

Before a Board of Arbitration

**HARVEY A. NATHAN, Impartial Chairman
JONATHAN ROTHSTEIN, Employer Designee
PETER SCHMALZ, Union Designee**

In the Matter of the Arbitration

between

**COUNTY OF COOK and
SHERIFF OF COOK COUNTY**

Sheriff's Police

AND

**2004-2008
Collective Bargaining Agreement**

**AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 31**

Hearing Held:

November 13, 20, 2006,
December 28, 2006
February 5, 8, 13, 27, 2007
March 19, 2007
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Briefs Exchanged:

July 27, 2007

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

I. INTRODUCTION

This is an interest arbitration proceeding held pursuant to Section 14 of the Illinois Public Labor Relations Act (5 ILCS 315/14), hereinafter referred to as the "Act," and the Rules and Regulations promulgated under the Act. The parties are County of Cook and Sheriff of Cook County, as joint employers ("Employer"), and American Federation of State, County and Municipal Employees ("AFSCME" or "Union").¹ The Union represents a bargaining unit of approximately 450 Police Officers in the Sheriff's Police Department.² The Police Department is divided into

¹ AFSCME appears as the bargaining representative for its Local 2264.

² The Sheriff's Police Department is one of four major law enforcement departments in the Sheriff's Office. The other departments are: Corrections, Court Services, and Community Supervision and Intervention. Each of these departments has multiple

operational and administrative units. Employees are assigned to these units and perform the duties of the unit. The movement of employees among the units is an issue in this award.³

bargaining units and all of the non-supervisory law enforcement employees are covered by collective bargaining agreements. AFSCME represents some of these bargaining units. Other labor organizations represent the other units. The personnel in the Police Department historically have been the highest paid of the Sheriff's law enforcement employees. The term "employees" as used in this Award refers only to the sworn officers in this bargaining unit. There are 88 sworn supervisory personnel, most of whom are represented by AFSCME in another bargaining unit.

³ The Patrol Unit is the largest segment, with 210 officers, 24 sergeants and 8 lieutenants. These officers operate from four command centers (Markham, Bridgeview, Skokie, Rolling Meadows) and provide general police protection in unincorporated Cook County. Most of the remaining officers are assigned to operational specialty units: Gang Crimes and Narcotics - 57 officers, Investigations - 40 officers, Fugitive Warrants - 29 officers, Special Operations - 21 officers (child pornography, organized crime, unsolved homicides), Criminalistics - 17 officers (evidence technicians), Truck Traffic - 12 officers, Bomb Squad - 10 officers, Canine - 10 officers, Vice - 9 officers (prostitution and gambling), Community Relations - 3 officers. The remainder are assigned to the following administrative units: Support Services, Planning and Research, Training Academy, and

Tech Unit.

This award is the result of an impasse in collective bargaining between the Employer and the Union for a first agreement for this bargaining representative. Previously the bargaining unit was represented by the Metropolitan Alliance of Police, Chapter 201 (“MAP”). The last collective bargaining agreement between the Employer and MAP was effective December 1, 2001 through November 30, 2004.⁴ Sometime after the expiration of that bargaining agreement employees in the unit voted to replace MAP with AFSCME as its bargaining representative.⁵

⁴ As will be discussed below, the contract came as a result of another interest arbitration award.

⁵ Pursuant to Illinois law, the terms of the MAP agreement continue in effect until this Award becomes final. Accordingly, it is likely that the terms of the collective bargaining agreement generated by this Award will have less than one year remaining after its effective date.

Prior to its certification as the bargaining agent for the Sheriff's Police, AFSCME had existing bargaining relationships with Cook County on behalf of 12 other bargaining units. These units covered a variety of employees, including correctional sergeants, professional and non-professional health care employees, assistant public defenders, investigators, adult and juvenile probation officers, and several groups of clerical employees.⁶ On November 15, 2004, these parties entered into an agreement setting ground rules for combined ("universal") bargaining on issues common to all units. Bargaining would also take place with each AFSCME local individually, and no single unit was required to agree to terms because the other local units did so. Local 2264, representing the Police Officers, joined these group negotiations under the AFSCME umbrella on August 2, 2005. Agreement on numerous common issues was reached on June 19, 2006. All but Local 2264, on behalf of the Police Officers, ratified the agreement.

The undersigned impartial chairman then was mutually selected by the parties. Mediation sessions were held with the impartial chairman on August 29, September 11, 18 and 22 and October 5, 2006. Many outstanding issues were settled during that period. Thereafter there was a formal hearing lasting eight days during which numerous witnesses testified and many exhibits were admitted into the record. After the close of the record the parties submitted proposals for identification

⁶ The joint employers for these bargaining units, in addition to the County Board, are Stroger, Provident and Oak Forest Hospitals, Clerk of the Circuit Court of Cook County, Chief Judge of the Circuit Court of Cook County, and the Sheriff of Cook County.

of the outstanding issues. On May 9, 2007, the impartial chairman issued his Ruling on the specification of the issues. They are:

Economic

- | | |
|-------------------|--|
| 1. Section 3.4(B) | Calculation and payment of overtime. |
| 2. Section 5.1 | Length of service for wage computation |
| 3. Section 5.2 | Wages, pay plan and shift differential |
| 4. Section 5.3 | Specialty Pay |
| 5. Section 5.5 | Education Pay |
| 6. Section 8.2(D) | Payment for obtaining medical release. |
| 7. Section 8.15 | Maintenance of full pay during duty disability |
| 8. Section 9.3 | Uniform Allowance |

Non-Economic

- | | |
|------------------|---|
| 9. Section 2.1 | Discretionary transfers |
| 10. Section 4.7 | Application of seniority for scheduling |
| 11. Section 4.8 | Posting and Bidding |
| 12. Section 11.3 | Transfer grievances |

Following the identification of the issues the parties submitted final offers, followed

by written briefs. There was also a motion to correct the text of the final offers, which was granted. A draft award was issued by the impartial chairman on October 2, 2007, and an executive session of the arbitration panel was convened on October 18, 2007. Thereafter the party arbitrators submitted written arguments for modification of the impartial chairman's proposed award. This Final Award contains some adjustments and corrections proposed by the parties as a result of the executive session.

II. STATUTORY FACTORS

Section 14(h) of the Act provides that the arbitrator shall base his findings, opinions and order upon the following factors, as applicable:

"(1) The lawful authority of the employer.

"(2) Stipulations of the parties.

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

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

"(A) In public employment in comparable communities.

"(B) In private employment in comparable communities.

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

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

III. DISCUSSION

A. ECONOMIC ISSUES

1. Section 3.4(B) Calculation and payment of overtime.

Section 3.3(B), Compensatory Time and/or Overtime Compensation, of the

expired

MAP contract addressed how hours are calculated for overtime purposes. The Union proposes changes in two features of this section: (1) The elimination of the exclusion of sick leave from the calculation of overtime, and (2) changing the overtime pay period from a 160 hour, 28 day pay period to a 80 hour, bi-weekly pay period. The Employer proposes no change in the existing language. The Union's proposal as superimposed upon the current language is as follows:⁷

For the purpose of calculating overtime, all compensated hours shall be counted ~~except sick leave during a fourteen (14) day pay period. In the event that an Officer is charged with sick leave in a fourteen (14) day pay period in which overtime occurs, the overtime hours effected by the sick leave shall be calculated at straight time for that pay period.~~ Employees shall receive overtime at the rate of time and one-half (1 ½) their normal hourly rate of pay for all hours worked in excess of ~~the one hundred sixty (160) eighty (80) hours, twenty-eight (28) day work period in a bi-weekly pay period.~~ At the employer's option, time and one-half (1 ½) overtime may be accumulated as compensatory time due, calculated at the overtime rate, in lieu of pay.

All compensatory time due earned, from whatever source, shall be accumulated to a maximum of one hundred sixty (160) hours. All hours earned in excess of one hundred sixty (160) hours shall be paid in cash. Absent unusual circumstances, overtime shall be paid within one (1) pay

⁷Section 3.3(A), now 3.4(A), provides that overtime is limited to emergency situations that cannot be deferred, or which cannot be performed with the personnel available, or because of abnormal "peak loads."

period of the date a report of such overtime is received by the timekeepers in the Sheriff's Police Department.

Compensatory time off may be used in time blocks of one (1) hour or more, at a time mutually agreed to between the employee and his/her supervisor.

The Union argues that the period for measuring overtime should be reduced from 160 hours to 80 hours. It also seeks to have sick time counted as time worked for overtime purposes. The Union acknowledges that no bargaining unit in the Sheriff's Department has the overtime formula that it seeks in this arbitration. It does point out that other AFSCME collective agreements with the County have the shortened overtime computation, although in some of these the workweek itself is measured differently. The Union also cites a number of external jurisdictions (*e.g.* City of Chicago and several large metropolitan police departments in the comparability group generally used by the parties). The Employer argues that most of the large public law enforcement employers do not count sick time as time worked for overtime purposes, many AFSCME contracts in Cook County contain limitations on the use of sick time for overtime calculations and that none of the Sheriff's law enforcement units provides this benefit.

This proposal must fail because the Union has not shown any need for this change other than that it would be a nice thing to have and would increase the employees' income. However, a few comments should be made here in respect to this and other proposals reviewed in this Award. First, as the parties are aware, as

to “economic” issues the Act requires the arbitration panel to select “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(g).⁸ The arbitration panel cannot pick and choose among portions of an economic proposal. The language read as a whole must satisfy the standards set forth in the Act. Thus the burden for the party seeking the change is to propose language which is entirely acceptable under the standards set forth in the Act. Questionable words or phrases in an otherwise conceptually acceptable proposal might cause the rejection of the entire proposal.

⁸ The factors in subsection (h) are found above, p. 5.

More significantly, a party seeking a change in language must meet three threshold standards: (1) It must show that the old language, or system it describes, has not worked as anticipated when originally agreed to. (2) The existing system or procedure has created operational hardships for the employer, or inequitable or due process problems for the employees (or the union). (3) The party seeking the change has reasonably exhausted efforts to secure the change at the bargaining table. These hurdles are what is behind the description of interest arbitration as a “conservative process.” It is conservative in that there is a presumption against a change in language secured at the bargaining table, or through an earlier interest arbitration. The party seeking the change has the burden of proof. It cannot, as appears with the Union’s proposal for a shift in the overtime computation, only show that a change in the system for measuring overtime would be a nice thing to have. It must dissect the language and prove that there is something inequitable or wrong with the current system, and that the opposing party has resisted any change notwithstanding a willingness by the petitioning party to consider reasonable alternatives, or in appropriate cases, a *quid pro quo* to meet the opponent’s needs.⁹

⁹ This is an appropriate place to discuss another misunderstood maxim in interest arbitration, that arbitrators must determine what the parties would have decided for themselves if collective bargaining had not broken down. Or, stated another way, that arbitrators should not impose on the parties what the parties themselves would not have agreed to at the bargaining table. See, *Town of Cicero v. Ill. Ass’n of Fire Fighters Local 717*, Cir. Ct. of Cook County (Arnold, J.), 00CH 1698, slip opinion at 7-8 (2001); *Maywood Firefighters and Village of Maywood*, ISLRB No. S-MA-95-167 (Malin, 1996). This concept is in line with the principle that interest arbitration is an extension of the bargaining process. *Will County Board and Sheriff of Will County, and AFSCME*, S-MA-88-9 (Nathan, 1988).

Accordingly, the Employer's proposal for this issue is selected.

2. Section 5.1 Length of service for wage computation

These concepts come from a time when interest arbitration was a private sector procedure as an alternative to strikes either because of government controls during wartime, because of federal statutes (e.g. Urban Mass Transit Act of 1964, as amended, requiring arbitration of terms and conditions of employment for public or private transit employees where federal funding was involved) or because the parties decided it would be more efficient to arbitrate than to resort to economic warfare. For an example, see, New York Shipping Association, 36 LA 44 (Stein, 1960). In these cases the arbitrators had to consider what the parties might have agreed to in the context of the full range of economic self-help. Interest arbitration is a substitute for work stoppages. That consideration must be factored in. Were it otherwise the principle would be meaningless because the side saying no at the bargaining table would always have the advantage. Thus, the true concept is that the arbitrators must consider the likelihood of results based on a variety of factors, conceptually assuming that both parties had conventional economic weapons at their disposal.

Section 5.1 of the MAP agreement provides the basic formula for movement on the salary schedule.¹⁰ It states that Police Officers' length of service for salary movement purposes is based upon their years of service as Police Officers. Prior service in the other three law enforcement departments of the Sheriff's Office is not counted for movement through the longevity steps.¹¹ It appears that the reason for this is that the differential between the Police salary schedule and those of the other law enforcement departments is so great that if new entrants to the Police Department were given full credit for total years of service in the County, the jump in a salary after promotion would be disproportionately larger than similarly situated moves among other County departments. This has a meaningful affect on employees on longevity steps upon promotion into the Department. Even though

¹⁰ It also provides that no other employees will perform the work of Police Officers. That portion of Section 5.1 is not in dispute.

¹¹ The formula used throughout the County is that an employee being promoted moves up two steps on the old salary schedule and the resulting salary amount is matched against the salary next closest on the new schedule. Depending on the salary spread between the old and new schedules an employee may remain on the same step or go up or down a step. For example, it is possible for an employee moving from one County schedule to another to lose a step upon promotion because the spread in actual dollars between the old and new schedules is such that even with an advancement of two steps on the old schedule the corresponding salary on the new schedule is one step lower than where the employee originally came from. Upon promotion to the Police Department prior service in other departments does not count for movement anywhere on the new schedule, although it is at the longevity steps that the difference becomes meaningful. In other words, movement at the first six steps is effective each year. An employee moving from one of the other law enforcement schedules might lose a step but the wage increase is still significant and affects the employee's rate of movement only marginally. However, the longer the promoted employee has worked in the former department, the greater the impact on his/her subsequent movement on the longevity steps of the Police schedule where movement is not an annual event but is based upon years of service.

every Police Officer has to serve time in one of the other law enforcement departments in order to be eligible for employment as a Police Officer, and the Employer has benefitted from these years of experience in the other law enforcement departments, that time is lost once the promoted employee is on the longevity schedule.¹² Sheriff's Police are the only employees in Cook County who do not get to use their total years of employment with the County for movement through the longevity steps of a salary schedule after promotion.¹³

The Union is seeking to change the formula and its proposal would phase in the change so that its impact would be gradual.¹⁴ The Employer opposes any change in the years of service formula. As superimposed on existing language, the Unions' proposal is:

Section 5.1. Job Classification

Employees in the job classification set forth in Appendix A to this Agreement shall receive the monthly salary provided for their respective grade and length of service ~~in the job classification.~~ in Cook County. Employees will be increased to the appropriate step upon completion of the required length of

¹² See, County Sheriff's Merit Board Rules and Regulations, January 2006. The Union estimates that the average Police Officer joins the force after four or five years of service in other departments and thus when moving to the Police that average employee is about to move onto the longevity schedule.

¹³ Of course this is also true of Police Sergeants who first served as Police Officers and underwent the same loss of seniority then. However, it is undisputed that even personnel co-employed by the Chief Judge and the Circuit Court of Cook County do not lose their years of service if they are promoted to positions with other County co-employers.

¹⁴ The Union estimates that about half the Police Officers lost placement or were delayed placement on the Police schedule as a result of this feature when they moved into the Police Department from one of the other law enforcement departments.

service ~~in the classification~~ in Cook County. No person or persons shall be permitted to perform the work of a Sheriff's Police Officer job classification, nor shall the employer transfer employees from other positions within the County or the Sheriff's Department to do bargaining unit work.

Employees covered by this agreement shall have their seniority date for the purposes of movement on the Police Pay Plan adjusted to reflect their years of service with the County effective upon final approval of this agreement. However, any employee entitled to a step increase as a result of a change in their seniority date shall receive the step increase on their first anniversary date with the Sheriff's Police Department following the final approval of this agreement. Per the County rules, employees may only receive one step increase per year; however, affected employees shall continue to receive annual step increases on their anniversary date until they are on the appropriate step that reflects their new seniority date.

The Union cites the case of Officer Timothy Gorniak who had 15 years of service in the Corrections Department before transferring to Police. He was placed on the 15th year longevity step of the Police salary schedule but after five years there he learned that he would not be moved to the 20 year longevity step until he accrued 20 years as a Police Officer. Thus he would have a total of 35 years of service with the County before he could be placed on the 20 year step of the Police schedule. It would then take him an additional five years to reach each of the last two steps, the 25 year step and the 30 year step. In other words, as a practical matter Gorniak could never reach the top of the schedule because to do so he would have to serve 45 years as a law enforcement officer. The Union argues that it is not likely that Gorniak could serve effectively as a Police Officer in his 70s or ever live long enough after retirement at that age to collect much of the pension he earned over the past 45 years.

If Gorniak attempted to retire at a more traditional age he would receive a smaller pension because pensions are based upon the last four years of salary. Thus, Gorniak would eventually leave the force with a smaller pension than a hypothetically similarly situated officer who joined the Sheriff's Police on the same day as Gorniak but who had only a few years of experience as a law enforcement officer for the Sheriff. As the Union points out, eventually this younger hypothetical other officer would be able to reach the 30 year step for retirement purposes and receive a substantially higher pension than Gorniak although at that point Gorniak would have many more total years of experience.¹⁵

Gorniak testified that when he learned of this anomaly he sought assistance from MAP, the union then representing the Police Officers. Although about 30 other officers had similar situations, MAP refused to seek a remedy. This led to the replacement of that union by AFSCME. In the meantime Gorniak and other Officers filed a class action against the Employer in the U.S. District Court (Case No. 4 C 0883, Kendall, J.) alleging that the resetting of seniority for pay progression purposes upon promotion to the Police Department was an unlawful and unconstitutional deprivation of compensation. On September 25, 2007, the District

¹⁵ The Union also argues that the loss of pension benefits might cause some older Officers to retain employment when they are at risk due to the physical requirements of the job. According to the Union, having Officers work as senior citizens in order to get a full pension is not in the public interest.

Court entered an Order of Summary Judgment against the plaintiffs.¹⁶

The Union argues that it has attempted to negotiate a phased in alteration of this practice but the Employer has refused to consider any changes at all. The Union rejects the Employer's argument that to change the formula for moving to the Police Officer schedule would cause an undue enrichment for the promoted Officers. It argues that the same relative increases occur throughout the County when an employee moves from one County pay plan to a higher rated one.

¹⁶ The court found that the "practice of counting an Officer's years of service from the Officer's first day with the Sheriff's Police Department does not deprive Plaintiffs of any property interest *** [or] of any contractual right or non-contractual promise under state law." Slip opinion, p. 10. An appeal to the Court of Appeals for the Seventh Circuit is pending.

The Employer argues that the salary increases generated by the Union's proposal would be a "stratospheric" increase; a windfall without precedent. The Employer asserts that the Union's proposal would be a "breakthrough" in a contract which already provides large wage increases and a new pay plan.¹⁷ The Employer points out that total wage increases over the life of the proposed contract without the proposed changes in Section 5.1 will be at least 14% and perhaps as high as 18.5%. These are times of budgetary crisis and as the impartial chairman stated at the arbitration hearing, the County's financial problems are a matter of public record.¹⁸

The Employer also argues that the Union does not seek to change the definition of "seniority," used as a measurement in other sections of the agreement, even though that definition is also an employee's length of time of most recent continuous employment in the Police Department. (Section 4.2 of the MAP agreement.) In other words, the Employer argues, the Union recognizes that service

¹⁷ The Employer points out that the Police Sergeants are in the same situation as the Police Officers in that they also come from the ranks of other Sheriff's law enforcement departments. AFSCME has represented the Sergeants since 1990, and through several negotiations, but has never once sought to change the method of counting only years of service in the Police Department as the measure for movement on the salary schedule.

¹⁸ Cook County faced a \$502 million budget shortfall in October, 2006. Over 1,400 positions were eliminated from the budget for 2007.

in the Police Department is different from that in other law enforcement departments, and that experience should be measured only as time spent as a Police Officer. In effect, the Employer argues that the Union's position on length of service for salary movement and seniority elsewhere in the proposed agreement is internally inconsistent and demonstrates that the Union's purpose is not equity but a windfall for a few senior Officers.

The Employer further reminds the impartial chairman that he has observed in past decisions that the panel must be an extension of the negotiation process and not award a proposal that the parties themselves would never have agreed to. The Employer argues that it never would have agreed to the extravagant proposal the Union has made for the fundamental changes in Section 5.1. The parties made many changes in universal negotiations with this and the other AFSCME locals, and a change in Section 5.1 was never part of the mix. Indeed, the Employer proposed a generous general wage increase which this Union might have accepted but for other open issues, and one which will be at or close to what this arbitration board eventually accepts. (See discussion of the next issue, below.) But in all of the negotiating and the back and forth exchange of proposals the Union never insisted that changes in Section 5.1 were as critical as it urges in arbitration. Had it done so, the Employer argues, the mix of settled issues would have been different.

Nor does the Employer see any merit in the arguments relating to Officer Gorniak. There is no reason why Gorniak, who spent so many years in the

Correctional Department, should get the same pension as an employee who spends substantially all of his career in the Police Department. What is lost in this discussion is that an employee promoted to the Police Department earns substantially more money than in any other County law enforcement position and accordingly will have a much greater pension than would be received if retirement came from one of these other departments. In Gorniak's case he will be entitled to a richer pension than he would have been had he stayed in Corrections.

There are several overriding factors as to why this issue should be awarded to the Union. The first is the significance of internal comparability for this bargaining unit and other units within the Office of the Sheriff. As the impartial chairman has stated in previous cases, internal comparability is the overriding Section 14 factor in Cook County law enforcement arbitrations.¹⁹ In large public employment structures labor relations develops its own unique patterns and practices. Comparisons with other large municipalities and counties in other states are somewhat artificial because of the different revenue sources, special bargaining histories and differing cultural attitudes towards law enforcement and collective bargaining. In Illinois, the County of Cook and its co-employer relationships with the Sheriff and other County public entities is azygous. Except for, perhaps, comparisons with the City of Chicago, no other bargaining relationships can be compared with those of Cook County. Certainly the counties surrounding Cook are growing and becoming large

economic forces of their own; but nothing in Illinois has the depth and complexity of Cook County and its Office of Sheriff. Yet to give collective bargaining a baseline, a sense of what is appropriate, comparisons must be made with similarly situated units. Collective bargaining is competitive and market driven. What is appropriate in a collective bargaining agreement in the large public employment arena must be measured by internal comparisons. Other bargaining units within the County have the same or very similar financial resources to gauge, the same employment policies and the same political forces to contend with. In this case the other units in the Sheriff's Office, first, and the other units in the County (particularly those represented by AFSCME), second, are the most important comparability groups.

The most striking feature regarding this issue of length of service for salary movement is that it is unique within the County. In no other promotion situations is an employee required to give up total years of service in exchange for the promotion.

In such a situation it is difficult to see the Union's proposal as a "breakthrough." A breakthrough is a new feature historically unknown to the parties. But these parties, the Sheriff, the County Board, and AFSCME are well-acquainted with the promotion system which allows an employee to keep his/her own total years of service within the County when moving to a higher paygrade. If there are dozens of bargaining units in Cook County, and they all have this benefit, how can granting it to one of the

¹⁹ Employer's Brief p.6 citing cases.

two units without the benefit be seen as a breakthrough?

It may be that the singular distinction for length of service upon promotion to this unit relates to the salary gap between Police and other units from which Officers are secured. The salary jump upon promotion to the Police Department is substantial.²⁰ However, that could be adjusted by making selective changes in the formula, providing discrete implementation of the change over an extended period of time, or in other ways as proposed by the Union. The problem here was the Employer inability to bargain about any changes. How can it be argued that the parties would never have agreed to this change, and therefore the arbitration panel should not award it, when the record indicates that Employer would not consider any changes? It cannot be determined that the parties would never reach agreement on this issue if it has never been seriously discussed by the side now claiming impossibility. The Employer minimizes the value of the experience gained in the other law enforcement departments in the Sheriff's Office. But surely there must be great benefit in this experience or otherwise the Employer would not make this work a prerequisite for promotion to the Police department. These are not unrelated jobs. The employees in Court Services and Corrections are sworn officers

²⁰ Of course, the size of the increase upon promotion is unaffected by the retention of total years of service. That only enters into the picture as the employees begin to move through the longevity steps. It is in these higher steps that the salary differential becomes more noticeable.

with substantial police-type training. They carry weapons and have the power to arrest. They must keep the peace, and utilize all of the authority that entails. If there is a point at which this prior experience loses its usefulness in proportion to the salary increase resulting from the promotion of a senior Correctional or Court Services employee to the Police force, that is for adjustment at the bargaining table.²¹ Experience in a job is central to all of the pay plans in Cook County. Employees' salaries automatically increase based upon years of experience. Employees are not given increases on a salary schedule due to special merit or the accomplishment of certain benchmark requirements. Once an employee is on a salary schedule and performs adequately there will be periodic salary increases. Denying an experienced Police Officer such as Gorniak a salary increase proportional to his years of total service in County law enforcement is an aberration within the overall scheme in Cook County.

The Employer's argument that the Union's proposal is inconsistent with the measurement of "seniority" as total service in the Police Department is not persuasive. Seniority is used to measure placement for internal purposes within the

²¹ It is not being suggested here that other law enforcement employees be paid similarly to Police Officers. Numerous arbitrators, including the impartial chairman of this panel, have found that there are significant distinctions, such as exposure to personal danger, between the other law enforcement departments and the Police. Cook County/ Sheriff of Cook County and Illinois Fraternal Order of Police (Dept. Of Community Supervision and Intervention - Fugitive Unit), No. L-MA-03-002 (Nathan, 2004). The issue here is the complete elimination of all prior service in these other departments for salary advancement purposes.

bargaining unit. The salary measurement of total years of service within the County relates to movement in or out of different bargaining units. Total length of service for movement on a pay scale is different from seniority.

The Employer has noted elsewhere in its arguments that the close relationship among the Sheriff's bargaining units causes a domino effect when one unit gets a new benefit. The other law enforcement units then make that benefit a primary goal in the next round of negotiations.²² That will not occur here because all other units, except for the Police Sergeants, already have this benefit. As for the Sergeants, there is no evidence that this an issue in their negotiations. Yet, awarding the Officers the benefit of keeping total years of service may interfere with the traditional differential between Officers and Sergeants. (See discussion on the next issue, below.) That risk is troublesome for the impartial chairman. Nonetheless, this panel cannot deny a justified benefit for the unit at issue in this case merely because it might trigger a demand from one smaller bargaining unit in their next negotiations.²³ Accordingly, the Union's proposal for changes in Section 5.1 is awarded.

3. Section 5.2 Wages, pay plan and shift differential

There were three elements to this issue: (1) Basic wage increases and (2) the pay plan or salary schedule for the unit as a whole and (3) shift differentials. In their

²² Cook County/Sheriff of Cook County and FOP, *supra* fn 20.

²³ The Police Sergeants have already settled their agreement for 2004 through 2008 and are paid under a new salary structure. See their salary schedule at p.22 below.

final offers the parties have agreed to the basic across-the-board increases plus a bonus and the Union has withdrawn its proposal for a shift differential. The across-the-board increases agreed to by the parties utilize the same formula accepted by the other 12 AFSCME locals in universal bargaining:

12-01-04	1.00 %
12-01-05	1.00 % + \$500 bonus ²⁴
06-01-06	2.00 %
12-01-06	1.50 %
06-01-07	2.50 %
12-01-07	2.00 %
06-01-08	2.75%

²⁴ On a \$60,000 annual salary, \$500 represents 5/6 of 1.00% (.00833%).

This is a 12.75% increase in the salary schedule. It compounds out to be a 13.45% increase in the present salary schedule over the four year period of the contract.²⁵

The remaining salary issue is the structure of the pay plan, or salary schedule. During universal collective bargaining the Employer agreed to AFSCME's request for "AFSCME pay plans" which would distinguish the salary ranges of AFSCME-represented employees from other bargaining units in Cook County. It was a major goal for the Union and when the Employer agreed to this the Union considered it a major part of its "great victory." (Emp. Exh. 28.) These pay plans all signify that the value of the work performed by the AFSCME bargaining units is rated at a higher level than previously. The percentage differentials between the old and the new pay plans vary from unit to unit. The Union justifies its new schedule, worth an average of 2.5% for the unit overall, to the need to maintain a constant differential between this unit's schedule and that of the Sergeants. The Employer does not disagree in principle with the Union but it calculates that its proposal represents a more accurate historical differential between the Police Officers and the Police Sergeants. The average benefit in the Employer's proposed schedule is about 1%.

²⁵ However, almost all of these increases were accrued before this Award issued and presumably some budget adjustments were made in the past to account for anticipated increases. Assuming this to be so, the County will have had the use of this money for nearly four years. Stated another way, the salary increases earned in 2004, 2006 and 2007 will not be paid until 2008 and they will be paid in 2008 dollars, the value of which has been marginally diluted due to inflation.

A comparison of the respective offers is as follows:

Wages After 12.75% Increase (6/1/08)

Entry	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	10 yrs	15 yrs	20 yrs	25 yrs	29 yrs
51370	54523	57586	60462	63429	66570	69213	71995	74865	77850	80953	

Employer's Proposal for New Pay Plan After 12.75% Increase (6/1/08)

Entry	Step1	Step 2	Step 3	Step 4	Step 5	Step 6	10 yrs	15 yrs	20 yrs	25 yrs	29 yrs
51370	53682	56098	58623	61260	64017	66897	69942	73124	76452	79931	81730

Union's Proposal for New Pay Plan After 12.75% Increase (6/1/08)

Entry	Step1	Step 2	Step 3	Step 4	Step 5	Step 6	10 yrs	15 yrs	20 yrs	25 yrs	29 yrs
51370	53683	56790	59676	62465	65233	68181	71102	73389	75715	80943	84619

Sergeants' Wage Schedule After 12.75% Increase and New Pay Plan (6/1/08)

Entry	Step1	Step 2	Step 3	Step 4	Step 5	Step 6	10 yrs	15 yrs	20 yrs	25 yrs	29 yrs
61609	64382	67275	70304	73468	76774	80227	83875	85769	87695	93750	98014

Percentage Differences Between Sergeants and Both Proposals

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	10 yrs	15 yrs	20 yrs	25 yrs	29 yrs
Union	20%	18.5%	17.8%	17.6%	17.7%	17.7%	18%	16.9%	15.8%	15.8%	15.8%
Employr	20%	20%	20%	20%	20%	20%	20%	17.3%	14.7%	17.3%	20%

At first it appeared to the impartial chairman that the Employer's proposal provided inadequate adjustments at the annual steps. The maintenance of the 20% differential seemed severe and not in line with the differentials between other law enforcement units. And, if the Union's representation is correct that the increases in other salary plans were much greater than the Employer's proposed plan, it would seem that there would be an internal comparability problem. However, upon an examination of the historic differences between the Sergeant and Officer schedules, the Employer's movement on most of the longevity steps provides a narrowing of the differences at a service level where, according to the Union, many of the Officers are now placed. The proposal has its weaknesses at Step 6 and at the last longevity step. On the other hand, the Union's proposal, particularly in actual dollars, appears to be a little out of balance considered in the context of other sheriff's bargaining units. It narrows the differential at the last three longevity steps more than the impartial chairman finds appropriate in the context of the Award as a whole and in

these times of economic distress for the Employer. Given the actual dollars at stake at these higher steps and the impact of the new measurement of length of service provided by the new Section 5.1, the total dollar increase for this single contract is out of balance with the other bargaining units. Granting the Employer's proposal will provide significant increases to the senior Officers, although the impartial chairman acknowledges it does not restore the historic differentials of the 1990s.²⁶

4. Section 5.3 Specialty Pay

The MAP contract provided for specialty pay for certain assignments within the Sheriff's Police Department. The old language was as follows:

Officers assigned to certain positions shall receive a monthly stipend based upon their job description. Such specialty pay shall be as follows:

Bomb Squad	\$375.00 per month
Gang Crimes	\$250.00 per month
FTO	1 hour compensatory time per day when acting in the capacity of FTO.

²⁶ In the executive session, following the issuance of the impartial chairman's preliminary award, the Union made several salient arguments on the impact of the award on the differential with the police sergeants. The impartial chairman acknowledges the legitimacy of these concerns but his duty is to craft a fair and balanced award in light of the statutory limitations. The delicate balance of the arguments on this issue at this time and place must tip towards the Employer's financial crisis.

FTO certified officers assigned to the Patrol Division shall receive field training assignments on a rotating seniority basis based upon a list provided by the Sheriff.

The Union proposes to add the following position to this list:

Detective/ET \$250.00 per month

The Union seeks the following provision for the canine officers:

Canine Officer: Officers who are working as K9 officers will work a one hour shortened shift. The last hour of their tour of duty will be utilized for the care of their canine.

Officers who are working as K9 officers should receive one hour of overtime, compensatory time on any days off if they are responsible for care of their canine on that day

The Union is seeking additional compensation, or “specialty pay” for three categories of Officers: Canine Officers, Detectives and Evidence Technicians. There are 10 Canine Officers, 17 Evidence Technicians and between 30 and 40 Detectives.²⁷ Without question these positions are all distinctive or particular, requiring substantial additional training to develop the special skills which identify these tasks. The Union developed a significant record demonstrating the skills, risks, extra hours, and dedication of the personnel in these positions. Without question these Officers are sophisticated professionals deserving great respect. The issue in this case is whether they are entitled to additional compensation over and

²⁷ The parties did not agree on the number of Detectives in the Department. No documentary evidence was submitted.

above that received by other officers in specialized fields.

Canine Officers already receive a shortened shift of one hour each day they are on duty. Canine Officers work four 10 hour days and thus receive four paid hours a week to care for and train their dogs. This is a matter of past practice only. The Union is seeking to have it put in the contract. Additionally, the record supports the claim that these Officers care for and maintain these animals every day, whether they are on duty or not. The maintenance of these specially trained animals requires considerable time, energy and expense. The Union argues that employees in other Sheriff's law enforcement units get substantial additional compensation and benefits in return for their canine duties. This is also true in comparable large cities and metropolitan counties. In a nutshell, the Union argues that Canine Officers should be paid for their work. Awarding them three additional hours of comp time a week is an inexpensive way to address this problem. The Union also points out that this is not a groundbreaking proposal. The Employer has already recognized that Canine Officers should receive some additional compensation.

Detectives investigate major crimes in unincorporated Cook County, assist suburban police departments in such investigations, and do criminal investigations in the Cook County Forest Preserve and the Cook County Jail. They do internal investigations within the Sheriff's Office and also assist the State's Attorney's office in criminal prosecutions. They work extended hours, sometimes multiple consecutive shifts.

Evidence Technicians engage in highly specialized investigative and crime scene analysis work. They are required to have expertise in gathering and examining hair, skin, fingerprints and DNA. They have to control a crime scene and work with the exactitude of a scientist. The Union argues that the external comparables support its proposal for specialty pay. This includes the State of Illinois and the City of Chicago. Finally, the Union argues that prior interest arbitrators deciding issues for this bargaining unit commented favorably on past attempts to secure specialty pay. Although it was not awarded because of considerations of the overall cost of the awards, the Union has now satisfied what these arbitrators stated needed to be in the record.

The Employer makes numerous arguments against specialty pay for Detective, Evidence Technicians and Canine Officers. It is more efficient to list the arguments.

1. The existing stipends for Bomb Squad and Gang Crimes were initiated by the Employer for extraneous reasons and do not serve as precedent for the Union's proposals in this case.²⁸
2. The overall economic package for base salary will be generous regardless of whose package is selected. Additional compensation for certain select Officers is unjustified.

²⁸ According to the Employer the Bomb Squad benefit was added to settle an FLSA case and the Gang Crimes stipend was provided because there was a shortage of Gang Crime Officers.

3. Most Officers are specialists. The only non-specialists are the Patrol Officers and they make up less than half of the unit.

4. The extra training for Evidence Techs and Detectives relied upon by the Union is provided during working hours. In the ordinary course of their duties, however, these officers have substantial overtime opportunities not available to other Officers.

5. While some comparable law enforcement communities do provide specialty pay for Detectives and Evidence Techs, many of the largest do not. There is no demonstrated comparability trend or practice.

6. There is no shortage of specialists to justify extra compensation. No economic incentives are necessary.

7. The Officers selected for the positions at issue are chosen based upon special skills and within the sole discretion of management. Economics should not be a factor encouraging Officers to seek these positions.

8. There is no evidence to support the Union's claim that Evidence Technicians are subject to greater risks than Patrol Officers, nor is there documented evidence that these officers have "supervisory" tasks at crime sites. Most work is routine.

9. With regard to Canine Officers, there is already a past practice giving these employees time off to manage their dogs. A contract provision is not necessary.

10. It was understood by Canine Officers when they accepted that position that they would have certain responsibilities in taking care of the dogs for which they would not be paid.

11. Two arbitrators, Byron Yaffe and Ed Benn, addressing the same issue in earlier interest arbitration cases for this unit, denied the Union's request for specialty pay.²⁹

²⁹ Arbitrator Benn considered the total economic package as an element of appropriateness when he denied the proposal for specialty pay.

Contrary to the Employer, the impartial chairman finds that the existing extra pay for Gang Crimes and Bomb Squad was a product of collective bargaining. Although it may have been introduced at the Employer's initiative, it is a part of the collective bargaining agreement because both parties wanted it there. That the Employer recognized that speciality pay for Gang Crimes and Bomb Squad met its needs does not mean that these rates were not negotiated. Regardless of the reason the Employer proposed it, these two provisions for specialty pay broke the ground for this benefit. Granting the Union an expansion of this benefit would not be a groundbreaking feature in the agreement which might otherwise require a higher threshold of need.

Nor do I follow the logic of the Employer's argument that to grant specialty pay would encourage Officers to apply for these positions when their selection is at the sole discretion of management. The justification for specialty pay is assessed by the difference in duties from one type of work to another. The Union must show that there is such a measurable difference in the complexities, skills, risks, etc. from other tasks that Officers in these positions should be paid more. It is simply irrelevant that higher pay for certain jobs might attract some Officers to apply for the work. At most, attracting more candidates might require the Employer to devote additional time to sort out the incompetents. Perhaps that is a cost inherent in collectively bargaining.

This discussion leads into the problems with the Union's proposal. The Union put on evidence that the work performed by the Evidence Technicians and Detectives are different from the work performed by other Officers, particularly Patrol Officers. But "different" does not necessarily translate into "more valuable." Certainly no one quarrels with the special nature and the talents necessary to perform these tasks. But the Union has not shown how these different features justify special pay. There are other specialties in the Sheriff's Police Department. Why should not they all get special pay in return for their special skills? Indeed, the logical consequence of the Union's reasoning is the inevitability that there will two classifications of Police Officers, one for Patrol Officers and the other for the half of the Officers in "special" positions. Stated another way, the Union has not shown that the work of any of the Evidence Techs and the Detectives is that much more skilled than any of the specialties or that it is at least as skilled as the Gang Crimes and Bomb Squad specialties. Anecdotal evidence that the experiences of Evidence Techs and Detectives are dangerous, or carry great responsibility, is insufficient to conclude that the inherent value of these tasks is greater than other assignments. Indeed, the impartial chairman is skeptical that the job of Patrol Officer is not equally dangerous to that of the Evidence Techs and the Detectives. Certainly the Patrol Officers must possess good instincts and sound judgment in the face of unknown risks that merit great admiration and a good salary. Why should they not be paid the same as the other specialists? The impartial chairman rejects the implication in the

Union's arguments that because Patrol Officer is the entry level position it is not worth as much as some of the specialties. The impartial chairman finds that the Union has not proven that specialty pay for Detectives and Evidence Technicians is warranted.

The position of Canine Officer is another matter entirely. Unfortunately, this arbitration panel cannot award a modification of the Canine Officer's remuneration as a separate item. It is part of the single issue which encompasses the other two assignments discussed above. The Canine Officer should be paid in some fashion for the additional work he/she actually puts in as part of the job. This is not a question of a special skill deserving of higher pay, but a recognition that employees should be paid for the actual work they must perform to meet the requirements of the job. That these employees knew about the extra time required when they accepted the assignments is irrelevant on many levels. Additionally, the Employer concedes the principle of time off for the extra work because it has voluntarily agreed to pay for some of that work. It is no great leap to award the employees for all of their extra work once the Employer acknowledges that such work should be paid.

5. 5. Section 5.5 Education Pay

The Union proposes a new section in the agreement establishing a joint management/labor committee to explore the improvement of Police Officer educational levels. It argues that because most Police Officers come from County positions which do not require a college education in the normal career progression

within the Sheriff's Office most Officers will not have an advanced education. It argues that police work requires critical thinking and the intellectual skills encouraged by a college education. It only seeks for a committee to study the issue and report to the parties no later than June 1, 2008.³⁰

The Employer opposes this proposal and suggests that the Union's arguments are theoretical without any substantive evidence presented at the hearing that the parties would benefit from exploring this area.

It is not clear from the record what the Union intends to accomplish from this proposal. If it is a method to have a form of collective bargaining outside the ambit of traditional negotiations it would not be appropriate for this arbitration panel to require that. Nor would be acceptable for the panel to require the Employer to partake in an exploratory process about a subject it has no interest in. If the Union's ultimate goal is to provide for or otherwise encourage Police Officers to have a higher education it would be more appropriate for the Union to do its own research and when it has evidence to prove its theory it should present that at the bargaining table and proceed in the conventional manner.

6. Section 8.2(D) Payment for obtaining medical release.

The expired MAP agreement provides that when an Officer is absent from

³⁰ This is a new proposal. During collective bargaining and during mediation the Union was seeking annual stipends for Officers with college degrees.

work for health reasons for forty (40) consecutive hours or more the Officer may be required to get medical clearance from a physician employed by Cook County. According to the Union, these physicians are not available at night and on weekends. Because Police work is a 24/7 business, an Officer who can return to work for a night shift or on a weekend is forced to remain off until a doctor is available. During negotiations the Union proposed that the Employer have a physician available every day. In arbitration it proposes that obtaining a medical release be on paid time. The old language with the Union's proposal underlined is as follows:

An employee who has been off duty for forty (40) consecutive work hours or more for any health reason may be required to undergo examination by the Employer's physician before returning to work, at the Employer's cost.

For health related absences of less than forty (40) consecutive work hours, a doctor's statement or proof of illness will not be required except in individual instances ***. If indicated by the nature of a health related absence, examination by the employer's physician may be required to make sure that the employee is physically fit to return to work.

An officer who is required to get a release from County Health Services in order to return to work should do so on paid time.

The Employer opposes this proposal because at the arbitration hearing the Union presented no evidence in support of a proposal for Officers to be paid for having a fitness-for-duty examination. The Union offered no comparative data and,

according to the Employer, none exist. The Employer argues that there is no basis under wage-hour laws for an employee to be paid for taking an exam to return to work.

At the arbitration hearing the Union described a problem. When employees are ready to return to work according to their own doctors they are prevented from doing so because the County insists that the Officers see County physicians who may not be available. Employees are forced to take unnecessary time from work and other Officers may have to perform additional work to cover for the absent employee until a County doctor is available to see the Officer. There is a kind of absurdity in the idea that a perfectly healthy Police Officer with a release from his own physician cannot return to work because the County doctors the Employer wants the Officer to see only work on weekdays from 9 to 5. And there is a corresponding absurdity when the Employer waves the "budget crisis" flag at every proposal and then supports keeping able-bodied employees from their jobs which potentially requires other employees at overtime rates to cover for the employees who want to return. Would it not be more efficient to allow an employee to return to work on the strength of his own physician's release and then have a follow-up by a County physician when one is on duty? Surely there are other possible solutions to this emblem of inefficiency.

However, the Union's proposal to this arbitration panel is unacceptable because there is no record as to how this proposal would operate. Is the Union

suggesting that the recovered Officer be paid for all time off from the receipt of his/her own physician's release until the Officer can be examined by a County doctor? Or is the Union merely proposing that the time in the County physician's office be paid time? If the latter is what is intended how does this solve the problem of the loss of time until the appointment with the County doctor? In either case, or with something in between, what is the Employer's financial exposure? How many employees have actually lost time from work because a County doctor was not available? Without a better record the arbitration panel cannot tell if this is a problem needing a solution or a solution in search of a problem.

7. Section 8.15 Maintenance of full pay during duty disability

The Union is proposing a new section in the agreement which would read as follows:

Officers shall receive 100% of salary for the first twelve (12) months they are on duty disability.

The Public Employee Disability Act provides that all police officers in Illinois get 100% of their salary for up to one year if disabled while performing work duties. However, this state statute exempts home rule units with populations exceeding one million, e.g., Cook County, City of Chicago. Under its home rule authority the Employer has determined to limit disability pay to 75%. The Union points out that across the country large units of police officers are 100% covered when disabled in the line of duty. The Employer points out that all Cook County law enforcement

groups get 75%.³¹ The Employer also suggests that this panel may not have jurisdiction to alter duty disability pay because it would be a usurpation of home rule.

The Union's proposal must be denied because: (1) There are no internal comparables. (2) There is no evidence of cost experience. (What are the statistics as to how many Officers suffer long term duty disabilities; what is this going to cost?) (3) The Union's proposal conflicts with Section 8.3 of the MAP agreement and there is no indication that that section is not a part of the new agreement. However, the impartial chairman rejects the Employer's argument about home rule. The statute authorizing collective bargaining is also a limitation on home rule.

8. Section 9.3 Uniform Allowance

Since at least 1998 the labor agreement for Police Officers has provided \$650 per year as a uniform allowance. This is the same amount received by the other Sheriff's law enforcement units. The Union is seeking a change in the terms of Section 9.3 to also include \$200 a year for "police equipment" and \$125 per year for "maintenance and replacement of body armor." The Union candidly acknowledges the difference in terms is an attempt to distinguish the uniform and equipment needs of Police Officers from those of other law enforcement personnel. The Employer

³¹ Police Sergeants, Correctional Officers, Correctional Sergeants, Day Reporting, Fugitive Unit, Deputy Sheriffs, Deputy Sergeants, Cook County Hospital Security, Cook County Hospital Sergeants, Oak Forest Hospital Public Safety.

opposes any increase in the uniform/equipment allowance for several reasons: (1) This was not a subject seriously pursued in negotiations. (2) The internal comparables all favor the current allowance of \$650. (3) The Union has greatly overstated the replacement costs for replacement material. (4) Some of the equipment cited by the Union is optional and discretionary with the employee.

The Union submitted a substantial amount of evidence in support of this proposal. It went through the many items a Police Officer needs in order to perform his/her duties correctly, efficiently and safely. The Union emphasizes that police work is a dangerous business and that the risk of serious harm is always present, particularly for Patrol Officers. The Union's witnesses testified as to normal wear and tear and the need for replacement equipment, particularly with regard to body armor. The Union also established that while many of the items purchased by the Officers are not mandatory, in order to operate in the manner demanded by the Employer, this additional equipment is essential.³²

³² In effect, the Union has made a persuasive case that the current uniform and material requirements are outdated. They may reflect what was the right equipment in 1998, but availability, quality and prices have increased since then. An example is the baton. There was evidence that a collapsible baton is used to train Officers, but that the written policy does not require a collapsible baton. Similar contradictions are in the record

regarding replacing body armor and the carriers in which the body armor fits on the employee. So, too, there is some discrepancy in the record as to whether the cost of the weapons now required of Police Officers has changed since 1998.

The starting point in this analysis is whether the Employer should pay for the “tools of the trade” for Police Officers. It can be argued that that decision was made many years ago when the Employer began to give employees an allowance for their uniforms and equipment. But it is not clear that in so doing the Employer was buying into the broader concept that the uniforms, etc. were its responsibility as with squad cars, which no one quarrels about. It may be true that the developing sophistication of law enforcement as a science has spawned a lot of peripheral equipment that makes the job easier, safer and more efficient. But the question remains whether the costs of all of these external paraphernalia should be supplied by the Employer or just should be accounted for in the employees’ salaries.

This proposal by the Union is denied. The record is unclear to the impartial chairman as to what is truly required and what is purchased simply for the convenience of the Officer. Without reaching the larger question of whether any equipment required by the Employer must be paid for by the Employer, it is to say that if the equipment, such as “posse boxes” to hold citation books and related materials in the squad car, is for the convenience of the Officer there is no obligation that uniform/equipment allowances reflect their cost. Stated another way, the Union has failed to prove that in past negotiations the parties agreed that the uniform allowance, etc. was intended to cover such optional equipment. The problem with the Union’s presentation in this case is that it failed to distinguish what was mandatory and what was not.

There are lingering doubts as well as to the true cost of some of this extra equipment. The Union did produce receipts for some purchases, and it seems to criticize the Employer's reliance on catalogues. Yet, selected receipts from a few officers is self serving and capable of manipulation. (Were there receipts in smaller amounts that the Union did not introduce?) The use of catalogues may be more accurate if the item described is the model and type required by the Department.

Based upon the parties' presentation on this issue, the impartial chairman believes that a better job could have been done at the bargaining table. There is a sense that problems with larger economic issues influenced the Union to save its evidence for arbitration and not confront the Employer with it at the bargaining table.

On the other hand, it needs to be said that denial of this proposal is not related to internal comparability. This is one situation where the other law enforcement units do not have the same equipment needs as the Police. There is no basis to deny the Police an increase in a uniform allowance merely because other units with less tool and equipment needs did not get the increase. In sum, a majority of the panel does not believe that this issue is ripe for arbitration.

B. NON-ECONOMIC ISSUES

The Union has proposed changes in contract language relating to transfers and the grievance of transfers. They were divided into four separate issues for final offer purposes. Because of their interrelationship they will all be discussed together.

All of the issues concern the transfer of Officers from the patrol division to several

specialized units, or between special units, within the Police Department and the right to grieve a refusal to transfer.

The contract language addressing transfers within the Department appears in various sections of the MAP agreement and are rife with contradictions. The starting point is Section 4.8 Job Posting and Bidding, which reads:

In the event an opening exists in any patrol area, sub-station, specialized unit of assignment or other assignments available within the Sheriff's Police Department, including the H.I.D.T.A. unit, notice of such openings shall be posted in such a manner as to insure all bargaining unit members have ample notice and opportunity to bid for such openings. Seniority, training, experience, skills, ability, and performance shall be used in consideration of the employee(s) selected for bid openings.

The system in place for many years allows the Sheriff to fill many open positions in "special" units without regard to the criteria listed in Section 4.8. The specialties are divided into two categories. Most positions are in Category One and include: Bomb, Canine, Community Relations, Detectives, Evidence Technicians, Field Training Officers, Fugitive Warrant, Special Operations and Truck Traffic . There are six units in Category Two: Internal Investigations and Inspections; Management Services (including Communications); Intelligence; Vice; Gang Crimes; H.I.D.T.A.³³. The MAP contract language provides that each year the Sheriff has the right to make thirty (30) selections for transfers, substantially without challenge,

³³ H.I.D.T.A. is not a unit at all, but the funding mechanism for the narcotics unit. "Narcotics" is actually a part of the Gangs unit. There was no explanation why the Category Two units are listed in this way.

in Category One.³⁴ All other selections in Category One can be grieved. Category Two transfers cannot be challenged at all. They are exempt from the grievance procedure. It appears that the Department posts all openings regardless of the standards used to select the Officer to fill the vacancy. As a matter of practice, the openings are posted for 14 days.³⁵

The contract language addressing this is discussed in several different areas of the contract, as follows:

Section 2.1. Employer Rights *** Employer rights shall be limited only by the specific and express terms of this Agreement. Employer's rights include, but are not limited to:

I. During each calendar year of this Agreement the Sheriff shall have the right to make certain "Employer Right" transfers from and into "Category One" positions, as defined in Section 11.3 of this Agreement, in accordance with the following schedule.³⁶

Fiscal Year 1999	30 transfers
Fiscal Year 2000	30 transfers
Fiscal Year 2001	30 transfers

"Employer Right" transfers shall be identified on the transfer order as "Employer Right" (ER) transfers; and, such transfers are not subject to the Grievance Procedure.

³⁴ Other law enforcement bargaining agreements with the Sheriff provide for "employer rights" selections. The Union claims that no other bargaining agreement has as many and that this concept does not exist in other Cook County units represented by AFSCME.

³⁵ The contract does not provide time limits.

³⁶ Adding to the confusion regarding transfer rights, the expiring MAP contract has no provisions for Employer rights transfers for the years covered by that agreement. The parties carried over the literal language of the prior agreement. Nonetheless there were 66 transfers in 2005, 91 in 2006 and 35 during a portion of 2007.

Upon written request from the affected employee, the Employer shall give cause for all other Category One transfers and such transfers shall be subject to the Grievance Procedure.

For the purpose of this Section the transfer of one person out of a position and the transfer of a replacement person into that vacated position shall count as two (2) transfers. There shall be no carry-over of unused transfers from year to year.

This language, however, is contradicted by provisions in the contractual grievance procedure. Section 11.3 Transfer Grievance provides as follows:

Transfer Grievances shall be limited as to whether or not they are reasonable and/or any provisions of this Agreement was violated.³⁷

Category One: Transfers Subject to the Grievance Procedure.

A transfer of an Employee which is subject to the grievance provisions of this Article is a transfer to and from any division, unit or assignment, except Category Two.

A transfer within the patrol division from one Area from that which the officer is normally assigned to another Area (north to south, south to north) may be grieved under the provisions of this Article only if such transfer is permanent (e.g. of five days duration or more) or has occurred more than two (2) times in a thirty (30) day period. This shall not apply if the transfer is caused as the result of a seniority "bump".

Category Two: Transfers Not Subject to the Grievance Procedure.

A transfer is not subject to the grievance provisions of this

³⁷ This language implies that "reasonableness" is a standard separate from the limitations contained in the agreement, e.g. Section 4.8 which requires that "seniority, training, experience, skills, ability, and performance shall be used in consideration of the employee(s) selected for bid openings." This language is repeated in Section 11.4. (See fn 37, below.) In fact this distinction was implied in an award between the parties involving a transfer grievance. See discussion of Arbitrator Edwin Benn's award in the Williams case at fn 46 below, and supporting text.

Article if an employee is transferred to or from any one of the following Units:

- (1) Internal Investigations and Inspections
- (2) Management Services (includes Communications);
- (3) Intelligence;
- (4) Vice;
- (5) Gang Crimes Unit;
- (6) H.I.D.T.A.

The assignment or transfer of an Employee returning from a leave of absence, voluntary requests for transfer (which shall not result in the involuntary transfer of another) or a probationary employee transferred within the patrol unit are not subject to the grievance provisions of this Article.

During each fiscal year of this Agreement, the Sheriff shall have the right to make certain "Employer Rights" transfers, subject to the schedule in Article II Employer Authority, Section 2.1(I). If the Union files a grievance objecting to an Employer Right to transfer, then the Union shall have the burden of proving that the Sheriff, or his designee, exercised his discretion in regards to this transfer based upon non-legitimate punitive (e.g. disciplinary) consideration or in a manner which utilized such transfer to reward individuals based upon non-legitimate considerations.³⁸

The language of the last paragraph was added in 2003 as a result of the interest arbitration award that resolved the terms of the immediate MAP contract. The record reflects that the MAP union was unhappy with the language giving the Sheriff non-grievable transfers. That union asserted that the Employer Right transfers were being used unfairly to punish or reward certain employees. The issue

³⁸ Transfer grievances are specially referred to again in Section 11.4 which, *inter alia*, provides: "**** The grievant shall be required to present his/her entire argument as to whether or not the transfer was reasonable, and/or the provisions of this Agreement alleged to have been violated at the hearing. The burden of proof is on the grievant."

was presented to Arbitrator Byron Yaffe as in the 2003 interest arbitration. Arbitrator Yaffe found that the Sheriff had not been abusing his discretion in the number of “free” transfers, as Yaffe called them. However, he was skeptical that the Sheriff was selecting personnel for transfers based upon “legitimate considerations.” Yaffe then stated as follows (Yaffe Award p.16):

In an effort to balance these competing interests the arbitrator will, in this award, allow the Sheriff to retain the free moves he currently has, but will allow the Union to grieve the exercise of such discretion on a limited basis - that being, the Union will have the right to grieve such transfers and prevail if it is able to prove (the Union will have the burden of proof if such grievances proceed to arbitration) that the Sheriff exercised his discretion in this regard based upon non-legitimate, punitive (e.g. disciplinary) considerations, or in a manner which utilized such transfers to reward individuals based upon non-legitimate considerations.

There is no indication that Yaffe intended to limit the Sheriff in only Category One transfers. Nothing in the above-quoted language distinguishes an abuse of discretion in Category One from Category Two. Rather, Yaffe stated that the Union could grieve “free moves” if it could prove “that the Sheriff exercised his discretion [in a] *** punitive [manner] or in a manner *** to reward individuals ***.”³⁹ “Free moves”

³⁹ One might ask why should it be forbidden to transfer an Officer to a Category One

refers to the 30 moves for Category One and all the moves from Category Two.

unit as a form of discipline or as reward for reasons unrelated to the job itself and not so with a Category Two transfer? Stated another way, if a political appointment to a merit job in the Police Department is wrong, why is it less wrong if the political appointment is to Gang Crimes or Vice, both Category Two units? Surely, to allow a transfer to these sensitive positions for non-job related reasons would take the merit system, at the heart of all law enforcement positions, and stand it on its head.

Notwithstanding this limitation on the Sheriff's discretion, the parties to the MAP agreement adopted language into their contract which simply muddied the waters. Thus, the parties there kept the provisions of Section 4.8 as well as the language of Section 2.1(I) which gave the Sheriff thirty "Employer Right" transfers each year without recourse to the grievance procedure but then also provided in the last paragraph of Section 11.3 that the Union could file a grievance challenging a Employer Rights transfer but only on the grounds that the transfer was made for disciplinary purposes or to reward an individual for "non-legitimate" reasons, quoting the language from Yaffe's Award.⁴⁰

Chief of Police William McHenry described the process of applying for positions in Category Two. Once the Department decides there is a vacancy in a unit a notice is posted for two weeks announcing the opening. Any interested Officer may apply for the position by submitting a request for transfer through the chain of command. The request for transfer should include the Officer's work history and special skills he/she possesses that might enhance that applicant's ability to work within the unit.⁴¹ Chief McHenry testified that with all vacancies for special unit

⁴⁰ In its brief the Employer offers a "concession" that the language of Section 11.3 "trumps" the contradictory language of Section 2.1(I). The impartial chairman suggests without deciding the possibility that such a concession is tantamount to amending its final offer. If the Employer thought this language needed a clarification that explanation should have been offered as part of a proposal and not in a brief in support of a proposal to keep the old language as is.

⁴¹ As an example, Chief McHenry cited computer and writing skills as a positive attribute for a position in the planning and research unit.

assignments the Department is looking for Officers who are self-motivated, can follow orders, work in difficult situations and who have good records. The Department is also looking for people with the right dynamics to work closely with other Officers in the particular special unit.

According to Chief McHenry, the applications are sent to the commander of the unit involved. The commander then schedules interviews with all of the applicants. The applicants' time and attendance records and their internal affairs files are also sent to the unit commander. The commander may also obtain descriptions of applicants' work performance from their current supervisors. The commander then forwards his preferences to the Chief and Deputy Chief. The Chief decides who is the best person for the particular opening. A personnel memorandum is issued as to who received the transfer and what date it will become effective.

Chief McHenry testified as to what is looked for in a candidate for each of the Category Two special units.⁴² For Internal Affairs an applicant must have at least five years' experience, the ability to work independently in confidential circumstances, unquestioned integrity and a good sense of fairness. In Planning and Research, a division of Management Services, applicants must have writing and

⁴² In addition to his oral testimony, Chief McHenry cited and relied upon detailed general orders covering each of these units. Chief McHenry emphasized that "more years on the job does not guarantee that they are the best person for that position." (Tr. 668, 2/27/07).

computer skills, the ability to work on budgets, draft general orders and special notices, do grant preparation and long range planning. For Narcotics and Gang Crimes Officers must have good investigative skills, the ability to work with other law enforcement departments, a good internal affairs record, the ability to work with confidential sources and to be able handle large amounts of cash. They have to be able to work within a team and follow orders under dangerous circumstances. They must be able to relate to community organizations and attend their meetings. For undercover operations Officers with specific language skills or of a specific race or gender are sometimes needed. The units of Vice, Intelligence and Child Exploitation are covered by general orders for "Special Operations." Officers in the Child Exploitation unit, Chief McHenry testified, must have high moral character, the ability to determine when child exploitation occurs, good computer skills to chat online with suspected perpetrators, and to work undercover. Officers assigned to Intelligence gather information and conduct investigations regarding organized crime. These personnel must be skilled in gathering information on gambling, must be able to handle large amounts of cash and must work undercover. They may have to have specific language skills and be of a particular race or gender. The Vice unit investigates prostitution, massage parlors, sales of stolen merchandise ("fencing"), gambling and the supervision and control of liquor licenses. According to Chief McHenry, these Officers must be able to work with large amounts of money, seized and stolen property, must work with confidential informants, must be able to work

within group dynamics, and be self-motivated.

The Employer did not introduce evidence regarding the standards used for selecting Officers for Category One transfers. However, on cross examination Chief McHenry acknowledged that the attributes he described as required for Officers applying for the Category Two units, e.g., self-motivation, the ability to work in teams, good time and attendance records, applied to applicants for Category One transfers as well. The evidence shows that the Sheriff does not use most of his free picks and there was no evidence as to why thirty are needed.

The Union offered evidence that, it argues, demonstrates that the selection process to fill vacancies in special units does not operate fairly. Several witnesses with considerable experience testified that they applied for transfers to special units but were denied the transfers and that Officers with much less experience in the Police Department got the assignments. According to these witnesses, and as the Union argues in its brief, there were no discernable reasons why much less experienced Officers got the positions. Some senior employees never received explanations as to why their transfer requests were denied.⁴³ Others, such as Officer

⁴³ Testimony of Paul Norrington. Tr. 628. Testimony of Regina Biocic. Tr. 574.

Jason Gallero, received explanations that were not supported by the facts.⁴⁴ Still others were involuntarily transferred without any posting.⁴⁵

⁴⁴ Testimony of Jason Gallero. Tr. 606, 608.

⁴⁵ Testimony of Robert Mazor. Tr. 504. Testimony of Regina Biocic. Tr. 562,563.

At least one case was taken to arbitration. Officer Kevin Williams applied for a transfer to Special Operations. He was not interviewed and never contacted about his request, although Chief McHenry (then First Deputy Chief) had written in a letter that all applicants would be interviewed and given an opportunity to provide their seniority, training, experience, skills, ability and performance. Williams grieved the denial of his transfer request. The Sheriff argued that the position at issue was really a Category Two position and therefore the selection could not be challenged. The grievance was heard by Arbitrator Edwin Benn who issued his award in July, 2007. Benn found that the Special Operations position was not in Category Two and therefore could be challenged. Benn also found that the test for challenging the selection in that case was whether it was “reasonable,” citing Section 11.3 of the MAP agreement.⁴⁶ Benn reasoned that if the selection was unreasonable it was therefore arbitrary or irrational. Inasmuch as the Sheriff failed to provide any explanation as to why Williams was not chosen, Benn concluded that the selection had to have been arbitrary.

The Union proposes changes in Sections 2.1 (discretionary transfers), 4.7 (application of seniority), 4.8 (posting and bidding) and 11.3 (transfer grievances).

⁴⁶ In this part of his analysis Benn ignored the language of Section 11.3 which also provides that a transfer cannot violate any provision of the agreement, such as those provided in Section 4.8. Benn did refer to Section 4.8, however, as a basis to refuse Williams the position he was denied because of the Sheriff’s defective process. The arbitrator’s remedy for the violation of Williams’ rights was to open the position at issue for rebidding.

Its proposal as it relates to existing language is as follows:

Section 2.1(l)

During each calendar year of this agreement, the Sheriff shall have the right to make ~~certain~~ up to ten (10) "Employer Rights" transfers ~~from and into "category one positions as defined in section 11.3 of this agreement with the following schedule:~~

~~Fiscal year 1999— 30 transfers~~
~~Fiscal year 2000— 30 transfers~~
~~Fiscal year 2001— 30 transfers~~

"Employer Rights" transfers shall be identified on the transfer order as "Employer Rights Transfers" (ER) transfers.

If the union files a grievance objecting to an "Employer Rights" transfer, the union shall have the burden of proving that the Sheriff or his designee exercised his discretion in regard to their transfer based upon non-legitimate punitive (e.g. disciplinary) considerations or in a manner which utilized such transfers to reward individuals based upon non-legitimate considerations.

Upon request from the affected employee, the employer shall give cause for all other ~~category one~~ transfers, and such transfer shall be subject to the grievance procedure. For the purposes of this section, the transfer of one person out of a position and the transfer of a replacement person into that vacated position shall count as two (2) transfers. There shall be no carryover of unused transfers from year to year.

Section 4.7

The seniority list shall govern in the selection of vacations or other time off selections and hirebacks in accordance with the provisions of this agreement. Seniority shall be considered when making ~~transfer and~~ vehicle assignments.

Section 4.8 (A) Vacancy

A recognized vacancy for the purpose of this Article exists when an employee is transferred, resigns, retires, dies, is discharged, and when new positions are created (including but not limited to assignments with other municipalities, state or federal agencies, or other units of government), or when an employee is suspended and removed for disciplinary reasons for more than thirty (30) days.

Section 4.8 (B) Job Posting

Whenever the employer intends to fill a job vacancy as defined above, a notice of such vacancy shall be posted on all bulletin board for no less than fourteen (14) days. Any specialized skills or requirements related to the job shall be listed on the posting. The Union will be notified in writing of all employees who have bid prior to the awarding of the bid.

Section 4.8 (C) Filling of Vacancies

Where bidders are relatively equally qualified to perform the job, the Employer shall select the most senior qualified bidder.

Section 11.3

~~Transfer Grievances shall be limited as to whether or not they are reasonable and/or any provisions of this Agreement was violated.~~

~~Category One: Transfers Subject to the Grievance Procedure.~~

~~A transfer of an Employee which is subject to the grievance provisions of this Article is a transfer to and from any division, unit or assignment, except Category Two.~~

~~A transfer within the patrol division from one Area from that which the officer is normally assigned to another Area (north to south, south to north) may be grieved under the provisions of this Article only if such transfer is permanent (e.g. Of five days duration or more) or has occurred more than two (2) times in a thirty (30) day period. This shall not apply if the transfer is caused as the result of a seniority "bump".~~

~~Category Two: Transfers Not Subject to the Grievance Procedure.~~

~~A transfer is not subject to the grievance provisions of this Article if an employee is transferred to or from any one of the following Units:~~

- ~~(1) — Internal Investigations and Inspections~~
- ~~(2) — Management Services (includes Communications);~~
- ~~(3) — Intelligence;~~
- ~~(4) — Vice~~
- ~~(5) — Gang Crimes Unit~~
- ~~(6) — H.I.D.T.A.~~

The assignment or transfer of an Employee returning from a leave of absence, voluntary requests for transfer (which shall not result in the involuntary transfer of another) or a probationary employee transferred within

the patrol unit are not subject to the grievance provisions of this Article.

~~During fiscal year of this Agreement, the Sheriff shall have the right to make certain "Employer Rights" transfers, subject to the schedule in Article II Employer Authority, Section 2.1(I). If the Union files a grievance objecting to an Employer Right to transfer, then the Union shall have the burden of proving that the Sheriff, or his designee, exercised his discretion in regards to this transfer based upon non-legitimate punitive (e.g. disciplinary) consideration or in a manner which utilized such transfer to reward individuals based upon non-legitimate considerations.~~

The Union's proposal defines a vacancy and requires that it be filled. It requires that vacancies be posted for 14 days and that the Union gets notice. The Union also proposes that seniority governs if other factors are equal and that all transfer decisions are subject to the grievance procedure. The proposal reduces the number of "employer right" selections and does away with the distinction between Category One and Category Two positions.

The Employer argues that there is no reason to reduce the number of Employer Rights transfers because they are hardly used at all. It asserts that the Sheriff's prudent use of Employer Rights grievances shows that the system works and that there have been no abuses. To put things in perspective, the Employer points out, when an Officer is transferred from one unit to another it creates a second vacancy. Thus, the total number of moves appears greater than what actually occurs.

The Employer objects to the elimination of the two categories of transfers. It argues that the non-grievability of the transfer to sensitive positions (Category Two)

has been recognized by the parties for some time and there is no evidence that the Sheriff has abused this right. Indeed, the Employer points out, the Union has produced no evidence whatsoever that the Sheriff has ever transferred an Officer less qualified than another applicant. That some transferred Officers had less seniority than others seeking the position is irrelevant because seniority is only one of several factors to be considered. The Employer argues that Category two transfers should be maintained because they involve sensitive positions where skills and characteristics cannot be quantified. The nature of the skills needed require professional judgment by management and not some weighing of quantities.

The Employer argues that internal comparables support its position and that other Sheriff's law enforcement units have Employer-discretionary transfers, including the Police Sergeants who are also represented by AFSCME. It also points out that several of the Officers who testified about their disappointments in not obtaining requested transfers had, in fact, received other transfers they had been seeking.⁴⁷

The Employer argues that making seniority a controlling factor for transfers ignores the special nature of police work and the individual skills needed to perform

⁴⁷ Officer Mazor has had several transfers to special units, including a transfer to management services, a Category Two position. The same is true with Officer Biocic and Sgt. Karl Humbert (when he was an Officer).

such sensitive work as gang crimes, vice, child exploitation and internal investigations. Despite the skills and abilities that all Officers have in maintaining their positions with the Sheriff's Police, not everyone has the instincts, personality traits and subjective psychological characteristics to work undercover or to engage in particularly dangerous assignments on a daily basis.

There is much to be said about the non-economic issues before this arbitration board. First, it is clear that the language is in bad need of reorganization, at a minimum. There are internal conflicts, provisions addressing years covered by a much earlier agreement and so much confusion about standards for review that Arbitrator Ed Benn ignored the express provisions of Section 4.8 that "seniority, training, experience, skills, ability, and performance shall be used in consideration of the employee(s) selected for bid openings" and found that "my role as an arbitrator in grievances concerning transfers is limited reviewing [sic] the County's managerial determination to assess '...whether or not they are reasonable...'" *County of Cook/ Sheriff of Cook County and AFSCME Local 2264*, Case No. 2006-11-28690 (Kevin Williams), July 2, 2007. And one of the "special units" in Category Two, the H.I.D.T.A., is not a unit or position at all.

The second major problem is the difficulty in discerning the difference between Category One and Category Two positions. All of the positions outside of the Patrol division are "special units." Chief William McHenry carefully described the particular requirements for the Category Two units but then admitted that these characteristics

were applicable to the Category One units as well. The Chief explained that the Category Two units are sensitive positions. But all of the special units are sensitive. Having read the written general orders pertaining to these positions the impartial chairman cannot see why “Vice” is a so-called sensitive position but “Bomb Squad” is not. Additionally, the criteria described by Chief McHenry were so general as to be beyond objective understanding. Of course, Officers in Category Two positions have to have integrity, the ability to work in groups or the ability to work alone. What does that mean? Do not Patrol Officers also have to have these characteristics? The Chief testified that some positions require employees of color, or with special language skills, or of a certain gender. In other words, some positions where Officers are needed to gain the trust and familiarity with suspects or a particular community generally need to possess the physical or ethnic features of that group. Although these special needs might be part of the posting, it is more noteworthy that there was no explanation why these special ethnic features are not applicable to some Category One positions.

Nor was there any history of how the special units were divided into the two categories as they are. The impartial chairman is left with the impression that certain of these distinctions are part of “folklore” and not objective considerations belonging in a collective bargaining agreement. Perhaps they come from a time when Management had absolute discretion in all assignments and contractual distinctions were unnecessary.

The next problem with the current transfer system is that it does not work. There was unrebutted testimony by several witnesses that interviews are not always conducted and that explanations are not always given, and when they are the reasons given relate to incorrect facts. The Employer argues that there are many times when the protocol is followed. That is not sufficient. It must be followed every time. If it is not, there is a need for changes in language to make that requirement clear. Those do not now exist.

In this regard, Arbitrator Yaffe's award from 2003 reinforces the Union's position that the system is abused. Yaffe was persuaded that there had to be restrictions on transfers for disciplinary or reward purposes. He imposed that as a standard for previously unchallengeable transfers. While it might be argued that Yaffe's new provision only applied to Category One positions, nothing in the language of his award says that. Indeed, there is no reason why there should be such a distinction. Can it seriously be argued that the Sheriff may not select his friends nor punish his opponents in Category One Employer Rights transfers, but may do so with Category Two jobs? It is simply not in the public interest to have such a sensitive unit of government award positions based upon anything other than merit. In his testimony, Chief McHenry acknowledged that if the Department not applying the Yaffe standards to Category Two cases that would "not be fair." (Tr. 700).

All of this leads to the conclusion that there is no basis to have two categories

of transfers. This is separate from whether the Sheriff is entitled to “free picks.” Apparently the Union acknowledges such a need in its proposal by seeking a reduction from thirty (30) to ten (10) Employer Rights transfers each year. The point here is that the standards for review must be the same for all transfers. However, the merging of Category 1 and 2 transfers is a major change in operations. The impartial chairman therefore finds that the retention of thirty (30) Employer Rights transfers each year is appropriate.⁴⁸

With the elimination of separate categories of transfers, there is no reason to deny that all transfers should be grievable. The standards should be set forth in clear language and the only exception will be the thirty (30) Employer Rights transfers where the standards will be a simpler exposition of Yaffe’s no discipline/no reward standard.

Finally, the standards for consideration of a transfer request should be similar to the standards now recited in Section 4.8. Seniority should be a factor because Police Officers are expected to be more productive and more valuable in proportion to their years of service. Indeed, their salary schedule is based upon this premise.

⁴⁸ In the impartial chairman’s proposed award only ten (10) Employer Rights transfers were provided. The Employer’s arguments in the executive session have persuaded the arbitrator not to reduce the thirty (30) free picks in the same award that combines the two categories of ER transfers.

As proposed by the Union, the reference to “seniority” shall be removed from Section 4.7 because it is redundant and out of place in this section.

The language awarded for the non-economic issues will be as follows:

Section 2.1(I)

During each calendar year of this Agreement, the Sheriff shall have the right to make up to thirty (30) “Employer Rights” transfers. “Employer Rights” transfers shall be identified on the transfer order as an “ER” transfer. ER transfers shall be at the Sheriff’s discretion but such transfers shall not be made to reward an employee for activities unrelated to that employee’s job, and shall not be made as a form of discipline.

The transfer of one person out of a position and the transfer of a replacement person into that vacated position shall count as two (2) transfers. There shall be no carryover of unused transfers from year to year.

Section 4.7 Application of Seniority

The seniority list shall govern in the selection of vacations or other time off selections in accordance with the provisions of this Agreement. Seniority shall be considered when making vehicle assignments.

Section 4.8 Job Posting and Bidding

A. Definition of Vacancy

A recognized vacancy for the purpose of this Article exists when an employee is transferred, resigns, retires, dies, is discharged, and when new positions are created (including but not limited to assignments with other municipalities, state or federal agencies, and other units of government), or when an employee is suspended and removed for disciplinary reasons for more than thirty (30) days.

B. Posting of Vacancies

When the Employer decides to fill a vacancy, as defined above, a notice of such vacancy shall be posted on all bulletin boards for fourteen (14) days. All specialized skills or other requirements related to the job must be listed in the posted notice. The Union shall be sent a copy of the notice when it is posted, the names of all applicants at the expiration of the fourteen (14) days and before the selection is made, and the name of the successful bidder after the selection is made. All such information to the Union shall be in writing.

C. Filling of Vacancies

(1) Applicants for vacancies as described above shall submit a written application containing their work history, special training, and any other reasons the applicant believes he/she is qualified for the position. All applicants shall be interviewed by the commander of the section or unit seeking to fill the vacancy, or his/her designee. Unsuccessful applicants shall receive a brief written statement setting forth the reasons why the applicant was not selected.

(2) Except in the case of an Employer Rights transfer, as described in Section 2.1(I) above, applicants to fill vacancies shall be evaluated for the position based upon training, experience, skills and abilities, past performance evaluations and the applicant's disciplinary record. If more than one applicant has substantially the same qualifications, as just set forth, the applicant with the greatest length of service in the Police Department shall be selected.

Section 11.3 Transfer Grievance

(1) Except in the case of an Employer Rights transfer, as described in Section 2.1 (I) above, any unsuccessful applicant to fill a vacancy may grieve the decision on the bases that the Employer failed to properly apply the standards set forth above in Section 4.8 (C) (2).

(2) An applicant to fill an Employer Rights vacancy, as

described in Section 2.1(I) above, may file a grievance on the bases that the transfer was made to reward an employee for activities unrelated to that employee's job, or that it was made as a form of discipline.

AWARD

1. Section 3.4(B) Calculation and payment of overtime is awarded to the Employer.
2. Section 5.1 Length of service for wage computation is awarded to the Union.

3. Section 5.2 Wages, pay plan and shift differential is awarded to the Employer.
4. Section 5.3 Specialty Pay is awarded to the Employer.
5. Section 5.5 Education Pay is awarded to the Employer
6. Section 8.2(D) Payment for obtaining medical release is awarded to the Employer.
7. Section 8.15 Maintenance of full pay during duty disability is awarded to the Employer.
8. Section 9.3 Uniform Allowance is awarded to the Employer.
9. Section 2.1 Discretionary transfers) are substantially
10. Section 4.7 Application of seniority for scheduling) Awarded to the
11. Section 4.8 Posting and Bidding) Union but the
12. Section 11.3 Transfer grievances) language shall be) as specified above.

Harvey A. Nathan,
Impartial Chairman

<hr/> Peter Schmalz, Union Designee Affirming in part/Dissenting in part	<hr/> Jonathan Rothstein, Employer Designee Affirming in part/ Dissenting in part
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November 12, 2007