STATE OF ILLINOIS
IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

COUNTY OF COOK and the
SHERIFF OF COOK COUNTY

And

ILLINOIS FRATERNAL ORDER OF
POLICE LABOR COUNCIL

APPEARANCES:

Stuart Garbutt and Jacob Rubinstein on behalf of the Employer
Gary Bailey on behalf of the Union

This is an interest arbitration award issued under Section 14 of the IL Public Labor Relations Act. Pursuant to Section 14 c of the Act, the parties selected the undersigned to serve as a single arbitrator in the matter. Pursuant thereto, a hearing was conducted on October 6, 2005, during the course of which the parties presented evidence and arguments in support of their respective positions. Briefs were filed thereafter and the record was closed on 11/17/05. Based upon a review of the record the undersigned renders the following award, which is based upon consideration of all of the factors set forth in Section 14 h of the Act.

The bargaining unit affected by the proceeding is composed of approximately 112 Deputy Sheriff Sergeants employed by the Employers who are assigned to the Court Services Division.

The issues in dispute cover 1) the duration of the proposed agreement, 2) wages and rank adjustment (the latter of which the Union argues should be treated as a separate issue), 3) a health insurance reopener, 4) watch commander pay, 5) uniform allowance, and 6) a dues check-off service fee. The parties stipulated that all of the disputed issues are economic issues under the Statute. In that regard, the parties' stipulation contemplates that the arbitrator must adopt one or the other of the parties' proposals for the entire duration of the Agreement.

BACKGROUND:

There are three main Sheriff law enforcement departments in Cook County; the Police Department (SPD), the Department of Corrections (DOC), and the Court Services Department (CSD).

There has been a historical three-tiered salary hierarchy between the employees in these three Department, the highest paid being the officers in the SPD, followed by DOC

officers, and then by CSD officers. This differential has historically applied to the Sergeants in the Departments as well as their subordinates.

Until 1999 there was an approximate 7+% differential between the Sergeants and Deputies in the DOC unit. In 2000, as the result of an interest arbitration award, the differential changed in the following ways. The differential between the majority of the Deputies in the Unit and the Sergeants increased to about 12% in 2000 and 14% in 2002. However, around the same time, about 20% of the Deputies in the unit, who were assigned to a street unit with different duties than the normal courthouse unit Deputies performed, received a 4% increase, and as a result, the differential between these Deputies and their Sergeants was about 8% in 2000 and 10% in 2002.

The average differential between SPD Sergeants and Officers exceeds 17%, and the average differential between DOC Sergeants and Officers exceeds 9%.

The bargaining unit involved in this proceeding consists of approximately 112 Deputy Sergeants who supervise some 1600 Deputy Sheriffs in the CSD.

The last agreement covering the CSD Deputy Sheriffs covered fiscal years 2001 through 2003. The agreements covering most other Cook County units covered 2002-2004.

The Union was certified as the representative of this unit in 1994. The parties' first agreement covered the period 12/1/94 through 11/30/97. It was the result of an interest arbitration award. The parties successfully negotiated their second agreement, which covered the period 12/1/97 through 11/30/99. They participated in an interest arbitration proceeding for their third agreement that resulted in an award of an agreement covering the period 12/1/99 through 11/30/02. However, said award resulted in litigation that continued through the duration of the period covered by said Agreement, and, as of the date of the hearing in this matter, the parties had not executed a contract covering said period. The parties nevertheless implemented the undisputed provisions of the last award, and, in this proceeding, are submitting for arbitral determination disputed terms for their successor agreement commencing on 12/1/02.

The history of negotiations and interest arbitrations between these parties has established a number of internally comparable law enforcement units: 1) Deputy Sheriffs, 2) Correctional Officers, 3) Correctional Sergeants, 4) Police Officers, 5) Police Sergeants, and 6) DCSI Units (Day Reporting, Fugitive Unit, and EM).

DURATION:

The Union proposes a three year agreement, while the Employers propose a four year agreement with a reopener at the beginning of the fourth year on health insurance. If the arbitrator awards a four year agreement, the Union proposes that there be no health insurance reopener.

Union Position:

If the Arbitrator awards a three year agreement, there will be no disputes remaining between the parties over the general wage increases unit employees will receive or over health insurance. If the Arbitrator awards a four year agreement there will be no dispute over the general wage increases unit employees will receive 12/1/05.

Comparability evidence clearly and strongly supports a three year agreement. In fact, all agreements in comparable units are, and have been, three year agreements.

In addition, it is well established (Citations omitted) that interest arbitrators attempt to determine what parties likely would have agreed upon on their own. This factor also supports the Union's position on this issue.

In fact, the Employer never proposed a four year agreement with the Union at the bargaining table, and interest arbitrators have consistently held that such efforts subvert the bargaining process and should not be supported. (Citations omitted)

A three year agreement would also enable the parties to negotiate health insurance with all other Employer law enforcement units—an acknowledged Employer goal.

If the Employer prevails on the insurance reopener issue, it would enable the Employer to possibly elicit higher health insurance costs from affected employees, while at the same time prohibiting the Union from attempting to obtain offsets for such cost increases.

If a four year agreement is awarded, such a reopener would also force the parties back to the bargaining table without a respite from these negotiations. Such a scenario certainly would not likely improve the relationship between these parties.

Employer Position:

The County is currently in negotiations with unions representing a majority of its 21,000 unionized employees. These negotiations include proposed changes in the County's health insurance plans. Most of these negotiations are for agreements that will commence on 12/1/04, or the start of fiscal year 05. However, since no agreements had been reached by the time the record in this proceeding was closed, any health insurance plan changes agreed upon or awarded will not become effective until fiscal year 06, i.e., 12/1/05 at the earliest.

The CSD Deputies currently have an agreement that runs through fiscal year 2006; however, said agreement includes a reopener for health insurance effective 12/1/05, for fiscal year 06.

Thus, the Employers' proposal for a reopener will put the Sergeants on the same footing as the Deputies, and will allow them to be involved in the current County-wide negotiations for 2006 health insurance plan changes. This will facilitate protecting and

perpetuating the uniform aspects of the Plan. As a reopener, the Sergeants will not be compelled to agree to a change for 2006, but will simply have to negotiate over the matter.

Discussion:

Although it would be beneficial to the parties' relationship for there to be a hiatus between the date of the issuance of this award and the commencement of another round of negotiations, in the undersigned's opinion, the circumstances present herein do not support achievement of that goal. A number of considerations support the reasonableness of the Union's proposal for a three year agreement.

First, and not unimportantly, it is unrefuted that the Union did not have an opportunity to negotiate the consequences of the Employers' four year proposal, since it was first brought to the table in the instant proceeding.

Secondly, a three year agreement will most likely afford the Union a meaningful opportunity to participate in the negotiations of the County wide health insurance plan that are currently in progress. If indeed it is the County's desire to give this unit meaningful stakeholder status in those negotiations, it is much more likely that will be the case if this Union can consider, weigh and balance the costs and benefits of plan modifications in the context of a total economic package that is subject to negotiations and, if necessary, interest arbitration.

Third, a four year agreement with a reopener on health insurance (even if the Employer agreed that the Union would not be compelled to accept any 2006 health insurance adjustments) would, in the undersigned's opinion, not likely cause the Union to become a genuine stakeholder in the ongoing negotiation process, and furthermore, it could possibly exacerbate the parties' relationship if the Union felt frustrated by its inability to meaningfully negotiate changes in its health insurance costs and benefits in the context of a total overall economic package.

The three year agreement is also supported by comparability considerations, both historical and current.

WAGES and RANK DIFFERENTIAL ADJUSTMENT

The parties general wage offers under both a three or four year agreement are identical: 5.5%, 4.5%, 4.5%, and 4.5%. The difference between the parties lies in the fact that the Union proposes an additional rank differential increase of 1% on 12/1/02, 1.1% on 12/1/03, and 1.1% on 12/1/04. The Union submits that this is a distinct economic issue, and the Employer contends that it should be treated as if it were part of the Union's wage proposal.

Union Position:

Upon the expiration of the Deputy Sergeants' 1997-99 Agreement, the Employers and Deputy Sheriffs negotiated a pay grade for Deputy Sheriffs assigned to street duties that was 4% larger than the traditional Deputies pay grade. This in effect reduced the differential between Deputy Sergeants and Deputies in the new pay grade by 4%, or, from 7.4%, which was the differential that existed in the prior two agreements, to 3.4%.

In the interest arbitration proceeding between these parties for the 1999—2002 Agreement the Arbitrator awarded the Union's final wage increase, which included a rank differential increase that established in 2002 a 10% differential between Deputy Sergeants and Deputy Sheriffs working street assignments

The rank differential that exists between the Employers Police Officers and Police Sergeants greatly exceeds the differential proposed by the Union. The rank differential between the Corrections Officers and Corrections Sergeants approximates that which is proposed by the Union. Thus, the factor of comparability favors the Union's proposal.

Furthermore, the concept of rank differential is common not only throughout law enforcement, but in many other workplace settings as well.

Employers Position:

Over the years, most of the Employers' law enforcement employees have received the same or very similar percentage wage increases every year. The principal exception in this regard has been the CSD Deputies and Sergeants, who have received considerably larger wage increases than the other law enforcement groups have received over the last several years. In fact, in the last round of bargaining, as a result of an interest arbitration award, the CSD Sergeants were awarded considerably larger increases than the CSD Deputies. That award resulted in increases for this unit that far exceeded the increases received by any other comparable unit. This history has resulted in a 51.5% increase in CSD Sergeant wages since 1995, in contrast to a 29.5% increase received by Sheriff's Police and Department of Corrections units. Relatedly, it is noteworthy that the increase in the cost of living index for the Chicago region over the same eight years was 20.5%.

The Employers' four year wage proposal in this proceeding, if adopted, will result in unit Sergeants receiving in excess of 70% pay increases, compounded, over 12 years. The Sergeants would also receive increases commensurate with the increases received by the employees they supervise. In actual dollar amounts the increases would be larger than the amounts received by the Deputies since their % increases would be on a larger base.

The Employers' wage proposal also preserves an appropriate rank differential. The Employers' wage offer will keep the differential between the majority of Deputies in the unit and the Sergeants at over 14% for the life of the Agreement. Translated into actual

dollars, the monthly difference between a Deputy's salary and a Sergeant's salary will range from $475 at step one to $709 at the maximum step. This differential is considerably larger than the less than ten percent differential that exists between Sergeants and Deputies in Corrections. Although the differential that exists in the Police unit is considerably larger (17%), historically, that differential is smaller than it has ever been. It is also based upon the fact that the police units are dominated by highly skilled and trained police specialists, who have traditionally been compensated differently than the other two law enforcement units.

It is also noteworthy that the Union's rank differential adjustment proposal contemplates a rank adjustment increase applied after the general wage increase each year, thus compounding the increase on top of the general increase.

There has only been one instance in which rank adjustment increases have ever been bargained or awarded in the Employers' bargaining units because of the irrelevance of rank differentials given the Employers' promotional pay practice.

In this regard the differential between ranks has no real effect on the increase an officer receives when promoted from one rank to another. This is because upon promotion the individual is advanced two steps in his/her rank (each step being between 4 and 5%), and then placed on whatever step of the promotional grade that is closest to but not less than that amount. The individuals pay thereafter increases with the steps in the promotional grade and general wage increases. This formula generally results in promotions generating 12% or more in wage increases.

If the Union's rank differential adjustment is awarded, it will almost certainly eclipse the DOC Sergeants' wages during this contract; thereby destroying the traditional wage hierarchy between those Departments that previous arbitrators have said should be preserved. (Citations omitted)

The Union's proposal is unsupported by evidence of any real inequity the DCS Sergeants are experiencing.

Because the Union's rank differential adjustment applies across the board to all Sergeants, and takes effect on the same dates as the regular wage increases, the proposal is in reality part and parcel of the regular wage increases.

Discussion:

Frankly, in this matter it makes no difference in the outcome whether the rank differential adjustment proposed by the Union is treated as simply a part of its wage proposal or instead, as a separate economic issue. This is so since the proposal affects all unit employees, is simply an add on to an agreed upon general wage increase, and since it would become effective on the same dates as the agreed upon general wage increase. Under these specific circumstances, the only question the undersigned has to decide is whether the record evidence and arguments warrant larger wage increases for the unit

based upon the wage differential that exists between these Sergeants and the Deputies they supervise, or based upon the differentials that exist between Sergeants and Deputies in the DOC and SPD.

In the undersigned's opinion, the record fails to support the need for, or indeed, the reasonableness of, the additional increase the Union seeks as a rank differential adjustment. There is neither evidence nor argument in the record supporting the need or justification for an adjusted differential based upon the differential that exists in the Police unit. The record also fails to contain evidence or persuasive argument supporting an adjusted differential in this unit based upon the differential that exists in the Corrections unit. In fact, the differentials that exist in the three law enforcement units appear to be more alike than they have ever been historically. Lastly, there is no evidence in the record that the differential between the Sergeants in question and the Deputies they supervise is unreasonable based upon comparability or indeed any other considerations. Relatedly, the two tiered wage system in the CSD Deputy unit does not, in the undersigned's opinion, support a finding that a rank adjustment is necessary to either maintain or improve the wage differentials between the Sergeants in this unit and the Deputies they supervise. Indeed, the differential at the end of the agreement at issue herein, without an adjustment, would appear to be at least about 10%, which approximates the differential that exists in the DOC units. If indeed inequities exist with respect to this issue, based upon comparability (or other) considerations, absent evidence supporting such a contention, the undersigned finds no basis for awarding the additional rank differential adjustment the Union proposes.

WATCH COMMANDER ASSIGNMENT

The Union proposes that when Sergeants are assigned Watch Commander duties, they shall receive their regular rate of pay plus $1.00/hour.

Union Position:

The record demonstrates that Sergeants are often assigned Watch Commander duties.

It must be conceded that the comparables do not support this proposal. However, other statutory factors do. The Union's proposal in effect enables the Employer to use Sergeants as Watch Commanders when the need arises at a much lower cost than would be the case if a Lieutenant had to be called in to cover on an overtime basis. Moreover the proposal would reinforce the notion that their extra duties merit more attention and responsibility.

Employers Position:

The Union proposes that Sergeants be paid an extra $1.00 per hour when they work in an assignment above their own rank. Although this proposal is designed to apply when Sergeants serve as watch commanders, the proposal is drafted so imprecisely it would create as many problems as it proposes to resolve. E.g., how is it to be applied to a less

than one hour assignment, and what constitutes an assignment above one's own rank. There would also be no negotiating history to help answer such questions.

The proposal, if adopted, would be unique in the Employers law enforcement bargaining units and is an unjustified breakthrough.

Discussion:

While the undersigned is sympathetic to the argument/concept that individuals should be compensated for the performance of their supervisors' duties and responsibilities, this record does not provide an evidentiary basis supporting such an award. In that regard, there is no evidence in the record that there are any comparables traditionally utilized by the parties that utilize such a compensation system. In addition, there is no evidence in the record pertinent to the issue of how much such a premium should be. There is also no evidence that the Employers have made such assignments in an excessive or otherwise unreasonable manner. And lastly, the Union's proposal on this issue could lead to potential disputes because, rather than specifically addressing watch commander duties, it addresses assignments above their own rank, which contains sufficient potential ambiguity to generate disputes over its interpretation. Another potential area for disputes might occur when there are assignments of watch commander duties that are only for a fraction of an hour. If and when such a proposal is raised again, in the undersigned's opinion these issues need to be addressed.

UNIFORM ALLOWANCE:

The Union proposes that the uniform allowance be increased from $650 to $700 per year.

Union Position:

Again, the comparables do not support the Union's position on this issue; however, cost of living considerations do. The last increase unit employees received for this purpose was on 12/1/99. Since then there has been an increase in the cost of living of more than 15%. The Union's request calculates into an increase of 7.7%. Even using the effective date of this agreement, there was approximately a 7% cost of living increase since the date of the last increase in the Sergeants' uniform allowance.

Employers Position:

Historically uniform allowance has been identical across all law enforcement bargaining units.

In the past five years, five unit representatives have proposed increases in the uniform allowance in interest arbitration proceedings, and in all of these cases, these requests have not been sustained.

There is also no record evidence demonstrating that there is a need for such an increase.

In response to the Union's cost of living arguments, the record establishes that the Sergeants' total compensation has increased multiples of cost of living increases over the past several years.

Discussion:

The record evidence does not support the reasonableness of the Union's proposal on this issue. While cost of living considerations are relevant to the disposition of this issue, absent evidence that the status quo allowance no longer permits Sergeants to maintain and/or replace their uniforms adequately, the abstract cost of living argument posed by the Union is not persuasive. Furthermore, comparability considerations also strongly support the Employers' position on this issue.

DUES CHECKOFF SERVICE FEE:

The Union proposes to eliminate a proviso in the parties' prior agreement that the Employer retain a five cent service fee for each dues check-off deduction it makes for the Union.

Union Position:

Despite the fact that the 5 cent service fee has been in several of the Employer's agreements, it has not been uniformly implemented. In fact, in five agreements with Cook County said proviso has been deleted. The fee is also not in the Police Officer, Police Sergeant, and Corrections Sergeant agreements. Only after the provision was removed from several agreements did the employer begin to make the service fee deductions.

Employers Position:

The service fee remains in all agreements in the CSD. Thus, true internal comparability dictates that the status quo should be maintained.

In addition, the Union has not offered a qui pro quo for the elimination of this provision in their Agreement.

Discussion:

This is a close one. The fact that the Employer only recently began implementing this provision of the parties' current agreement, and that it has been willing to remove the provision from comparable law enforcement unit agreements, supports the reasonableness of the Union's proposal. On the other hand, the fact that the provision remains in other CSD unit agreements, and that the Union has offered no quid pro quo for the proposed elimination of this proviso, supports the reasonableness of the Employers' position on this issue.

In view of the above competing considerations, and the generally accepted principle that the proponent of a change in the status quo on an issue such as this has the burden of persuasion in a proceeding such as this to justify the need for and reasonableness of its proposed change, the undersigned does not believe that the Union has met its burden in that regard on this issue.

Based upon all of the foregoing considerations the undersigned hereby renders the following:

INTEREST ARBITRATION AWARD

The parties' successor collective bargaining agreement shall contain the voluntary agreements the parties' entered into during the course of this round of negotiations, the Union's duration proposal, and the Employers' positions on all remaining issues that were in dispute, including: wages and rank differential adjustments, watch commander pay, uniform allowance, and dues check off service fee.

Dated this 1st day of December, 2005 at Chicago, IL 60660.

Byron Yaffe
Arbitrator