana* 338 U.S. 49 (52) (1949)

Union, increases in the cost of living since the contractual Uniform Allowance was last adjusted is "sufficient evidence" that its proposed change constitutes a justified departure from *status quo*. In support, the Union cites Consumer Price Index calculations for the Chicago/Gary/Kenosha and Midwest Urban areas establishing cost of living increases between December 1, 2000 and November 30, 2004 of 8% or higher. In contrast, argues the Union, its proposed increase of 7.7 % Uniform Allowance is below that mark, and is thus reasonable. According to the Union, "The Joint Employer's refusal to augment the allowance one single penny is ludicrous … . The cost of goods has increased and the Union's proposed increase seeks only to keep up with the ever-rising costs of gear needed by the Fugitive Investigators."

For the foregoing reasons, then, the Union urges the Arbitrator to depart from the *status quo* and adopt its revised Uniform Allowance.

The Position of the Joint Employer

The Joint Employer argues that the Union's Uniform Allowance proposal should be rejected for two main reasons. First, argues the Joint Employer, this issue should, as any involving potential economic gain which departs from the *status quo*, be viewed in the context of overall compensation. In support, the Joint Employer cites Arbitrator Edwin Benn's comment in his 1998 interest arbitration with the Sheriff's Police, that, "[Uniform Allowance] benefits are not to be examined in isolation … . [R]esolution of this economic issue returns to the wage offer which has favorably placed the bargaining unit within the relevant comparables and the lack of cost of living basis to justify further economic benefits." In this particular case, argues the Joint Employer, "The overall wage and benefit compensation already enjoyed by these employees is extremely

favorable and competitive", and will continue to be so if the Joint Employer's wage proposal is adopted.

Moreover, argues the Joint Employer, the Union's demand to increase the Uniform allowance is not justified in this record by any empirical evidence as to the cost of purchasing and maintaining uniforms. Rather, notes the Joint Employer, the Union merely asserts that, "We believe the uniform allowance doesn't go as far as it used to." (Tr. 70.) The Joint Employer argues that similar bids for increases in Uniform Allowance have been repeatedly rejected by other arbitrators, and urges this Arbitrator to do likewise. Internal comparability, notes the Joint Employer, should rule the day, and the uniform allowance currently received by the Fugitive Investigators is exactly the same as the allowance for every other law enforcement bargaining unit in Cook County. The Joint Employer thus urges the Arbitrator to deny the Union's proposal on this issue, and maintain the *status quo*.

Discussion:

While on the surface it would appear that the Union's proposal should prevail on the sole basis of cost of living increases between 2000 and the present, the proofs on this issue, or more correctly the lack thereof, are fatal to a departure from the *status quo*. Again, any such departure must be prompted by a "proven need for the change" (See; *McAlpin*), and the Union has failed to prove a need in this case. True, the Union reasonably assumes based upon general cost of living data, that uniforms are more expensive now than they were when the uniform allowance was last adjusted. However, the record, as noted by the Joint Employer, contains no empirical evidence that this is actually true. For example, there were no uniform catalogues to examine

and compare, and no actual expense records demonstrating that the $650 uniform allowance is now insufficient.

It is important here, for the Arbitrator to note that he is not particularly persuaded by the Joint Employer's "internal parity" argument. Indeed, had the Union come in with genuine evidence that the current allowance is insufficient, its proposal would have carried the day on this issue. In other words, just because other bargaining units have either been unsuccessful in their pursuits on this issue or have neglected to raise it in the first place, is not fatal to the Union for one reason in particular; the uniform allowance in this and in predecessor agreements, was clearly crafted to be a benefit over and above cost of living wage increases which the Joint Employer argues have placed this bargaining unit in a favorable position overall. It is reasonable then, for the relative value of that benefit to be maintained as the years go by, so long as there is adequate proof that the *status quo* in terms of actual dollars no longer sustains the intended relative worth of the benefit.

Having said that, the Arbitrator reminds the Union that "internal parity" alone will, for similar reasons, constitute an inadequate argument if, in the future, the Joint Employer increases uniform allowances in other Cook County Sheriff's Department bargaining units. The record establishes that Fugitive Investigators do not wear uniforms on a daily basis, as do other internally comparable units. The Arbitrator is very aware that Fugitive Officers are required to have and maintain uniforms. However, common sense dictates that the relative need to augment the uniform allowance in this particular bargaining unit could be different from the others for that reason.

In any event, in this particular record, the Union has supplied no evidence, such as cost comparisons, etc., indicating that, in the "real world" the present $650/year uniform allowance is no longer sufficient. Thus, the Arbitrator maintains the *status quo* for lack of sufficient proof that departure from it is warranted. An order to that effect follows.

Order

The *status quo* is maintained. The Union's petition is denied.

IX. Conclusion and Award

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

John C. Fletcher, Arbitrator

Poplar Grove, Illinois, February 1, 2007