ILLINOIS STATE LABOR RELATIONS BOARD

INTEREST ARBITRATION

In the Matter of the Arbitration	Before
between	HARVEY A. NATHAN, Sole Arbitrator
COUNTY OF COOK AND COOK COUNTY SHERIFF (Dept. of Community Supervision and Intervention - Fugitive Unit)	
and	ISLRB No. L-MA-03-002
ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNCIL	

Hearing Held: May 30, 2003
June 14, 2004

Briefs Exchanged: August 5, 2004

For the Employer: J. Stuart Garbett
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Attorneys

For the Union: Gary L. Bailey, Attorney
Illinois FOP Labor Council

O P I N I O N A N D A W A R D

I. INTRODUCTION

This is an interest arbitration proceeding held pursuant to Section 14 of the Illinois Public Labor Relations Act (5 ILL 315/14), hereinafter referred to as the "Act," and the Rules and Regulations of the Illinois State Labor Relations Board ("Board"). The parties are County of Cook and Sheriff of Cook County, as joint employers ("Employer" or "County"), and Illinois Fraternal Order of Police Labor Council ("Union").

Cook County employs about 27,000 people either directly or jointly with elected officials. There are ninety (90) different collective bargaining units encompassing about 80% of the employees.[1] About 6,000 employees occupy law enforcement positions, mostly within the jurisdiction of the Cook County Sheriff. The Sheriff's Office is divided into numerous administrative units. The four largest law enforcement units are the Department of Corrections ("DOC") with 3,000 employees, the Court Services Department (1,600 employees), the Sheriff's Police Department (500 employees), and the Department of Community Supervision and Intervention ("DCSI") with 400 employees.

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

[1] There are 68 different collective bargaining agreements.

This case involves the appropriate wage rate for a bargaining unit of 26 Fugitive Investigators working in the Fugitive Unit of the Department of Supervision and Intervention.[2] DCSI was created in 1992 to administer four alternative incarceration programs. These are the Electronic Monitoring Unit ("EMU"), Day Reporting Center ("DRC"), Pre-Release Center ("PRC") and Sheriff's Work Alternative Program ("SWAP").[3] The bargaining units representing these employees were certified by the Illinois Labor Relations Board around 1995. Employees in the Fugitive Unit, represented by the FOP, are all classified as Fugitive Investigators. Although the EMU and the DRC also employ Investigators, the EMU Investigators are represented by the Metropolitan Alliance of Police ("MAP") and are included in the much larger Correctional Officer bargaining unit.[4]

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[2] The classification is sometimes referred to as a Fugitive Investigator II.

[3] Electronic monitoring involves the incarceration of persons in their home using a non-removable anklet that is monitored 24 hours a day. Compliance is further supported by unannounced home visits. The program is limited to non-violent offenders or those accused of non-violent offenses, such as petty drug violations. Non-violent offenders may also be assigned to the Day Reporting Center for job training, drug counseling and the like, or they may be enrolled SWAP program where they are used as no-cost manpower for communities within Cook County.

[4] Alongside DCSI in the administrative structure, but not actually a part of DCSI, are the Impact Incarceration unit which operates a "boot camp" for offenders as an alternative to incarceration in the Cook County Jail, and the Women's Justice Services, a day reporting alternative to incarceration for women similar to one for men operated within DCSI. The employees in these two groups are part of the Correctional Officer bargaining unit represented by MAP. They are not classified as Fugitive Investigators as are the EMU personnel who are also in that bargaining unit. In June, 2000, Arbitrator Byron Yaffe denied MAP's impasse proposal to place these employees in the Fugitive

Although also represented by the FOP, the DRC Investigators have their own bargaining unit.[5]

The DCSI organization was created from the ranks of the Department of Corrections in about 1992. Most of the employees were taken from that department where they were classified as Correctional Officers. As with similarly situated classifications the County proposed that the Fugitive Investigators be placed on the "IS2 wage scale," one of the County's several common wage scales. This was challenged by the Union and the parties' first collective bargaining agreement for the 1995 through 1998 term resulted from an arbitration award in support of the Employer's position issued by Arbitrator Jack Fletcher on September

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Investigator classification.

[5] In all there are 11 law enforcement bargaining units within the Sheriff's jurisdiction. They include: Sheriff's Police, Sheriff's Police Sergeants, Correctional Officers (including the EMU Investigators, boot camp and Women's Justice personnel), Correctional Sergeants, DOC Internal Affairs Investigators, Court Services Deputies, Court Services Sergeants, Court Services Lieutenants, Court Services Internal Affairs Investigators, Fugitive Unit Investigators and Day Reporting Investigators. Cook County also has five law enforcement units unrelated to the Sheriff (hospitals and State's Attorney's units) and the Cook County Park District also its own law enforcement unit.

15, 1998.

For the second agreement, for the 1998 through 2001 period, the Union again sought to move the Fugitive Investigators to a higher pay scale. The matter went to Arbitrator Herbert Berman, who upheld the County's position to retain the Fugitive Investigators on the IS2 wage schedule. Berman's decision was issued on November 14, 2001.[6]

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[6] The Union filed a Petition to Vacate the Arbitration Award on January 30, 2002 in the Circuit Court of Cook County. While this Petition was pending, the undersigned arbitrator was selected by the parties to resolve the impasse between the parties for the next collective bargaining agreement, to be in effect from December 1, 2001 through November 30, 2004. The hearing on this matter was postponed pending resolution of the Petition regarding the prior, and now expired, Agreement. On February 13, 2003, after argument in open court, the Circuit Court, Judge G.L. Lott, presiding, entered

III. Statutory Factors

Among the factors set forth in Section 14 of the Illinois Public Labor Relations Act ("Act") some are more relevant in some cases than in others. See, generally, Nathan, "Arbitral Standards for Deciding Non-Economic Impasse Issues," 21 Illinois Public Employee Relations Report No. 1 (2004). In the present case the traditional economic factor of "ability to pay" (Section 14(h)(3) of the Act) is not

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an order vacating the Award. On March 13, 2003, the County filed a Notice of Appeal to the Appellate Court. On May 30, 2003, the undersigned arbitrator convened an opening session for the arbitration hearing for the 2001 through 2004 agreement. After listening to arguments of counsel the arbitrator determined that he would be unable to resolve the impasse regarding wages for the 2001-2004 contract term until the appeal was resolved or the parties otherwise determined the appropriate wage structure for the 1988 through 2001 term. On October, 2003, the parties agreed to implement the wage schedule awarded by Arbitrator Berman in his contested award, pending resolution of the appeal of the vacation of that award. On March 8, 2004, the parties resolved the matter between themselves by agreeing to abide by Arbitrator Berman's award. The parties agreed to withdraw their respective legal proceedings. Thereafter the hearing for this present arbitration was set for June 14, 2004.

significant because the costs of this bargaining unit make up a very small portion of the Employer's budget. Neither proposal will have a meaningful impact on the Employer's ability to provide services in the interest and welfare of the public.

Likewise, external comparability (Section 14(h)(4)), that is, a comparison of wages and benefits paid in comparable communities to employees doing similar work is immaterial because there is no community comparable to Cook County within Illinois. In larger metropolitan communities in the state it is unlikely that there are groups of employees doing comparable work. While comparisons have been made with employees doing comparable work in larger communities in other states, the comparison breaks down because each state has its own revenue system, its own labor and employment laws and its own customs and practices. Indeed, whether wages and benefits in other states were negotiated through collective bargaining or imposed by the public authorities is a defining feature. By definition there can be no "comparable community" in another state because the financial, historical and political foundation will never be the same.

What is significant is a comparison with other employees within the same political jurisdiction who are performing work which is similar to that being done by the employees in question. In this case the focus must be on the terms and conditions of employment of other law enforcement personnel employed by the Employer. Each unit of law enforcement personnel has a competitive position vis-a-vis the available revenue. Each looks to the standards enjoyed by the other units. The arbitrator must be mindful that in an organization as large and diversified as

the Sheriff's Department there must be some symmetry among the wages and benefits for the units as a whole.

Additionally, the "cost of living" as measured by the U.S. Department of Labor's Consumer Price Index is a relevant factor (Section 14(h)(5)). The CPI is not a precise measurement of what particular employees are paying to live, but is a gauge of relative changes of an artificial benchmark. It is a measure of inflation (or deflation) and establishes a context for the need to change terms and conditions of employment.

An additional factor is an assessment of the overall compensation received by the employees under consideration (Section 14(h)(6)). To some extent this overlaps comparability because any assessment has meaning only in terms of what other employees are receiving. This arbitrator interprets subsection 6 of the standards as an assessment of bargaining history, the experience of these parties in achieving the present wage and benefit structure. The assessment of compensation is a reference to what the parties have negotiated, under what circumstances and over what time period. The arbitrator in evaluating total compensation, aside from comparability, must consider where the parties have been and what is a reasonable adjustment, if any, in that total compensation.

III. THE ISSUE

The parties have again reached an impasse on the issue of the appropriate wage rate for Fugitive Investigators. It is the only issue before the arbitrator. The parties have resolved all other issues and their agreement for the 2001 through

2004 period is otherwise complete.

This case arises because the parties cannot agree whether the work of the Fugitive Investigators is more comparable to those law enforcement units that are paid on a higher wage scale than the Fugitive Investigators, or to the other units also on the IS2 wage scale.[7] The Union has proposed putting the Fugitive Investigators on a new pay scale, which it refers to as the "IS2B" scale. This scale is proposed at 4% more than the existing IS2 scale. Other than this structural change the parties agree that all wages should be increased according to the formula accepted by other law enforcement bargaining units for the 2001 through 2004 contract years. This proposed formula is as follows:

1. Effective the first full pay period after June 1, 2002 - lump sum bonus of 2% of wages paid from December 1, 2001 to May 30, 2002 plus a 2.5% wage increase. (Under the Union's proposed formula the bonus and the wage increases would be paid on the new IS2B scale which represents an increase of 4%.)

2. Effective the first full pay period after December 1, 2002 - 2% wage increase.
3. Effective the first full pay period after June 1, 2003 - 1% wage increase.

4. Effective the first full pay period after December 1, 2003 - 3% wage increase.

[7] Traditionally, the Sheriff's Police are the highest paid unit. The DCSI Investigators earn about 86% of what the Police are paid. Correctional Officers earn about 78% of the Police pay and Court Services deputies earn the least among the law enforcement units.

The Employer maintains that except for the Court Services units which are on a different contract cycle, all other units have received this wage increase formula for the 2001-2004 contract period.[8] The Sheriff's Police, represented by MAP, went to arbitration before Arbitrator Byron Yaffe. The Correctional Officers went to arbitration before Arbitrator Robert McAlister. The Day Reporting Investigators went to arbitration before Arbitrator Edwin Benn. In each case the respective arbitrator awarded the Employer's proposal which is the same as the Employer's offer in this case.

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

Thus, despite the Employer's argument that it is seeking to preserve similarity in wage structure among all employees doing similar work, the EMU Investigators are paid on a different scale from the Fugitive Investigators. The Women's Justice employees, who may be doing the same work as the DCSI Fugitive Investigators, are paid on an entirely different scale.

The Employer also acknowledges that the Court Services units are paid on different schedules and have received different wage increases than other units. Indeed, the thrust of the Union's case in seeking a new wage scale for the

[8] There are a few exceptions, not relevant here.

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

The Union argues that in the past it attempted to obtain a wage differential for this bargaining unit based on the risks, responsibilities and features of the Fugitive Investigator job duties. Comparisons were made with street work performed by the Sheriff's Police. The County resisted because it argued that there were no internal differentiations within job descriptions. Arbitrators agreed and the Union was unsuccessful in its quest. Now the County has reversed positions,

the Union maintains, and agreed with another union to split the Court Services deputies and pay a differential. The Union argues that the same distinction exists within the DCSI division.

The Union also points out that the County has always argued that the Fugitive Investigators could not compare themselves with the Sheriff's Police and that is why the Fugitive Investigators could not be paid more. Now a Circuit Court judge has disagreed and while that decision is without precedent it does provide guidance to the arbitrator in making his analysis in the present case.

The County responds that the differential among the Court Services employees has been an historical practice which was temporarily abandoned during the early years of collective bargaining. The agreement to restore the differential was not a breakthrough or a new concept. The parties simply restored what had been a long historical practice. According to the County, that the parties mutually agreed to restore the *status quo ante*, and that this was not imposed by an arbitrator, distinguishes the Court Services wage structure from that sought by the FOP in this present case. Additionally, the County argues that there really is a distinction between the work performed by the street units and the inside Court Services employees that does not exist between the Fugitive Investigators and the other FOP represented employees in DCSI. According to the County, most of the Court Services deputies work their entire assignments within the secure confines of a courthouse, while the outside deputies are serving writs, subpoenas, summons and the like. Others execute levies, arrest persons on warrants and conduct

evictions. The distinction, the Employer argues is between this work and the routine work within a building. There is no such distinctions among the DCSI employees all of whom do some work inside and some work outside. In any event, none of the Court Services deputies are paid as much as the DCSI employees, with or without the 4% D2B schedule.

The parties disagree as to the risks arising from the environment in which the Fugitive Unit employees work. They disagree as to the relative skill and training required.[9] Relevant portions of the job description for Fugitive Investigator in the Fugitive Unit is as follows:

> Class Title
> Fugitive Unit Investigator (Corrections Grade 16)
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> Characteristics of the Class
> Under the supervision of a field supervisor, locate and take into custody EM [electronic monitoring] participants who are declared AWOL or otherwise in violation of EM procedures.
>
> Examples of Duties
> · Conduct investigations to locate EM violators.
> · Take EM violators into custody.
> · Prepare arrests, criminal case, and related reports.
> · Write narrative reports.
> · Search physical premises for violators or clues as to their location.
> · Interview and interrogate persons.
> · Coordinate and cooperate with other law enforcement agencies.

[9] Of course the parties agree that there is risk in any law enforcement position. The issue is much more discrete: First, whether the duties of this job are more similar to those of higher paid classifications and, alternatively, whether they are different enough from other DSCI units to be on a separate wage scale regardless of whether the duties are comparable with Sheriff's Police, for example. In other words, under the alternative theory, even if the Fugitive Unit employees are not comparable to the Sheriff's Police, if they are sufficiently distinguishable from other DSCI employees then they deserve their own wage scale just as the Court Services Street Deputies.

- Search EMS 2000, LAN, and CHRIS databases.
- Obtain search and arrest warrants.
- Testify in court.
- Transport prisoners.

Desired Minimum Qualifications
- Possess a valid Illinois driver license.
- Familiarity with EM operations.
- One years experience in EM Patrol, or equivalent.
- Above average performance evaluation in current assignment.
- Good attendance and disciplinary record.
- Thorough familiarity with Cook County geographic layout.
- Physically and mentally capable of performing required duties.
- Knowledgeable of the laws of arrest, search, and seizure.
- Good oral and written communication skills.

Knowledge
- EM organization and operations.
- Cook County geographic layout.
- Laws of arrest, search and seizure.
- Laws and Sheriff's policy on use of deadly and less deadly force.
- Investigation information sources.

Skills
- Safe and accurate use of a firearm.
- Handcuff prisoners.
- Prisoner searches
- Physical premise searches.
- Interviewing and interrogating.
- Oral and written communications
- Accessing EM and public sector databases.

Abilities
- Use physical force when necessary.
- Write a narrative report.
- Identify inconsistencies in information.

As indicated above, the dispute regarding the wage schedule placement of Fugitive Unit Investigators has been an issue since the parties' first contract for this bargaining unit. At that time Arbitrator Fletcher upheld the Employer's proposal and the DCSI Fugitive Investigators were not paid additional sums, as the Union sought, on the basis of special skills and responsibilities which

differentiated them from other Investigators. As Fletcher characterized the dispute, the question was whether the Fugitive Unit Investigators were comparable to Police Officers or whether the comparison should be made with the Investigators in the DCSI Electronic Monitoring and Day Reporting Units.

Fletcher stated as follows:

> While it is true the Fugitive Investigators may, at times, become involved in the apprehension of violent criminals, the data proferred by the Union simply do not support any suggestion that this is a major portion of the work. *** While the Employers acknowledge that there is the possibility of human error, it is evident efforts are made to limit participation in the Electronic Monitoring and the Day Reporting Programs to persons who are not likely to be violent. ***
>
> While the Fugitive Investigators might be exposed to the same risks as the Police Officers, the Panel finds the frequency of such exposure to be a distinguishing characteristic. Furthermore, the record sufficiently establishes that Police Officers are required to have substantially more formal training than the Fugitive Investigators. ***[10]

Fletcher found that the Fugitive Investigators have historically been paid at the same rates at the EMU and DRC Investigators and discontinuing this parity would be a breakthrough unwarranted by the evidence (citing Arbitrator Elliott Goldstein in L-MA-95-001).

[10] The detailed data and statistics supporting Fletcher's conclusions have been deleted. The point is Fletcher's conclusions.

Three years later, Arbitrator Herbert Berman reached the same conclusions. Once again the parties agreed to all terms and conditions of employment for the Fugitive Unit Investigators except for base wages. Arbitrator Berman examined the job duties of the Fugitive Unit Investigators and compared their work with that of the Investigators in the DRC (represented by the FOP) and those in the EMU (represented by MAP as part of the DOC unit). He found that Fugitive Investigators' primary function "is to apprehend detainees who have violated program rules of the Electronic Monitoring or the Day Reporting program or who have otherwise gone AWOL." They make an average of 3 arrests a day expending 70% of their time arresting AWOL EMU participants and 20% of their time apprehending DRC absentees.[11] Berman found that notwithstanding the occasional danger faced by DSCI Fugitive Investigators, their work could not be compared with that of Sheriff's Police.

There has been considerable discourse on whether Arbitrator Berman examined all of the evidence because of the statement in his Award that he did "not consider it appropriate to consider new evidence relevant to issues raised and considered in a prior award." However, his discussion of the various Union exhibits demonstrates that he had a substantial grasp of the particulars of the Union's evidence. Indeed, his description of the Unit's work indicates an acceptance of the essential danger in apprehending people who do not want to be found. As Berman stated:

> I do not mean to suggest that Fugitive Investigators work in a totally benign and controlled environment. They do not; for after all, they must often venture into marginal neighborhoods and apprehend criminals – even if those sought may be considered petty criminals. But the evidence simply failed to demonstrate that Fugitive Investigators routinely, or often, come face-to-face with danger.

Berman acknowledged that some Sheriff's Police have desk jobs, are evidence technicians or are in other positions which keep them substantially out of harm's way. But, he concluded, it would be wrong to compare a few positions within a large police department with an entire unit of specialized investigators. Rather, he stated, as a **general proposition** Fugitive Investigators did not have the responsibilities, training and exposure to danger as the Sheriff's Police.

The Union responds to Berman's findings by arguing that it does not want an equal standing with Sheriff's Police. Its proposal will not even begin to place Fugitive Investigators at the wage level of the Police. Rather, the comparison is made vis-a-vis the other Investigators such as those working in the EMU. They have considerably less exposure. Thus, if Police are so highly paid because of the relative risks they take compared with other Sheriff's law enforcement employees generally, the Fugitive Investigators should be paid more because of the greater risks they take compared with other employee on the IS2 wage scale. This is not some farfetched scheme, the Union argues, because the County has agreed to do exactly this with the street units of the Court Services deputies. The argument there was not that those street units should be compared to Sheriff's Police but

that they did different work than the inside employees. If the County has recognized this distinction within the Court Services unit it must do the same with regard to the Fugitive Investigators.

IV. CONCLUSIONS

The Union is in a difficult position because two arbitrators have determined that the work of Fugitive Investigators is not so fraught with risk that they should be paid a premium over what is paid to other Investigators. While the Union and the employees genuinely believe that these prior arbitrators were wrong, their findings resolve the issue unless the Union can show either that there was some egregious error or a mistake of law or that the facts and circumstances have so changed as to render the prior awards as inapplicable. That another arbitrator might disagree with the prior conclusions is insufficient to unsettle the case law. To permit a *de novo* review of findings where the facts have not materially changed would have a disruptive effect on labor relations and would tend to make interest arbitration a game of chance.

I find that there was, and continues to be, substantial evidence to support Fletcher's and Berman's findings that Fugitive Investigators are not sufficiently distinguishable from other Investigators so as to justify premium pay. Nothing submitted by the Union demonstrates that the facts and circumstances of the work of these employees has changed since the issue was last addressed by Arbitrator Berman. Both Berman and Fletcher articulated their understanding that the work in question is dangerous and has some kinship to other street work. Nonetheless,

they found that, in their judgment, the level of risk did not justify additional wages. The parties "bargained" for the judgment of these arbitrators and the undersigned will not alter those findings without a strong showing of a change in circumstances, egregious error or mistake of law. None of these factors appear in the record of this case.

The Union argues that what has changed is that the Employer has now agreed to pay Street Deputies in the Court Services Department a 4% wage premium over "Inside Deputies." It argues that this upsets the Employer's prior justification against agreeing to a premium for some employees in a single classification in a single department. In principle, without other considerations, the Union has a point. The Employer cannot now argue that a wage variance within a single department would be a "breakthrough," *e.g.* a precedent, or new benefit outside the usual order of things, when it has done so for other law enforcement employees. While the Employer might argue that the circumstances were different, as a matter of principle, the precedent has been set.

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

But the argument cannot be considered in a vacuum. If the principle behind the splitting of the wage schedules for Court Service employees is to be applied to DSCI employees there must be a similarity of circumstances. With Court Service employees there is a clear dichotomy of functions. Some deputies do not go on the street at all. Others are always on the street. Regardless of whether their street work is as dangerous as Fugitive Investigator street work (it is not), the comparison must be made with the other employees in the respective departments. With Investigators, almost everyone is out on the street sometimes and inside at other times. The split in responsibilities is not as clear cut as it is within the Court Services Department. Thus, the argument comes full circle. Are the Fugitive Unit Investigators that materially different from other Investigators so as to justify a special wage schedule. That is the question that Arbitrators Fletcher and Berman resolved. Insufficient evidence has been presented to disturb those findings.[12]

AWARD

1. The Employer's proposal for wages is the most appropriate proposal pursuant to the factors contained in the Act.

2. The Employer's wage proposal and all other issues as agreed upon

[12] With regard to the other statutory factors, it is clear that the CPI has been sufficiently low as to favor the Employer's proposal. There is no need to further discuss the parties' historical development of the wage and benefit package. It is clear from the discussion above that both proposals are within the historical range of the parties' bargaining history. Finally, as amply demonstrated by the parties' agreement, but for the 4% premium, the basic wage package is consistent with the increases given to other Cook County law enforcement employees.

by the parties shall constitute the collective bargaining agreement for the period of November 1, 2001 through October 31, 2004.

Respectfully submitted,

HARVEY A. NATHAN

September 15, 2004