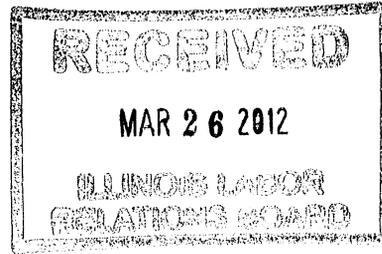


DONALD W. COHEN, ARBITRATOR



In the matter of the
Arbitration between
Forest Preserve District of Cook
County

Employer

And

No L-MA-08-010

Union

Illinois Fraternal Order of
Police Labor Council

Appearances:

Employer:

John B. Murphy, Attorney
Keino Robinson, Sr. Attorney

Union:

Gary L. Bailey, Attorney

The Arbitration of the above -- captioned matter was heard on October 28, 2011 and December 19, 2011 at the offices of the employer 536 N. Harlem Avenue, River Forest, Illinois. At the arbitration, the parties stipulated to this Arbitrator's jurisdiction and authority in the above -- captioned matter. The parties presented evidence and arguments in support of their respective positions and submitted briefs on February 22, 2012.

This is an interest arbitration under authority of Section 14 of the Illinois Public Labor Relations Act (ILPRA), 5 ILCS 315/14. The purpose of this proceeding is to resolve disputed issues between the parties and to determine the terms and conditions of a new collective

bargaining agreement between the parties covering the 10 sergeants in the bargaining unit.

The contract expired on December 31, 2008 and the parties have been unable to reach an agreement upon a new collective bargaining agreement. The Union submitted 23 economic issues and 21 non---economic issues to arbitration. The Employer submitted seven economic issues and 4 non -- economic issues to arbitration.

APPLICABLE STATUTORY LANGUAGE

5 ICLS 315/14(h) sets forth the standards to be applied by the arbitrator in resolving the issues relevant to establishing a final court to bargaining agreement as follows:

The arbitration panel shall base its findings, or 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, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the following circumstances during the pendency of the arbitration proceedings.

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

THE ISSUES

The parties have cumulatively submitted in excess of 50 issues which need to be resolved. These are attached to this award as **Union issues -- exhibit A and Employer issues- exhibit B.**

BACKGROUND

The parties have a relatively short bargaining history, with the Union having been first recognized in the February 2003 and the last contract expiring December 31, 2008. Each is in agreement that negotiations subsequent to the expiration of the collective bargaining agreement were fruitless, resulting in the large number of issues which need resolution. Some of the issues characterized as non-economic appear to have economic implications and some of the issues were resolved by agreement of the parties at arbitration.

The bargaining unit presently consists of eight sergeants are delegated with authority over the forest preserves throughout Cook County. Their work is spread out over three shifts in a 24 hour period. At maximum strength could be as many as 13 sergeants however this has not been the case for some period of time.

DECISION

The decision will follow the proposals advanced by the Union from beginning to end, after which the Employer issues will be resolved, although some may directly impact upon Union proposals and will be resolved in conjunction therewith.

UNION ECONOMIC PROPOSALS

#1-4 Section 4.3 Compensatory Time and/or Overtime Compensation

Proposals 1-4 relate to this section of the contract.

#1 seeks to have sick leave counted for the purpose of calculating overtime.

The Union claims such as the case in comparable contracts considered appropriate for this bargaining unit.

The Employer argues that sick leave is pay for time not worked and that this by definition means that it should not be considered for purposes of overtime.

The Employer position is valid, being one which is far more logical and the Union proposal is rejected.

#2 Union proposal #2 is that the restriction on employees acquiring more than 160 compensatory hours at any given time is not reasonable and that 2 comparable units provide for employees to earn up to 480 hours of compensatory time.

The Employer response has been that compensatory time is already a great burden and rather than grant additional compensatory time, the Employer proposes to eliminate such altogether.

Although the Union has argued that two comparable units provide for employees to earn up to 480 hours of compensatory time, the Employer makes a persuasive argument that in view of the small number of employees in the unit it is virtually impossible to function with additional compensatory time granted to the employees. On the other hand the parties have functioned up to the present time with no apparent problems and even though the Employer suggests that it will pay over-time rather than compensatory time the present system appears to be working.

Based upon the foregoing, Union proposal number 2 is denied and the Employer request to eliminate compensatory time is denied.

#3 The Union proposes to add additional language to this section providing the overtime hours in excess of the accrual limit be paid out to the employees at time and one half and that employees not be required to take time off in lieu of overtime payment for hours over the accrual limit.

In view of the Employer's position that it would rather pay for overtime hours then have Compensatory time, and the statement of acceptance in the Employer brief, it would appear that the Union position would ameliorate the Employer's concerns and the Union proposal is granted. The following language shall be inserted in section 4.3

Any overtime hours in excess of the accrual limit shall be paid out to the employee at the rate of time and one half (1 1/2) of the employee's regular hourly straight time rate of pay. Employees who have reached the accrual limit shall not be required to take an additional day off in lieu of overtime

payment nor shall be employee be assigned an additional day off by the Employer in lieu of overtime payment.

#4 The Union seeks to give employees the option to obtain payment of up to 80 hours of their accumulated Compensatory Time by making a request by December 15 of each year to do so. It contends that four comparable bargaining units have this right and that there is no negative impact on the Employer. The Employer response is that the County system is not set up to handle such a payout and that exposing the District to the payment of over \$35,000 in a lump sum is not reasonable.

In this day of computers, the Employer argument that it is not set up to make payments of this sort does not ring a bell. Also the sum in question is not being supported by an allegation of an inability to pay. The Union contention that comparable bargaining units have this right is persuasive and the following language shall be added to section 4.3:

Employees shall have the option of getting paid up to 80 hours of their accumulated Compensatory Time by submitting a request to do so by December 15th of each year.

#5 The Union proposes a new section 7.6 which provides that in the event of employee's vacation is canceled by the Employer, the Employer shall reimburse the employee for any economic loss suffered by the employee.

Chief Waszak, an Employer witness, testified that it is highly unlikely that an employee's vacation would be canceled and that it had not happened in the nine years since he had been chief.

The Union argues that employees would suffer substantial economic loss in terms of reservation forfeitures and coordinated planning with fellow vacationers.

While it is understandable that the Union has concerns on this issue, the fact that the problem has not occurred and the difficulty which the Employer would have in ascertaining the damages sustained, compels a determination that this demand be rejected.

#6 The Union proposes that upon retirement an employee shall be allowed to retain health insurance with the same benefit levels, premium contribution rate and prescription co-pays as active employees until such time as the employee is eligible for Medicare coverage.

The Employer response is that health insurance benefits are provided on a countywide basis and that the Union has not presented any evidence in support of its position.

In view of the fact that health insurance is provided on a countywide basis is no reason to make an exception for the retiring sergeants and request is denied.

#7 The Union seeks an addition to Section 8.5-Sick Leave to provide that employees may acquire up to 175 days (1400) hours of sick leave. The Employer states in its brief that it agrees to such offer and it is hereby included in the collective bargaining agreement

#8 The Union proposes the addition of one sentence to section 8.5 -- Sick Leave to allow sick leave to be used in one hour increments.

The Employer opposes this proposition and instead offers its own proposal that there be no partial sick days and that employees who fail to call in sick at least two hours before the commencement of their tour of duty will be subject to discipline and that employees who call in sick may not there- after come in to work for a partial shift.

These counterproposals call for a set standard to partially accommodate each. My determination is that the Union proposal is denied and the Employer proposal is modified as follows:

Employees calling in sick prior to the start of their shift will not be permitted to there after work any portion of their shift. Employees seeking sick leave after reporting to work will not be permitted to work any future portion of his or her shift on the day in question.

#9 The Union seeks to amend Section 9.3 -- Personal Days, by changing the days to hours and permitting employees to utilize such in one hour increments and also to permit the use of such time in conjunction with vacation. It also seeks to permit the use of such hours consecutively with no limitation.

In support of its position the Union points out that labor contracts for Police Sergeants, Deputy Sergeants and DCSI Deputy Chiefs allow use of sick time in hours, not days.

The Employer claims use of hours would lead to abuse and that the Employer works with the employee with regard to Doctor's appointments and other scheduled matters.

The doctrine of comparability would not apply to this situation as it would to an economic one and does not require consideration. In view of the fact that the contract now calls for use of personal days in increments of no less than one half day, there is no basis for altering the terms of this Section of the contract.

#10 The Union also seeks to amend Section 9.3 -- Personal Days so that they may be used for tardiness to work due to unforeseen circumstances.

The Employer response is that the employees in question are supervisory and should not be seeking an excuse for not reporting to work on time.

In view of the fact that I denied the Union request to convert personal days to personal hours I find it unlikely that an employee would use a half-day to avoid tardiness. Union has also limited its request to situations where there are unforeseen circumstances. The Union proposal to add an additional sentence to this Section is granted, reading: *Personal hours may be used in cases of tardiness for work due to unforeseen circumstances (i.e. power outages, car trouble, traffic, etc.) up to three (3) times per calendar year.*

#11 The Union suggests one more change to Section 9.3 to provide that 'Personal hours may be used in conjunction with other benefit time (Compensatory Time or vacation)'

I am unable to see any basis for adding personal time to the already considerable vacation and compensatory time to which the employees are entitled and this request is denied.

#12 The Union proposes to expand coverage of Section 10.1 -- Bereavement Leave, to include stepsister, stepbrother, grandchildren, and any other persons who reside with the employee.

The Union argues that grandchildren are covered under comparable contracts and that it is appropriate to include the other categories since they are related

The Employer opposes the expansion of this section stating that the Union has advanced no rationale for its request and that an employee desiring to go to a funeral for such persons has a variety of options under the collective bargaining agreement.

The category of grandchildren, since it is found in comparable agreements, is appropriate and shall be included in this collective bargaining agreement. The other categories are not to be included.

#13 The Union proposes deletion of the provisions of Section 10.4 -- Military Leave and insertion of the following:

Employees who enter the armed services of the United States, or who are members of the National Guard or any of the Reserve Components of the Armed Forces of the United States shall be entitled to all the rights and privileges conferred by any applicable federal or state law, Act, Executive Orders, or regulations.

The Employer has agreed to the foregoing and it shall be included in the collective bargaining agreement.

#14 The Union has suggested a new Section 10.12 -- Temporary Light Duty to provide for five positions subject to conditions which it sets forth.

The Employer opposes this proposal on two grounds, the first being that it amounts to a Manning proposal which would be prohibited under Section 14(i) of the Act and second that the testimony of Chief Waszak makes clear that with a unit as small as that of the Sergeants there is no way the District could function while maintaining five light duty positions.

Under existing law there are requirements that an employer accommodate certain handicapped employees and in a unit this small that is all that should be required of the Employer. This proposal is denied.

#15 The Union has proposed the addition of a sentence to Section 11.7 -- Impartial Arbitration Procedure to read:

The parties agree that the Arbitrator or hearing officer shall have the authority to grant punitive damages to the grievance as part of his award.

This proposal is opposed by the Employer which contends that under Illinois law local government entities are absolutely immune from the payment of punitive damages (745 ILCS 10/2-102) . Also, in response, the Employer proposes language granting the Arbitrator the authority to direct a losing party to compensate the prevailing party for its attorney's fees and costs in arbitration in the event the Arbitrator determines the grievance was frivolous or the conduct of the Employer was in bad faith.

Punitive damages, aside from being banned by state statute, are virtually unheard of in arbitration proceedings and the Union request is denied. As to the Employer counter proposal, this constitutes an unnecessary burden upon the parties and is an unnecessary burden upon the arbitration process. Accordingly, the Employer counter demand is also denied.

#16 The Union suggests changes to Section 13.10 -- Uniforms by deletion of the last sentence of the Section and insertion of the following:

The employer will also provide and maintain in accordance with the manufacturer's specifications level 3 protective body armor. Employees shall have the option to wear the vest in an approved carrier above the uniform shirt.

The Employer opposes this proposal on a number of grounds, the first being that Section 14(i) denies the Arbitrator the right to enter an award with respect to the type of equipment issued by the Employer. The Employer also claims that the Union has offered no justification for a need for such vests and the cost of replacement would be prohibitive. It also contends that wearing the vests outside the

uniform shirts would be contrary to the mission of the District which is attempting to project a friendly image to the public.

The Union has not advanced any valid reason for replacement of the vests or the wearing of them outside the uniform shirts. The Union request is denied.

#17 The Union has also requested another change to Section 13.10 to provide that uniformed officers receive \$600 annually for cleaning and maintenance of uniforms and that officers serving in specialized units which require the wearing of plainclothes receive a clothing allowance of \$600 dollars annually.

The Employer furnishes uniforms to the officers at no charge. The Union has offered no rationale for requiring a cleaning allowance and request is denied.

#18 The Union proposes to enter into the collective bargaining agreement the practice of permitting bargaining unit members to take County vehicles to and from their homes, which has existed without codification under the expired collective bargaining agreement.

The Employer opposes this proposal, stating that it is in the process of reducing the number of vehicles in its fleet by 25% and allowing the officers to take their vehicles would defeat the purpose of the planned reduction. It argues that the sergeants are not subject to emergency call back and there is no basis for retention of this right.

The right to utilize the District vehicles is an economic privilege which has been in existence for some time. The District has not offered compelling reasons why it should be removed and the proposal is granted as follows:

Bargaining unit members shall be allowed to take County vehicles to and from home, at their option, and use their vehicles in a manner consistent with past practice as it existed as of December 31, 2008.

#19-21 These sections deal with the Union proposals on wages. The parties are in agreement with regard to the basic wage increases for each year commencing January 1, 2009 through January 1, 2012 and an additional increase as of July 1, 2012. The Union, in addition, suggests step increases, with the first implemented for sergeants with 20 years seniority effective January 1, 2009 in the amount of a 4% increase. The next increase would be for sergeants reaching the 25 year level with an additional 4% over the 20 year rate of pay effective January 1, 2011 and a third to be implemented for sergeants with 29 years or more service effective January 1, 2011 with an increase of 4.5% over the 25 year rate.

Both parties have extensively analyzed proposals, with the District citing numerous cases in support of the proposition that the primary factors to be considered are the interests and welfare of the public and the financial ability of the government to meet the costs, along with an internal comparison of wages hours and conditions of employees performing similar duties within the county. The bottom line of the Employer's position is that cost-of-living has actually not increased and that the economy is in extremely poor condition.

The Union takes the position that the District is financially able to make the payments in question, something that is not disputed by the District, and that comparability at the 20 and 25 year levels dictates a finding on behalf of the Union since virtually all comparable segments of the county provide for increases at those levels. At the 29 year level only one comparable is cited. The Union argues that there have been consistent cost-of-living raises and it is only seeking to place the employees at a comparable level with those other units within the county which are comparable.

I see two issues which must be addressed in considering this matter. These are comparability and the state of the economy. With regard to the state of the economy, I have considered the cases cited by the parties and have reviewed my reasoning in City of Morris and Metropolitan Alliance of Police, Morris Police Chapter #63,ILRB Case NO. S-MA-10-180.

In that case I analyzed the state of the economy and felt that it was already showing signs of improvement. The stock market is now at its highest level since 2007 and the job market has also indicated signs of improvement. Under such circumstances I find that comparability is a governing factor and that the Union demand for step increases at the 20 and 25 year level is granted. I do not find the same level of comparability at the 29 year level and deny this request.

The step increases shall be as follows:

Effective January 1, 2009 the 20 year level shall be increased by 4% and effective January 1, 2011 the 25 year level shall be increased by 4%.

#22 The Union proposes to add to Section 15.3 --Administrative Duties, language requiring sergeants working the night shift to receive one half hour of compensatory time for administrative duties at the end of each workday.

The Employer argues that the night shift has virtually no time-consuming duties at the present and any work needed to be accomplished at the end of the shift can either be done by such employees or sergeants on the incoming shift.

The testimony of Chief Waszak is persuasive that there is no need from an operational standpoint for the sergeants to be compensated for completing administrative duties at the end of their normal work-shift and proposal is denied.

#23 The Union seeks to have any sergeants assigned work in an area different than their regularly assigned area granted one-hour compensatory time for each day that their assignment is changed.

The Union has made no showing that the reassignments are pervasive or that the travel requirements create an unnecessary burden.

The District has argued that employees may well reside in the area to which they are being transferred and that in any event such reassignments are rare. Under the circumstances the Union demand is rejected.

NON-ECONOMIC OFFERS

#1 The Union seeks two 15 minute breaks during the eight-hour shift. Section 4.2

The Union offers no argument in support of its position for this demand and the Employer contends that this is additional compensatory time. I find no basis for the Union demand be granted and it is denied.

#2 The Union proposes an addition to Section 4.3 of the contract providing that employee requests to use compensatory time shall not be unreasonably denied; employees will be allowed use of compensatory time within a reasonable time of the request to do so, and that compensatory time may be used in increments of one-hour.

The Union seeks the requested language to codify how the parties are to approach the taking of compensatory time.

The Employer does not offer any reason not to grant the request as it relates to the use of such time and there is no basis for denying the

Union proposal except as it relates to use of compensatory time in one-hour increments which has already been denied.

There shall be added to the sentence following 'Fair Labor Standards Act (FLSA) the following:

However, employee requests to use Compensatory Time shall not be unreasonably denied. Employees shall be allowed the use of Compensatory Time within a reasonable time of the request to do so.

#3 The Union requests an additional sentence to be added to Section 4.3 to provide that employees may cancel their compensatory time off which has been granted as well as any other granted benefits and report to work should the employee desire to do so.

Waszak testified that this request would place an undue burden upon the District because other employees will have been scheduled to work in place of the employee who was been granted leave and the small number of employees in the bargaining unit and possible scheduling problems will be created. The Union has not advanced any compelling reason to grant this request and it is denied.

#4 The Union has requested the following additional changes to Section 4.3:

Employees may submit up to 80 hours of compensatory time requests for each calendar year by December 1 of the preceding year (but after the vacation bid is complete). Compensatory time off will then be scheduled on the basis of seniority. The Employer shall post the schedule of approved compensatory days off in each District sub area by December 15th of each year. Requests to use compensatory time submitted after January 1st of each year shall be granted on a first-come, first-served basis. Upon presentation of the compensatory time off request to the employee's supervisor, the supervisor shall acknowledge the receipt of the request by initialing and dating the

request form, and shall provide the employee a copy of the ballot request form. The supervisor receiving the request shall then be responsible for forwarding the request to the Chief of Police or designee for approval or denial. All compensatory time requests shall be responded to within seven (7) calendar days of the date of receipt of the request by the supervisor, and if not responded to, the request shall be deemed granted. All benefit time (compensatory time, vacation time and personal hours) may be used in conjunction with each other. No one category of benefit time will supersede another category after the annual vacation and compensatory time bid.

The Union has not submitted any compelling arguments in support of this proposal and the request is denied.

#5 The Union seeks to add a new sentence to Section 4.3 to provide for posting of a schedule of all benefit time that has been granted. While the District contends that maintaining schedules is countywide, there is no logical reason to deny the Union request which would keep the employees apprised of their status. The request is granted as follows:

The Employer shall post a schedule of all benefit time (compensatory time, vacation time and personal days) off requests that have been granted on the County Intranet site, to which all employees shall have access and also at each Sub- Area. Employees' Compensatory Time Balances shall be updated monthly and a written report of said balances should be posted at each Sub-Area of the District. Disputes regarding an employee's Compensatory Time balance shall be resolved through the grievance procedure of this Agreement.

#6 The Union proposes a new Section 4.7 to provide that employees can trade shifts subject to approval of the employee's supervisor

The Employer strenuously opposes this proposal stating that the shifts are bid and the employees are committed to such throughout

the year. It argues that to allow this provision create scheduling problems.

The Union argues that the labor contracts for the Deputy Sergeants and the DCSI Deputy Chiefs permit such a trade and that this would in no way to create scheduling problems.

The Union position is reasonable and there are two comparables. Under such circumstances the Union request is granted as follows:

Section 4.7 Shift Trades

An employee may request in writing to trade a full shift with another employee. Such requests to trade shifts shall be subject to the approval of the employee's supervisor provided that such trades shall not be unreasonably denied.

#7 The Union requests a change to Section 5.2C requiring the annual provision of a seniority list.

This proposal is procedural and I see no reason not to permit it as follows:

Section 5.2 C. Seniority List

The Employer agrees to provide the Union annually with a list covering the names of employees who are covered by this Agreement, in order of seniority from last date of hire as well as from last date of promotion to a position covered by this Agreement. The Employer shall not be responsible for any errors in the seniority list unless such errors are brought to the attention of the Employer in writing within thirty (30) calendar days after the Union's receipt of the list. If there is any dispute over whether there is an error such dispute shall be subject to the grievance and arbitration procedure set forth in this Agreement

#8 The Union requests an additional sentence to be added to Section 6.3 Holidays in Vacations to provide that a holiday which falls within or completes an employee's approved vacation or within a block of approved compensatory time shall be granted.

Waszak testified that when a holiday falls within a 40 hour block of vacation time, the employee is granted the holiday to complete his/her vacation. At other times, he stated, the nature of police-work and protecting the general public means that the District cannot guarantee a certain holiday off.

The Union presented evidence that the District had agreed to its requested language in the patrol contract.

Because of the small number of Sergeants in the bargaining unit, I do not consider the patrol contract to be comparable in this regard and deny the Union request.

#9 The Union seeks to change the posting date of the vacation schedule in Section 7.4 Vacation Preference and Scheduling from January 15 to December 15.

The District opposes this change contending that it would impose a burden on the person who does the administrative scheduling and was dealing with wide range of operational issues for the coming year. I do not perceive a burden and finalizing the vacation schedules within 14 days after they had been submitted for 8 employees in the Union request is granted changing the last sentence to read as follows:

The District shall post the vacation schedule of all of the Sergeants in each Sub- Area by December 15 each year.

#10 The Union proposes a new Section 7.4 F Vacation Preference and Scheduling to provide:

All requests pursuant to this Section shall be responded to within seven (7) calendar days from the date of submission, and if not responded to, the request shall be deemed granted.

The District indicates a willingness to incorporate this provision with a 14 day requirement and I believe this would allay Union concerned about no response to vacation requests for extended periods of time. The Union request is therefore granted changing seven to 14 calendar days.

#11 The Union wishes to change section 9.3 by substituting "personal hours for "personal days". As previously indicated, personal days may not be modified to personal hours and this request is denied.

#12 The Union has proposed procedural changes two sections 11.3; 11.4 and 11.7 In conformance with the elimination of a step in the grievance procedure which has been agreed to between the parties and these are all accepted.

13 The Union has proposed an additional sentence in Section 11.6 Discovery, to provide for grievance meetings to be scheduled during the normal workday, on days when a grievant is scheduled to work and that meetings be held at one specific location.

The Employer objects to scheduling meetings when he grievant would be on the clock because the grievant would have to be paid and his services would not be available.

The Union is not submitted any rationale for why grievances must be scheduled during a grievant's worktime and there is no quid pro quo offered. Under these circumstances the request to schedule

grievances during the grievant's worktime is denied. The second portion of this proposal is that grievances be held at a specific location and this portion of the Union demand is sustained. And additional sentence shall be added to Section 11.63 to read:

All grievance meetings shall be held at the Forest Preserve District of Cook County, 536 N. Harlem Ave., River Forest, Illinois

#14 The Union requests additional language to be added to Section 13.2 Personnel Files, requiring the Employer to comply with Personnel Records Review Act.

The Union indicates it wishes this language so that disputes under this section can be handled via arbitration rather than through the court system. The Employer argues that the court system specifically deals with personnel situations and that it would be improper to delegate this authority to arbitration.

As the language presently stands the Union would have the right to grieve violations of this section and would gain nothing from the addition of the requested language and its demand is denied.

#15 The Union has submitted several demands with regard to Section 13.5 General Orders. The first relates to employees covered by this agreement being furnished copies of the Forest Preserve District of Cook County Department of Law Enforcement Rules and Regulations, Procedural Orders and General Orders, and the Cook County Personnel Manual. The Second proposal is that bargaining unit members receive any benefits which are subsequently allocated to non-bargaining unit County employees.

The Union supports its claim for production of the publications on the fact that the bargaining unit members should be aware of whatever language appears there in. It does not offer anything in support of its claim for benefits.

The Employer argues that the employees already have copies of the District's rules and regulations and have no need to have this right placed in the contract. The District also argues that the employees have no need to have a requirement in the contract to receive the County's Personnel Manual. With regard to the Union claim for what amounts to a 'most favored nations' clause, it states that this is an economic claim and the Union has submitted nothing on behalf of its position.

The Union is persuasive in its argument that the Sergeants should be given the right to those documents which directly affect the bargaining unit and the Union request is granted.

An additional sentence shall be added to Section 13.5 to read:

The Employer will provide to all employees covered by this Agreement a copy of said Forest Preserve District of County Department of Law Enforcement Rules and Regulations, Procedural Orders and General Orders, as well as the general Cook County Personnel Manual.

The position of the Employer with regard to 'most favored nations' is valid and Union request is denied.

#16 The Union proposes a new Section 13.11 Promotion to provide that in the event the Employer creates a non--exempt rank above the rank of Sergeant it will negotiate with the Union over testing procedures and promotional criteria.

The Union supports its request on the basis that it is only seeking the right to have input should the Employer decide to add another civil service rank.

The Employer argues that the testing procedure and promotional criteria for a non-exempt rank above the rank of sergeant is out of the District's hands because they are controlled by the Shakman decree.

While the strictures of the Shakman may or may not be applicable, what the Union requests goes beyond the certified bargaining unit and therefore is denied.

#17 The Union proposes a new Section 13.12 Vacant Positions, to provide that when a sergeant's vacancy occurs members will be allowed to bid for the position based upon seniority.

The Union rationale is that rather than have a newly promoted sergeant hold the position it should be bid on a seniority basis.

The Employer argues that Union request is contrary to the District's current policy and that bidding takes place once a year.

The Union demand would effectively force the Employer to open all jobs for bids at any time during the year that a vacancy occurred. In a unit as small as the one in this contract, the result could be chaotic and the Union request is denied.

#18 The Union requests an additional sentence to be added to Section 14.4 Form of Discipline, to provide that in the case of suspensions, the employee shall have the option of using accumulated benefit time in lieu of loss of pay for any suspension imposed.

The Employer argues that a suspension with loss of pay is a command decision which should be entirely within the right of the Employer.

The Union states that the requested language memorializes a past practice which has existed for a long time in police department.

Absent any showing that this practice did not exist, the Union position has merit and is granted. That should be added as the last sentence of Section 14.4 the following:

In the case of suspensions, the employee shall have the option of using accumulated benefit time in lieu of loss of pay for any suspension imposed.

#19 The parties agree that the contract shall become effective January 1, 2009 and shall remain in effect until December 31, 2012. The Union also proposes deletion of the phrase "or either party shall give the other party five (5) calendar days written notice of cancellation thereafter" and inserting "either through ratification or an arbitrator's award"

Clearly either party should have a right to terminate the collective bargaining agreement after its expiration and there is no basis for changing the language presently appearing in the contract and the Union demand is denied.

#20 The Union seeks to have APPENDIX A WORK SCHEDULES amended to provide that all bid shifts shall be permanent.

The Union argues that switching shifts causes an unhealthy lifestyle and this has been established by doctors to be associated with a number of physical and mental disorders. It also claims that the District paid for the 2011 Desk Audit which found that rotating shifts were a problem within the police department.

The District contends that it is important to have the sergeants familiar with different problems which may arise and that it has consistently alternated the shifts. It also contends that there has been no showing that any of the personnel have suffered problems as a result of the shift changes.

In view of the fact that there have been no problems to date, a change in the present provisions of the collective bargaining agreement is not called for at this time and the request is denied.

#21 APPENDIX A WORK SCHEDULES

The Union proposes the addition of the word “personally” on the fifth line after the word “being”.

The Union argues that this addition does nothing to materially change the collective bargaining agreement and that it does make clear the manner in which employees must be contacted by the Chief of Police.

The Employer contends that there have never been any problems with seniority and that there is no reason to change the language in the contract.

The Union has not advanced any reason to change the language in the contract and its request is denied.

EMPLOYER’S ISSUES

#1 The Employer proposes to eliminate everything after the first sentence of Section 4.3 A Compensatory Time, to eliminate compensatory time.

This issue has been addressed elsewhere in this award and the Employer request has been denied.

#2 The Employer requests elimination of Section 4.3 B

This issue has been addressed elsewhere in this award and the Employer request has been denied.

#3 The Employer requests Section 8.1 (a) be replaced with the attached new Section and Appendix both of which are part of Exhibit B.

The parties are in agreement on this issue and it is granted.

#4 The Employer requests an effective date of the Health Insurance change of February 10, 2010.

The Union opposes the change, stating that an arbitration is now pending in which the Union contests the unilateral implementation of the Health plan on February 10, 2010.

I believe that it is proper to defer judgment on this issue to the arbitrator hearing the pending case. Should the arbitrator find against the Employer, contributions under the new Health plan will increase to the level required under the Plan, effective the issue date of this award. Should the arbitrator find for the Employer that the Plan was properly implemented on February 10, 2010, then contributions will be required retroactive to such date.

#5 The Employer proposes to add an additional sentence to Section 8.5 Sick Leave, providing that partial sick days are not recognized and that an employee who fails to call in at least two hours before commencement of their tour of duty would be subject to discipline. It also provides that employee who calls in sick may not come into work thereafter for a partial shift.

The Employer's proposal has been modified elsewhere in this award and is resolved as set forth in Union economic proposal number 8.

#6 The Employer seeks to eliminate Section 8.7 Health Insurance Opt Out Program.

The parties have agreed to this proposal.

#7 The Employer proposes a change in language in Section 10.4 Military Leave.

The parties have agreed upon the language proposed by the Union its proposal number 13.

#8 The Employer proposes to eliminate step three of Section 11.4 Grievance Procedure Steps.

The parties have agreed to this proposal.

#9 The Employer seeks to amend Section 11.7 Impartial Arbitration Procedures to provide that grievances filed must refer to the section of the agreement alleged to have been violated and to provide that all reference to "all other applicable sections of the Agreement" is insufficient.

The Union has touched upon the fact that grievances are drafted by bargaining unit members who are not experienced in preparing them and that arbitration is intended to be a nonjudicial proceeding.

The Union argument is compelling and the Employer Demand is denied.

#10 The Employer proposes that Section 11.7 Impartial Arbitration Procedures be amended to provide for compensation for the prevailing party.

While this is a sword which cuts both ways, it represents an impediment to the free use of the arbitration process and does not appear in the majority of collective bargaining agreements.

The Employer request is denied.

#11 This is the wage proposal which has been agreed to between the parties.

#12 This is a proposal on an effective date for wages and has been agreed to between the parties.

#13 The Employer poses to eliminate section 15.3 Administrative Duties which provides for a start time one half hour prior to an employee's regular starting time for the purpose of administrative duties only.

The Employer witness, Palcu, suggests that anything an incoming sergeant can do in that half hour can be done by the employee who is presently on duty. The Employer also contends that it has the unilateral right to eliminate the requirement that sergeants arrive for duty a half hour early.

It is questionable whether the Employer could unilaterally eliminate the requirement since it is a clear contract term. While Palcu's testimony is worthy of consideration, the fact is that the employees have a major economic benefit and the Employer has not offered any quid pro quo for its removal.

The Employer proposal is denied.

#14 The Employer proposes a contract term from January 1, 2009 to include December 31, 2012. This has been agreed to by the Union.

AWARD

The proposals set forth by the parties are accepted or rejected as set forth herein.

The Arbitrator reserves jurisdiction of this matter for 30 days from the date of issue of this award for the sole purpose of resolving any questions presented by both parties jointly regarding clarification of the decision as it relates to any particular proposal.



March 22, 2012

Donald W. Cohen, Arbitrator