

**INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD**

**John C. Fletcher - Neutral Chairman
John G. Kalchbrenner - Employer Delegate
David W. Wickster - Union Delegate**

**The Illinois Fraternal Order of Police
Labor Council**

and

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

JUL 15 2002

**ISLRB No. L-MA-01-002
Deputy Sheriff Sergeants
Court Services Department**

OPINION and AWARD

Procedural Background:

This matter comes as an interest arbitration between the County of Cook and the Sheriff of Cook County as Joint Employers ("the Employers") and the Illinois Fraternal Order of Police Labor Council ("the Union") pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 ("the Act"). The bargaining unit consists of approximately 120 Deputy Sergeants, who supervise approximately 1600 Deputy Sheriffs in the Sheriff's Court Services Department ("the CSD").

This dispute arises from the parties' impasse in the negotiation of the Collective Bargaining Agreement ("the CBA") effective November 1999 through November 2001. The parties stipulated that the only issues before the Arbitration Panel are the issues of wages for fiscal years 1999, 2000, and 2001 and the language to be included within Article 13, Section 13.2 Regular Work

Periods of the CBA. With respect to wages, the parties have further stipulated that these issues are a package within the meaning of Article 14, Section 14.2 Wage Rates, and that the Panel must adopt one or the other of the party's pay proposals in its entirety. Furthermore, the parties have stipulated that the Panel has jurisdiction to hear and decide the issue.

A hearing was held in this matter in the Chicago, Illinois, Sears Tower law offices of outside counsel for the Employers on August 23rd, 2001, at which time the parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses, and to make such arguments as were deemed pertinent. At the hearing the Union was represented by:

Kevin P. Camden, Esq.
Gary Bailey, Esq.
Illinois Fraternal Order of Police Labor Council
5600 South Wolf Road
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Co-counsel for the Employers were:

Hon. Richard A. Devine, State's Attorney
Sanja Musikic, Esq., Assistant State's Attorney
500 Richard J. Daley Center,
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Chicago, Illinois 60602
J. Stuart Garbutt, Esq.
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123 North Wacker Drive, Suite 1800
Chicago, Illinois 60606

Post-hearing briefs were filed with the Arbitrator and exchanged on December 21, 2001. The record was closed on that date.

Factual Background:

The Sheriff of Cook County is an elected official with countywide law-enforcement responsibilities. There are three main departments in the Sheriff's Office; (1) the Sheriff's Police Department ("SPD") which is a full-service police agency consisting of some 550 sworn personnel providing police services throughout the County; (2) the Cook County Department of Corrections ("DOC") with some 3000 sworn personnel, which operates the County jail complex; and, (3) the Court Services Department ("CSD"), which provides security in each of the various court facilities, and acts as its enforcement arm. The Sergeants involved in this arbitration are employed in the CSD.

The CSD Sergeants are responsible for maintaining security in and around Cook County, securing court facilities and courtrooms, and for serving legal papers issued by the courts. Approximately 75 to 80 percent of the CSD personnel handle courtroom security functions, including maintaining order in the courts, monitoring in-custody defendants in the courtrooms, and securing the entrances and parameters of all of the court buildings. The remaining 20 to 25 percent of the CSD personnel are assigned to process serving or "street

unit" functions, such as serving summonses and executing warrants and evictions for the courts.

Although the CSD Deputies have been organized since the late 1980's, their immediate supervisors, the CSD Sergeants, members of the Bargaining Unit involved in this arbitration, were not organized for purposes of collective bargaining until 1994.

Historically, there has been a three-tiered salary hierarchy between the three departments of the Sheriff's Office, under which SPD Officers always have been the most highly paid, followed by the DOC Officers, and then by the CSD

Officers. In a series of interest arbitration awards,¹ CSD Sheriff's Deputies have received larger-than-pattern increases based on the finding that their wages lagged too far behind the wages of the SPD and DOC Officers, particularly when considering the functions performed by street unit Deputies. To date, CSD Sergeants have been given identical increases to match the Deputies that they supervise. Between fiscal year 1995 and ending with fiscal year 1999, both the Deputies and the Sergeants' Units received the same increases of 6.5 percent, 6.0 percent, 5.0 percent, 5.5 percent, and then 5.5 percent, respectively, for a total increase of 28.5 percent over the five years. The SPD and DOC Units (both Officers and Sergeants) were receiving increases in the same period of 4.5 percent, 3.0 percent, 4.0 percent, 3.5 percent, and 4.0 percent for a total of 19.0 percent over the five years.

The CSD Deputies wages for fiscal years 1998-2000 were also decided in an interest arbitration in which they received increases of 5.5%. Cook County and Sheriff of Cook County and Local 714, L-MA-99-003 (Benn 1999). After the County initially rejected the Award, the parties accepted it but negotiated the creation of a D2B salary grade for street unit Deputies, effectively employees in that classification a total increase of 9.5 percent for fiscal year 2000. CSD Deputies' increases for fiscal years 2001 and 2002 have been determined in a

¹ Cook County and Cook County Sheriff & Teamsters Local 714, L-MA-95-001 (Goldstein 1995); Cook County and Cook County Sheriff & Teamsters Local 714, L-MA-97-006 (Berman 1997); Cook County and Cook County Sheriff & Teamsters Local 714, L-MA-99-003 (Benn 1999).

recent interest arbitration award by Arbitrator Peter Meyers awarding increases proposed by the Union.²

Final Offers:

The final offers of the parties are copied below:

The Employers' Final Offer on wages is:

1. Appendix A Wage Rates

Joint Employers propose the following for the Sheriff Sergeants:

- (a) Effective 12/1/99 5.5% General Wage increase
- (b) Effective 11/30/00 Creation of new D3B pay grade (at approximately 4% above existing D3 salaries) as set forth in Appendix A - 1
- (c) Effective 12/1/00 3% General Wage Increase
- (d) Effective 12/10/01 After the 3% increase, the applicable salary grades and steps shall be increased by two hundred eight dollars (\$208).³
- (e) Effective 11/30/01 1% Special Equity Adjustment
- (f) Effective 12/1/01 3% General Wage Increase
- (g) "Me-Too" Clause If the total Wage increases received by the Cook County Deputy Sheriffs bargaining unit exceeds 4% for fiscal year 2001 (12/01/00 11/30/01) or 3% for fiscal year 2002 (12/1/01 11/30/02), the Deputy Sheriff's Sergeants shall also receive the benefit of any higher

² The Employers rejected that Award and the parties have returned to Arbitrator Meyers for further proceedings. The Employers, though argue that for purposes of this case it does not matter how that proceeding turns out, since by virtue of the "me too" provision contained in its offer, CSD Sergeants will receive the same increases as the Deputies will receive.

³ This was agreed to by the parties as of July 7th, 2001, and is not at issue in this arbitration.

increase or increases at such time that they are implemented. This would include both general increases and any equity adjustments that unit might receive, but excludes the adjustment of D2B grade.

All Wage increases will be effective the first full pay period after the date indicated. In addition, an Appendix A-1 shall be added to the agreement, stating as follows:

Appendix A-1

Effective 11/30/00, all Sergeants assigned to supervise the "street unit" Deputies including Civil Process servers, the Warrants, Levies Evictions Units and the SWAP Units shall be placed on the attached D3B pay plan. These employees shall retain their current step placement and anniversary dates on the D3B pay plan. In other words, a Sergeant who is previously at Step 4 on the D3 pay plan will move to Step 4 of the D3B pay plan and retain the same anniversary date for purposes of future step increases. Likewise, when Sergeants move between the D3 pay plan and the D3B pay plan in the future, they will retain their existing step placement and anniversary dates. Any future movement between the D3 pay plan and the D3B pay plan will be governed by the bidding procedures of the collective bargaining agreement.

Only non-probationary employees assigned to working units on the D3B pay plan shall receive a pay adjustment.

The Union's final offer is:

Effective December 1, 1999	5.5%	across-the-board increase
Effective November 30, 2000	Additional 4.0%	"rank differential" increase
Effective December 1, 2000	6.75%	across-the-board increase (including a 1.25 percent "rank differential").
Effective December 1, 2001	6.75%	across-the-board increase (including a 1.25% "rank differential")

2. Article III Section 3.2: Regular Work Periods

The Employers' Final Offer on Article III, Section 3.2 is:

Joint Employers propose the following revisions to section 13.2 (language to be added in **bold**, language to be deleted is underlined):

Section 13.2 Regular Work Periods

The normal work day shall consist of eight (8) consecutive hours. The normal work week shall consist forty (40) hours in a seven (7) day work week (Sunday through Saturday), with two or more consecutive days off. The Labor Council shall be provided *at least thirty (30) days notice* prior to any proposed change in the hours worked or work schedules from those which exist as of December 1, 1997, and may in the Labor Council's sole discretion, issue a demand to bargain over any such change. In the event no agreement is reached on the contemplated changes in the hours worked or work schedules, the Labor Council reserves the right to move the issue directly to impasse arbitration, pursuant to the provisions of the Illinois Public Labor Relations Act.

However, the Employer reserves the right to adjust the duty hours of employees by up to three (3) hours for operating necessities. The Employer agrees to provide the affected employee with as much notice as possible of the adjustment of hours.

The Unions' Final Offer on Article III, Section 3.2 is that the existing language be retained.

THE POSITION OF THE PARTIES

The Position of the Union:

Wages

With respect to the relevant statutory factors the Union states that both parties are in agreement that Sections 4 and 8 of the Act are the most important factors, namely comparability and general criteria. The Union cites a series of interest arbitration awards in Cook County (see footnote one), and observes that the Employers' proposal leaves the Deputy Sheriffs Sergeants near or at

the bottom of the scale. For this reason, the Employers have all but abandoned reference to external comparability. The Union's final offer does not move the Deputy Sergeants to the top. Rather, it moves them from 25th (out of 26) to 19th after three years. The Employers' final offer moves the Deputy Sergeants to 23rd after three years.

Furthermore, the Union rejects the Employers' use of the City of Chicago for purposes of external comparability. The Union notes that a series of other interest awards have rejected the City of Chicago as an appropriate external comparable. The same result should obtain here.

Internal comparability, the Union submits, is the most relevant factor. In this regard, the Union once again cites the earlier interest awards in which an examination of duties resulted in internal comparability with police and security deputies. Indeed, in 1999 negotiations, the Employers cited internal comparability in their case with Teamsters Local 714 on behalf of its proposal for the CSD Deputies. Thus, the parties have by arbitral fiat or tacit agreement, focused on the internal comparability between the Deputy Sergeants and the Sheriff's Deputies, DOC Officers, and the SPD Police, it is argued.

The Union's analysis of the wage offers results in the conclusion that there is no evidentiary basis to support the creation of a new classification for the Sergeants. The CSD Deputy Sergeants are responsible for prisoner

control, jury and judicial protection, jury transportation and implementation of policies for "high-risk" court cases. They are also summonses, subpoenas, garnishments, forcible and other court-related documents as well as enforcement of execution of Orders of the Court. The recent arbitration award by Arbitrator Meyers involving the D2B classification further undermines the Employers' proposal for a separate classification of D3B which is also premised on the "difference" in duties between "in-house" and "street" Deputy Sheriffs. In support of its contention that there is no meaningful distinction between the street and in-house Deputies, the Union quotes Arbitrator Meyers ("Meyers"):

The panel finds that the Employers' arguments unjustifiably minimize the responsibilities and risks faced by the Deputy Sheriffs in the performance of their duties. Providing courtroom security in Cook County is no easy task. Maintaining safety and control in any civil or criminal courtroom encompasses the need to confront a wide variety of volatile problems, issues, and personalities. A real possibility of danger and harm are present.

(Meyers at pp.14-15)

Furthermore, the Union contends that the Employers' proposal to create a two-tiered pay system would create tensions between Sergeants in the two classifications. In this respect two employees working in the same Department within the Sheriff's Office, both having the same training, uniforms and credentials, would be paid at two different salary rates, providing fertile ground for conflict, dissatisfaction and low morale. The Union further notes that the Employers' proposal makes no provision for movement in or out of the D3B

classification, nor does it address any purported differences in job duties and responsibilities.

The Union further cites examples of two tiered compensation systems in the private sector that it submits have created unwarranted tensions between workers. In addition, the Union cites NALC and US Postal Service, (Stark 1995), in which Arbitrator Stark rejected the bargaining positions of the US Postal Service calling for lower salaries and a two-tiered system for leave. The Union further cites other commentary and critical studies of the effects of two tiered wage systems and notes that a two-tier system was specifically rejected in Cook County and Cook County Sheriff and Teamsters Local 714, L-MA-99-003 (Benn 1999).

Finally, the Union contends that its final offer includes the "rank differential equity adjustment" of 4 percent in the first year and 1.25 percent in years two and three. The Union acknowledges that the Employer attempts to address the rank differential problem, but only with respect to a "favorite group" of Deputy Sergeants who would be eligible for additional compensation by virtue of being placed in a street unit. By contrast, the Union's proposal addresses the rank differential problem but does not discriminate within the bargaining group. Furthermore, the Union observes that the Meyers' award mandating an increase of 5.5 percent per year for the Deputy Sheriff's, will place the Deputy Sergeants in the anomalous position of earning less than

those employees that they supervise. The Union's proposal recognizes the rank differential and preserves it at the current rate for the term of the Agreement.

Scheduling

The Union submits that the Employers have failed to establish any need to change the status quo on this issue. The evidence provided by supervisors for the Employers was merely a "wish list" rather than a demonstration of need. Indeed, the bulk of memoranda submitted by the Employers were created in early August 2001 in preparation for the interest arbitration. No problems or difficulties during the term of the past contract were demonstrated. In fact, during the term of the Agreement not one grievance went to hearing over the issue of a schedule change. The Union has resolved the concerns of the Deputy Sergeants with respect to scheduling as evidenced by the grievance settlement. Moreover the parties executed a Memorandum of Agreement by which a system was implemented to provide ease of shift change. It does not provide for up to three hours change in schedules.

With respect to an internal comparable, the City of Chicago is not an appropriate comparable and such language should not be given any persuasive weight. The appropriate internal comparables are Deputies, SPD

and DOC Officers. Their scheduling provisions do require discussion with the Union prior to implementation of changes.

Finally, the Union is concerned that the Employers' proposal is susceptible to supervisory abuse because it contains no limitations as to how often or how frequently the Employer may make changes to employees schedules. Lacking such restrictions, the Sergeants are at risk for losing the predictability in their schedules that are necessary for commuting and daycare arrangements.

The Position of the Employers

Wages

The Employers argue that their proposal maintains the crucial historical internal parity between the Sergeants and the Deputies that they supervise. The Union's proposal, on the other hand, would fundamentally disrupt this historical relationship. Even if the Deputies ultimately receive the 5.5% increases awarded by Arbitrator Meyers in their interest arbitration, under the Union's proposal Sergeants would receive increases which amount to 9.5%, 8%, and 8%. The Union's "rank differential" argument does not justify these unprecedented and expensive annual increases. There is no justification for the Sergeants to now recover in interest arbitration a differential and wage increases because they failed to self organize and bargain when the Deputies did. The "Me-Too" components of the Employers' final wage proposal will preserve and continue the established pattern no matter what the final outcome may be of the Deputies pending interest arbitration.

In addition to the established parity between Sergeants and Deputies, there is an established hierarchy between the Sheriff's Police, DOC officers, and CSD personnel. Interest arbitrators in numerous previous cases have preserved the established relationship and stated that it is proper for it to be responsible for serving continued. The Union's proposal, by disproportionately

increasing the wages of the Court Services Sergeants would represent the sort of precedent shattering "breakthrough" in established relationships that clearly should be avoided in interest arbitration. Insofar as interest arbitrators have found that all CSD personnel's wages deserve "catch up" somewhat closer to the wages of the Sheriff's Police and DOC personnel, those findings have been limited to cases involving the much larger group of Deputies. There is no precedent or justification for the wages of the smaller Sergeants unit to be increased by even larger amounts.

The Employers further reject the Union's reliance on external comparables. The parties in prior negotiations and one prior interest arbitration deliberately refrained from considering external comparables. This has been the case because it has been recognized that the paramount inquiry concerns the relationship between the supervisors' wages and the employees that they supervise since both groups are unionized. Indeed, supervisors typically are promoted from the ranks of those they supervise. In support of this argument, the Employer cites County of Cook and Sheriff of Cook County and AFSCME Counsel 31, Local 3692 (Fleischli 2000), in which it was recognized that DOC Sergeants are ordinarily promoted from the ranks of the Correctional Officers and that both groups have received identical percentage increases. In that decision, the Arbitrator recognized that to the extent the Correctional Officers received increases that are greater than the county law enforcement

pattern, the increases received would be extended to the Sergeants pursuant to the "Me Too" provision.

With respect to internal comparability, the Employers argue that the rank differential argument has no significance in this case. When a Deputy becomes a Sergeant he/she receives a wage increase of 12 to 13 percent by virtue of moving up two steps in the deputy (D2) grade before being slotted into a step on the Sergeants (D3) grade. Thus, the percentage by which the Deputy's wage increases when he/she becomes a Sergeant is unaffected by the size of the "differential" between the Deputy and Sergeant grades.

The same argument pertains as to the "rank differential" between the street unit D2B and D3B salary grades. If the Arbitrator adopts the Employers' final wage offer, which includes creation of the D3B Grade which parallels the D2Bs the promoted Sergeant will continue to earn at least 12 to 13 percent more as a Sergeant than he/she did as a Deputy prior to promotion. This reality renders the 7.5% a meaningless number and "rank differential" a meaningless concept for these employees. The Union's wage proposal would only give the current CSD Sergeants a much larger percentage increase over the three years of their new agreement than any other Sheriff's Unit will receive. Such a result will threaten the carefully established pattern of wages among all Cook County Sheriffs law enforcement personnel. It will also destroy the

traditional relationship that has been maintained between CSD Deputies and CSD Sergeants.⁴

Scheduling

The Employers maintain that the scheduling proposal affects only minor and minute changes in scheduling of hours of work. Moreover, it contains a reasonable notice provision because it is not always possible or feasible to provide 30-days advance notice of minor changes in scheduling. The Employer itself often gets very little or no notice whatsoever of such changes in operating needs, yet is obliged to respond by statute.

The Union's argument that the Employers proposal is a "breakthrough" in the scheduling provision is flawed. The proposal in no way affects major changes in scheduling and the Union's "evidence" on this point is not relevant because the changes contained therein were drastic or major changes in scheduling of over three hours, involved different days off, or different schedules altogether. Furthermore, prior to 1999, the Sheriff's Office is unaware of any case that the Union has ever challenged any of its scheduling changes even though after that time the issue has been in contention. The Union's suggestion that the Sheriff should be at the mercy of volunteers when

⁴ The Employers note that the Union's proposal will not benefit individuals who are promoted to Sergeant in the future, since their wages as Sergeants will be decided merely by the two-step move within the deputy grade.

attempting to meet its operational needs is impractical. The Sheriff is not capable of running a facility or meeting its statutory obligations in providing security at all times when there are no volunteers. The Union does not address this point.

The Employers further note that the very same issue of hours of work has recently been arbitrated and lost by the Deputies in the 1999 interest arbitration in which the Deputies propose to eliminate contract language that any changes in scheduling be "discussed". The Union's proposal would create the absurd situation where the hours of Deputies can be changed by the Sheriff without the duty to bargain or provide notice, but Sergeants hours of work, which necessarily correlate with Deputies hours, cannot be changed, regardless of how minor the changes are or how little advance notice the Employer itself receives. There is no notice requirement with respect to scheduling the Sheriff's Police Sergeants which affords the Sheriff maximum flexibility in meeting operational needs. Likewise, the Employers' current proposal is very similar to the Chicago police contract but is even more reasonable because the Sheriff is proposing that notice still be provided to Sergeants of any minor changes in hours of work. All of the above comparables involving Deputy Sheriffs, DOC Sergeants, Police Sergeants, and Chicago police officers demonstrate that the Employers have been afforded the

flexibility in scheduling hours of work that it needs, which is much greater flexibility than is requested in the present case.

Discussion and Analysis

Statutory Criteria

Under the Illinois statute, this Panel is required to base its findings, opinions, and order, upon the eight specific factors, as applicable. The Panel received evidence addressed to the "comparability" factor:

- (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.

The parties also referred to:

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

The Panel has reviewed the record with respect to the other six specified factors and finds them not to be dispositive.

Wages

The parties ground rules and stipulations limits the Panel to adopting one or the other party's wage proposal in its entirety. The evidence presented by both parties has focused upon the factor of comparability, primarily internal comparability. The Panel has concluded, based upon the reasons outlined below that the Union's proposal favors the factor of comparability. The Panel first visits internal comparability.

Internal Comparability

As has been recognized by other arbitrators in a series of interest arbitration awards involving the Deputy Sheriffs (see footnote one), a wage gap between Officers in the CSD and those in the SPD and DOC has existed in the past and continues to exist at the present time. Before this Panel, the Employers argue that this gap has been sufficiently narrowed, while the Union argues that it must be compressed further. In this regard the Panel finds that the Employers' reliance primarily on percentages of increase rather than the dollar-to-dollar relationship is somewhat misleading. As the Employers seem to recognize, the percentages are higher because of the cases wherein arbitrators have concluded that the CSD Deputies' wages lagged too far behind the wages of SPD and DOC Officers – particularly when considering the functions performed by "street unit" deputies. The Union's proposal will clearly

serve to reduce, but not eliminate, the wage gap between the CSD Sergeants and their counterparts in the other groups.

Furthermore, there is nothing in the Union's proposal that radically changes the historical pay relationship between the SPD Police, DOC Officers, and CSD Deputy Sergeants. Even under the Union's proposal, this historical relationship, whereby CSD Sergeants rank third on the totem pole, would be maintained.

In a similar vein, the Employers' argument that the "Me Too" language satisfies any Union entitlements here, is misplaced. With all due respect to the conclusions of Arbitrator Fleischli, (*supra*), this Panel is charged by the Illinois Statute to consider the evidence in this record and to render a determination on the merits of the parties final offers under the statutory criteria that has been stated in the Act. To embrace the Employers' argument with respect to the potential benefits of its proposed "Me Too" clause would be akin to abdicating the Panel's statutory function, and place the fate of the parties wage arbitration contingent upon the evidence, arguments, and advocates abilities (and perhaps agenda) of a different bargaining unit, perhaps too, even one represented by a different labor organization.

Typically, a "Me Too" clause results from an "unpublished" *quid pro quo* in negotiations. A Union in a leading position in "pattern negotiations" wants to

ensure that the bargain it is making will not be less than any bargain being fashioned in some other "related" unit's negotiations. "Me Too" "insurance" may be acceptable in such circumstances, but this Panel does not find it appropriate under the criteria we are compelled to follow in fulfilling our responsibilities under the Act.

Looking next at the Employers' contentions that the "rank differential" argument raised by the Union is irrelevant because of the increases in pay that occur when a Deputy is promoted Sergeant. This concept is also rejected by the Panel as not valid. Promotions between the ranks of a unit serve a different purpose and function than annual pay increases within a given rank. Any individual pay increase resulting from a promotion represents compensation for additional duties, skills, and responsibilities. If the Employers' argument were adopted here, it would result in promotions to pay grades that would remain stagnant. Over time this would become a disincentive to Deputies seeking advancement through promotion. The evidence established that the Union's proposal will maintain the existing differential whereas the Employers' proposal would only serve to exacerbate compression between the two pay scales. Indeed, the Employers' proposal could result in the anomalous situation where the Sergeants could earn less than the Deputies that they supervise.

Although the Employers' acknowledge the existence of the rank differential issue, they seek to resolve it only with respect to Sergeants assigned to the CSD street unit. The Panel, based upon the evidence presented, concurs with the conclusion of Arbitrator Meyers that the functions of in-house personnel are not so different with respect to the risk of danger so as to justify the creation of a two-tiered bargaining unit for street and in-house Sergeants:

Providing courtroom security in Cook County is no easy task. Maintaining safety and control in any civil or criminal courtroom encompasses the need to confront a wide variety of volatile problems, issues and personalities. A real possibility of danger and harm are present.

(Meyers at p.15)

Nor is there any evidentiary basis on which to conclude that there are any meaningful differences in qualifications, training, risk or stress between the two groups.

External Comparability

The Panel has also concluded that the external comparables presented by the Union favor its proposal. Significantly, the Employer does not argue that the jurisdictions presented by the Union are not comparable but rather that external comparability is not relevant because the parties did not rely on this factor in their prior 1998 interest arbitration. Nonetheless, external comparability is a factor that the statute mandates this Panel to consider when

raised. These same jurisdictions have been relied upon in a series of arbitration awards involving the Deputy Sheriffs. (See footnote one). The Employer has offered no persuasive reason why the Panel should ignore the salaries for sworn, uniformed officers in other major metropolitan areas as a comparable, other than the fact that this issue was not raised by the parties in their earlier interest arbitration. The Panel is unwilling to embrace this reasoning in this case.

An analysis of these other jurisdictions of salary comparisons of uniformed officers in comparable districts reveals that the need for "catch up" remains. The Employers' proposal would leave the Deputy Sergeants 23rd out of 26 with respect to minimum salaries whereas the Union's proposal would move them to 19th. The Union's proposal more nearly comports with the factor of external comparability, than does that of the Employers.

Conclusion on Wages

In sum, the Panel has concluded that the Union's proposal favors the statutory factor of internal and external comparability, the factors to which both parties tailored their evidence. There was little or no mention of the County's ability to pay, so this factor does not warrant a different result. Nor was there evidence to suggest that the public interest and welfare would not be served by

granting the Union's proposal. As a result, the Panel is obligated to adopt the Union's final proposal on wages.

Scheduling

The Employers propose the elimination of the 30-day notice provision with respect to scheduling changes of three hours or less. The Union's proposal seeks to maintain the status quo. It is well-established that the party wishing to alter the status quo bears the burden of proving the need for such change. In addition, it must be established that the proposal meets the need without imposing undue hardship on the other party, that there has been a sufficient quid pro quo offered to the other party to buy out the change, or that the Employers were able to achieve this position with a comparable group without the quid pro quo. The Employers have not met this burden.

The thrust of the Employers' evidence is merely that of administrative convenience. Although there was evidence that the Sheriff desired short-notice scheduling, there was no credible evidence that the existing requirement for negotiation and notice had created any actual identifiable hardship on the Employers. It was established that short-notice scheduling had been accommodated through the use of volunteers. Absent an evidentiary showing of the real need for scheduling relief, the Employer has provided the Panel with

no basis for adopting a departure from the status quo, which, of course, had ought to continue adequate accommodation through the use of volunteers.

And, the fact that the Employers have obtained more liberal provisions with other comparable bargaining units agreements is not sufficient in the absence of a showing of the circumstances under which these provisions were achieved. It will not be assumed that they were negotiated without some quid pro quo from the Unions. Two of the three provisions do provide for notice to the Union, albeit without the 30-day requirement.

Finally, the Employers argue that failure to adopt their proposal will create the anomalous position whereby the Employers will have unfettered flexibility to schedule the Deputies but will be restricted with the 30-day notice for the Sergeants who supervise them. The fact that such language resulted from an interest arbitration with another bargaining unit does not permit this Panel to impose a departure from the status quo under the criteria set forth in the Illinois Statute.

Conclusion on scheduling

Simply put, the Employer has failed to meet the elements provided by the Statute for this Panel to award a departure from the status quo. Accordingly, the Union's proposal on Article 13, Section 13.2 is adopted.

AWARD

The evidence of record considered by the Panel establishes that the Union's proposal more nearly complies with the applicable factors prescribed in Section 14(h) of the Illinois Public Employees Labor Relations Act. By a majority vote, the Panel adopts the Wage proposal and the Scheduling proposal of the Union.

Date _____
John C. Fletcher, Neutral Arbitrator

Concurring

Date _____
David W. Wickster, Union Delegate

Dissenting

Date _____
John G. Kalchbrenner, Employer Delegate
Cook County, Illinois - January 30, 2002

**INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD**

**JOHN C. FLETCHER - NEUTRAL CHAIRMAN
JOHN G. KALCHBRENNER - EMPLOYER DELEGATE
DAVID W. WICKSTER - UNION DELEGATE**

**The Illinois Fraternal Order of Police
Labor Council**

and

**County of Cook, Illinois/Sheriff of Cook County
Joint Employers**

**ISLRB No. L-MA-01-002
Deputy Sheriff Sergeants
Court Services Department**

SUPPLEMENTAL DECISION

Procedural Background

This supplemental arbitration proceeding was convened pursuant to the provisions of Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315 (“the Act”). The parties in this proceeding are the County of Cook and the Sheriff of Cook County as Joint Employers (“the Joint Employers”) and the Illinois Fraternal Order of Police Labor Council (“the Union”). The dispute in this matter originally was submitted to arbitration as the result of an impasse in the parties’ negotiations to reach terms on a new collective bargaining agreement (“agreement” or “contract”) in the Joint Employers’ deputy sergeants bargaining unit (“the sergeants”).

Relevant Statutory Provisions

**ILLINOIS PUBLIC LABOR RELATIONS ACT
5 ILCS 315/1 et seq.**

Section 14. Security Employee, Peace Officer and Fire Fighter Disputes

(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel

shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) The Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet these 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.

(a) All of the terms decided upon by the arbitration panel shall be included in the agreement to be submitted to the public employer's governing body for ratification and adoption by law, ordinance or the equivalent appropriate means.

The governing body shall review each term decided upon by the arbitration panel. If the governing body fails to reject one or more terms of the arbitration panel's decision by a 3/5 vote of those duly elected and qualified members of the governing body, within 30 days of issuance, such term or terms shall become a part of the collective bargaining agreement of the parties. If the governing body affirmatively rejects one or more terms of the arbitration panel's decision, it must provide reasons for such rejection with respect to each term so rejected, within 20 days of such rejection and the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision with respect to the rejected terms. Any supplemental decision by an arbitration panel or other decision maker agreed to by the parties shall be submitted to the governing body for ratification and adoption in accordance with the procedures and voting requirements set forth in this Section. The voting requirements of this subsection shall apply to all disputes submitted to arbitration pursuant to this Section notwithstanding any contrary voting requirements contained in any existing collective bargaining agreement between the parties.

(o) If the governing body of the employer votes to reject the panel's decision, the parties shall return to the panel within 30 days from the issuance of the reasons for rejection for further proceedings and issuance of a supplemental decision. All reasonable costs of such supplemental proceeding including the exclusive representative's reasonable attorney's fees, as established by the Board, shall be paid by the employer.

Relevant Rule Provisions

**RULES AND REGULATIONS
ILLINOIS STATE LABOR RELATIONS BOARD**

Section 1230.90. Conduct of the Interest Arbitration Hearing

f) THE ARBITRATION PANEL MAY ADMINISTER OATHS, REQUIRE THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, CONTRACTS, AGREEMENTS AND DOCUMENTS AS MAY BE DEEMED BY IT TO BE MATERIAL TO A JUST DETERMINATION OF THE ISSUES IN DISPUTE (Ill. Rev. Stat. 1985, ch. 48, par. 1614(e)).

Section 1230.110. Employer Review of the Award

a) ALL OF THE TERMS DECIDED UPON BY THE ARBITRATION PANEL SHALL BE INCLUDED IN AN AGREEMENT TO BE SUBMITTED TO THE PUBLIC EMPLOYER'S GOVERNING BODY FOR RATIFICATION AND ADOPTION BY LAW, ORDINANCE OR EQUIVALENT APPROPRIATE MEANS. (Ill. Rev. Stat. 1985, ch. 48, par. 1614(n)).

c) The governing body may reject any terms of the award BY A THREE-FIFTHS VOTE OF THOSE DULY ELECTED AND QUALIFIED MEMBERS OF THE GOVERNING BODY. (Ill. Rev. Stat. 1985, ch. 48, par. 1614(n)). Such rejection vote must occur within 20 days after the service of the award. The governing body shall provide written reasons for its rejection and shall serve those reasons on the parties and the neutral chairman no later than 20 days after the rejection vote. The governing body shall file a copy of its reasons and certification of service with the Board. The reasons for rejection shall be considered issued on the date that they are served on the neutral chairman.

e) The neutral chairman shall call together the panel and convene a supplement interest arbitration hearing within 30 days after issuance of the reasons for rejection. The supplemental hearing shall be conducted in accordance with Section 1230.90 of this Part.

Final Offers

At the time of submitting their dispute to arbitration, the parties stipulated that the only matters which separated them were wage increases for fiscal years 2000, 2001 and 2002, and the scheduling of work hours as set forth in the contract at Article 13, Section 13.2 Regular Work Periods.¹

¹ As set forth in the record, the award incorrectly notes in its preliminary statement of facts that the impasse herein covers wage rates for fiscal years 1999 through 2001. There being no objection, and in accordance with the submissions and stipulations of the parties, the award is amended to reflect that the wage increases provided therein pertain only to the fiscal years 2000 through 2002. As set forth in more detail in this Supplemental Decision, the award in all other respects is affirmed.

The parties further stipulated that their respective wage offers constitute indivisible "packages" for contractual purposes, and must be accepted or rejected on that basis for purposes of arbitration. There being no objection to that part of our original award which pertains to the scheduling of work hours, the parties' respective final offers on wages and related matters included the following:

The Joint Employers' Final Offer

- (A) Effective 12/01/99, a general wage increase of 5.5 per cent per year;
- (B) Effective 11/30/00, a new D3B pay grade, at approximately 4 per cent above existing D3 salaries, as set forth in Appendix A-1.
- (C) Effective 12/01/00, a 3 per cent general wage increase;
- (D) Effective 12/10/00 and after the 3 per cent general increase, an increase of \$208.00 in applicable salary grades and steps;
- (E) Effective November 30, 2001, a special equity adjustment of one per cent;
- (F) Effective December 1, 2001, a 3 per cent general wage increase; and
- (G) Inclusion of a "me-too" clause whereby CSD sergeants shall receive the benefit of any wage increase(s) for deputies that 4 per cent for fiscal year 2001 or 3 per cent for fiscal year 2002.²
- (H) In addition, the Joint Agreement shall include an Appendix A-1 providing that: (1) effective November 30, 2000, all sergeants assigned to the supervision of "street unit" deputies shall be placed on the D3B pay plan; (2) all sergeants who supervise "street unit" deputies and are placed on the D3B pay plan shall retain their existing step placement and anniversary dates; and (2) sergeants who move between the D3 and D3B pay plan in the future shall also retain their existing step placements and anniversary dates. Only

² As noted in our award, the parties agreed to Item (D) above, on July 7, 2001. This item therefore is not at issue in the present arbitration.

non-probationary employees assigned to work units on the D3B pay plan shall receive a pay adjustment.

The Union's Final Offer

- (A) Effective December 1, 1999, an across-the-board increase of 5.5 per cent;
- (B) Effective November 30, 2000, additional "rank differential" of 4.0 per cent;
- (C) Effective December 1, 2000, an across-the-board increase, including a 1.25 per cent "rank differential," of 6.75 per cent; and
- (D) Effective December 1, 2001, an across-the-board increase including a 1.25 per cent "rank differential," of 6.75 per cent.

The Award

Pursuant to the submission of the dispute to arbitration, a hearing was held in Chicago, Illinois on August 23, 2001. At this hearing, all parties were represented by counsel and were afforded an opportunity to present oral and written evidence, examine and cross-examine witnesses, and make such arguments as they deemed pertinent. Post-hearing briefs were filed with this Arbitrator and exchanged on December 21, 2001. The record was thereupon closed on that same date.

On January 30, 2002, this arbitration Panel ("Panel") issued an award adopting the wage and scheduling proposals of the Union. In this award, our Panel found that the Union's proposals more nearly complied with the applicable factors prescribed in Section 14, subsection (h), of the Act. More specifically, the award found that a pay gap continues to exist among the different units in the Sheriff's Office of Cook County ("Sheriff's Office"), that this pay gap continues to work to a significant disadvantage on the deputy sergeants in comparison to the pay rates in other departments of the

Sheriff's Office, and that the Union's final offer more closely reflects the current trend of arbitrators in favor of reducing the gap without eliminating or radically changing the historical pay relationships between the various departments in the Sheriff's Office. In addition, the award found that the Union's offer also would be better able to close what this Panel deemed to be a further significant gap between the sergeants' pay and the compensation of sworn and uniformed officers in comparable metropolitan areas.

Rejection of the Award

Pursuant to Section 14(h), subsection (n), the Joint Employers gave written notice to this Arbitrator on February 26, 2002 that their governing body, the Board of Commissioners of Cook County, had rejected the Panel's award at a meeting which was held on February 7, 2002. The Joint Employers' notice set forth the following reasons for rejecting the award:

- I. The percentage wage increases that are granted to bargaining unit sergeants as a result of the award are much larger than the percentage increases in bargaining units which represent the Joint Employers' other law enforcement employees, and therefore conflict with "a well-established pattern of the Joint Employers' law enforcement employees receiving roughly the same percentage increases each year."
- II. The award incorrectly looks at prior wage increases primarily in dollar rather than percentage terms and thus makes the erroneous finding that "the much larger percentage wage increases that the Deputies and Sergeants have received during the past several years have not brought them meaningfully closer in compensation to the Sheriff's Police and Correctional Officers."
- III. The award "fails to give due recognition to the collectively bargained creation of a new and higher paid classification of the Deputies who perform 'street unit' functions, and unjustifiably refuses to create a parallel classification for the Sergeants as proposed in the Joint Employers' wage offer."

IV. The award "gives improper weight to data supposedly reflecting the wages of 'externally' comparable employees, even though the parties historically have ignored external comparables in setting the Sergeants' wages."

V. The award erroneously finds that the Joint Employers' "proposal would . . . exacerbate compression between the two pay scales' and 'could result in the anomalous situation where the Sergeants could earn less than the Deputies that they supervise."

Pursuant to the above notice, a supplemental hearing was held on April 15, in offices of the counsel for the Joint Employer, Suite 2002 at 123 North Wacker Driver, Chicago, Illinois. In accordance with the procedures which were established at the initial hearing, both parties appeared through counsel and were afforded an opportunity to present oral and written evidence, examine and cross-examine witnesses, and make such arguments as were deemed pertinent. (The Union delegate was not present, however all parties waived his appearance and the Joint Employer agreed to proceed without his attendance. (Tr. 4))

Factual Background

As previously set forth in our award, the Union represents a bargaining unit which includes about 120 deputy sergeants who supervise approximately 1600 deputy sheriffs ("deputies") in the Joint Employers' Court Services Department ("CSD"). Sergeants and deputies are responsible for providing court security functions and performing related "street unit" functions such as serving summonses and executing upon warrants and writs of eviction. For purposes of collective bargaining, the sergeants have been organized since 1994 and the deputies have been organized in a separate bargaining unit since the late 1980's. As discussed in more detail below, the deputies recently were awarded a wage increase in the interest arbitration proceeding

that was chaired by Arbitrator Peter Meyers. (*International Brotherhood of Teamsters, Local Union No. 714, and The County of Cook and Sheriff of Cook County, L-MA-01-001 (Meyers 2002)*)

CSD is one of three departments in the Sheriff's office, which also includes the Sheriff's Police Department ("SPD") and the Department of Corrections ("DOC"). Historically, compensation in the Sheriff's Office has been based on a three-tier hierarchy that is structured along departmental lines. Within this hierarchy, SPD employees received the highest level of wages and DOC employees receive the next highest level. CSD employees traditionally have occupied the third and lowest rung in the hierarchy, although a series of interest arbitration awards since 1995 have found the wages in CSD to be excessively low in comparison to wages in the other two departments. As a result of these awards, CSD deputies have received a series of increases in recent years that were greater than those provided other bargaining units. (*See Cook County and Cook County Sheriff & Teamsters Local 714, L-MA-95-001 (Goldstein 1995); Cook County and Cook County Sheriff & Teamsters Local 714, L-MA-97-006 (Berman 1997); Cook County and Cook County Sheriff & Teamsters Local 714, L-MA-99-003 (Benn 1999).*)

During the five-year period prior to the dispute herein, the sergeants received a series of wage increases which were equal those that were awarded to the deputies during the same period. From fiscal year 1995 through fiscal year 1999, both deputies and sergeants received increases of 6.5 per cent, 6.0 per cent, 5.0 per cent, 5.5 per cent and another 5.5 per cent, for a total of increase of 28.5 per cent over the aforesaid period. During that same period, both officers and sergeants in the SPD and DOC units

received increases of 4.5 per cent, 3.0 per cent, 4.0 per cent, 3.5 per cent and 4.0 per cent, for a total increase of 19.0 per cent.

The increases that the CSD deputies received in fiscal years 1998 and 1999 were granted under the terms Arbitrator Edwin Benn's 1999 award cited above. As part of this award, Arbitrator Benn also granted a further increase of 5.5 per cent for the deputies to cover fiscal year 2000. Although this award initially was rejected by the County, the parties subsequently agreed to accept it on the basis of further negotiations that led to the creation of a separate grade, designated as D2B, for those individuals who were assigned to work as "street unit" deputies. Based on a new wage scale for the D2B classification that was set at four per cent above the existing wage scale for deputies, employees in this new grade effectively received a total wage increase of 9.5 per cent for fiscal year 2000. For fiscal years 2001 and 2002, the award and supplemental decision of Arbitrator Peter Meyers cited above granted increases of 5.5 per cent to the deputies in each of those two years.

Position of the Parties

Position of the Joint Employers

The Joint Employers take the position that the award in this matter must be set aside on the ground that this Panel "has adopted a proposal on wages that not only is grossly excessive and unsupported by the record but also is inconsistent with Section 14 of the Illinois Public Labor Relations Act ("Act"), 5 ILCS 315/14." The Joint Employers argue that "rather than properly applying the statutory interest arbitration criteria in selecting between the parties' wage proposals, the Award gives the Court Services Sergeants wage increases that defy 'comparison . . . with the wages . . . of

other employees performing similar services [and] with other employees generally' " under Section 14(h) of the Act. Further, the Joint Employers contend that the award "ignores the fact that the 'overall compensation presently received by the [Sergeants]' has not just kept pace with, but has increased at two-and-one half times the rate of increase in, the Consumer Price Index" (Jt. Er. Supp. Br. at 1-2).

With respect to the standard of review that should be applied in the present proceedings, the Joint Employers take the position that this Panel should consider both the original record and additional exhibits that were presented at the supplemental hearing, as well as further evidence from the interest arbitration before Arbitrator Meyers in the deputies' unit. The Joint Employers contend that these materials will rebut the evidence which the Union presented at the original hearing to show the existence of a wage gap between the deputies and the sergeants. The Joint Employers maintain that their evidence will demonstrate how much this gap "actually has diminished."

In support of their evidence, the Joint Employers cite Section 1230.110(e) of the Rules and Regulations of the Illinois State Labor Relations Board ("the Board"), which provides that a supplemental interest arbitration hearing shall be conducted in accordance with Section 1230.90 of the same regulations. As set forth above, Section 1230.90 broadly provides, in relevant part, that an arbitration Panel is authorized to ask for the "attendance of witness and the production of books, papers, contracts, agreements and documents as may be deemed by it to be material to a just determination of the issues in dispute." The Joint Employers assert that a review and consideration of their evidence would be "clearly permissible" under Sections 1230.90 and 1230.110 (Jt. Er. Supp. Br. at 3-4).

The Joint Employers also rely upon an award by Arbitrator Martin Malin which broadly concluded and found that "presenting evidence at a supplemental proceeding to point out the errors in the Panel's award, or to explain the employer's grounds for rejecting the award, is quintessentially proper in such a proceeding under Section 14." (Jt. Er. Supp. Br. at 4, citing *Illinois Fraternal Order of Police Labor Council and Village of Fox Lake*, Case No. S-MA-98-122 (Malin 1999).) While acknowledging that this finding might not be pertinent in those supplemental proceedings where the employer is attempting to produce new evidence in support of a new or revised final offer that was not presented at the original arbitration hearing, the Joint Employers assert that they "have not attempted to present a new or revised wage offer" and that any awards that might apply to that particular fact pattern are not applicable herein. (Jt. Er. Supp. Brief at 4, citing *Village of Westchester and Illinois Fraternal Order of Police Labor Council, Lodge N. 21*, Case No. S-MA-90-167 (Briggs 1991); *Peoria County and Council 31 of the American Federation of State, County and Municipal Employees*, Case No. S-MA-10 (Sinicropi 1986); and *Teamsters Local Union No. 714 and County of Cook and Sheriff of Cook County*, Case No. L-MA-95-001 (Goldstein 1995).)

With regard to the substantive issues in the matter, the Joint Employers take the further position that the award "is palpably wrong" on its merits because it "breaks the traditional parity of increases between the sergeants and deputies for no reason, and gives the sergeants much larger increases than any internally comparable unit." (Jt. Er. Supp. Br. at 6.) The Joint Employers contend there is no basis for our finding that analyzing increases in percentage terms could be "misleading, and that it is a percentage rather than a dollar analysis which constitutes the most accurate measure of parity between different wage rates over time. (Jt. Er. Supp. Br. at 17-18.) Anticipating that we may have relied on language in the initial award of Arbitrator Meyers' panel

"encouraging an absolute dollar analysis of the 'wage gap,'" the Joint Employers maintain that a number of other arbitrators, including Arbitrator Elliott Goldstein in a 1995 award in the deputies' unit, "have convincingly rejected such a notion." Based on Arbitrator Goldstein's award, the Joint Employers suggest that the better practice is for arbitrators to refrain from "altering too significantly the pattern of same-percentage increases" among the Sheriff's various units "absent truly compelling reasons." (Jt. Er. Supp. Br. at 19-20.)

From this perspective, the Joint Employers contend that the sergeants and deputies have, in fact, "maintained a relationship of exact parity in annual percentage wage increases" and that our award will have the effect of breaking that parity and making the margin between the two groups so small that there will be a "radical change" in the "historical pay relationship" between those groups. (Jt. Er. Supp. Br. at 7.) More specifically, the Joint Employers note that under Arbitrator Meyers' award in the deputies' unit, annual increases for the period from 2000 through 2002 will be limited to an annual fixed rate of 5.5 per cent, for a total of 16.5 per cent over the three years covered by that award. In comparison, the sergeants' annual rate on increase under the award herein will range from 6.75 to 9.50 per cent, for a total of 23.0 for the same period of time. The Joint Employers further note that our award will thus grant annual increases to the sergeants amounting to "almost *half again as much* as the Deputies' increases." (Jt. Er. Supp. Br. at 8.)

Conversely, the Joint Employers argue that under the "me-too" provision in their offer, "the sergeants would again, as they have historically, receive exactly the same percentage increases as the deputies" have received. Further, the Joint Employers contend that this provision would work indirectly to keep the sergeants' pay in line with

the pay rates in the other Sheriff's Department units as well. In this regard, the Joint Employers point to evidence showing that in 2000 and 2001, correctional and police officers in the Sheriff's office received total increases of 6 and 8 per cent, or only about 40 to 50 per cent of what the sergeants would receive during that same period under the Panel's award. The Joint Employers thus conclude that even if their offer was adopted, the sergeants' total increase of 11 per cent in 2000 and 2001 would still be "substantially larger than the increases of the Police and Correction units, but not nearly so far out of line" as to disturb the historical relationship between the sergeants' compensation and the compensation of correctional and police officers. (Jt. Er. Supp. Br. at 9-10.)

In addition, the Joint Employers contend that the award as it presently stands also will negate certain historical patterns within the sergeants' unit. Based on data from Volume 1, Tab 11 of the Union's exhibits, the Joint Employers calculate that the 1996 pay rate of the sergeants was equal to 80.3 of the rate for correctional sergeants, and that the pay of the correctional sergeants was equal to 77 per cent of the police sergeants' pay. According to the Joint Employers' interpretation of the same data, the sergeants' pay in 1999 was still no greater than 84 per cent of what was being paid to correctional sergeants, who still received 77 per cent of what was being paid to the police sergeants. According to the Joint Employers, the present award will disrupt this asserted pattern and will result in the sergeants' pay growing to almost 95 per cent of what the correctional sergeants will be earning by the end of fiscal year 2002, with almost no corresponding decrease during that period in the gap between the pay of the correctional and police sergeants. The Joint Employers thus claim that the award will turn what formerly was a moderate and gradual merging of the sergeants' pay rates into a "wrenching acceleration of that pattern" at the expense of the "historical relationship" between those rates. (Jt. Er. Supp. Br. at 10-14.)

The Joint Employers argue that Arbitrator Meyers and others have been able to award increases that have narrowed the gaps without producing the "wrenching" effects that the present award allegedly will produce. Based on their analysis of the increases in the Meyers award and data from Tab 2 of their supplemental exhibits, the Joint Employers estimate that "the Deputies' wages have closed from about 82 per cent of Correctional Officers wages in fiscal year 1996 to about 90 percent of Correctional Officers wages in the current 2002 fiscal year." In comparison, it is anticipated that our award would raise the sergeants' pay to 95 per cent of the correctional sergeants' pay, which in the Joint Employers' view would "go far beyond anything that the other arbitration awards have done in the case of the Deputies." (Jt. Er. Supp. Br. at 14-16.)

To avoid this result, the Joint Employers see a "me-too" provision as a useful device that would limit the sergeants' increases while simultaneously guaranteeing that the sergeants would receive no less than the equivalent of any increases that might be granted to the related group of employees who they supervise. The Joint Employers contend that any reason for objecting to a "me-too" provision during the pendency of the deputies' dispute has now been removed by the award of the Meyers panel. Based on that award, the Joint Employers argue that for the sergeants to now receive the increases that were awarded to the deputies "is not only consistent with applicable precedent but will again assure the same parity percentage increases between the Deputies and Sergeants as has always been obtained ever since they both have been bargaining." Further, the Joint Employers assert that support for a "me-too" provision can be found in the correctional sergeants award that was issued by Arbitrator George Fleischli in 2000. (Jt. Er. Supp. Br. at 21.)

The Joint Employers also argue that this Panel did not have adequate grounds for finding that their proposal to create a separate classification and pay grade for "street unit" sergeants would create a "two-tiered compensation system" among the sergeants and thereby provide "fertile ground for conflict, dissatisfaction and low morale." (Jt. Er. Supp. Br. at 21, citing award at page 10.) As a preliminary matter, the Joint Employers contend that because the Union allegedly did not challenge their proposal for a new classification in the original hearing, they (the Joint Employers) had no opportunity prior to the issuance of the award to show that the classification will not lead to a two-tiered system.

In fact, according to the Joint Employers, the creation of a "street unit" classification would not and could not lead to a two-tiered system inasmuch as the sergeants who would be placed in this classification work in a community setting and perform duties that differ from those performed by sergeants who work in court facilities. For a two-tiered system to exist, the Joint Employers argue, there must be evidence that two groups of employees perform the same type of work but are paid at different wage rates. The Joint Employers thus claim that in the absence of any such evidence in the present matter, the creation of a street classification in the deputies' unit justifies the creation of a parallel classification in the sergeants' unit for the purpose of maintaining wage parity between the two groups. (Jt. Er. Supp. Br. at 22-23.)

In addition, the Joint Employers argue that this Panel erred by relying on "rank differential compression" as a further basis for awarding "radically large increases for the Sergeants." The Joint Employers claim in this regard that we failed to give adequate consideration to evidence showing that such compression has no practical effect on, and is irrelevant to, the rate of pay that a deputy receives upon promotion to

the rank of sergeant. (Jt. Er. Supp. Br. at 23.) More specifically, the Joint Employers take strenuous exception to our finding that the "Union's proposal will maintain the existing differential whereas the Employers' proposal would only serve to exacerbate compression between the two pay scales ... [and] could result in the anomalous situation where the Sergeants could earn less than the Deputies that they supervise." "Inasmuch as their proposal would increase the sergeants' pay "in exactly the same percentages as the Deputies' rates," the Joint Employers contend that there is no basis for our findings and that their proposal will not result in any "compression" of the wage scales, even if such compression were a relevant consideration." (Jt. Er. Supp. Br. at 27.)

If anything, assert the Joint Employers, it is our award and not their proposal that will compress wage differentials and discourage more senior deputies from seeking promotion to the rank of sergeant (Jt. Er. Supp. Br. at 27.) As the process is described by the Joint Employers, a deputy who receives a promotion to the rank of sergeant is entitled under the County's promotion policies and practices to be advanced "two steps laterally along the deputy scale," and then placed at that step in the sergeant's scale which is closest to, but not less than, the step that the deputy held after being advanced in the deputies' scale. (Jt. Er. Supp. Br. at 23-24.) Based on their analysis of the deputies' pay scale as it appears with the increases from Arbitrator Meyers' award included, the Joint Employers conclude that the only employees who will "universally benefit" from the Union's proposal in the present matter are the incumbent sergeants. Allegedly, the benefits of that proposal will not "translate into consistently better pay for those who become sergeants in the future." In the opinion of the Joint Employers, "some individuals promoted under the new scale may do better in the size of their

promotional increases than they would have otherwise but others clearly will do less well.” (Jt. Er. Supp. Br. at 27.)

Lastly, the Joint Employers claim that it was inappropriate for a number of reasons to consider the Union’s data on external comparables in making our award. On historical grounds, the Joint Employers claim that because the parties previously agreed to exclude data on external comparables from their only prior interest arbitration, and have not affirmatively revoked that agreement since then, there is no precedent or basis in the parties’ bargaining history for relying on such data now. On statutory grounds as well, the Joint Employers claim that while “Section 14(h) of the Act makes the compensation received by other comparable employees one of the most influential factors to be used by interest arbitrators, it does not specifically mandate considering external comparables in all cases.” (Jt. Er. Supp. Br. at 28.)

Conversely, the Joint Employers take the position that even if there is a legal or historical basis for considering external comparables, there would still be a serious problem in correctly identifying the employees in other jurisdictions who perform services that are “similar” to those performed by the sergeants. The Joint Employers claim in this regard that the same type of courtroom security work which is assigned to the deputy sergeants and deputies in Cook County is performed in “several other jurisdictions” by sheriff’s police officers who also have other duties which overshadow their “court security assignments.” In the purported absence of any reliable or legally recognizable data on external comparables, the Joint Employers argue that consideration of this factor must be governed by the principle that where “an interest arbitration involves how to properly compensate a relatively small group of employees who are promoted from and supervise a much larger group of employees, internal wage

comparability with the unit of their subordinates is, inherently, much more paramount than any external comparability.” The Joint Employers observe that this principle previously has appeared in the awards of Arbitrator Fleischli and others. (Jt. Er. Supp. Br. at 29.)

Position of the Union

The Union takes the position that “the Joint Employers’ reasons for rejecting the Award . . . are in error on each count.” Based on the standard established in prior supplemental proceedings, the Union contends that the Joint Employers must show that the award in this matter is the result of “significant error” or will result in “extraordinary hardship.” Absent such a showing, the Union argues, the award should not be disturbed. (Un. Supp. Br. at 4, citing Arbitrator Sinicropi in *Peoria County and Council 31 of the American Federation of State, County and Municipal Employees, supra*; Arbitrator Briggs in *Village of Westchester and Illinois Fraternal Order of Police Labor Council, Lodge N. 21, supra*; and Arbitrator Malin in *Illinois Fraternal Order of Police Labor Council and Village of Fox Lake, supra*.)

Pursuant to this standard, the Union takes the further position that the Joint Employers have offered no evidence of any budget shortfall or other circumstances that make them unable to pay the increases set forth in the award, or any other evidence that establishes “manifest error” or “undue hardship” in the award. (Un. Supp. Br. at 5.) Rather, the Union contends that the Joint Employers have merely used the present proceedings to assert the same positions and arguments that they previously advanced at the initial hearing. (Un. Supp. Br. at 3-5.)

Alternatively, the Union contends that even if the Joint Employers' evidence is sufficient to warrant a full review of the award on its merits, this evidence still would not provide sufficient grounds for setting the award aside. With regard to the issue of pay comparability, the Union argues that the Joint Employers have failed to show that a comparison of percentage pay increases is more accurate than a comparison of "dollar to dollar" increases. Un. Supp. Br. at 6-7. Further, the Union points to Arbitrator Meyers' comments in his supplemental decision questioning whether it is even appropriate to frame the issue in percentage terms any longer in view of the fact that percentage increases have now become both the tool for measuring wage gaps in the Sheriff's Office and the tool for rectifying those gaps, much like a mirror looking at itself. (Un. Supp. Br. at 10-11, citing *Teamster Local Union No. 714 (Meyers)*, *supra*, at pages 13-14.)

Similarly, the Union opposes the Joint Employers' position on the street unit classification. The Union maintains that the Joint Employers have presented no evidence in either the present or the prior proceedings to establish that any sergeants perform only "street" duties on a routine basis. Further, the Union contends that it also is relevant that there has never been any bargaining between the parties on this issue, and that any bargaining with the deputies' unit did not take place until the Joint Employers presented a "street unit" proposal to the deputies on the night before their interest arbitration hearing in that matter. Moreover, the Union asserts that the deputies eventually agreed to the proposal only because they were operating at that point "under the burden of the Joint Employers' rejection of their initial Award." (Un. Supp. Br. at 7-8.)

Finally, the Union claims that the Joint Employers have merely argued "factual questions [they] raised, or should have raised, at the initial hearing." (Un. Supp. Br. at 9.)

Discussion

Standard of Review

As set forth above, the Joint Employers take the position that under the standard set forth in Arbitrator Malin's *Fox Lake* award, *supra*, supplemental proceedings do not require the same showing of "arbitrary, capricious or manifest injustice" that would be required by a court. Rather, say the Joint Employers, a supplemental proceeding must be open to "any evidence that sheds light on the employer's reasons for having rejected the award." Absent the introduction of new or different issues, an employer need only show that the award is "wrong." If it is, the Panel should be free to correct its error. (Tr. 8-9.)

As further set forth above, the Union opposes this standard and takes the position that under the standard set forth in a number of other awards, including the 1986 *Peoria* award of Arbitrator Sinicropi, *supra*, an award cannot be set aside absent a showing of "extraordinary hardship and/or significant error." (Tr. 81.) The Union argues that the Joint Employers have not met this standard beyond showing that they simply do not like the award, which is not a sufficient basis in the Union's view to set the award aside. (Tr. 82, 88-89.)

Upon careful consideration of the authorities cited by the parties, we find that we are unable to adopt the standard of review that has been proposed by the Joint Employers. As a preliminary matter, we must question the utility of any standard which

merely calls for the Panel to determine whether the award is "wrong." Had we believed that the award in this matter was wrong, we clearly would not have made it in the first instance. In our opinion, a standard of review must provide a more workable set of criteria for determining whether an award should be affirmed or set aside. The Joint Employers' proposed standard here contains no criteria whatsoever.

Moreover, we believe that the Joint Employers' reliance on the *Fox Lake* award is somewhat misplaced. Based on our careful review of that award, we find nothing therein which clearly establishes, or even suggests, that the employer in a supplemental proceeding is required to do nothing more than show that the award is "wrong." Rather, it is clear to us that Arbitrator Malin simply stated in *Fox Lake* that because the provisions for judicial review of an award under Section 14(k) of the Act are not applicable to supplemental proceedings under Section 14(h), an employer is free to reject an award in a supplemental proceeding without alleging the specified grounds for review which must be set forth under Section 14(k). Again, to say that an employer need not allege these grounds is quite different from saying that the employer need only prove that the award is wrong.

Further, Arbitrator Malin emphasized in *Fox Lake* that the more rigorous standard of review which was adopted by Arbitrator Sinicropi in the *Peoria* award was not to be "dismissed lightly." In accordance with that admonition, we must conclude that the Joint Employers' interpretation of the *Fox Lake* award is overly broad. Significantly, the Joint Employers seem to have recognized this point as well when they advised us on the record at the supplemental hearing that they were prepared to show that the award was not just wrong, but was so wrong as to be fraught with fundamental error which would have a substantial adverse impact on collective bargaining in both

this and other units in Cook County. (Tr. 5-6.) We deem it advisable to take the Joint Employers' representations at face value and accordingly find that in order for the award in this matter to be set aside, there must be a clear showing of error or hardship.

Evidentiary Standard

In support of their arguments at the supplemental hearing, the Joint Employers offered various exhibits from the proceedings before Arbitrator Meyers in the deputies' unit. Although they apparently concede that these exhibits were not previously offered at the initial hearing in this matter, the Joint Employer assert that the exhibits do not constitute "new or radically different evidence," but rather, merely serve to demonstrate that their "wage offer in this case was not only reasonable but [was] the only reasonable wage proposal before the panel." (Tr. 6.)

Conversely, the Union takes the position that no consideration whatsoever should be given to the exhibits at this stage of the process. The Union argues that there are no new issues that have come to light as a result of the award, and that nothing has happened since the first hearing which now makes it necessary to offer additional evidence beyond what could have been presented at that time. (Tr. 85-86.) The Union thus suspects that the Joint Employers are offering the disputed exhibits merely as a pretext for reviving and putting "different spins" on arguments which already have been heard and considered. (Tr. 86-87.)

Upon careful consideration, we are unable to find any basis for excluding the evidence that has been offered by the Joint Employers in this proceeding. While we agree with the Union that this evidence consists largely of data that was either offered or could have been offered at the initial hearing, that fact alone cannot be determinative

in deciding whether the evidence is relevant and admissible. Notwithstanding the weight that should be given to this evidence, there is nothing in the record which suggests to us that the evidence has been offered as a pretext for introducing new issues into this matter, or that it will otherwise have this effect. We see nothing in the Joint Employers' evidence which, if credited, would change the Joint Employers' final offer in any manner whatsoever. In this regard, the Joint Employers have expressly stated that it is not their intent to present any new or revised offers. Should we decide to set aside our award and adopt the Joint Employers' final offer at this posture, the Joint Employers will have gained no more and no less than they would have gained had we adopted their offer in the original proceedings.

Inasmuch as the Union appeared at the supplemental hearing with counsel and had full opportunity to examine the evidence, we do not believe that our findings will result in any unfairness or hardship, either procedural or substantive, to the Union or to the employees in the bargaining unit. Accordingly, we shall permit new evidence to be presented and considered in this matter for the limited purpose of interpreting, explaining or casting new light on matters that previously were raised in the initial hearing. With this limitation, we feel confident that the above standard adequately excludes and bars evidence which goes to new or different issues that were not previously raised in the initial hearing.

Based on this standard, we find that the evidence which was offered by the Joint Employers at the hearing on April 15, 2002 was properly included in the record for consideration by this Panel. The weight which this Panel has decided to give to that evidence is discussed below.

Internal Comparability

As discussed above, the Joint Employers take exception to our finding that the Union's proposal will not radically change the historical pay relationship between the Sheriff's police officers, correctional officers and Court Service's deputy sergeants. The Joint Employers argue that this finding is not supported by the record, and that opting for the Union's proposal will only serve to destroy the three-tiered wage hierarchy that historically has prevailed in the Sheriff's office, as well as break the parity that traditionally has existed since 1995 between the sergeants' increases and those of the deputies. (Tr. 11, 23-28, 36, 40, 52.)

In support of their position, the Joint Employers ask that we consider certain data from the additional exhibits which they submitted at the supplemental hearing. The Joint Employers point first to the data at Tab 1 of this evidence, which purport to show that from the start of bargaining between the parties in 1995 to the expiration of their agreement in 1999, CSD sergeants and deputies received identical total increases of 28.25 per cent in comparison to corresponding total increases of only 19.0 per cent that were received by the correctional and police officers during that same period. (Tr. 32-33.) The Joint Employers also request that we consider data from Tab 2 which show that the deputies' wages for fiscal year 1995 were equivalent to only 77.1 per cent of the correctional officers' wages and only 65.9 per cent of the police officers' wages, but had increased by fiscal year 1999 to 84.15 per cent of the correctional officers' wages and 72.2 per cent of the police officers' wages. (Tr. 35-36.)

The Joint Employers also note that for the period from fiscal year 1995 through fiscal year 2000, which was the last year of the Joint Employers' agreement with the

correctional officers, data from Tabs 3 and 5 further show that the deputies' wages rose from 77 per cent to 87 per cent of the wages that were paid to the correctional officers, and from 66 per cent to 75 per cent of what was paid to the police officers. (Tr. 38.) In comparison, according to the data in Tab 5, the wages of correctional officers did no better than maintain parity with the police officers' wages at a rate of about 85 per cent over that same period from 1995 to 2000. (Tr. 39.) Finally, the Joint Employers direct our attention to data in Tabs 4 and 6 which purport to show that with the inclusion of wage increases of 5.5 per cent in 2001 and 2002, the deputies' wages will be equal to 90 per cent of the correctional officers' wages and 78 per cent of the police officers' wages by 2002, with the correctional officers' wages remaining relatively unchanged at 86 per cent of the police officers' wages. (Tr. 38, 40.)

Although we have carefully reviewed the above data and find no reason to question its accuracy *per se*, we are of the opinion that the weight which can be given to this evidence is substantially limited by the fact that it pertains entirely to the deputies' unit and not to the sergeants' unit which is the subject of the present arbitration. Further, even if we decided to accord greater weight to this evidence and treated the data therein as though it came from the sergeants' unit directly, we still would not be entirely certain of what the data proves. In this regard, it is our understanding that the Joint Employers offered their evidence for the purpose of showing that the new wage increases which have been awarded to the deputies would be sufficient to significantly narrow the wage gap between the sergeants and their DOC and SPD counterparts were those increases to be adopted in the same amount herein. Having fully examined the data, however, we find nothing therein which inherently supports this conclusion. In our opinion, to simply claim, for example, that the gap between the deputies' wages and the wages of the correctional officers decreased by

ten per cent over a given period of time says very little about whether that narrowing of the gap is sufficient. In the absence of an objective standard that can be applied to the data or extrapolated from the data itself, it is difficult for us to accept, at face value, any subjective conclusion that any given narrowing of the gap is "sufficient" and that no further narrowing is required or appropriate.

At most, the Joint Employers refer us to data which shows, for example, that the deputies' wages are at the point, or soon will be at the point, where they will be equal to 90 per cent of the correctional officers' wages. Based on this data, the Joint Employers anticipate that if that rate of increase is allowed to continue at its current pace, the deputies' wages inevitably will exceed those of the correctional officers, and perhaps those of the police officers as well, with the result that the traditional wage hierarchy in the Sheriff's office will have been destroyed.

We assume that the Joint Employers' argument is correct insofar as it goes, but it also seems to us that this argument raises more questions than it answers. From what we can tell, the Joint Employers' projections necessarily are based on the assumption that the wages of the correctional and police officers will continue to increase in the future at a rate which must be below the current rate of increases in CSD if the narrowing of the wage gap is to continue. However, the Joint Employers have not provided us with any basis for making these projections and assumptions. If bargaining in other units produces future wage increases which exceed those that already have been implemented, the Joint Employers' assumptions may prove to be incorrect and we will have had no basis for concluding that a sufficient narrowing of the wage gap had been achieved or was imminent. We therefore must decline to rely on these projections and assumptions, and find instead, based on the record before us,

that there is insufficient evidence to conclude at this time that the Union's final offer will lead to a "wage breakthrough" of such large magnitude that it will destroy the basic features of the Joint Employers' current pay structure as the Joint Employers contend. (*Teamsters Local Union No. 714, supra*, at page 39.)

Based on the foregoing, we conclude that the Joint Employers' evidence does not establish that our prior findings with respect to internal wage comparability are in error or would lead to hardship. We therefore affirm our prior finding that the evidence of internal wage comparability favors adoption of the Union's final offer.

External Comparability

The Joint Employers object to our findings "that the external comparables presented by the Union favor its proposal" and that the parties' agreement not to rely on this factor in their prior 1998 interest arbitration is not binding in the present matter. (Tr. 25.) The Joint Employers take the position that a practice of excluding external comparables from the parties' arbitrations was established as a result of the parties' stipulation to exclude this factor from their 1998 arbitration, and that any departure from this asserted practice should not be permitted at the present time. ((Tr. 74.) See *County of Cook et al and Illinois Fraternal Order of Police Labor Council*, Case No. L-MA-96-009 (McAlpin 1998).) The Joint Employers argue that nothing in Section 14(h) of the Act requires that external comparability be considered in every arbitration under that provision. (Tr. 72.) In support of this position, the Joint Employers rely on an award from Arbitrator George Fleischli in the correctional sergeants unit, which they cite as authority for the practice of limiting consideration of external comparability in those arbitrations where one of the other relevant factors is internal comparability between

employees and supervisors. ((Tr. 73.) See *County of Cook et al and AFSCME, Council 31, Local 3692, AFL-CIO*, Case No. 99-07-18163 (Fleischli 2000).)

In response, the Union adheres to its position that the exclusion of external comparability from the 1998 arbitration does not bar the introduction or consideration of evidence which is relevant to this factor in the present matter. (Tr. 84.) In this regard, we note for the record that our findings on this subject were based to a large extent on evidence which the Union offered at the original hearing and which showed that the sergeants' pay ranked 25 among the pay rates for sergeants in 26 major metropolitan areas around the country. (See transcript of initial hearing at page 16 and Tab 10 referenced therein).

Based on this and other evidence, we found in our award that the sergeants' pay still lagged excessively behind the comparable rates of sergeants' pay elsewhere, and that the "Union's proposal more nearly comport[ed] with the factor of external comparability than [did] that of the Employers." (Award at page 23.) As we understand their current objections, the Joint Employers do not necessarily challenge this finding on its merits, but simply contend that this Panel should not even have reached the issue of external comparability in light of the parties' stipulation to exclude this factor from the 1998 arbitration. We disagree. This Panel is not aware of any basis for excluding evidence which has been expressly authorized by statute simply because this evidence was excluded by the stipulation of the parties from a prior arbitration.

The Joint Employers do not claim that there is anything in the statute which permits or authorizes an arbitrator to exclude otherwise competent and relevant evidence from the record under Section 14(h), nor have the Joint Employers drawn our attention to any award, administrative decision, or court opinion that has read any such

authority or discretion into the statute. Although we have not forgotten that one of the factors which an arbitration panel is expressly authorized to consider under Section 14(h) of the Act is the "stipulations of the parties," we find nothing in this language, and have been referred to nothing, which suggests that this bare reference to "stipulations" was meant to make a stipulation in one arbitration binding on the parties in a later arbitration, particularly where the stipulation goes only to an evidentiary issue and the two arbitrations are separated by a period of more than several years.

Further, we are unable to conclude that the stipulation in the 1998 arbitration bars the introduction of evidence in the present proceeding as a matter of past practice. We have carefully reviewed Arbitrator McAlpin's award in that arbitration and find nothing in that award which reveals the existence of any agreement to make the stipulation in that matter applicable to any other arbitration. Without further comment, the above award merely notes the existence of an agreement between the parties "to limit the inquiry to internal comparables." (*AFSCME Council 31, supra*, at 9.)

We also have carefully reviewed Arbitrator Fleischli's award in the correctional sergeants unit, but find nothing to indicate that evidence of external pay comparability was excluded or given less relevance in that matter based on the presence of other evidence pertaining to the comparable pay rates of employees and supervisors. As we read the award, the Fleischli panel merely found that this latter comparison constituted the most significant evidence going to the issue of internal comparability. Where the panel limited its consideration of external comparables was in the area of benefits such as uniform allowances and vacations. On that limited issue, the panel did, in fact, find that comparisons between employee and supervisory benefits were of "controlling significance." However, there is nothing in the award which excluded consideration of

external comparables *per se* with regard to either wage or benefit issues. (*County of Cook et al and AFSCME, Council 31, Local 3692, AFL-CIO, supra*.)

Based on the foregoing, we find that the stipulation excluding evidence of external pay comparables from the parties' 1998 arbitration is not binding or otherwise applicable in the present matter. In our opinion, it has not been demonstrated that this stipulation required or otherwise contemplated the exclusion of similar evidence from subsequent arbitrations, nor has it been demonstrated that the exclusion of external comparables from the 1998 arbitration was of such singular importance to the outcome of that arbitration that its exclusion in the present arbitration is required as a matter of past practice in order to avoid an unfair result here.

As noted above, the Union's evidence from the initial hearing shows that in comparison to the minimum salary rates for sergeants in 26 selected metropolitan areas around the country, compensation in Cook County ranked 25 and would move even under the Union's proposal to no better than 19 on the list. As before, we continue to believe that this evidence mitigates in favor of adopting the Union's final offer. We therefore reaffirm our prior findings in this regard.

Cost of Living

The Joint Employers contend that our findings and award fail to give adequate weight to evidence which shows that during the period from 1995 to 1999, the sergeants and deputies received increases at a rate which more than doubled the equivalent rate of increase in the consumer price index for the Chicago metropolitan area during the same period of time. (Tr. 33-34.) As indicated elsewhere in this supplemental decision, the evidence shows that the sergeants and deputies received total increases of 28.5 per

cent during the foregoing period. In comparison, the consumer price index rose locally during that period by only 12.3 per cent. (Tr. 32-33.)

Although our findings and award do not specifically address cost-of-living as a separate issue, we wish to make it clear for the record that this omission was not due to any failure to consider this factor when we made our award. Rather, the omission merely reflects our opinion, both then and now, that the cost-of-living data in this matter does not significantly favor the final offer of either party. In accordance with Arbitrator McAlpin's finding in 1998 that cost-of-living was not a determinative factor at that time, inasmuch as both offers therein significantly exceeded the relevant consumer price index for the period in question, the Panel here recognized earlier that both final offers in the present case provided for increases which exceeded the rise in the local index for the period of comparison. (*AFSCME Council 31, supra*, at 24-25.)

To the extent that we did not expressly do so in our original award, we wish to make clear for the record now that the cost-of-living evidence in this matter does not, in our opinion, support the final offer of either party. We therefore conclude that the Joint Employers have failed to demonstrate that our findings in this regard were in error or that the award will otherwise cause hardship as a result of these findings.

The Dollar Differential Issue

The Joint Employers take exception to our finding that a "reliance primarily on percentage of increase rather than the dollar-to-dollar relationship is somewhat misleading" and "supports a need for further narrowing of the wage gap." (Tr. 42-43.) The Joint Employers contend that there is no evidence to support this finding, and that a dollar-to-dollar standard would have the effect of destroying the percentage

relationship between different wage rates over time in order to keep the dollar relationship constant. (Tr. 45-47.) The Joint Employers claim that this result would conflict with Arbitrator Goldstein's 1995 award, which they describe as the "seminal" authority for establishing a practice of "maintain[ing] the historical negotiated percentage salary increase parity between the D2 deputies [sic] and the other law enforcement personnel working for the Joint Employers." (Quoting at Tr. 49, *Teamsters Local Union No. 714, supra*, at 38-39.)

In our opinion, the Joint Employers have misinterpreted the scope and significance of both our award and Arbitrator Goldstein's award. Our review of the latter award convinces us that Arbitrator Goldstein's focus was limited to an inquiry into the historical pattern of wage increases in that matter and not to the substantially narrower issue of whether that pattern required the negotiation of increases on a percentage rather than a dollar basis. It appears to us that this latter issue was not raised by either of the parties or by Arbitrator Goldstein.

In either event, we find nothing in Arbitrator Goldstein's award which looks with disfavor on the use of dollar differentials as a potentially helpful tool for gaining added perspective and insight into the relative merits and economic effects of competing wage offers. In fact, we do not believe that we have said anything in the present matter which has not been said in several other arbitrations with the Joint Employers. As Arbitrator Fleischli observed in his correctional sergeants award in 2000, it was precisely the "spread (in absolute dollars) between the wages of Sheriff's deputies and deputy sergeants and the wages of Sheriff's police and police sergeants" that has "convince[d] a series of arbitration panels that 'catch-up' increases were required." (*County of Cook et al and AFSCME, Council 31, Local 3692, AFL-CIO, supra* at 18.) More recently, as

the Union argues and as we note above, Arbitrator Meyers has questioned whether it is even appropriate to frame the issue in percentage terms any longer given the fact that percentage increases have now become both the unit of measurement tool for evaluating the wage gaps in the Sheriff's Office and the tool for rectifying those gaps, much like a mirror looking at itself. (Un. Supp. Br. at 10-11, citing *Teamster Local Union No. 714 (Meyers)*, *supra*, at pages 13-14.)

As we previously observed in our award, we continue to believe that analyzing the issue solely in percentage terms may be somewhat misleading. To say, for example, that the wages of one group of employees is equal to 85 per cent of the wages of another group of employees arguably suggests that the gap between the two groups is relatively small. However, if the average employee in the second group earns \$40,000 per year, a percentage gap of 15 per cent means that there is a dollar gap of \$6000 per year, which may not seem like a small or inconsequential amount to the employees who are not receiving that money.

As we understand their argument with regard to the dollar differentials, the Joint Employers argue that we should not even be looking at this data in the first instance, but that if we do, we should find that "in absolute dollar as well as percentage terms, the difference between the salaries of the CSD and DOC sergeants decreased substantially in the years before the contract now at issue." (Jt. Er. Supp. Br. at 18.) We do not agree. To use another hypothetical, if a dollar analysis happened to show that the salary gap between CSD and DOC sergeants now averaged no more than a few hundred dollars across both pay scales, it seems fairly obvious that this type of showing would argue strongly in favor of not narrowing the gap any further. However, that problem is not one that confronts us at this time. For present purposes, we merely find that the

dollar differentials in the actual data before us are not narrow enough to suggest that our findings in this matter are in error. Determining the exact point at which the dollar differentials might require a different result raises issues that we need not reach herein, as it is the belief of the Panel that we are not presently at that point.

Based on the foregoing, we believe that it was appropriate for us to consider both percentage and dollar differentials in deciding upon which of the parties final offer would be awarded. The award herein does nothing to disrupt the parties' established practice of negotiating and denominating pay increases in percentage rather than dollar terms. Having made an award which expressly provides for wage increases on a percentage basis, we are at a loss to understand how this award has disrupted the established practice or otherwise has resulted in a flawed outcome simply because we also have given some consideration to what the parties' competing offers would mean in terms of actual spendable dollars.

As the Panel tried to make clear in our award, the dollar differentials between the parties' respective final offers constituted just one of several factors that we considered in deciding upon an appropriate award. Nowhere in our findings and award did we intend to suggest that the dollar differentials were the sole or even the determinative factor in this decision, nor do we believe that anything in our findings and award reasonably suggests that controlling weight was given to this factor. It was not. Accordingly, we conclude that our findings in this regard were not in error and that the award will not lead to hardship as a result of these findings.

The Rank Compression Issue

The Joint Employers disagree with our findings that rejection of the Union's offer will exacerbate compression between the pay scales of the sergeants and the deputies, and that this compression will become a disincentive to deputies seeking advancement through promotion and "could result in the anomalous situation where the Sergeants could earn less than the Deputies that they supervise." (Tr. 24-25, 67-68.) The Joint Employers contend that these findings are erroneous on several grounds.

First, the Joint Employers reason that if the sergeants' pay continues to rise in tandem with the deputies' pay, which is exactly what will happen under their proposal, increases for deputies who are promoted to the rank of sergeant cannot become stagnant relative to what the incumbent sergeants are receiving. (Tr. 68.) The Joint Employers note in this regard that any changes in dollar differentials which result from the implementation of otherwise equal percentage increases will have no effect on what a deputy receives upon being promoted to the rank of sergeant inasmuch as the County's promotion procedures provide for the newly-promoted deputy to be advanced by two steps along the deputies' pay scale and then slotted into the sergeant's scale at that step which is closest to, but not below, the two-step jump. (Tr. 63-64, 69.)

Conversely, the Joint Employers further reason, each percentile of increase in the sergeants' pay beyond what has been awarded to the deputies will work to the disadvantage of those deputies who have been promoted to the rank of sergeant because those individuals will enter the sergeants' classification from what will have become a relatively deflated deputies' pay grade, with relatively deflated pay steps all

along the scale within that grade. (Tr. 65.) In effect, argue the Joint Employers, the award will have created a two-tiered pay system with the incumbent sergeants clustered at the top of that system and the newly-promoted sergeants clustered at the bottom. (Tr. 66-67.)

Upon careful consideration, this Panel is unable to agree with the Joint Employers' conclusions. As a preliminary matter, it seems to us that these conclusions necessarily are based on the same philosophy which underlies the Joint Employers' "me-too" proposal. The Joint Employers do not appear to dispute that any narrowing of the dollar differential between the sergeants' and deputies' pay scales is inherently a function of not only the increases that we have awarded in the present arbitration, but is also a function of the increases that were awarded in the deputies' arbitration. Presumably, there would be no rank compression issue before us now had the panel in the deputies' arbitration awarded the same increases that have been awarded here. In that event, as the Joint Employers' reasoning seems to imply, there presently would be no relative change in the dollar differentials between the two wage scales, and hence, no change in a newly-promoted deputy's relative position along those scales at the time of his or her promotion.

Conversely, this same reasoning would seem to further imply that the undesirable changes which allegedly have resulted from our award would be avoided, and could only be avoided, by conforming the percentage increases in the award to the percentage increases award in the deputies' arbitration. In effect, it appears that to us that we merely are being asked again, albeit in a somewhat different form and for somewhat different reasons, to include a "me-too" provision in the award. As we already have discussed in the award, and as we discuss again below, this Panel

continues to believe that awarding a "me-too" provision in the present matter would not be appropriate.

Aside from this consideration, however, we are not particularly convinced that our award will lead to a two-tiered pay system as the Joint Employers fear. As the Joint Employers recognize in their objections to our "street unit" findings, which we address below, a common and indispensable feature of any two-tiered pay system is the existence of a substantial and permanent disparity between the wage rates of two separate groups of employees who perform the same type of work. Based on this definition, we find nothing in the record to suggest that our award will have the effect of producing separate groups of sergeants who are being compensated at substantially different rates of pay over a significant period of time.

In the absence of any evidence to the contrary, we assume that a substantial number of the newly-promoted sergeants will advance over time to the higher steps in the sergeants' pay scale. If so, the Joint Employers' evidence merely shows that awarding somewhat larger percentage increases to the sergeants would cause, at most, a temporary expansion of the gap that normally exists in any context between the population spread of junior and senior employees based on differences in longevity within the same classification. Under these circumstances, it follows that any expansion of the population spread in the present matter represents not a permanent loss of pay for the new sergeants, but rather, a partial deferral or "back loading" of some of the promotional benefit to a later time when the new sergeants advance to the higher steps in the sergeants' pay scale and are able to capture or realize the remainder of the benefit.

At the very least, the Joint Employers have not presented any hard evidence which demonstrates that our award will create a two-tiered system or dilute the

incentives for seeking promotions to the rank of sergeant. From what we can tell, the Joint Employers have merely attempted to illustrate that because of the otherwise normal increases which routinely appear in the differentials between the sergeants' pay and the deputies' pay as one advances from the lower to the higher steps in each pay scale, our award will have the effect of increasing the possibility that deputies who are at or near the top of their wage scale upon becoming sergeants will be slotted into steps on the sergeants' scale that are lower than the steps where they formerly would have been slotted prior to our award.

In our opinion, this contention, even if true, does not prove the existence of a two-tiered system. As common experience and the record make clear, widening differentials of the type described above are a normal feature of any pay structure that maintains multiple wage scales and progressive step increases within those scales, including the pay structure under scrutiny herein. Such a feature is almost certain to appear in pay structures of this type, and such a feature does, in fact, routinely appear in the Joint Employers' pay structure with or without our award.

An analysis of Joint Employer Exhibits 6 and 7 from our first hearing in this matter shows that on December 1, 1999, deputies at the lowest step of that classification's wage scale earned \$29,760 per year whereas sergeants' at the lowest step of their pay scale earned \$31,965 per year, or \$2,205 in excess of what the employees at the lowest step of the deputies' scale were earning. On that same date, deputies at the top step of their scale earned \$44,210 per year, while individuals at the highest step of the sergeants' scale earned \$47,499 per year, or \$5,289 more than what the deputies were earning. In other words, the disparity at the bottom of the two scales

in 1999 was only \$2,205 in 1999, but increased at the top to \$5,289, for a net increase of \$3,084.

Based on this data, it is clear to us that the central question in this matter is not whether widening differentials would exist at the top of the Joint Employers' pay structure but for our award. They do exist, and they exist because it is in the nature of that structure for them to exist. Rather, the real question before us is whether our award would so exacerbate these pre-existing differentials that the result would be the creation of a two-tiered system with accompanying disincentives to seek promotion. In our opinion, the record does not support this conclusion.

As we noted in our discussion of whether it was appropriate for us to consider dollar differentials, the Joint Employers again have failed to propose any objective criteria or standard that would permit us to determine with any degree of certainty that the increases in our award will actually have the effect that the Joint Employers fear. There is nothing in the record to indicate how many newly-promoted deputies might be placed into lower pay steps on a comprehensive basis over a given period of time, nor is there anything in the record which provides any comprehensive estimate of the specific pay disparities that are likely to develop as a result of the award. Rather, the evidence before us consists mainly of several hypothetical comparisons showing how isolated individuals might be adversely affected by our award at selected steps along the pay scale.

As we further noted above, the expansion of dollar differentials at the top of a pay scale is a normal feature of the type of wage structure at issue herein. Significantly, the Joint Employers do not appear to claim that their own proposal will have anything other than this same effect. Instead, the Joint Employers merely seem to claim that their

final offer with its lower proposed pay increases will not widen the differential as much as the Union's proposal will. In our opinion, this distinction falls far short of forming a basis for finding that implementation of the Union's proposal will produce a two-tiered system or create disincentives for deputies who are interested in applying for sergeants' positions. Absent further evidence, we conclude that the record before us merely shows that the present award will incrementally widen the existing dollar differentials at the top of the CSD pay structure by a relatively small and insignificant margin over the expansion that also would take place under the Joint Employers' proposal. There being nothing in the record to suggest that this margin of difference is sufficient to create a two-tiered system, we further conclude that our earlier findings in this regard were not in error and will not lead to hardship.

The "Me Too" Proposal

The Joint Employers also object to our finding that the "me-too" proposal in their final offer does not satisfy any of the statutory criteria set forth in Section 14(h) of the Act. The Joint Employers contend that this finding is unwarranted in light of what they characterize as the frequent use of "me-too" clauses in their contracts with "various unions representing the sworn personnel like the court services deputies and sergeants." The Joint Employers also contend that their objections are supported by the finding in our award that "me-too" provisions "may be acceptable" when negotiated by the lead union in pattern bargaining. (Tr. 54-55.)

Upon careful consideration of the Joint Employers' objection, this Panel is not convinced that it would be appropriate to include a "me-too" provision absent a sufficient showing that the inclusion of such a provision would bring the award closer

into conformance with the factors enumerated in Section 14(h). For the reasons set forth below, we do not think that a "me-too" provision meets this standard.

Section 14(h) of the Act provides that "the arbitration panel shall base its findings, opinions and order upon the" factors set forth therein. As indicated in our award, we construe this language to mean that the Panel is required to make its findings solely on the basis of the record before it. To repeat what we said in the award, "To embrace the Employers' argument with respect to the potential benefits of its proposed 'Me Too' clause would be akin to abdicating the Panel's statutory function, and place the fate of the parties wage arbitration contingent upon the evidence, arguments, and advocates abilities (and perhaps agenda) of a different bargaining unit, perhaps too, even one represented by a different labor organization." (Award at page 20.) Nothing that has been put before this Panel since the issuance of the award persuades or convinces us that there is any need to modify or set aside this finding.

Further, we believe that the Joint Employers' reliance on our observations about the potential use of "me-too" clauses in certain limited circumstances is somewhat misplaced on the facts of the present matter. The Joint Employers are quite correct in noting that this Panel indicated in the award that such a provision might be appropriate when the lead union in pattern negotiations wants to "ensure that the bargain it is making will not be less than any bargain being fashioned in some other 'related' unit's negotiations." However, we find nothing in this finding to suggest, nor was it our intent to suggest, that this Panel believes that the imposition of a "me-too" provision through arbitration is appropriate when the union in the arbitration neither wants nor has asked for this type of provision.

While we are of the opinion that a wage increase is the type of contractual term which is uniquely suited to arbitration, we are of the further opinion that the same thing cannot be said of a "me-too" provision. There are some significant differences between a wage increase and a "me-too" provision, starting with the basic features of each. In most instances, a wage increase is finite and certain. Whether negotiated or awarded through arbitration, an increase typically is implemented in a designated amount at a specified time. In contrast, a "me-too" clause is neither finite nor certain. By its nature, a "me-too" clause binds the parties to a result that may or may not come to pass, and which will come to pass, if at all, in a form that may or may not conform to what one or both of the parties expected or anticipated when the clause went into effect.

Given these differences, we think that the inclusion of a "me-too" clause in an agreement that has never contained such a provision in the past is likely to give rise to equally significant changes in the parties' underlying bargaining relationship. If so, this Panel strongly believes that such changes should be made through the parties' negotiations and not through the discretion of the Panel. Moreover, the Panel does not believe that it is our function to move a bargaining relationship in a direction that is significantly different from the one that already has been established, and one which has not been mutually chosen by the parties themselves.

As noted by Arbitrator Herbert Berman in a prior award from the deputies' unit, an "established ... relationship between the parties ... should not be sundered without justification in the form of substantial proof of changed facts." (*County of Cook and Cook County Sheriff and Teamsters Local 714*, No. L-MA-97-005 (Berman 1998) at page 7.) As noted by Arbitrator Goldstein, it is merely the function of the arbitrator to step in and determine the relevant pay comparables "when the parties have failed to

adopt such standards for themselves.” (*County of Cook and Sheriff of Cook County, supra*, at 18.) This Panel is unable to determine the “relevant pay comparables,” if any, resulting from a “me-too” clause.

With Arbitrator Goldstein, we believe that the proper role of an arbitration panel requires that we use our best efforts to stand in the shoes of the parties and identify the specific contractual terms that most likely would have resulted from the negotiations had the parties reached agreement rather than impasse. In this regard, we find nothing in the present bargaining history which suggests that a “me-too” provision would have been negotiated by the parties had they not reached impasse, nor are we aware of any precedent or authority for imposing this type of provision on a bargaining history such as that under review here.

Although the Joint Employers argue that this history can be found in the identical wage increases that the sergeants and deputies received between 1995 and 1999, we are not entirely convinced that these increases alone supply all of the facts that we need to establish the prior existence of a “me-too” pattern or practice in the sergeants’ unit. The Joint Employers’ argument fails to reflect what we view as a crucial distinction between a history of wage parity and a history of maintaining wage parity as a matter of established practice. As a corollary to our finding that a “me-too” provision cannot be arbitrarily imposed without a bargaining history that justifies this result, we are of the further opinion that a bargaining history which does not show that the wage parity is the specific result of a recognized “me-too” practice between the parties is not sufficient to establish the existence of such a practice.

On the record before us, we find that the evidence does not show that the pay increases which were implemented in the deputies’ and sergeants’ units prior to 2000

were the result of a specific agreement or understanding that the Joint Employers were required to maintain pay parity between the two units as a matter of an established and enforceable practice. Absent such evidence, we remain reluctant to award any type of “me-too” provision that effectively would result in the creation of a practice that the parties themselves have never established.

Moreover, we do not think that it would be appropriate or feasible to attempt any circumvention of past practice by trying to fashion a limited “me-too” provision that would be strictly confined to the scope and terms of the award. Regardless of its origins and the limits that are placed on its use, it is clear to us that any “me-too” provision has the objective of tying pay increases in one unit to the increases in another. Again, we do not think that this type of provision is invalid *per se*, but we do continue to believe that it is the type of provision which goes to the heart of the parties’ bargaining history and therefore should be enforced only when it has been negotiated by the parties themselves.

On a related basis, moreover, we also would be faced with the practical problem of attempting to draft appropriate language that would not obscure or compromise the other terms of the award. Drafting excessively broad language conceivably could lead to the establishment of the very type of “me-too” practice that we already have declined to impose on the parties’ bargaining history in these proceedings. Conversely, drafting excessively narrow language could lead to other types of changes that are presently unforeseen but potentially could have equally significant consequences for the parties’ bargaining relationship in the future. It is of primary importance to this Panel that our effort to avoid one type of intrusion into that relationship not lead to another type of impact that is equally undesirable from the standpoint of leaving the parties’ bargaining

relationship to the parties. To reiterate, it is our job as arbitrators to interpret and give effect to the parties' established practices, not create those practices for the parties.

Based on the foregoing, our further review of the record in these proceedings fails to demonstrate the existence of any "me-too" practice or any other contractual practice between the parties which requires that wage increases in the sergeants' unit be fixed or tied in any manner to increases in the deputies' unit. Absent such evidence, we conclude that the Joint Employers have failed to show that our prior findings in this regard were in error or will lead to hardship if implemented as part of the award in the present matter. We therefore affirm these findings in their entirety.

The D3B Classification

As part of our original findings, we concluded that the Joint Employers' proposal to create a D3B "street unit" classification did not favor the adoption of their final offer under the statutory criteria set forth in Section 14(h) of the Act. We further found that there was no "evidentiary basis on which to conclude that there are any meaningful differences in qualifications, training, risk or stress between" sergeants who work in the "street unit" and those who do not, and "that the functions of in-house personnel are not so different with respect to the risk of danger so as to justify the creation of a two-tiered bargaining unit for street and in-house Sergeants."

The Joint Employers object to these findings insofar as they are based on our conclusion that the establishment of a new classification would lead to the creation of a two-tiered pay scale for sergeants who perform essentially the same type of work. The Joint Employers take the position that the new classification would not have this effect inasmuch as the sergeants who would be placed in this classification perform a

specialized type of work that differs substantially from the work which is performed by other sergeants. (Tr. 56-59.) The record reveals that the work in question centers on assignments to the Joint Employers' "street unit," which includes the supervision of deputies who also are assigned to this unit. (Tr. 59-60.)

The Joint Employers contend that a "history of parallelism" between the sergeants' and deputies' units requires the establishment of a D3B classification to complement the D2B classification that now covers employees who perform "street unit" work under the deputies' agreement. (Tr. 60-62.) As we understand their use of this term, the Joint Employers contend that a four percent premium in the D2B pay scale creates a need for an equivalent pay grade and premium in the sergeants' wage scale in order to maintain parity between the two groups and keep the street unit sergeants "in exactly the same percentage relationship with the Street Unit Deputies that they supervise." (Tr. 71.)

For several reasons, we cannot agree with these contentions. As a preliminary matter, we do not think that a new classification can be justified in the present matter simply as an expedient way of maintaining parity between the street unit deputies and the sergeants who supervise them. As we noted in our discussion of the proposed "me-too" provision, the Joint Employers' arguments in favor of creating a new classification seem to confuse parity with past practice. The fact that an argument can be made in favor of maintaining parity between the street unit sergeants and deputies on economic grounds does not necessarily mean that there also is a history or past practice which requires that result.

To reiterate what we already have said, the sole purpose of an arbitration proceeding is to determine the terms and conditions of employment that likely would

have resulted from the negotiations had the parties reached agreement rather than impasse. In discharging this duty, it may become necessary for an arbitration panel to determine whether there are any relevant practices that need to be considered. However, it is not the job of that panel to create practices simply to justify a particular result, however desirable that result arguably may be. That function belongs to the parties and not to the arbitrator.

Unless the implementation of a new classification is required as a matter of prior agreement or practice, there is simply no reason to take this action without the existence of a separate group of employees whose job duties and working conditions necessitate a new classification. From what we can tell, the parties never entered into any prior agreements or understandings that the implementation of new job classifications in the deputies' unit automatically would be accompanied by the establishment of corresponding classifications in the sergeants' unit as a matter of established practice. In the absence of such an agreement or understanding, we believe that the Joint Employers' reliance on a "history of parallelism" is somewhat misplaced. In our opinion, the Joint Employers miss the point when they argue that a new classification and pay grade would have the desirable effect of maintaining parity between the street unit deputies in the new D2B classification and the sergeants who supervise them. This argument ignores the fact that maintaining parity between the street unit sergeants and street unit deputies could only be achieved at the expense of disrupting the parity that now exists among the sergeants as a whole.

If parity is to be maintained at all, we continue to believe that it should be maintained by matching the premium in the D2B classification across the entire pay scale in the sergeants unit absent clear and convincing evidence that the job duties and

working conditions of the street unit sergeants truly warrant the creation of a separate classification and pay scale for those individuals. As we noted in our award, the evidence from the original hearing fails to show that the street unit sergeants perform a distinctive type of work as the Joint Employers assert. Rather, the record merely shows that about 20 to 25 per cent of the sergeants and deputies are assigned to CSD's civil process division or "street unit," which is the division that has responsibility for serving warrants and summonses and executing upon various types of legal process such as evictions and tax levies. (See, the transcript of the initial hearing at pages 10-11, 47-48, 65, 99-100.) In our opinion, this evidence alone does not justify or warrant the establishment of a D3B classification.

Further, we are not convinced that the present proposal to establish a D3B classification would meet the statutory criteria in Section 14(h) of the Act even if there was, in fact, enough of a past practice or differentiation of job duties in the sergeants' unit to warrant an additional classification. In this regard, the record shows that the Joint Employers did not present their proposal for a new classification to the Union until a day or two before our first hearing in the present matter. As a result, this proposal was never put on the bargaining table or discussed by the parties prior to the submission of this matter to arbitration. (See transcript of original hearing at pages 26-27, 70-71.)

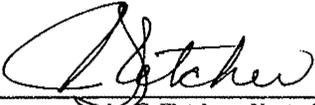
Although the Joint Employers' claim that the Union had actual if not official knowledge of the negotiations to include a D2B classification in the deputies' agreement, we think that merely having knowledge does not necessarily mean that the Union thereby consented to having the results of the deputies' negotiations presented to it as *fait accompli* in the sergeants' unit. In our opinion, this issue of consent is of

central importance. Relying upon an asserted history or pattern of bargaining to justify a new job classification does not mean that the party who has made the proposal is thereby relieved of all obligation to provide the other party with an opportunity to bargain over that proposal. The D2B classification that forms the basis and rationale for the proposed D3B classification in the present matter is the direct result of the Joint Employers' negotiations in the deputies' unit. If the deputies' bargaining representative had a right to bargaining over the proposal in that unit, we think that the Union had no less of a right to bargain over the proposal in the unit here.

Again, the fact that an asserted bargaining history or past practice eventually might have limited the scope of the bargaining does not mean that the Union thereby lost its right to bargain *per se*. Under Section 14(h) of the Act, our authority to issue an award is limited to disputes over contractual wage rates or other conditions of employment. Based on clear evidence that the Joint Employers failed to provide the Union with a timely opportunity to bargain over their D3B proposal prior to the submission of this matter to arbitration, we are unable to conclude that there is a dispute over that proposal within the meaning of Section 14(h). To that extent, the Joint Employers' proposal inherently fails to meet the statutory criteria set forth in the statute. Accordingly, we find that our prior findings in this regard were not in error and will not lead to hardship. These findings are therefore affirmed.

Conclusion

Upon full review of the entire record, the undersigned Panel finds and concludes that the Joint Employers have failed to demonstrate that the Opinion and Award in this matter are the result of error, or that the implementation of the Award would result in hardship to the County of Cook or to the Sheriff of Cook County. Accordingly, the Opinion and Award are hereby affirmed with regard to all matters addressed herein.

By:  Date: July 15, 2002
John C. Fletcher – Neutral Chairman

By: _____ Date: _____
David W. Wickster – Union Delegate, Concurring

By: _____ Date: _____
John G. Kalchbrenner – Employer Delegate, Dissenting