

In the Matter of Interest Arbitration between:	)	
	)	
Metropolitan Alliance of Police, Chapter 292	)	ILRB Case Number:
	)	
and	)	S-MA-14-188
	)	
Northern Illinois University	)	

Hearing Dates	December 17, 2015 December 18, 2015
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Appearances:

For the Union	STEVEN CALCATERRA Steven Calcaterra & Associates, P.C. 24 W 500 Maple Avenue, Suite 208 Naperville, IL 60540
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For the Employer	ROBERT T. BERNSTEIN JEREMY L. EDELSON Laner Muchin, Ltd. 515 N. State Street, Suite 2800 Chicago, IL 60654-4688
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Date of Award	May 19, 2016
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Impartial Arbitrator	MICHAEL A. WOJCIK
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An interest arbitration hearing was held on December 17 and 18, 2015, at Northern Illinois University in DeKalb, Illinois. Pursuant to the Illinois Public Labor Relations Act, the hearing was held before an Impartial Arbitrator. At the hearing, the parties presented sworn testimony and offered documentary exhibits into evidence. A court reporter made a verbatim transcript of the hearing. The parties filed post-hearing briefs which were received and exchanged by the Arbitrator on March 11, 2016, at which time the record was closed.

## **PROCEEDINGS AND STIPULATIONS**

This is an interest arbitration under Section 14 of the Illinois Public Labor Relations Act (Act) to determine resolution of disputed terms of the initial Collective Bargaining Agreement (Agreement) between the Metropolitan Alliance of Police, Chapter 292 (the Union) and Northern Illinois University (NIU / the University / the Employer). The employees represented by the Union are members of the bargaining unit and are Sergeants of the NIU campus police force. At the time of the hearing, there were thirteen (13) Sergeants in the unit. The University is located in DeKalb, Illinois and is governed by a Board of Trustees.

This is the initial Agreement for the parties. The parties had several negotiating sessions, including mediation, but were unable to finalize an Agreement. As a result, resolution of the matter was submitted to the interest arbitration procedures of the Act. The parties selected the undersigned to serve as the neutral sole arbitrator for the interest arbitration.

At the hearing, the parties submitted ground rules and stipulations which are included in the Union's Exhibit 3 and signed jointly by the parties. Included in the ground rules and stipulations are the tentative agreements the parties reached during negotiations, the issues remaining at impasse and the respective final offers of the parties. The parties further determined and stipulated which of the issues are deemed "economic" within the meaning of Section 14(g) of the Illinois Public Labor Relations Act and which require that the Arbitrator must choose either the Employer's final offer or the Union's final offer.

Following additional discussion during the hearing, the parties reached tentative agreement on a few of the disputed issues originally identified in the ground rules and stipulations. As a result, the following represents the remaining and final list of disputed issues to be resolved by the Arbitrator.

The parties have determined that the following issues are "economic":

- a) Section 8.1 Purpose (Hours of Work)

- b) Section 8.2 Hours of Work/Work Schedules
- c) Section 8.5 Training
- d) Section 8.7 Contracted Services/Special Events
- e) Section 8.8 Other Extra Assignments
- f) Section 8.11 Required Meetings/Exams
- g) Section 9.3 Holidays, Administrative Closures and Other Scheduled University Closures
- h) Section 10.1 Salary Rates
- i) Section 10.2 Salary Rates for Sergeants Employed In That Capacity As of Date of Approval of This Agreement – FY 2017 through FY 2019
- j) Section 10.3 Salary Rates for Sergeants Hired After the Date of Approval of This Agreement
- k) Section 10.4 University-Wide Wage Increases
- l) Section (10.X – TBD) Tuition Waiver
- m) Section (10.X – TBD) Tuition Contribution

The parties have determined that the following issues are non-economic:

- a) Section 13.5 Arbitration
- b) Section 14.1 Progressive Discipline
- c) Section 14.3 Notification
- d) Section 14.5 Discipline Record
- e) Section 14.11 Drug and Alcohol Policy
- f) Section 19.1 Duration
- g) Appendix TBD – Election, Waiver and Release for Disciplinary Process (Related to Section 14.9 Election of Grievance Arbitration for Discipline/Appeal Process for Suspensions/Discharge)

All other issues except the ones contained in the following award have been agreed to and/or withdrawn.



## STATUTORY CRITERIA

The Illinois Public Labor Relations Act mandates certain requirements in interest arbitration cases. Section 14 (h) of the Act sets forth the factors to be considered in these cases:

(h) Where there is no agreement between the parties, ... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, 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.

Additionally, with respect to each economic issue in dispute, the Arbitrator is required to adopt the final offer of one of the parties. With respect to each non-economic issue, the Arbitrator may adopt the final offer of one of the parties or may render an alternative resolution.

### **COMPARABLES**

The parties were unable to agree on a common list of employee groups (police/sergeant) to be utilized for comparisons of wages, hours and conditions of employment.

The Employer has offered the following as internal comparables:

- NIU Patrol Officers
- NIU Telecommunicators
- NIU Security Guards

The Employer has offered the following as external comparables:

- University of Illinois – Urbana/Champaign (UIUC)
- University of Illinois – Springfield (UIS)
- Southern Illinois University – Edwardsville (SIUE)
- Southern Illinois University – Carbondale (SIUC)
- Illinois State University (ISU)
- Eastern Illinois University (EIU)
- Western Illinois University (WIU)
- Governor’s State University (GSU)

The Union has offered the following as internal comparables:

- NIU Patrol Officers

The Union has offered the following as external comparables:

- City of DeKalb
- DeKalb County
- University of Illinois – Urbana/Champaign (UIUC)
- University of Illinois – Chicago (UIC)

The parties agree on only two comparable groups, the NIU Patrol Officers and the University of Illinois – Urbana/Champaign (UIUC).

The Union has offered several arguments supporting their position on the identification of comparable employee groups and the Arbitrator has summarized them as follows. The Union contends:

- 1) Although the City of DeKalb and DeKalb County police departments are municipal and not university organizations, there is at least one occasion when an arbitrator has ruled that they may be considered as comparables.
- 2) The duties, responsibilities and daily interactions of the NIU sergeants are very similar to those performed by both the City of DeKalb and DeKalb County police departments.
- 3) The Employer's identification of universities as comparables (other than UIUC) should be rejected because of the significant differences in student enrollment and/or number of sworn officers when compared to NIU.
- 4) The NIU patrol officers (MAP Chapter 291) are a key and reasonable internal comparable.

The Employer has offered several arguments supporting their position on the identification of comparable employee groups and the Arbitrator has summarized them as follows. The Employer contends:

- 1) The NIU Telecommunicators and NIU Security Guards should be considered as internal comparables because the Employer and Union have jointly negotiated the agreements governing these university work groups.
- 2) The universities suggested as comparables by the Employer have been adopted by previous arbitrators.

- 3) Municipality police departments, such as the City of DeKalb and DeKalb County are not appropriate benchmarks for comparison due to major differences in mission, funding, structure and accountability.
- 4) University of Illinois – Chicago (UIC) should not be considered as a comparable because it is a large city urban campus while NIU is a smaller city rural campus.

As noted above, the parties agree on only two comparable groups, the NIU Patrol Officers and the University of Illinois – Urbana/Champaign (UIUC). The parties have utilized the existing NIU Patrol Officers bargaining agreement as the early model for beginning the sergeant negotiations. Of the Universities presented, UIUC closely resembles NIU in size, geography and departmental staffing.

The Union wishes to include the municipal departments of the City of DeKalb and DeKalb County. The Arbitrator agrees with the Employer and sees the duties and responsibilities of the municipal police departments as substantially different from the duties and responsibilities of a university police department. While some similarities, as suggested by the Union, do exist between the departments, the Arbitrator does not believe they reach an appropriate level to warrant consideration as an external comparable. It is the Arbitrator's opinion that including the City of DeKalb and DeKalb County for comparison is unreasonable.

The Employer desires to use the NIU Telecommunicators and NIU Security Guards as internal comparables. Although the Union and Employer have jointly negotiated these agreements, the Arbitrator does not believe that there is sufficient comparability between the duties performed by these groups and the duties performed by the sworn law officers of the police or sergeants work groups. As a result, the Arbitrator elects not to include the NIU Telecommunicators and NIU Security Guards as comparables.

With respect to the list of other universities offered by both parties, it is the Arbitrator's opinion that only the University of Illinois – Urbana/Champaign (UIUC) is a reasonable comparable for comparison to NIU.



As a result, the comparables the Arbitrator will consider for the purposes of this arbitration proceeding will be limited to the two agreed to by the parties, namely the NIU Patrol Officers and the University of Illinois – Urbana/Champaign (UIUC).

## **FINAL OFFERS AND DISCUSSION**

The following identifies the final offers of the parties as presented in the ground rules and stipulations or as modified by agreement of the parties during the hearing.

### **ARTICLE VIII - HOURS OF WORK/OVERTIME/ADDITIONAL PAY**

#### **Section 8.1 – Purpose**

##### **Employer’s Final Offer**

This Article shall define the normal work hours for employees covered by this Agreement and provide a basis for the calculation and payment of overtime. Nothing herein shall be interpreted as a guarantee of hours of work per day or per week.

##### **Union’s Final Offer**

This Article shall define the normal work hours for employees covered by this Agreement and provide a basis for the calculation and payment of overtime.

##### **Discussion and Decision**

The Union has offered arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Union contends:

- 1) The Union’s proposal maintains the status quo as to the number of hours of work per week performed by the sergeants.
- 2) The Union’s proposal protects the hours of work of the members.

The Employer has offered arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Employer contends:

- 1) The Employer’s proposal maintains the status quo and allows the Employer to continue its practices with respect to scheduling work hours consistent with operational needs.

- 2) The CBA governing the patrol officers unit has the exact same language as the language proposed by the Employer for the sergeants unit.
- 3) The Union has not presented adequate evidence to indicate a need to change from the status quo.
- 4) The Union's proposal is inconsistent with Section 3.1, Management Rights which has been agreed to by the parties.

The Arbitrator recognizes the concerns expressed by the Union regarding a previous incident that occurred between the Employer and the patrol officers unit regarding a reduction in hours of work and a concern that it could happen to the sergeants if the Union's proposed language is not incorporated in the CBA. The Arbitrator also recognizes that the Sergeants have been working a certain schedule of work hours for a fairly long time and have an interest in continuing to work within that schedule. The Union suggests that excluding the sentence, "Nothing herein shall be interpreted as a guarantee of hours of work per day or per week", will address their concerns.

The Employer believes the language in the sentence reinforces their management rights as identified in Section 3.1, Management Rights (a tentative agreement between the parties) and should remain. The same language is already in the CBA for the patrol officers unit and has not been contested by the Union during contract negotiations for that unit.

The Arbitrator sees no compelling reason to exclude the language from the sergeants CBA and finds in favor of the Employer. Because the parties have stipulated the issue as "economic" the Employer's final offer shall be incorporated within the CBA.

## **Section 8.2 - Hours of Work/Work Schedule**

### **Employer's Final Offer**

Individual work schedules are defined as the number of hours worked per day and the number of days worked in a work cycle. The overall work day shall be defined as a 24 hour period of time from 7:00 a.m. to and including 6:59 a.m. the following day.



Operations permitting, employees will be granted a paid meal period not to exceed thirty (30) minutes within their regularly scheduled shift, and the department will attempt to provide a fifteen (15) minute paid rest period during each four hour period of work.

Hours of operation for specialty assignments as referenced in section 7.5 of this Agreement shall be determined by the Employer.

The Employer will provide a minimum of seven (7) working days' notice prior to revising work shifts for regular scheduled duties unless there is an exigency to meet the operational needs of the department.

The Chief of Police will determine the number of Sergeants assigned to patrol or a specialty position. A PM and AM patrol shift will be established for Sergeants assigned to patrol.

Half of patrol positions for Sergeants will be eligible for bid each year based on seniority in the Sergeant classification. Each year the Chief will present a schedule of patrol shifts eligible for bid no later than May 1<sup>st</sup>. Sergeants eligible for bidding to a patrol shift will submit a bid form provided by the department indicating their preference for the shift they desire to work by June 1<sup>st</sup>. All shift positions shall take effect July 1<sup>st</sup>. Sergeants assigned to a patrol shift based on an awarded bid will remain on the shift for one (1) calendar year unless emergency circumstances require changes to the shifts. Yearly bid positions will be determined by the Chief of Police with the exception of Sergeants who have been designated to hold specialty positions.

Reporting and quitting times for employees in the Sergeant classification may be moved either way without affecting the defined workday. If the Employer wishes to modify reporting and quitting times on the applicable patrol shift, patrol Sergeants will be allowed to select, by seniority within the Sergeant classification, from the proposed schedule(s).

Each patrol shift shall normally be covered by at least one Sergeant. If requested by the Chapter, the Employer agrees to meet and discuss the availability of bid positions.

Probationary Sergeants will be assigned based on the operating needs of the department and are not eligible to participate in the annual shift bid process until after they successfully complete their probationary period.

### **Union's Final Offer**

Individual work schedules are defined as the number of hours worked per day and the number of days worked in a work cycle. The overall work day shall be defined as a 24 hour period of time from 7:00 a.m. to and including 6:59 a.m. the following day.

The duty cycle shall typically consist of eighty-four (84) hours worked over a fourteen (14) day consecutive work cycle. If during the term of this Agreement, the Employer



desires to modify this work cycle, the Union agrees to reopen the Agreement to engage in mid-term bargaining concerning the provision and its impact, subject to dispute resolution pursuant to Article 14 of Illinois Labor Relations Act, provided that no change to the work cycle shall occur until the conclusion of said bargaining and/or arbitration.

Operations permitting, employees will be granted a paid meal period not to exceed thirty (30) minutes within their regularly scheduled shift. In accordance with University policy, the department will attempt to provide a fifteen (15) minute paid rest period during each four hour period of work.

Each year the Chief will present a shift schedule in April. The shift schedule shall remain in effect for the duration of the yearly bid period unless emergency circumstances require change. Hours of operation for specialty assignments as defined in Section 7.5 of this Agreement shall be determined by the Employer. The Chief of Police will determine the number of Sergeants assigned to patrol or a specialty position. A PM and AM patrol shift will be established for Sergeants assigned to patrol. Biddable patrol shifts shall be structured in 12 hour shifts, start time to be determined by the employer.

Reporting and quitting times for individual employees may be moved either way without affecting the defined workday. If the Employer wishes to modify reporting and quitting times on the applicable patrol shift, patrol Sergeants will be allowed to select, by seniority within the Sergeant classification, from the proposed schedule(s).

Each patrol shift shall normally be covered by at least one Sergeant, and one or more Police Officers. Employees shall bid annually to a shift based on seniority within the Sergeant classification. All employees covered by this Agreement will only be allowed to bid in May of each calendar year, with the schedule to take effect on the first Monday of July. Yearly bid positions will be defined on the basis of seniority requirements with the exception of Sergeants who have been designated by the employer to hold specialty positions, thereby equally distributing the overall experience level across all shifts.

The Employer reserves the right to determine the number of bid positions on each shift. The Employer shall notify the Chapter of all available bid positions. If requested by the Chapter, the Employer agrees to meet and discuss the availability of bid positions. Written bids will be honored if submitted prior to the bid date by providing such to the Operations Commander. The Employer shall bear no contractual obligation upon the failure to receive such written bids.

Probationary Sergeants will be assigned based on the operating needs of the department and are not eligible to participate in the annual shift bid process until after they successfully complete their probationary period.

## **Discussion and Decision**

There are significant differences between the parties on Section 8.2, Hours of Work / Work Schedules.

The Union has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Union contends:

- 1) The Union's proposal seeks to maintain the status quo as to the number of hours of work per duty cycle performed by the sergeants. The current duty cycle is 84 hours in a two week period. The sergeants work 12 hour days, seven out of every fourteen day period.
- 2) The Union's proposal offers to reopen the CBA for purposes of negotiating the duty cycle should the Employer desire to modify the sergeants work schedule.
- 3) The Union's proposal most accurately reflects the status quo and the Employer has failed to justify their proposal.

The Employer has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Employer contends:

- 1) The Union proposal is seeking an annual guarantee of work hours.
- 2) The Union proposal is unreasonable and would limit the Employer from making any changes to work hours until the conclusion of mid-term bargaining and/or interest arbitration proceedings.
- 3) The Union proposal is a deviation from the status quo regarding shift assignment / shift bidding.
- 4) The Employer's proposal on shift bidding is not only more reasonable but also in the best interests of public safety.

The Arbitrator views two main differences between the parties in Section 8.2, Hours of Work / Work Schedules. The first is the Union's interest in documenting the current work duty cycle in the CBA and the Employer's concern over any guarantees of work hours. The second is the issue of sergeants bidding on patrol shifts.



The Arbitrator understands the Union's interest in maintaining the current work duty cycle for sergeants which consists of seven 12 hour days over a two week period. The current work cycle has been in place for several years. It is understandable that the sergeants appreciate and enjoy the flexibility and consistency that the work schedule may bring to their personal life. The Arbitrator also understands the Union's concerns about any possibility that the sergeants work hours could be reduced by the Employer.

The Employer has the responsibility to insure that the Department is appropriately staffed around the clock. It needs to insure that the appropriate number of sergeants are available to perform all of the necessary sergeant responsibilities at various times of the day or night. To the extent that the current 84 hour duty cycle has achieved the staffing objectives of the Department, it has been beneficial to both the Employer and the Union. However, to require that the Employer maintain the duty cycle for the term of the CBA or be required to maintain that duty cycle during mid-term bargaining and/or interest arbitration is problematic for this Arbitrator. The Arbitrator believes that if the language suggested by the Union were to be incorporated in the CBA, the Employer would be denied its authority to effectively manage the work force.

With respect to the issue of shift bidding, the Employer's proposal more clearly defines the process for shift bidding than the language proposed by the Union.

For the reasons above, the Arbitrator finds the Employer's proposal more reasonable. Because the parties have stipulated the issue as "economic" the Employer's final offer shall be incorporated within the CBA.

## **Section 8.5 – Training**

### **Employer's Final Offer**

All time spent in training will count as hours worked for purposes of this agreement. Travel time for over 50 miles will count as time worked and will be paid based on the actual take time it takes to reach the training site from the DeKalb campus or home location, whichever is shorter. Travel time will not apply to local training held in the DeKalb/Sycamore area. All training, including method of travel to and from the training, must be preapproved by the Chief of Police or designee.



## **Union's Final Offer**

All time spent in training will count as hours worked for purposes of this Agreement. Except for training attended locally, travel time for over 50 miles will count as time worked and will be paid based on the actual number of miles and the time it takes to reach the training site from the DeKalb campus or home location, whichever is shorter. Travel time will not apply to local training held in the DeKalb/Sycamore area.

## **Discussion and Decision**

The Union has offered arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Union contends:

- 1) The Union's proposal describes the status quo related to training.
- 2) The proposed language governing the sergeants (absent the reference to probationary police officers) is identical to the language in the CBA for the patrol officers unit.

The Employer has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Employer contends:

- 1) The Employer's proposal more accurately reflects the status quo and codifies the authority of the Chief of Police or designee to preapprove all training and related travel.
- 2) The Employer's proposal more clearly defines the issue of travel time.

There is very little difference between the parties regarding this issue. There is no dispute that all training must be preapproved by the Chief of Police or designee and/or that time spent in training and travel time for training (travel over 50 miles) will count as hours worked for purposes of compensation. Additionally, no evidence was presented to indicate the current process for training and associated travel time has presented problems or concerns.

It is the Arbitrator's opinion that the Employer's proposal more clearly reflects the status quo. Because the parties have stipulated the issue as "economic" the Employer's final offer shall be incorporated within the CBA.

## **Section 8.7 - Contracted Services/Special Events**

### **Employer's Final Offer**

Contracted services/special events are defined as University events that may require special attention to include additional police and public safety support such as, but not limited to, athletic events, dances, conventions, student organization events, Greek events, book buyback, VIP protection, science fair, Spring show, concerts, and other on-campus special activities as determined by the Employer.

The Employer reserves the right to determine Sergeant staffing needs for special events and make assignments with available personnel as required. The Employer reserves the right to adjust schedules and assign personnel as needed to provide additional Sergeant support for special events.

If the Employer determines that insufficient personnel are available to meet Sergeant staffing needs for a special event, the assignment shall be posted for voluntary assignment. In all instances where there are an insufficient number of volunteers, the department may assign these duties by inverse seniority in the Sergeant classification.

Events defined in the section do not automatically compensate Sergeants for overtime or callback pay.

### **Union's Final Offer**

Contracted services/special events are defined as events requiring additional Police support such as, but not limited to, designated athletic events, dances, special Greek events, book buyback, VIP protection, science fair, spring show, and concerts.

After the Employer has determined the makeup of any on-campus details requiring Police personnel, the Employer agrees to first offer such assignments to members of the bargaining unit in accordance with the contractual provisions regarding such assignments. Events of this nature shall be initially posted for voluntary assignment. In all instances where there is an insufficient number of volunteers, the department may assign these duties by inverse seniority. Gridlocks shall not be considered as voluntary duty for purposes of this Section.

Assignments to contracted services, as defined above, shall be paid and administered in accordance with other contractual overtime and callback provisions.

### **Discussion and Decision**

The Union has offered arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Union contends:



- 1) The Union's proposal reflects the status quo regarding the staffing of contracted services and special events.
- 2) The Union's proposal provides clear and unambiguous language governing these types of assignments.
- 3) The Employer's proposal would result in a substantive change in the current practice.
- 4) The Employer has not presented any evidence of economic hardship if the Union's proposal is accepted.

The Employer has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Employer contends:

- 1) The Employer's proposal represents the status quo and the process the Department has been following for years and clearly defines the steps of the staffing process.
- 2) It is management's right to assign work and to determine the methods, means, and number of personnel needed to carry out the mission of the Department.
- 3) The Employer's proposal is more fiscally responsible.
- 4) Working contracted services and special events is a normal and direct part of a sergeant's duties.

The process for staffing contracted services and special events is clearly in dispute. Each party believes that their final proposal accurately reflects the current process for assigning sergeants to work such assignments and has offered testimony in support of their position.

The Employer suggests that their proposal reflects the Employer's rights as management and that those basic management rights have already been incorporated in the CBA and accepted by the Union. Additionally, the Employer believes that their proposal more clearly defines the steps in determining the staffing levels and how the special work assignments are made available to the sergeants.



The Union suggests that their language represents the status quo and the language they propose is clear and unambiguous. The Union further suggests that if the Employer's proposal were adopted it would result in a substantive change in the current staffing process.

It is the Arbitrator's opinion that there is an absence of consistency in the process for assigning sergeants to contracted services and special events. This absence of consistency is evidenced by the testimony and supporting discussion of the parties. Because of the differences in testimony regarding how these events are staffed (and have been staffed in the past), and because the parties have deemed this as economic, the Arbitrator can only evaluate each proposal to determine which proposal is more reasonable and provides more clarity in defining the staffing process.

The Arbitrator agrees with the Employer regarding their authority to manage the work force and assign work. In addition, the Employer's proposal more clearly defines the steps the Employer will take to assign or enlist volunteers to staff contracted services and special events. The Arbitrator finds in favor of the Employer. Because the parties have stipulated the issue as "economic", the Employer's final offer shall be incorporated within the CBA.

## **Section 8.8 – Other Extra Assignments**

### **Employer's Final Offer**

The Employer reserves the right to determine and require employees to stay on duty after their shift has ended or to report early for duty prior to the beginning of their shift, subject to FLSA and overtime provisions.

In emergency situations where employees are required to stay on duty or report early, the Employer may fill the vacancy in any manner possible. For administration of this section, an emergency situation shall be defined as a vacancy that occurs with four (4) hours or less notice.

In non-emergency situations, assignments of this nature shall first be offered to the most senior employees in the Sergeant classification on the affected shift. If volunteers cannot be found to fill the vacancy, employees in the Sergeant classification on the affected shift will be ordered to work based on inverse seniority.

The parties agree that Sergeants may be required to fill Telecommunicator vacancies in emergency situations. In these instances, the Employer shall make every effort to relieve the Sergeant with appropriate personnel as soon as possible.

Temporary assignments are defined as short term work assignments apart from or in addition to a Sergeant's current assignment and that last less than six (6) months. Temporary assignments may include, but are not limited to Sergeants with temporary restrictions prohibiting the Sergeant from working their regularly assigned duties, assignments that require the knowledge, skills and abilities of a specific Sergeant to complete, and other similar temporary work as assigned by the Chief of Police or designee.

### **Union's Final Offer**

The Employer reserves the right to determine and require employees to stay on duty after their shift has ended or to report early for duty prior to the beginning of their shift, subject to FLSA and overtime provisions.

In emergency situations where employees are required to stay on duty or report early, the Employer may fill the vacancy in any manner possible. For administration of this section, an emergency situation shall be defined as a vacancy that occurs within four (4) hours or less notice.

In non-emergency situations, assignments of this nature shall first be offered to the most senior employees in the Sergeant classification on the affected shift. If volunteers cannot be found to fill the vacancy, employees in the relevant classification on the affected shift will be ordered to work based on inverse seniority.

The parties agree that Sergeants may be required to fill Telecommunicator vacancies in emergency situations. In these instances, the Employer shall make every effort to relieve the Sergeant with appropriate personnel as soon as possible.

Temporary assignments are defined as short term work assignments apart from or in addition to a Sergeant's current assignment and that last less than three (3) months. Temporary assignments may include, but are not limited to Sergeants with temporary restrictions prohibiting the Sergeant from working their regularly assigned duties, assignments that require the knowledge, skills and abilities of a specific Sergeant to complete, and other similar temporary work as assigned by the Chief of Police or designee.

### **Discussion and Decision**

Aside from a couple of insignificant word differences, the main difference between the parties' final proposals on this issue is the definition of the length of a temporary assignment. The Union proposes that a temporary assignment should last less than three (3) months, while the Employer suggests that the Employer should be



able to place a sergeant on a temporary assignment for a period of less than six (6) months.

The Employer believes a temporary assignment of six months is more appropriate and offered testimony to present somewhat recent examples when a sergeant was temporarily assigned to other work by the Chief. The Chief testified that he felt six months to be reasonable and practical and that it allows flexibility in offering or making temporary assignments to sergeants.

The Union suggests that three months is more acceptable since when an assignment exceeds three months "the assignment is much closer to a bidded assignment than it is to a temporary assignment".

The Arbitrator believes that the Employer's proposal of six (6) months is representative of the current process regarding temporary assignments and the Arbitrator has not been provided with any compelling reason to change from the status quo. As such, the Arbitrator finds in favor of the Employer. Because the parties have stipulated the issue as "economic" the Employer's final offer shall be incorporated within the CBA.

## **Section 8.11 – Required Meetings/Exams**

### **Employer's Final Offer**

All departmental meetings, physical or mental examinations, and/or conferences required by the Employer, which occur outside of a Sergeants regularly scheduled shift will be paid at the applicable rate, and unless deemed mandatory are subject to benefit usage in accordance with departmental and university standards. The Employer shall provide for payment of applicable fees for such required activities. When required to travel, the Employer will provide transportation or pay mileage if the employee is required to use their own vehicle. This provision does not apply to return-to-work physicals.

### **Union's Final Offer**

All departmental meetings, physical or mental examinations, and/or conferences required by the Employer, which occur outside of a Sergeants regularly scheduled shift will be paid at the applicable rate. The Employer shall provide for payment of applicable fees and directly-related occupational expenses for such required activities. When required to travel, the employer will provide transportation or pay mileage if the

employee is required to use their own vehicle. This provision does not apply to routine return-to-work physicals.

**Discussion and Decision**

The Union suggests that their proposal for Section 8.11, Required Meetings and Exams, is exactly the same as the language in the patrol officers unit CBA, represents the status quo and should be incorporated in the sergeant’s CBA. The Employer suggests that the Employer’s proposal provides more clarity and strives to avoid ambiguity in the future.

It is the Arbitrator’s opinion that the additions and word changes suggested in the Employer’s proposal have minimal value in providing a better understanding of the provisions of this section of the CBA. The Arbitrator believes that the language the parties are accustomed to (that is, the language in the patrol officers unit CBA) adequately governs the process for addressing required meetings and exams. Absent significant reason to modify the status quo, the Arbitrator finds in favor of the Union.

Because the parties have stipulated the issue as “economic” the Union’s final offer shall be incorporated within the CBA.

**ARTICLE IX**

**Section 9.3 – Holidays**

**Employer’s Final Offer**

Holidays, Administrative Closures, and Other Scheduled University Closures recognized under this Agreement and any additional pay for such days shall be consistent with the NIU Board of Trustees (BOT) Regulations. Recognized holidays normally shall be:

New Year’s Day	January 1
Memorial Day	Observed Monday
Independence Day	July 4
Labor Day	Observed Monday
Thanksgiving Day	Observed Thursday
Christmas Day	December 25
Five (5) Floating Holidays	As determined by the University



Subject to NIU's BOT Regulations and the provisions of this Agreement, Sergeants required to work on designated holidays, administrative closure days, or other scheduled University closure days, will receive their regular rate of pay plus one and one-half (1.5) times their regular rate of pay for all hours worked. Employees who are scheduled or approved to be off on these designated days shall receive one day of regular pay for that day, with one day equaling the most common number of hours worked during a day of the employees' regular work schedule. (For example: Sergeants regularly scheduled to work 8 hours each work day will be compensated for 8 hours, and Sergeants regularly scheduled to work 12 hours each work day will be compensated for 12 hours.) Sergeants required to work on any of these designated days that call in sick will be charged the appropriate benefit time and are ineligible for additional pay as stipulated in this Section 9.3.

### **Union's Final Offer**

Holidays, Administrative Closures, and Other Scheduled University Closures recognized under this Agreement and any additional pay for such days shall be consistent with this provision. Recognized holidays normally shall be:

New Year's Day	January 1
Memorial Day	Observed Monday
Independence Day	July 4
Labor Day	Observed Monday
Thanksgiving Day	Observed Thursday
Christmas Day	December 25
Five (5) Floating Holidays	As determined by the University

Subject to the provisions of this Agreement, Sergeants required to work on designated holidays, administrative closure days, or other scheduled University closure days, will receive their regular rate of pay plus one and one-half (1.5) times their regular rate of pay for all hours worked. Employees who are scheduled or approved to be off on these designated days shall receive one day of regular pay for that day, with one day equaling the most common number of hours worked during a day of the employees' regular work schedule. (For example: Sergeants regularly scheduled to work 8 hours each work day will be compensated for 8 hours, and Sergeants regularly scheduled to work 12 hours each work day will be compensated for 12 hours.) Sergeants required to work on any of these designated days that call in sick will be charged the appropriate benefit time and are ineligible for additional pay as stipulated in this Section 9.3.

### **Discussion and Decision**

The key issue related to Section 9.3 Holidays, is the Employer's interest in adding a reference to the NIU Board of Trustee (BOT) Regulations in the provision.

The Union has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Union contends:

- 1) The Union does not negotiate with the Board of Trustees and should not be subject to a unilateral CBA change based on a decision by the BOT to change a regulation.
- 2) Changes to negotiated holidays or associated pay provisions are a mandatory subject of bargaining.
- 3) The Union's proposal which excludes the reference to the Board of Trustees protects the rights of the sergeants.

The Employer has offered arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Employer contends:

- 1) The Union has already agreed to Section 9.2, Board of Trustee Benefit Provisions, which provides that in the event of a change(s) to policies related to employee benefits such as holidays, the parties will meet to negotiate the impact of any such change(s).
- 2) The Union has not raised any issues nor presented any compelling evidence to indicate that the agreed upon language in Section 9.2 does not provide sufficient protection to the sergeants.

The Union is concerned that by including the Employer's proposed language in the CBA, the Employer could unilaterally decide to eliminate holidays or modify the compensation structure for holidays. The Employer suggests that Section 9.2, Board of Trustee Benefit Provisions, which has already been agreed to by the parties and requires the parties to negotiate the impact of any benefit changes adequately addresses the issue raised by the Union. No evidence was presented to indicate that there have been concerns or issues regarding how the policy has been administered in the past with respect to the bargaining unit employees.

While the Arbitrator understands the Union's concerns, the Arbitrator believes that the Union has suitable protections as outlined in Section 9.2, Board of Trustee



Provisions. If the Board of Trustees desires to modify the holiday regulations, the Employer is required to notify the Union, meet with the Union to determine if the change(s) have an impact on the sergeants, and if so, negotiate the impact of such change(s). As a result, the Arbitrator believes that inclusion of the language proposed by the Employer is acceptable.

With respect to Section 9.3, Holidays, Administrative Closures, and Other Scheduled University Closures, the Arbitrator finds in favor of the Employer. Because the parties have stipulated the issue as "economic" the Employer's final offer shall be incorporated within the CBA.

## **ARTICLE X. - WAGES**

### **Employer's Final Proposal**

#### **Section 10.1 - Salary Rates**

Effective the first day of the first pay period following the NIU BOT's date of approval of this Agreement in the Spring of FY 2016 (i.e., March 2016) or July 1, 2016, whichever date is sooner, all Sergeants, with the exception of any Sergeants who are currently making in excess of \$39.25/hour as of the date of approval, shall receive a 2% wage increase which will raise their hourly compensation from \$39.25 to an hourly rate of \$40.04.

Thereafter, for the subsequent fiscal years of this Agreement, Section 10.2, 10.3 and 10.4 shall apply. Any wage increases granted under Section 10.1 and 10.2 are not retroactive to a prior date.

#### **Section 10.2 - Salary Rates for Sergeants Employed In That Capacity as of Date of Approval of This Agreement -- FY 2017 through FY 2019**

Hourly salaries shall be paid to the Sergeants employed by the Employer as of the date of approval of this Agreement by NIU's BOT, with the exception of any Sergeants who are making in excess of \$39.25 as of the approval date of this Agreement, as follows:

FY 2017 (07/01/16) or NIU BOT's Date of Approval of Agreement, Whichever Comes First	\$40.04
FY 2018 (07/01/17)	\$40.84 (+2%)
FY 2019 (07/01/18)	\$41.65 (+2%)

Any Sergeants compensated in excess of the wage rates set forth above are not eligible for the wage increases set forth above. However, any Sergeants compensated in excess of the rates set forth above shall be eligible for a University-wide increase as set forth below in Section 10.4.

**Section 10.3 - Salary Rates for Sergeants Hired After the Date of Approval of This Agreement**

Hourly salaries shall be paid to Sergeants who are hired after the date of approval of this Agreement by NIU's BOT, as follows:

Starting Rate	\$37
After Completion of One Year Probationary Period	\$38.48
After Completion of 2nd Year of Employment as a Sergeant	\$40.04
After Completion of 3rd Year of Employment as a Sergeant	The Applicable Wage Rate as Set Forth in the Schedule Above in Section 10.2

**Section 10.4 - University-Wide Wage Increases**

For each of the fiscal years of this Agreement (FY 2016, 2017, 2018 or 2019), the University will grant the greater of either the wage increases set forth above in Sections 10.2 or 10.3 (depending on which wage scale is relevant to the particular Sergeant) or grant the Sergeants salary increases equivalent to those authorized for general distribution to all non-negotiated hourly Operating Staff employees of the University in accordance with the salary increase distribution procedures approved by the Board of Trustees and outlined in applicable published University Salary Increment Guidelines for the University, including Funds appropriated for salary increases by the University or personnel salary increases via the state appropriation process. These increases will be distributed to eligible employees on an across the board basis. In the event that the University Salary Increment Guideline provides for a variable distribution to all hourly Operating Staff employees on the basis of merit or other factors, then the average increment authorized under the respective guideline will be distributed to the Sergeants in accordance with this Section 10.4 (i.e., the University will grant the greater of either the wage increases set forth above in Sections 10.2 or 10.3,



depending on which wage scale applies to the Sergeant, or any University-wide wage increase as described in this Section 10.4).

**Union’s Final Wage Proposal**

**Section 10.1 - Salary Rates**

Effective 07/01/14 (FY 2015), Sergeants shall be compensated at the hourly rate of pay in accordance with the following schedule:

	<b>Annual Increase</b>	<b>Hourly Rate</b>	
		<b>Starting</b>	<b>After Probation</b>
Current wage		\$39.25	\$41.65
7/1/2014	2%	\$40.04	\$42.48
7/1/2015	2%	\$40.84	\$43.33
7/1/2016	2%	\$41.65	\$44.20

All wages are retroactive to 07/01/14.

**Discussion and Decision**

The parties’ final offers regarding wages have significant differences in the details, amounts and the timing of wage increases.

The Union proposes an overall wage increase of approximately 12.6%. This includes an initial hourly wage adjustment from \$39.25 to \$41.65 and annual wage increases of 2% effective July 1, 2014, July 1, 2015 and July 1, 2016. The Union further proposes that the wage increases be retroactive to July 1, 2014. The Union also proposes that effective July 1, 2016, \$41.65 will be the starting rate for new sergeants and once they have completed their twelve-month probationary period, they will be adjusted to a new maximum rate of \$44.20.

The Employer proposes an initial wage increase of 2% effective July 1, 2016 (or the date of Board of Trustee approval of the Agreement, if earlier) followed by wage increases of 2% on both July 1, 2017 and July 1, 2018. The Employer proposal also includes contract language that provides for the possibility of higher than 2% wage increases for the sergeants if certain conditions occur within the University and are approved by the Board of Trustees. Further, the Employer proposes reducing the

starting wage rate for new sergeants from the current rate of \$39.25 to \$37.00 (a reduction of approximately 5.7%) and implementing step increases over the first three years before a new sergeant would reach the maximum wage rate. The Employer also proposes that none of the offered wage increases are retroactive and no increase shall be granted to any sergeant already compensated in excess of the proposed wage rate schedules.

The Union has offered several arguments supporting their position on the issue of wage rates and the Arbitrator has summarized them as follows. The Union contends:

- 1) The Employer's proposal to reduce the starting wage of new sergeants is punitive and not appropriate with the cost of living and does not match any arbitration decisions in Illinois concerning public safety employees.
- 2) The sergeants have not received an increase in wages since 2012.
- 3) The Union did not engage in regressive bargaining as suggested by the Employer.
- 4) The Employer is seeking to benefit from the delay that naturally comes from negotiation.
- 5) The Union's wage proposal is more equitable and reasonable than the Employer's.

The Employer has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Employer contends:

- 1) The Union's wage request is unreasonable when compared to other internal collective bargaining agreements negotiated by the Union for the NIU patrol officers, telecommunicators and security guards.
- 2) Since this is an initial CBA, the request for retroactive wage increases is wholly inappropriate since much of the delay in bargaining was caused by the Union.
- 3) The Union is attempting to take advantage of the Employer's decision not to fully reduce one employee's wage rate to \$39.25 when the employee



requested and was granted a voluntary demotion from lieutenant back to sergeant. The Union's proposal that this employee's rate (\$41.65 per hour) become the minimum wage rate for all sergeants is unreasonable.

- 4) The Employer's proposal for wage increases across the life of a 2015-2017 CBA more closely matches the cost of living.
- 5) The Union's proposal ignores the State of Illinois budget crisis and NIU's financial condition.
- 6) The sergeant's current take home pay already exceeds the salary of their commanding officers (lieutenants).

As noted earlier, the parties differ greatly on the issue of wages. Because the issue is economic, the Arbitrator must choose between the two final offers and has no authority to find an alternative resolution. The Arbitrator must evaluate the merits of each proposal, apply the statutory criteria of Section 14(h) of the Illinois Public Relations Act and render a final decision.

With respect to the one external comparable (UIUC), the only available wage data is for wage rates effective the periods ending August 2013, August, 2014 and August, 2015. At those dates, the maximum hourly wage rate for UIUC sergeants was \$41.43, \$42.57 and \$43.63, respectively. If the Union's proposal was adopted, NIU sergeants would earn \$42.48 per hour on July 1, 2014 and \$43.33 per hour on July 1, 2015. Still less than UIUC, but comparable. On the other hand, the Employer's proposal would provide no increases during this period and freeze the sergeant hourly rate at \$39.25 until July 1, 2016. This would result in NIU sergeants losing ground to UIUC sergeants. Although it is unknown what will occur with the UIUC sergeant's rate of pay for 2016 (their current agreement expires in August 2016), it is the Arbitrator's opinion that based on the data for 2014 and 2015, the Union's proposal is more reasonable when compared to the sergeants employed by UIUC.

The Employer suggests that the current budget crisis in Illinois is a reason that the Employer's offer on wages is more reasonable than the Union's. The Employer submitted evidence and testimony to show that the State of Illinois has reduced its

funding level to the University and there is uncertainty regarding future funding levels. The Employer has not suggested that the University is "unable to pay". Rather, the Employer has suggested that the University would endure a financial hardship if required to adopt the Union's proposal on wages. While the Arbitrator understands the Employer's position, the Arbitrator must evaluate these additional costs and potential financial hardship along with the interests and welfare of the public. The University has an obligation to insure the safety and security of the students, faculty, staff and visiting public as well as protect campus facilities. This obligation of safety and security is accomplished through the work of the NIU police force under the leadership and direction of the Chief, the lieutenants and sergeants. Administration of and budgeting for the cost of providing this safety and security function is the responsibility of University leadership and the Board of Trustees. In carrying out this responsibility, the University must balance and prioritize expenditures based on the overall value provided by each university activity. As a result, to the extent any funding is available for University expenditures, it is incumbent on University leadership to evaluate and determine which University activities must be funded, which can be reduced and/or which should be eliminated. It is the Arbitrator's opinion that while the increased costs resulting from the Union's proposal may require the University leadership to make difficult financial decisions regarding expenditures on all University activities, the interests and welfare of the public are of high priority and must be appropriately funded. Further, the Arbitrator believes that while adoption of the Union's proposal may require the Employer to make difficult financial decisions, it would not result in financial hardship or have significant economic impact on the University.

The Union has proposed an initial wage adjustment from \$39.25 per hour to \$41.65 per hour. Currently, of the thirteen incumbent sergeants, one is compensated at the higher hourly rate, while the other twelve are paid \$39.25 per hour. The one sergeant compensated at \$41.65 per hour took a voluntary demotion from lieutenant on October 31, 2012. At the time of the voluntary demotion, the University elected to reduce the employee's wages from his lieutenant salary (\$4,286.55 semi-monthly) to his current hourly rate of \$41.65. No evidence or testimony was presented to indicate



the rationale for the Employer's decision or to indicate why the Employer elected not to reduce his hourly rate to \$39.25 (the rate of pay for all other sergeants). The Employer suggests that by proposing an initial adjustment to increase all sergeants to \$41.65 per hour, the Union is attempting to take advantage of the Employer's "good deed" when the Employer elected not to reduce the sergeant's hourly rate to \$39.25. Whether or not that is (or was) the Union's intention, the Arbitrator believes that when the Employer decided to only reduce the demoted employee's hourly rate to \$41.65 and not \$39.25, it would not be unreasonable for the Union to view this as the Employer setting a "target" rate of pay that the Employer was willing to pay for an employee performing sergeant duties. As such, the Employer's decision "opened the door" for the Union to propose \$41.65 per hour as the appropriate level for sergeant pay.

The Employer has also expressed concerns that if the Union's final offer on wages was adopted, the sergeants would earn more in total compensation on an annual basis (including overtime) than their commanding officers (lieutenants) earn in salary. The lieutenants are salaried, non-represented employees and are compensated under the guidelines for non-bargaining unit University employees. Currently, the two incumbent lieutenants are compensated at approximately \$92,000 per year. While the Arbitrator understands the concerns the Employer may have if the sergeants earn more than the lieutenants are paid, the Arbitrator does not agree that the lieutenant's rate of pay should impact a decision on the rate of pay for sergeants. The Employer controls the salary structure and pay levels for lieutenants. The Employer also administers the salary program which determines whether or not lieutenants may receive salary adjustments. The Employer has the authority and capability to adjust the pay of lieutenants as needed. During the hearing, one of the lieutenants testified that on several occasions he had requested a salary increase from the University. On all occasions, the request was denied by the University. The Employer has a published range for the salary of lieutenants. The annual salary minimum is \$73,488.00, the midpoint is \$95,496.00 and the maximum is \$117,504.00. Both of the incumbent lieutenants are currently below the midpoint. As of now, the University has decided not to increase the pay of the incumbent lieutenants. To the extent the sergeants

compensation may exceed the lieutenants salary is an issue the Employer needs to resolve with the lieutenants and not be an opportunity for the Employer to place an artificial ceiling on sergeants' wages and use as an argument for denying sergeants a wage increase.

Finally, the Arbitrator has reviewed the cost of living for the period of June 2013 (the date the Union began representation of the sergeants) through March 2016 (most recent published data). During this period the Consumer Price Index (CPI) increased by about two percent (2.0 %). The Union is proposing an overall increase in wages of about 12.6% for the period 2014 through 2016. The Employer has proposed a wage increase of 2% in 2016. However, the Employer's proposal also includes a reduction in the starting pay of new sergeants from \$39.25 to \$37.00, a decrease of about 5.7%. The Union's proposal is significantly higher than the CPI. The Employer's proposal, although appearing to be better aligned with the CPI, is skewed by the proposed 5.7% reduction in wage rates for new sergeants. As such, it is the Arbitrator's opinion that neither parties wage proposal is sufficiently aligned with the CPI to warrant or establish favorability in deciding the issue.

The parties have stipulated the issue of wages as "economic". As required by the Act, the Arbitrator must adopt one of the parties' final offers. For the reasons stated above, the Arbitrator finds in favor of the Union. The Union's final offer on wages shall be incorporated within the CBA.

## **Section 10.X (TBD) – Tuition Waiver**

### **Employer's Final Offer**

The Tuition Waiver benefit will be administered in accordance with the NIU BOT regulations.

### **Union's Final Offer**

A tuition and fee waiver shall be granted to a bargaining unit who is employed on a full-time basis, provided admission standards are met and the bargaining unit member began their employment at NIU on or before the last day of registration for the semester for which the waiver is sought. Tuition waiver shall only be granted for



courses taken at the University and is limited to eight (8) hours in each of the fall and spring semesters and four (4) hours for the summer session.

## **Section 10.X (TBD) - Tuition Contribution**

### **Employer's Final Offer**

The Tuition Contribution benefit will be administered in accordance with the NIU BOT regulations.

### **Union's Final Offer**

Dependent children of eligible bargaining unit member may qualify for fifty (50) percent of the tuition waiver at any state of Illinois public university. This benefit provides for up to four (4) years for undergraduate education as long as satisfactory academic progress toward graduation is maintained. The waiver is applicable when the child has been admitted under the same requirements, standards and policies applicable to general admissions.

### **Discussion and Decision**

Although Tuition Waiver and Tuition Contribution are presented by the parties as two separate sections of the CBA, the Arbitrator had determined that both can be discussed and decided as one issue. Both are benefits provided by the Employer to University employees and are related to tuition benefits for the Sergeants and their eligible dependent children.

The Union has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Union contends:

- 1) The Tuition Waiver and Tuition Contribution are a substantial economic benefit to the sergeants, represents the status quo and the Employer should not be allowed to change it without bargaining.
- 2) The provision is a mandatory subject of bargaining because it concerns wages, hours and other terms and conditions of employment.
- 3) The Employer's proposal violates the Illinois Public Labor Relations Act.

The Employer has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Employer contends:

- 1) The Employer's proposal clearly reflects the status quo as this benefit has historically been administered in accordance with the Board of Trustees regulations.
- 2) The Union has not raised any issues nor presented any evidence indicating that the current system or procedure for this benefit has not work as anticipated.
- 3) The Union has already agreed to Section 9.2, Board of Trustee Benefit Provisions, which provides that in the event of a change(s) to policies related to employee benefits, the parties will meet to negotiate the impact of any such change(s).

There is no dispute that the Tuition Waiver and Tuition Contribution programs have been available to the sergeants for a long time and are considered by both parties to be a valuable and attractive employee benefit. The Union is concerned that by not including their proposed language in the CBA, the Employer could unilaterally decide to eliminate the program and its benefits. The Employer suggests that Section 9.2, Board of Trustee Benefit Provisions, which has already been agreed to by the parties and requires the parties to negotiate the impact of any benefit changes adequately addresses the issue raised by the Union. No evidence was presented to indicate that there have been concerns or issues regarding how the policy has been administered in the past with respect to the sergeants.

While the Arbitrator understands the Union's interest in codifying the details of the tuition policies within the CBA, the Arbitrator believes that the language offered by the Employer and its reference to the Board of Trustee regulations is more reasonable and acceptable. The Arbitrator also agrees with the Employer that Section 9.2, Board of Trustee Benefit Provisions, provides suitable protections to the sergeants should the Employer communicate the need to change or modify the Tuition Waiver and Tuition Contribution benefits.

With respect to Section 10.X - Tuition Waiver and Section 10.X - Tuition Reimbursement, the Arbitrator finds in favor of the Employer. Because the parties have



stipulated the issues as "economic" the Employer's final offers shall be incorporated within the CBA.

## **ARTICLE XIII**

### **Section 13.5 – Arbitration**

#### **Employer's Final Offer**

If the grievance is not settled at Step 3, the Union may present the grievance to the Associate Vice President of Administration and Human Resource Services, or a designated representative, for Arbitration within ten (10) business days after receipt of the Step 3 response.

The Employer and the Union shall jointly request a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS). The arbitrator shall be selected by a representative of the Employer and the Union alternatively striking names from the panel list. The choice of the first strike shall be determined by the toss of a coin. The last name remaining shall be the arbitrator. The arbitrator shall be notified of his selection by joint letter from the Employer and the Union requesting that he set a date and time for the hearing, subject to the availability of the arbitrator. Court reporter, transcripts and all other costs incurred by the arbitrator shall be borne equally by both parties. Neither side shall be responsible for the expense of the other's witnesses or representatives.

The scope of the arbitration is limited to the terms of this Agreement and any supplemental agreements between the parties. Board of Trustees Regulations and By-Laws, Department Operation Manual, Laws of the State of Illinois, and Rules and Regulations of Administrative Agencies are not subject to arbitration.

The arbitrators shall have no authority to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. The arbitrators shall only consider and make a decision with respect to the particular issues necessary to resolve the grievance without recommendation or comment on any other matter. The arbitrators shall be without power, or make a decision, or render an award contrary to or inconsistent with or modifying or varying in any way the application of laws, rules, and regulations having the force and effect of law. No liability shall accrue against the Employer for a date prior to the date the grievance was presented in Step 1. The arbitrators shall submit in writing their decision and award within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later. The decision and award shall be based solely upon the arbitrator's interpretation of the meaning or application of this Agreement to the facts of the grievance presented. Past practices may be considered in interpreting an ambiguous provision of this Agreement, but may not be considered for the purpose of creating an



employee right for Employer obligation or liability. Subject to the provisions of this section, the decision of the arbitrators shall be binding on the parties.

### **Union's Final Offer**

If the grievance is not settled at Step 3, the Union may present the grievance to the Associate Vice President of Administration and Human Resource Services, or a designated representative, for Arbitration within ten (10) business days after receipt of the Step 3 response.

The Employer and the Union shall jointly request a panel of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS). The arbitrator shall be selected by a representative of the Employer and the Union alternatively striking names from the panel list. The choice of the first strike shall be determined by the toss of a coin. The last name remaining shall be the arbitrator. The arbitrator shall be notified of his selection by joint letter from the Employer and the Union requesting that he set a date and time for the hearing, subject to the availability of the arbitrator. Court reporter, transcripts and all other costs incurred by the arbitrator shall be borne equally by both parties. Neither side shall be responsible for the expense of the other's witnesses or representatives.

The scope of the arbitration is limited to the terms of this Agreement and any supplemental agreements between the parties. The arbitrators shall have no authority to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement.

The arbitrators shall only consider and make a decision with respect to the particular issues necessary to resolve the grievance without recommendation or comment on any other matter. The arbitrators shall be without power, or make a decision, or render an award contrary to or inconsistent with or modifying or varying in any way the application of laws, rules, and regulations having the force and effect of law. No liability shall accrue against the Employer for a date prior to the date the grievance was presented in Step 1. The arbitrators shall submit in writing their decision and award within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later. The decision and award shall be based solely upon the arbitrator's interpretation of the meaning or application of this Agreement to the facts of the grievance presented. Past practices may be considered in interpreting an ambiguous provision of this Agreement, but may not be considered for the purpose of creating an employee right for Employer obligation or liability. Subject to the provisions of this section, the decision of the arbitrators shall be binding on the parties.

### **Discussion and Decision**

The only difference between the parties proposals for Section 13.5, Arbitration, is the Employer's proposal to include the statement, "Board of Trustees Regulations



and By-Laws, Departmental Operation Manual, Laws of the State of Illinois, and Rules and Regulations of Administrative Agencies are not subject to arbitration.” The Union proposal excludes the statement.

The Union has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Union contends:

- 1) If the Employer’s proposal is accepted, the Union would be powerless to dispute any change or new regulation imposed by the Board of Trustees.
- 2) The Employer’s proposal is not in line with the Illinois Public Relations Act because it would limit the Union’s abilities to resolve certain issues through final and binding arbitration.
- 3) While the Employer’s proposed language currently exists in the patrol officers unit CBA, that CBA is not well-drafted.

The Employer has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Employer contends:

- 1) The Employer’s proposal is consistent with the language in other CBA’s negotiated with the Union.
- 2) The Union has provided no compelling reason to exclude the language from this CBA.
- 3) The Union has suitable protection under Section 9.2, Board of Trustee Benefit Provisions (tentative agreement between the parties).

The Arbitrator understands the Union’s concerns. While the statement may exist in other CBA’s negotiated by the parties, the Arbitrator agrees with the Union that it may not be well drafted. The Arbitrator believes the language may become restrictive if interpreted incorrectly. The Employer has not provided the Arbitrator with adequate evidence and reasoning to support the necessity of placing the language in the CBA. The language does not provide clarity and instead is somewhat confusing. In addition, the Arbitrator does not agree with the Employer’s contention that Section 9.2, Board of Trustee Benefit Provisions provides the Union with suitable protections in this case.

Section 9.2, by definition and by its placement within the CBA, refers to Board of Trustee regulations related to benefits and benefit programs. The arbitration process is designed to resolve contractual disputes between the parties and "is limited to the terms of this Agreement and any supplemental agreements between the parties". This language already exists in both parties proposals and clearly defines what is subject to arbitration. No additional clarity or limitations are necessary.

It is the Arbitrator's opinion that the Union's proposal is more reasonable and finds in favor of the Union. The Union's final offer shall be incorporated in the CBA.

## **ARTICLE XIV: DISCIPLINE AND DISCHARGE**

### **Section 14.1 – Progressive Discipline**

#### **Employer's Final Offer**

The Employer subscribes to the tenets of progressive and corrective discipline and shall only discipline employees for just cause. The Employer's agreement to use progressive and corrective disciplinary action does not limit in any respect the Employer's ability in any case to impose discipline which is commensurate with the severity of the offense. The Chapter agrees there may be justification for immediate suspension or discharge of an employee in accordance with the State Universities Civil Service System Statute and Rules or the provisions of this Agreement. Disciplinary action or measures will generally include the following:

1. Oral reprimand
2. Written reprimand
3. Suspension
4. Discharge

#### **Union's Final Offer**

The Employer subscribes to the tenets of progressive and corrective discipline and shall only discipline employees for just cause. The Employer's agreement to use progressive and corrective disciplinary action does not limit in any respect the Employer's ability in any case to impose discipline which is commensurate with the severity of the offense. The Chapter agrees there may be justification for immediate suspension or discharge of an employee in accordance with the State Universities Civil Service System Statute and Rules and this Agreement. Disciplinary action or measures include the following:

1. Oral reprimand
2. Written reprimand
3. Suspension
4. Discharge



## **Discussion and Decision**

There are two differences between the parties' final offers on this issue. The first difference is basically whether "and" or "or" should be utilized in the second to the last sentence between "State Universities Civil Service System Statute and Rules" and "and this Agreement" or "the provisions of this Agreement. The second difference is whether or not the words "will generally" should be included in the last sentence.

The Union suggests that the Employer's proposal to use "or" instead of "and" appears to give the Employer, rather than the employee, the choice of which option to pursue to dispute certain levels of disciplinary action under Section 14.9, Election of Grievance Arbitration for Discipline.

The Employer suggests that their proposal is "more sound and mirrors the dual track system that the parties have already tentatively agreed to in Sections 14.6, Limitations and 14.9, Election of Grievance Arbitration." The Employer further offers that the words "will generally" is more reasonable because it is consistent with the authority the Employer has under Section 3.1, Management Rights and the Employer's right to determine the appropriate level of discipline.

The Arbitrator believes that the main purpose of Section 14.1 is to identify the Employer's authority to impose discipline for just cause. In addressing the Union's concern, it is the Arbitrator's opinion that the Employer's proposal to use "or" instead of "and" does not give the Employer the right to select the option the employee pursues to dispute certain disciplinary actions. The path or option the employee elects to pursue is and remains the employee's right.

Overall, the Arbitrator finds the Employer's proposal more reasonable and finds in favor of the Employer. The Employer's proposal shall be incorporated in the CBA.

## **Section 14.3 – Notification**

### **Employer's Final Offer**

When disciplinary action other than an oral reprimand is imposed, the Employer shall notify the employee within ten (10) business days of the disciplinary action. Such notification shall be in writing and shall reflect the specific nature of the offense.

### **Union's Final Offer**

When disciplinary action other than an oral reprimand is imposed, the Employer shall notify the employee and the designated Chapter representative within ten (10) business days of the disciplinary action. Such notification shall be in writing and shall reflect the specific nature of the offense.

### **Discussion and Decision**

The only difference between the parties proposals on this issue is whether or not the Union's designated representative should be notified when a sergeant is subject to discipline (other than an oral reprimand).

The Union suggests the notification of the Union is necessary for the Union to perform their statutory function of representation of the sergeants.

The Employer suggests that the sergeant should be responsible for the decision regarding whether or not the sergeant wants to notify the Union.

It is the Arbitrator's opinion that notification of the Union by the Employer of a disciplinary action imposed upon an employee is a consistent and well established principle within labor-management relationships.

Therefore, the Arbitrator finds the Union's proposal more reasonable and finds in favor of the Union. The Union's proposal shall be incorporated in the CBA.

## **Section 14.5 – Discipline Record**

### **Employer's Final Offer**

Upon written request, oral and written reprimands will not be considered for progressive discipline after two (2) years has elapsed provided no further related reprimands have been issued in that timeframe. Suspensions of 15 days or less shall no longer be considered in the progressive discipline process after four years has elapsed, provided no further related reprimands or suspensions have been issued in that timeframe. Suspensions of any duration can be considered as documentation of work history.

Counseling statements may be used to document employee conduct, which may be either positive or negative in nature. Counseling statements shall not be considered to be part of the disciplinary record; however, they are considered as documentation of work history.



## **Union's Final Offer**

Upon written request, oral and written reprimands will be removed from an employee's file after two (2) years has elapsed provided no further related reprimands have been issued in that timeframe. Suspensions shall no longer be considered in the progressive discipline process after two years has elapsed, provided no further related reprimands have been issued in that timeframe.

Counseling statements may be used to document employee conduct, which may be either positive or negative in nature. Counseling statements shall not be considered to be part of the disciplinary record; however, they are considered as documentation of work history. Counseling statements which are negative in nature, upon the employees request shall be removed from the employee's file after a period of one year.

## **Discussion and Decision**

The Union has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Union contends:

- 1) By adding the words "of 15 days or less" the Employer's proposal is limiting the suspensions that can ever be removed from a sergeant's file.
- 2) The Employer's contention that the Union's proposal violates the State Records Act is without merit.
- 3) The Employer's proposal to include that suspensions of any nature can be considered as work history is a back-door approach by the Employer to consider previous discipline against a sergeant.

The Employer has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Employer contends:

- 1) The Union's proposal to change the language that suspensions shall no longer be considered in the disciplinary process from two (2) years to four (4) years is unreasonable and without justification.
- 2) The Employer's proposal is more reasonable than the Union's proposal.
- 3) The Employer's proposal is more consistent with other internal comparables.
- 4) The Employer's proposal which would allow the Employer to indefinitely consider suspensions greater than fifteen (15) days in the progressive disciplinary process is reasonable based on the leadership capacity of sergeants.

The Arbitrator has fully evaluated and considered the parties' positions on this issue and has found merit in each. Because the parties have deemed this issue as "non-economic", the Arbitrator has the authority to render an alternative resolution different from either party's proposal. As such, the Arbitrator determined that this section of the CBA shall read as follows:

#### Section 14.5 – Discipline Record

Upon written request, oral and written reprimands will be removed from an employee's file after two (2) years has elapsed provided no further related reprimands have been issued in that timeframe. Suspensions shall no longer be considered in the progressive discipline process after four years has elapsed, provided no further related reprimands or suspensions have been issued in that timeframe.

Counseling statements may be used to document employee conduct, which may be either positive or negative in nature. Counseling statements shall not be considered to be part of the disciplinary record; however, they are considered as documentation of work history. Counseling statements which are negative in nature, upon the employees request shall be removed from the employee's file after a period of two years.

### **Section 14.11 – Drug and Alcohol Policy**

#### **Employer's Final Offer**

#### **Section 1 - Statement of Policy**

It is the policy of the Northern Illinois University Police Department that the use of illegal drugs and abuse of legal drugs and alcohol by members of the Police Department present unacceptable risks to the safety and well-being of other employees and the public, invite accidents and injuries, and reduce productivity. Additionally, such conduct violates the reasonable expectations of the public that Sergeants will be free of the effects of drugs and alcohol while on duty. The purpose of this policy shall be achieved in such manner as not to violate any constitutional rights of the employees.



## **Section 2 - Prohibitions**

Employees shall be prohibited from:

- a) Consuming, possessing, or being under the influence of alcohol on duty other than in an authorized duty capacity, required in the conduct of an investigation, with prior supervisory authorization;
- b) Possessing, using, or being under the influence of any controlled substance (including cannabis) while on duty, other than in an authorized duty capacity, except with the approval and guidance of a licensed physician;
- c) Using any illegal drug, or any drug not yet scheduled as a controlled substance, but which impairs an employee;
- d) Failing to report to their immediate supervisor any known adverse side effects of over-the-counter medication or prescription drugs which they are taking.

## **Section 3 - Drug and Alcohol Testing Permitted**

Where the University has reasonable suspicion to believe that an employee is under the influence of alcohol, a controlled substance or illegal drugs during the course of the work day, the University shall have the right to require the employee to submit to alcohol or drug testing as set forth in this Agreement.

There shall be no random or unit-wide testing of employees, except random testing of an individual employee as authorized in Section 9 below; or the University may also require an employee to randomly submit to alcohol or drug testing while the employee is assigned to a specialty position or specialized services related to the conduct of drug investigations, providing emergency medical services (emergency medical technician or paramedic), or K9. The University shall not order an employee to submit to horizontal nystagmus tests or to what are commonly known as "field sobriety tests," except under circumstances where the Sergeant would otherwise be subject to the taking of such tests as a citizen under the law of the State of Illinois.

Any Sergeant who discharges his or her weapon either accidentally or intentionally while on duty (other than for training purposes or for the necessary euthanizing of an animal), is involved in a vehicle accident while operating a department vehicle that results in a fatality, critical injury to a person, or significant property damage, or uses physical force while on duty that results in serious bodily harm or the death of another person, shall be subject to mandatory drug and alcohol testing as set forth within this Agreement. Such testing shall be conducted at a reasonable and appropriate time and place given the circumstances and as determined by the department.



For the purposes of this provision, a critical injury is defined as an injury involving or which potentially could result in death, dismemberment, loss or significant impairment of an organ, loss of sight or hearing, burns over a major part of the body, a significant loss of blood, bone or skull fractures, or any other injury requiring care in a critical or intensive care unit or that could be classified by medical personnel as constituting a critical injury.

Significant property damage is defined as damage to any personal property owned by the University or any corporation, individual or other entity that is assessed by the University to exceed one thousand dollars (\$1,000.00), including repairs and labor costs.

Serious bodily harm is defined as bodily harm that imposes a substantial risk of death or causes extreme physical pain, prolonged loss or impairment of the function of any body part or organ, protracted unconsciousness, permanent disfigurement, or significant internal damage (such as internal bleeding or broken bones).

#### **Section 4 - Order to Submit to Testing**

At the time a Sergeant is ordered to submit to testing authorized by this Agreement, the University shall provide the employee with a written notice of the order, including a brief synopsis of the observations which have formed the basis of the order to test. No questioning or testing of the employee shall be conducted without first affording the employee the right to Union representation and/or legal counsel provided that this shall occur within 45 minutes of the order being given. Refusal to submit to such testing may subject the employee to discipline, but the employee's taking of the test shall not be construed as a waiver of any objection or rights that he or she may have.

#### **Section 5 - Tests to be Conducted**

In conducting the testing authorized by this Agreement, the University shall:

- a) Use only a clinical laboratory or hospital facility that is licensed pursuant the Illinois Clinical Laboratory Act that has been accredited by the National Institute of Drug Abuse (NIDA);
- b) Use as the initial screening immunoassay (IA) step a rapid semi-quantitative chemical test which uses a specific antibody to react with the drug or metabolite of interest. The confirmation assay used in the drug analysis procedure shall be Gas Chromatography/Mass Spectrometry (GC/MIS), or an equivalent or better scientifically accurate and accepted method that provides quantitative data about the detected drug or drug metabolites;
- c) Establish a chain of custody procedure for both sample collection and testing that will ensure the integrity of each sample and test result. No



employee covered by the Agreement shall be permitted at any time to become a part of such chain of custody;

- d) Collect a sufficient sample of the same bodily fluid or material for the purpose of drug testing of an employee to allow for initial screening, a confirming test and a sufficient amount to be set aside reserved for later testing if requested by the employee. This will not apply to alcohol testing as this will be done on a breathalyzer as specified by Section 5, Paragraph (h) of this policy,
- e) Collect samples in such a way as to preserve the employee's right to privacy and to ensure a high degree of scrutiny for the sample and its freedom from adulteration;
- f) Provide the employee tested with an opportunity to have the additional sample tested by a clinical laboratory or hospital facility accredited by (NIDA) of the employee's own choosing and at the employee's expense within forty-eight (48) hours of the confirmed test results, provided the employee notifies the University in writing within twenty-four (24) hours of receiving the result of the tests;
- g) Require that the laboratory or hospital facility report to the University that a blood or urine sample is positive only if both the initial screening and confirmation tests are positive for a particular drug or alcohol. The parties agree that should any information concerning such testing or the results thereof be obtained by the University inconsistent with the understandings expressed herein (i.e. billings for testing that reveal the nature or number of tests administered), the University will not use such information in any manner or forum adverse to the employee's interest;
- h) Require that with regard to alcohol testing, for the purpose of determining whether the employee is under the influence of alcohol, test results that show an alcohol concentration of .04 or higher be considered positive and such tests to be performed on an Intoximeter RBT4 or whatever equivalent machine is deemed necessary at the time by clinical laboratory or hospital facility;
- i) Provide each employee tested with a copy of all information and reports received by the University in connection with the testing and the results. Test results shall be communicated to and interpreted by a physician who is designated as the Medical Review Officer (MRO). Both positive and negative test results will be reported to the Chief of Police and other University officials on a strict "need to know" basis. Prior to reporting positive test results, the MRO is required to contact the employee involved to determine whether there is any alternative explanation for the presence of the controlled substance. If the MRO determines that the



presence of the prohibited drug is due to legitimate medical use, the test will be reported as negative;

- j) Ensure that no employee is the subject of any adverse employment action except temporary reassignment or relief from duty with pay during the pendency of any testing procedure. Any such temporary reassignment or relief from duty shall be immediately discontinued in the event of a negative test result.

### **Section 6 - Right to Contest**

The Union and/or the employee, with or without the Union, shall have the right to file a grievance concerning any testing permitted by the Agreement, contesting the basis for the order to submit to the tests, the right to test, the administration of the tests, the significance and accuracy of the tests, the consequences of the testing or results or any other alleged violation of the Drug and Alcohol Policy. It is agreed by the parties that they in no way intend to have in any manner restricted, diminished or otherwise impair any legal rights that employees may have with regard to such testing. Employees retain any such rights as may exist and may pursue the same in their own discretion, with or without the assistance of the Union.

### **Section 7 - Voluntary Requests for Assistance**

The University shall take no adverse employment action against an employee who, prior to detection, voluntarily seeks treatment, counseling or other support for an alcohol or drug related problem, other than the University may require reassignment of the employee with pay if he/she is then unfit for duty in his/her current assignment. The University shall make available through its Employee Assistance Program a means by which the employee may obtain referrals and treatment. All such requests shall be confidential and any information received by the University through whatever means, shall not be used in any manner adverse to the employee's interest, except reassignment as described above.

While undergoing voluntary treatment or evaluation, employees shall be allowed to use accumulated benefit time and/or be placed on unpaid leave pending treatment. Such leave shall not exceed twelve (12) calendar weeks. While undergoing treatment, the employee shall comply with and implement all conditions and recommendations of the program counselor or treatment team.

The provisions of this Section shall not be applicable when the request for assistance follows the order to submit to testing or follows a finding that the employee is using illegal drug(s) or alcohol or is otherwise in violation of this Policy.

### **Section 8 - Confidentiality of Test Results**

Confirmed positive and negative drug and alcohol tests will be disclosed to the Chief of Police. This information may be disclosed to other University officials on a strict "need



to know" basis. In addition, the person tested and/or the designated representative of the Union shall be provided the results of confirmed drug and alcohol tests unless the person tested makes a written request to the Chief of Police that the Union representative not be given the results. Unless required by court order or lawful subpoena and as evidence presented by the University in disciplinary proceedings involving the Sergeant who has been tested, test results will not be disclosed externally except where the person tested consents. Any employee whose drug/alcohol screen is confirmed positive shall have an opportunity at the appropriate stage of the disciplinary process to refute said results.

### **Section 9 - Discipline**

An employee who, prior to detection, voluntarily seeks assistance shall not be subject to discipline or other adverse employment action by the University, as provided for in Section 7. The foregoing is conditioned upon:

- a) The employee agreeing to appropriate treatment as determined by the physician(s) or substance abuse professional involved;
- b) The employee discontinues his or her use of illegal drugs and/or abuse of alcohol;
- c) The employee completes the course of treatment prescribed, including an "after-care" plan;
- d) The employee agrees to submit to random testing during work hours of work for up to one year;
- e) The employee agrees to sign the appropriate releases to allow disclosure of employee's participation in treatment and completion of any prescribed program.

Employees who do not agree to or who do not act in accordance with the foregoing or who test positive for the presence of illegal drugs or alcohol during the hours of work, shall be subject to discipline, up to and including discharge.

### **Section 10 - Dismissal**

The University Police Department shall initiate action to dismiss an employee for:

- a) Refusal to cooperate with the testing authorized by this Agreement or adulterating any sample;
- b) Refusing to obtain counseling or rehabilitation through the Faculty/Staff Assistance Program after having been found to use or possess illegal drugs, controlled substances, or alcohol in violation of this Agreement; or

- c) Having been found not to have refrained from improper use of illegal drugs, controlled substances or alcohol after the first finding of illegal drug use or improper alcohol use;
- d) Failure to comply with any recommended treatment or rehabilitation program.

The foregoing shall not be construed as an obligation on the part of the University to retain an employee on active status throughout the periods of rehabilitation if it is appropriately determined that the employee's current use of alcohol or drugs prevents such individual from performing the duties of an employee or whose continuation on active status could constitute a direct threat to the property or safety of the general public.

## **Union's Final Offer**

### **Section 1 - Statement of Policy**

It is the policy of the Northern Illinois University Police Department that the use of illegal drugs and abuse of legal drugs and alcohol by members of the Police Department present unacceptable risks to the safety and well-being of other employees and the public, invite accidents and injuries, and reduce productivity. Additionally, such conduct violates the reasonable expectations of the public that Sergeants will be free of the effects of drugs and alcohol while on duty. The purpose of this policy shall be achieved in such manner as not to violate any constitutional rights of the employees.

### **Section 2 - Prohibitions**

Employees shall be prohibited from:

- a) Consuming, possessing, or being under the influence of alcohol on duty other than in an authorized duty capacity, required in the conduct of an investigation, with prior supervisory authorization;
- b) Possessing, using, or being under the influence of any controlled substance (including cannabis) while on duty, other than in an authorized duty capacity, except with the approval and guidance of a licensed physician;
- c) Using any illegal drug, or any drug not yet scheduled as a controlled substance, but which impairs an employee;
- d) Failing to report to their immediate supervisor any known adverse side effects of over-the-counter medication or prescription drugs which they are taking.

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day, the University shall have the right to require the employee to submit to alcohol or drug testing as set forth in this Agreement.

Any Sergeant who discharges his or her weapon either accidentally or intentionally while on duty (other than for training purposes or for the necessary euthanizing of an animal), is involved in a vehicle accident while operating a department vehicle that results in a fatality, critical injury to a person, or significant property damage, or uses physical force while on duty that results in serious bodily harm or the death of another person, shall be subject to mandatory drug and alcohol testing as set forth within this Agreement. Such testing shall be conducted at a reasonable and appropriate time and place given the circumstances and as determined by the department. For the purposes of this provision, a critical injury is defined as an injury involving or which potentially could result in death, dismemberment, loss or significant impairment of an organ, loss of sight or hearing, burns over a major part of the body, a significant loss of blood, bone or skull fractures, or any other injury requiring care in a critical or intensive care unit or that could be classified by medical personnel as constituting a critical injury.

Significant property damage is defined as damage to any personal property owned by the University or any corporation, individual or other entity that is assessed by the University to exceed three thousand dollars (\$3,000.00), including repairs and labor costs.

Serious bodily harm is defined as bodily harm that imposes a substantial risk of death or causes extreme physical pain, prolonged loss or impairment of the function of any body part or organ, protracted unconsciousness, permanent disfigurement, or significant internal damage (such as internal bleeding or broken bones).

#### **Section 4 - Order to Submit to Testing**

At the time a Sergeant is ordered to submit to testing authorized by this Agreement, the University shall provide the employee with a written notice of the order, including a brief synopsis of the observations which have formed the basis of the order to test. No questioning or testing of the employee shall be conducted without first affording the employee the right to Union representation and/or legal counsel provided that this shall occur within 45 minutes of the order being given. Refusal to submit to such testing may subject the employee to discipline, but the employee's taking of the test shall not be construed as a waiver of any objection or rights that he or she may have.

#### **Section 5 - Tests to be Conducted**

In conducting the testing authorized by this Agreement, the University shall:

- a) Use only a clinical laboratory or hospital facility that is licensed pursuant the Illinois Clinical Laboratory Act that has been accredited by the National Institute of Drug Abuse (NIDA);
- b) Use as the initial screening immunoassay (IA) step a rapid semi-quantitative chemical test which uses a specific antibody to react with the drug or metabolite



of interest. The confirmation assay used in the drug analysis procedure shall be Gas Chromatography/Mass Spectrometry (GC/MIS), or an equivalent or better scientifically accurate and accepted method that provides quantitative data about the detected drug or drug metabolites;

- c) Establish a chain of custody procedure for both sample collection and testing that will ensure the integrity of each sample and test result. No employee covered by the Agreement shall be permitted at any time to become a part of such chain of custody;
- d) Collect a sufficient sample of the same bodily fluid or material for the purpose of drug testing of an employee to allow for initial screening, a confirming test and a sufficient amount to be set aside reserved for later testing if requested by the employee. This will not apply to alcohol testing as this will be done on a breathalyzer as specified by Section 5, Paragraph (h) of this policy,
- e) Collect samples in such a way as to preserve the employee's right to privacy and to ensure a high degree of scrutiny for the sample and its freedom from adulteration;
- f) Provide the employee tested with an opportunity to have the additional sample tested by a clinical laboratory or hospital facility accredited by (NIDA) of the employee's own choosing and at the employee's expense within forty-eight (48) hours of the confirmed test results, provided the employee notifies the University in writing within twenty-four (24) hours of receiving the result of the tests;
- g) Require that the laboratory or hospital facility report to the University that a blood or urine sample is positive only if both the initial screening and confirmation tests are positive for a particular drug or alcohol. The parties agree that should any information concerning such testing or the results thereof be obtained by the University inconsistent with the understandings expressed herein (i.e. billings for testing that reveal the nature or number of tests administered), the University will not use such information in any manner or forum adverse to the employee's interest;
- h) Require that with regard to alcohol testing, for the purpose of determining whether the employee is under the influence of alcohol, test results that show an alcohol concentration of .04 or higher be considered positive and such tests to be performed on an Intoximeter RBT4 or whatever equivalent machine is deemed necessary at the time by clinical laboratory or hospital facility;
- i) Provide each employee tested with a copy of all information and reports received by the University in connection with the testing and the results. Test results shall be communicated to and interpreted by a physician who is designated as the Medical Review Officer (MRO). Both positive and negative test results will be reported to the Chief of Police and other University officials on a strict



"need to know" basis. Prior to reporting positive test results, the MRO is required to contact the employee involved to determine whether there is any alternative explanation for the presence of the controlled substance. If the MRO determines that the presence of the prohibited drug is due to legitimate medical use, the test will be reported as negative;

- j) Ensure that no employee is the subject of any adverse employment action except temporary reassignment or relief from duty with pay during the pendency of any testing procedure. Any such temporary reassignment or relief from duty shall be immediately discontinued in the event of a negative test result.

### **Section 6 - Right to Contest**

The Union and/or the employee, with or without the Union, shall have the right to file a grievance concerning any testing permitted by the Agreement, contesting the basis for the order to submit to the tests, the right to test, the administration of the tests, the significance and accuracy of the tests, the consequences of the testing or results or any other alleged violation of the Drug and Alcohol Policy. It is agreed by the parties that they in no way intend to have in any manner restricted, diminished or otherwise impair any legal rights that employees may have with regard to such testing. Employees retain any such rights as may exist and may pursue the same in their own discretion, with or without the assistance of the Union.

### **Section 7 - Voluntary Requests for Assistance**

The University shall take no adverse employment action against an employee who, prior to detection, voluntarily seeks treatment, counseling or other support for an alcohol or drug related problem, other than the University may require reassignment of the employee with pay if he/she is then unfit for duty in his/her current assignment. The University shall make available through its Employee Assistance Program a means by which the employee may obtain referrals and treatment. All such requests shall be confidential and any information received by the University through whatever means, shall not be used in any manner adverse to the employee's interest, except reassignment as described above.

While undergoing voluntary treatment or evaluation, employees shall be allowed to use accumulated benefit time and/or be placed on unpaid leave pending treatment. Such leave shall not exceed twelve (12) calendar weeks. While undergoing treatment, the employee shall comply with and implement all conditions and recommendations of the program counselor or treatment team.

The provisions of this Section shall not be applicable when the request for assistance follows the order to submit to testing or follows a finding that the employee is using illegal drug(s) or alcohol or is otherwise in violation of this Policy.



## **Section 8 - Confidentiality of Test Results**

Confirmed positive and negative drug and alcohol tests will be disclosed to the Chief of Police. This information may be disclosed to other University officials on a strict "need to know" basis. In addition, the person tested and/or the designated representative of the Union shall be provided the results of confirmed drug and alcohol tests unless the person tested makes a written request to the Chief of Police that the Union representative not be given the results. Unless required by court order or lawful subpoena and as evidence presented by the University in disciplinary proceedings involving the Sergeant who has been tested, test results will not be disclosed externally except where the person tested consents. Any employee whose drug/alcohol screen is confirmed positive shall have an opportunity at the appropriate stage of the disciplinary process to refute said results.

## **Section 9 - Discipline**

An employee who, prior to detection, voluntarily seeks assistance shall not be subject to discipline or other adverse employment action by the University, as provided for in Section 7. The foregoing is conditioned upon:

- a) The employee agreeing to appropriate treatment as determined by the physician(s) or substance abuse professional involved;
- b) The employee discontinues his or her use of illegal drugs and/or abuse of alcohol;
- c) The employee completes the course of treatment prescribed, including an "after-care" plan;
- d) The employee agrees to submit to random testing during work hours of work for up to one year;
- e) The employee agrees to sign the appropriate releases to allow disclosure of employee's participation in treatment and completion of any prescribed program.

Employees who do not agree to or who do not act in accordance with the foregoing or who test positive for the presence of illegal drugs or alcohol during the hours of work, shall be subject to discipline, up to and including discharge.

## **Section 10 - Dismissal**

The University Police Department shall initiate action to dismiss an employee for:

- a) Refusal to cooperate with the testing authorized by this Agreement or adulterating any sample;
- b) Refusing to obtain counseling or rehabilitation through the Faculty/Staff Assistance Program after having been found to use or possess illegal drugs, controlled substances, or alcohol in violation of this Agreement; or



- c) Having been found not to have refrained from improper use of illegal drugs, controlled substances or alcohol after the first finding of illegal drug use or improper alcohol use;
- d) Failure to comply with any recommended treatment or rehabilitation program.

The foregoing shall not be construed as an obligation on the part of the University to retain an employee on active status throughout the periods of rehabilitation if it is appropriately determined that the employee's current use of alcohol or drugs prevents such individual from performing the duties of an employee or whose continuation on active status could constitute a direct threat to the property or safety of the general public.

### **Discussion and Decision**

The Union has offered several arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Union contends:

- 1) Drug and alcohol testing of incumbent employees is a mandatory subject of collective bargaining.
- 2) The employer has failed to demonstrate a compelling reason and presented no justification to seek random drug testing.
- 3) The Employer's proposal to test employees who are involved in a vehicle accident resulting in significant property damage that is assessed to exceed \$1,000.00 is too low and that the Union's proposal of \$3,000.00 is more appropriate.

The Employer has offered arguments supporting their position on the issue and the Arbitrator has summarized them as follows. The Employer contends:

- 1) A drug and alcohol policy which includes a random drug testing policy supports the department's mission of effective public service and safety.
- 2) Provisions for random testing are sensible and common among drug and alcohol policies.
- 3) The Employer's proposal for random testing is more reasonable than the Union's proposal which excludes random testing for any Sergeant in any scenario.

- 4) A vehicle accident resulting in more than \$1,000.00 in assessed damages is significant property damage.

The parties testified that they spent very little time discussing the issue of a drug and alcohol policy during negotiations. The Employer submitted a copy of a proposed policy to the Union on the day before the hearing. The Union presented only an outline of a policy in their final offer. While there may have been little or no discussion during negotiations, during the hearing the parties reached agreement on several key issues of a drug and alcohol policy. The open and unresolved issues relate to whether or not a random testing process should be included in the policy and what dollar value related to property damage as a result of vehicle accidents should trigger a "for cause test".

The Arbitrator believes that both parties fully understand and support the importance and need of a comprehensive drug and alcohol policy in a law enforcement department. Both final offers show that commitment and understanding. The Union's willingness to accept most of the Employer's final offer during the hearing further displays the Union's willingness to define and accept a fair and equitable policy with the Employer.

While this Arbitrator believes a random testing provision must be a part of the overall Drug and Alcohol Policy governing the sergeants, the details of random testing need to be discussed by the parties. It is important that the parties clearly define the details of a random drug testing policy, such as, who will be subject to random testing, when and under what circumstances will employees be subject to random testing, what process will be used to randomly select employees for testing and how often will employees be subject to random tests. During the hearing, the Employer was unable to provide definitive details regarding the process when questioned by the Union. The Arbitrator believes that before a random testing process can be implemented, the Union and Employer must have a meeting of the minds on all of the requirements for random testing. Absent prior discussion and a mutual understanding of the details of random testing by the parties, the Arbitrator is unwilling to agree with the Employer's



proposal on this issue. For these reasons, the Arbitrator finds in favor of the Union proposal to exclude the paragraph related to random testing.

Regarding the issue of significant property damage as a result of a vehicle accident and the dollar value which would initiate a "for cause test", neither party provided compelling reasons to support their proposed dollar value. Because the parties have determined the Drug and Alcohol Policy to be "non-economic", the Arbitrator finds that a fair and reasonable value lies between both parties' proposals and establishes the value at \$2,000.00.

In summary, with respect to Section 14.11, Drug and Alcohol Policy, the Arbitrator finds for the Union regarding the exclusion of random testing and has determined that the dollar value for significant property damage as a result of a vehicle accident be established as \$2,000.00.

## **ARTICLE XIX: TERMINATION**

### **Section 19.1 - Duration**

#### **Employer's Final Offer**

This Agreement shall be effective upon ratification and approval of both parties and shall remain in full force and effect until June 30, 2019. It shall continue in effect from year to year thereafter, unless notice of "Request to Renegotiate" is provided in writing by registered or certified mail by either party no earlier than 120 days and no later than 90 days prior to the expiration date of the Agreement. Notices to renegotiate, as required and provided by the Employer, shall be addressed to M.A.P. Chapter #292, in care of the Local Chapter President, at NIU Department of Public Safety. Notices to renegotiate, as required and provide by M.A.P., shall be addressed to Northern Illinois University, Associate Vice President for Administration and Human Resources, Human Resource Services, Northern Illinois University, DeKalb, Illinois 60115-2854. Either party may, by written notice, change the address as noted above. Such notice to renegotiate shall be considered to have been given as of the date shown on the postmark.

Upon expiration of this agreement, Northern Illinois University and the Metropolitan Alliance of Police, Local 292, hereby agree to extend the current collective bargaining agreement to provide for continued negotiations for a new labor agreement. Accordingly, the terms and conditions of the current collective bargaining agreement shall remain in full force and effect while an extension agreement is in effect.

### **Union's Final Offer**

This Agreement shall be effective upon ratification and approval of both parties and shall remain in full force and effect until June 30, 2017. It shall continue in effect from year to year thereafter, unless notice of "Request to Renegotiate" is provided in writing by registered or certified mail by either party no earlier than 120 days and no later than 90 days prior to the expiration date of the Agreement. Notices to renegotiate, as required and provided by the Employer, shall be addressed to M.A.P. Chapter #292, in care of the Local Chapter President, at NIU Department of Public Safety. Notices to renegotiate, as required and provide by M.A.P., shall be addressed to Northern Illinois University, Associate Vice President for Administration and Human Resources, Human Resource Services, Northern Illinois University, DeKalb, Illinois 60115-2854. Either party may, by written notice, change the address as noted above. Such notice to renegotiate shall be considered to have been given as of the date shown on the postmark.

Upon expiration of this agreement, Northern Illinois University and the Metropolitan Alliance of Police, Local 292, hereby agree to extend the current collective bargaining agreement to provide for continued negotiations for a new labor agreement. Accordingly, the terms and conditions of the current collective bargaining agreement shall remain in full force and effect while an extension agreement is in effect.

### **Discussion and Decision**

This is an initial collective bargaining agreement between the parties. The Union was certified as exclusive bargaining agent for the sergeants in June 10, 2013. The parties have been in contract negotiations for well over two years and have had several mediation sessions prior to this interest arbitration proceeding. The Union has proposed a CBA which expires on June 30, 2017. The Employer has proposed an Agreement which ends on June 30, 2019.

If the Union's proposal was adopted, the parties would be required to return to the bargaining table within the next year. The Arbitrator believes the parties need time to operate under the new agreement and establish a more stable relationship. Returning to negotiations within a year is not in the best interests of either the Union or the Employer. While the Arbitrator believes that the Union's proposal for expiration of the agreement is too soon, the Arbitrator also believes that the Employer's proposal



for an expiration date of June 30, 2019 is too distant and that a date somewhere in between would better serve both parties.

Therefore, since the issue of Section 19.1, Duration, has been determined to be 'non-economic' by the parties, the Arbitrator has provided an alternative resolution. The Arbitrator finds that the first sentence of Section 19.1, Duration, related to the expiration of the Agreement shall read as follows: "This Agreement shall be effective upon ratification and approval of both parties and shall remain in full force and effect until June 30, 2018."

## **APPENDIX (TBD)**

### **Employer's Final Offer**

#### **ELECTION, WAIVER AND RELEASE FOR DISCIPLINARY PROCESS**

##### I. Notice to Employee

I, \_\_\_\_\_, a Sergeant at Northern Illinois University, and a member of the Metropolitan Alliance of Police, Chapter 292 Northern Illinois University Police Sergeants ("Chapter"), being proposed for discipline of thirty (30) calendar days, or a demotion or termination, by the Northern Illinois University Police Department, have been informed of my options to dispute such discipline in accordance with the collective bargaining agreement between Northern Illinois University and the Metropolitan Alliance of Police, Chapter 292. I understand that I may elect to pursue a grievance over such discipline (option A), or I may choose to dispute the discipline before the State University Civil Service Merit Board (option B), but not both. I understand that an election of one of these procedures is a waiver of my rights and remedies to the other. I further understand that the Board of Directors of the Metropolitan Alliance of Police ("Union"), not the Chapter, has the final authority on whether or not to approve this matter for arbitration. If I elect arbitration and the Union declines to authorize arbitration of this matter for any reason, this does not waive my statutory rights under the State Universities Civil Service Act, 110 ILCS 70/1 *et. seq.*

I have been given a written notice of the proposed discipline and the factual basis thereof. This notice has been presented to me on \_\_\_\_\_, 20 \_\_\_\_\_, I have fourteen (14) calendar days, exclusive of today, to return this notice to the Chief of Police, or his designee, indicating my choice of disciplinary forum. If I do not return this form electing arbitration, then the proposed discipline will be subject to the

State University Civil Service Merit Board, pursuant to the procedures of 110 ILCS 70/1 et. seq.

Chief of Police or Designee: \_\_\_\_\_

Officer: \_\_\_\_\_

Chapter Representative: \_\_\_\_\_

II. Election

**I have had an opportunity to discuss these options with a union representative and choose to dispute the proposed discipline before the following forum:**

A. Grievance Arbitration

By selecting the grievance arbitration alternative, I acknowledge my understanding that an arbitrator will determine whether the discipline was imposed with just cause.

By election to file a grievance over my discipline, I hereby release Northern Illinois University and the Metropolitan Alliance of Police, as well as their officers, directors, agents, employees, attorneys, and other representatives from any and all liability which flows as a consequence of my election.

**I hereby elect the grievance arbitration procedure and waive my rights to a hearing before the State University Civil Service Merit Board. I understand that I have seven (7) calendar days from my receipt of this notice to request authorization to arbitrate this matter from the Union, and that the Union has seven (7) additional days to submit this document as a request to arbitrate to the Chief of Police or his designee. This document will be considered my grievance. In the event that the Union declines to arbitrate this matter or does not return this document within fourteen (14) calendar days from the notice of the Decision to Discipline, the discipline will be subject to the jurisdiction of the State University Civil Service Merit Board.**

Agreed: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_



**This disciplinary charge is hereby approved for arbitration by the Metropolitan Alliance of Police, Board of Directors. This document serves as written notice advancing this matter for arbitration in accordance with the collective bargaining agreement:**

Union: \_\_\_\_\_ Date: \_\_\_\_\_

**Received by the Chief of Police's Office:** \_\_\_\_\_

Date: \_\_\_\_\_

**B. State University Civil Service Merit Board**

By selecting an appeal of discipline of thirty (30) calendar days or a demotion or termination before the State University Civil Service Merit Board, I understand that I will have a hearing over such discipline, demotion or termination before the State University Civil Service Merit Board in accordance with their rules and the laws of the State of Illinois as provided within the State Universities Civil Service Act, 110 ILCS 70/1 *et seq.*, as amended. I agree that such hearing shall be a waiver of the grievance/arbitration procedures of the collective bargaining agreement between Northern Illinois University and the Metropolitan Alliance of Police.

By electing to have a hearing before the State University Civil Service Merit Board over my thirty (30) calendar day suspension, demotion or discharge, I hereby release Northern Illinois University and the Metropolitan Alliance of Police, as well as their officers, directors, agents, employees, attorneys, and other representatives from any and all liability which flows as a consequence of my election. I understand that this hearing will be subject to the Rules and Regulations of the State University Civil Service Merit Board.

**I hereby elect the State University Civil Service Merit Board, and waive my rights to the grievance/arbitration procedures of the collective bargaining agreement between Northern Illinois University and the Metropolitan Alliance of Police. This document will be considered my request for a hearing before the State University Civil Service Merit Board concerning this discipline.**

Agreed: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Received by the Chief of Police's Office: \_\_\_\_\_

Date: \_\_\_\_\_

**Union's Final Offer**

**ELECTION, WAIVER AND RELEASE FOR DISCIPLINARY PROCESS**

I. Notice to Employee

I, \_\_\_\_\_, a Sergeant at Northern Illinois University, and a member of the Metropolitan Alliance of Police, Chapter 292 Northern Illinois University Police Sergeants ("Chapter"), being proposed for discipline of thirty (30) calendar days, or a demotion or termination, by the Northern Illinois University Police Department, have been informed of my options to dispute such discipline in accordance with the collective bargaining agreement between Northern Illinois University and the Metropolitan Alliance of Police, Chapter 292. I understand that I may elect to pursue a grievance over such discipline (option A), or I may choose to dispute the discipline before the State University Civil Service Merit Board (option B), but not both. I understand that an election of one of these procedures is a waiver of my rights and remedies to the other. I further understand that the Board of Directors of the Metropolitan Alliance of Police ("Union"), not the Chapter, has the final authority on whether or not to approve this matter for arbitration. If I elect arbitration and the Union declines to authorize arbitration of this matter for any reason, this does not waive my statutory rights under the State Universities Civil Service Act, 110 ILCS 70/1 *et. seq.*

I have been given a written notice of the proposed discipline and the factual basis thereof. This notice has been presented to me on \_\_\_\_\_, 20 \_\_\_\_\_, I have fourteen (14) calendar days, exclusive of today, to return this notice to the Chief of Police, or his designee, indicating my choice of disciplinary forum. If I do not return this form electing arbitration, then the proposed discipline will be subject to the State University Civil Service Merit Board, pursuant to the procedures of 110 ILCS 70/1 *et. seq.*

Chief of Police or Designee: \_\_\_\_\_



Officer: \_\_\_\_\_

Chapter Representative: \_\_\_\_\_

II. Election

**I have had an opportunity to discuss these options with a union representative and choose to dispute the proposed discipline before the following forum:**

A. Grievance Arbitration

By selecting the grievance process alternative, I acknowledge my understanding that an arbitrator will determine whether the discipline was imposed with just cause and whether the discipline was excessive.

By election to file a grievance over my discipline, I hereby release Northern Illinois University and the Metropolitan Alliance of Police, as well as their officers, directors, agents, employees, attorneys, and other representatives from any and all liability which flows as a consequence of my election.

**I hereby elect the grievance arbitration procedure and waive my rights to a hearing before the State University Civil Service Merit Board. I understand that I have seven (7) calendar days from my receipt of this notice to request authorization to arbitrate this matter from the Union, and that the Union has seven (7) additional days to submit this document as a request to arbitrate to the Chief of Police or his designee. This document will be considered my grievance. In the event that the Union declines to arbitrate this matter or does not return this document within fourteen (14) calendar days from the notice of the Decision to Discipline, the discipline will be subject to the jurisdiction of the State University Civil Service Merit Board.**

Agreed: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

**This disciplinary charge is hereby approved for arbitration by the Metropolitan Alliance of Police, Board of Directors. This document serves as written notice advancing this matter for arbitration in accordance with the collective bargaining agreement:**

Union: \_\_\_\_\_ Date: \_\_\_\_\_

**Received by the Chief of Police's Office:** \_\_\_\_\_

Date: \_\_\_\_\_

**B. State University Civil Service Merit Board**

By selecting an appeal of discipline of thirty (30) calendar days or a demotion or termination before the State University Civil Service Merit Board, I understand that I will have a hearing over such discipline, demotion or termination before the State University Civil Service Merit Board in accordance with their rules and the laws of the State of Illinois as provided within the State Universities Civil Service Act, 110 ILCS 70/1 *et seq.*, as amended. I agree that such hearing shall be a waiver of the grievance/arbitration procedures of the collective bargaining agreement between Northern Illinois University and the Metropolitan Alliance of Police.

By electing to have a hearing before the State University Civil Service Merit Board over my thirty (30) calendar day suspension, demotion or discharge, I hereby release Northern Illinois University and the Metropolitan Alliance of Police, as well as their officers, directors, agents, employees, attorneys, and other representatives from any and all liability which flows as a consequence of my election. I understand that this hearing will be subject to the Rules and Regulations of the State University Civil Service Merit Board.

**I hereby elect the State University Civil Service Merit Board, and waive my rights to the grievance/arbitration procedures of the collective bargaining agreement between Northern Illinois University and the Metropolitan Alliance of Police. This document will be considered my request for a hearing before the Statue University Civil Service Merit Board concerning this discipline.**

Agreed: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

Received by the Chief of Police's Office: \_\_\_\_\_

Date: \_\_\_\_\_



## **Discussion and Decision**

The Election, Waiver and Release for Disciplinary Process form applies to Section 14.9, Election of Grievance Arbitration for Discipline. The parties have reached a tentative agreement on Section 14.9. The main issue in dispute regarding the waiver form is in the first paragraph of subsection A. Grievance Arbitration.

The Union proposes that the ending of the sentence should read "...an arbitrator will determine whether the discipline was imposed with just cause, and whether the discipline was excessive". The Employer proposes to exclude the words "and whether the discipline was excessive".

The Union suggests that the additional wording should remain in the Waiver and provides protection to insure that the level of discipline remains subject to arbitration. The Employer contends that the words "and whether the discipline was excessive" should be excluded because they may create confusion or ambiguity in the future and that the term "just cause", by definition, includes an arbitrator's authority to determine whether a disciplinary action is excessive.

The Waiver is a form to document a sergeant's election regarding his or her options for resolving a dispute over a disciplinary action imposed upon the sergeant by the Employer. That is, the sergeant is electing whether to pursue resolution through the grievance/arbitration process or appeal the discipline before the State University Civil Service Merit Board.

The Arbitrator believes that while the additional words "and whether the discipline was excessive" may be redundant, they provide clarity for the sergeant who is making a one-time election regarding a disciplinary action imposed by the Employer. The Arbitrator does not believe that including the words will cause confusion and/or ambiguity in the future.

With respect to Appendix (TBD) – Election, Waiver and Release for Disciplinary Process, the Arbitrator finds in favor of the Union and the Union's final offer shall be incorporated in the CBA.

## **AWARD**

After a careful and thorough review of the evidence and testimony presented at the hearing, an evaluation of the parties' positions on the disputed issues and full consideration of all pertinent and required statutory factors, the Arbitrator summarizes his findings as follows:

### Section 8.1 – Purpose

For the Employer

### Section 8.2 - Hours of Work/Work Schedule

For the Employer

### Section 8.5 - Training

For the Employer

### Section 8.7 - Contracted Services/Special Events

For the Employer

### Section 8.8 – Other Extra Assignments

For the Employer

### Section 8.11 – Required Meetings/Exams

For the Union

### Section 9.3 – Holidays

For the Employer

### Section 10.1 - Salary Rates

For the Union

### Section 10.X (TBD) – Tuition Waiver

For the Employer

### Section 10.X (TBD) - Tuition Contribution

For the Employer

### Section 13.5 – Arbitration

For the Union

### Section 14.1 – Progressive Discipline

For the Employer



Section 14.3 – Notification  
For the Union

Section 14.5 – Discipline Record  
Arbitrator's Resolution

Section 14.11 – Drug and Alcohol Policy  
For the Union, in part.  
Arbitrator's Resolution

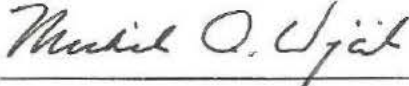
Section 19.1 – Duration  
Arbitrator's Resolution

Appendix TBD – Election, Waiver and Release for Disciplinary Process  
For the Union

I also order that the substance of the above findings are to be incorporated into the parties' Collective Bargaining Agreement, along with all tentative agreements previously reached by the parties and agreed to be included in this Award.

In the event the parties require clarification or assistance in implementing this award, the Arbitrator will retain jurisdiction for a period of at least thirty (30) days from the date of this award.

Dated: May 19, 2016

 5/19/16

MICHAEL A. WOJCIK  
ARBITRATOR