

**INTEREST ARBITRATION  
ILLINOIS STATE LABOR RELATIONS BOARD**

**Metropolitan Alliance of Police  
Cook County Department of Corrections,  
Chapter #222**

and

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

**ILRB No. L-MA-04-006  
Correctional Officers  
Department of Corrections**

**OPINION AND AWARD  
of  
John C. Fletcher, Arbitrator  
December 15, 2006**

**I. Procedural Background:**

This matter comes as an interest arbitration between the County of Cook and the Sheriff of Cook County as Joint Employers (“the Joint Employer”) and the Metropolitan Alliance of Police, Cook County Department of Corrections, Chapter #222 (“the Union”) pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (“the Act”). The bargaining unit represented by the Union consists of approximately 2,600 sworn Correctional Officers in the Department of Corrections who serve at the Cook County Jail, and approximately 155 Electronic Monitoring Investigators who serve in the Department of Community Supervision and Intervention (“DCSI”). This dispute arises from the parties’ impasse in the negotiation of the Collective Bargaining Agreement (“CBA”) effective December 1, 2004 through November 30, 2008. The parties’ stipulations are set forth in Section IV herein below.

A hearing before the undersigned Arbitrator was held in this matter on July 19, 2006, in the offices of Counsel for the Joint Employer, commencing at 10:30 a.m. The

parties were afforded full opportunity to present written and oral evidence in the narrative, and to make such arguments as were deemed pertinent to their respective positions. At the hearing, the Union was represented by:

Steven Calcaterra, Esq.  
Steven Calcaterra & Associates  
8301 South Cass Avenue, Suite 203  
Darien, Illinois 60561

Co-counsel for the Joint Employer were:

J. Stuart Garbutt, Esq.  
Jacob M. Rubinstein, Esq.  
Meckler Bulger & Tilson, LLP  
123 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606

Post-hearing briefs were filed with the Arbitrator and exchanged on October 1, 2006. The record was closed on that date.

## **II. Factual Background**

The County of Cook employs approximately 25,000 workers, about 20,000 of whom are represented by some 90 different unionized units for purposes of collective bargaining. (Tr. 169.) Members of the bargaining unit represented by the Union in this case, are “jointly” employed by the County of Cook (“the County”) and the elected Cook County Sheriff (“the Sheriff”). The record establishes that the County is responsible for the resolution and administration of all issues having economic impact on the bargaining unit, including but not limited to those concerning wages and benefits. Other administrative responsibilities, such as the hiring, firing, and supervising of Sheriff’s Department employees, are relegated to the Sheriff.

The Cook County Department of Corrections (“DOC”) is the principal department in the Sheriff’s Office, and staffs the largest single-site jail of its kind in the United

States. Occupying more than eight city blocks in Chicago, the DOC is primarily a pretrial detention facility. Thus, inmates incarcerated at Cook County Jail are, as a rule, awaiting trial on pending criminal charges. Some, however, have been convicted and sentenced to incarceration for a period of one year or less. (Tr. 176-177.) In recent years, the average daily inmate population of the DOC has declined from 10,941 inmates in 2002 to 9,912 inmates in 2005. At the same time, the total number of authorized covered staff positions has increased from 2,995 in 2002 to 3,294 in 2006.<sup>1</sup>

### **III. Statutory Authority and the Nature of Interest Arbitration**

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

#### **5 ILCS 315/14(g)**

On or before the conclusion of the hearing held pursuant to subsection (d), the arbitration panel shall identify the economic issues in dispute... the determination of the arbitration panel as to the issues in dispute and as to which of these issues are economic shall be conclusive... As to each economic issue, the arbitration panel shall adopt the last offer of settlement, which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h).

5 ILCS 315/14(h) – [Applicable Factors upon which the Arbitrator is required to base his findings, opinions and orders.]

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
  - (A) In public employment in comparable communities.

---

<sup>1</sup> Joint Employer Exhibit 5.

- (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
  - (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
  - (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
  - (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

As have been observed by other arbitrators, certain principles underlie this interest arbitration award. First, interest arbitration in general is intended to achieve resolution to an immediate impasse, but not to usurp, or be exercised in place of, traditional bargaining. Some arbitrators, correctly or incorrectly depending upon where one stands, have characterized the unique function of interest arbitration, as opposed to that of grievance arbitration, as avoidance of any gain on the part of either party which could not have been achieved through traditional negotiations. Otherwise, some have reasoned, the entire collective bargaining process would be undermined to the extent that many parties, at the first sign of impasse, would immediately resort to interest arbitration.<sup>2</sup> Pursuant to this theory, then, there should be no substantial

---

<sup>2</sup> "If the process [of interest arbitration] is to work, it must not yield substantially different results than could be obtained by the parties through bargaining. Accordingly, interest arbitration is essentially a conservative process. While, obviously value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it his function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse..." See; Will County Board and Sheriff of Will County; (Nathan, 1988); quoting Arizona Public Service; 63 LA 1189, 1196 (Platt, 1974); accord; City of Aurora; S-MA-95-44 at pages 18-19 (Kohn,1995).

“breakthroughs” in the interest arbitration process, and the Arbitrator understands, but does not agree completely with, the premise supporting this point. Certainly, were he (or any arbitrator for that matter) to award an economic advantage to one party or the other significantly superior to that which it might otherwise have gained through traditional bargaining, how likely is it that the “victorious” party would go right back to the well the next time, and thus by-pass good-faith bargaining altogether? Traditional wisdom dictates that the answer is, “very likely”, and perhaps this is true. However, this Arbitrator has examined all of the issues and authorities directed to our attention by both parties to this particular dispute, and has also carefully considered their articulations concerning the proper role of impasse interest arbitration in that context. Because the record before the Arbitrator demonstrates that these parties met no fewer than 12 times to negotiate over the economic and non-economic issues at bar, and later proceeded to mediation when impasse was reached, there is little doubt in the Arbitrator’s mind, even in the face of a patent history of past impasse arbitrations, that good faith bargaining did occur before this one.<sup>3</sup>

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

---

<sup>3</sup> Union brief at page 2.

manifestly important to each for different reasons, are relatively close. Thus, without a crystal ball, determining which proposal the parties “would likely have achieved on their own” is somewhat problematic.<sup>4</sup> When all is said and done, “last best offer” arbitration is the only self help alternative available to the parties under applicable Act provisions when true impasse occurs, and thus must be viewed as an extension of, and not a replacement for, the collective bargaining process. As the Arbitrator previously observed, there is no evidence that either party to this particular dispute has viewed the instant arbitration any other way, even though in the end, they were unable to settle their differences face-to-face with respect to the issues that follow.

Holding the above truth (that the Arbitrator is not, in fact, in possession of a crystal ball) in tension with the task at hand, it is also important to note that it is not entirely impossible to obtain a change, or a departure from the “status quo”, through the process of interest arbitration. Here, three tests (and an additional observation) noted by Arbitrator Harvey Nathan in Will County Board and Sheriff of Will County and AFSME, Local 2961; S-MA-88-9 (1988) prove particularly useful. Arbitrator Nathan

---

<sup>4</sup> The Arbitrator’s opinion on this matter does not depart from the following pertinent (and long-held) opinion he expressed in Village of Downers Grove and the Downers Grove Professional Firefighters; Case No. S-MA-94-246, December 6, 1994: “For instance, explore the notion that impasse arbitration had ought not award either party a better deal than that which it could have expected to achieve through negotiations at the bargaining table. Without a crystal ball, who can tell with any degree of certainty what the expectations of either party were. Going in, both sides know that the final option available, if impasse occurs, is last best offer arbitration. The bargaining table, in most negotiating environments, is not the final available stop. Mediation, fact-finding, emergency boards, arbitration, strike, lockout, blue flu, discharge, bankruptcy, discontinuance of the enterprise, decertification, as well as legislative lobbying and court action, may also be viable pursuits for negotiating objectives. Moreover, and importantly, under the IPLRA, impasse arbitration, with its last best offer approach, is an essential ingredient of the labor relations process for Illinois security employees, peace officers and firefighters. The Act is designed to substitute self help and other traumatic alternatives, resources available in some other environment, (and also the threat of self help which may hang as a sword over the negotiating table), with a less disruptive procedure to produce settlement. The concept that arbitrators should do no more than the parties would do themselves is patently circuitous since in fact the parties were not able through negotiations to do it themselves...” (Page 24, emphasis added.)

concluded that in order to obtain a change through interest arbitration, the party seeking the change must, at a minimum demonstrate the following:

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

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

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

[W]hen one side or the other propose[s] significant changes to the status quo, there is a special burden placed on that party. When one side or another wishes to deviate from the status quo of the previous Collective Bargaining Agreement, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This panel recognizes that this extra burden of proof is placed on those who wish to significantly change the collective bargaining relationship. The party desiring the change must show that:

1. There is a proven need for the change
2. The proposal meets the identified need without imposing an undue hardship on the other party.
3. There has been a quid pro quo offered to the other party of sufficient value to buy out the change or that other comparable groups were able to achieve this provision.<sup>5</sup>

This Arbitrator finds the guidance of Arbitrators Nathan and McAlpin (among others) on this subject to be a reasonable alternative to the “crystal ball” approach. The Arbitrator will thus examine each of the parties’ proposals on the issues at bar in the

---

<sup>5</sup> County of Cook /Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council;  
LLRB Case No. L-MA-96-009 (McAlpin, 1998.)

context of the above “tests” where applicable, and equally importantly in light of their promulgated proofs.<sup>6</sup>

#### IV. The Stipulations of the Parties

1. Pursuant to Section 14(c) of the Public Labor Relations Act and Section 1230.80(a) of the Illinois Labor Relations Board’s Rules, the parties have agreed to present this case to a single-member arbitration panel and have mutually chosen John C. Fletcher as Arbitrator. The parties stipulate to the jurisdiction of the Arbitrator to hear and decide the issues presented to him, with the exception of any reservations that may be specified in either party’s final offers of settlement.
2. The hearing in this matter will convene on July 19, 2006 and continue on additional dates, if necessary, by mutual agreement of the parties. The requirement of Section 1230.90(a) of the Rules and Regulations of the Illinois Labor Relations Board, that the hearing begin within a certain number of days of the appointment of the Arbitrator, has been waived by the parties. There are no disputes as to timeliness or other pre-arbitration procedural matters.
3. The issues to be decided by the panel are reflected in the parties’ respective final offers. The parties agree that all the issues except as may be designated in the final offers are “economic” issues within the meaning of the IPLRA. The parties’ offers shall become final as of the close of the hearing record.
4. The hearing will be transcribed by a court reporter or reporters whose attendance is to be secured for the duration of the hearing by mutual agreement of the parties.
5. The parties stipulate that the arbitration hearing involves “collective negotiating matters between public employers and their employee or representatives,” and, therefore is not subject to the public meetings requirement of the Illinois Open Meetings Act, 5 ILCS 120/1.
6. By mutual agreement, the hearing will be conducted in the “narrative” format by the parties’ representatives, rather than by the testimony of sworn witnesses, except as the parties otherwise may agree or as may be ordered.

---

<sup>6</sup> See also; City of Burbank and the Illinois Fraternal Order of Police Labor Council; ISLRB Case No. S-MA-97-56 (Goldstein, 1998.)

7. All sessions of the hearing will be closed to all persons other than the Arbitration Panel, representatives of the parties, including negotiating team members, witnesses, the management staff of the Joint Employer, and such other persons may be permitted to observe the proceedings by mutual agreement of the parties.
8. At the conclusion of the hearing the Arbitrator shall indicate the dates when the record shall be closed and whether the parties may have additional time to finalize their offers. The parties will prepare post-hearing briefs and exchange them through the Arbitrator on a date to be set by the Arbitrator.

**V. Outstanding Issues**

- Section 1.1 – Representative Unit
- Section 2.3 – Chapter and Employer Meetings
- Section 3.6 – Multiple Assignments
- Section 3.7 – Shift Differential
- Section 3.9 – Hazardous Pay
- Section 5.1 – Job Classification (Wages)
- Section 5.3 – Job Grades
- Section 8.1 – Hospitalization Insurance
- Section 8.3 – Disability Benefits
- Section 9.1 – Bereavement Leave
- Section 11.6 – Union Representatives
- Section 12.1 – No Strike
- Section 13.12 – Uniform Allowance
- Section 6.2 – Holiday Pay

**VI. – External Comparables**

In this case, unlike others of similar nature between these parties, the Union and the Joint Employer have proposed two completely incongruent lists of external comparables. The Joint Employer has proposed comparison of pending economic issues in this record, and wages in particular, with 22 counties previously considered by

Arbitrator McAllister in the 2003 interest arbitration between these same parties.<sup>7</sup> The Union, on the other hand, has proposed an entirely new set of external comparables, and this lack of congruency has thus, predictably, proven to be exceedingly problematic for purposes of comparison and analysis. Even so, the Arbitrator at this juncture hastens to assure both parties, and the Union in particular, that the mere fact that new comparables have been introduced in this record is not the fundamental problem here. Indeed, while consistency of comparables from bargaining season to bargaining season is an obvious boon to the process, for it cannot help but establish a predictable “jumping off” place, times and fortunes of comparable counties and communities do change. For better or worse, this is a fact of life. Thus, the Arbitrator does not find the essential fact of new comparables, to be, in and of itself, troublesome. However, in this Arbitrator’s view, the real trouble for the Union on this issue has come for three other reasons.

First, while the Union has exhaustively presented evidence as to why its proposed comparables should be selected for purposes of comparison, it has failed to adequately establish the inherent quality of that evidence. For example, the Union has set forth the following “Comparable Community Selection Criteria”:

Residential Population:	Within the top 100 counties in the United States  (Data from U.S. Census Report 2000).
Union Status:	State Labor Board authorizing statute for public union, with binding impasse arbitration provision.
Employer:	County government managing the jail/pretrial detention function.

---

<sup>7</sup> The Arbitrator notes that in the case before Arbitrator McAllister, the Union proposed 13 external comparables, and the Joint Employer considered 10 others. Here, the Joint Employer combined both lists, and, with the exception of Suffolk County, New York, compared their relevant statistics with those of Cook County.

Jail Population:	Within the top 50 of jail populations in the United States. Data from Bureau of Justice Statistics Bulletin, “Prison and Jail Inmates at Midyear <u>2004</u> ”, Harrison and Beck.
Median Household Income:	Cook County Value: <u>\$46,322</u> Within 25% +/- of Cook County Value (\$32,028-53,380) Data from U.S. Census Report <u>2003</u> .
Median Home Value	Cook County Value: <u>\$157,700</u> Within 25% +/- of Cook County Value (\$118,275-\$197,125) Data from U.S. Census Report <u>2000</u> .
Retail Sales Per Capita:	Cook County Value: \$9,403 Within 25% +/- of Cook County Value Data from U.S. Census Report <u>2002</u> (\$7,052-\$11,754) (Emphasis added.) <sup>8</sup>

At the outset, one can easily observe that the comparative indices in each of the above established factors for Cook County alone are substantively out of date. Moreover, they are not even consistent in terms of applicable year with one another. In other words, if the Arbitrator wished to view a “snapshot” of Cook County in any given year, which should presumably be possible in this case (at least more currently than 2000), he would be unable to do so using the Union’s data. The Arbitrator further observes that the above data is inconsistent with the data represented as that upon which the Union based its final list of proposed comparables. Union Exhibit 6, to which the Arbitrator refers, is a “Comparison of [100] Large County Governments”, of which all but a few were ultimately eliminated by the Union because they were not “comparable” (within +/- 25%) to Cook County in terms of Median Home Value, Median Income, and Retail Sales Per Capita. Importantly, Union Exhibit 6 establishes that the Cook County Median Home Value in 2000 was \$157,700. This figure ties with Exhibit 4 above.

---

<sup>8</sup> Union Exhibit 4.

However, Union Exhibit 6 also reflects a 2003 Median Household Income amount of \$42,704, and that value differs from the Union Exhibit 4 “2003 Census” figure of \$46,322 for Median Income. This defect, the Arbitrator acknowledges might be viewed by some as an inconsequential statistical or recording error. However, the important conclusions he is called upon to make, particularly where wages and other compensations are concerned, are dependant upon the quality of the comparative data provided. It must be both accurate and useful. Here, then, the Union meets its first obstacle with respect to its new proposed external comparables, as, before even considering the validity of the new proposed comparable counties, we realize fully that we have nothing valid to compare them to. The Union’s statistics for Cook County, which are of course crucial to any defensible examination of its current economic proposals, are inconsistent in terms of applicable year, such that an “apples and oranges” scenario inevitably emerges when an attempt is made to correlate Cook County income data with Cook County cost data in any given past year. That is to say, how is 2003 median income data useful when only 2000 housing data accompanies it, and how can 2002 sales data possibly relate to either? Moreover, some data at least, appears to be inconsistent with what should be identical data in other parts of the evidentiary record.<sup>9</sup> The Arbitrator absolutely understands that the Union has compared “apples to apples” in each of the three categories independently; that is to say that like data was examined in each of the three economic considerations from

---

<sup>9</sup> The Arbitrator notes that the Joint Employer has also presented “Median Income” and “Median Housing Value” statistics for Cook County (along with those of their other proposed external comparables). Interestingly, these figures are different still, as they were, according to the record, gleaned from a U.S. Census Bureau 2004 American Community Survey. Thus, neither party has presented the Arbitrator with a congruent view of Cook County, let alone its proposed comparable counties. The dilemma this presents is self-explanatory.

county to county for purposes of elimination as a potential comparable. However, the result is necessarily flawed in terms of its usefulness, because when all is said and done, much of the data used by the Union to reject potential comparables is outdated and “piecemeal”.

This brings the Arbitrator to the second flaw in the Union’s logic with respect to which counties were “left standing” as external comparables at the end of the process. The Union’s rationale for rejecting all other potential comparables was as, if not more, noteworthy than its reasons for accepting the ones ultimately proposed in this record. At arbitration, the Union exhaustively explained its reasons for selecting the following counties as external comparables:

Riverside County Sheriff’s Department (California)  
Sacramento County Sheriff’s Department (California)  
San Bernardino County Sheriff’s Department (California)  
DuPage County Sheriff’s Department (Illinois)  
Will County Sheriff’s Department (Illinois)  
Lake County Sheriff’s Department (Illinois)

As explained by the Union, examination of potential external comparables began with the fundamental understanding that the County of Cook is the second largest county in the United States with a population of approximately 5.3 million according to 2004 census data.<sup>10</sup> Based strictly on population, then, the Union adopted a list of the 100 most populous counties, and then “applied more selective criteria to narrow the comparables to a more precise market. (Id.)<sup>11</sup> The first criteria suggested, and ultimately used by the Union for purposes of narrowing the field of potential

---

<sup>10</sup> Union brief at page 7.

<sup>11</sup> The Union argues that the parties to this arbitration had no agreed upon criteria for the selection of comparable counties under the Act.

comparables, were: gross sales tax revenue per capita, median home value, and median income. The Union eliminated all counties (of the 100) which had individual criterion values above or below 25% of Cook County statistics for the same years. That is, even if the values for two of the three selected factors were within allowable range, if the third was not, that county was totally rejected as a potential comparable. (From this, one can now easily see how absolutely crucial accuracy was to this process.)

The Union next eliminated remaining counties whose unions operate under labor laws unlike those of Illinois. In particular, the Union eliminated counties with laws barring unionization of public safety groups, and also impasse arbitration. The Union further eliminated any county “not [providing] the function that this group does provide, namely, the support and staffing of a public safety, county pre-trial and limited post-trial detention facility, and any county not maintaining a county jail at least within the 50 largest facilities in the nation having an inmate population within 20% of that of Cook County Jail.”<sup>12</sup>

This entire process, then, yielded only three remaining potential “comparables”, the three California counties listed above. However, according to the record, the Union also subsequently added three Illinois comparables to that list on the basis of geography alone. Evidently, the Union applied none of the above mentioned “elimination criteria” to the proposed comparable Illinois counties of DuPage, Will and Lake.<sup>13</sup>

---

<sup>12</sup> Union brief at pages 8 and 9. The Union also points out that it did not consider state-governed correctional institutions, because they are typically post-conviction facilities and generally offer a career track different from that of county jails.

<sup>13</sup> Here, the Union argues that, “[T]he neighboring counties of Will, DuPage and Lake are good, if not even better comparables to Cook County than the large geographically diverse units described above

After carefully examining this record, the Arbitrator concurs with the Joint Employer that the Union’s process of selecting external comparables was confusing, and in the end, result-oriented. This is hardly surprising, given the importance of comparables to the Arbitrator’s findings with respect to wages and other economic issues. However, the Arbitrator is convinced that the Union’s process was flawed in its harshness, in that its wholesale elimination of potentially comparable counties for “failing” only one of numerous self-selected tests, was inappropriate. On this, the Arbitrator is guided by the teachings of Arbitrator Edwin Benn, in A Practical Approach to Selecting Comparable Communities in Interest Arbitrations under the Illinois Public Labor Relations Act, who noted in pertinent part as follows:

...From a practical standpoint, the determination of whether two communities are “comparable” is important and most difficult. First, the Act does not define “comparable communities.” There is no legislative history concerning what the drafters intended when they used that phrase. Nor is there any judicial guidance. Arbitrators are therefore left to their own devices to discern how to determine comparability.

Second, the notion that two communities can be truly “comparable” may not be realistic. As I observed in my award in *Village of Streamwood*: “It is not unusual in interest arbitrations for parties to choose for comparison purposes those communities supportive of their respective positions. The concept of a true “comparable” is often times elusive to the fact finder. Differences due to geography, population, department size, budgetary constraints, future financial well-being, and a myriad of other factors often lead to the conclusion that true reliable comparables cannot be found. The notion that two municipalities can be so similar (or dissimilar) in all respects that definitive conclusions can be drawn tilts more towards hope than reality. The best we can hope for is to get a general picture of the existing market by examining a number of surrounding communities...”

\*\*\*

---

because of their proximity to Cook County. Although the financial circumstances of each of these counties exceed the parameters described above for the large national counties, the geographical relevance of these units must not be ignored...” (Union brief at page 9.)

... This article offers one arbitrator's thoughts on a practical and reasonable method for making these difficult comparability determinations.

\*\*\*

To begin the analysis, the parties' lists of comparables are first examined to determine if there are communities over which the parties are not in dispute. The comparability analysis seeks to determine whether a contested community is sufficiently similar to the agreed upon comparable communities. But similar in what ways? The parties often present data concerning factors that can be used for comparison purposes...

The parties have thus identified agreed upon comparable communities, contested communities and have further identified factors and data to be used for comparison purposes. The agreed upon comparable communities form a range which can be used for comparison purposes. If a contested community has sufficient contacts in terms of the identified factors with the range of agreed upon comparables, then it is reasonable to conclude that the contested community is also comparable to the community subject to the interest arbitration. Conversely, if the contested community does not have sufficient contacts with the agreed upon range of comparable communities, then it is reasonable to conclude that the contested community is not comparable.

\*\*\*

[Some Observations About the Analysis]

\*\*\*

First, my experience in interest arbitrations has been that the parties offer substantial amounts of data to support their comparability arguments. All this analysis does is provide a method for organizing and analyzing that data. Because the Act neither defines nor gives guidance on how comparability determinations are to be made, a reasonable method must be chosen. This is a reasonable method....

Second, this analysis is flexible. Merely because a contested comparable falls outside the range of agreed upon comparables in a particular factor does not automatically mean that comparability does not exist for that particular factor. Even though outside the range of agreed upon comparables, the difference may be numerically minimal. The analysis permits the conclusion in that case that, although outside the range of agreed upon comparables, a contested community still can have sufficient contact with the range of agreed upon comparables...(Emphasis added.)

Careful reading of Arbitrator Benn's instruction in the context of this particular case raises one obvious question: How is his proposed analysis useful when the parties have no comparable counties in common? The answer is simple, if not entirely

obvious. Arbitrator Benn's logic can easily be applied to a party's internal quest for comparables. Here, the Union had a "range", if you will, of only one "uncontested" comparable; Cook County. After selecting a number of criteria, the Union compared Cook County data with similar data from a group of 100 other counties. However, what the Union failed to do pursuant to Arbitrator Benn's reasoning, which this Arbitrator finds both rational and practical to the internal process, was to determine whether each of the 100 counties in turn had "sufficient contacts" with Cook County criteria so as to make them closely, if not entirely, comparable. (Remember, Arbitrator Benn correctly, in this Arbitrator's opinion, observed that "The notion that two municipalities can be so similar [or dissimilar] in all respects that definitive conclusions can be drawn tilts more towards hope than reality.") Instead, the Union threw out any county which failed to contact Cook County (within a set range of acceptability) in any way. While the Arbitrator cannot of course be entirely certain of this, he is of the opinion that the Union's wholesale rejection of many potential comparables in this manner, was likely akin to throwing out the baby with the bathwater.

Moreover, the Union used elimination criteria in its "single strike" approach, which were not appropriate in the first place. Labor law structure in particular, was not a valid elimination criterion. (Again, had the multiple "contact" test advocated by Arbitrator Benn been utilized, some of the counties eliminated because they operated under dissimilar labor laws, would have survived the process in every other way.) Legal and/or arbitral processes are not, in this Arbitrator's opinion, relevant to any cogent analysis of wage packages or other economic issues impacting parties to interest arbitrations under the Act. True, as the Union has argued, unions and management

sharing similar resolution structures with these particular parties have the process in common, but not necessarily the result. As already noted, impasse arbitrations and attendant appeals processes are natural extensions of the collective bargaining process, and thus, at least in spirit, are not different enough from other collective bargaining processes with respect to results to warrant the exclusivity the Union suggests.

The Arbitrator has one last word with respect to the Union's external comparability data. While it is extensive in scope and voluminous in nature, it proved in the end to be confusing and difficult to apply to the realities of the parties' respective wage packages. The Arbitrator found nothing in the record which actually presented the current wages of Cook County Correctional Officers as compared with those of the proposed comparable counties. Apparently, the Arbitrator was supposed to go to each of the six respective collective bargaining agreements included in this record, and glean that information on his own. However, as he has observed in other cases with respect to proofs, a pile of bricks does not a house make. Clearly, comparative evidence is the stuff of the decision making process with respect to economic issues in interest arbitrations, and wage issues in particular. Even if solid applicable evidence in favor of the Union's comparables did exist in this record, and the Arbitrator is not entirely convinced for previous reasons that it does, it was never succinctly summarized for comparative purposes. The record did contain numerous graphs and charts containing cost of living data, national wage trends, and a host of other cost-related factors. However, when all was said and done, the Arbitrator was unable to find any concise evidence as to how Cook County Correctional Officers actually fared on economic

issues (particularly wages) when compared with corrections personnel in all six of the Union's selected external comparables.

Thus, the Arbitrator is left with the Joint Employer's list of comparable counties for purposes of analyzing the parties' proposed wage packages. Here again, the Arbitrator points out that, while they will be used in this case, it is not because they are inherently more truthful than the Union's proposed comparables. Instead, it is because the Union's external comparables, for reasons stated above, are likely to be less reliable because the Union's original list of 100 counties was slashed to three without proper justification.

There is another reason the Joint Employer's proposed external comparables are useful here. They are consistent with what both parties agreed were comparable communities in the last round of negotiations and interest arbitration. The Arbitrator notes that the parties presented two smaller lists to Arbitrator McAllister in 2003. Here, the Joint Employer combined the lists of prior comparables, and presented them against Cook County in Joint Employer Exhibits 7 and 8. Thus, the Arbitrator is satisfied that the Joint Employer covered all the necessary bases by incorporating all of the last round's comparables in this record. Absent good enough reason to depart from them, and given the fact that that the Arbitrator is not privileged to conjure something better, he is convinced that the Joint Employer's proposed list of external comparables is the more reasonable of the two. They are thus adopted for purposes of comparison in this record.

## **VII. Internal Comparables**

For purposes of internal comparability, the parties are in essential agreement that the Cook County Sheriff's Police and the Cook County Court Services Deputies Unit have been, and should continue to be, considered valid internal comparables. The record establishes that the Cook County Sheriff's Police continue to be the highest paid of the three bargaining groups, including the instant Cook County Correctional Officers. There is no dispute that the Sheriff's Police have full police patrol responsibilities, and the group as a whole is comprised of highly trained police specialists. (Tr. 183.) Cook County Correctional Officers are the next highest paid of the three groups, closely followed by the Cook County Court Services Deputies Unit. The record establishes that prior recent interest arbitrations involving the Cook County Court Services bargaining unit have resulted in "catch-up" wage increases designed to close, albeit maintain by a slight margin, a wage gap between Court Services personnel and Correctional Officers.

The Union "strongly objects" to any reference on the part of the Arbitrator to the recent Correctional Sergeants collective bargaining agreement. The Correctional Sergeants agreement, argues the Union, was not made a matter of this record, and should not be relied on by the Arbitrator as he considers the economic issues before him in the instant arbitration.<sup>14</sup>

### **VIII. The Issues**

---

<sup>14</sup> In particular, the Union urges the Arbitrator not to be swayed by the fact that the Correctional Sergeants agreed to wages and insurance benefits similar to those the Joint Employer has proposed here. In particular, the Union points out that the Correctional Sergeants are represented by an entirely different union, and have negotiated a "me too" clause into their wage package which essentially guarantees them any pay increases over and above what they have agreed to, which are later granted to this bargaining unit. (Union brief at page 58.) Here, the Union implies that the Arbitrator should not accept this as a signal that the Joint Employer's offers in this case are reasonable, but rather recognize the Correctional Sergeant's acceptance as a lack of incentive to do better at the bargaining table because they stand to gain something better if this Union is successful.

## Section 1.1 – Representative Unit

### The Union's Final Proposal

The Employer recognizes the Chapter as the sole and exclusive Representative for all employees of the Employers in the job classifications of Correctional Officer, Canine Specialists, and Investigator II (Intensive Supervision) within the EM Division and Records Unit of the Department of Community Supervision and Intervention and Cook County Sheriff's Boot Camp Drill Instructors, Canine Unit, and Department of Women's Justice and excluding all employees above the rank of Correctional Officer, Canine Specialists, Investigator II positions in the Fugitive Unit and Day Reporting Unit business, Investigator III and Investigator IV Positions, all Investigator positions regularly assigned to conduct internal investigations or regularly assigned to the Sheriff's Merit Board, and excluding all supervisors, managerial and confidential employees, and all other employees of the County of Cook and the Cook County Sheriff's Department.<sup>15</sup>

### The Joint Employer's Final Proposal

Maintain *status quo*.<sup>16</sup>

#### The Position of the Union:

The record establishes that in August, 1992, Cook County/the Sheriff of Cook County formed a Canine Unit, and staffed "Canine Specialist" positions with bargaining unit Correctional Officers on a temporary basis until budget authority for the jobs could be obtained. When the jobs were made permanent, it was decided that they would be non-bargaining unit positions, and incumbents were thus directed to return to the bargaining unit as Correctional Officers, or forfeit their seniority and remain non-union Canine Specialists. Shortly thereafter, the union representing Correctional Officers at the time (not the Union presently representing them), charged the Joint Employer with unfair labor practices, on the basis that they had unlawfully removed both work and members from the bargaining unit. On October 10, 1996, the Board issued a decision

---

<sup>15</sup> Union Exhibit 1. Underscoring indicates departure from the *status quo*.

<sup>16</sup> At arbitration, the parties indicated that a tentative agreement has been reached to incorporate reference to "Department of Women's Justice" into the language of Section 1.1 of the Agreement. Thus, the Arbitrator addresses only the issue of "Canine Specialists" in his award.

in favor of the Union, and ordered the employer to bargain with the union and restore the work to the bargaining unit. The County appealed the Board's decision, and on April 29, 1998, the Illinois Appellate Court ruled that the Sheriff's Office had improperly reclassified positions (K-9) into a new unit without bargaining with the union, and thus upheld the Board's decision. A few months later, the Metropolitan Alliance of Police, Chapter #222 was elected as the exclusive bargaining representative for this unit, and neither the former representative unit nor the Joint Employer evidently informed MAP #222 of this litigation and its result. As a consequence, the entire matter "fell through the crack" and was never raised in subsequent collective bargaining.

Now, then, the Union argues that Correctional Officers who were members of this unit, either with the predecessor union, Teamsters #714, or with MAP #222, and were "transferred" to the Canine Unit, are still Union members and should be recognized as such. The Union argues that both the Board and the Illinois Appellate Court recognized that the Joint Employer wrongfully reclassified Canine Specialist positions as non-bargaining unit positions. Thus, argues the Union, it is now justified in seeking through interest arbitration, affirmation of the Board's ruling through its proposed change in Section 1.1 of the Collective Bargaining Agreement. In particular, the Union states, "The Union is not asking that individuals who were not ever members of this unit be considered members, only that employees who were members upon their transfer into the unit remain as such." The Union acknowledges that these proposed "grievants" have not appeared on Union rosters, nor have they paid Union dues, since the [non-union] Canine Specialist positions were created. The Union insists, even in the face of the Arbitrator's lack of statutory authority to accrete new job classifications into the

bargaining unit under the Act, that he now consider the prior litigation evidence of the Board's pre-existing exercise of that exclusive right, and sustain the instant petition to integrate "Canine Specialists" into the Representative Unit through the interest arbitration process.

The Position of the Joint Employer:

The Joint Employer argues against the Union's proposal to add any reference to Canine Specialists in Section 1.1 of the Agreement. Canine Specialist positions, argues the Joint Employer, are not, nor have they ever been, bargaining unit positions. Thus, argues the Joint Employer, since only the ILRB has statutory authority to accrete them into the bargaining unit now, it is inappropriate for the Arbitrator to consider doing so through the process of interest arbitration. The Joint Employer is not persuaded that the ILRB intended that Canine Specialist positions be accreted as a result of the litigation cited by the Union in support of its proposed change to the present Agreement. In particular, argues the Joint Employer, the ILRB repeatedly referred to Canine Specialists as "outside the bargaining unit", and nothing has changed. More importantly, argues the Joint Employer, simply because the Board ordered the parties to negotiate over the matter, does not mean it can be construed that the Board by extension intended an accretion into the bargaining unit that only it could statutorily accomplish.

Were the Arbitrator to rely on Arbitrator Nathan's instruction that, within the context of Section 14(h) of the statute he could consider the parties bargaining history on the matter, argues the Joint Employer, the result would still be the same. There is no evidence in this record, argues the Joint Employer, that it, as "the party seeking to maintain the *status quo*", somehow resisted attempts at the bargaining table to address the problem. In fact, argues the Joint Employer, the matter was never raised during bargaining. (Tr. 217.) Thus, maintains the Joint Employer, "Any enforcement of the

Board order should go to the Board itself, and it's probably way too late to do that now when nobody can say what was done in the wake of the decision itself." (Id.)

### Discussion

Clearly, as the Joint Employer has argued, only the Illinois Labor Relations Board has authority to accrete new job classifications into covered collective bargaining agreements. In point of fact, there is no dispute between the Joint Employer and the Union as to the place where that particular authority begins and ends. However, the Union essentially argues that the Board has already ruled on this issue and, albeit nearly 10 years have passed since, its decision, later upheld by the Illinois Appellate Court, should now be brought to the fore and acted upon through the process of this interest arbitration. This necessarily raises two important questions; first, did the Board really rule on the essential matter of accreting "Canine Specialist" positions into the bargaining unit, and second, if so, can that ruling be resurrected at so late a date.

As to the first question, which necessarily impacts the second, the Arbitrator is not persuaded, after a careful reading of both the Board's initial decision and the Court's affirmation, that the position of Canine Specialist was expressly accreted as a result thereof. Both the Board and the Court recognized that the Joint Employer wrongfully removed work (and by extension personnel) from the bargaining unit, though the Board repeatedly recognized the position of Canine Specialist as one outside the bargaining unit. While this may appear to be an exercise in hair-splitting, really it is not. What the Board expressed, in the opinion of this Arbitrator, is that the Canine Specialist work, most appropriately thought of in the context of traditional "corrections" work, was wrongfully transferred from the bargaining unit to people who, while albeit wrongfully

removed from the bargaining unit to perform that work in the first place, were known as [non-union] Canine Specialists. This is distinctly different from judicially adding the title of “Canine Specialist” to the Agreement. In essence, then, the Board agreed with the Union that neither the work nor the personnel should have been transferred out of the unit, and thus effectively ordered the Joint Employer to “go back and fix it” through the process of negotiations. While it appears that this was never done, it is, as the Joint Employer has observed, impossible to know what really transpired in the wake of the Board’s decision, because none of the players are still around. Should the parties now attempt to “fix” the inherited problem of what was, at least in 1998, recognized as lost bargaining unit personnel and work? Perhaps and perhaps not; that is up to them.

That brings us to the second point; should the Board’s decision be acted upon now, some nine years later? Again, perhaps and perhaps not. Importantly, it is not for the Arbitrator to legislate, because the ruling of the ILRB all those years ago did not, in fact, mandate what he is being asked by the Union to do in this case; that is to add a job title to the Collective Bargaining Agreement. Actually, if the Arbitrator *were* to do as the Union asks, that is to insert the title of “Canine Specialist” into Section 1.1, it would still not fix the real problem of an unlawful transfer of work. Indeed, at least in theory, the Joint Employer could, and the Arbitrator is not saying it would, have newly-installed bargaining unit “Canine Specialists” bathe and groom dogs, while non-bargaining unit “Canine Specialists” continued to perform the disputed corrections work. Thus, the process of formal accretion is absolutely necessary, as it formalizes job functions and codifies both parties’ understandings with respect to the scope and purpose of new covered positions. This, obviously, is not what the Board did all those years ago. The

Arbitrator is not unsympathetic to the Union on this matter, because, clearly a battle was won and the spoils evidently never enjoyed. Perhaps this was intentional; some sort of side or verbal agreement might actually have been made to maintain the *status quo* in the wake of the Board's decision, in exchange for some other concession. Perhaps it was a genuine oversight. In any event, it is impossible to know now. Certainly, the Union is free to re-litigate the matter and pursue formal accretion, and given the issue's established history, might even prevail again. It is, nevertheless, an inappropriate issue in the instant forum.

### **Order**

For the foregoing reasons, the Arbitrator concludes that the *status quo* with respect to the absence of any reference to "Canine Specialists" in Section 1.1 of the Agreement should be maintained. The Union's petition is denied.

### **Section 2.3 – Chapter and Employer Meetings**

#### The Union's Final Proposal

B. Department of Community Supervision and Intervention and Department of Cook County Sheriff's Boot Camp, Canine Unit and Department of Women's Justice:

For the Department of Community Supervision and Intervention and the Department of Cook County Sheriff's Boot Camp, Canine Unit and Department of Women's Justice labor/management meetings will be scheduled on an as need basis. Arrangements for such meetings shall be made reasonably in advance, at mutually agreed upon times and both parties will provide a written agenda. Matters taken up in the scheduled meetings will be confined to the agenda.

The number of designated Representatives for each side will be mutually agreed upon.

#### The Joint Employer Final Proposal

Maintain *status quo*.<sup>17</sup>

### Order

For the reasons stated by the Arbitrator in response to the Union's petition pursuant to Section 1.1 of the Agreement and incorporated herein as if fully rewritten, the Arbitrator concludes that the *status quo* with respect to the absence of any reference to "Canine Unit" in Section 2.3 of the Agreement should be maintained. The Union's petition is denied.

### (New) Section 3.6 – Multiple Assignments

#### The Union's Final Proposal

Effective November 30, 2008, any member who performs Multiple Assignments shall be compensated with an additional one hour (1 hr) of compensatory time if the assignment exceeds one hour during their regularly scheduled work shift. For purposes of this provision, "Multiple Assignments" shall be defined as an assignment requiring that an Officer be assigned to more than one area, dormitory, tier, wing, pod, post, work area or living unit simultaneously. For example, a Multiple Assignment is living unit A and G simultaneously assigned.

#### The Joint Employer's Final Proposal

Maintain *status quo*.<sup>18</sup>

#### The Position of the Union:

The Union argues that insufficient staffing in the Cook County Department of Corrections has been "a consistent problem over the years", and as a result, Correctional Officers have frequently been required to "cross-watch" or, in other words, to watch more than one tier or living unit of inmates at a time. The Union accordingly concludes that "officers at the Cook County Jail are overworked", and further contends

---

<sup>17</sup> At arbitration, the parties indicated that a tentative agreement has been reached to incorporate reference to "Department of Women's Justice" into the language of Section 2.3 of the Agreement. Thus, the Arbitrator addresses only the reference to "Canine Unit" in his award.

<sup>18</sup> The Arbitrator understands that the Agreement does not currently contain a provision for Multiple Assignments. Thus, the *status quo* is maintained if the Union's proposal fails and Section 3.6 is not adopted.

that staff shortages and frequency of cross-watching “has contributed greatly to the increase in the numbers of injuries to staff.”<sup>19</sup>

The Union acknowledges that its “Multiple Assignment” proposal is a “breakthrough”, and further avows “hope that it will not be needed” as the Joint Employer continues to affirmatively address core issues of staff shortages. To that end, offers the Union, proposed Section 3.6, if successful, will not take effect until the last day of the Collective Bargaining Agreement. However, maintains the Union in the alternative, upon November 30, 2008, “[O]ur officers will finally receive some small compensation in exchange for performing the workload of two or more people.”

The Position of the Joint Employer:

The Joint Employer calls the Union’s proposal to initiate a “Multiple Assignment” premium an “unprecedented breakthrough” without evidentiary support. The Joint Employer cites undisputed evidence that, since the *Howard* report was issued, the number of Correctional Officers staffing Cook County Jail has increased while inmate population has declined. The Joint Employer acknowledges that, “No one contends that assigning Correctional Officers to supervise more than one unit at a time is ideal.” However, notes the Joint Employer, the problem is exacerbated when Correctional Officers scheduled to work “take time off”.

---

<sup>19</sup> Union brief at page 31-32. The Union’s assumption here is prompted by a report published by the John Howard Association, an “independent monitor” assigned to oversee, among others, staffing reforms at the Cook County Jail subsequent to *Duran v. Sheahan et al.*, 76 C 2949 *et.seq.* While the *Howard* report stopped short of drawing a straight line between manpower shortages and increased incidents of staff injuries during the examination period, the Union observes that overcrowding and understaffing were accompanied by increases in reported injuries to jail personnel during the same period.

The Joint Employer interprets the Union’s proposal for “compensatory time” as a petition for actual paid time off when Correctional Officers are required to cross-watch for more than one hour on any single shift. Thus, reasons the Joint Employer, the Union’s proposal, in reality, works against the Union’s fundamental complaint of insufficient staffing. In other words, argues the Joint Employer, “[Proposed Section 3.6] would result in *more* time off for Officers – an additional hour of compensatory time for each occasion an Officer is multiply assigned – thus *undercutting* efforts to alleviate the multiple assignment problem by reducing absences.” (Emphasis original.)<sup>20</sup>

Moreover, argues the Joint Employer, there is no demonstrable proof in this record directly connecting personnel shortages with staff injuries. In fact, notes the Joint Employer, the evidence shows that the rate of staff injury is not presently greater or more alarming than it has been throughout recent history. (*Id.*) Even if staff injuries were on the rise as a result of staff shortages, argues the Joint Employer, the Union’s proposal (that is compensatory time off for cross-watching) would only make matters worse by authorizing affected Correctional Officers to take even more time off. Thus, reasons the Joint Employer, the Union’s proposal should be rejected.

Discussion:

Holding to Arbitrator McAlpin’s previously cited teaching in County of Cook/Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council, LLRB No. L-MA-96-009 (1998), the Union’s proposal to depart from the *status quo* must be supported by sufficient evidence that there is a proven need for the proposed change, and that the change meets that need without imposing an undue hardship on the other

---

<sup>20</sup> Joint Employer brief at page 55.

party. Additionally, as Arbitrator McAlpin observed and this Arbitrator affirms, the Union in this case (as the party proposing departure from the *status quo*) must “fully justify its position” and “provide strong [substantiated] reasons” for its proposed change. After carefully examining this record, including the cited *Howard Report* in its proper context, the Arbitrator is not persuaded that the Union satisfied this “extra burden of proof.” (See *McAlpin*.)

First, the Arbitrator observes what appears to be a difference in the parties’ interpretation of the disputed language. This, in itself, is troubling, because it demonstrates to the Arbitrator that the parties were not, evidently, of one mind as to what they disagreed on in the first place. The Union appears to argue that the proposed language is a petition for a cash premium; that is one extra hour’s pay for every shift a covered Correctional Officer is required to cross-watch or guard more than one unit of inmates at a time. (See; Calcaterra testimony at page 14 of the hearing transcript; “What the Union is looking to do is to compensate just a little extra compensation for those officers who have to work multiple assignments...”, and at page 127 of the transcript; “[The Joint Employer] is in a unique position with this provision, and that unique position is that they can fix the situation so that they don’t have to pay the Union members [if staffing shortages are addressed]... We can, however, ask for compensation for workload that exceeds the typical workload...” (Emphasis added.)

The Joint Employer, on the other hand, appears to interpret proposed Section 3.6 as a petition for “comp time” in the traditional sense; that is, paid time off, which they argue would only worsen the problem of existing staff shortages at the heart of the Union’s complaint.

Obviously, the parties' mutual misunderstanding as to the meaning and application of the proposed language, makes a reasonable conclusion as to whether or not it meets the identified need nearly impossible. If the Union's theory is accepted, the Arbitrator is not persuaded that it does.

First, the Union asserts that Officers are required to cross-watch to such a degree that they are increasingly unsafe and incidents of staff injury are on the rise because of it. Anecdotally, this may be true, and the Arbitrator does not presume to minimize the Union's fundamental (and legitimate) desire to protect the safety of its members. However, this record does not contain substantive proof that cross-watching continues to occur as a direct result of the Joint Employer's patent failure to address staffing problems, nor has the Union satisfactorily established a direct correlation between proven ongoing neglect on the part of the Joint Employer in this specific area, and staff injuries.

Moreover, and this is significant from the parties' respective arguments on other issues in this record, the Union has evidently failed to factor absenteeism into the equation of "multiple assignments", and thus seeks to penalize the Joint Employer for an alleged problem its own members are potentially contributing to. (For example, as will be discussed below, the Union has asked the Arbitrator to allow Union Stewards paid time off for monthly Union meetings even when those meetings do not conflict with their scheduled tours of duty. Additionally, the Union has sought to block the Joint Employer's proposed change in holiday pay language which would close a "loophole" presently enabling excessively large numbers of Correctional Officers to call in "sick" on major holidays and still qualify for paid compensatory time off afterward.) The Union's

position on these other issues, then, casts a shadow of doubt on its promulgated motives for the instant “multiple assignment” language change.

Additionally, the Union’s proposed premium does not fix the problem even if a problem really does exist. If safety really is the issue, one hour’s pay will not change a thing. Moreover, the fact that Correctional Officers may, on occasion, be required to guard an additional number of inmates on any given shift, does not necessarily qualify them for more pay. It is, after all, the very same work they perform anyway, and whether or not “cross-watching” requires more effort is purely a matter of speculation. True, it is less convenient, but what the Arbitrator is saying is this; in theory, a Correctional Officer only has so much “effort” to give. The fact that that “effort” is spread more thinly than he considers usual, does not necessarily make his job so difficult that the entire nature of it has changed to the extent that a premium (either in cash or time off) is thus reasonable and warranted. Absent definitive proof that a bona fide job change as a direct result of the disputed practice has occurred, and there is no reliable evidence of such a change in this record, the premium sought here is unwarranted according to established statutory and arbitral instruction. The following Order so reflects.

### **Order**

The *status quo* with respect to the absence of Section 3.6 in the Agreement is maintained. The Union’s petition is denied.

### **(New) Section 3.7 – Shift Differential**

#### The Union’s Final Proposal

Effective November 30, 2008, members who are assigned to perform any work or assignment other than between 0700 and 1500 hours shall be paid a shift differential equal to twenty-five (\$0.25) per hour in addition to their regular salary.

The Joint Employer's Final Proposal

Maintain *status quo*.

The Position of the Union:

The Union argues that, "Shift Differential is an economic benefit that is present in a majority of Sheriff's Departments serving a population of 500,000 or more."<sup>21</sup> While acknowledging that internally comparable units in the Cook County Sheriff's Department do not enjoy this particular benefit, the Union argues that considering Court Services Deputies "comparable" is particularly inappropriate in this case. Court Services Deputies, argues the Joint Employer, function primarily during the day shift, and do not have substantial 24-hour per day duties as do Correctional Officers at Cook County Jail.

In at least one of its externally comparable counties, Sacramento County CA, notes the Union, corrections employees do, in fact, receive a shift differential. The Union also notes that corrections personnel receive shift differentials in other major metropolitan areas.<sup>22</sup> Thus, reasons the Union, "Compared to the range of benefits offered by other correctional department employers, the differential requested by the Union of \$0.25/hr is substantially below market value, and would not be a significant economic impact upon the employer."<sup>23</sup>

The Position of the Joint Employer:

---

<sup>21</sup> The Union cites U.S. Bureau of Justice Statistics, *Sheriff's Offices, 2003* in support.

<sup>22</sup> In support, the Union cites Suffolk County, Nassau County, Orange County, Westchester County, Las Vegas County, Santa Clara County, the State of Pennsylvania and the State of Minnesota.

<sup>23</sup> Union brief at page 34.

The Joint Employer argues that record evidence, “in the context of the overall economic circumstances of the bargaining unit”, militates against the Union’s proposal for shift differential. The Joint Employer argues that because wages and benefits already afforded Cook County Correctional Officers are “highly favorable and competitive” in comparison to its external comparables, and because the Union failed to establish justification for the “breakthrough inauguration” of a shift differential, the *status quo* should be maintained.

The Joint Employer further notes that the Union’s effort to obtain shift differentials through interest arbitration in 1987 and 1993, were unsuccessful. Moreover, argues the Joint Employer, shift differentials are not paid in any of the other Cook County Sheriff’s law enforcement units, and the Union, opines the Joint Employer further, has not established compelling evidence that new circumstances somehow make a breakthrough on this issue appropriate now.

The Joint Employer concludes, on the basis of internal parity and in light of past arbitral precedent, that the Union’s proposed amendment of the Agreement to include Section 3.7 is not justified.

Discussion:

Upon the whole of this record, the Arbitrator is persuaded by the Joint Employer that the *status quo* should be maintained with respect to shift differentials. Once again, the Union runs aground on the matter of external comparables, for this, absent demonstrable evidence that actual circumstances have changed for Correctional Officers working other than day shifts at the Cook County Jail, is the only instrument at the Arbitrator’s disposal by which he can mandate the proposed reform in a factually

supportable way. Interestingly, it appears that the Union is all too willing to abandon the “externally comparable” counties it worked so hard to justify in the beginning, when comparison with those counties (on economic issues other than wages) does not serve the purpose of the day. In this particular instance, the record establishes that only one of the Union’s selected comparable counties, Sacramento County, pays corrections personnel a shift differential. The Union does note that both Riverside and San Bernardino Counties offer “other sorts of specialty differential pay”, but that is not helpful here. “Other sorts of specialty differential pay” are not before the Arbitrator in proposed Section 3.7 of this Collective Bargaining Agreement. Moreover, the three Illinois “collar” counties of DuPage, Will and Lake selected by the Union as additional external comparables, are not even mentioned. Interestingly, the Union does cite a number of the Joint Employer’s external comparables in support of its position here.

Internal parity is worth considering here, too, even though the Union notes that the Court Services Deputies work mainly during the day, and thus should not be considered comparable on the issue of shift differential. The Arbitrator does not find this argument particularly persuasive. If shift differentials are warranted only when large numbers of bargaining unit personnel are affected, where is the “qualifying line” to be drawn? Would it not stand to reason that if any shift differential is warranted in the Sheriff’s Department, every employee working other than the day shift (even if only a single employee) should be entitled to it? The Arbitrator is certain the Court Services Deputies assigned to night court (albeit few in number) would argue strongly in the affirmative. In any event, one important, indeed crucial, fact remains; this record establishes that no Sheriff’s Department bargaining unit, including the Cook County

Sheriff's Police (who are on duty around the clock) receives this particular premium. Thus for the Union to prevail now, there would have to be strong evidence that this proposed departure from the *status quo* is necessary to address and correct a particular problem unique to this bargaining unit. There is no such evidence. The record fails to establish that shift differentials are warranted on the basis of internal and external comparability, or, in the alternative, on the basis of a *bona fide* need not addressed in predecessor agreements with this bargaining unit.

For the foregoing reasons, then, the Arbitrator finds that the *status quo* with respect to an absence of Section 3.7 in the Collective Bargaining Agreement should be maintained. The following Order so reflects.

## Order

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

### **(New) Section 3.9 Hazardous Pay**

#### The Union's Final Proposal

Beginning on December 1, 2006, members assigned to perform street duties shall receive an additional specialty pay amount equal to three percent (3%) in excess of the base rate of pay, which shall be included in their rate of pay for all compensation including calculation of overtime.

#### The Joint Employer's Final Proposal

Maintain *status quo*.

#### The Position of the Union:

The Union argues that "employees who perform street duties [should] be compensated above their regular compensation in exchange for their service and performance of duties that exceed those contemplated by the current collective bargaining agreement." In particular, the Union seeks a 3% premium wage increase midway through the term of this Collective Bargaining Agreement, for a group of Electronic Monitoring Investigators in DCSI who are assigned to perform field duties associated with the supervision of electronically monitored inmates outside the confines of Cook County Jail. The Union believes that the duties of this select group of DCSI EM Investigators make them more like Police Officers than Correctional Officers, and thus opines that the "slight wage increase" over and above that of other EM Investigators and Correctional Officers is warranted.

The Position of the Joint Employer:

The Joint Employer points out that the Union seeks “Hazardous Pay” for a “subset” of EM Investigators without identifying exactly who they are or under what specific conditions they should qualify for the premium. Additionally, argues the Joint Employer, the Union has failed to present substantive evidence that the EM Investigators who go out “on the street” are, in fact, a discrete segment of the EM unit or that they regularly face such unique “hazards” as to warrant the establishment of a unique pay scale.<sup>24</sup> The Joint Employer points out that EM Investigators already receive the “CS2” wage scale, which is *higher* than the “Street Unit” D2B Deputy Sheriffs (who regularly execute evictions and serve writs and warrants) receive. Additionally, argues the Joint Employer, EM Investigators are also paid more than their fellow Investigators in the DCSI Fugitive Unit, who likewise regularly go out “on the streets” to search for and re-apprehend Electronic Monitoring Unit participants who have left their confinements or otherwise failed to comply with the program.<sup>25</sup> Thus, reasons the Joint Employer, the 3% premium wage increase for this select group of EM Investigators is not evidently designed to correct an apparent disparity with other internally comparable bargaining unit members who perform similar functions. In fact, argues the Joint Employer, granting the Union’s petition with respect to the proposed “hazardous pay” would widen an already existing gap with internally comparable

---

<sup>24</sup> The “new pay scale” referenced by the Joint Employer here represents the existing EM Investigator “CS2” wage scale plus the 3% “hazardous pay” premium proposed in disputed Section 3.9 language.

<sup>25</sup> The EM Investigators in the DCSI Fugitive Unit to which the Joint Employer refers here, are represented by a different bargaining unit, and are thus not party to this arbitration.

groups, because EM Investigators represented by this bargaining unit currently receive wages exceeding those of other “street unit” personnel doing similar work.<sup>26</sup>

Discussion:

For reasons similar to those expressed by the Arbitrator with respect to shift differentials, record evidence does not support a finding that the proposed Section 3.9 premium is either warranted on the basis of comparability, or on the basis of a new and substantive need not addressed in predecessor agreements.

First, as to the matter of comparability, the Arbitrator notes with concern for the Union, that not one external comparable is mentioned. Thus, the Arbitrator has no choice but to assume that the existing *status quo* does not depart significantly from the norm. Secondly, the Arbitrator is persuaded by the Joint Employer that internal comparability is not helpful to the Union’s case either, because EM Investigators in this bargaining unit, who would substantially benefit from the significant premium proposed by the Union, are already paid higher wages than EM Investigators and “street unit” personnel in other Cook County law enforcement bargaining units.<sup>27</sup> Certainly, then, for the Arbitrator to widen that gap even further, particularly in “breakthrough” fashion, he would have to have a very good reason for doing so.

Here, then, we come to the matter of proofs, and once again, the Union has come up short of its “extra burden” to prove that the change it seeks is supported by evidence of a bona fide need, and further that the proposed change directly addresses

---

<sup>26</sup> The Joint Employer also urges the Arbitrator to consider the Union’s proposal with respect to Section 3.9 part of the Union’s total proposed wage package, and thus either accept it or reject it based upon his conclusions pursuant to subsequent Section 5.1 of the Agreement.

<sup>27</sup> This excludes the Cook County Sheriff’s Police, who remain the highest paid of all Cook County law enforcement bargaining units.

that need without causing undue hardship on the Joint Employer. True, the Union has supplied numerous documents establishing the core duties and responsibilities of “street” EM Investigators in this bargaining unit. However, the Union has failed to adequately prove that those duties, in and of themselves, put EM Investigators who perform them, into an entirely new and different class in terms of skill and risk. This record does not speak to significant additional training for “street” EM Investigators, nor is there a substantive evaluation of the risks associated with this job which might prompt the Arbitrator to conclude that they have somehow have changed since the last agreement, or, in the alternative, were not adequately addressed in the predecessor agreement in the first place. In other words, it is one thing to say that this group or that “should” make a premium wage. Indeed, most of us could, without much imagination, make some kind of defensible argument toward higher wages. Nevertheless, proving that higher wages are warranted in the context of “last best offer” interest arbitration, especially when circumstances have not changed, and the established *status quo* does not appear to be in conflict with existing comparables, is an entirely different matter. As previously noted, the Union has not made a sufficient case to either end. Thus, for the foregoing reasons, the Arbitrator is convinced that the *status quo* with respect to the absence of proposed Section 3.9 in the Agreement should be maintained. An Order to that effect follows.<sup>28</sup>

### Order

---

<sup>28</sup> In maintaining the *status quo*, the Arbitrator does not adopt the Joint Employer’s reasoning that Section 3.9 should be considered as part of the Union’s total wage package. While certainly potentially impacting the wage structure, the Union’s proposal with respect to “hazardous pay” had much to do with function and little to do with form, even though the premium sought was expressed as a percentage rather than a flat amount. Thus the Arbitrator considers the Union’s petition on its merit, just as he would any other economic issue potentially impacting total earnings.

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

### **Section 5.1 – Job Classifications (Wages)**

#### The Union's Final Proposal

All bargaining unit employees shall receive the biweekly salary provided for their respective grade and length of service as set forth in Appendix A of this Agreement. Employees will be increased to the appropriate step upon completion of the required length of service in the classification.

The salary grades and steps applicable to his bargaining unit shall be increased as follows during the term of this agreement:

Effective the first full pay period after 12/01/04 3.5 % general increase

Effective the first full pay period after 12/01/05 3.5% general increase

Effective the first full pay period after 12/01/06 3.5 % general increase

Effective the first full pay period after 12/01/07 3.5% general increase

The full amount due members from all retroactive pay shall be paid in accordance with the following schedule:

1) One-third: within 60 days after ratification of this agreement

2) One-third: upon the last pay period in November 30, 2007

3) On-third: upon the last pay period in November 30, 2008<sup>29</sup>

#### The Joint Employer's Final Proposal

\*\*\*

Effective first full pay period on or after 12-1-04, a 1% wage increase

Effective first full pay period on or after 12-1-05, a 1% wage increase

Effective first full pay period on or after 6-1-06, a 2% wage increase

Effective first full pay period on or after 12-1-06, a 1.5% wage increase

Effective first full pay period on or after 6-1-07, a 2.5% wage increase

Effective first full pay period on or after 12-1-07, a 2% wage increase

Effective first full pay period on or after 6-1-08, a 2.75% wage increase

Non-compounded \$500.00 cash bonus for all employees in pay status on the date the Cook County Board approves the agreement per past practice.

---

<sup>29</sup> Underscoring indicates departure from the *status quo*.

The Position of the Union:

The Union proposes that the Arbitrator award 3.5% general wage increases in each successive year of the proposed four-year contract, retroactive to December 1, 2004, for a total 14% general increase in wages. In contrast, notes the Union, the Joint Employer proposes a 12.75% total wage increase over four years in a proposal that is so “back-loaded”, very little retroactive wage will be paid at ratification.

General cost of living increases over the past several years, argues the Union, support its proposal for four consecutive 3.5 % wage increases retroactive to December 1, 2004. Because the predecessor Collective Bargaining Agreement will have been expired for nearly 2 years by the time the instant contract is ratified, notes the Union, existing Consumer Price Index (CPI) data already provides a “very clear picture” as to increases in consumer costs over nearly half of the new Agreement’s effective term. Thus, observes the Union, the Arbitrator has the benefit of hindsight as he considers which of the two proposals more closely addresses recent cost of living increases.<sup>30</sup>

According to the Union, CPI data for the Chicago area indicates cost increases (as compared to prior data by month) consistently in excess of 3% per month on average during the 18-month period covered by the first half of the new Agreement. Thus, reasons the Union, its proposal of 3.5% annual increases more closely resembles actual cost of living increases than the proposal offered by the Joint Employer. It is “imperative”, argues the Union, for the Arbitrator to observe that the Joint Employer’s

---

<sup>30</sup> In support, the Union cites general U.S. Department of Labor statistics (Union Exhibits 9, 10 and 11) indicating general upward trends in employment cost and consumer price indices since 2003.

proposal is “designed to avoid paying any significant retroactive increases.”<sup>31</sup> By offering only a 1% increase for the entire first year of the contract, notes the Union, the Joint Employer has proposed a wage increase considerably below that of established cost of living increases for the same period (in terms of percentage), and has accordingly “reduced the buying power of the members for the duration.” (Id.)

Established salaries for selected externally comparable counties, argues the Union, also support its proposal for 3.5% annual wage increases. In particular, the Union compares corrections personnel “career values” in San Bernardino County, Riverside County, and Sacramento County (all in California) with comparable “career values” for Cook County Correctional Officers under the both the Joint Employer’s and its own present proposals. In addition, the Union similarly compares the “career value” of DuPage County (Illinois) corrections officers to that of members of this bargaining unit. (See Union Exhibit 14).<sup>32</sup> Within their respective careers, notes the Union, the earnings of corrections officers in the external counties examined, generally earn similar spendable dollars over the course of a 20-30 year career. Thus, reasons the Union, the similarity between them in terms of established data demonstrates their validity as external comparables. “When comparing the lifetime income of these comparables to the offers between the parties,” opines the Union accordingly, “the Union proposal more closely reflects the external groups.”<sup>33</sup> The Union rejects the Joint Employer’s external comparables on the same basis, arguing that “tremendous differences” in the starting

---

<sup>31</sup> Union brief at page 36.

<sup>32</sup> The Arbitrator notes that although the Union calls this a “wage” comparison (Union brief at page 37), Union Exhibit 14 actually represents an extrapolation of the effect of both proposals upon the lifetime career earnings of corrections employees in each of the four selected “externally comparable” counties as compared to those of Cook County Corrections Officers.

<sup>33</sup> Union brief at page 38.

wages of corrections officers in many of the Joint Employer’s “comparable counties” make it “abundantly clear” that they are not truly comparable.

It is important to note, states the Union, that its members are not “dramatically under paid in relation to its comparables.” Instead, maintains the Union, “[T]hese members deserve their hard earned wages...”<sup>34</sup>

As to internal comparables, the Union also maintains that reason favors its proposed wage increase schedule. In particular, the Union rejects the Joint Employer’s observation that prior interest arbitrations involving the Court Services Deputies have resulted in “catch-up” wage schedules expressly designed to bring earnings of Court Services Deputies closer to those of Correctional Officers. The Joint Employer has argued, notes the Union, that because they have been directed to pay Deputies more to bring them nearer to the pay range of the Correctional Officers, the Union’s wage proposal will cause a “leapfrogging” effect such that the gap between the earnings of Correctional Officers and the Court Services Deputies will once again widen. However, argues the Union, “[To] make the argument that one group of officers should not receive a fair wage increase because another group has been historically underpaid borders on the absurd.”<sup>35</sup>

The Union also rejects any reliance by the Joint Employer on the fact that a wage agreement has been secured with the Correctional Sergeants establishing a schedule similar to that which has been proposed by management in the instant arbitration. First, argues the Union, the Correctional Sergeant’s agreement is not a matter of record in

---

<sup>34</sup> Id.  
<sup>35</sup> Union brief at page 39.

this case. Moreover, argues the Union, the Correctional Sergeant's predecessor agreement contained "strong me-too" language giving them the right to later pursue any more favorable wage package achieved by another bargaining unit in the Cook County Sheriff's Department. Thus, reasons the Union, any agreement made by the Correctional Sergeants is unpersuasive as an internal comparable.

In sum, the Union notes that the parties' wage proposals are not so very far apart in terms of total percentage of general wage increases. However, argues the Union, because the Joint Employer's proposal is significantly "back-loaded" (as opposed to even distribution of increases over the term of the contract), the compounded benefit to Correctional Officers in terms of higher base wages from year to year is not realized under the Joint Employer's proposal. (Tr. 75.) Thus, for all the foregoing reasons, the Union urges the Arbitrator to adopt its wage proposal rather than that of the Joint Employer.

The Position of the Joint Employer:

According to the Joint Employer, its wage offer is clearly the more "appropriate" of the two proposals. As to comparability, argues the Joint Employer, record evidence demonstrates "beyond question" that the employees in this bargaining unit continue to compare favorably in terms of total compensation with other Cook County employees (including all those in law enforcement), and further as compared to similar personnel in other major metropolitan counties nationwide.

First, the Joint Employer rejects the Union's list of proposed external comparables, on the basis that the process resulting in their selection was "convoluted and apparently result oriented". The Joint Employer also notes the "arbitrary nature" of

the Union's exclusion process, arguing, *inter alia*, that the three California counties left standing when all was said and done, were augmented by three supposedly comparable suburban Chicago counties to which the Union did not apply the same exclusion criteria. Thus, despite its "lengthy exposition at the hearing involving numerous exhibits", argues the Joint Employer, "the Union is unable to shoulder its burden to explain why the Arbitrator should even reconsider, much less abandon, the group of 23 large urbanized counties that the parties and their arbitrators have used for external comparisons in each of their last several rounds of negotiations and interest arbitrations."

Obviously, notes the Joint Employer, some of the 23 counties proposed (and used in prior arbitrations between these parties) are different from Cook County in a number of identifiable respects. However, argues the Joint Employer, the record establishes that they do, in the aggregate, have enough key factors in common (population, urban concentrations, large jails, etc.) to warrant a conclusion that average data is useful for purposes of comparison with Cook County.

In point of fact, then, argues the Joint Employer, external comparability data based upon the 23 counties listed, demonstrates that Cook County Correctional Officers rank near the top of the chart in almost every sense. First, even considering current wages, argues the Joint Employer, Cook County Correctional Officers rank between fourth and seventh of all 23 jurisdictions traditionally used as external comparators, and as high as second when compared to the 17 jurisdictions which, like Cook County, do not use full-fledged police personnel to perform correctional work. Moreover, argues the Joint Employer, in each instance a superior wage is evident among external

comparators, it occurs in “pricey” East or West Coast counties where average incomes and living costs are also substantially higher than those of Cook County.<sup>36</sup> In any event, opines the Joint Employer, “That a precious few such counties pay correctional officers somewhat better than Cook County cannot be a justification for the wage increases the Union seeks in this arbitration, no matter what kinds of communities those other counties represent. When only a few out of 23 comparable counties pay better than Cook County, by definition the vast majority of the comparable counties pay less.” In sum, then, argues the Joint Employer, data from the “traditional” external comparables reflects that members of this bargaining unit continue to be paid wages at or near the top of the list, and as such, circumstances do not warrant larger increases than the it is offering here.

With respect to internal comparables, the Joint Employer notes that over the ten years culminating in the final year of the last contract for this bargaining unit, Correctional Officers received wage increases totaling 35.5 %, or an average of nearly 3.6 % per year. Over the same period, notes the Joint Employer, Cook County’s “Schedule I” employees (both union and non-union) received increases totaling only 31.0 %. Meanwhile, observes the Joint Employer, the top-paid Sheriff’s Police Officers and other Cook County law enforcement employees received increases totaling only 33.54 %. Thus, argues the Joint Employer, past wage increases in this bargaining unit have “much more than kept pace” with the wages of the majority of their internally comparable bargaining units.

---

<sup>36</sup> See Joint Employer Exhibits 7 and 8.

Of all the internally comparable groups, notes the Joint Employer, the only bargaining unit to have received percentage increases higher than those of this and other law enforcement units in the last 10 years, is the Sheriff's Court Services unit.<sup>37</sup> However, argues the Joint Employer, Court Services personnel have been awarded larger increases only because interest arbitrators have ordered them with express purpose to narrow the gap between the wages of Court Services personnel and those of Correctional Officers. In support, the Joint Employer cites The County of Cook/Sheriff of Cook County and International Brotherhood of Teamsters, Local Union No. 714 (Court Services Deputies); Case No. L-MA-01-001 (2001), wherein Arbitrator Peter Meyers concluded in pertinent part as follows:

... In general, these [prior] interest arbitrators have indicated that the wages paid to the [Court Services] deputies needed to be brought closer, although not necessarily equal to, the wages paid to the Sheriff's Police officers and DOC officers.

\*\*\*

Although the different duties assigned to Sheriff's Police and Correctional Officers may justify some disparity in wages compared to those of the [Court Services] Deputy Sheriffs, the existing wage gap is too large and cannot be justified by the proven differences in training, duties, job-related risk, or job-related stress. Although the Joint Employers are correct in asserting the wage gap should not be eliminated, this Panel finds that, based on the evidence before us, the wage gap nevertheless must be closed still more.<sup>38</sup>

Thus, reasons the Joint Employer, if the instant arbitration involving the Correctional Officers were to result in "larger-than-pattern" increases, the "catch-up" increases awarded by other arbitrators purposing to narrowing wage gap between the Deputies and members of this bargaining unit, would, at least partially, be nullified. In sum, argues the Joint Employer as to the matter of comparability, both internal and

---

<sup>37</sup> See; Joint Employer Exhibit 10.

<sup>38</sup> Appendix E to Joint Employer brief.

external data establish that the larger increases proposed by the Union cannot be justified.

The Joint Employer also argues that its wage offer is more appropriate in light of cost of living data. In support, the Joint Employer cites Exhibit 10, which demonstrates that overall general wage increases received by Correctional Officers over the last decade have substantially exceeded local cost of living increases for the same period. Moreover, argues the Joint Employer, when step increases are factored in, the evidence establishes that within their pay classification, covered employees have stayed “far ahead” of inflation.

As to the structure of the two proposals, the Joint Employer argues that its proposal gives the employees contemporaneous dollars much more nearly corresponding to the 2005-06 increases in cost of living (about 5.5 %) than does the Union’s proposal. The Joint Employer points out that, although the Union petitions for annual 3.5 % wage increases in each of the 4 years covered by the Agreement, the first two years’ increases, totaling 7%, will be considered “retroactive” for pay purposes at the time of ratification. Because the Union proposal divides this 7% increase into 3 equal installments, notes the Joint Employer, only about 2.3 % of total retroactive dollars will be due at ratification. In contrast, argues the Joint Employer, its proposal offers a total of 4% general wage increases for the first two years of the contract (2004 and 2005), all of which, plus a bonus of \$500.00, will be due at ratification. Thus, reasons the Joint Employer, Correctional Officers are better off in terms of “contemporaneous dollars” at ratification under its proposal, than under that of the Union.

The Joint Employer also rejects the Union’s assertion that, on principle, the Joint Employer’s wage proposal is “back-loaded”. First, argues the Joint Employer, “There’s a reason for that... It’s because of the economic crisis that Cook County faces right now... Money is very difficult to come by.” Second, notes the Joint Employer, the Union seems to be arguing against itself on this point, because although its proposed schedule calls for slightly larger overall percentage increases in the first two years of the contract, it also offers to defer actual payment of those wages until later. Thus, argues the Joint Employer, *both* proposals effectively produce a back-heavy result, and the Union’s objections on this point are accordingly, from a purely practical standpoint, unfounded.

The Joint Employer also argues that the Union’s demand for a 3% “hazardous” pay premium for certain EM Investigators cannot be separated from the Union’s general wage proposal, in that it seeks to achieve for this particular group even larger total wage increases than those here at issue under Section 5.1. The parties agreed at the outset, argues the Joint Employer, that the Arbitrator has no authority to “cherry-pick” on economic issues. Thus, maintains the Joint Employer, the Union’s additional proposal with regard to [unwarranted] “hazardous pay” provides yet another reason to reject its overall wage proposal on the basis that it already seeks increases not supported by internal and external comparables and cost of living data.

For the foregoing reasons, the Joint Employer urges the Arbitrator to adopt its proposed amendments pursuant to Section 5.1 of the Agreement.

Discussion:

The crucial nature of relative comparability cannot be ignored in the matter of wages, for it is upon this foundation, evaluation of additional factors such as cost of living patterns and employer hardship makes sense. Apart from a well-informed examination of what other employees in comparable positions in comparable work communities are being paid, and additionally what their patterns of increase have looked like over a period of time, it is impossible for any outside individual to make so important a judgment call as this. Thus, as observed in the Arbitrator's discussion above, the essential quality and reliability of that foundation is of preeminent importance.

For reasons previously stated, the Arbitrator adopts the Joint Employer's list of external comparables for purposes of assessing each of the parties' respective wage proposals. He does so, first because he is not convinced that the Union was justified in eliminating other potentially useful, and perhaps even more applicable, comparables. Second, the Arbitrator again notes that at least one of the factors considered by the Union as a valid basis for the elimination of potential comparables, was not material to any well-founded evaluation of wage proposals, because it concerned the process of bargaining disputes resolution and not information specific and relevant to actual economic comparability. Third, as already noted, the Union's copious evidence was never arranged into an understandable contrast of criteria in all six of its selected externally comparable counties with Cook County. Interestingly, when any sort of comparison was attempted, one or more of the Union's selected comparables was conspicuously absent from the proffered "proof". The Arbitrator is accordingly inclined to affirm the Joint Employer's view, in spite of the Union's near-Herculean efforts to

present a new set of external comparables, that their selection was confusing at best, and truly result-oriented at worst. In any event, for all the foregoing reasons, the Arbitrator is convinced that finding in favor of the Union's wage offer on the sole basis of the Union's proffered external comparables, is not adequately supported by cogent and reliable information.

The Joint Employer's list of external comparables, in contrast, has been used in a number of prior arbitrations between these parties, including the most recent one before Arbitrator McAllister in 2003. Additionally, while certainly different from Cook County in some respects, they do, in the aggregate, share enough key factors so as to make them more useful to the Arbitrator than the Union's selections for purposes of comparison.

Considering the Joint Employer's externally comparable data to the wage offers presented by both the Union and the Joint Employer, the Arbitrator is prompted to conclude that, while slightly less than that of the Union's in terms of overall percentage wage increase over 4 years, the Joint Employer's proposal is a reasonable one, in light of the fact that Cook County Correctional Officers already rank at or near the top of their peers elsewhere with respect to wages. The Joint Employer's externally comparable data with respect to cost of living also supports the equanimity of its overall proposal.

In the matter of internal comparability, the Arbitrator is also persuaded that the Joint Employer's proposal is reasonable. In so concluding, the Arbitrator hastens to add that he is not particularly convinced by the Joint Employer's evident reliance on "patterned bargaining". Clearly, such "patterned bargaining" is advantageous to the employer, in that its outcome is both predictable and controllable. It is, however, dangerous for employees, in that management inevitably insists that other groups fall

“lock-step” into the pattern whether or not it is reasonable or applicable to their unique bargaining agendas. Thus, the Arbitrator does not embrace the Joint Employer’s opinion that one size necessarily fits all with respect to internally comparable data. Clearly, other arbitrators have held the same view, particularly those who have granted the Court Services Deputies “larger than pattern” increases just to bring them more in line with other internally comparable groups.

Having said that, the Arbitrator has no choice but to consider the practical effect of prior “catch-up” awards involving Court Services Deputies on the wage proposals before him in this case. That is to say, if both of the proposed wage offers are reasonable, whichever offer is more supported by externally comparable data and also maintains established (albeit intentionally minimal) parity between the wages of Court Services Deputies and those of Correctional Officers, is likely to win the day. Here, as noted by the Union, both proposals are reasonably close together in terms of total percentage increase over the four-year term of the Agreement. Thus, neither is head and shoulders above the other on the basis that one of them is entirely unreasonable. Because the Joint Employer has satisfactorily demonstrated that its offer maintains its already favorable position among accepted external comparables, however, and because it also preserves an expressly intended, albeit minimal, parity between Court Service Deputies and members of this bargaining unit, the Arbitrator finds the Joint Employer’s proposal to be the more reasonable of the two. Indeed, as the Joint Employer has argued, the Union’s higher wage proposal would again widen the wage gap between these two groups which has been so carefully closed by other arbitrators. As observed in pertinent part by Arbitrator Elliott Goldstein in County of Cook/Sheriff of

Cook County and Teamsters Local Union No. 714, LLRB No. L-MA-95-001 and affirmed

by this Arbitrator:

When the limited role of this Panel is considered, standing as it does as a substitute for genuine or arm's length negotiations, it seems advisable to maintain the historical negotiated percentage salary increase parity between the [Court Services] Deputies and the other law enforcement personnel working for the Joint Employers...<sup>39</sup>

Thus, the issue remaining before the Arbitrator for purposes of evaluating the relative aptness of the two wage proposals, concerns the actual structure of each party's proposed schedule of increases, and addresses the Union's concern that the Joint Employer's offer is substantively and unduly "back-loaded". At first glance, it appears that the Union's concern is a valid one. However, closer examination, just as the Joint Employer suggests, proves otherwise.

First, the Union proposes a total wage increase of 14% over the four years of this Agreement, to be paid in 3.5 % increments beginning the first full pay period after December 1, 2004, 2005, 2006 and 2007. (Thus, the calendar years of 2005, 2006, 2007, and 2008 are effectively under consideration.) The Union also proposes that retroactive wages for the calendar years of 2005 and 2006 be deferred on the following schedule:

One-third of 7% total increase, or approximately 2.3 %, to be paid within 60 days of ratification.

One-third of 7% total increase, or approximately 2.3 %, to be paid upon the last pay period in November, 2007.

One-third of 7% total increase, or approximately 2.3 %, to be paid upon the last pay period in November, 2008.

---

<sup>39</sup> See; Appendix F of Joint Employer's brief.

According to the above timetable, then, the Union’s wage proposal results in the following payment schedule:

- At ratification: 2.33 % wage increase (representative of the first retroactive wage installment.)
- Calendar year 2007: 5.8 % wage increase (representative of the scheduled 3.5 % wage increase and the second 2.33 % retroactive wage installment combined.)
- Calendar year 2008: 5.8 % wage increase (representative of the last scheduled 3.8 % wage increase and the final 2.33 % retroactive wage installment combined.)

In contrast, the Joint Employer submits a relatively close offer in terms of total overall percentage increase, with a schedule less “back-loaded” than the Union’s proposal, and more favorable in terms of cash paid upon ratification:

The Joint Employer proposes a [lesser] 12.75 % total wage increase, to be paid as follows:

- At ratification: 4 % total wage increase plus lump sum cash payment of \$500 upon ratification. (Representative of a 1% increase for the period of 12/1/04 to 12/1/05, a 1% increase for the period of 12/2/05 to 6/1/06, and a 2% increase for the period of 6-2-06 to 12-1-06 [plus \$500.00 bonus] combined.)
- Calendar year 2007: 4 % total wage increase. (Representative of a 1.5 % increase for the period of 12-2-06 to 6-1-07 and a 2.5 % increase for the period of 6-2-07 to 12-1-07 combined.)
- Calendar year 2008: 4.75 % total wage increase. (Representative of a 2.0 % increase for the period of 12-2-07 to 6-1-08 and a 2.75 % increase for the period of 6-2-08 to expiration of Agreement combined.)

Thus, it would appear that the Union’s argument is not really about “back-loading” in the Joint Employer’s proposal to the extent that members of the bargaining unit will immediately start off “behind the eight-ball” in terms of cost of living upon ratification of this contract. True, the Union’s overall proposed increases are greater (in terms of percentage) than the Joint Employer’s in the first two years of the Agreement.

However, as the Joint Employer observes, the Union’s offer also proposes to defer payment of a full two-thirds of all retroactive wages until the last two years of the contract. Accordingly, while the Union’s proposal overall does contemplate higher wage rates over the full term of the Agreement, the Joint Employer’s offer puts employees in a better immediate cash position upon ratification, and as such is not illustrative of a “back-loaded” proposal.

Clearly, then, the Union’s real complaint here concerns differences in the two parties’ proposed wage rates and not in their proposed wage schedules (“back-loaded” or otherwise). Naturally, the latter impacts the former when scheduled increases are based upon higher overall wage rates each time. In other words, over time, Correctional Officers operating under the Union’s proposal do stand to make more money, because each successive wage increase is built upon a higher base wage rate. Perhaps this is what the Union really means by “back-loading”, in which case its cost of living argument against the Joint Employer’s proposal (in terms of spendable dollars up front) is effectively negated. In any event, as previously established, the Joint Employer’s proposal, even when compounded, keeps the relative earnings of Cook County Correctional Officers well within reach of, and in point of fact above most, similarly employed officers in externally comparable counties. Moreover, the Joint Employer’s proposal maintains an acceptable degree of parity with other Cook County law enforcement personnel in internally comparable bargaining units.<sup>40</sup>

---

<sup>40</sup> The Arbitrator also takes judicial notice of the Joint Employer’s passing comment that “money is hard to come by” in Cook County at the present, and while the “employer’s inability to pay” was not expressly raised as an argument in favor of rejecting the Union’s higher overall wage proposal, the County’s strained financial state is a matter of public record.

Thus, for all the foregoing reasons, the Joint Employer’s wage proposal is adopted. The Arbitrator’s Order to that effect follows.

### **Order**

The Joint Employer’s proposal is adopted.

### **Section 5.3 – Job Grades**

#### The Union’s Final Proposal

Bargaining unit employees shall be classified by the following job grades;

- A. CO1 – Includes all members within the bargaining unit, unless otherwise specified.
- B. CS2 – Includes all members assigned to the Electronic Monitoring programs within the Department of Community Supervision Intervention (DCSI) and Department of Women’s Justice.
- C. Grade 17 - Includes all members assigned to the canine unit.<sup>41</sup>

#### The Joint Employer’s Final Proposal

Maintain *status quo*.

#### The Position of the Union:

The Union urges the Arbitrator to award a modified wage scale which would move approximately fifteen (15) Department of Women’s Justice Services officers to the Investigator II pay scale. The Union explains that the CS2 scale was originally created to compensate Electronic Monitoring Investigators for their higher-risk “street” duties, and urges a similar increase for Department of Women’s Justice Services officers with like responsibilities. According to the Union, “These employees are in the same union, and perform substantially the same job function [as DCSI Electronic Monitoring

---

<sup>41</sup> Underscore indicates departure from *status quo*.

Investigators], yet they are compensated on different wage scales.” The Union thus argues that the *status quo* is contrary to principles of internal parity, and urges the Arbitrator to adopt its proposed Section 5.3 language to correct the alleged inequity.<sup>42</sup>

The Union also argues that Canine Specialists, if covered under this Agreement, should earn Grade 17 CO-1 pay.

The Position of the Joint Employer:

The Union’s only justification for upgrading officers who staff the Sheriff’s Female Furlough Program (SFFP), argues the Joint Employer, is that they perform electronic monitoring functions for certain female alleged offenders just as their counterparts in DCSI do for male offenders. The Joint Employer argues, however, that there are significant differences between the two programs. To mention just two, notes the Joint Employer, SFFP officers are not required to complete any specialized training, and the SFFP program is especially designed for women offenders who have family responsibilities. The Joint Employer points out that previous arbitrators have duly noted these and other differences in “consistently rejecting similar proposals”, and cites in particular Arbitrator Yaffe’s following conclusion:

In the undersigned opinion, what should be done with respect to these issues before the next round of negotiations is that the disputed positions should be examined by disinterested professional job evaluators to ascertain whether the positions are properly classified...<sup>43</sup>

The Joint Employer notes that the Union did not undertake to secure Arbitrator Yaffe’s recommended analysis, and thus its similar proposal before Arbitrator McAllister

---

<sup>42</sup> The Arbitrator notes that, although the Union asserts that the core duties of certain officers in the Department of Women’s Justice are like those of EM Investigators in DCSI such that they are entitled to the higher CS2 rate of pay, it does not likewise contend that they are entitled to the “hazardous pay” proposed for EM Investigators with “street duties” pursuant to Section 3.9 above.

<sup>43</sup> Joint Employer Exhibit 24 at page 13.

in 2003 was again [logically] struck down. The Joint Employer points out that Arbitrator McAllister not only noted that Arbitrator Yaffe's suggestion had not been followed, he offered the following additional observation:

Officers assigned to... Women's Justice Services (SFFP) are not dealing with high risk detainees, and the conditions under which they work can reasonably be viewed as more favorable than those within the DOC complex...<sup>44</sup>

In this round, argues the Joint Employer, the record demonstrates that the circumstances considered by both Arbitrators Yaffe and McAllister have not changed. Thus, argues the Joint Employer, it stands to reason that their prior conclusions preclude a finding by this Arbitrator that the Union's third trip to the very same well should produce a different result. The Joint Employer thus urges the Arbitrator to maintain the *status quo*.

Discussion:

After reviewing the history of this issue and the respective arguments of the parties, the Arbitrator is persuaded that the *status quo* should be maintained. On the identical issue as presented in 2000, Arbitrator Yaffe additionally observed as follows:

If truth be told, although the record is replete with evidence describing what EM Investigators, Boot Camp Officers, SORT Officers and Officers who work in the Women's Furlough Program do, it provides not a clue as to what standards/criteria are utilized to determine what duties, training, experience, risk factors, etc. are or should be utilized to establish appropriate wage rates for said groups, as well as for other groups of employees performing specialized and/ or unique duties. (Emphasis added.)

As previously noted, Arbitrator Yaffe went on to suggest that an independent study be conducted to establish such criteria in order that any future petition for similar

---

<sup>44</sup> Joint Employer Exhibit 23 at page 21.

wage increases might have factual and comparative foundation. As Arbitrator McAllister noted in the subsequent 2003 interest arbitration decision on this selfsame issue, however, this was never done. Thus, unless such an evaluation was done after the McAllister decision, and this record fails to establish that it was, there still exists the evidentiary void complained of by Arbitrator Yaffe in 2000.

Nevertheless, Arbitrator McAllister helpfully observed that SFFP Officers “are not dealing with high risk detainees, and the conditions under which they work can reasonably be viewed as more favorable than those found within the DOC complex.” In this record, then, three unavoidable truths emerge. One, the evidence before this Arbitrator, as did the evidence before Arbitrators Yaffe and McAllister, does not support the proposed departure from the *status quo* because the definitive analysis called for by Arbitrator Yaffe (when he addressed and rejected the Union’s proposal for lack of justification the first time) was never done. Second, Arbitrator McAllister noted that it was, in any event, reasonable to conclude that SFFP Officers routinely work under less risky and generally more favorable conditions than do their male counterparts in DCSI. Accordingly, he, too, rejected the Union’s proposal to reclassify SFFP (among other) officers. Third, circumstances have not changed as far as this record indicates, and this fact represents the final nail in the Union’s proposal. Pursuant to established arbitral precedent, it is appropriate to maintain the *status quo* when the Arbitrator has been given insufficient proof of a bona fide need to depart from it.<sup>45</sup>

---

<sup>45</sup> See; County of Cook/Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council, LLRB No. L-MA-96-009, (McAlpin, 1998.)

As to the matter of the wage rate for Canine Specialists, the issue is moot pursuant to the Arbitrator’s prior ruling that the position of Canine Specialist is not a position covered by this Collective Bargaining Agreement.

For all the foregoing reasons, then, the Arbitrator is persuaded that the *status quo* should be maintained. His Order to that effect follows.

**Order**

The *status quo* is maintained. The Union’s proposal is denied.

**Section 8.1 – Hospitalization Insurance**

The Union’s Final Proposal

[Unless expressly noted by the Arbitrator in this Section, the Union seeks to maintain the *status quo*.]

... Effective 12-01-06, employees who have elected to enroll in the County’s HMO health benefits plan shall contribute twenty-four [dollars] (\$24.00) per pay period.

The Joint Employer’s Final Proposal

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

HMO Health Care

<u>Plan Feature</u>	<u>Copay</u>
Office Visit	\$10
Emergency Room	\$40
Inpatient Hospital	\$100
Outpatient Surgery	\$100
Rx Generic	\$7
Rx Formulary	\$15
Rx Non-Formulary	\$25
Mail Order RX supply	Twice retail copay for 3 mos.

PPO Health Care

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

Employee Premium Contribution

Effective 6-1-08

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

The Position of the Union:

The Union proposes to increase HMO premium contributions pursuant to its acknowledgment that “a change is necessary... and the amounts for the employees must increase.”<sup>46</sup> However, the Union states three primary concerns as to the reasonableness of the Joint Employer’s counter-proposal. First, the Union believes that the Joint Employer’s proposed increases in employee premium contributions, and further proposed increases in employee co-pay amounts for HMO services and

---

<sup>46</sup> Union brief at page 43.

prescription medications, is tantamount to “reducing the benefit level”, even though the Joint Employer has not proposed a new insurance carrier or an amendment in actual services.<sup>47</sup>

Conversely, maintains the Union, its proposal that covered members contribute a flat premium fee every pay period with no change in co-pay amounts, is reasonable. In support, the Union cites a report published by Mercer Human Resources Consulting in July, 2005 “compare[ing] Cook County’s health care program to several selected benchmarks and propos[ing] changes to be implemented effective 12/1/2005,”<sup>48</sup> from which raw data was extracted for purposes of analyzing the County’s rising health care expenditures in the context of existing employee contributions. The Union concludes, based upon the estimated number of bargaining unit members already contributing to the HMO plan, that flat contributions of \$24.00 per pay period per covered employee, would generate some \$3,250,000.00 in total employee contributions over the last two years of the new Agreement. That amount, argues the Union, is more than twice the employee contribution amount proposed by the Joint Employer. All other aspects of HMO coverage, including co-pay amounts for services and medications, proposes the Union, could then reasonably remain the same. The Union also rejects the Joint Employer’s argument on the basis of equity, here, in that every covered employee under the Union’s offer would contribute equally to the plan without regard to his or her income or actual use of the health care system. The Union states that its members were “carefully polled” and are in agreement with flat contributions to HMO health care

---

<sup>47</sup> Here, the Arbitrator notes that the Union proposes to maintain the *status quo* in its entirety with respect to PPO coverage. However, the Union argues that by far, the majority of members in this bargaining unit are currently participating in the Joint Employer’s HMO plan. Thus, says the Union, their proposed contributions will meet the demands of rising HMO health care costs.

<sup>48</sup> Joint Employer Exhibit 12 at page 4, Mercer Report.

premiums so long as other aspects of the current plan, including PPO coverage, remain *status quo*.

The Union also rejects the Joint Employer's obvious effort to maintain uniformity in health care coverage for all Cook County employees, arguing in particular that the Joint Employer has stayed the course of internal parity without duly considering specific employee concerns or "bargains offered."

The Union also equates the Joint Employer's proposed increases in premium contributions and co-pays to a reduction in benefits.<sup>49</sup> On this point, the Union reasons that, "[W]hen it costs more money out of pocket for an employee to go to the doctor or to obtain a prescription, that result is a reduction of this benefit."<sup>50</sup> Accordingly, argues the Union, proposed flat rate premium contributions, while other "benefits" such as existing co-pays for services and prescription remain the same, is a simple plan which "makes better use" of employee money.<sup>51</sup>

#### The Position of the Joint Employer:

The Joint Employer cites numerous reasons for the specific health care reforms it has proposed. First, maintains the Joint Employer, proposed changes will maintain the uniformity in health insurance that has been an "historical hallmark" of Cook County employee health care. Maintaining a "universal" health insurance program for all Cook County employees, argues the Joint Employer, enables the County to negotiate better terms with health care providers on the basis of sheer numbers alone. Moreover, argues the Joint Employer, its proposal takes a step toward addressing the ever-

---

<sup>49</sup> Union brief at page 47.

<sup>50</sup> Id.

<sup>51</sup> Union brief at page 49.

increasing costs of providing employee health care coverage. It is beyond dispute, opines the Joint Employer, that employers across the board are facing a “health insurance cost crisis of epic proportion”. In support, the Joint Employer notes that in 2006, employers across the nation are expected to realize a 9.9 % increase in overall health insurance costs. Moreover, argues the Joint Employer, costs have already been on the rise for years, with premiums increasing 11.2 % in 2002, 14.7 % in 2003, 12.3 % in 2004 and 11.3 % in 2005.<sup>52</sup> Thus, observes the Joint Employer, it is hardly surprising that Cook County has also felt the effects of this nationwide trend. In fact, argues the Joint Employer, Cook County’s expenditures for employee health insurance and prescription medications rose a full 20% between December 1, 2002 and December 1, 2004. Even so, argues the Joint Employer, not until now has the County joined the established trend among other large employers to seek greater support from covered employees for health care. Thus, argues the Joint Employer, undisputed evidence suggests that its proposed health care reforms are “more than just a good idea”. In fact, maintains the Joint Employer, they represent “belated step[s] toward bringing Cook County’s health insurance program in line with other employer’s programs.”<sup>53</sup> Moreover, argues the Joint Employer, they are “absolutely necessary to preserve the County’s fiscal health, a vital concern for all Cook County employees and taxpayers.”

As to its “last best offer” herein before the Arbitrator, the Joint Employer argues that it proposes relatively modest increases in premium contributions as compared with

---

<sup>52</sup> Bailey, Gary, “Health Insurance Trends in Interest Arbitration,” *Illinois Public Employee Relations Report*, Winter 2006, Volume 23, Number 1, 2-3. See also, *City of Chicago and Fraternal Order of Police, Lodge No. 7*, No. 04-328 (Benn, 2005). (“Insurance costs are skyrocketing... the national trend underscores the reality that employer health care costs are soaring at alarming rates and are being shifted to employees.”)

<sup>53</sup> Joint Employer brief at page 68.

those recommended by the Mercer Report cited by the Union. Additionally, notes the Joint Employer, its proposed changes in co-pay amounts are also lower across the board than those urged by Mercer. The Joint Employer argues that its proposal maintains a percentage of salary formula for employee contributions lower than that recommended by Mercer, and finally implements changes late in the tenure of this Agreement.<sup>54</sup>

The Joint Employer also rejects the Union's proposal because it "carves out" a special and untenable arrangement for members of this bargaining unit. In particular, the Joint Employer notes inherent inequity in the Union's plan, because each and every employee accessing HMO services would contribute the same amount, regardless of income or need for services. The unfairness of this arrangement, maintains the Joint Employer, is self-evident. Moreover, argues the Joint Employer, the Union's proposal to maintain *status quo* with respect to PPO coverage fails to recognize the fact that the current PPO program is simply unsustainable. In support, the Joint Employer notes that the cost to Cook County for PPO health insurance County-wide, rose some 35 % between December 1, 2002 and December 1, 2004. The Joint Employer notes that while employee contributions have also increased, they have, by far, failed to keep pace with costs.

Thus, for the foregoing reasons, the Joint Employer urges the Arbitrator to "embrace the notion of reasonable, equitable reform in the area of employee health

---

<sup>54</sup> The Joint Employer's proposed changes to co-pay amounts would take effect December 1, 2007, while employee contributions would not increase until June 1, 2008.

insurance by adopting their proposal while rejecting the Union’s unfair, backward-looking scheme.”<sup>55</sup>

Discussion:

After reviewing record and the arguments of the parties, the Arbitrator is persuaded that the Joint Employer’s proposal with respect to Section 8.1 of the Agreement more suitably addresses both a legitimate (and mutually recognized) need for health care cost reform in this bargaining unit, and the statutory requirement that the Arbitrator duly consider “the interests and welfare of the public and the financial ability of the unit of government to meet those costs”.

First, in this particular case, uniformity of Agreement language among various County bargaining units is distinctly advantageous to employee and employer alike, in that, by virtue of its sheer size, Cook County has tremendous buying power as an employer. Thus, the concept of uniform County-wide health care options is not merely convenience-driven. Nor, in this Arbitrator’s opinion, is it representative of unwillingness on the part of the Joint Employer to bargain in good faith over an important issue concerning this particular Union. It is simply common sense that employees will, in general, fair better in matters concerning the health care industry, being the giant that it is, when they have a giant in their corner themselves. Moreover, the skyrocketing cost of health care in general is well known, indeed it is beyond disputing. Certainly, the Arbitrator recognizes that no employee, public or private, wants to pay more for health care in general, never mind for coverage identical to that which he or she has previously enjoyed for a lesser amount. However, as noted, the cost for that same level of care

---

<sup>55</sup> Joint Employer brief at page 71.

has risen substantively in recent years, and it is simply indefensible for modern-day employees to expect their employers to foot the entire bill for those increases. Indeed, this would put an undue hardship on any employer, and this one in particular. Cook County's financial woes, as previously noted, are already a matter of public record.

What of the Union's plan then? On a couple of fronts, the Arbitrator finds that it is neither viable nor reasonable. First, the Union proposes to leave the existing HMO plan in place, and require employees opting for HMO coverage to pay a flat amount for that coverage rather than contribute a percentage of their base salary. Moreover, the Union proposes that co-pays for HMO services and medications remain as low as they are currently (despite Mercer recommendations), and also promulgates no change whatever in PPO coverage despite significantly rising costs there too. Indeed, the Union's offer would, as the Joint Employer observes, carve out a special (and advantageous) arrangement with this bargaining unit not enjoyed by any other Cook County employee with identical coverage, and would inevitably create a firestorm of "me-toos" elsewhere in the County. Obviously, the end result would seriously undermine the County's ability to bargain effectively with health care providers.

From a purely evidentiary standpoint, the Union's proposal also fails. The Union promulgates a financial boon to the Joint Employers under its proposal, but admits that the foundation for that asserted advantage is based upon an extrapolation of data gleaned from an outside contractor report nearly 18 months old. Certainly, it takes more than an estimate to convince the Arbitrator that the Union's plan is the more reasonable of the two in light of the express statutory criteria to which he is beholden. Also, the Union asserts estimated employee cash contributions of some \$3.25 million in the final

two years of this contract, but subsequently fails to compare those contributions with actual health care costs. Thus, it is mathematically impossible for the Arbitrator to even entertain so radical a departure from the *status quo*, were he even inclined to do so in view of the obvious resulting administrative nightmare, without reliable proof that the Union's plan more thoroughly addresses the Joint's Employer's *bona fide* need for reform.

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

### **Order**

The Joint Employer's proposal is adopted.

### **Section 8.3 – Disability Benefits**

#### The Union's Final Proposal

Employees incurring any occupational illness or injury will be covered by Workers' Compensation insurance benefits. Employees injured or sustaining occupational disease on duty, who are off work as a result thereof shall be paid Total Temporary Disability (TTD) Benefits pursuant to the Workers' Compensation Act.

When an employee suffers any injury or illness on duty which causes him to be unable to perform his duties, the employer agrees to issue a preliminary decision regarding the employee's claim in the most expeditious manner possible. If the claim is approved, the applicable payment shall begin immediately. In the event that the employer does not issue a preliminary approval or denial within fifteen (15) days of receipt of a written application for said benefits, the employee shall be placed on paid administrative leave, with no loss of pay or benefits, until such time as the initial review is completed or the employee is able to return to duty, as long as the delay is not attributed to the negligence of the employee. This administrative leave is non-disciplinary in nature. If the preliminary decision is denied due to a lack of required information or medical documentation, the employee shall be permitted to cure the deficiency by submitting the requested documentation, at which time the fifteen (15) day time period for review shall begin. In the event that any retroactive TTD benefit is determined to be payable to the employee for a period of time wherein he was on paid

administrative leave under this provision, this payment shall be paid directly to the employer, and in no circumstance shall an employee receive double compensation under this provision.

[The remaining existing language of Section 8.3 – Disability Benefits is incorporated herein as if fully rewritten.]<sup>56</sup>

The Joint Employer’s Final Proposal

Maintain *status quo*.

The Position of the Union:

According to the Union, the above proposed changes in Section 8.3 of the Agreement are offered in hopes that it “will solve some procedural defects present in the application of duty-disability cases”. The Union states that it does not intend to expand disability benefits, but rather proposes to force the Joint Employer to approve or disapprove disability applications within fifteen days of satisfactory completion, because, “[It] has had far too much experience with officers who have reported that they have simply been taken off the payroll for as much as 2-3 months before receiving compensation, or that they have received no update from the Employer as to the status of their claim.”<sup>57</sup> The Union is of the opinion that implementing its proposed changes in Section 8.3 will merely “grease the administrative wheels” where workers’ compensation applications are concerned, and thus minimize unpaid leave time while applicants are awaiting disability leave approval. The Union realizes that TTD payments are sent directly to covered employees, and are retroactive to the date of disability. Thus, promises the Union, any duplicate payment under proposed Section 8.3, that is payment for whatever time covered employees are on administrative leave to which retroactive TTD benefits have also been applied, “shall be refunded to the Employer.”

---

<sup>56</sup> Underscore represents proposed changes in existing Section 8.3 language.

<sup>57</sup> Union brief at page 50.

“It cannot be emphasized enough,” says the Union, “that this provision is in direct response to a lack of consideration that has been given to members who have claimed injury on duty.”

The Position of the Joint Employer:

The Joint Employer opines that the Union’s proposal is “ill-advised” for a number of reasons. First, argues the Joint Employer, it would “destroy decades of uniformity and internal comparability by carving out a special disability benefits provision for this bargaining unit.” As a consequence, argues the Joint Employer, approximately 22,000 County employees would have one set of procedures for disability benefits, while the some 2800 members of this bargaining unit would have another. Second, opines the Joint Employer, the Union’s proposal would inevitably confer upon bargaining unit members “windfall” income if TTD decisions are delayed beyond the 15 days prescribed by proposed Section 8.3 language.

Moreover, argues the Joint Employer, the Union has offered no empirical evidence proving that the Joint Employer’s decisions with respect to TTD applications have been unduly slow. Instead, opines the Joint Employer, the Union has relied on the “vague pronouncement” that its proposal is “intended as a procedural safeguard to protect the rights of employees who are injured or at least claim to be injured in the service of the employer. (Tr. 153-154.)” Thus, argues the Joint Employer, the *status quo* with respect to Section 8.3 of the Agreement should be maintained.

Discussion:

After examining the record and the arguments of the parties on this matter, the Arbitrator is convinced that the *status quo* with respect to Section 8.3 should be maintained. First, the Arbitrator is not persuaded by the Union's evidence (or, more accurately, he is persuaded in the Joint Employer's favor by a lack of it) that the alleged problem is deserving of the proposed solution. Certainly, the Arbitrator is not oblivious to the inconvenience, and obvious hardship in some cases, which accompanies full resolution (financial and otherwise) of an on-duty injury. In many cases, the circumstances are complicated, and the application/approval process takes time. In so noting, the Arbitrator neither sanctions nor advocates unnecessary foot-dragging on the part of the Joint Employer with respect to the handling of disability benefit applications. However, the Union has, as the Joint Employer correctly observes, offered no definitive proof that that "unnecessary foot-dragging" on the part of management is really the trouble. Thus, it appears, the Union has proffered a solution for which there is no *bona fide* problem directly attributable to management malfeasance or to a deficiency in current Collective Bargaining Agreement language. Furthermore, the Arbitrator agrees that adoption of the Union's proposal would, indeed fly in the face of a long history of uniformity and internal comparability. The County of Cook employs some 22,000 workers, each of whom, at least in theory, is entitled to prompt handling of disability benefit applications. Nevertheless, some things take time.

Interestingly, the Arbitrator also notes that if he were to approve the Union's proposed changes to Section 8.3, the practical impact of such a decision on members the bargaining unit could be more negative than positive. Because it is, however

unfortunately, true that “some things take time”, the Joint Employer *might*, and the Arbitrator is not suggesting that it actually would, deny otherwise supportable claims within the allowable fifteen days, just to satisfy new time limit obligations under revised Section 8.3 language that management render “a decision” within that time. This scenario, the Arbitrator is certain, is not what the Union had in mind.

Finally, there is the matter of the “windfall” to which the Joint Employer refers. On this point, the Arbitrator does observe the Union’s clearly stated mission to avoid double compensation, so the Joint Employer’s argument here is a bit mystifying. Nevertheless, recovering duplicate benefits from employees whose retroactive TTD benefits have overlapped “paid administrative leave” under proposed Section 8.3 would, to say the least, prompt a real administrative nightmare. This, in the opinion of the Arbitrator, would create a genuine hardship on the Joint Employer without sufficient evidence that a real problem exists in the first place.

Thus, because internal comparability militates against the Union’s proposed change to Section 8.3, because the Union has failed to demonstrate a deficiency in current Agreement language such that the promulgated issue should be corrected by the proposed amendment thereto, and because adoption of the Union’s proposal might produce both unhappy results and administrative hardships for injured employees and management respectively, the Arbitrator is convinced that the *status quo* should be maintained. An Order to that effect follows.

## Order

The *status quo* is maintained.

### Section 9.1 – Bereavement Leave

#### The Union's Final Proposal

A. Excused leave with pay will be granted, up to Five (5) days, to an employee for the funeral of a member of the Employee's immediate family or household. For purposes of this Section, and employee's immediate family includes parents, or such persons who have reared the employee, (either one or the other not both may be used), husband, wife, child (including step children and foster children), brothers, sisters, grandchildren, grandparents, spouse's parents.

**Arbitrator's Note:** The record establishes that the Union petitions the Arbitrator on an additional point with respect to application of the two additional days of bereavement leave proposed and tentatively agreed to by the parties to this arbitration. (Tr. 156.) At the arbitration hearing, Union counsel advised the Arbitrator as to the essence of the Union's additional proposal, and advised that new proposed language would be submitted to the Joint Employer and to the Arbitrator within one (1) week of the hearing. (Tr. 33.) To date, the Arbitrator has yet to receive it. Nevertheless, so the entirety of this interest arbitration is not unduly delayed, and because the Arbitrator has a thorough understanding of the Union's petition in this matter, he is prepared to rule below with the following reservation: The Arbitrator shall retain jurisdiction of Section 9.1 language in its entirety, and shall review and approve the exact language in the context of his Award and Order, before it shall become final.

The Essence of the Union's Proposal: The Union explains that the parties are in agreement that the number of bereavement days granted under Section 9.1 of the new Collective Bargaining Agreement shall be changed from three (3) to (5) when covered employees are required to travel some distance to attend a funeral. The Union proposes that the two additional bereavement days be granted by the Joint Employer when an employee covered by this Agreement is required to travel more than 150 miles from the Cook County Jail, as measured in any direction, in order to attend a funeral. (Tr. 32, 155)

#### The Joint Employer's Final Proposal

Add the following sentence to Section 9.1(A):

"Where death occurs and the funeral is to be held out of Illinois and beyond the states contiguous thereto, the employee shall be entitled to a maximum of five (5) normal days pay."

The Position of the Union:

According to the Union, the parties are in agreement that the bereavement leave provisions in the predecessor Agreement should be expanded to allow for additional paid time off work for bargaining unit members who are required to travel a “substantial distance” to attend funerals. The parties differ however, observes the Union, as to their opinion of what a “substantial distance” is.<sup>58</sup> The Union rejects the Joint Employer’s proposal that a “substantial distance” should be defined as travel to any state not contiguous with the State of Illinois. “A quick view of the map,” notes the Union, “demonstrates the problem with the [Joint] Employer’s proposal. With their proposal, some employees would receive this benefit when traveling less than 75 miles (from the Cook County Jail to New Buffalo Michigan, 74 miles, ref. Google Map), yet other employees might travel 500 miles or more for a funeral and still not be entitled to this benefit (from the Cook County Jail to Springfield, Missouri, 506 miles, ref. Google Map).” The Union recognizes and applauds the agreed-upon expansion of benefits here, but argues in light of the above scenario, that the Joint Employer’s proposed application promotes disparity and undue hardship among members of the bargaining unit. Thus, opines the Union, its proposal, that is uniform application of the “150-mile radius” rule, is by far the more reasonable and equitable of the two “last best” offers before the Arbitrator with respect to Section 9.1.

---

<sup>58</sup> Union brief at page 51.

The Position of the Joint Employer:

As did the Union, the Joint Employer acknowledges “enhanced” benefits in proposed Section 9.1. However, notes the Joint Employer, “The difference between the parties’ proposals is that the Union’s proposal would allow for up to five days whenever the funeral is held 150 miles or more from the Department of Corrections, whereas the Joint Employers’ proposal would permit a five-day bereavement leave when the funeral is in a state not contiguous to Illinois.”<sup>59</sup>

The problem with the Union’s proposition, argues the Joint Employer, is obvious when the following scenario is considered: “Under the Union’s proposal, an officer could take five days’ bereavement leave to attend a funeral in Peoria, Illinois, which is 160 miles from the Department of Corrections but a mere two hours 38 minutes driving time. (See Mapquest.com). The Union’s proposal would not be so generous to an officer who attended a funeral in Bloomington, Illinois, however. Attendance at a funeral in Bloomington, only 132 miles from the DOC (two hours and 15 minutes driving time), must be completed in only three days. (See Mapquest.com). Thus, despite the fact that the difference in driving time between Bloomington and Peoria is only 23 minutes, the Union’s proposal would add two days to the bereavement leave for Peoria funerals. This is a nonsensical result.”<sup>60</sup> In contrast to the Union’s proposal and in view of the above scenario, argues the Joint Employer, its proposal is superior in that it “would expand bereavement leave to five days where the funeral is sufficiently distant from Chicago to actually require extra travel time.”

---

<sup>59</sup> Joint Employer brief at page 6..

<sup>60</sup> Joint Employer brief at pages 63-64.

Discussion:

After reviewing the arguments and the respective “scenarios” of the parties, the Arbitrator is persuaded that the Union’s proposal is the more reasonable and equitable of the two before the Arbitrator. First, the Arbitrator does not agree that the Union’s idea promotes a nonsensical result. In point of fact, the Union’s proposal produces a reasonable and predictable result which is fair to everyone. The Joint Employer argues that its “Peoria/Bloomington” example is illustrative of unfairness because the two cities are relatively close together, yet one is more than 150 miles from the DOC while the other is not. Thus, as duly noted by the Joint Employer, of two employees traveling to each of these cities in order to attend a funeral, one would receive the “expanded” benefit, and the other would not. This, in the Arbitrator’s opinion is not indicative of inherent unfairness, because the “line” where benefits apply and where they do not has to be drawn *somewhere*. Even the Joint Employer’s proposal illustrates that, when an employee traveling to Michigan, a state not contiguous with Illinois, is able to travel a significantly shorter distance than an employee traveling south the entire length of Illinois and into a non-contiguous neighboring state, and still qualify for the additional bereavement days. Moreover, under the Joint Employer’s scenario using the Union’s alleged “nonsensical” proposal, neither employee would qualify for “expanded” benefits, while the employee traveling to New Buffalo, Michigan under the Joint Employer’s proposal (a mere 74 miles from the DOC) would. That, in the Arbitrator’s view, is nonsensical.

The Arbitrator also notes the Joint Employer’s argument that its proposal is more reasonable because it comes into play “where the funeral is sufficiently distant from

Chicago to actually require extra travel time.” (See Joint Employer brief at page 64.) That statement might be true if the Joint Employer’s proposal referred to “Chicago”. It does not. Instead, it refers to the State of Illinois, and this makes actual application of the expanded benefit under the Joint Employer’s proposal vastly different.

Clearly, because the Union has proposed the “150-mile” radius rule, the Joint Employer is safe from cries of disparity should the “Bloomington/Peoria” scenario (or other such similar scenario) arise in the future, and in the opinion of the Arbitrator, is safer still from inherent unfairness in its own proposal. “Radius” provisions are commonplace in collectively bargained bereavement rules, and the Arbitrator finds the Union’s proposal to be practical from an administrative standpoint and also equitable to covered employees. Thus, the Union’s proposal is adopted with the above-stated retention of the Arbitrator’s jurisdiction pending finalization of appropriate Section 9.1 language. An Order to that effect follows.

### **Order**

The Union’s proposal is adopted, subject to the Arbitrator’s approval of final Section 9.1 language.

### **Section 11.6 – Representatives**

#### The Union’s Final Proposal

The Chapter will advise the Employer in writing of the names of the Representative and alternates and shall notify the Employer promptly of any changes. Upon obtaining approval from their supervisor before leaving their work assignment or area, Stewards will be permitted to handle and process grievances referred by employees at the appropriate steps of the grievance procedure during normal hours without loss of pay, provided that the operations of the Employer are not adversely affected. Additionally, all Representatives shall be excused from duty on the day of and in order to attend monthly Chapter meetings. In all cases the primary mission of the

Employer and proper manpower considerations shall be controlling. It is mutually recognized that the principle of proportional representation is a sound and sensible basis for determining the number of Representatives.<sup>61</sup>

The Joint Employer's Final Proposal

Maintain *status quo*.

The Position of the Union:

The Union argues that its proposed modification to Section 11.6, which would allow all union representatives to attend monthly union meetings, is in response to the reality that the Joint Employer has more than 12 divisions, and in many cases more than one administrative team applying the Collective Bargaining Agreement. Thus, reasons the Union, it is “of mutual interest to have the representatives well-informed and able to engage in a harmonious labor-management relationship.” The Union notes the size of this bargaining unit, and opines accordingly that dissemination of information, crucial to the process of addressing labor-management concerns, can be more readily accomplished through well-prepared representatives. Thus, the Union seeks to depart from the *status quo* such that all Union representatives would be excused from duty on the day of Union meetings in order to attend, whether or not the meetings conflicted with their scheduled tours of duty.

---

<sup>61</sup> Underscoring indicates proposed changes in the *status quo*.

The Position of the Joint Employer:

At the outset, the Joint Employer argues that, “The Correctional Officers’ bargaining unit, like all Cook County units, is not a group that suffers from a lack of paid time off.”<sup>62</sup> In support, the Joint Employer notes that covered employees are given 10-20 working days of vacation annually (depending on seniority), 12 sick days per year, 4 personal days per year, 12 paid holidays each year, and one “floating holiday” which an officer may use on any day he or she chooses. Thus, the Joint Employer finds the Union’s petition on behalf of bargaining unit representatives for one additional paid day off every month to be unreasonable. After all, argues the Joint Employer, there are 50 Union stewards in the DOC, and all of them being absent on the same day to attend a Union meeting (whether or not the meeting conflicted with their scheduled shifts) would create obvious staff shortages, and necessitate a practice the Union has already loudly complained about; cross-watching.

Moreover, argues the Joint Employer, the Union’s proposal constitutes a “breakthrough”, in that it has never existed in predecessor agreements, and the privilege sought does not exist in any other Cook County Sheriff’s Department bargaining unit agreement. The Joint Employer argues that the Union has failed to satisfy its “extra burden” to demonstrate that its breakthrough proposal is prompted by genuine need, noting in fact, that, “The Union did not even attempt to present evidence that current paid time off is insufficient for these monthly meetings. Thus, this proposal is truly a solution to a problem that does not exist.” Accordingly, the Joint Employer urges the Arbitrator to maintain the *status quo*.

---

<sup>62</sup> Joint Employer brief at page 64.

Discussion:

As the Joint Employer correctly observes, the Union's proposal with respect to Section 11.6 above is "breakthrough" to the extent that it has not existed in predecessor agreements, and the privilege proposed therein is not enjoyed by other internally comparable bargaining units. No attempt has been made on the part of the Union to demonstrate comparability either externally or internally, for none exists. Thus, as previously stated by this Arbitrator, conventional wisdom and prior arbitral authority call for a demonstration on the part of the Union that the proposed departure from the *status quo* is in response to a particular "proven need" and further, that it "meets the identified need without imposing an undue hardship on the other party." The Union's proposal here fails both tests.

First, the Union failed to prove that the proposed change is needed. As the Arbitrator has already stated, need is distinctly different from a desire to alter the terms of a Collective Bargaining Agreement just so they are more favorable to one party or the other. Certainly such "desires" are appropriately broached at the bargaining table during the normal course of healthy "give and take" negotiating, but that is not what interest arbitration is all about. What the Union has asked for in this particular context, is a benefit for which there is no clear evidentiary support.

The record is absent any factual indication that labor/management relations are in real jeopardy because Union representatives are not adequately informed. Furthermore, there is no evidence that dissemination of information cannot be, and is not being, accomplished under existing *status quo* conditions. As the Joint Employers have noted, employees covered by the present Agreement have numerous options with

respect to paid time off, and Union representatives are no exception. There are already in existence, a host of ways Union representatives can attend monthly meetings without suffering a loss of wages.

Neither are there external or internal comparables which support the Union's proposal. The record establishes that no other Cook County Sheriff's Department bargaining unit enjoys the benefit sought by the Union here. The Arbitrator is not oblivious to the difference in the size of this particular bargaining unit as compared to the others, but that fact alone, is not sufficient to justify the proposed departure from internal comparability. Again, there is no proof that labor/management practices in place now are grossly deficient because of the size of the bargaining unit.

Not only is there an absence of genuine need to depart from the *status quo* established in this record, but, as the Joint Employer has argued, the Union's proposal would create a totally unnecessary hardship on management. The Union asks that representatives be excused from duty on the day of Union meetings whether or not the meeting conflicts with their duty assignments. This, the Arbitrator finds, is patently unreasonable on many fronts, and is indeed circuitous given the Union's supposed concern for staffing shortages.

For the foregoing reasons, the Arbitrator finds that the Union failed to prove that the proposed departure from the *status quo* is warranted and appropriate. The Joint Employer's position is affirmed, and the *status quo* with respect to Section 11.6 of the Agreement is maintained. The Arbitrator's Order to that effect follows.

### **Order**

The *status quo* is maintained. The Union’s proposal is denied.

### **Section 12.1 – No Strike**

#### The Union’s Final Proposal

The Chapter will not cause or permit its members to cause, and will not sanction in any way, any work stoppage, strike, or slowdown of any kind or for any reason, or the honoring of any picket line or other curtailment, restriction or interference with any of the Employer’s functions or operations; and no employee will participate in any such activities during the term of this Agreement or any extension thereof.

This provision does not limit the ability of the Chapter or its members to express any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form on issues pertinent to the operation of the Chapter.<sup>63</sup>

#### The Joint Employer’s Final Proposal

Maintain *status quo*.

#### The Position of the Union:

The Union proposes to modify this non-economic provision in the Agreement “to directly address a problem that occurred within the previous contract period.” The Union refers to an alleged incident during which a Union representative advised the Joint Employer of his intent to notify the public of his concern over certain labor issues through the practices of hand billing and picketing. The Union contends that the Joint Employer subsequently threatened to discipline any bargaining unit member who engaged in hand billing and picketing, and despite the Union’s belief that those practices were (and are) protected under the First Amendment, it opted for other means of disseminating information. In general, notes the Union, employees are “extremely reluctant” to challenge employers when they are “under threat of discharge”, and “It is

---

<sup>63</sup> Underscoring indicates proposed changes it the *status quo*.

exactly this sort of threat that [the instant] change to the *status quo* language is intended to protect against.”<sup>64</sup>

The Union rejects the Joint Employer’s objection to the above proposed amendment on the basis of a lack of internal parity, because, says the Union, the Joint Employer has never asserted that other bargaining units have had similar problems and have successfully resolved them under existing language. “Internal comparability,” argues the Union, “is only persuasive if similar circumstances exist within comparable units.” Thus, reasons the Union, if other internally comparable bargaining units have no need to change their no-strike language, they should not seek to change it. However, maintains the Union, “[T]his Chapter has experienced direct threats to its representatives regarding this issue, and therefore has established a genuine need to change this provision.”<sup>65</sup>

The Position of the Joint Employer:

The Joint Employer argues that Section 12.1 of the predecessor Agreement, “is a standard provision that is essentially identical to other provisions in the labor agreement s covering all 6,000 County law enforcement personnel.”<sup>66</sup> In keeping with the Act’s prohibition on work stoppages by law enforcement units, argues the Joint Employer, existing Section 12.1 bars strikes, picketing or slowdowns. Thus, opines the Joint Employer, the Union is seeking to dilute this “tried and true provision” by carving out a unique exception for this bargaining unit.

---

<sup>64</sup> Union brief at page 53.

<sup>65</sup> Union brief at page 54. See *a/so*; Union Exhibit 22; Affidavit of Andrew Diakoumis, wherein it is alleged that on March 5, 2004, Callie Baird, former Executive Director of the Department of Corrections, threatened Diakoumis and other union employees with discipline “if they picketed or distributed hand-bills to the general public.”

<sup>66</sup> Joint Employer brief at page 71.

The Joint Employer further argues that the Union has presented insufficient proof that the change is warranted, notwithstanding its position as to internal comparability. First, notes the Joint Employer, the Union's sole apparent justification for proposing the disputed departure from the *status quo*, is an alleged threat by a former Executive Director of the Department of Corrections that she would discipline Correctional Officers if they engaged in handbilling. In fact, notes the Joint Employer, no such discipline ever occurred, and Callie Baird, the Executive Director at the center of the storm, no longer holds that position.

Finally, argues the Joint Employer, the record fails to establish that the Union ever challenged the precise meaning of Section 12.1 language (as it is impacted by the First Amendment) under the grievance procedures established in the Collective Bargaining Agreement. Thus, reasons the Joint Employer, there can be no real assertion by the Union that the existing 12.1 language is "inadequate".

Discussion:

Again, the Union appears to have proposed a solution for which there is no demonstrable problem. As previously noted and restated here, well-grounded principles establishing the fundamental focus and practice of "last best offer" interest arbitration, mandate that the Arbitrator's job is not to play a Santa Claus in the act of pouring over proverbial "wish" lists. In point of fact, just as in traditional bargaining, the *status quo* serves as a springboard for discussion, because it represents what the parties' themselves last agreed to on any given subject. Thus, the Arbitrator, as the caretaker of that process and purveyor of its "natural extension" under the auspices of applicable statutes, must naturally begin his deliberations over proposed departures from what the

parties last agreed to, with their *reasons* for doing so. On the instant issue of Section 12.1 language, the Arbitrator is convinced that the Union's proposal once again does not hold up to the test of genuine need.

The record does establish, because the Arbitrator has not been given reason to doubt Mr. Diakoumis' affidavit, that perhaps some type of "threat" did issue forth from former Executive Director Callie Baird in 2004 in response to the Union's petition to handbill the public and picket over issues of concern to the Union at that time. However, the record also demonstrates that her alleged threats were never acted upon, and the Union failed to grieve her prohibition pursuant to the applicable grievance procedures in the Collective Bargaining Agreement. Thus, because the record is entirely void of evidence of on-going tension between the Union and management in this regard, and further because Baird's idle, if inappropriate, comment proved more bark than bite, the Arbitrator is not fully persuaded that there is an authentic and demonstrable deficiency in existing 12.1 language such that a change in the *status quo* (what the parties themselves last agreed to on this subject) is called for. The Arbitrator understands that Baird's threat was never tested (nor for that matter was the "practical" meaning of Section 12.1), because the Union apparently backed away from the fight first. However, that is not particularly helpful to the Union in this case, because the Arbitrator, in this forum, is not privileged to alter the *status quo*, not to mention depart from substantively identical internally comparable agreement language, simply because the negative impact of a single threat alleged by the Union almost happened or might have happened.

For the foregoing reasons, then, the Arbitrator is convinced that the *status quo* should be maintained. An Order to that effect follows.

### **Order**

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

### **Section 13.12 – Uniforms**

#### The Union's Final Proposal

The parties have agreed that the uniform allowance payable in equal amounts to employees in September and March of each calendar year will be as follows during the term of this agreement:

FY 2005 - \$650/yr

FY 2006 - \$ 650/yr

FY 2007 - \$750/yr

FY 2008 - \$850/yr<sup>67</sup>

#### The Joint Employer's Final Proposal

Maintain *status quo*

#### The Position of the Union:

The Union seeks what it perceives to be a "modest increase" to the uniform allowance already provided in the Collective Bargaining Agreement. As can be noted from the predecessor contract, notes the Union, the Uniform Allowance benefit has not increased since 1999. However, argues the Union, cost of living and subsequent increases in clothing and uniform costs, favor the proposed expansion of benefits. "By merely utilizing a simple inflation calculator based upon the national CPI data," argues

---

<sup>67</sup> Underscoring indicated departure from the *status quo*.

the Union, “it can be easily observed that \$650 in 1999 has the same buying power of approximately \$799 in 2006.”<sup>68</sup>

The Union also rejects the Joint Employer’s reliance on internal comparability in denying the proposed Uniform Allowance increase, noting in particular that the Cook County Sheriff’s Police are working under an expired contract, and the Court Services Deputies contract expires at the end of 2006. Thus, reasons the Union, while it might have been predictable (even supportable) for the Joint Employer to note that internally comparable bargaining units *had* identical uniform allowances in the past, “[I]t cannot yet be demonstrated what [the Joint Employer] will provide when settled.”

The Position of the Joint Employer:

The Joint Employer argues that, “The Arbitrator should reject this latest demand to increase the uniform allowance because once again the Union has not come close to meeting its burden of proving that the current \$650 per year is insufficient.”<sup>69</sup> Moreover, maintains the Joint Employer, internal comparables mandate that the Arbitrator reject the Union’s proposed departure from the *status quo*. There is no dispute, argues the Joint Employer, that the uniform allowance authorized for Correctional Officers is exactly the same as that which is authorized for every other uniformed law enforcement bargaining unit in Cook County. In point of fact, notes the Joint Employer, even the Deputy Sheriffs, whose agreement runs through 2006, still have the \$650/year uniform allowance. This internal parity, insists the Joint Employer,

---

<sup>68</sup> Union brief at page 55, with statistical reference incorporated as if rewritten.

<sup>69</sup> Joint Employer brief at page 57.

is “fatal” to the Union’s proposed increase, and thus, the Arbitrator should maintain the *status quo*.

Discussion:

While on the surface it would appear that the Union’s proposal should prevail on the sole basis of cost of living increases between 1999 and the present, the proofs on this issue, or more correctly the lack thereof, are fatal to a departure from the *status quo*. Again, any such departure must be prompted by a “proven need for the change” (See *McAlpin*), and the Union has failed to prove a need in this case. True, the Union makes a reasonable assumption based upon general cost of living data, that uniforms are more expensive now than they were in 1999. However, the record contains no empirical evidence that this is actually true. For example, there were no uniform catalogues to examine and compare, and no actual expense records demonstrating that the \$650 uniform allowance is now insufficient. Perhaps, \$650 was generous in 1999, and achieved through some other *quid pro quo*. Perhaps, the County has negotiated a great deal with a uniform provider such that readily observable increases in “street” clothing costs are irrelevant. Apart from cost data, who knows?

It is important here, for the Arbitrator to note that he is not particularly persuaded by the Joint Employer’s “internal parity” argument. Indeed, had the Union come in with proof of cost increases demonstrating that the current allowance is insufficient, its proposal would have carried the day on this issue. In other words, just because other bargaining units have either been unsuccessful in their pursuits on this issue or have neglected to raise it in the first place, is not fatal to the Union for one reason in particular: the uniform allowance in this and in predecessor agreements, was clearly

crafted to be a benefit over and above cost of living wage increases which the Joint Employer argues have “more than made up for” any increases in uniform costs. It is reasonable then, for the relative value of that benefit to be maintained as the years go by, so long as there is adequate proof that the *status quo* in terms of actual dollars no longer sustains the intended relative worth of the benefit.

Nevertheless, in this particular record, the Union has supplied no evidence, such as cos comparisons, etc., indicating that, in the “real world” the present \$650/year uniform allowance is no longer sufficient. Thus, the Arbitrator has no real alternative but to maintain the *status quo* for lack of sufficient proof that departure from it is warranted. An order to that effect follows.

### **Order**

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

### **Section 6.2 – Holiday Pay Eligibility**

#### The Joint Employer’s Final Proposal

Add the following as a new subparagraph C:

Holiday compensation will not be credited to members scheduled to work on a holiday if the member is on the medical roll (except IOD) or absent due to sickness.<sup>70</sup>

#### The Union’s Final Proposal

Maintain *status quo*.

#### The Position of the Joint Employer:

The Joint Employer argues that the above proposal to depart from the *status quo* with respect to holiday pay eligibility is “compellingly justified”, and offers “a simple

---

<sup>70</sup> Underscoring indicates departure from the *status quo*.

remedy for a real problem.”<sup>71</sup> Under the current Holiday Pay language, opines the Joint Employer, Correctional Officers actually have incentive to routinely call in sick when scheduled to work on holidays, which they do so in force, because they qualify for both sick pay and the compensatory day off. In effect, notes the Joint Employer, Correctional Officers who are scheduled to work on holidays and call in sick, get two days off with pay, while Correctional Officers who are scheduled to work and actually do, only receive one. Not only is this inherently unfair, argues the Joint Employer, the “loophole” in Section 6.2 language has prompted wholesale “abandonment” on holidays.

The following evidence presented at arbitration demonstrates the scope of this problem, notes the Joint Employer: On Christmas Day 2005, a Sunday, 222 Corrections Officers called in sick. On the next non-holiday Sunday, sick calls fell by some 78 %, to only 48. Similarly, on Tuesday, July 4, 2006, 127 Officers called in sick. On the following Tuesday, sick calls fell by some 82 %, to a mere 23.

The Joint Employer argues that the original purpose of paying time and one-half for “major holidays” with an extra day off to take later (and full pay on “minor holidays” with an accompanying extra day off), was to encourage and reward Correctional Officers who actually came to work “on days when most people would rather do other things.” Unfortunately, laments the Joint Employer, many Correctional Officers scheduled to work on holidays now call in sick because, in the end, they are treated the same for pay purposes as if they had actually worked. (That is, they are paid for the holiday, albeit as “sick pay”, and also qualify for the additional day off with pay.) Moreover, they actually enjoy the holiday off, notes the Joint Employer.

---

<sup>71</sup> Joint Employer brief at page 65.

Thus, reasons the Joint Employer, the above proposed departure from the *status quo* addresses the clear absenteeism problem and resulting staff shortages on holidays, and also maintains a benefit originally intended to reward Correctional Officers for working on holidays.

As a matter of internal parity, the Joint Employer notes that in 2001, Arbitrator Peter Meyers granted similar changes in holiday pay eligibility for Court Services Deputies in response to like arguments on the part of the Joint Employer. (See Joint Employer Exhibit 11, Tr. 255.)

The Position of the Union:

The Union argues that the Joint Employer has based its proposed departure from the *status quo* on a survey of “sick calls” over the seven months preceding the instant arbitration. “This brief survey,” maintains the Union, “may or may not demonstrate that there was a higher than expected number of sick calls on one or two of the holidays listed on their memorandum dated July 18, 2006.”<sup>72</sup> However, argues the Union, the Joint Employer’s interpretation of evidence of alleged abuse is flawed for a number of reasons. First, notes the Union, the two most significant days in terms of sick calls, December 25, 2005 and January 1, 2006, were in the winter, “when one might expect a higher number of sick calls naturally.” Second, argues the Union, there is no evidence that the Joint Employer ever attempted to determine whether or not the employees who called in sick were actually sick. “Presumably,” opines the Union, “if they believed that a person was falsifying medical excuses, the Employers would investigate the allegation...” Third, argues the Union, while it appears that 7% of the Correctional

---

<sup>72</sup> Union brief at page 55.

Officers scheduled to work on the statistically worst day called in sick, still 93 % of the scheduled staff came to work. Thus, reasons the Union, the majority of Correctional Officers represented by the Union should not be “punished” by the Joint Employer’s proposal, which would deprive them of existing benefits when they were legitimately sick on holidays they were scheduled to work. Finally, argues the Union, the Joint Employer’s data is not compared to normal absenteeism rates, so that a reasonable conclusion can be drawn as to the bargaining unit’s alleged abuse of Section 6.2 benefits.

Discussion:

After reviewing the evidence and the arguments of the parties, the Arbitrator is persuaded by the Joint Employer that the proposed change in the *status quo* with respect to holiday pay eligibility is both reasonable and warranted. Here, the Joint Employer demonstrated to the satisfaction of the Arbitrator that there is, in fact, “a proven need for the change”, and new proposed Section 6.2 language (as opposed to existing language) logically addresses that need without imposing undue hardship on the Union. In fact, the Arbitrator is convinced that the Joint Employer’s language will actually preserve what the parties originally intended.

The sheer number of Correctional Officers who called in sick on major holidays last year is indeed troubling, and it is not a stretch for the Arbitrator to reason that this is not what the framers of the original Section 6.2 language had in mind. *Certainly*, it is not what the Joint Employer anticipated. This leads the Arbitrator to conclude, just as the Joint Employer has concluded, that a significant number of bargaining unit members scheduled to work on holidays are, unhappily, “playing the system”. The Arbitrator is

not deaf to the Union's desire to preserve the *status quo* for the benefit of those Correctional Officers who really are ill on a holiday they are scheduled to work. However, majority must rule the day in this case, because the proven staffing nightmare on holidays must be addressed to the best of the Arbitrator's ability pursuant to the parties' last best offers. In this case, the Joint Employer's offer is, by far, the more reasonable of the two, and the resulting "hardship" on the bargaining unit is minimal at best. In actuality, the Joint Employer's proposal is likely to reduce hardship on the bargaining unit, because staffing shortages necessitating "double tiering" and "cross-watching" on holidays is very likely to decline significantly as a result thereof. Moreover, the Joint Employer has a right by virtue of the employee/employer relationship, to expect every employee scheduled to work on any given day, including a major holiday, to report for duty, and the Arbitrator is convinced by obvious excessive absenteeism on holidays as demonstrated in this record, that there is a genuine deficiency in existing Agreement Section 6.2 language which must be corrected.

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

### **Order**

The Joint Employer's proposal is adopted.

### **IX Conclusion and Award**

The foregoing Orders represent the final and binding determination of the Neutral Arbitrator in this matter and it is directed that the parties collective bargaining agreement

be amended to incorporate their previously agreed upon modifications along with the specific determinations made above.

---

**John C. Fletcher, Arbitrator**

Poplar Grove, Illinois, December 15, 2006