ILLINOIS LABOR RELATIONS BOARD
INTEREST ARBITRATION
BEFORE
LISA SALKOVITZ KOHN,
SITTING AS SOLE ARBITRATOR

In the matter of the Interest Arbitration	**)**	
between	**)**	
	)	
COUNTY OF COOK/COOK COUNTY SHERIFF,	**)**	
Joint Employer,	**)**	
	)	
and	**)**	**Case No. L-MA-09-018**
	)	
TEAMSTERS LOCAL 700,	**)**	
Union.	**)**	

Appearances:

For the County and Sheriff: Paul O'Grady
Melissa Sobota
Peterson, Johnson & Murray

Peter Kramer
Cook County Sheriff's Office

For the Union : Kevin Camden
Teamsters Local 700

<u>A R B I T R A T I O N   A W A R D</u>

I. INTRODUCTION

This is an impasse arbitration held pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1, *et seq.,* (the Act) subject to certain modifications agreed upon by the parties. The Union, Teamsters Local 700, and the Joint Employer, Cook County and the Cook County Sheriff (the "Sheriff" or the "Joint Employer"), selected the undersigned Arbitrator to serve as the sole member of the arbitration panel in this matter, waiving their respective rights to appoint Union and Employer representatives to the arbitration panel. The parties have stipulated that there are no procedural matters at issue, and that the Arbitrator has jurisdiction and authority to rule on the mandatory subjects of bargaining submitted to it as authorized by the Act. At the hearing held May 10, 2012, both parties were given the opportunity to present such evidence and argument as they desired. The parties submitted their post-hearing briefs and two additional exhibits on August 13, 2012, at which time the record was closed.

The parties have stipulated that their tentative agreements on other matters shall be incorporated into the Arbitrator's award in this matter, subject to obtaining County approval where necessary. They have also agreed to revise references in the resulting collective bargaining agreement contract as needed to reflect that Teamsters 700 is now the collective bargaining representative for these employees.

II. ISSUES

The parties submitted the following issues to the Arbitrator, stipulating that they are economic issues within the meaning of Section 14(g) of the Illinois Public Labor Relations Act: Wages, Street Pay, Uniform Allowance, Family and Medical Leave, Insurance Opt-Out, and Travel Reimbursement. Because these are economic issues, the Arbitrator must choose either the Joint Employer's offer or the Union's offer on each issue.

III. STATUTORY FRAMEWORK

Section 14(h) of the Act, 5 ILCS 315/14(h), provides that:

> [T]he arbitration panel shall base its findings, opinions, and order upon the following factors, as applicable:
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> (1) The lawful authority of the employer;
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> (2) Stipulations of the parties;
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> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs;
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> (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:
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> (A) In public employment in comparable communities;
>
> (B) In private employment in comparable communities:
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> (5) The average consumer prices for goods and services commonly known as the cost of living;
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> (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, and the continuity and stability of employment and all other benefits received;

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings;

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

The arbitrator must consider each of these factors when determining his or her findings, opinion and order. However, as has been frequently noted, some factors may bear more weight and significance than others, depending on the facts and circumstances of the case. Even within a single opinion, some factors may be determinative of one issue, but may be less relevant to another. In the discussion that follows, the factors most determinative of the outcome of this Interest Arbitration are highlighted. However, <u>all</u> the statutory factors, including all of the parties' stipulations, have been considered in reaching this decision and Award.

IV. BACKGROUND and INTERNAL COMPARABILITY

The Cook County Sheriff's Office has approximately 6,400 to 6,800 employees. Approximately 90% of these employees are in 19 different bargaining units, represented by a single union. The unit whose collective bargaining agreement is at issue here is a unit of Fugitive Investigator II's, represented by Teamsters Local 700 and paid in grade IS2. While there were approximately 19 Fugitive Investigator II employees at the time of the hearing, the number has fluctuated over time.

The last collective bargaining agreement covering this unit was effective from

December 1, 2004 through November 31, 2008.[1] Since its inception in 1998 and through much of the prior contract term, the unit was represented by the Illinois Fraternal Order of Police Labor Council (FOP).[2] Teamsters Local 714 took over representation of the unit during the course of the latest negotiations, and was subsequently replaced by Teamsters Local 700, which is now the certified representative of the unit.

The Sheriff's Office includes a number of employee groups in addition to the unit whose contract is at issue here, including Sheriff's Police Officers, represented by AFSCME Local 2264; Sheriff's Police Sergeants, represented in a separate unit by AFSCME 3958; Court Services Deputies, represented by Teamsters Local 700; Court Services Sergeants, represented by the FOP; Court Services Lieutenants, represented by the Police Benevolent Labor Committee (PBLC); Deputy Chiefs, formerly part of the Department of Community Services and Intervention (DCSI), who are now represented by the FOP; Day Reporting Unit employees, represented by FOP; and a group of civilian clerks, represented by SEIU Local 73. Over time, the tendency has been for the Sheriff's Police to be the highest-paid group of Sheriff's employees, followed by

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[1]The Joint Employer has a December 1 to November 30 fiscal year.

[2]All prior collective bargaining agreements covering this unit were finalized in interest arbitration. See *Illinois Fraternal Order of Police Labor Council and County of Cook and Cook County Sheriff (Investigators II - Fugitive Unit),* Case No. L-MA-96-007 (Fletcher, 1998)(December 1, 1995 - November 30, 1998); *County of Cook and Cook County Sheriff and Illinois Fraternal Order of Police Labor Council, Fugitive Investigators,* Case No. L-MA-99-102 (Berman, 2001) (December 1, 1998 - November 30, 2001); *County of Cook and Cook County Sheriff (DCSI - Fugitive Unit) and Illinois Fraternal Order of Police Labor Council,* Case No. L-MA-03-002 (Nathan, 2004) (December 1, 2001 - November 30, 2004); and *Illinois Fraternal Order of Police Labor Council and County of Cook, Illinois/Sheriff of Cook County - Fugitive Investigators - DCSI,* Case No. L-MA-05-007 (Fletcher, 2007) (December 1, 2004 - November 30,2008).

Corrections Officers and Court Services Deputies. While the Corrections Officers historically were paid more than the Court Services Deputies, the gap between these two units has over the past several collective bargaining agreements.

Fugitive Investigator II's are in the EM (Electronic Monitoring) Fugitive Unit, headed by Chief Don Morrison. The history of this unit, its impasse arbitrations and the resulting collective bargaining agreements is thoroughly detailed in the Award by Arbitrator John C. Fletcher that settled the 2004 - 2008 agreement. (*Illinois Fraternal Order of Police and County of Cook, Illinois/Sheriff of Cook County,* Case No. L-MA-05-007 (February 1, 2007) (Joint Ex. 2)("the 2007 Fletcher Award")) That history bears consideration here because it reflects the strong historical pattern of reliance by the parties and by the various arbitrators on assessments of internal comparability in setting economic terms, particularly wages. Almost every other statutory consideration has been overshadowed by these internal comparisons, with perhaps the sole exception being the cost of living index, about which more later. Indeed, in this case, neither party has identified to the arbitrator any external communities to consider under Section 14(h)(4).

However, there have been two major changes for the unit since the 2007 Fletcher Award. In the past and at the time of the 2007 Fletcher Award, the EM Fugitive Unit was part of DCSI. In March 2011, the EM Fugitive Unit became part of a new Central Warrants Division, along with the warrants employees of the Cook County Sheriff's Police Fugitive Unit, the Child Support Unit, the Court Services Civil Warrants

Unit.[3]

The parties dispute the degree to which the creation of the new Division has altered the duties of the EM Fugitive Investigator II's. According to Chief James McArdle, head of the Central Warrants Division, the consolidation of the four different warrant groups into the Central Warrants Division eased communication regarding warrants and increased efficiency by reducing the number of supervisors in all four groups, but the core functions of each warrant unit did not change: The Court Services unit remains responsible for serving civil and criminal body attachments issued by the civil courts, and for serving domestic violence warrants; the Sheriff's Police Warrant Unit remains responsible for serving felony warrants from the county court; the Child Support Unit remains responsible for serving summonses and warrants in child support matters, and the EM Fugitive Unit remains primarily responsible for serving all warrants related to escapees from the EM Program, although they now also are responsible for making sure that the warrant has been obtained as well.

[3]As far as this record shows, the consolidation has not resulted in a change of collective bargaining relationships: Each group continues to be represented for bargaining as they were prior to the creation of the Central Warrants Division, as far as this record reflects.

In particular, the Fugitive Investigator II's investigate fugitives from the Electronic Monitoring Unit and Day Reporting program, as they have in the past. However, between 2011 and 2012, the number of people on electronic monitoring increased from approximately 250-300 to approximately 1200-1300. If the Fugitive Investigator II's are not fully occupied with the EM responsibilities, they may be assigned to other fugitive investigative work, including assisting the Child Support unit, as they have in the past, and participating in sting operations with other units of the Central Warrants Division. They also assist the Cook County Sheriff's Female Furlough Unit in apprehending their female fugitives, a responsibility that existed prior to 2007 but has increased since then. In spring 2012, the Fugitive Investigators began to investigate fugitives from Boot Camp. Since the transfer to the Central Warrant Unit, they have handled hot-line tips about wanted fugitives on County warrants, with charges ranging from theft to murder.[4]

III. ANALYSIS AND CONCLUSIONS

A. Wages

The parties have agreed on a November 30, 2012 expiration date for this agreement.

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[4] The Fugitive Investigator II's conduct background investigations of fugitives utilizing various computer databases. The Union observes that prior to 2007 or 2008, those background investigations were limited to EM or Day Reporting fugitives, but now may cover other fugitives as well. However, the extension of the use of the computer databases in this fashion is at most a minor alteration in these employees' duties.

Prior to the start of this interest arbitration, the Joint Employer and the Union exchanged final offers to be presented at the hearing; at that time they apparently agreed that the appropriate wage proposal was the "Nathan wage pattern," the pattern adopted by Arbitrator Harvey Nathan in *County of Cook and the Sheriff of Cook County and Teamsters Local Union 700*, Case No. L-MA-09-016 (Nathan, September 14, 2011) (Correctional Officers). However, on the day of the hearing, the Union notified the Joint Employer that it was going to request leave to amend its offer on wages to propose the "Benn wage pattern," the pattern adopted by Arbitrator Edwin Benn in *Cook County Sheriff/County of Cook and AFSCME Council 31*, Case No. L-MA-09-003, 004, 005, and 006 (Benn, September 29, 2010) (Police Officers, Sergeants, Correctional Sergeants and Correctional Lieutenants). The Arbitrator granted the Union leave to amend its offer, but also allowed the Joint Employer to amend its exhibits as necessary.

In sum, the parties' final offers on wages are as follows:

	UNION (**"Benn pattern"**):	**COUNTY** (**"Nathan pattern"**):[5]
2009	2.0%	1%
2010	1.5%	1%
2011	2.0%	0.5% (12/1/10)
		1.5% (06/1/11)
2012	1.0%	2.0% (12/1/11)
		2.5% (06/1/12)

The parties have agreed that all increases will be fully retroactive. Thus, while both

[5]For brevity's sake the Joint Employer will also be referred to as "the County" or "the Sheriff" herein.

offers total 8.5% over the life of the contract (ignoring compounding), the difference between the distribution of that 8.5% over the contract term results in greater total retroactive compensation (which equates to a greater total cost to the Joint Employer for the contract term) under the Union's offer than under the Joint Employer's offer.

Of all the statutory factors to be considered by the arbitrator pursuant to Section 14(h) of the Act, the parties have focused their arguments almost exclusively on three: internal comparisons with other employees of the Sheriff and/or Cook County performing similar services, the cost of living or consumer price index (CPI), and the interests and welfare of the public and the financial ability of the Joint Employer to meet those costs.

Internal comparability has been a critical factor in the settlement of wage contracts among the various bargaining units of the law enforcement employees of the Joint Employer. There has been a fairly consistent hierarchy among these units: The Sheriff's Police being the highest paid, followed by the Correctional Officers and the Court Services Deputies, with the difference between the latter two narrowing over the years. The Fugitive Investigator II's IS2 pay scale is higher than the D2 and D2B pay scales for the Deputies.

By the time this hearing was held, two other arbitration awards affecting analogous Cook County law enforcement or security employees had been issued, where the arbitrator was presented with a choice between the Benn and the Nathan

approaches.[6] One more award was issued between the time of the hearing and the filing of post-hearing briefs.[7] In each case, the arbitrator concluded that the pattern set by Arbitrator Nathan were more appropriate, primarily because of the "current economic situation" and the greater back pay due under Benn's wage pattern than under Nathan's. Only one arbitrator has selected the Benn approach as the more appropriate, but that was for a unit of State's Attorney's Investigators, who historically have not been compared to this unit. *Cook County State's Attorney's Office and Illinois Fraternal Order of Police*, Case No. S-MA-08-238 (Crystal, January 25, 2012)(State's Attorney's Investigators I and II). Thus, internal comparability strongly favors the Joint Employer's offer, preserving a historic relationship among the unit traditionally compared.

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[6] *County of Cook and the Sheriff of Cook County (DCSI Day Reporting) and Illinois Fraternal Order of Police Labor Council*, Case No. L-MA-09-002(Bierig, January 13, 2012); *County of Cook and Oak Forest Health Center and Illinois Fraternal Order of Police Labor Council,* Case No. L-MA-08-012 (Simon, January 13, 2012)(Oak Forest Hospital Security) .

[7] *County of Cook and Cook County Sheriff and Illinois Fraternal Order of Police Labor Council,* Case No. L-MA-11-003 (Clauss, July 11, 2012)(DOC Office of Professional Review)

The parties each contend that considerations of cost of living data support their own wage offer. Both Arbitrator Benn and Arbitrator Nathan relied heavily on information about the CPI to reach their decisions. Arbitrator Benn concluded in 2010 that the economic conditions at the time, the financial crash of the recent past, and a variety of projections for the future of the economy, supported the wage increase structure that the Union now proposes. One year after the Benn decision, Arbitrator Nathan took a more pessimistic view of the course of the economy (and the County's financial status) than had Arbitrator Benn, and selected the employer's offer that resulted in less retroactive pay to employees. In this case it is unnecessary to rely on speculation as to changes in the cost of living over the term of the contract; because the hearing was held late in the contract term, the actual changes in the CPI can be considered. However, the parties have chosen different measures of the CPI to guide the arbitrator. The Union relies on the US Cities CPI, an average measure of the economy in cities throughout the country, while the Joint Employer relies on the Local CPI - Gary-Kenosha-Chicago. The Union contends that the Benn pattern should be awarded because it more closely follows the CPI (the US Cities CPI) in the years of the expired contract and provides a higher degree of bargaining certainty for the future. The Union asserts that the Nathan pattern, in contrast, is far too generous in the final year of the contract, but too low relative to the US Cities CPI in the first two years of the contract. The generous final year could also redound to the unit's detriment in the next negotiations, the Union objects, when the County will likely urge

that it should get "credit" for the 4.5% increase in the final year.[8]

The County responds that because the Joint Employer is a unique entity, not readily comparable to external entities, the CPI for the Chicago-Gary-Kenosha area ("the Local CPI") is more appropriate than the nationwide US Cities CPI to determine which offer most closely tracks the area'sl economy. The comparison between the parties' offers, and the two measures of CPI is as follows::

	UNION OFFER	EMPLOYER OFFER	US CITY CPI CHANGE	LOCAL CPI CHANGE
FY2009	2.0%	1%	2.9%	3.03%
FY2010	1.5%	1%	1.32%	0.98%
FY2011	2.0%	0.5% (12/1/10) 1.5% (06/1/11)	3.22%	2.53%
FY2012	1.0%	2.0% (12/1/11) 2.5% (06/1/12)	1.65% (through 3/12)	1.91% (through 3/12)

The total increase in US City CPI for the period is 9.09%, while the increase in the Local CPI for the period is 8.54%, so both offers are slightly below the aggregate change in CPI. Neither offer tracks the yearly changes with particular accuracy, so these cost of living statistics do not mandate the selection of one offer over another.

[8] The 4.5% increase is actually two increases, a 2.*% increase at the beginning of the final year, and a 2.*% increase six months later.

What is more important here is "the interests and welfare of the public and the financial ability of the unit of government to meet those costs." While the Joint Employer does not claim that it has an "inability to pay," the County has been grappling with an ongoing budget crisis over several years. Although the County enjoyed a small budget surplus in the early fiscal years of this contract term, that surplus was projected to disappear in FY 2012. The County's financial resources have plummeted and continue to decrease, as indicated by projections that the County faces a budget shortfall of $210 in FY 2013, increasing to $659 in FY 2016. Accordingly, the Joint Employer urges that the added cost burden of the Union's offer is inappropriate.[9]

It is unnecessary here to repeat in detail the economic analyses provided by Benn and Nathan. As arbitrators in subsequent cases have observed, the County's economy suffered a significant and persistent blow, the effects of which continue to impact its budget. In light of the pattern among the comparable units, and the economic and budgetary data available, the Arbitrator finds the Joint Employer's analysis persuasive, and finds the Joint Employer's wage offer the more appropriate.

[9]The Union objected that the difference in retroactive pay between the two offers should not weigh against its offer, asserting that the back pay burden was largely the result of delay by the County dragging out bargaining over three years. With the expiration of the contract term, that argument is now moot.

B. <u>Street Pay</u>

The Union's final offer includes a proposal to add as street pay a "4% bump to create IS2B pay step." The Joint Employer opposes the creation of street pay for this Unit. There is no provision for street pay in the expired agreement. Thus, the Union's offer in this regard is a departure from the *status quo.*

It is well established that interest arbitration under the Act is essentially a conservative process, and that interest arbitration is most effective when it operates as an extension of, and not a replacement for, the collective bargaining process. Accordingly, arbitrators do not lightly impose a new contract term that departs significantly from the parties' existing bargain. The burden is on the party seeking to obtain a significant change through interest arbitration to prove that the old system or procedure has not worked as anticipated when originally agreed to, that the existing system or procedure has created operational hardship 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 the problem. *Will County Board and Sheriff of Will County and AFSCME, Local 2961*, Case No. S-MA-88-9 (Nathan, 1988), cited in the 2007 Fletcher Award, *supra,* p. 19.

This is not the first time this bargaining unit has sought to add street pay to its contract. For many years, the bargaining unit's position was that they performed duties similar to the Sheriff's Police and therefore deserved the 4% street pay differential. This argument was rejected by Arbitrator Fletcher in 1998, by Arbitrator Berman in

2001, and by Arbitrator Nathan in 2004.[10] Most recently, in 2006, the unit urged that because a newly created pay scale gave Court Services Deputies with street duties a 4% street pay differential (the D2B pay scale), the Fugitive Investigator II's should also receive a 4% street pay differential. However, Arbitrator Fletcher rejected this argument in his 2007 Award, *supra*, distinguishing the two bargaining units as follows (underlining in original, citation added, pp. 77-78):

> 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.
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> 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.
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> Pursuant to the instruction of Arbitrator McAlpin [in County of Cook /Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council, Case No. L-MA-96-009 (McAlpin, 1998)], then, the Arbitrator is

[10] Case No. L-MA-96-007 (Fletcher, 1998); Case No. L-MA-99-102 (Berman, 2001); Case No. L-MA-03-002 (Nathan, 2004). Full cites are provided in footnote 2 above.

> 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.

Arbitrator Fletcher rejected the street pay differential offer because there was no need to differentiate among a group of Investigators, all of whom had street duties, and no need to grant the differential in order to preserve parity with the Court Services Deputies.

The Union argues that the street pay differential is appropriate now, notwithstanding Arbitrator Fletcher's 2007 decision, because the duties of Fugitive Investigator II's have changed considerably since then, particularly following the creation of the Central Warrants Unit. According to the Union, these changes have expanded the scope of the Investigators' duties and expose them to greater risk. The Union gives a variety of examples: Joint operations with US Marshall's Task Force, with the Sheriff's Central Intelligence Unit, and with the Sheriff's Police to arrest more dangerous criminals than in the past; the recovery of weapons during the services of warrants; and one occasion when Fugitive Investigator II's were ordered to bring their body armor to a particular operation. The Union also notes the addition of boot camp fugitive responsibilities, investigating hotline tips and the increase in female furlough apprehension. Finally the Union asserts that Fugitive Investigator II's now handle

Sheriff's Police warrants that involve neither electronic monitoring, day reporting nor a female furlough program, and press their own charges for additional criminal acts that they discover during warrant service.

The Joint Employer objects that the Fugitive Investigator II's have no financial need for the increase, because their pay scales are already higher than the D2B pay scale and higher than the Correctional Officers' pay scale and already reflect the nature of their duties. In addition, the Joint Employer asserts that the Union has failed to prove that many of the activities it cites were actually new since 2007, or are comparable to the duties that have been found to warrant a street pay differential in units that have not traditionally worked street duty.

Having reviewed the parties' positions and evidence, the undersigned concurs with Arbitrator Fletcher's assessment in 2007 of the nature of "street pay." Its purpose is to provide a differential within a group of employees, some of whom perform street duties, with the attendant added danger and inconvenience, and some of whom do not. But the Fugitive Investigator II's all have street duties – to go out and apprehend fugitives – and for that reason, in part, their CS2 pay scale historically provides them greater compensation than all Court Services Deputies, those with street duties, on the D2B scale, and those without, on the D2 scale.

The Union's response to the past decisions rejecting street pay for the unit is reasonable – to show that conditions have changed so that the analysis in prior awards no longer applies. The problem is that the Union has failed to prove that the new

duties cited demonstrate a need for the differential. In many cases, the Union's evidence fails to show that the "new" duties and activities began only after 2007; in other cases, the Union has failed to show that the new duties have so altered the nature of the Fugitive Investigators' work that additional compensation is warranted for "street work," which they have always performed.

There is also an operational problem. There is no evidence of how to apply the sought-after "differential" within this unit. There is no evidence that a particular group of Fugitive Investigator II's has been designated, trained or identified to handle more "street work" than others in the unit.

In sum, the Arbitrator finds that the Union has failed to prove that there is a justification for this new benefit of a street pay differential, and accordingly selects the Joint Employer's proposal to retain the *status quo* on this issue.

C. Uniform Allowance

The Union proposes that the uniform allowance in Section 18.3, be increased to $850 effective with the 2012 fiscal year. This would be the first increase since 1998.The Joint Employer opposes any increase in the uniform allowance.

It is undisputed that the cost of clothing has increased since 1998. So observed Arbitrator Nathan in 2011, in *County of Cook and the Sheriff of Cook County and Teamsters Local Union 700*, Case No. L-MA-09-016 (Nathan, September 14, 2011). In that case, Arbitrator Nathan declined to accept the increase in uniform allowance in

light of the wage increases being awarded.

However, the uniform allowance proposal must be declined for this unit regardless of the new wages. Unlike the Corrections Officers under Arbitrator Nathan's consideration, Fugitive Investigator II's are not required to wear their uniform on a daily basis. The only time the Investigator II's are required to wear a uniform is during an inspection by Chief Morrison, or during an in-service training class that requires a full uniform. Otherwise, they wear civilian clothes, along with a bullet-proof vest, a gun belt with handcuffs, gun, mace and a collapsing baton (ASP), and a radio. The Sheriff provides the radio, the gun, and the Investigator II's first vest. The Fugitive Investigators purchase ammunition for their duty weapon for off-duty training, replacement vests, and may purchase other optional equipment, such as flashers for their unmarked cars, car chargers for their laptop computers, and leather gloves. Thus while the Investigators are rarely in full uniform, they do incur out of pocket expenses for specialized equipment related to their job.

Other Joint Employer bargaining unit's contracts provide the same $650 uniform allowance, but those units that have requested an increase during this bargaining cycle have been rebuffed, either by the Joint Employer in bargaining or by an interest arbitrator. See, e.g., Case No. L-MA-09-003, 004, 005, 006 (Benn, September 29, 2010), *supra*; Case No. L-MA-09-016 (Nathan, September 14, 2011), *supra*; Case No. L-MA-09-002(Bierig, January 13, 2012) *supra*; Case No. L-MA-08-012 (Simon, January 13, 2012) *supra*; *Metropolitan Alliance of Police, Cook County DCSI Deputy Chiefs*

Chapter 438 and County of Cook/Sheriff of Cook County, Case No. 08-002 (Simon, 2010)(stipulated award). The internal comparison is a major consideration here, particularly because the employees in this unit, as opposed to some of the others, are not required to be in uniform on a daily basis. The Union has failed to demonstrate that this unit has a need more pressing than the others for the uniform allowance increase. Accordingly, the Arbitrator finds that no change to the *status quo* should be made, and accepts the Joint Employer's position as more appropriate.

D. FMLA Leave

The Parties' Final Offers:

The Joint Employer proposes that Section 8.7, "Family and Medical Leave" be modified to read (new language underlined):

> Employees shall be granted family medical leave in accordance with the Family Medical Leave Act.
>
> The Employer may require employees first to use (substitute) up to ninety-six (96) hours, if available, if earned and accrued time in conjunction with their FMLA absences per calendar year before commencing unpaid FMLA absences, in accordance with FMLA.

The Union proposes to keep the *status quo* for Section 8.7.

Discussion:

The Joint Employer explains that the impetus for the proposed change is to remove unfunded liabilities from the books, by requiring employees to use all of their accumulated paid leave, up to 96 hours, before being placed on unpaid FMLA leave. At the same time, the Joint Employer observes, the provision to require employees to

take all but 96 hours of their accrued leave before going on FMLA leave ensures that if an employee uses the required accrued leave and then all of their FMLA leave, the employee will still have 96 hours of leave that may be used for other purposes. The County notes that it negotiated this provision with this Union for the Correctional Officers unit.

The Union objects that while the proposal was accepted in the Correctional Officers unit, it was accepted as part of a larger negotiated package. For this unit, the Union asserts, the Joint Employer has offered no *quid pro quo* for what the Union characterizes as "breakthrough language," and has not shown that there is any problem with the current system.

This type of change to the *status quo* that should not be imposed through interest arbitration unless a clear need has been shown by the party requested the change. Cf. *Will County, supra.* In this case, the Joint Employer has failed to present sufficient evidence of need: The Joint Employer acknowledges that while FMLA leave usage was a greater problem within the Corrections unit than in other units of the Sheriff's Department, there has been no problem with FMLA leave usage by Fugitive Investigator II's. In addition, the Joint Employer offered no data to illustrate the magnitude of the problem of unfunded liabilities in this regard. The Corrections unit is apparently the only group of comparable employees with this provision in its contract. For these reasons, the Arbitrator declines to accept the Joint Employer's offer, and accepts the Union's *status quo* position as the more appropriate.

E. Insurance Opt-Out

The Joint Employer proposes to add the final underlined sentence to Section 17.8 of the expired contract:

> The Employer agrees to pay $800.00/year (up from $650.00/year) to eligible employees who opt-out of the Employer's health benefit program. The $800.00 will be paid in one lump sum at the beginning of each fiscal year. Prior to opting-out of such program, the employee must demonstrate to the Employer's satisfaction that he/she has alternative healthcare coverage. Any employee electing to opt-out of the Employer's health benefit program may request that in lieu of a payment to the employee, this amount be credited to a medical flexible spending account. Eligible employees who lose their alternative healthcare coverage may enroll in or be reinstated to the Employer's health benefit program. Covered employees may not opt-out if their spouse or domestic partner are also County employees.

The Union proposes to keep the *status quo* for Section 17.8.

Discussion:

The purpose of the opt-out is to allow employees who have the option of coverage through their spouse's or partner's employment to opt out of the County insurance program, at a savings to the Joint Employer. According to the Joint Employer, its current proposal is intended to eliminate a "windfall" that occurs when the spouse or partner is also a County employee. In that case, the bargaining unit member gets the benefit of both the spouse's County insurance and the annual opt-out incentive payment. Instead of saving the Joint Employer money, as intended, this opt-out costs the Joint Employer more, because it pays both the full insurance cost, and the annual opt-out incentive. The Joint Employer notes that this proposal has been adopted in two mediated interest arbitration awards during this bargaining cycle: *County of Cook and Cook County Sheriff and Illinois Fraternal Order of Police Labor Council,* Case No. L-MA-11-003 (Clauss, July 11, 2012); and *Metropolitan Alliance of Police, Cook County DCSI Deputy Chiefs Chapter 438 and County of Cook/Sheriff of Cook County*, Case No. 08-002 (Simon, 2010).

The Union objects that the County has failed to demonstrate the necessary basis for this "breakthrough" proposal. The County has failed to offer any evidence as to how many, if any, bargaining unit members would be affected by this proposal, and how much money it would save if the proposal were adopted. The Union is concerned that the County is trying to achieve this breakthrough with a 19-member unit that it cannot achieve through bargaining with its substantially larger law-enforcement units.

The Arbitrator finds that the Joint Employer has proved sufficient need for this

change in the *status quo* to justify its unilateral imposition on the parties in the context of an interest arbitration award. This unit of 19 employees is surely not the tail that wags the dog of the insurance and opt-out costs of the entire law-enforcement workforce of the Sheriff's Office. While the change may be a reasonable one in general, the Joint Employer has failed to prove that the cost savings, if any, that would result from this modification (and therefore the need for this modification) is so great as to warrant its imposition outside the context of the give and take of effective collective bargaining. The evidence of internal comparisons is weak; only two units have agreed to the change in "mediated interest arbitration." Accordingly, the Arbitrator finds that the change proposed by the Joint Employer is less appropriate than the Union's proposal to retain the *status quo*.

F. <u>Mileage/Travel Reimbursement Policy</u>

<u>The Parties' Final Offers:</u>

The Joint Employer proposes to change the title of Section 18.4 (now "Mileage") to "Mileage/Travel Reimbursement Policy" and to amend the Section to read as follows:

> County employees, with the prior permission of their Department Head may use private vehicles for County business and shall do so in accordance with the Cook County Vehicle Policy Ordinance.
>
> Employees required to use personally owned automobiles in the course of their employment shall be reimbursed at the applicable rate, established by law.

The Union proposes to maintain the *status quo* for Section 18.4, which currently states:

Section 18.4 Mileage:
Employees required to use personally owned automobiles in the course of their employment shall be reimbursed at the rate of 34.5 cents per mile in accordance with the Cook County Travel Expense Reimbursement policy effective June 1, 2001. Such rate shall be adjusted upward, an [sic] necessary, to ensure that employees are paid the maximum allowable by County policy.

Discussion:

The County asserts that the proposed changes are necessary "because the current language in the CBA is far outdated and the mileage reimbursement, as provided by the County and Federal law, changes frequently." In addition, the Joint Employer seeks uniformity of language with all of the Sheriff's bargaining units. The Union objects that the Joint Employer has failed to show that there is any problem with the current language, and that the mere fact that the language is reasonable is not enough to justify an interest arbitrator's unilateral imposition of a change to the *status quo.*

The parties offered little evidence on this proposal, which a Joint Employer witness characterized as "a language clean-up thing." While the Joint Employer wants the language to allow reimbursement rates to fluctuate to meet County and Federal standards, the Joint Employer has failed to showed that this power is missing under the existing language. Nor has the Joint Employer identified any actual problems under the current language. Even though the Union concedes that "In theory, [the Joint Employer's proposal] it may be a good idea," the burden is on the Joint Employer to justify the change. The Joint Employer, as party proposing the change, has failed to meet its burden. Accordingly, the Joint Employer's proposal is not accepted and the

Union's proposal to retain the *status quo* is accepted.

V. <u>ORDER</u>

For the reasons stated above, the issues are resolved as follows:

1. Wages: The Joint Employer's final offer is accepted.

2. Street Pay: The Joint Employer's final offer is accepted.

3. Uniform Allowance: The Joint Employer's final offer is accepted.

4. Insurance Opt-Out: The Union's final offer is accepted.

5. Mileage Reimbursement: The Union's final offer is accepted.

6. Tentative Agreements: Pursuant to the parties' stipulation, the Arbitrator hereby incorporates into this Award and the collective bargaining agreement all tentative agreements and resolved contractual provisions reached during negotiations between the parties. In addition, the parties have agreed make any corrections to the collective bargaining agreement necessary to reflect that Teamsters Local 700 is now the collective bargaining representative of the employees in this unit.

Respectfully submitted,

April 2, 2013

Lisa Salkovitz Kohn
Neutral Arbitrator