

INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD

METROPOLITAN ALLIANCE OF POLICE
CHAPTER 507 - COOK COUNTY TELECOMMUNICATIONS SUPERVISORS

and

THE COUNTY OF COOK
THE SHERIFF OF COOK COUNTY
(JOINT EMPLOYERS)

ILRB No. L-MA-13-001
TELECOMMUNICATIONS SUPERVISORS

OPINION AND AWARD
of
John C. Fletcher, Arbitrator
December 26, 2013

I. Procedural Background

This matter comes as an interest arbitration between the Cook County Sheriff and the County of Cook (“the Joint Employers” or “the County”) and the Metropolitan Alliance of Police, Chapter 507 (“the Union”), pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (“the Act”). The record establishes that the bargaining unit represented by the Union currently consists of five Telecommunications Supervisors, who are charged with overseeing the approximately 35 unionized Telecommunications (911 call center) employees represented by the Metropolitan Alliance of Police Chapter 261 (“Chapter 261” or “261”). The evidence also shows that this heretofore non-union unit of supervisors filed for representation in January, 2008,

and on August 13, 2010, MAP Chapter 507 was certified by the Illinois Labor Relations Board (in Case No. L-RC-08-022) as the unit’s exclusive agent for purposes of collective bargaining.

It is undisputed that none of the employees in this newly-established bargaining unit of Telecommunications Supervisors are considered “protective service employees” (i.e. peace officers, firefighters and security employees) with ongoing access to statutory interest arbitration under Section 14 of the Act. The instant proceeding, however, was convened under recent amendments to the Act which afford non-protective service employees in bargaining units of 35 or fewer members (at the time of original certification), one-time access to Section 14 mandatory interest arbitration for purposes of achieving an initial collective bargaining agreement.

Following certification, the parties to this arbitration met on numerous occasions to negotiate agreeable terms for a full contract. They were, however, ultimately unable to reach final settlement on certain economic and non-economic issues, and among them is the term of this initial Collective Bargaining Agreement. Depending upon the Arbitrator’s findings, which will be set forth herein below, the resultant contract will either expire on November 30, 2012 or November 30, 2014. On October 1, 2010, the Union filed a demand for interest arbitration with the Illinois Labor Relations Board for final resolution of all impasse issues. On September 27, 2012 the undersigned was notified by the ILRB of his appointment as the Arbitrator. The initial hearing date for this matter was scheduled for November 16, 2012. That hearing date was cancelled because Counsel for the Union had a conflict with a trial in Federal Court. A second hearing date was scheduled for December 19, 2012, but was cancelled because of a

family member death. Eventually a hearing was held on March 15, 2013, at the Cook County Sheriff's campus in Chicago, Illinois. At the hearing, the Union was represented by:

Steven T. Calcaterra, Esq.
Steven Calcaterra & Associates, P.C.
1220 Iroquois Lane, Suite 204B
Naperville, Illinois 60563

Counsels for the Joint Employers were:

Paul A. O'Grady, Esq.
Melissa D. Sobota, Esq.
Peterson, Johnson & Murray Chicago, LLC
233 South Wacker Drive, 84th Floor
Chicago, Illinois 60606

and

Peter M. Kramer, Esq.
General Counsel, Cook County Sheriff's Department
50 West Washington, Room 704
Chicago, Illinois 60602

Post-hearing briefs were filed with the Arbitrator that were received on June 7, 2013. On August 13, 2013, the Arbitrator submitted a joint request to the parties seeking to clarify certain discrepancies encountered in study and review of the extensive record in this case. The Union filed its response on September 9, 2013, with the Joint Employers response being received on October 22, 2013.

II. Factual Background

The County of Cook employs approximately 25,000 individuals, of whom about 80% are organized in 94 unionized groups for purposes of collective bargaining. The County and the Sheriff's office are, in this case, "Joint Employers". It is undisputed that the majority, if not all, County collective bargaining agreements expire simultaneously.

Therefore, when approaching negotiations for successive contracts, the County customarily prepares “universal” bargaining proposals concerning the major economic issues (such as wages, health care, compensation policies and holidays) that are common to all bargaining units. These “universal” proposals are presented to all bargaining units across the board, and the process is recognized by Cook County as “pattern bargaining.” Other issues (both economic and non-economic) having particular impact on the Sheriff’s Department bargaining units are then independently negotiated by the parties in the unique context of law enforcement’s specialized functions. With respect to contract term, then, the Joint Employers urge the Arbitrator to adopt an initial contract between the County and the bargaining unit of Telecommunications Supervisors that would expire in 2012, along with other Sheriff’s Department collective bargaining agreements. In addition to the open issue of contract term, the parties have presented to the Arbitrator numerous additional impasse matters in this case, and they are both economic and non-economic in nature.

Telecommunications Supervisors and the Telecommunicators whom they oversee, are non-sworn members of the Sheriff’s Department. According to the record, Telecommunicators are primarily responsible for performing police dispatch services in the Cook County Sheriff’s Emergency Communications Center. The evidence additionally shows that the Center’s administrative staff is made up of a Director, 5 Telecommunications Supervisors, and approximately 35 Telecommunicators. The Director is appointed by the Cook County Sheriff, and is usually a sworn member of the Department. Currently, the Director of Emergency Communications is Chief Burrough Cartrette. As already noted, the County employs approximately 35 unionized

Telecommunicators represented by MAP Chapter 261, who are supervised by the MAP Chapter 507 Supervisors, the employees party to this arbitration. All employees in the 5-member Telecommunications Supervisor bargaining unit are full-time, and currently work four 10-hour shifts per work week.

III. The Parties' Bargaining History

The Union was certified by the Illinois Labor Relations Board as the bargaining unit's exclusive agent on August 13, 2010. After receiving the Union's subsequent demand for bargaining, the parties met for purposes of negotiations on approximately 10 separate occasions, the first of which occurred on November 15, 2010. The parties' final (and ultimately unsuccessful) session convened nearly a year later, on November 9, 2011. Mediation took place in June, 2012, but the parties were still unable to resolve a considerable number of open contract issues.

At arbitration, it was stipulated that all tentative agreements the parties *were* able to achieve are accurately set forth in Union Exhibit 5. It was further stipulated that they should be fully incorporated, as if fully rewritten, into the final contract resulting from the this arbitration.¹

As noted above, the instant proceeding takes place under the authority of a Section 7 amendment of the Act, and is a one-time process for these parties. Hereafter, the avenue of mandatory interest arbitration is not open to the Joint Employers and MAP Chapter 507.

¹ Because many of the impasse issues which follow are new proposals which have no counter-offer from the other party, the section numbering in the final contract will inevitably need to be adjusted according to which proposal (or lack thereof) prevails. Accordingly, the Arbitrator has prepared a full index of Tentative Agreements and impasse resolutions, by correct Article and Section reference, as Appendix A of the final Award.

IV. Statutory Authority

The statutory provisions governing the issues in this case are found in Section 14 of the Illinois Public Labor Relations Act. Inasmuch as the parties are well familiar with the requirements of the Act, its provisions need not be repeated here.

The issues before the Arbitrator are both “economic” and “non-economic” in nature. As to the “economic” impasse issues, it is the Arbitrator’s statutory duty to select (unaltered) whichever final offer more clearly complies with the factors set out in the Act. As has already been exhaustively explained over the nearly 30 years since the Act’s adoption, the statutes themselves provide almost no guidance for arbitrators charged with deciding which factors should apply (or be given more weight) in any given circumstance. Arbitrators have, over the years, established external comparability as the single most important factor in choosing between competing proposals on wages and other economic issues. Other important factors have included changes in the Consumer Price Index and the employer’s ability to pay. In this case, however, neither party has suggested that external comparability, CPI and/or the County’s ability (or lack thereof) to pay should be given any weight, never mind significant weight. Instead, the factor of internal comparability, that is the relative standing of this bargaining unit as compared with other unionized groups within the Sheriff’s Department on impasse issues of an economic nature, was stressed by the Union (and only peripherally addressed by the Joint Employers) as the *most* applicable statutory criterion in the context of this specific matter.

V. THE PARTIES’ STIPULATIONS

1. Pursuant to Section 14(c) of the Public Labor Relations Act and Section 1230.80(a) of the Illinois Labor Relations Board’s Rules, the parties have

agreed to present this case to a single-member arbitration panel and have mutually chosen John Fletcher as the sole Arbitrator and neutral chairman, waiving the right to the employer's delegate and exclusive representative's delegate. The parties stipulate to the jurisdiction of the Arbitrator to hear and decide the issues presented to him.

2. The hearing in this matter will convene at the offices of the Sheriff's Office South Campus, on March 15, 2013 and continue on additional dates, if necessary, by mutual agreement of the parties. The requirement of Section 1230.90(a) of the Rules and Regulations of the Illinois Labor Relations Board, that the hearing begin within a certain number of days of the appointment of the Arbitrator, has been waived by the parties. There are no disputes as to timeliness matters.
3. The parties agree that they will identify the issues remaining in dispute at the beginning of the hearing as either "economic" or "non-economic" offers. In the event that there is a disagreement between the parties as to whether an offer is economic or non-economic, the parties agree that the arbitrator shall have jurisdiction to determine whether the proposal is "economic" or "non-economic" within the meaning of Section 14(g) of the Illinois Public Labor Relations Act. Economic issues may be submitted for resolution by the Arbitrator, and that the Arbitrator must choose either the Employer's offer or the Union's offer on each of the "economic" issues. Further, in the event there is a dispute over the jurisdiction of the arbitrator regarding any proposals (meaning, whether a proposal is a mandatory or permissive subject of bargaining), the parties agree that the Arbitrator will not rule on the position of either party as the determination as to whether a proposal is a mandatory or permissive subject of bargaining belongs exclusively to the Illinois Labor Relations Board.
4. The parties shall exchange final offers on all issues through the Arbitrator. Once exchanged by the parties, final offers of settlement are not subject to change, except by mutual agreement of the parties in writing.
5. The issues to be decided by the Arbitrator are reflected in the parties' respective final offers. The parties agree that the following issues in the final offers are "economic" issues within the meaning of the IPLRA:
 - a. Section 3.3 Regular Work Days
 - b. Section 3.4 Compensatory Time and/or Overtime Compensation
 - c. Section 3.6 Lunch Breaks
 - d. Section 3.7 Acting Director
 - e. Article VI Rates of Pay (Union Section 5.1)
 - f. Section 7.1 Designation of Holidays
 - g. Union Section 6.2 Holidays in Vacations
 - h. Section 7.2 Eligibility
 - i. Section 7.3 Holiday Pay for Holidays Not Worked
 - j. Section 8.1 Vacation Leave
 - k. Section 9.1 Hospitalization Insurance; Employee Contributions

- l. Section 9.2 Sick Leave
 - m. Union Section 8.3 Disability Benefits
 - n. Section 10.1 Bereavement Leave
 - o. Section 10.2 Jury Duty
 - p. Union Section 9.4 Election Days
 - q. Section 10.3 Personal Days
 - r. Union Section 10.11 Educational Fund
 - s. Union Section 13.12 Special Training – Telecommunication Supervisors
 - t. Section 15.14 Uniform Allowance
6. The parties agree that the following issues in the final offers are “non-economic issues within the meaning of the IPLRA:
- a. Section 2.4 Integrity of the Bargaining Unit
 - b. Section 3.2 Regular Work Period
 - c. Section 4.2 Reduction in Work Force, Layoff and Recall
 - d. Union Section 4.2 Termination of Seniority
 - e. Section 4.4 Promotional Seniority List
 - f. Union Section Union Rights
 - g. Section 4.6 Promotion and Shift Assignment
 - h. Union Section 4.6 Layoff and Recall
 - i. Union Section 4.7 Job Posting
 - j. Union Section 10.5 Union Leave
 - k. Section 13.1 General Statement (Union Section 12.1)
 - l. Section 13.2 Purpose
 - m. Section 13.3 Policy
 - n. Section 13.4 Appeals Procedure
 - o. Section 13.5 Disciplinary Action Form
 - p. Union Section 13.1 No Discrimination
 - q. Section 15.25 Alcohol and Drug Testing
 - r. Article XVI Duration²
7. There are objections to the following issues:
- a. Section 2.2 Employer Obligation (Permissive)
 - b. Section 2.6 Labor/Management Meetings on Career Development (permissive)
8. The hearing will be transcribed by a court reporter or reporters whose attendance is to be secured for the duration of the hearing by mutual agreement of the parties.

² Joint Exhibit I. The Arbitrator notes that there certain items listed above upon which subsequent Tentative Agreements were reached. The Arbitrator further recognizes section numbering discrepancies between the two final offers which will be corrected in his final Award.

9. The parties stipulate that the arbitration hearing involves “collective negotiation matters between public employers and their employee(s) or representatives” and therefore is not subject to the public meeting requirement of the Illinois Open Meetings act, 5 ILCS 120/1.
10. By mutual agreement, the hearing will generally be conducted in the “narrative” form by the parties’ representatives, rather than by the testimony of sworn witnesses, except as the parties may deem necessary in order to support their respective positions. The parties agree to exchange their list of witnesses and topics of testimony no later than 5 p.m. on March 14, 2013.
11. All sessions of the hearing will be closed to all persons other than the Arbitrator, representatives of the parties, including negotiation team members, witnesses, members of the collective bargaining unit, the management staff of the Employer, and such other persons as may be permitted to observe the proceedings by mutual agreement of the parties.
12. At the conclusion of the hearing, the Arbitrator shall indicate the dates when the record shall be closed and whether the parties may have additional time to finalize any grammatical corrections to their offers as granted by the Arbitrator or as otherwise agreed by the parties. The parties will prepare post-hearing briefs and exchange them through the Arbitrator on a date to be set by the Arbitrator.
13. The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator shall issue his award as soon as practicable after submission of the post-hearing briefs or any agreed upon extension requested by the Arbitrator.
14. Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during, or subsequent to the arbitration hearing.
15. Except as specifically modified herein, the provisions of the Illinois Public Labor Relations Act and the rules and regulations of the Illinois Labor Relations Board shall govern these arbitration proceedings.
16. The parties represent and warrant to each other that the undersigned representatives are authorized to execute on behalf of and bind the respective parties they represent.
17. The Arbitrator shall retain the official record of the arbitration proceedings until such time as the parties confirm that the award has been fully implemented.

VI. OUTSTANDING ISSUES

The outstanding issues are set forth herein above in Section V of this Award, as stated in the parties' stipulations.

VII. EXTERNAL COMPARABLES

While the statutory criterion of external comparability has historically been considered of primary importance in the analysis of impasse issues before interest arbitrators, neither party has promulgated a list of comparable counties for the Arbitrator's consideration in this particular case. Thus, external comparability will not play a role in the Arbitrator's final analysis of the open issues.

VIII. INTERNAL COMPARABLES

As stated herein above, the County currently has bargaining relationships with some 94 unionized employee groups. The Union has relied heavily on the criterion of internal comparability in this case. In general, the Union asserts varying degrees of comparability with other Sheriff's Department bargaining units, but more specifically, the Union has extensively argued that this bargaining unit shares many "touch points" with MAP 261 Telecommunicators. In substance, the Union urges the Arbitrator to consider the context of the relationship between MAP 261 Telecommunicators and MAP 507 Telecommunications Supervisors when resolving the following open contract issues. This, the Union explains, is because the Joint Employers has, on numerous occasions, promulgated final offers which would place these supervisors at a significant disadvantage as compared with the MAP 261 employees over whom they have decision-making authority. From the Joint Employers's perspective, internal comparability is

also of considerable import here, particularly in light of “pattern bargaining” engaged in by Cook County with all of its unionized employee groups. On this point, the Joint Employers stresses that, among other lesser items, the larger issues of wages, holidays, and health care benefits are uniformly negotiated across all represented groups, and thus have consistent force and effect in numerous collective bargaining agreements which expire at the same time.

Accordingly, for lack of any indication from the Joint Employers that other employee groups within the County (or even without) are substantively similar to this one for purposes of comparability on the “non-pattern” issues, the Arbitrator finds the Union’s assertions reasonable to the extent that the MAP 261 bargaining unit is more tangent to MAP 507 than any other unionized group in the County. Additionally, the Arbitrator concludes that a more general comparison with other Sheriff’s Department bargaining units will, in certain instances, be additionally instructive.

IX. OTHER STATUTORY CRITERIA

As previously noted, neither party has, with any degree of substance in terms of proofs, offered argument pertinent to other traditional criteria such as CPI, interests and welfare of the public, and/or the employer’s ability (or lack thereof) to pay. In point of fact, the issue of wages, where these and other criteria generally come into play, is not, in this case, a complicated one in the traditional sense. The central questions before the Arbitrator with respect to wages in this record concern where to initially place bargaining unit members into the existing County pay/grade schedule, and whether resulting increases (the general percentage of which is identical in the two offers) should or should not be retroactive to the effective date of the contract.

That being said, the Arbitrator adds, under the rubric of “other factors traditionally considered by arbitrators,” the fact that this is a first contract. Moreover, this is perhaps the last time these parties will be privileged to settle their differences through the process of impasse arbitration under the Act. Therefore, the Arbitrator believes he should provide effective and judicious dispute resolution in the present context, while at the same time taking care not to scorch the foundation of future good faith bargaining, as that will hereafter be the only available path to a mutually functional labor/management relationship.

X. THE ISSUES IN CHRONOLOGICAL ORDER

Section 2.2 – Employer Obligation

The Union’s Final Proposal

The Union recognizes that this Agreement does not empower the Employer to do anything that it is prohibited from doing by law.

The Joint Employers’ Final Proposal

The Joint Employers rejects the Union’s proposal in its entirety.

The Position of the Union:

The Union argues that the statutory criterion of internal comparability favors adoption of its proposal concerning Section 2.2. Specifically, the Union notes, the language offered by the Union is identical to that which appears in the MAP 261 contract covering Telecommunicators who are supervised by members of this bargaining unit. Telecommunications Supervisors should have no fewer contractual benefits than their subordinates, the Union argues. Furthermore, the Union argues, similar or identical

language appears in nearly all other Sheriff's Department collective bargaining agreements, and it should therefore appear in this one.

The Position of the Joint Employers:

The Joint Employers argues that the Union's proposal is frivolous. It goes without saying, the Joint Employers argues, "that the Employer cannot do anything to the members of this bargaining unit that is prohibited by law..."³ The Joint Employers further argues that, should management do something prohibited by law, "appropriate action" should be taken in the "appropriate forum." Adopting the Union's proposal for Section 2.2 could lead to confusion about whether the grievance and arbitration procedure applies in such instances, the Joint Employers argues. As such, the Arbitrator is urged to reject inclusion of Section 2.2 in the final contract.

Discussion

The Arbitrator is persuaded by the Union that inclusion of Section 2.2 is reasonable. This is so on the basis of internal comparability, because the MAP 261 contract contains identical language. Additionally, many other comparable collective bargaining agreements offered into evidence confirm the fact that most other Sheriff's Department contracts contain similar language. While the Joint Employers is correct in stating the obvious, the Arbitrator finds no proof in this record that the proposed Section 2.2 language has, under other comparable agreements, caused "confusion" or misunderstanding as to proper recourse when questions of law arise. The Arbitrator therefore finds no reason to set this particular bargaining unit apart by rejecting the

³ Joint Employers brief at page 47.

proposed incorporation of Section 2.2 language into this new Collective Bargaining Agreement. The following Award so states.

AWARD

The Union’s proposal concerning Section 2.2 is adopted.

Section 2.4 – Integrity of the Bargaining Unit

The Union’s Final Proposal

Non-bargaining unit employees shall not be permitted to perform bargaining unit work except in emergency situations, in training situations where a supervisor or management personnel is teaching or instructing an employee, or where bargaining unit members are unavailable through no fault of the employer to perform required work other than with normal absenteeism and vacations, or where circumstances exist which are out of the ordinary and beyond the control of the employer. However, it is expressly understood and agreed that no outside agency shall perform Sheriff telecommunication supervisor work.

If non-bargaining unit employees repeatedly perform bargaining unit work, this issue shall immediately be grievable at the second step of the grievance procedure.

This provision shall not apply to Telecommunicators serving in an ‘Acting Supervisor’ capacity.

The Joint Employers’ Final Proposal

The Joint Employers rejects the Union’s proposal in its entirety.

The Position of the Union:

The Union argues that there is “compelling evidence” of internal comparability on this issue, given the fact that the MAP 261 contract contains nearly identical language. In proposing the above, the Union states, there is no intent on the part of this bargaining unit to bar Telecommunicators represented by MAP 261 from working as supervisors. In fact, the Union argues, the Union’s proposal contains a modification to the Chapter 261 language that actually affords flexibility to the Joint Employers beyond the language that

the subordinate unit collective bargaining agreement allows. This bargaining unit should enjoy no fewer rights than those of the immediately subordinate employee group, the Union argues, and the instant proposal should therefore be adopted.

The Position of the Joint Employers:

The Joint Employers asserts that the Union’s proposal for Section 2.4 “is essentially a strict prohibition against subcontracting.” The Joint Employers further states that this proposed language was specifically rejected during negotiations because it places a severe restraint on management that actually goes beyond what is required by the Illinois Labor Relations Act. While MAP 261 members have nearly identical language in their present contract, the Joint Employers acknowledges, the record contains no evidence of *quid pro quo* for the obvious concession here. Furthermore, the Joint Employers argues, the Union failed to provide any evidence as to why this language is necessary in the MAP Chapter 507 contract. For all the foregoing reasons, then, the Joint Employers urges the Arbitrator to reject the Union’s proposed inclusion of Section 2.4.

Discussion

While the Arbitrator recognizes the obvious prohibition against “outside agencies” performing bargaining unit work in the Union’s proposal, the Joint Employers’ arguments against such an inclusion are not persuasive. There is no getting around the fact that the Joint Employers already agreed to nearly identical language which has impact on a bargaining unit more than six times the size of this one. Therefore, the Joint Employers’ contention that management’s hands would be (or could be) unduly tied at some point in the future, carries little weight. Taking into account the obvious internal

parity with the MAP 261 unit, the Union’s proposed Section 2.4 language does not really represent a “breakthrough” in the truest sense. Of course, this bargaining unit has not enjoyed “Integrity” protections in the past, but the same can be said of anything in this new contract. Indeed, Telecommunications Supervisors have never had a collective bargaining agreement with the Joint Employers before. Therefore, quite literally everything that might be considered favorable to the Union in this contract constitutes a “breakthrough” of sorts.

To overcome this obvious distortion of the historic “breakthrough” instruction, then, the Arbitrator has no real choice but to carefully observe what privileges the Joint Employers’ has acquiesced to in other highly comparable bargaining units, and the evidence here is clear; Section 2.3 of the subordinate Telecommunicator’s collective bargaining agreement contains provisions which closely mirror what the Union has presented here. In the end, the Joint Employers has not sufficiently demonstrated why or in what specific manner the County would be (or has been) adversely affected by them. Furthermore, the Joint Employers failed to explain why this supervisory unit should be subject to contract provisions less favorable than those of the directly subordinate unit. There is no showing that proposed Section 2.4 provisions would be inappropriate (as compared with MAP Chapter 261) because of demonstrable differences in unit structure and/or function, and neither is there evidence that the County has been unduly harmed (“the present system is not working”) by inclusion of Section 2.3 in the subordinate MAP 261 contract.

Based upon the statutory criterion of internal comparability, then, the Arbitrator adopts the Union’s proposal with respect to Section 2.4 – Integrity of the Bargaining

Unit. The following Award so states.

AWARD

The Union’s proposal concerning Section 2.4 is adopted.

Section 2.6 – Labor/Management Meetings on Career Development

The Union’s Final Proposal

Labor/Management meetings will be held periodically to discuss employee training and education as well as job classifications. The Employer and the Union recognize the importance of training programs, the development of career ladders and of equitable employment opportunity structures and seek here to establish these goals through labor management meetings.

Toward this end, the Employer and the Union agree to establish a Labor/Management Committee. This committee shall review all training programs, their implementation and application to bargaining unit Sheriff employees.

The Labor Management Committee shall evaluate, discuss and recommend reclassifications and upgrades to the Sheriff. These recommendations shall be reviewed by the Sheriff, and if possible, any changes will be requested in the following fiscal year budget. The Labor Management Committee may also make recommendations to the Sheriff and the County concerning courses and in-service training to enhance career opportunities for employees in the bargaining unit. When meetings are scheduled, a specific management representative will be assigned to attend the meetings.

The Joint Employers’ Final Proposal

The Joint Employers rejects the Union’s proposal in its entirety.

The Position of the Union:

Again, the Union argues that it has proposed language identical to that which appears in the MAP 261 contract, the purpose of which is to “foster good labor management relations to allow meetings to take place.”⁴ There is also similar language in many other Sheriff’s Department collective bargaining agreements, the Union argues,

⁴ Union brief at page 30.

and therefore, based upon the statutory criterion of internal comparability, the above proposal should be adopted.

The Position of the Joint Employers:

The Joint Employers rejects the Union’s proposal concerning bilateral meetings on career development as being frivolous. This is a “top-end” bargaining unit, the Joint Employers argues, and thus, there are no promotional opportunities for members of MAP 507 within the Sheriff’s Department. The Joint Employers also notes that the sole reason for including Section 2.6 in this initial contract stated by the Union was to foster cordial labor-management relations. Importantly, the Joint Employers argues, the parties have already tentatively agreed to two other labor management meeting provisions in the Agreement (one on health care and the other for all other general issues), and thus, there is no need to include an additional (and pointless) meeting provision for the cause of “employee relations” alone.

Proposed Section 2.6 language is frivolous on its face, the Joint Employers argues, and thus, it should be excluded from the Agreement.

Discussion

While the statutory criterion of internal comparability might, under other circumstances favor the Union here, this is one instance in which it does not. That is so, because this is one situation (as noted above) in which inclusion of the proposed (and internally comparable) language would be inappropriate (as compared with MAP Chapter 261) “because of demonstrable differences in unit structure and/or function.” The Union does not dispute the fact that Telecommunications Supervisors have no promotional

opportunities in terms of a direct career path. Therefore, the Union’s proposal is, for all intents and purposes, inconsequential. As the Joint Employers notes, there are other provisions in the tentatively agreed-upon contract wherein joint meetings (which naturally foster good employee-employer relations) have already been prescribed. One such specification describes meetings of a “general” nature, and as such, there would be no meaningful reason to include Section 2.6 for the sole purpose of enhancing labor relations.

The Arbitrator is thus persuaded by the Joint Employers that inclusion of Section 2.6 as it has been proposed by the Union should not be adopted. The following Award so states.

AWARD

The Union’s proposal concerning Section 2.6 is rejected. The Joint Employers will prevail to the extent that Section 2.6 (as it has been presented on this issue) will not appear in the final Collective Bargaining Agreement.

Section 3.2 – Regular Work Period

The Union’s Final Proposal

The normal work week shall consist of forty (40) hours in a seven (7) day work week (Sunday through Saturday), with two (2) or more consecutive days off.

Days off shall be according to one of [sic] two schedules, “Schedule A” and “Schedule B.” Normal days off for employees on Schedule A shall be Thursday and Friday, with Saturdays and Sundays off every other weekend. Normal days off for employees on Schedule B shall be Mondays and Tuesdays with Saturdays and Sundays off every other weekend.

The Union shall be provided at least thirty (30) days notice prior to any proposed change to the hours worked or work schedules from those existing as of the date of execution of this Agreement and may, in the Union’s sole discretion, issue a demand to

bargain over any such proposed change. In the event that no agreement is reached on the contemplated changes to hours of work or work schedules, the Union reserves the right to move the issue directly to impasse arbitration, pursuant to the provisions of the Illinois Public Labor Relations Act, 5 ILCS 315/1 et seq., as amended from time to time.

The Joint Employers' Final Proposal

The normal work week shall consist of forty (40) hours in a seven (7) day work week (Sunday through Saturday), with two (2) or more consecutive days off.”

The Position of the Union:

The Union argues that the County’s proposal represents a deviation from current practices in the Department. Shift schedules as set forth have been in place for ten years, the Union argues, and the MAP 507 proposal seeks only to memorialize the *status quo*. Because it confirms a present and long-standing practice, the Union argues, Section 3.2 language must be adopted in accordance with the final offer of MAP 507. Other bargaining units, including MAP 261, have achieved contractually mandated work schedules through the negotiations process, the Union argues, and there is no reason, because of its strong parity with that of other unionized groups in the Sheriff’s Department, for the proposed language to be rejected by the Arbitrator.

The Position of the Joint Employers:

First and foremost, the Joint Employers argues, the Union’s proposal concerning Section 3.2 (Regular Work Period) should be rejected because it gives the Union interest arbitration rights for future collective bargaining agreements. Such rights, the Joint Employers stresses, are not afforded under the Illinois Labor Relations Act, and therefore cannot be included in any collectively bargained arrangement. The Act was recently amended to provide interest arbitration rights for bargaining units of fewer than thirty members for an initial collective bargaining agreement *only*, the Joint Employers argues,

and thus, granting the Union’s proposal in its entirety would be tantamount to awarding this bargaining unit of Telecommunications Supervisors a breakthrough to which it is not otherwise entitled under the Illinois Labor Relations Act.

As to the Union’s arguments concerning the contractual establishment of set work periods, the Joint Employers argues that while the MAP 507 final offer may indeed represent present practices, the Joint Employers’ proposal preserves management’s right to schedule the members of this bargaining unit as needs of service require. The Joint Employers further argues that its proposal is entirely appropriate, because it “accurately and adequately” defines the workweek for members of this bargaining unit, while at the same time effectively allowing for the *status quo* to be maintained.

Discussion

There is plenty of instruction in this arena of interest arbitration concerning the appropriate handling of “economic” versus “non-economic” impasse issues under the Act. It is well-established that arbitrators are not privileged to “cherry pick” language from the parties’ final offers for purposes of fashioning new and original agreement provisions on issues having economic impact upon the employer, the union, or both. While contractual establishment of a “regular work week” necessarily impacts the issue of overtime (thus making the subject of a regular work week essentially “economic” in nature), the parties in this case have stipulated that, in its joint opinion, Section 3.2 should be treated by the Arbitrator as a non-economic, or essentially administrative, impasse issue under the Act. Accordingly, the Arbitrator is privileged to unilaterally fashion new contract language, either by compiling selected provisions from both proposals, and/or

incorporating new language of his own. Here, after careful consideration and in light of the statutory criterion of internal comparability, the Arbitrator concludes that neither proposal, on its own, should entirely prevail. A compilation of the two proposals is more reasonable.

At the outset, the Arbitrator observes that first paragraph of each proposal is identical. That, however, is where the similarity between them ends. The Union’s proposal, alone, goes on to codify what it contends is the present (and long-standing) practice with respect to “Schedules A and B” in the regular bargaining unit workweek. Because the Joint Employers has not disputed the truth of the Union’s assertion on this point, the Arbitrator accepts, in theory at least, that “Schedules A and B” as set forth by the Union in its proposal are therefore representative of the current *status quo*.

The Union states that it seeks, among other things (such as mandatory interest arbitration in the event of work week changes) to have the contract indicate “that the employees work the hours that they currently work.”⁵ While the language is not identical to that of the MAP Chapter 261 agreement, the Union observes, the principle is the same. The MAP 261 contract establishes watches, times, and hours within the designated work week, and this is also true of other collective bargaining agreements within the County Sheriff’s Department.⁶ The Arbitrator therefore finds nothing unreasonable in a similar inclusion in this contract, as long as the Joint Employers’ operational interests and management rights are appropriately preserved.

⁵ Union brief at page 32.

⁶ See, i.e.; MAP 261 Telecommunicators Section 3.2, Cook County Correctional Officers Section 3.2, Cook County Correctional Sergeants Section 3.2, Cook County Sheriff’s Police Section 3.2, Cook County Sheriff’s Police Sergeants Section 3.2, Cook County Court Services Officers Section 3.2, Cook County DCSI Deputy Chief’s Section 3.2.

Importantly, the Union’s proposal for Section 3.2 (Regular Work Period), while memorializing the *status quo* with respect to present Schedules A and B for Telecommunications Supervisors, also recognizes that “changes to the hours worked or work schedules from those existing as of the date of execution of this Agreement” may occur. Granted, the Union also proposes that it be given 30 days’ advance notice of such “proposed changes,” and may thereafter demand bargaining (and mandatory interest arbitration) in the event a bilateral agreement on the new schedule cannot be reached. The important point here is this; the Arbitrator takes no issue with the Union’s desire to memorialize the present *status quo* with respect to “Regular Work Periods” as set forth in proposed Section 3.2 and subsequent Section 3.3 “Regular Work Days” which follows. However, as in Section 3.2 of the MAP 261 contract, the Joint Employers’ right to alter schedules as needs of service require must also be preserved. Section 3.2 of the MAP 261 agreement states in relevant part as follows:

Work schedules for all covered employees shall be posted at least thirty (30) days prior to the effective date of said schedule.

That statement immediately follows what represented (at least at the time of negotiations) a description of the “watch hours for Telecommunicators.” The practical effect of the language, therefore, is a clear understanding that the stated work schedule might change, and that the new work schedule “must be posted at least thirty (30) days prior to the effective date of said schedule.” Crucially, there is no additional provision in the relevant MAP 261 language limiting the Joint Employers’ unilateral right to implement changes in watch hours as the needs of service require. The MAP 261 contract only requires that the Joint Employers give the bargaining unit 30 days’ advance

notice of the effective date of any work schedule other than the current one. The Arbitrator believes this to be reasonable, and there is strong implication on the basis of internal comparability, that the Joint Employers would be amenable to such an arrangement in this bargaining unit as well.

With respect to the Union's proposals for mandatory bargaining and future interest arbitrations on this issue, the problems are obvious. First, there is absolutely no support from statutory criteria for such a proposal. The Joint Employers' operation, has not ever (and cannot be now) dictated by the "sole discretion of the Union," for in the end, that is the practical impact of its proposal. In other words, the Union cannot hold the Joint Employers hostage with respect to work schedules, at least until such time as a bilateral agreement can be reached or voluntary interest arbitration can take place. Clearly, the Joint Employers has the right to alter work schedules within the bargaining unit supervised by members of MAP 507 (MAP 261), and it is patently unreasonable for management to be held to a schedule in this bargaining unit which would not suit the operation within the Department should it ever change.

Additionally, the Act does not provide for mandatory interest arbitration in this bargaining unit after the initial contract, and certainly, the Union cannot reasonably expect the Joint Employers to concede to expensive and time-consuming voluntary interest arbitration when there is no precedent for it, no support from statutory criteria for it, and no evidence that it was ever considered a viable option at the bargaining table. Because this is an essentially conservative process, a principle upon which this Arbitrator has expounded at length in other cases, he will not now grant what would clearly be

breakthrough in the County at large; a contractual obligation for voluntary interest arbitration.

Before issuing his final Award concerning Section 3.2 of the contract, the Arbitrator notes that the Union’s proposed Section 3.3 is also of import here. The Union’s proposal for Section 3.3 establishes “Regular Work Days,” to which the Joint Employers did not counter because management’s proposed Section 3.2 language was sufficient to address both “Regular Work Periods” and “Regular Work Days.” The same is true in the MAP 261 contract. Section 3.2 of that agreement establishes watch hours which, for some reason, the Union decided were deserving of a separate section in the MAP 507 agreement. The Arbitrator believes that a single section, which will be Section 3.2 as follows, is indeed sufficient to address both subjects. This puts *status quo* “Schedules A and B” and watch hours in the same section, and thus subject to the 30-day notice requirement in the event either or both change in response to the needs of service as determined by the Joint Employers.

Accordingly, as set forth in the Award herein below, Section 3.2, because it has been jointly deemed “non-economic” by the parties and may be altered at the Arbitrator’s discretion, will also include the Union’s proposed language for Section 3.3. The practical effect of this inclusion will be identical to that which the Joint Employers already agreed to in MAP 261’s Section 3.2; to codify the existing *status quo*. By incorporating set “watch hours” into Section 3.2 of the instant contract, the Arbitrator intends only to do the same thing; to codify the existing *status quo*. Exactly like changes in “regular work periods,” then, changes in “regular work days” may be implemented unilaterally by the Joint Employers, so long as the Union has been notified of said changes 30 days in

advance of their effective dates. For all the foregoing reasons, then, the Arbitrator's Award, as set forth herein below, determines the following Section 3.2 language to be appropriate.

AWARD

The Arbitrator hereby orders that Section 3.2 (Regular Work Periods) shall read as follows:

The normal work week shall consist of forty (40) hours in a seven (7) day work week (Sunday through Saturday), with two (2) or more consecutive days off.

Days off shall be according to one of two schedules, "Schedule A" and "Schedule B." Normal days off for employees on Schedule A shall be Thursday and Friday, with Saturdays and Sundays off every other weekend. Normal days off for employees on Schedule B shall be Mondays and Tuesdays with Saturdays and Sundays off every other weekend.

The work-day is defined as actual hours worked in a 24-hour period. For telecommunications supervisors, a work-day shall consist of one of three ten-hour watch shifts. The work-day for telecommunications supervisors shall be one of the following watch shifts:

First Watch: 2200 - 0800 hours

Second Watch: 0600 - 1600 hours

Third Watch: 1400 - 0000 hours

The Union shall be notified at least thirty (30) days in advance of the effective date of any change in the hours worked or work schedules from those existing as of the date of execution of this Agreement."

Section 3.3 – Regular Work Days

The Union's Final Proposal

The work-day is defined as actual hours worked in a 24-hour period. For telecommunications supervisors, a work-day shall consist of one of three ten (10) hour watch shifts. The work-day for telecommunications supervisors shall be one of the following watch shifts:

- First Watch: 2200-0800 hours
- Second Watch: 0600-1600 hours
- Third Watch: 1400-0000 hours”

The Joint Employers’ Final Proposal

The Joint Employers rejects the Union’s proposal in its entirety.

Discussion

The Arbitrator will not address the parties’ respective arguments on this open issue, which the parties have, somewhat surprisingly, jointly deemed “economic” in nature, in light of the Findings and Award relative to Section 3.2 as established herein above. The substance of the Union’s proposal for Section 3.3 has been fully addressed by the Arbitrator, and has been incorporated into revised Section 3.2 language. Thus, the Joint Employers’ proposal for omission of Section 3.3 from the contract is logically adopted. The following Award so states.

AWARD

The Joint Employers’ proposal for omission of Section 3.3 (Regular Work Days) from the contract is adopted.

Section 3.4 – Compensatory Time and/or Overtime Compensation

The Union’s Final Proposal

- A. Employees may be assigned to overtime work provided that such overtime shall be limited to either emergency conditions which cannot be deferred and which cannot be performed with the personnel available during normal work hours, or because of an abnormal peak load in the activities of the institution or department.
- B. An Employee shall be paid one and one-half times the average of the employee’s regular hourly rate (including any differential) for all hours worked in excess of regularly assigned workday, or over forty (40) in any regular work week.

Employees shall not be laid off from their regular scheduled hours of work to avoid payment of overtime.

- C. The Employee may request and the Employer may, in lieu of overtime pay, grant compensatory time off at the rate of one and one-half hours for each hour of overtime worked. All denials of a request shall be accompanied by an explanation.

Effective fiscal year 1998 (December 1, 1997) at the employee's option, overtime will be made in the form of compensatory time off or pay so long as there is sufficient money in the overtime budget.

- D. An Employee may "bank" up to 240 hours (6 weeks) of compensatory time. All overtime hours worked above this limit must be compensated for in accordance with subsection B of this section.
- E. An Employee terminating employment with the County shall be paid for unused compensatory time in accordance with the Fair Labor Standards Act (FLSA).
- F. The Employer shall allow employees to take accrued compensatory time off within a reasonable period after making the request when such time off does not unduly disrupt the operation of the office.

In an emergency situation an employee shall be able to take accrued compensatory time off without coming into work to stamp a time card. This access to compensatory time off shall not be denied in a capricious, arbitrary or discriminatory manner.

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

- G. Payment for overtime work shall generally be in the next pay period following the pay period in which the overtime was worked. However, when the overtime account runs short and the Sheriff must go to the County Board for transfer approval of additional funds to cover worked overtime, the Sheriff will notify the Union of the current state of the overtime and will report when the Board is to approve the additional overtime."

The Joint Employers' Final Proposal

- "A. An Employee shall be paid one and one-half (1 ½) times the average of the employee's regular hourly rate (including any differential) for all hours worked over forty (40) in any regular work week. Paid time off for medical reasons shall not be considered hours worked for the purposes of computing overtime in a regular work week.

- B. At the employee’s option, overtime will be paid either in the form of compensatory time off or pay in lieu of overtime pay.
- C. An employee may accumulate up to 240 hours (6 weeks) of compensatory time. All overtime hours worked above this limit must be compensated for in accordance with subsection A of this section.
- D. An Employee terminating employment with the County shall be paid for unused compensatory time in accordance with the Fair Labor Standards Act (FLSA).
- E. The Employer shall allow employees to take accrued compensatory time off within a reasonable period after making the request when such time off does not unduly disrupt the operation of the office.
- F. Payment for overtime work shall generally be in the next pay period following the pay period in which the overtime was worked.
- G. The County shall refuse overtime that would result in more than forty (40) hours of overtime in any Sunday through Saturday work week, or that would result in more than six hundred twenty-four (624) hours of overtime in a fiscal year, with the exception of operational necessity as determined by the County and any overtime compensation funded exclusively by the Emergency Telephone System Board (ETSB).”

The Position of the Union:

The Union’s argument is simple; the language proposed for this bargaining unit is identical to that which the Joint Employers has already granted members of MAP 261. “It is irrational for employees at a higher rank to receive a lesser benefit than those that are subordinate to them in the same union and have the same Joint Employers,” the Union submits. The Union also argues that benefits similar or identical to those proposed for this bargaining unit, have been awarded in the collective bargaining agreements of other internally comparable groups, including Cook County Correctional Officers (Section 3.5), Cook County Correctional Sergeants (Section 3.4), and Cook County DCSI Deputy Chiefs (Section 3.5). Where internally comparable contracts do not grant

members the same level of compensatory time accumulation as is proposed here, the Union argues, the degree of the benefit is at least the same between line level members and their direct supervisors. The same principle should prevail here, the Union states.

The Position of the Joint Employers:

The Joint Employers states that, “There are several portions of the Union’s proposal that are inconsistent with the Joint Employers’ policy and practice.”⁷ Specifically, the Joint Employers rejects the reference to “work day” in paragraph B of the Union’s proposal, noting that employees in this bargaining unit, unlike those in MAP 261, work 10-hour days, rather than 8-hour days.⁸ The Joint Employers also argues that much of the Union’s final offer was never discussed during formal negotiations, and should thus be rejected by the Arbitrator for the Union’s lack of good faith during bargaining. Finally, the Joint Employers states, “In an effort to curb the amount of compensatory time and overtime being accrued by many of its employees, the Joint Employers enacted a policy that limits the amount of overtime or compensatory time any individual employee can accrue to no more than forty (40) hours of overtime in any work week or more than six hundred twenty-four (624) hours in any fiscal year.” This represents the current *status quo*, the Joint Employers argues, and thus the limit should be memorialized in the final contract.

Discussion

⁷ Union brief at page 52.

⁸ Here, the Arbitrator takes judicial note of the fact that the Union’s paragraph B, also states “...or over 40 hours in any regular work week.”

Upon the whole of the evidence, the Arbitrator is not persuaded by the Joint Employers that adopting the Union’s proposal would be tantamount to granting a “breakthrough” benefit to this bargaining unit, or to lifting the stated administrative limit on compensatory time accrual. Furthermore, the Arbitrator cannot accept, for reasons stated herein below, that the Union’s proposed language is patently “inconsistent with the Joint Employers’ policy and practice.” Finally, while the Joint Employers may be correct in stating that the entirety of the Union’s proposal was never addressed in formal bargaining, there is a suggestion in the record that this issue, along with a number of other “final proposals” offered by the Union, were proffered for consideration during mediation. The Arbitrator will not infringe upon the sacrosanct privacy of mediation, or in the alternative attempt to divine the relative impact it had upon the bargaining relationship between these parties. However, as structured as the process of impasse arbitration is (and indeed it should be structured because of its many potential snares), it does not take place in a vacuum. In other words, it is disingenuous for the Joint Employers to assert subversion of the process by way of ambush at arbitration, when that is not what truly occurred. In any event, there is sufficient evidence of internal comparability in this record to satisfy the Arbitrator that the Union’s final offer concerning Section 3.4, both in its substance and in its detail, did not come completely out of left field to the utter dismay of the Joint Employers.

As to the Joint Employers’ assertion that the Union’s offer does not comport with current policies and practices, the Arbitrator is not persuaded that this is entirely so, or in the alternative, that adopting this language would chain management to an untenable requirement it could not otherwise live with. This is so, because the MAP 261 contract

provisions mirror to the letter those proposed by the Union here. Either the practices in that bargaining unit, under identical language, function in practice in accordance with present policy, or the Joint Employers exercised its privilege to alter certain customs after the contract was ratified, for indeed most of the applicable language is permissive. Either way, the Joint Employers cannot now, with any degree of vigor, insist that adoption of the Union’s final offer on this economic issue would force an untenable departure from *status quo*.

The Arbitrator, as previously noted, does acknowledge the reference to “work day” in paragraph B of the Union’s proposal. This, the Joint Employers argues, exposes the entire Section to grievances because members of this bargaining unit work 10-hour days rather than 8-hour days. However, in practice, the Arbitrator does not, after decades of interpreting language exactly like this, believe this to be a predictable outcome. Because of the preceding and express mention of 40-hour work weeks as a basis for computing overtime, the Arbitrator is sufficiently convinced of clarity in the rule that he should not throw the baby out with the bathwater. This is an economic issue, and therefore, aside from obvious scrivener’s errors, the Arbitrator must choose one complete offer over the other as the more reasonable, not the most perfect.

As to the Joint Employers’ insistence that the administrative limit placed on overtime and compensatory time in other employee groups should be codified in this Agreement, the Arbitrator is again mystified. Clearly, whatever policy the Joint Employers “enacted to curb the amount of compensatory time and overtime being accrued” in the Sheriff’s Department is functioning properly in the MAP 261 bargaining unit, whose members operate under language absolutely identical to that which the Union

has proposed here, and at that, in an employee group more than six times the size of this one. Therefore, the Arbitrator is not convinced that in any real sense, the Union's proposal is inherently unreasonable.

Finally, the Arbitrator is persuaded in principle by the fact that the County has already endeavored to maintain parity between supervisors and their subordinate groups with respect to certain employee benefits. Here, the Arbitrator concludes, for all the foregoing reasons, that there is no substantive reason for him to impose disparity between this bargaining unit and the subordinate MAP 261 bargaining unit on this issue.

Upon the whole of the evidence, the Arbitrator concludes that the Union's final offer concerning Section 3.4 should be adopted. The following Award so states.

AWARD

The Union's Final Offer concerning Section 3.4 is adopted.

Section 3.6 – Lunch Breaks

The Union's Final Proposal

When a watch commander approves employee's time cards because of shortages on the shift, those employees shall receive 1.5 hours overtime in lieu of lunch. Management shall not over-ride the decision of the watch commander by later denying the overtime after the employees have already given up their lunch.

An employee must work at least 5 hours of the shift to earn a ½ hour lunch and 6 hours of the shift to earn an hour's lunch."

The Joint Employers' Final Proposal

The Joint Employers rejects the Union's offer in its entirety.

The Position of the Union:

The Union argues that its proposal is similar to Lunch Break provisions in other internally comparable collective bargaining agreements. It is rare, the Union admits, for a supervisor not to take a lunch break. However, the Union submits, if a “major incident” prompted a supervisor to work through his or her meal break, additional compensation should be in order.

The Position of the Joint Employers:

The Joint Employers argues that incorporating Section 3.6 into the contract would be frivolous, since Telecommunications Supervisors rarely, if ever, work through their meal periods. By rejecting the Union’s proposed language for 3.6, the Joint Employers argues, the County was not suggesting that Supervisor lunches be eliminated, for to do so would violate Federal law. Instead, the Joint Employers states, omitting Section 3.6 from the contract merely codifies the present *status quo*; Supervisors do not work through their lunch periods as a general rule.

Discussion

While the Arbitrator acknowledges the truth that Telecommunications Supervisors rarely, if ever, work through their meal periods, the fact remains that the contracts of many internally comparable Sheriff’s Department bargaining units, including MAP 261, provide for premium compensation in the event working through a meal becomes an operational necessity. The Arbitrator is further persuaded by testimony adduced at the arbitration hearing which established that, on the infrequent occasions working through lunch has been required of Telecommunications Supervisors, they have applied for, and been granted, additional compensation for doing so.

On the statutory criterion of internal comparability, the Union’s final offer on this economic issue (in the absence of any counter offer from the Joint Employers), is the more reasonable of the two choices before the Arbitrator. Furthermore, these Supervisors should not be required to work through meals (even though doing so is rare) without additional compensation, when their subordinates, with whom they work side by side, are receiving that benefit. For all the foregoing reasons, then, the Union’s final proposal with respect to Section 3.6 (Lunch Breaks) is adopted. The following Award so states.

AWARD

The Union’s final proposal concerning Section 3.6 is adopted.

Section 3.7 – Acting Director

The Union’s Final Proposal

Any bargaining unit employee who is qualified and required to perform the duties of a watch commander [sic] shall be compensated an additional ½ hour if they perform as a watch commander [sic] for four (4) or less hours and additional one (1) hour if they perform as a watch commander [sic] for more than four (4) hours.”

The Joint Employers’ Final Proposal

The Joint Employers rejects the Union’s proposal in its entirety.

The Position of the Union:

The Union argues that its proposal is similar to comparable MAP 261 provisions, in that premium compensation is awarded in the event a covered employee is required to “work up” in some capacity. The Union acknowledges the scrivener’s error in the multiple references to “watch commander” rather than “acting director,” but argues that this mistake should have no bearing on the Arbitrator’s ultimate decision as to whether he should accept or reject the idea of premium pay in this context.

The record establishes, the Union notes, that at least one member of MAP 261 performed service as an “acting director” in the past, and was compensated accordingly (Tr. 103.) Therefore, the Union submits, the sole purpose of including Section 3.7 in this new contract was to memorialize a practice already recognized by the Joint Employers. The Union acknowledges that, other than MAP 261, there has been no real showing that other internally comparable units have similar language, though this is because they are not normally required to perform service in higher classifications. However, the Union argues, the Joint Employers offered neither a counter-proposal nor a reason to depart from recognized *status quo*, and as such, the Arbitrator should adopt its proposal as the more reasonable of the two scenarios on this economic issue.

The Position of the Joint Employers:

The Joint Employers rejects the Union’s final offer on the matter of “Acting Director” premium pay, because bargaining unit members do not perform tasks that may be considered “different” from their normal duties and responsibilities. While an “acting director” may be required to review and approve time sheets, the Joint Employers argues, members of this bargaining unit also did so “until recently.” As such, the Joint Employers submits, that sole added responsibility is already “a part of underlying duties and responsibilities,” and thus, should be rejected as a basis for additional pay.⁹

Discussion

On the basis of the statutory criterion of internal comparability, the Arbitrator is persuaded that the Union’s final proposal is more reasonable than the absence of *any*

⁹ See; Cook County Oak Forest Hospital Facility and Metropolitan Alliance of Police Oak Forest Safety Public Safety Officers Chapter 57 (Cox, 2003.)

provision, which was the Joint Employers’ chosen route on this economic issue. The record establishes that members of MAP 261 are awarded premium pay in the event they are required to perform the duties of a watch commander, and the Arbitrator finds it reasonable that their supervisors should be no less rewarded. The Arbitrator understands the Joint Employers’ argument with respect to “underlying duties and responsibilities,” but the evidence in this record indicates that, at the very least, approving time sheets is no longer considered to be recognized bargaining unit work. True, it may have been before, but it is not now, and the Joint Employers presumably had good reason for reassigning that particular task to management (non-union) employees.

It is also worth mentioning that working in a higher classification, and more particularly performing the services of a management employee, means more than simply having different duties. Indeed there is often a crossover between higher and lower classifications with respect to specific tasks. What is important here is the essence of hierarchy and its attendant authority. It is traditional in the workplace to compensate employees who agree to temporarily work in higher classifications, and that is all the Union has proposed here.

The most internally comparable bargaining unit has this benefit, and the record establishes that Telecommunications employees who have been temporarily assigned the position of “Acting Director” have already received premium pay for performing services in that capacity. In the absence of a counter-proposal from the Joint Employers offering some other reasonable alternative, the Arbitrator concludes that the Union’s final offer both represents *status quo*, and enjoys support from the statutory criterion of internal

comparability. The Union’s final proposal is therefore adopted. The following Award so states.

AWARD

The Union’s final proposal concerning Section 3.7 is adopted, with correction of the obvious scrivener’s error referencing “Watch Commander” rather than the appropriate title of “Acting Director.”

Section 4.2 – Termination of Seniority¹⁰

The Union’s Final Proposal

An employee’s seniority and employment relationship with the Employer shall terminate upon the occurrence of any of the following:

- A. Resignation or retirement;
- B. Discharge for just cause;
- C. Absence of three (3) consecutive work days without notification to the Employer during such period of the reason for the absence, unless the employee has a reasonable explanation for such failure to return to work;
- D. Failure to report to work at the termination of leave of absence or vacation, unless the employee has a reasonable explanation for such failure to report to work;
- E. Absence from work because of layoff or any other reason for twelve (12) months in the case of an employee with less than two (2) years of service when the absence began or twenty-four (24) months in the case of all other employees except that this provision shall not apply in the case of an employee on an approved leave [sic] of absence, or absent from work because of illness or injury covered by the duty disability or ordinary disability benefits;

¹⁰ There are several section-related numbering discrepancies between the final offers of the parties, and this is the first of many to be addressed in this Award. The Union proffered provisions concerning “Termination of Seniority” under Section 4.2, while the Joint Employers’ effective counter-proposal was offered under Section 4.4. The Arbitrator will consider both, and the prevailing contract provisions governing termination of seniority will appear in the final contract under **Section 4.2**.

- F. Failure to report to work upon recall from layoff within ten (10) work days after notice to report for work is sent by registered or certified mail or by telegram, to the employee's last address on file with the Personnel Department of the Employer.

The Joint Employers' Final Proposal [Offered as Section 4.4]

An employee's seniority and employment relationship with the Employer shall terminate upon the occurrence of any of the following:

- A. Resignation or retirement;
- B. Discharge for cause;
- C. Absence for three (3) consecutive work days without notification to the Employer during such period of the reason for the absence;
- D. Failure to report to work at the termination of a leave of absence.

The Position of the Union:

The Union submits an offer similar in substance to applicable Section 4.8 of the MAP 261 collective bargaining agreement, though it excludes the latter's prohibition against engaging in gainful employment while on authorized leave. It is the Union's position here that if bargaining unit member is on an authorized leave of absence, and desires to do so, he or she should be permitted to secure outside employment without risking their MAP 507 seniority. Given the "compelling evidence" of internal comparability, the Union argues, its final proposal with respect to Section 4.2 should be adopted by the Arbitrator.

The Position of the Joint Employers:

The Joint Employers urges that its [Section 4.4] final offer concerning termination of seniority should be selected over that of the Union, because "it is consistent with the

Joint Employers’ policy and practice for when seniority is terminated.” The Joint Employers also argues that the Union’s language is too permissive, in that it requires only a “reasonable explanation” for failing to return to work at the end of an approved leave of absence. The County’s proposal is clear, concise, and consistent with the Joint Employers’ present practices, it should prevail over that of the Union, the Joint Employers argues.

Discussion

This impasse issue is non-economic in nature and as such, the Arbitrator is not bound by the Act to select one proposal in its entirety over the other. After reviewing both submissions carefully, and also considering applicable Section 4.8 of the MAP 261 contract, the Arbitrator is convinced that Section 4.2 of this Collective Bargaining Agreement should represent a compilation of all three, for indeed, in substance, they are similar. Termination of seniority, *per se*, is essentially a Union matter, but retention of attendant employment, and the County’s need to rely on a full compliment of workers (unless alternate arrangements are made), are most definitely management priorities. After examining both proposals and noting comparable language in the very similarly situated MAP 261 work group, the Arbitrator concludes that fashioning language which is representative of an existing and relevant Department *status quo* (which he is privileged to do on this non-economic issue) is the appropriate course of action for Section 4.2 in this case. The following Award so establishes.

AWARD

Section 4.2 (Termination of Seniority) shall now read as follows:

An employee's seniority and employment relationship with the Employer shall terminate upon the occurrence of any of the following:

- A. Resignation or retirement;*
- B. Discharge for just cause;*
- C. Absence of three (3) consecutive work days without notification to the Employer during such period of the reason for the absence, unless the employee has an explanation acceptable to the Employer for not furnishing such notification;*
- D. Failure to report to work at the termination of leave of absence or vacation, unless the employee has an explanation acceptable to the Employer for such failure to report for work;*
- E. Absence from work because of layoff or any other reason for six (6) months in the case of an employee with less than one (1) year of service when the absence began or twelve (12) months in the case of all other employees except that this provision shall not apply in the case of an employee on an approved leave of absence, or absent from work because of illness or injury covered by the duty disability or ordinary disability benefits;*
- F. Failure to report to work upon recall from layoff within ten (10) work days after notice to report for work is sent by registered or certified mail or by telegram, to the employee's last address on file with the Personnel Department of the Employer;*
- G. Engaging in gainful employment while on an authorized leave of absence, unless permission to engage in such employment was granted in advance by the Sheriff in writing.*

Section 4.3 – Seniority List

The Union's Final Proposal

On December 1 and June 1 of each year the Employer will furnish the Union a list showing the name, number, address, classification, last hiring date and promotion date of each employee, and whether the employee is entitled to seniority or not. The Sheriff shall post a similar list without employee addresses on bulletin boards designated for employee notices. Within thirty (30) calendar days after the date of posting, an employee must notify the Employer in writing of any error in his/her last hiring date as it appears on that list or it will be considered correct and binding on the employee and the Union for that period of time. The Employer will furnish the Union monthly reports of any changes to such list.

At least quarterly, the County on behalf of the Union covered by this Agreement, shall notify the Union in writing of the following personnel transaction involving bargaining unit employees within each department and on a work location basis: new hires, promotions, demotions, checkoff revocations, layoffs, re-employments, leaves, returns from leave, suspensions, discharges, terminations, retirements and Social Security numbers. The Union shall, upon request, receive such information on computer tapes, where available.

The Joint Employers' Final Proposal

The Joint Employers rejects the Union's proposal for Section 4.3 in its entirety.

The Position of the Union:

The Union proposes Section 4.3 language identical to applicable provisions in the MAP 261 contract. In sum, the Union argues, proposed Section 4.3 requires the Joint Employers to furnish the Union with a list of bargaining unit members, including their appropriate seniority rank/date, twice a year. The Joint Employers, the Union argues, has rejected the proposal, even though questions have been proffered by Telecommunications Supervisors regarding their relative standing in the work group in the past. The Union also points out that its proposed language is similar or identical to provisions in numerous other Sheriff's Department contracts on this subject, and thus, the statutory criterion of internal comparability strongly favors incorporation of Section 4.3 into the new MAP 507 contract.

The Position of the Joint Employers:

The County urges the Arbitrator to reject proposed Section 4.3 because it is "unduly burdensome on the Joint Employers."¹¹ While this type of language may be necessary in some bargaining units because of their size, the Joint Employers notes, the

¹¹ Joint Employers brief at page 58.

same is not true here. This bargaining unit, the Joint Employers argues, is only comprised of five employees, who all work at a single location. Therefore, the Joint Employers submits, the information requested by the Union does not change often, and to require management to send it to the Union several times during the year would place an expensive burden on the County. For all the foregoing reasons, then, the Union urges the Arbitrator to reject the Union’s proposed Section 4.3.

Discussion

On the basis of internal comparability, the Arbitrator concludes that the Union’s proposal for Section 4.3 should be adopted in its entirety. Most, if not all, Sheriff’s Department collective bargaining agreements have such a provision, and this contract should be no different. The Arbitrator is not persuaded by the Joint Employers’ assertion of an “expensive” and “undue” burden associated with providing the Union a seniority list twice a year, mainly because management’s argument turns back upon itself with respect to what that burden really represents. This, as the Joint Employers points out, is a bargaining unit of only five individuals, all of whom have been employed by the County for a long time. Therefore, the Arbitrator is at a loss as to how or why maintaining such a seniority list in its proper form would drain the Joint Employers of administrative resources. Furthermore, the Joint Employers also notes that, “The information the Union is requesting in Section 4.3 does not change often...” Thus, from a purely practical point of view, providing the Union with a seniority list would likely be as simple as copying it, and either putting it in the mail or hand-delivering it to the appropriate Union representative.

Therefore, based on evidence of strong internal comparability, and also because the Joint Employers' arguments in favor of departing from that *status quo* are not convincing, the Arbitrator concludes that the Union's final proposal with respect to Section 4.3 should be adopted. The following Award so states.

AWARD

The Union's final proposal concerning Section 4.3 is adopted.

Section 4.4 – Union Rights

The Union's Final Proposal

At least quarterly, the Employer, on behalf of all employees covered by this Agreement, shall notify MAP Chapter 507 in writing of the following personnel transactions involving bargaining unit employees within each department and on a work location basis: promotions, demotions, check-off revocations, layoffs, leaves, returns from leave, discharges, terminations, retirements, and Social Security numbers. MAP Chapter 507 shall, upon request, receive such information on computer tapes, where available.

The Joint Employers' Final Proposal

The Joint Employers rejects the Union's proposal for Section 4.4 in its entirety.

The Position of the Union:

The Union argues that, while there is no support from the criterion of internal comparability on this issue, particularly with the MAP 261 bargaining unit, this proposal should nevertheless prevail. The Union states that it "wishes to be kept up to date regarding personnel transactions, including promotions, demotions, Union checkoff revocations, layoffs and leaves." This is a small bargaining unit, the Union argues, and the relative impact on the Joint Employers would be small in terms of administrative

burden. For the foregoing reason, then, the Union urges the Arbitrator to adopt its proposal for Section 4.4 (Union Rights).

The Position of the Joint Employers:

The Joint Employers' argument concerning this proposal offered by the Union is identical to that stated in response to proposed Section 4.3. This is a small bargaining unit, the Joint Employers argues, and the information sought by the Union changes rarely, if ever. Thus, the Joint Employers argues, Section 4.4 would be effectively frivolous, and would also present an undue burden for the County. Accordingly, the Joint Employers urges the Arbitrator to reject the Union's proposal on "Union Rights".

Discussion

Unlike the Union's proposal for Section 4.3, to which the Joint Employers responded identically on this issue, there is no statutory support for Section 4.4 "Union Rights." The Arbitrator does not necessarily agree with the Joint Employers that providing the Union with the requested information would present an undue administrative burden, but neither can he agree with the Union that inclusion of this essentially "breakthrough" item is reasonable. Again, there is no bargained *status quo* because this is an initial contract. Thus, the Arbitrator must rely heavily on what the Joint Employers has agreed to do in other comparable bargaining units, and discern the relative value of that information as indicators of the "norm". Here, the Union cannot argue with any strength that such "Union Rights" should be granted on that basis, because there has been no evident offer of *quid pro quo*, no showing that the present system is not working, and no evidence of internal comparability.

Therefore, for all the foregoing reasons, the Arbitrator rejects the Union’s petition for a new Article 4 section pertaining to proffered “Union Rights”. While there will, in the final contract be a Section 4.4 (because of numbering chronology), Article 4 will not contain this proposed language. The following Award so states.

AWARD

The Union’s proposal for Section 4.4 (Union Rights) is rejected.

Section 4.5 – Promotion and Shift Assignment

The Union’s Final Proposal

Supervisors shall bid, by promotional seniority, in November of each year, for Watch and Day off Key. Bidding for vacations shall be conducted in December of each year.

Bidding for shift assignments shall become effective the first pay period of each year.

The Joint Employers’ Final Proposal

Supervisors shall bid, by promotional seniority, in November of each year, for Watch and Day off Key. Bidding for vacations shall be conducted in December of each year. Bidding for shift assignments shall become effective January 1 of each year.

The Position of the Union:

The Union states that its proposal is similar to the Joint Employers’ with the exception of the effective date for bidding of shift assignments. The Union also states that its offer more closely represents current *status quo* with respect to actual practices and should thus be incorporated into the new contract in its entirety.

The Position of the Joint Employers:

The only difference between the two offers, the Joint Employers explains, is that the County's offer provides that new shift and watch assignments will take effect on January 1st of each year, whereas the Union's proposal provides that changes will take effect during "the first pay period of each year." The Joint Employers submits that the vagueness of the Union's language could lead to grievances down the road, and as the County's offer is more concise and does not alter the substance of the Section, it should be selected by the Arbitrator over that of the Union.

Discussion

After reviewing the arguments on this issue and examining comparable language in the MAP 261 contract, among others, the Arbitrator is persuaded that the Joint Employers' offer is the more reasonable of the two proposals presented. Indeed, they are so similar as to be nearly indistinguishable, so from a practical standpoint, the outcome is more administrative than substantive in terms of overall effect on the bargaining unit. The Joint Employers seeks to establish a firm date upon which changes in shift assignments will take effect, and the Arbitrator does not find this petition capricious in its theory. If implementing such a requirement (without affecting the bargaining unit in an adverse way) forecloses the possibility of grievances down the road, then it should be done.

For the foregoing reasons, then, the Arbitrator concludes that the Joint Employers' final proposal should be adopted. The following Award so states.

AWARD

The Joint Employers' final offer concerning Section 4.5 is adopted.¹²

Section 4.6 – Layoff and Recall

The Union's Final Proposal

Should the County determine that it is necessary to decrease the number of employees within a department or facility, the employee(s) to be laid off shall be removed within the same job classification in inverse order of seniority, as defined by their length of service as a Telecommunications Supervisor.

Except in an emergency, both the employees to be laid off and the Chapter shall be given notice at least sixty (60) calendar days prior to the effective date of the layoff(s), in order to afford the Chapter the opportunity to provide advisory input through a labor management meeting, provided the process is not used to delay the layoff(s). Employees laid off as a result of this procedure shall be subject to recall in order of seniority before new employees are hired in the job classifications held by them at the time of the layoff. In the event of layoff(s), reasonable efforts shall be made to transfer the effected Employees to another department or division within the Sheriff's Department to a position with a similar pay structure.

- A. Definition of Layoff: A layoff is defined as the termination of an employee's employment with a right of recall for a period of twelve (12) months following the effective date of the layoff for an employee with fewer than twelve (12) months of seniority. Employees with twelve (12) or more months of seniority recall rights will be for a period of twenty-four (24) months following the effective date of the layoff.
- B. Implementation of Layoff: With the implementation of layoffs, the County initially will terminate the employment of any probationary employees who are employed in the job classifications to be affected by the layoff. The County will then layoff non-probationary employees in the job classification to be affected by the layoff in inverse order of seniority.
- C. Recalls from Layoffs: An employee who has been laid off shall notify the County in writing of any change in his/her address within fourteen (14) calendar days of such change.

An employee who has been laid off shall notify the County in writing of any change in his/her address within fourteen (14) calendar days of such change.

¹² "Promotion and Shift Assignments" will appear as Section 4.4 in the final contract, due to the Arbitrator's rejection of the Union's proposed Section 4.4 (Union Rights).

An employee who has been laid off shall have a recall right for the period defined in Article IV, Section 4.4(A), to vacancies in his/her job classification at the time of the layoff or vacancies in other job classifications for which he/she is qualified. If more than one (1) employee has a recall right to a vacancy, the County shall recall the most senior employee, provided the employee currently has the ability and qualifications to perform the required work.

The County shall notify an employee of his/her obligation to return to work by sending a notice of recall by certified mail to the most recent address on record provided by the employee. The sending of such notice to the most recent address on record shall completely satisfy the County's obligation to notify the employee of the recall. The County shall simultaneously provide a copy of the notice of recall to the Union.

An employee shall lose all recall rights if he/she:

1. Fails to contact the County within ten (10) business days after the date in which the notice of recall was sent by the County to the most recent address on record provided by the employee;
2. Is unqualified or unable to return to work within the time frame established by the County; or
3. Declines the offer of recall.”

The Joint Employers' Final Proposal
[Offered as Section 4.2]

Should the Employer determine that it is necessary to decrease the number of employees, the employees to be laid off shall be removed in inverse order of seniority.

For the purpose of layoff, ties in seniority shall be broken by using the employee's Cook County I.D. number. The Employer, upon request shall meet with the Union concerning the impact on employees resulting therefrom.”

The Position of the Union:

The Union acknowledges that its proposal departs from language appearing in the MAP 261 contract on the subject of layoff and recall, because “the nature of the job” necessitated certain alterations. The Union argues that specific language pertaining to notice requirements and employee assistance is relevant and necessary, as are specific provisions governing the processes of laying off and recalling members of this bargaining

unit in the event of a force reduction. The County’s offer, the Union argues, includes nothing on the subject of recall, and is insufficiently clear overall with respect to processes and employer obligations in this important matter. Therefore, the Union argues, its proposal is the more reasonable of the two, and should be selected by the Arbitrator over that of the Joint Employers.

The Position of the Joint Employers:

The Joint Employers urges the Arbitrator to adopt its “Layoff and Recall” language as set forth in its [Section 4.2] offer. The County’s offer, the Joint Employers argues, accurately reflects the way in which layoffs and recalls are performed at present. It has always been the practice, the Joint Employers states, to lay off employees in inverse order of seniority, and offer bargaining unit representatives a chance to meet with management and discuss the relative impact of layoffs on their constituents. Furthermore, the Joint Employers argues, the Union’s requirement of 60 days’ advance notice of a layoff is unreasonable and has no support from internally comparable collective bargaining agreements. Finally, the Joint Employers argues, the Union’s proposal requires the County to offer advisory input with respect to operational needs, and this idea, too, has no support from statutory criteria.

For all the foregoing reasons, then, the Joint Employers urges the Arbitrator to adopt its [Section 4.2] language on the subject of layoff and recall as more reasonable than that offered by the Union.

Discussion

This is a non-economic impasse issue, and as such, the Arbitrator is not obligated to accept one final offer in its entirety over the other. In this case, that is fortunate, because neither proposal fully addresses every necessary element of such a rule. The Union’s offer is burdensome and impractical in certain areas, and also contains some “breakthrough” items that have no statutory support. The Joint Employers’ final proposal is also inadequate, because it fails to mention the recall process at all.

Therefore, after examining language contained in the internally comparable MAP 261 agreement, the Arbitrator is, again, convinced that a “hybrid” solution is in order. The resultant provisions should be clear and easy to understand, as is the language in the MAP 261 agreement, and should contain no obvious “breakthrough” items and/or unnecessarily specific verbiage. The Arbitrator thus concludes that combining the Joint Employers’ final offer with certain recall provisions contained in Section 4.4 of the MAP 261 contract will serve all requisite purposes. The following Award so indicates.

AWARD

Layoff and Recall provisions, which will appear in Section 4.5 of the new contract (due to the Arbitrator’s previous rejection of the Union’s proposed Section 4.4 on “Union Rights”) shall read as follows:

Should the Employer determine that it is necessary to decrease the number of employees, the employees to be laid off shall be removed in inverse order of seniority.

Employees and the Union shall be given notice thereof at least thirty (30) days prior to the effective date. Employees laid off as a result of this procedure shall be subject to recall in order of seniority before new employees are hired in the classification held by them at the time of the reduction in force.

For the purposes of layoff, ties in seniority shall be broken by using the employee's Cook County I.D. number. The Employer, upon request shall meet with the Union concerning the impact on employees resulting therefrom."

Section 4.7 – Job Postings

The Union's Final Proposal

When job openings or vacancies occur within the bargaining unit in a particular department, or when new positions are created, the Sheriff will post a notice on all bulletin boards where notices to employees are normally posted. These postings will be for a period of (10) working days.

Interviews for the position shall be held within reasonable time of the last day of posting. The positions shall be filled within 60 days of the last interview.

Employees within the department where the vacancy occurs will be given preferential consideration for promotion to a higher paying position in accordance with Section 3. Employees in equal or lower paying grades in other departments or divisions who apply for the vacancy will be given preferential consideration in accordance with Section 3 before new employees are hired.

Employees who are awarded the new position shall move to their new position as soon as possible thereafter."

The Joint Employers' Final Proposal

The Joint Employers rejects the Union's proposal for Section 4.7 in its entirety.

The Position of the Union:

The Union requests job postings regarding vacancies within the Department. The language, the Union argues, mirrors applicable provisions in the MAP 261 contract, and thus has strong support from the statutory criterion of internal comparability.

The Position of the Joint Employers:

The Joint Employers argues that the Union's proposal on the issue of Job Postings should be rejected because it represents frivolous language that does not apply to the

members of this bargaining unit. As already noted, the Joint Employers argues, Telecommunications Supervisors have no direct path to promotion within the Department. Furthermore, the Joint Employers argues, even if a position does become available for which members of this unit may be eligible, the County always posts such vacancies on the Cook County website. Therefore, the Joint Employers argues, the Union’s proposal is impractical, and should thus be rejected in its entirety.

Discussion

Because the subject matter of job postings is non-economic, the Arbitrator is not compelled to select one proposal over the other in its entirety. The Arbitrator understands the Joint Employers’ position with respect to promotional opportunities (or more accurately a lack thereof) available to members of this bargaining unit. However, the Joint Employers does acknowledge that, on occasion, job openings for which Telecommunications Supervisors may apply do occur. This is hardly surprising. The Arbitrator is not persuaded by the Joint Employers that posting such openings on the Cook County website is satisfactory in terms of its obligation to the bargaining unit, for if that were true, there would be no need for the Joint Employers to obey comparable provisions in the MAP 261 contract when the “openings” under consideration were those of a lateral nature. Therefore, as in certain prior instances, the Arbitrator concludes that Job Posting provisions are appropriate for this contract as well, though not those submitted for consideration by the Union in their entirety.

As any reference to “promotion to a higher paying position” would assuredly be out of place in this contract, the Arbitrator selects the Union’s final proposal with the omission of the third paragraph concerning promotions. The following Award so states.

AWARD

Job Posting provisions, which will appear in Section 4.6 of the new contract (due to the Arbitrator’s previous rejection of the Union’s proposed Section 4.4 on “Union Rights”) shall read as follows:

When job openings or vacancies occur within the bargaining unit in a particular department, or when new positions are created, the Sheriff will post a notice on all bulletin boards where notices to employees are normally posted. These postings will be for a period of (10) working days.

Interviews for the position shall be held within reasonable time of the last day of posting. The positions shall be filled within 60 days of the last interview.

Employees who are awarded the new position shall move to their new position as soon as possible thereafter.”

Section 5.1 – Rates of Pay

The Union’s Final Proposal

Effective January 1, 2011, Telecommunications Supervisors shall receive the monthly salary provided for their respective grade and length of service in the job classification Grade 19, as set forth in Appendix A. Telecommunications Supervisors will be increased to the appropriate step upon completion of the required length of service in the classification.

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

Effective with the first full pay period on or after January 1, 2011, bargaining unit employees shall be placed at the appropriate step of the Grade 19 wage schedule.

Effective with the first full pay period, on or after;

June 1, 2012 3.75%

The Employer and MAP 507 agree that if during the term of this Agreement the Employer enters into any new agreement with the Electronic Monitoring Technicians, Vehicle Service Men, and Radio Dispatchers, providing for increased wages, that the Employer shall immediately apply such provisions automatically to this Agreement.

Wages are retroactive to January 1, 2011.

The Joint Employers' Final Proposal

Current members of the bargaining unit at the time of ratification will be placed on the January 1, 2011 Cook County Union Schedule I at Grade 19 in the Step closest to, but not less than, each employee's current rate of pay at time of ratification. This Schedule is attached as Exhibit A. (To be added upon tentative agreement on all other terms). All new members hired or promoted into the bargaining unit after ratification will be placed on the Cook County Union Schedule I at Grade 18, Step 1. This schedule is attached at Exhibit B. (To be added upon tentative agreement on all other terms). Employees will be increased to the appropriate step upon completion of the required length of service in classification.

Effective June 1, 2012, the bargaining unit will receive a 3.75% wage increase.

The Position of the Union:

At the outset, the Union acknowledges that both parties agree that members of this bargaining unit should be placed at Grade 19 in the Joint Employers' current wage schedule. Additionally, the Union notes, both the County and the Union agree that, effective June 1, 2012, a general wage increase of 3.75% should be implemented consistent with increases awarded in other internally comparable bargaining units. However, the Union contends that Telecommunications Supervisors should be placed at a step within Grade 19 commensurate with their seniority. (Thus, for example, a Supervisor with 5 years of service would be placed at the fifth step of the Grade 19 wage schedule.) The Joint Employers, on the other hand, believes that Supervisors should be

placed at the step affording wages closest to, but not less than, their current rate of pay, the Union notes.

The Union further argues that all wage increases resulting from the relative placement of bargaining unit Supervisors at Grade 19 should be retroactive to January 1, 2011, while the Joint Employers argues that step increases should not take effect until final ratification of the contract has been achieved. The Union rejects the Joint Employers' proposal on this point, specifically because it would, in effect, prompt a lengthy wage freeze. Similar proposals offered by the Joint Employers in other bargaining groups have been rejected by arbitrators for lack of reasonableness on this point, the Union notes, and this Arbitrator should take their lead.¹³

The Union also argues that members of this bargaining unit would be unduly harmed by rejection of retroactivity, in that, if the Arbitrator adopts the Joint Employers' offer for a contract term expiring in 2012, movement into the appropriate step (and the attendant wage increase) will not take place until well after the contract has expired. The Joint Employers would therefore be rewarded for delaying negotiations, and also for delaying final approval of this contract, the Union argues.

Finally, the Union notes, the Joint Employers' proposal relative to placement of new employees in the bargaining unit [at Grade 18] is contrary to provisions in the internally comparable MAP 261 agreement. Specifically, the Union argues, Section 5.3 thereof states that an employee who is promoted to a job in a higher salary grade will be entitled to placement on the step of the new salary grade which will provide earnings at

¹³ See, e.g.: *City of Chicago and Teamsters Local 700 – SPCO Unit, L-MA-10-002 (Benn, 2013)* (*Arbitrator found no justification for a lengthy freeze imposed by the City's wage offer.*)

least two steps above his or her previous salary. Thus, for example, an employee with five years of service who got promoted to a Supervisor position would be placed at Step 1, Grade 18 under the Joint Employers' offer, the Union notes, and this would actually result in about a \$7000.00 pay cut, the Union estimates.

The Union argues that, according to undisputed testimony at arbitration, members of this unit have received whatever wage increases were approved for the MAP 261 Telecommunicators. It is thus clear, the Union argues, that the proposed "Me Too" language is consistent with past practice in the Department, and is therefore representative of the *status quo*. For that and all the foregoing reasons, then, the Union urges the Arbitrator to adopt its proposal concerning Section 5.1 in its entirety.

The Position of the Joint Employers:

First, the Joint Employers argues that placing these Supervisors into the Grade 19 wage scale in the manner proposed by the Union would run counter to the current practice of the County to place employees at the step closet to, without going under, the step representative of the employee's former salary. The Joint Employers also argues that placing newly-promoted Supervisors at Grade 18 would more closely establish the typical wage spread between supervisors and their subordinate employees throughout the County structure. Placing Telecommunications Supervisors as proposed by the Union, the Joint Employers argues, would only continue to increase the wage disparity between them and their subordinate employees.

The Joint Employers also rejects the Union's "Me Too" language petitioning for any wage increase which is granted to MAP 261 members during the proposed term of

this contract. This was never proposed at the bargaining table, the Joint Employers argues, and is inappropriate because the Union’s proposed term of the agreement is inappropriate. Finally, the Joint Employers argues, the Union’s request that step wage increases be granted immediately instead of upon ratification “must be rejected because the County Board must approve any and all wage increases before they can go into effect; and because the Union never made this proposal at any point during their negotiations...”¹⁴ The Union cannot usurp the authority of the County Board by demanding that the Arbitrator award wage increases immediately, the Joint Employers argues, and furthermore, the Union should not be rewarded for attempting to achieve something at arbitration which was never proposed during negotiations. For that and all the foregoing reasons, then, the Union urges the Arbitrator to reject the Union’s final offer in its entirety.

Discussion

Obviously, this is an economic issue, and as such, the Arbitrator is not privileged to amend the language of either proposal, but must instead select one over the other in its entirety as the more reasonable of the two. After much thought, the Arbitrator concludes that, over all, the Union’s final offer is neither unfair nor patently unreasonable, whereas the Joint Employers’ offer contains certain elements that have already been rejected by other arbitrators in this forum. **In truth, the Arbitrator found substantial deficiencies in both final offers**, not the least of which were the Union’s surprising “Me Too” inclusion and the Joint Employers’ refusal to implement step increases retroactive to the effective date of this contract. Also, the Joint Employers’ demand that the agreed upon

¹⁴ Joint Employers brief at page 62.

4.5% increase not kick in until **ratification** – there will be no Union vote of ratification on the collective bargaining agreement that results from this award.¹⁵

Generally, this Arbitrator refrains from embracing any “me too” language, as doing so weakens the bargaining process, and also effectively removes substantial discretion from important personnel who are left with little or no input concerning important matters. That is not strictly true here, however. Importantly, the Joint Employers argued that the proposed “me too” provisions offered by the Union were “inappropriate because the Union’s proposal for an extended contract term is inappropriate.” As set forth later in this decision, the Arbitrator has decided to adopt the Joint Employers’ proposal for a contract expiring in 2012, and because MAP 261 (which represents included “Electronic Monitoring Technicians, Vehicle Service Men, and Radio Dispatchers”) participates in pattern bargaining along with other internally comparable Sheriff’s Department bargaining units, MAP 507 Supervisors would have gotten what MAP 261 is awarded anyway. Even more important is the fact that the “Me Too” inclusion proposed by the Union will not survive a successor agreement unless agreed to by the parties, according to the way in which it was worded. In other words, the “me too” is not a monkey that will remain on the Joint Employers’ back indefinitely (or beyond the date Section 5.1 is re-negotiated). This is so because in relevant part, the Union’s proposed Section 5.1 states, “The Employer and MAP 507 agree that if **during the term of this Agreement** the Employer enters into any new agreement with [MAP 261] providing for increased wages, that the Employer shall immediately apply such provisions automatically to this Agreement.” (Emphasis added.)

¹⁵ See, Stipulation No. 1, p. 6, supra.

As a result of the Arbitrator's ultimate decision to accept its final offer on the issue of wage rates over that of the Joint Employers (which will place bargaining unit Supervisors at a step within Grade 19 commensurate with their seniority), step increases will be retroactive to the effective date of this contract. It is worth observing on this point that either the effective date of a contract (indeed its entire term) has meaning or it does not. The Arbitrator fully understands that the County Board must sign off on wage increases, but this is most assuredly not the first time that body has ever wrestled with the matter of retroactive payouts. Certainly, neither the Arbitrator nor the Union may compel the Joint Employers to compensate any member of this bargaining unit contrary to law. Obviously, the instant retroactive increases, like countless that have gone before, will have to wait until the Board acts in whatever manner is officially required to authorize them. However, there will likely be some incentive for the Joint Employers to expedite the process before the Board if possible, because the period of retroactivity (and the resultant lump-sum payout) will only grow more significant with each day the Board (or the Joint Employers) tarries.

For all the foregoing reasons, then, the Union's final offer concerning Section 5.1 (Rates of Pay) is adopted. The following Award so states.

AWARD

The Union's final offer concerning Section 5.1 Rates of Pay is adopted.

Section 6.1 – Designation of Holidays

The Union's Final Proposal

- A. The following days are hereby declared holidays except in emergency and for necessary operations for employees in the bargaining unit:

1.	New Year's Day	January 1st
2.	Martin Luther King's Birthday	Third Monday in January
3.	Lincoln's Birthday	February 12th
4.	President's Day	Third Monday in February
5.	Pulaski Day	First Monday in March
6.	Memorial Day	Last Monday in May
7.	Independence Day	July 4th
8.	Labor Day	First Monday in September
9.	Columbus Day	Second Monday in October
10.	Veteran's Day	November 11th
11.	Thanksgiving Day	4th Thursday in November
12.	Christmas Day	December 25th

It is the intent of the Employer that all employees be granted twelve (12) holidays, or equivalent paid days off per year. In addition to the above, any other day or part of a day shall be considered a holiday when so designated by the Board of Commissioners.

- B. In addition to the foregoing holidays, employees shall be credited with one (1) floating holiday on December 1 of each year, which may be scheduled in accordance with the procedures for vacation selection. If an employee elects not to schedule said day as provided above, the employee may request to use his/her floating holiday at any time during the fiscal year. Requests shall not be unreasonably denied. If any employee is required to work on a scheduled floating holiday by the Employer, the employee shall be entitled to holiday pay.
- C. In addition to the foregoing paid holidays, employees shall be credited with one (1) floating holiday on December 1 of each year, which may be scheduled in accordance with the procedures for vacation selection set forth in Article VII, Section 2. If an employee elects not to schedule said day as provided above, the employee may request to use his/her floating holiday at the time during the fiscal year. Requests shall not be unreasonably denied. If an employee is required to work on a scheduled floating holiday by the Employer, the employee shall be entitled to holiday pay.
- D. If a scheduled holiday coincides with an employee's regular day off, the employee shall receive eight (8) hours compensatory time due in lieu of holiday pay.

Employees whose regular work schedule coincides with any of the six (7) major holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day) and where the employee works on said holiday, the employee shall receive one and one half (1 ½) times their hourly rate of pay, for all hours worked, plus an additional eight (8) hours of compensatory time due.

Employees who work on one of the six (6) minor holidays shall receive straight time pay for all hours worked plus an additional day off with pay.”

The Joint Employers’ Final Proposal [Offered as Section 7.1]

The following days are hereby declared holidays except in emergency and for necessary operations, for employees in the bargaining unit:

- | | | |
|-----|-------------------------------|---------------------------|
| 1. | New Year’s Day | January 1st |
| 2. | Martin Luther King’s Birthday | Third Monday in January |
| 3. | Lincoln’s Birthday | February 12th |
| 4. | President’s Day | Third Monday in February |
| 5. | Pulaski Day | First Monday in March |
| 6. | Memorial Day | Last Monday in May |
| 7. | Independence Day | July 4th |
| 8. | Labor Day | First Monday in September |
| 9. | Columbus Day | Second Monday in October |
| 10. | Veteran’s Day | November 11th |
| 11. | Thanksgiving Day | 4th Thursday in November |
| 12. | Christmas Day | December 25th |

It is the intent of the Employer that all employees be granted twelve (12) holiday, or equivalent paid days off per year. Each holiday is paid and treated as an eight hour day. In addition to the above, any other day or part of a day shall be considered a holiday when so designated by the Board of Commissioners.

In addition to the foregoing holidays, employees shall be credited with one (1) floating holiday on December 1 of each year, which may be scheduled in accordance with the procedures for vacation selection. The floating holiday is also paid and treated as an eight (8) hour day. If an employee elects not to schedule said days as provided above, the employee may request to use his/her floating holiday at any time during the fiscal year. Requests shall not be unreasonably denied. If an employee is required to work on a scheduled floating holiday by the Employer, the employee shall be entitled to holiday pay.”

The Position of the Union:

The Union proposes provisions similar to those appearing in relevant portions of the MAP 261 contract. The differences, the Union submits, are reflective of alternate work schedules, and do not represent an enhancement of any current right under the

status quo. Therefore, the Union argues, as its proposal accurately represents actual practices at present, its proposal on this economic issue should be adopted in its entirety.

The Position of the Joint Employers:

The Joint Employers rejects the Union’s proposal, because, according to the County, it is not reflective of the present *status quo*. Specifically, the Joint Employers argues that the Union’s final offer provides for two floating holidays, rather than one. Adding an additional floating holiday was never discussed at the bargaining table, the Joint Employers argues, and is something the County would never have agreed to during negotiations had the matter been raised.¹⁶ The Joint Employers states that its final proposal is consistent with the County’s present practices across all bargaining units, and should thus be adopted by the Arbitrator.

Discussion

After reviewing both proposals on this economic issue, the Arbitrator is persuaded that the Joint Employers’ final offer is more reasonable than the Union’s. This is so for two main reasons. First, the substance of the County’s offer is more comparable to language in the existing MAP 261 contract, in that it does not contain the Union’s paragraph “D,” or any reference to the subject matter contained therein. The Union’s paragraph “D” is clearly new language, and the Union failed to substantiate its specific reason for including it. There is no indication in this record that the language set forth in the MAP 261 contract is somehow insufficient in its detail, is ambiguous, or in the

¹⁶ The Arbitrator takes judicial note of a scrivener’s error in the Union’s final offer which, as the Joint Employers states, would ultimately have the effect of adding an additional floating holiday. The error occurred when Paragraphs B and C were obviously duplicated in the text of the proposal. They are, word for word, identical, and their full context clearly indicates to the Arbitrator unintentional replication.

alternative, is not functioning the way the parties intended. Neither is there a contractual distinction in the MAP 261 contract between “major” and “minor” holidays. While there may be practical differences between holidays from an administrative and/or scheduling point of view, neither the Union nor the Joint Employers adequately explained them to the Arbitrator. The Arbitrator is thus left with the fact that the most comparable collective bargaining agreement to this one, that belonging to the Telecommunicators bargaining unit, contains nothing even remotely resembling paragraph “D” of the Union’s final proposal on this issue.

Second, the Joint Employers’ final offer clarifies the fact that, while the members of this bargaining unit (at least at present) work 10-hour days rather than 8-hour days, holidays will be paid as 8-hour days. This is not noted in the Union’s final offer. Though the Arbitrator assumes, without so finding as a matter of fact, that the parties already know how to award holiday pay in employee groups assigned to work 10 rather than 8-hour days, he nevertheless finds the Joint Employers’ proposed language to be clearer and more representative of *status quo*.

For all the foregoing reasons, the Joint Employers final proposal on Designation of Holidays, which will appear in the new contract under Section 6.1, is adopted. The following Award so states.

AWARD

The Joint Employers’ final offer concerning Section 6.1 is adopted.

Section 6.2 – Holiday in Vacations

The Union’s Final Proposal

“If a holiday falls within an employee’s scheduled vacation, such employee, if otherwise eligible, will be carried holiday.”

The Joint Employers’ Final Proposal

[Offered as Section 7.3 “Holiday Pay for Holidays Not Worked”]

Should a holiday fall within an employee’s scheduled vacation, the employee will not be required to schedule a vacation day on the holiday, but will be granted the same eight hours of vacation pay as all other bargaining unit members that are off on the holiday. However, since bargaining unit employees work a ten hour schedule, employees that are off on the holiday will be required to use an additional two hours of benefit time (excluding sick time) to earn pay for the entire holiday.”

The Position of the Union

The Union states that its proposal is identical to language appearing in the MAP 261 contract, and it should thus prevail over that of the Joint Employers on this economic issue on the basis of internal comparability. Furthermore, the Union notes, similar or identical language may also be found in other Sheriff’s Department collective bargaining agreements.¹⁷ Every internally comparable agreement offered into evidence supports this proposal, the Union argues, and thus, the Arbitrator is urged to select it over that of the Joint Employers as the more reasonable of the two offers.

The Position of the Joint Employers

The Joint Employers argues that its proposal for Section 7.3 (Holiday Pay for Holidays Not Worked) should be selected over language proposed by the Union under Section 6.2, both of which concern the matter of pay for holidays falling within a covered employee’s vacation. The Joint Employers argues that, should the Arbitrator grant the

¹⁷ See; Cook County Correctional Officers Section 6.3, Cook County Correctional Sergeants Section 7.2, Cook County Sheriff’s Police Section 6.4, Cook County Sheriff’s Police Sergeants Section 7.2, Cook County Court Services Officers Section 6.3.

Union’s proposal, members of this bargaining unit would receive a total of 130 hours of pay for the thirteen Joint Employers holiday, because members of this unit work 10-hour days rather than 8-hour days. Clearly, the Joint Employers argues, members of this unit should not receive more holiday pay than other County employees, and as such, the Union’s final proposal should be rejected.

Discussion

After considering the respective arguments of the parties, and examining the collective bargaining agreements of other comparable units, the Arbitrator is persuaded, in accordance with the statutory criterion of internal comparability, that the Union’s final offer should be adopted. The Arbitrator does not read into the language the dire outcome argued by the Joint Employers, for indeed, there are other groups in the Sheriff’s Department who work 10-hour days and receive no more holiday pay than other County employees if the holiday falls within their scheduled vacation periods. In fact, the Union’s proposes that employees in this bargaining unit be carried as “holiday” if such a holiday falls within their vacation, and adopted Section 6.1 expressly states that holidays will be paid as 8-hour days. The practical effect of the Union’s proposed Section 6.2, then, is the retention of a day of vacation that would otherwise be used. The same effect is more clearly stated in Section 6.3 of the MAP 261 agreement, which says, “If a holiday falls within an employee’s scheduled vacation, such employee, if otherwise eligible, shall be granted an additional day of vacation.” Obviously, the parties did not intend here to grant an additional day of vacation, *per se*. Instead, it was clearly understood that employees whose vacations bridged a recognized holiday would be paid holiday pay and not vacation pay on the date upon which the holiday fell. The Union proposes the same

here, though in the case of this bargaining unit, that would amount to 8 hours of pay rather than 10. The Union’s proposed Section 6.2 language does not require employees to use up an earned vacation day on a holiday. This is a privilege enjoyed by members of many, if not all, other comparable Sheriff’s Department bargaining units, and the Telecommunications Supervisors represented by MAP 507 should have the same benefit.

For all the foregoing reasons, the Arbitrator is persuaded that the Union’s final offer for Section 6.2 should be adopted, and further that the Joint Employers’ final offer for applicable Section 7.3 should be rejected. The following Award so states.

AWARD

The Union’s final offer for Section 6.2 is adopted. The Joint Employers’ relevant final offer under Section 7.3 is specifically rejected.

Section 7.1 – Vacation Leave

The Union’s Final Proposal

- A. All bargaining unit employees, who have completed one year of service with Cook County, including service mentioned in Section 1, Paragraph E, shall be granted vacation leave with pay for periods as follows:

<u>Anniversary Of Employment</u>	<u>Days of Vacation</u>	<u>Maximum Accumulation</u>
1st thru 6th	80 hours	160 hours
7th thru 14th	120 hours	240 hours
15th thru 20th	160 hours	320 hours

- B. Accruals will be carried out in accordance with the bi-weekly payroll system. Employees must be in a pay status for a minimum of 5 days in a pay period to accrue time in that period.
- C. All individuals employed on a part-time; [sic] work schedule of twenty (20) hours per week or more shall be granted vacation leave with pay proportionate to the time worked per month.

- D. Employees may use only such vacation leave as has been earned and accrued provided, however, that five (5) working days of the initial vacation allowance may be allowed after the first six (6) months of service. The heads of the County offices, departments, or institutions may establish the time when the vacation shall be taken.
- E. Any employee, of the County of Cook who has rendered continuous service to the City of Chicago, the Chicago Park District, the Forest Preserve District, the Metropolitan Sanitary District of Greater Chicago and/or the Chicago Board of Education shall have the right to have the period of such service credited and counted for the purpose of computing the number of years of service as employees of the County for vacation credit only. All discharges and resignations not followed by reinstatement within one (1) year shall interrupt continuous service, and shall result in the loss of all prior service credit. Credit for such prior service shall be established by filing, in the Office of the Comptroller of Cook County, a certificate of such prior service from such former place or places of employment.
- F. In the event an employee has not taken vacation leave as provided by reason of separation from service, the employee, or in the event of death, the employee's spouse or estate, shall be entitled to receive the employee's prevailing salary for such unused vacation periods.
- G. In computing years of service for vacation leave, employees shall be credited with regular working time plus the time of duty disability.
- H. Any Cook County employee who is a re-deployed veteran shall be entitled to be credited with working time for each of the years absent due to military service. The veteran's years of service for purposes of accrual of vacation time in the year of return to employment with Cook County, shall be the same as if employment had continued without interruption by military service.
- I. Holidays recognized by the Board of Commissioners of Cook County are not to be counted as part of a vacation.
- J. Employees on the 130 Extra and Overtime Account will not receive any fringe benefits."

The Joint Employers' Final Proposal
[Offered as Section 8.1]

All bargaining unit employees who have completed one (1) year of service with the Employer shall be granted vacation leave with pay for periods as follows:

<u>Anniversary of Employment</u>	<u>Days of Vacation</u>	<u>Maximum Accumulation</u>
1st thru 6th	80 hours	160 hours
7th thru 14th	120 hours	240 hours
15th and beyond	160 hours	320 hours

Employees must be in a pay status for a minimum of five (5) days in a bi-weekly pay period to accrue time in that period.

Employees may use only such vacation leave as has been earned and accrued provided, however, the forty (40) hours of the initial vacation allowance may be allowed after the first six (6) months of service. The County or Sheriff officials may establish the time when the vacation shall be taken.

Any employee of the County of Cook who has rendered continuous service to the City of Chicago, the Chicago Park District, the Forest Preserve District, the Water Reclamation District of Greater Chicago and/or the Chicago Board of Education shall have the right to have the period of such service credited and counted for the purpose of computing the number of years of service as employees of the County for vacation credit only. All discharges and resignations not followed by reinstatement within one (1) year shall interrupt continuous service, and shall result in the loss of all prior service credit. Credit for such prior service shall be established by filing, in the Office of the Comptroller of Cook County, a certificate of such prior service from such former place or places of employment.

Any Cook County Employee who is a re-employed veteran shall be credited with working time for the years of his absence pursuant to the County’s military leave policy.

Employees on the one hundred thirty (130) Extra and Overtime Account will not receive any fringe benefits.”

The Position of the Union:

The Union proposes language mirroring applicable MAP 261 Section 7.1. Similar or identical language also appears in other internally comparable agreements, the Union argues, and thus, its final offer should be adopted by the Arbitrator over that of the Joint Employers on this economic issue.

The Position of the Joint Employers:

The Joint Employers argues that the Union’s final offer should be rejected for several reasons. First, the Joint Employers argues, the language appearing in paragraphs b, c, and parts of e, i, and j were not included in any of the offers brought by the Union to the bargaining table. Moreover, the Joint Employers argues, the Union’s proposed paragraph c is inappropriate and frivolous, since there are no part-time employees in this bargaining unit. Finally, the Joint Employers argues that its proposal is consistent with practice and policy, and is therefore representative of the present *status quo*. For all the foregoing reasons, the Joint Employers urges the Arbitrator to adopt “Vacation Leave” provisions presented under Section 8.1.

Discussion

After examining the two proposals offered by the Union and the Joint Employers on the impasse issue of “Vacation Leave,” the Arbitrator concludes that the Joint Employers’ language more accurately represents the parties’ mutual understanding of the *status quo*, though neither offer is perfect. This is an economic issue under the Act, and therefore, the Arbitrator is not privileged to amend or correct either final proposal. While the Union’s final offer indeed appears to have strong support from the statutory criterion of internal comparability, particularly since it is an exact duplicate of applicable MAP 261 contract language, its particular construction does not serve the parties’ purposes here.

First, as the Joint Employers notes, there are no part-time employees in this bargaining unit, and thus, inclusion of paragraph “C” of the Union’s offer has no practical value. Indeed, as the Joint Employers argues, it is “frivolous” and unnecessary. Second,

paragraph “D” of the Union’s final offer states in relevant part that, “Employees may use only such vacation leave as has been earned and accrued provided, however, that five (5) working days of the initial vacation allowance may be allowed after the first six (6) months of service.” (Emphasis added.) In the MAP 261 unit, 5 “working days” amounts to 40 hours. In this bargaining unit, 5 “working days” amounts to 50 hours, since Telecommunications Supervisors work 10-hour days. While a similar error appears in the second paragraph of the Joint Employers’ final offer, the practical effect of the two (as mistakes go) is not the same. In the case of Paragraph “D” of the Union’s final offer, the error has both a monetary value and an administrative value. In other words, from a monetary standpoint, the Joint Employers would be contractually bound to pay 50 hours rather than 40 hours of vacation time in the first six months of service. Clearly, this would represent an enhanced benefit to new employees in this bargaining unit not otherwise afforded to those in other internally comparable groups.

From an administrative standpoint, the Union’s mistake also has impact on the County’s operation, because new employees in this group (those who have served for more than six months), would get an extra “working day” off as vacation, because they normally work 4 days in a 7 day period rather than 5.

For those reasons, then, the Arbitrator concludes that the language proposed by the Union is too fraught with errors to truly represent the current (and understood) *status quo*. The Arbitrator recognizes that the Joint Employers, too, has referenced “days” in its accrual language. (“Employees must be in a pay status for a minimum of five (5) days in a bi-weekly pay period to accrue time in that period.”) Clearly, by referencing “bi-weekly pay periods,” the Joint Employers conveyed that it did not mean that members of

this bargaining unit had to work more hours than other Sheriff's Department unionized employees in order to qualify for vacation. The Arbitrator thus recognizes that this particular mention of "five days" was really intended to mean 40 hours of qualifying service. Accordingly, the Arbitrator recommends, for the sake of clarity, that the adopted accrual language be amended to reflect "40 hours" or "4 work days" before the final contract is published.

Because this is an economic issue, the Arbitrator is not lawfully permitted to amend either proposal in order to correct what amount to administrative errors. The sum and substance of both offers is appreciably the same. Here, however, the Joint Employers' final offer is the less flawed of the two. Thus, for all the foregoing reasons, and with the Arbitrator's recommendation that the appropriate accrual reference be corrected, the Arbitrator concludes that the Joint Employers' final offer should be adopted. The following Award so states.

AWARD

The Joint Employers' final offer, presented to the Arbitrator as Section 8.1, is adopted, and will appear in the final contract under Section 7.1 – Vacation Leave.

Section 8.1 – Hospitalization Insurance

The Union's Final Proposal

The County agrees to maintain the current level of employee and dependent health benefits that are set forth in Appendix C as revised by this Agreement, and specifically described in Appendix C."

The Joint Employers' Final Proposal [Offered as Section 9.1]

The County agrees to maintain the level of employee and dependent health benefits in accordance with Appendix C.

Should the Arbitrator grant the Union’s proposal for the duration of the CBA, the County further proposes the following language to be added to this Section:

The provisions of this Section shall be subject to a re-opener of the negotiations of this Section effective November 30, 2012. Upon the request of either party, the terms of this Section and Appendix C shall be negotiated by the parties. The parties agree that they will begin negotiations within thirty (30) days of notice by either party of the desire to re-open the negotiations.”

Discussion

There is little need to present the parties’ respective arguments with regard to Hospitalization Insurance, in that the substance of both final offers is the same. “Appendix C,” referenced in the final proposals of both the Union and the Joint Employers, sets forth County-wide health care policies which mirror those of all unionized employee groups in Cook County. Thus, both reason and the statutory criterion of internal comparability demand that this bargaining unit of only five employees receive the same benefits as all other unionized groups who participate in the aforementioned “pattern bargaining.” What distinguishes the two offers in this case is a marked recognition that the term of this Collective Bargaining Agreement is an open issue. The Union petitions for a longer contract term, expiring in 2014. The Joint Employers, on the other hand, urges the Arbitrator to adopt a contract which, in effect, has already expired. The Joint Employers insists this is reasonable, because the County’s other collective bargaining agreements expired on November 30, 2012, and, as previously mentioned, major common issues such as wage and health insurance are negotiated on a County-wide basis.

The Union has constructed Section 8.1 in such a way as to ensure that whatever “Appendix C” contains at the time of this contract’s implementation will remain in effect

until its expiration. In the event the Arbitrator concludes that expiration of the contract should be 2014 rather than 2012, the Union proposes to maintain *status quo* with respect to health insurance despite inevitable Appendix C changes that will be negotiated into other comparable contracts which expired in 2012.

Upon the whole of the record, the Arbitrator concludes that the Joint Employers' language, as it was proposed under Section 9.1, is clear, concise, and representative of the County-wide *status quo*. As will be addressed (and explained) herein below, the Arbitrator will be adopting the Joint Employers' proposal for a contract which shares an expiration date with most, if not all, internally comparable (and also County-wide) collective bargaining agreements. Therefore, the Joint Employers' final proposal (without the suggested and now unnecessary "reopener" amendment) is more appropriate in its construction than that of the Union. Accordingly, and for all the foregoing reasons, it is hereby adopted. The following Award so states.

AWARD

The Joint Employers' final offer is adopted, and will appear as Section 8.1 of the final contract.

Section 8.2 – Sick Leave

The Union's Final Proposal

- A. All monthly salaried employees, other than seasonal employees, shall be granted sick leave with pay at the rate of one (8 hours) working day for each month of service. Accruals will be carried out in accordance with the bi-weekly payroll system. Employees must be in a pay status for a minimum of 5 days in a pay period to accrue time in that period. Accrued sick leave will carry over if employees change offices or departments within the County as long as there is no break in service longer than thirty (30) days.

All individuals employed on a part-time work schedule of twenty (20) hours per week or more shall be granted sick leave with pay proportionate to the time worked per month.

- B. Sick leave may be accumulated to equal, but at no time to exceed, one hundred seventy-five (175) working days, at the rate of twelve (12) working days per year. Records of sick leave credit and use shall be maintained by each office, department, or institution. Severance of employment terminates all rights for the compensation hereunder. Amount of leave accumulated at the time when any sick leave begins shall be available in full, and additional leave shall continue to accrue while an employee is using that already accumulated.
- C. Sick leave may be used for illness, disability incidental to pregnancy, or non-job related injury to the employee; appointments with physicians, dentists, or other recognized practitioners; or for serious illness, disability, or injury, in the immediate family of the employee. Sick leave shall not be used as additional vacation leave. Sick leave may be used as maternity or paternity leave by employees.
- D. An employee who has been off duty for five (5) consecutive days or more for any health reason shall submit to their department head a doctor's certificate as proof of illness. Such employees also may be required to undergo examination by the Employer's physician before returning to work. This practice will not be used in a capricious and discriminatory manner.

For health related absences of less than five (5) consecutive days, a doctor's statement or proof of illness will not be required except in individual instances where the Sheriff has sufficient reason to suspect that the individual did not have a valid health reason for the absence. If indicated by the nature of a health related absence, examination by die [sic] Employer's physician may be required to make sure that the employee is physically fit for return to work.
- E. In, in the opinion of the Sheriff/Designee the health of an employee warrants prolonged absence from duty, the employee will be permitted to combine his/her vacation, sick leave and personal days. Employees will be allowed to use accumulated time due hours in addition to vacation, sick and personal day.
- F. The employee may apply for disability under the rules and regulations established by the Retirement Board.
- G. In the event a Telecommunicator is unable to report for work due to illness or injury, he/she must inform the Watch Commander on duty within two (2) hours of his/her designated starting time."

The Joint Employers' Final Proposal [Offered as Section 9.2]

Telecommunications Supervisors shall be [sic] accrue sick leave with pay at the rate of eight hours each month. Accruals will be carried out in accordance with the bi-weekly payroll system. Employees must be in a pay status for a minimum of five (5) days in a pay period to accrue time in that period. Accrued sick leave will carry over if employees change offices or Departments within the County as long as there is no break in service longer than thirty (30) days.

Sick leave may be accumulated to equal, but at no time to exceed, one thousand four hundred hours, at the rate of 96 hours per year. Records of sick leave credit and usage shall be maintained by each office, department, or institution. Severance of employment shall terminate all rights of the compensation hereunder. The amount of leave accumulated at the time when a sick leave begins shall be available in full, and additional leave shall continue to accrue while an employee is using that already accumulated.

Sick leave may be used in accordance with Cook County policy. Sick leave may not be used as another way to take time off with pay and may not be used to extend an approved leave of absence.

After five (5) consecutive days a doctor's certificate as proof of illness will be required. Such employees also may be required to undergo examination by the Employer's physician before returning to work. All time used shall be charged to the employee. In the event that an employee will be off for more than forty (40) hours, the employee will furnish the Employer with a doctor's statement as soon as possible and will keep the Employer informed as to when he/she anticipates returning to work.

For health related absences of less than five (5) consecutive days, a doctor's statement or proof of illness will not be required except in individual instances where the Sheriff has sufficient reason to suspect that the individual did not have a valid health reason for the absence. 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.

If, in the opinion of the Employer, the health of an employee warrants prolonged absence from duty, the employee will be permitted to combine his/her vacation, sick leave, compensatory time and personal days. In the event a bargaining unit member is unable to report for work due to illness or injury, he/she must inform the Watch Commander at least two (2) hours prior to their designated start time."

The Position of the Union:

The Union argues that its final offer concerning the impasse issue of Sick Leave should prevail over that of the Joint Employers on the basis of internal comparability.

The language proposed, the Union states, is identical to that of comparable Section 8.2 of the MAP 261 contract. Moreover, the Union argues, similar or identical language appears in the collective bargaining agreements of many other internally comparable Sheriff's Department units. There is no logical reason, the Union argues, for the Joint Employers to have rejected this final offer, and the Arbitrator is accordingly urged to adopt Section 8.2 as proposed.

The Joint Employers' Final Proposal [Offered as Section 9.2]

The Joint Employers urges the Arbitrator to reject the Union's proposal for several reasons. First, the Joint Employers argues, the Union's offer contains "frivolous language" and "has inaccurate accruals."¹⁸ There are no part-time members in this bargaining unit, the Joint Employers argues, and the Union's proposed accruals are based on "work days," when sick time is actually accumulated on an hourly basis.

Second, the Joint Employers argues, the Union proposes language in its "last best offer" which the parties had no opportunity to discuss at the bargaining table. For that and all the foregoing reasons, then, the Joint Employers urges the Arbitrator to reject the Union's final offer in its entirety.

Discussion

After reviewing both proposals in detail, the Arbitrator is persuaded that the Joint Employers' final offer on this economic issue is more reasonable than that of the Union. As in other instances, the Union's proposal contains a provision pertaining to part-time employees, when there are no part-time employees in this bargaining unit. The Arbitrator

¹⁸ Joint Employers brief at page 66.

understands that the Union merely duplicated the MAP 261 language,¹⁹ and thus urges him to grant the proposal in its entirety on the basis of internal comparability. On this point, the Union specifically argues Telecommunications Supervisors are deserving of the same sick leave benefits as their subordinates. However, the Joint Employers' proposed language does not reduce any benefit to which these Supervisors are otherwise entitled. Instead, it clarifies the matter of sick leave accrual by removing the Union's reference to "working days," which in this case is not appropriate given the fact that, unlike their counterparts in MAP 261, members of this bargaining unit work 10-hour days rather than 8-hour days. It is noted that paragraph A of the Union's proposal indeed states that sick leave shall be granted "at the rate of one (8 hours) working day." However, there is certainly room for misunderstanding in subsequent paragraph B, wherein the Union proposes that sick leave be accumulated to "equal, but at no time to exceed, one hundred seventy-five (175) working days, at the rate of twelve (12) working days per year." (Emphasis added.) Because the matter of Sick Leave is an economic issue under the Act, the Arbitrator is not vested with authority to amend either final proposal for purposes of clarifying or correcting potentially ambiguous or confusing language.

The Arbitrator therefore concludes that Joint Employers' proposal provides for the appropriate benefit, maintains the current *status quo*, and is far less ambiguous than the Union's final offer on this subject. For all the foregoing reasons, then, the Arbitrator adopts the Joint Employers' proposal as presented under Section 9.2. Sick Leave provisions, however, will appear in the final contract under Section 8.2. The following

¹⁹ See, "G" of the Union's proposal where the term "Telecommunicator" is used instead of "Telecommunications Supervisors".

Award so states.

AWARD

The Joint Employers' final proposal is adopted. However, it will be under Section 8.2 rather than Section 9.2.

Section 8.3 – Disability Benefits

The Union's Final Proposal

Employees incurring any occupational illness or injury will be covered by Workers' Compensation insurance benefits. Employees injured or sustaining occupational disease on duty, who are off work as a result thereof shall be paid Total Temporary Disability Benefits pursuant to the Workers' Compensation Act. Duty disability and ordinary disability benefits also will be paid to employees who are participants in the County Employee Pension Plan. Duty disability benefits are paid to the employee by the Retirement Board when the employee is disabled while performing work duties. Benefits amount to seventy-five percent (75%) of the employee's salary at the time of injury, and begin the day after the date the salary stops. Ordinary disability occurs when a person becomes disabled due to any cause, other than injury on the job. An eligible employee who has applied for such disability compensation will be entitled to receive, on the thirty-first (31st) day following disability, fifty percent (50%) of salary, less an amount equal to the sum deducted for all annuity purposes. The first thirty (30) consecutive days of ordinary disability are compensated for only by the use of any accumulated sick pay and/or vacation pay credits unless the employee and the Employer otherwise agree. The employee will not be required to use sick time and/or vacation time for any day of duty disability. All of the provisions of this Section are subject to change in conjunction with the changes in State laws.

The Sheriff shall write a letter to the Pension Board requesting that the bargaining unit employees under this contract be covered under IOD or On Duty Injury time wherein the first 30 days during which an employee is away from work shall be paid by the County's time and not the Employee's.

The Joint Employers' Final Proposal

The Joint Employers rejects the Union's final offer in its entirety.

The Position of the Union:

The Union's proposal mirrors the language in applicable Section 8.3 of the MAP

261 contract, and is characterized as “a benefit every employee in the County receives.” Similar or identical language is also present in other internally comparable Sheriff’s Department collective bargaining agreements, the Union argues.²⁰ Given such compelling evidence of internal comparability, the Union submits, the Joint Employers rejection of proposed Section 8.3 should not prevail.

The Position of the Joint Employers:

The Joint Employers rejects the Union’s final offer concerning disability benefits because some provisions therein were “never brought to the bargaining table before the Union proposed it in its Last Best Offer.”²¹ The Joint Employers also argues that the Union’s proposed final paragraph (which is one the parties never discussed) could have significant economic impact on the County, in that it requires the Joint Employers to cover an employee’s salary for the first thirty days whenever he or she has claimed an on-duty injury. For that and other foregoing reasons, the Joint Employers urges the Arbitrator to reject the Union’s final offer in its entirety.

Discussion

It should come as no surprise to the Joint Employers that the Union’s proposal will prevail in light of overwhelming support from the statutory criterion of internal comparability. Every single cited bargaining unit within the Sheriff’s Department enjoys disability benefits, not the least of which is the subordinate MAP 261 unit. Certainly, Telecommunications Supervisors should not have fewer important benefits than the

²⁰ See; Cook County Correctional Officers Section 8.3, Cook County Correctional Sergeants Section 9.3, Cook County Sheriff’s Police Section 9.3, Cook County Sheriff’s Police Sergeants Section 9.3, Cook County Court Services Officers Section 8.3.

²¹ Joint Employers brief at page 67.

employees whom they supervise. Neither should this new bargaining unit be less favorably situated than all others in the Sheriff's Department.

The Joint Employers argues that the final paragraph of the Union's final offer was not brought to the bargaining table. However, there is no counter-offer from the Joint Employers upon which the Arbitrator might rely in rejecting the Union's proposal on this economic issue. In other words, the situation here is this; either this bargaining unit will be awarded no disability benefits (in the absence of a Joint Employers counter-offer), or the disability benefits proposed by the Union. The statutory criterion of internal comparability demands that the Union's offer succeed. It will, and the following Award so states.

AWARD

The Union's final proposal concerning Section 8.3 Disability benefits is adopted.

Section 9.1 – Bereavement Leave

The Union's Final Proposal

- A. Excused leave with pay will be granted, up to three (3) days, to an employee for the funeral of a member of the employee's immediate family or household. Immediate family is understood to include mother, father, husband/wife, child (including Step children and foster children), brother/sister, grandchildren, grandparents, spouse's parents and such people who have reared the employee.
- B. Any additional time needed in the event of bereavement may be granted consistent with the operating needs of the facility from accumulated vacation, personal days, or compensatory time accumulated by the employee.
- C. If an employee's vacation is interrupted by a death in the immediate family, bereavement pay as described herein shall be allowed, and such days will not be counted as vacation.

- D. To qualify for pay as provided herein, the employee may be required to provide satisfactory proof of death, relationship to deceased, proof of residence in the employee’s household and attendance at the funeral.

The Joint Employers’ Final Proposal
[Offered as Section 10.1]

- “A. Excused leave with pay will be granted, up to three (3) days, to an employee for the funeral of a member of the employee’s immediate family. For purposes of this Section, an employee’s immediate family includes mother, father (including in-laws), husband, wife, child (including step, foster, and adopted), brothers, sisters, grandchildren, and grandparents.
- B. Leave requested to attend the funeral for someone other than a member of an employee’s immediate family or household may be granted, but time so used shall be deducted from the accumulated vacation, personal leave or compensatory time due of the employee making the request.

The Position of the Union:

The Union’s proposal is identical to applicable Section 9.1 of the MAP 261 contract. The Joint Employers’ proposal, the Union argues, “significantly reduces this chapter’s ability to use bereavement leave.”²² This unit, the Union argues, should have no fewer rights than their subordinates, and for that reason, the Arbitrator should adopt this offer over that of the Joint Employers.

The Position of the Joint Employers:

The Joint Employers argues that its final proposal should be accepted because it is consistent with the County’s policies and practices. Much of the Union’s final offer was not brought to the bargaining table, the Joint Employers argues, and moreover, paragraph C is not representative of the present *status quo*. The Joint Employers accordingly urges the Arbitrator to adopt its final offer over that of the Union on this economic issue.

²² Union brief at page 47.

Discussion

After carefully reading both proposals and searching the contracts of other internally comparable bargaining unit, the Arbitrator is convinced that the Union's offer should prevail on the statutory criterion of internal comparability. The Joint Employers argues two fundamental points here, which in light of the evidence, are not persuasive. First, the Joint Employers argues that it is not County policy to grant bereavement leave in the event of the death of "persons who reared the employee." The proofs in this record demonstrate the contrary. As previously noted, that right has been granted to members of the MAP 261 unit already, and thus it is disingenuous for the Joint Employers to contend that accepted policies and practices do not permit such an extension of benefits. Furthermore, several other bargaining unit agreements within the Sheriff's Department allow bereavement leave for that purpose, including the contracts for Cook County Correctional Sergeants, Cook County Sheriff's Police, Cook County Police Sergeants, Cook County Deputy Sheriffs, Cook County Deputy Sheriff Sergeants, and DCSI Deputy Chiefs.

As to the additional provision for vacation interruption, which the Joint Employers also argues is counter to the *status quo*, even though it appears in the MAP 261 contract, it also appears in the collective bargaining agreements of at least two other unionized groups in the Sheriff's Department; Cook County Correctional Sergeants, and Cook County Police Sergeants. While the Arbitrator acknowledges that comparability does not as strongly support the vacation interruption provisions petitioned by the Union, there is nevertheless precedent for them in other Sheriff's Department contracts. Importantly, one of these is the MAP 261 agreement, and the Arbitrator is persuaded by

the Union, in light of cited evidentiary support, that Telecommunications Supervisors should have no fewer benefits than those of their directly subordinate group on this subject.

For that and all the foregoing reasons, then, the Arbitrator finds the Union's proposal more reasonable than the Joint Employers' on the economic issue of Bereavement Leave. It is therefore adopted, and the following Award so states.

AWARD

The Union's proposal concerning Section 9.1 Bereavement Leave is adopted.

Section 9.4 – Election Day

The Union's Final Proposal

An employee who is a registered voter will receive two (2) hours time off without pay during his regular work day so that he/she may vote in any general election. An employee desiring to take such time off shall arrange the exact hours of intended absence with his/her supervisor at least two (2) work days prior to the election.”

The Joint Employers' Final Proposal

The Joint Employers rejects the Union's proposal in its entirety.

The Position of the Union:

The Union's proposal asks that registered voters in the bargaining unit be allowed two hours off without pay to vote on election days. The Union argues that because this proposal was never responded to in the form of a counter-proposal, its final offer should prevail, citing in support City of Belleville and Illinois Fraternal Order of Police, S-MA-08-157 (Goldstein, 2010). (Arbitrator awarded the Union's proposal when the employer

failed to submit a final offer on a provision.) On that basis, the Union urges the Arbitrator should also adopt the instant proposal concerning Election Day privileges.

The Position of the Joint Employers:

The Joint Employers argues that the Union's proposal should be rejected because it is not representative of the *status quo* in the Sheriff's Department. County policy, the Joint Employers explains, provides for time off to vote only if an employee's shift embraces the entire period in which the polls are open. That is not the case in this bargaining unit, the Joint Employers argues. The Joint Employers further submits that the Union offered nothing in the way of evidence to support a need to depart from *status quo*, and as such, urges the Arbitrator to reject the Union's final offer in its entirety.

Discussion

After reviewing the record and the arguments of the parties, the Arbitrator is convinced that the Union's final proposal on this issue should be rejected. As the Joint Employers notes, the Union's offer in this economic issue represents a notable departure from present *status quo* as set forth in established County policy. The Union offered no evidence that the present system is causing undue hardship on the bargaining unit such that an exception must be made for this particular employee group. Furthermore, the most significant statutory criterion in this case, that of internal comparability with other Sheriff's Department bargaining units, does not support the proposed departure from recognized *status quo*. For that and all the foregoing reasons, then, the Arbitrator rejects the Union's proposal concerning Election Day benefits. The following Award so states.

AWARD

The Union's final proposal concerning Section 9.4 Election Day is rejected.

Section 9.5 – Personal Days

The Union's Final Proposal

Employees will accrue personal days at the rate of 1.23 hours per pay period (bi-weekly).

All employees, except those in a per diem or hourly pay status, shall be permitted four (4) days off with pay each fiscal year. Employees may be permitted these four (4) days off with pay for personal leave for such occurrences as observance of a religious holiday or for other personal reasons. Such personal days shall not be used in increments of less than one-half (1/2) day at a time.

Employees entitled to receive such leave, who enter Cook County employment during the fiscal year, shall be given credit for such personal leave at the rate of one (1) day for each full fiscal quarter in pay status; except that two (2) personal days may be used for observance of religious holidays prior to accrual, to be paid back in the succeeding two (2) fiscal quarters. No more than four (4) personal days may be used in a fiscal year.

If the health of an employee warrants prolonged absence from duty, the employee will be permitted to combine personal days, sick leave and vacation leave. Personal days may be used consecutively, if approved by the supervisor. Personal days off shall be scheduled in advance to be consistent with operating necessities and convenience of the employee, subject to Department Head approval.

In crediting personal days, the fiscal year shall be divided into the following fiscal quarters:

- 1st Quarter- December, January, February
- 2nd Quarter- March, April, May
- 3rd Quarter- June, July, August
- 4th Quarter- September, October, November

Severance of employment shall terminate all rights to accrued personal days.

All hours of personal time accumulated annually by Telecommunications Supervisors in excess of thirty (30) and left unused shall be converted to compensatory time.

The Joint Employers' Final Proposal [Offered as Section 10.3]

Employees will accrue personal days at the rate of 1.24 hours per pay period (bi-weekly). Two (2) personal days may be used for observance of religious holidays prior to accrual, to be paid back in the succeeding two (2) fiscal quarters. No more than four (4) personal days may be used in a fiscal year.

Personal days shall not be used as additional vacation leave, if the health of an employee warrants prolonged absence from duty, the employee will be permitted to combine personal days, sick leave, and vacation leave.

The Position of the Union:

The Union's proposal concerning the economic issue of Personal Days is nearly identical to the language of applicable Section 9.5 in the MAP 261 contract. The only difference, the Union explains, is the last sentence which states, "All hours of personal time accumulated annually by Telecommunicator Supervisors in excess of 30 and left unused shall be converted to compensatory time." Since the employees in this chapter work 10-hour days, the Union notes, they use their personal days differently than employees who work 8-hour shifts, and are often left with "stray" hours of benefit time they have difficulty using. Until recently, the Union argues, Telecommunications Supervisors were allowed to convert those odd hours to compensatory time rather than lose them, and the instant proposal merely codifies that former practice. The Joint Employers, the Union states, unilaterally changed that practice "on the eve of bargaining" for this contract, and should not now be rewarded for doing so. For all the foregoing reasons, the Union urges the Arbitrator to adopt its final proposal concerning Personal Days.

The Position of the Joint Employers:

The Joint Employers argues that its proposal should be adopted over that of the Union, because it is consistent with the County's policy that employees must use all of

their personal time within the year in which it is earned. Contrary to the present *status quo*, the Joint Employers argues, the Union’s proposal would allow members of this bargaining unit to convert personal time in excess of thirty hours to compensatory time at the end of the year. The Union offered no explanation as to how members of this bargaining unit have been unduly harmed by the Joint Employers’ policy, and neither has the Union proposed any *quid pro quo* for the economic hardship that would result from adoption of its final offer on this issue. Allowing Telecommunications Supervisors to convert personal time to compensatory time on an annual basis would lead to a large unfunded liability at the end of the year, the Joint Employers argues, and absent any reason to depart from present policy barring that practice, the *status quo*, should be maintained.

Discussion

This is an economic issue under the Act, and as a consequence, the Arbitrator is compelled to select one final offer over the other in its entirety. After reviewing the record and the arguments of the parties, the Arbitrator is persuaded that the Joint Employers’ final offer should prevail over that of the Union. Were it not for the inclusion of the final paragraph of the Union’s final offer, there would have been strong support from the statutory criterion of internal comparability for its adoption instead. Prior to bargaining for this contract, according to evidence not in dispute, the County unilaterally implemented a “use it or lose it” policy with respect to personal days. This, the County was privileged to do. This was an unrepresented work group at the time, and as a consequence, there were no constraints upon management’s right to establish such a policy relative to Telecommunications Supervisors. There was no essential reduction in

the benefit itself, because the County did not act to increase accrual requirements to the detriment of the bargaining unit. Instead, the County implemented a fiscal decision requiring that the “liability” of personal days be exhausted in the year in which the benefit was actually earned.

Unsuccessful at regaining a privilege to convert unused personal time to compensatory time at the bargaining table, the Union urges the Arbitrator to do so here. However, as the Joint Employers argues, there has been no observable offer of *quid pro quo* for an obvious “breakthrough,” and neither is there any support in the record from the statutory criterion of internal comparability. The Arbitrator notes that even in the MAP 261 bargaining unit, personal days may be used in increments of one-half day (or more) at a time. Therefore, it is just as likely for Telecommunicators represented by MAP 261 to have “left over” personal time at the end of the year as it is for their supervisors. The Union has failed to show that the MAP 507 bargaining unit (because of the 10-hour days) is, from a practical standpoint, disparately situated as compared with MAP 261 Telecommunicators, particularly in light of the fact that Section 9.5 of the MAP 261 contract makes no provision for the conversion of personal time to compensatory time.

For lack of evidentiary support, statutory support, and/or *quid pro quo*, the Arbitrator concludes that the Union’s final offer must be rejected on this economic issue. The Joint Employers’ final offer will be adopted as the more reasonable of the two. The following Award so states.

AWARD

The Joint Employers' final proposal is adopted. "Personal Days" provisions will appear in the contract under Section 9.4 because of the Arbitrator's prior rejection of the Union's unilateral proposal concerning "Election Day" benefits.

Section 10.5 – Union Leave

The Union's Final Proposal

A leave of absence not to exceed one (1) year without pay, will be granted to an employee who is elected, delegated or appointed to participate in duly authorized business of the Union that requires absence from the job. Such leave may be extended by mutual agreement. Employees duly elected as delegates of the Union will be allowed time off, without pay, to attend State and National conferences and conventions of the Union, not to exceed ten (10) work days for each employee. Sick pay, vacation pay and insurance benefits will be provided as set forth in Section 3 of this Article."

The Joint Employers' Final Proposal

The Joint Employers rejects the Union's final offer in its entirety.

The Position of the Union:

The Union argues that the statutory criterion of internal comparability supports its proposal on this non-economic issue. The Union seeks a benefit similar to that which appears in Section 10.4 of the MAP 261 contract, which authorizes a leave of absence not to exceed one year for employees to participate in Union duties requiring an extended absence from the job. "While this is infrequent," the Union argues, "this provision is not uncommon with the Employer." Thus, the Union submits, given "compelling evidence" of internal comparability, the Arbitrator should adopt its final proposal on the issue of Union Leave.

The Position of the Joint Employers:

The Joint Employers argues that the Union’s proposal concerning Union Leave should be rejected because it would place an undue hardship on the County. The Union’s proposal would allow a covered employee to take a leave of absence for a period of one year to participate in Union business, the Joint Employers notes. However, the Joint Employers argues, there are only five employees in this bargaining unit to begin with, and therefore, allowing one employee to be off for an entire year without the privilege of back-filling his or her position as a vacancy, would prompt an obvious increase in the need for overtime. Moreover, the Joint Employers argues, there is no stated limit as to the number of people in the bargaining unit who could be elected delegates at any given time, and therefore, there is a real risk that more than one bargaining unit employee could petition for leave at the same time.

For that and all the foregoing reasons, the Arbitrator is urged to reject the Union’s proposal for “Union Leave.”

Discussion

While the statutory criterion of internal comparability might appear to support the Union’s theory of this issue, the Arbitrator concludes that the size and function of this bargaining unit as compared with those of the MAP 261 bargaining unit serve to make the two groups inherently dissimilar in this particular circumstance. Indeed, as the Joint Employers argues, even a single one-year leave could have a significant impact upon the Joint Employers’ operation, considering there are only five members of this bargaining unit to start with. Moreover, there is no opportunity for management to exercise discretion the way the language is drafted, and as such, if more than one

Telecommunications Supervisor was “elected, delegated or appointed to participate in duly authorized business requiring absence from the job,” the Joint Employers would be contractually obligated to grant multiple extended leaves of absence for that purpose.

Given the very small size of this bargaining unit and the real potential for an adverse effect upon the County’s operation in the event such an absence, mandated by the Union, became necessary, the Arbitrator is persuaded that the Union’s final offer on this impasse issue is unreasonable. Therefore, the Joint Employers’ petition that it be rejected in its entirety is adopted. The following Award so states.

AWARD

The Union’s final offer concerning Section 10.5 Union Leave is rejected.

Section 10.10 – Use of Benefit Time

The Union’s Final Proposal

Except where required by law, each employee covered by this Agreement shall not be required to use accumulated time prior to going on an unpaid leave of absence, except for leave taken pursuant to the Family and Medical Leave Act (“FMLA”).”

The Joint Employers’ Final Proposal

The Joint Employers rejects the Union’s final proposal in its entirety.

The Position of the Union:

The Union urges the Arbitrator to adopt the above proposal on the basis of internal comparability with the MAP 261 agreement. The language here is similar, the Union argues, and the purpose of the difference actually favors the Joint Employers in that it codifies an existing understanding that FMLA leave is not included in stated exemptions. The Union states, “The Union is willing to agree to what is believed the

stated objective of the Joint Employers, to allow the Employer to require the employee to use their accumulated benefit time before going on unpaid FMLA Leave.”²³ However, the Union argues, in the event any other type of unpaid leave is granted, employees in this bargaining unit should not be required to exhaust accumulated benefit time first.

The Position of the Joint Employers:

The record establishes that the Joint Employers rejected the Union’s final proposal with respect to “Use of Benefit Time,” but offered no argument before the Arbitrator as to why it did so.

Discussion

It is clear that the parties failed to reach a tentative agreement on this open issue, but the Arbitrator has been offered no line of reasoning upon which to reject the Union’s offer. Clearly, the Union’s proposal is supported by the statutory criterion of internal comparability, given the fact that the MAP 261 contract contains nearly identical language. The Arbitrator’s review of other internally comparable collective bargaining agreements established further support for provisions which the Union proposes here; that is, with the exception of FMLA Leave, Telecommunications Supervisors should not be required to exhaust accrued benefit time before going on an unpaid leave of absence.

The Arbitrator believes the Union offer to be reasonable, and also supported by the statutory criterion of internal comparability. Accordingly, and for all the foregoing reasons, the Arbitrator concludes that the Union’s final be proposal should be adopted. The following Award so states.

²³ Union brief at page 49.

AWARD

The Union's final proposal regarding the "Use of Benefit Time" is adopted. Applicable provisions will appear in the final contract under Section 10.9 due to the Arbitrator's rejection of proposed "Union Leave" as set forth herein above.

Section 10.11 – Educational Fund

The Union's Final Proposal

Employees who attend approved seminars which are related to their job shall receive pay for the hours they otherwise would have worked. If all employees wishing to attend a particular seminar are not able to attend, selection shall be made on the basis of seniority.

Employees who desire to take a course or courses of instruction not offered by a City or suburban junior college shall submit their request through the Union to the Director of Department of Human Resources of the County.

The County agrees to allocate funds for education purposes in each year of this Agreement to be made available all MAP #507 bargaining unit employees. The amount allocated shall be an aggregate total of one thousand dollars (\$1,000), or one hundred fifty dollars (\$150) per each bargaining unit employee. Employee requests for such funds shall be for reimbursement for the costs of courses offered through any certified education institution, including community colleges, continuing adult education, and other training or technical institutions. Such course work shall be employment related."

The Joint Employers' Final Proposal

The Joint Employers rejects the Union's final offer in its entirety.

The Position of the Union:

The Union urges the Arbitrator to adopt the instant proposal, because it has strong support from the statutory criterion of internal comparability. The Union notes that the County agreed to allocate \$10,000 in funds for continuing education in the MAP 261 contract, arguing that it asks for nothing even close to that amount here. The Union acknowledges the vast difference between the two bargaining units in terms of size, and

therefore proposes an appropriately proportionate \$1000 for Telecommunications Supervisor training. The Union urges the Arbitrator to adopt its final proposal for an “Educational Fund.”

The Position of the Joint Employers:

The Joint Employers argues that the Union’s proposal for an Educational Fund should be rejected because the County no longer provides this benefit in other bargaining units for reasons of economic hardship. The Joint Employers also argues that the Union’s final offer was amended prior to arbitration, and thus, the full text of it was never discussed at the bargaining table. It should be rejected on that basis alone, the Joint Employers submits. In the end, the Joint Employers argues, the Union’s final offer would have an adverse impact on the County because of cost. For that and all the foregoing reasons, the Joint Employers urges the Arbitrator to reject the Union’s final offer in its entirety.

Discussion

After reviewing the record and the arguments of the parties, the Arbitrator is persuaded that the Union’s final offer should be rejected. Essentially undisputed evidence in this record establishes that the MAP 261 “Educational Fund” provisions upon which this proposal was based, while permissive in the sense that the County retained jurisdiction over if and under what circumstances such funds would be disbursed, they are now obsolete. The Joint Employers, for obvious financial reasons, given recent changes in the general economic environment, has stopped authorizing expenditures for continuing education. There is no logic in adopting contract language concerning a

benefit (no matter how discretionary the exercise of it might be on management's part) that the Joint Employers no longer offers to employees in other internally comparable bargaining units. Should the parties ever wish to reinstate this privilege in future contracts if the nature of the economy improves (or in the alternative if an acceptable *quid pro quo* is offered by Union), they are certainly free to do so. In the meantime, since this is a fresh collective bargaining relationship, the Arbitrator concludes that obsolete and/or inapplicable references of an economic nature should be avoided whenever possible.

Accordingly and for all the foregoing reasons, the Union's final offer is rejected. The following Award so states.

AWARD

The Union's final offer concerning Section 10.11 Educational Fund is rejected in its entirety.

Section 12.1 – Discipline

The Union's Final Proposal

The Employer shall not demote, suspend, discharge or take any disciplinary action against any employee without just cause. Employees who are to be or may be disciplined are entitled to Union Representation exclusively in any disciplinary proceedings. The Union and the Employer agree that discipline should be timely, progressive and accompanied by counseling where appropriate. A written reprimand or suspension of three days or less (as a result of a summary punishment action request from SPAR) will be disregarded and removed from an employee's personnel file after twelve months from the issuance of the discipline SPAR, provided that the employee has received no other written reprimand or suspension for a similar offense during the twelve month period. If there is another similar written reprimand or suspension during this twelve month time period, then the discipline SPAR will be removed eighteen months after the employee's last reprimand or suspension.

Complimentary documentation will be disregarded and removed from the employee's personnel file eighteen months from the subject incident and returned to the employee upon the affected employee's written request."

The Joint Employers' Final Proposal
[Offered as Sections 13.1, 13.2, 13.3]

Section 13.1: General Statement

The Union and the Employer agree that discipline should be timely, progressive and accompanied by counseling where appropriate.

Section 13.2: Purpose

To provide a mechanism whereby disciplinary action will be initiated in a series of progressive steps, depending upon the severity of the rules infraction.

Section 13.3: Policy

- A. Discipline is intended to be corrective and should follow a series of timely and progressive steps to change the Employee's unacceptable conduct or behavior;
- B. In general, discipline will include the following steps:
 - 1. Written reprimand(s)
 - 2. Suspension(s)
 - 3. Discharge
- C. Sick time is not to be used by Employees as vacation or simply to take time off with pay, but Employees shall not be disciplined for the bona fide use of sick time. The Employer shall keep the Union informed of Employees suspected of abusing sick time and the Union will cooperate with the Employer in counseling individuals in an effort to minimize such abuse. Excessive absences from work when not documented as a major illness, disability or injury on duty are unacceptable. This includes both misuse and abuse of medical time and dock time.
- D. Disciplinary action may begin or advance to any step dependent upon the nature of the infraction. Once disciplinary action has been taken against an Employee, such disciplinary action on the particular charge cannot be increased in severity, unless additional facts are presented that increase the severity of the offense. Any subsequent adjustment of the discipline shall be made only by mutual agreement in settlement of the dispute.
- E. Should it be necessary to reprimand an Employee, management will attempt to administer such reprimand so as not to unduly cause embarrassment to the Employee.
- F. The level of disciplinary action and/or degree shall be appropriate to the infraction including, if appropriate, consideration of the following:

1. Documentation of Employee’s past conduct
2. Whether or not the Employee was adequately warned and counseled of the consequences of his/her conduct
3. Length of service
4. Seriousness and circumstances of the infraction
5. County or Sheriff’s practice in similar cases
6. Motives and reasons for violating a rule.”

The Position of the Union:

The Union proposes language identical to that of applicable Section 14.7 of the MAP 261 contract. The Union argues that the Joint Employers failed to mention “just cause” in its final offer, and thus, there appears to be a question as to the legal standard under which the parties will go forward concerning employee discipline. “Just cause” is the most widely applied test used by grievance arbitrators, the Union argues, and this bargaining unit should be no more unfavorably situated in that regard than members of other internally comparable bargaining units. The Union thus urges the Arbitrator to reject the Joint Employers’ final offer and adopt the language proposed herein above.

The Position of the Joint Employers:

In relevant part, the Joint Employers argues that its final proposal is clear, concise, fair, and more representative of discipline provisions contained in the majority of other internally comparable collective bargaining agreements than the general (and potentially ambiguous) language offered by the Union. The Joint Employers therefore

urges the Arbitrator to adopt its final offer over that of the Union as the more reasonable of the two.

Discussion

The Arbitrator notes, after reviewing applicable provisions concerning employee discipline in other internally comparable collective bargaining agreements within the Cook County Sheriff's Department, that there is little absolute consistency among them except for the customary reference to "just cause" which is noticeably absent in the Joint Employers' final offer on this non-economic issue. In general, however, most internally comparable contracts contain language more like that which has been proposed by the Joint Employers than that which has been proposed by the Union. In substance, the Arbitrator therefore concludes after much consideration, that the Joint Employers' final offer is, overall, the more reasonable of the two.

That being said, this is a non-economic issue, and the Arbitrator is thus privileged to amend the more reasonable of the two proposals to whatever extent he deems necessary to render the final result suitable. In this case, the Arbitrator agrees with the Union that no rule concerning employee discipline in this context should be patently void of reference to just cause. Therefore, the Arbitrator concludes that the Joint Employers' final offer [which will appear in the final contract under Article 12] should be adopted in its entirety, *except* that Section 12.1 shall now read as follows:

The Employer shall not demote, suspend, discharge or take any disciplinary action against any employee without just cause.

The Union and the Employer agree that discipline should be timely, progressive and accompanied by counseling where appropriate."

The following Award so states.

AWARD

The Joint Employers' final proposal is adopted in its entirety, with the aforementioned amendment to Section 12.1 thereof.

Section 12.2 – Appeals Procedure

The Union's Final Proposal

The employee has the right to petition for appeal of a summary discipline action. The appeal is heard by an impartial appeal board and a final decision is rendered. Should the employee be dissatisfied with the appeal decision, they can then file a grievance. Both management and the Union consider a grievance timely filed if it is within 30 days of the rendered appeal decision. This Article does not apply to oral and written reprimands, which are not grievable or appealable.”

The Joint Employers' Final Proposal [Offered as Section 13.4]

All Department disciplinary actions, including counseling and written reprimands, demotions, suspensions, and terminations, shall be subject to the grievance procedure. Grievances involving actions for termination shall proceed directly to arbitration. Grievances involving counseling and written reprimands shall be initiated at Step 1 of the grievance procedure and may be processed only through Step 3 of the procedure. For all disciplinary grievances, the Union shall submit a written grievance to the Sheriff or the Sheriff's designee within thirty (30) calendar days of the Union's receipt of the formal notice of the disciplinary action from the Employer.”

The Position of the Union:

The Union again proposes language which mirrors applicable provisions in the MAP 261 contract. Given “compelling evidence of internal comparability,” then, the Union urges the Arbitrator to adopt the discipline appeals procedure offered herein above.

The Position of the Joint Employers:

The Joint Employers argues that the Union’s proposal should be rejected for several reasons. First, the Joint Employers argues, the language offered by the County has strong support from the statutory criterion of internal comparability, in that many other collective bargaining agreements in the Sheriff’s Department contain discipline appeals provisions constructed in an identical manner. Second, the Joint Employers argues, the Union’s proposal “will have a negative economic impact on the Joint Employers because it will require the Joint Employers to defend its disciplinary action twice before impartial third parties which means it will need to pay its attorneys for two separate hearings where presumably the same facts and evidence will need to be presented.”²⁴ Up until presentation of its “Last Best Offer,” the Joint Employers argues, the Union did not include any reference to an “Appeals Board.” The matter of “two bites at the disciplinary appeals apple” should have been addressed at the bargaining table, the Joint Employers argues, and, considering the obvious economic hardship such a process would cause, any contract provision authorizing it should be rejected.

Discussion

As the Arbitrator noted herein above, there is no absolute consistency among Sheriff’s Department collective bargaining agreements concerning the practice of employee discipline. Indeed, as the Union argued, some, like the MAP 261 contract, contain provisions for an appeals board step prior to initiation of the grievance and arbitration process. The Joint Employers argues here, that inclusion of such a step is both unnecessary and unduly costly, and the Arbitrator is inclined to agree. The fact is, that some Sheriff’s Department contracts provide for the extra appeals step and some do not.

²⁴ Joint Employers brief at page 73.

This is a very small bargaining unit of supervisory personnel, and even the Union argues that discipline in this particular employee group is infrequent at best. The Arbitrator is therefore persuaded by the Joint Employers that an extra step in the process, should discipline ever be required, would be unnecessarily burdensome, time-consuming, and costly.

The Arbitrator concludes, for all the foregoing reasons, that the Union's final offer should be rejected. The following Award so states.

AWARD

The Union's final offer regarding Section 12.2 is rejected.

Section 13.5 – Disciplinary Action Form [Proposed by the Joint Employers]

The Joint Employers' Final Proposal

- A. The disciplinary action form is to be completed for all steps of disciplinary action. A form mutually agreed on by the Sheriff and the Union shall contain at least the following:
 - 1. Name of the employee being disciplined
 - 2. Date of report
 - 3. Date and time of infraction
 - 4. The infraction committed, with a description
 - 5. Supervisor signature space

- B. The disciplinary action form is given to an Employee by his immediate supervisor in a conference discussing the disciplinary action. The form shall be signed by the immediate supervisor or the Sheriff's designee and the Employee. If the Employee refuses to sign the form, the refusal will be noted in the space designated for the Employee's signature by both the supervisor and the Union Representative.

- C. Copies of the disciplinary action form shall be distributed to the following individuals:
 - 1. The employee

2. Chapter Representative.

The Union’s Final Proposal

The Union rejects the Joint Employers’ proposal in its entirety.

The Position of the Joint Employers:

The Joint Employers argues that Disciplinary Actions Forms are customarily utilized in Sheriff’s Department in the event discipline becomes necessary. The Joint Employers therefore argues, on the basis of strong support from the statutory criterion of internal comparability, that the above proposal should be adopted in its entirety.

The Position of the Union:

The Union argues that any contractual reference to a “Disciplinary Action Form” would represent a “deviation from the language within the MAP 261 collective bargaining agreement without any articulated reason.”²⁵ Again, the Union argues, discipline in this unit “is not a problem,” and the Joint Employers failed to substantiate its reasons for departing from existing practices in the most internally comparable employee group within the Sheriff’s Department; MAP 261. The Union accordingly urges the Arbitrator to reject the Joint Employers’ offer in its entirety.

Discussion

Again, there is no evidence of “lock-step” consistency among Sheriff’s Department collective bargaining agreements concerning the matter of Disciplinary Action Forms. Indeed, some contracts include references to them and some do not. While it is true that the MAP 261 agreement is silent on the matter, the Arbitrator does

²⁵ Union response brief at page 13.

not necessarily agree with the Union that the omission activates the statutory criterion of internal comparability to such an extent that the Joint Employers' proposal is automatically unreasonable. Indeed, in this Arbitrator's considerable experience as a grievance arbitrator, such forms favor the employee as much (or more) than they favor the employer. This is so because the forms must be "mutually agreed upon" by the parties, and they naturally provide accountability on both sides of any disciplinary issue. Importantly, such forms would require the employer to provide details concerning alleged infractions, and this, certainly, would aid the Union in the process of defense while holding the employer accountable to a [newly recognized] standard of just cause.

It is also true, that Disciplinary Action Forms are customarily used in the Department already, albeit in bargaining units other than MAP 261. As such, the Arbitrator finds the Joint Employers' proposal both reasonable and supported by the statutory criterion of internal comparability. For that and all the foregoing reasons, then, the Arbitrator concludes that the Joint Employers' final offer should be adopted. The following Award so states.

AWARD

The Joint Employers' final offer concerning Section 13.5 "Disciplinary Action Form" is adopted.

Section 13.1 – No Discrimination

The Union's Final Proposal

No employee shall be discriminated against on the basis of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, political affiliation and/or beliefs, or activity or non-activity on behalf of the Union. The Employer and the Union acknowledge that the

County of Cook has adopted and implemented a human rights ordinance which will be complied with. The parties agree that failure to pursue such a complaint of discrimination through the grievance procedure shall not be the basis of a bar to proceed before any State or Federal Agency or Court.”

The Joint Employers’ Final Proposal

The Joint Employers rejects the Union’s final proposal in its entirety.

The Position of the Union:

The Union proposes language mirroring applicable Section 14.1 of the MAP 261 contract, with an additional sentence recognizing the practical impact of *14 Penn Plaza v. Pyette*, 129 S.Ct. 1456 (2009). The Union seeks to preserve all avenues of recourse open to employees who believe that they have been illegally discriminated against, and purposes to codify a contractual understanding that the grievance process, if utilized, shall not be the exclusive remedy in such instances.

The Position of the Joint Employers:

The Joint Employers proposes to omit the language in its entirety, because, “Agreeing to allow employees to process claims of discrimination through the grievance and arbitration procedure does have an economic impact on the Joint Employers because it will be required to pay for Arbitration proceedings.”²⁶ Furthermore, the Joint Employers argues, because the issue was not raised during bargaining, the Union should not be awarded this entirely new language at arbitration.

Discussion

²⁶ Joint Employers brief at page 73.

There is strong support from internally comparable Sheriff's Department contracts for inclusion of "No Discrimination" language in this collective bargaining agreement. However, none that the Arbitrator reviewed contained any reference (either stated or by inference) to the implications of *Pyette*, supra. It is the Arbitrator's opinion that the Supreme Court decision means what it means, and relevant provisions on the subject of unlawful discrimination (within the intent and meaning of *Pyette*) in this Agreement should carry no more weight in significance or process than those established in other internally comparable contracts. In other words, while the Union asserts a purpose to "clarify" the practical implications of *Pyette* upon conventional "No-Discrimination" language appearing in other Sheriff's Department contracts, it is the Arbitrator's opinion that no such clarification is really necessary.

Therefore, since this is a non-economic issue under the Act, the Arbitrator is privileged to fashion a solution that satisfies both the statutory criterion of internal comparability and a lack of need to go any further (in terms of "clarification") than any other comparable contract does on this subject. The Arbitrator thus rules that "No Discrimination" provisions should be included in this collective bargaining agreement as proposed by the Union, but with omission of the final sentence. The following Award so states.

AWARD

The Union's final offer is adopted with amendments. "No Discrimination" provisions will appear under Section 13.1 of the parties' final collective bargaining agreement, and shall read as follows:

No employee shall be discriminated against on the basis of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, political affiliation and/or beliefs, or activity or non-activity on behalf of the Union. The Employer and the Union acknowledge that the County of Cook has adopted and implemented a human rights ordinance which will be complied with.

Section 13.11 – Uniform Allowance

The Union’s Final Proposal

The Employer will provide Radio Room telecommunicators with uniforms and uniform allowance of \$350 per year effective December 1, 1997.”

The Joint Employers’ Final Proposal

The Joint Employers rejects the Union’s proposal in its entirety.

The Position of the Union:

The Union’s proposal mirrors applicable language in the MAP 261 contract, which provides for a uniform allowance of \$350 per year. The Union believes that this bargaining unit of supervisory personnel should not be unfavorably situated as compared with MAP 261 telecommunicators. Telecommunications Supervisors wear uniforms, the Union argues, and these have to be obtained from a particular supplier. Certainly, the Union argues, uniforms need to be replaced periodically, and this should not occur at these employees’ expense. The Union accordingly urges the Arbitrator to adopt its final offer in its entirety.

The Joint Employers’ Final Proposal

The Joint Employers proposes to disallow any uniform allowance because “it is an economic proposal that has a retroactive date of December 1, 1997.”²⁷ Despite the Union’s claims during arbitration that they were not actually seeking the uniform allowance retroactive to 1997, the Joint Employers argues, the Union never changed or amended their final offer to so indicate. Clearly, the Joint Employers concludes, because this is an economic issue, the Arbitrator has no authority to amend the language, and as such, he has no choice but to reject the Union’s final proposal.

Discussion

The Joint Employers argues that the Arbitrator has no authority to amend language concerning economic issues under the Act, and this is true. However, the Arbitrator may still select whichever offer he deems more reasonable (in spite of perceived deficiencies), and in this case, he believes the more reasonable of the two offers came from the Union. The fact that this issue, which has relatively little economic impact on the Joint Employers, is still open strongly indicates a degree of bad faith on the part of the Joint Employers. Clearly, members of this bargaining unit are entitled to a uniform allowance, and there is a mountain of support for this from the statutory criterion of internal comparability. What the Joint Employers did here, though, was attempt to hold [presumably] valued employees of this new bargaining unit hostage to inadequacies in proposed contract language which could easily have been corrected by a good-faith counter offer.

The Arbitrator is convinced that the Union’s assertions at arbitration regarding the matter of retroactivity, which the Joint Employers readily acknowledged, were genuine in

²⁷ Joint Employers brief at page 74.

the sense that there was no purpose on the part of MAP 507 representatives to secure a benefit for Telecommunications Supervisors retroactive to any time period during which they were not represented by the Union for purposes of collective bargaining. Indeed, prior to that time, these employees had no right to demand a uniform allowance from the County, and this contract, whatever it says, cannot change history to the extent that the Union now has power over the past. In other words, even though there may be a reference to 1997 in proposed Section 13.11, it is a practical impossibility for the benefit of a uniform allowance to be retroactive to a period in which affected (heretofore non-union) employees had no right to the benefit.

The parties will certainly be able to correct the error in reference in future contracts (if they do not do so in the process of publishing this one), and the Arbitrator strongly urges them to do so. In the meantime, this Award will serve to memorialize the Union's sole stated purpose of obtaining a Uniform Allowance for members of this bargaining unit comparable to that which the Joint Employers has already awarded other Sheriff's Department employees.

The Arbitrator also presumes that the Joint Employers will be amenable to correcting what was clearly a scrivener's error in the Union's reference to "Radio Room Telecommunicators" rather than "Telecommunications Supervisors." If the County is not willing to make that small correction in prose as a courtesy, then the error will appear, as is, in the final contract. For all the foregoing reasons, then, the Union's final offer is adopted. The following award so states.

AWARD

The Union’s final offer concerning Section 13.11 Uniform Allowance is adopted in its entirety. The parties are, of course, privileged to implement the Arbitrator’s suggested corrections before they publish the final contract.

Section 13.12 – Special Training/Telecommunications Supervisors

The Union’s Final Proposal

The employer shall be responsible for providing training to all communications personnel with the advent of any new technology, or job requirements during working time. An employee will be compensated for training another employee at the rate of one (1) hour of pay or compensatory time for every eight (8) hours of training.

The Joint Employers’ Final Proposal

The Joint Employers rejects the Union’s final offer in its entirety.

The Position of the Union:

The Union’s proposal mirrors applicable Section 13.3 language in the MAP 261 contract. In short, the Union believes that members of this bargaining unit are entitled to no fewer benefits than their subordinate counterparts. Thus, in light of clear support from the statutory criterion of internal comparability, the Union urges the Arbitrator to adopt its final offer in its entirety.

The Position of the Joint Employers

The Joint Employers rejects the Union’s final offer “because it requests additional pay for duties that are already part of a supervisor’s duties and responsibilities.” Telecommunications Supervisors regularly instruct members of the MAP 261 bargaining unit, the Joint Employers explains, and such instruction is normally minimal in terms of

time expenditure. The Joint Employers further argues that the proposed language is ambiguous and could lead to grievances in the future, because it is unclear as to whether the Union intended the “8 hours of training” to be consecutive or accumulated. For those reasons, then, the Joint Employers urges the Arbitrator to reject the Union’s proposal in its entirety.

Discussion

After carefully considering the Union’s proposal and the arguments of the parties, the Arbitrator is persuaded by the Joint Employers that Section 13.12, as it has been constructed, should be rejected. This is an economic issue, and as such, the Arbitrator is not privileged under the Act to amend or correct potentially ambiguous language, absent any indication from the proposing party that the language does not actually state what was intended (as in the preceding issue). The Arbitrator acknowledges and accepts the Joint Employers’ foundational argument *that basic instruction and oversight are fundamental parts of any supervisor’s job*, and the Union’s proposal, as it is worded, makes no precise distinction as to what kind of “training” is intended. This is crucial, because the essential functions of members of the instant bargaining unit are not the same as those of the MAP 261 unit, in which peer training clearly merits premium compensation.

The Arbitrator is not suggesting that Telecommunications Supervisors are not deserving of premium pay in the event they, too, are required to provide extensive training. Certainly, the chance of that occurring should be addressed by the parties during the next round of bargaining. However, given the way the Union’s proposal is

constructed here, it is possible that any and all “training,” even issuance of advisory instruction, could be construed as “training” within the intent and meaning of Section 13.2 and therefore deserving of premium compensation. Because the language as it has been presented by the Union is potentially ambiguous, and because it also fails to adequately recognize basic “training” as a normal supervisory function, the Arbitrator will not adopt Section 13.12. The following Award so states.

AWARD

The Union’s final offer concerning Section 13.12 Special Training is rejected.

ARTICLE 14 – ALCOHOL AND DRUG TESTING

The Joint Employers’ Final Proposal [Offered as Section 15.25]

The covered employees agree to abide by the Sheriff’s current drug and alcohol testing policy, so long as the Employer continues to provide transportation to and from the testing site for all covered employees.

Discussion

It is unnecessary for the Arbitrator to substantively address the Union’s rejection of proposed Article 14 concerning Alcohol and Drug testing. The Union argues that it never received “a full and complete copy of what the Employer was proposing,” but MAP is well aware of the Joint Employers’ policies and practices in this area. Indeed, the Joint Employers has merely proposed that members of this bargaining unit follow the exact policy to which all other Sheriff’s Department employees are subject. The statutory criterion of internal comparability is obviously of particular significance on this issue,

and therefore, the Arbitrator is confident in adopting provisions which clearly comport with the current *status quo*.

AWARD

The Joint Employers proposed Article 14 is awarded.

Section 14.1 – Term

The Union’s Final Proposal

This agreement shall become effective on December 1, 2010, and shall remain in effect through November 30, 2014. It shall automatically renew itself from year to year thereafter unless either party shall give written notice to the other party not less than sixty (60) calendar days prior to the expiration date, or any anniversary thereof, that it desires to modify or terminate this Agreement.

In the event such written notice is given by either party, this Agreement shall continue to remain in effect after the expiration date until a new Agreement has been reached or either party shall give the other party five (5) calendar days written notice of cancellation thereafter.”

The Joint Employers’ Final Proposal

This agreement shall become effective on December 1, 2010, and shall remain in effect through November 30, 2012. It shall automatically renew itself from year to year thereafter unless either party shall give written notice to the other party not less than sixty (60) calendar days prior to the expiration date, or any anniversary thereof, that it desires to modify or terminate this Agreement.

In the event such written notice is given by either party, this Agreement shall continue to remain in effect after the expiration date until a new Agreement has been reached or either party shall give the other party five (5) calendar days written notice of cancellation thereafter.

Discussion

The two proposals are linguistically identical, with the exception of the proposed expiration date of this new contract. For obvious reasons, the Union urges the Arbitrator to adopt a contract that will expire in 2014, since November 30, 2012 has long since

passed. The Joint Employers, on the other hand, recognizes that while this process has been an arduous one, pattern bargaining in the County over the major economic issues of wages and health insurance practically demands that the contracts of all unionized groups expire at the same time. While re-entering the bargaining process right away is obviously inconvenient for the parties, the Arbitrator, who has a great deal of experience in the arena of interest arbitration under the Act, recognizes that adopting effectively expired contracts happens all the time. Obviously, if notice to begin bargaining is issued mere months before a contract expires, and open issues go to interest arbitration thereafter, it is often a natural occurrence that the contract term has come and gone long before ratification.

In this case, even in adopting the Joint Employers' final proposal for a contract expiring concurrently with others in the Sheriff's Department, the Arbitrator is somewhat comforted by the knowledge that, in this particular case, mandatory interest arbitration was a "one-time shot." Hereafter, the parties will have to settle their differences at the bargaining table. Of course voluntary interest arbitration is always an option, but the hope here is that, with the advent of this new contract, future adjustments can be made during the course of pattern bargaining on the major economic issues, and the rest of the Agreement can be renegotiated in a timely manner to the mutual benefit of the parties.

The Arbitrator concludes, based upon persuasive argument from the Joint Employers and support from the statutory criterion of internal comparability, that the Joint Employers' final offer on the matter of Term should be adopted. The following Award so states.

AWARD

The Joint Employers' final offer, which will appear under Section 15.1 (Term) of the final contract, is adopted.

XI. TENTATIVE AGREEMENTS

The parties' tentative agreements and pre-hearing mediation accords as set forth in the record, and those additionally achieved at arbitration and noted in the transcript of the March 15, 2013 arbitration hearing, are incorporated herein as if fully rewritten. Appendix A to this Decision and Award integrates the following Orders into the parties' prior Tentative Agreements, and represents a full and complete index of the final Collective Bargaining Agreement.

XII SUMMARY OF ORDERS

The following is a summary of the AWARDS set forth herein above. They are so ordered.

ORDERS

Section 2.2 – Employer Obligation – **Union**

Section 2.4 – Integrity of Bargaining Unit – **Union**

Section 2.6 – Labor/Management Meetings – **Joint Employers**

Section 3.2 – Regular Work Period – **Arbitrator**

Section 3.3 – Regular Work Days – **Joint Employers**

Section 3.4 – Compensatory Time and/or Overtime Compensation – **Union**

Section 3.6 – Lunch Breaks – **Union**

Section 3.7 – Acting Director – **Union**

Section 4.2 – Termination of Seniority – **Arbitrator**

Section 4.3 – Seniority Lists – **Union**

- Section 4.4 – Union Rights – **Joint Employers**
- Section 4.5 – Promotion and Shift Assignments – **Joint Employers**
- Section 4.6 – Layoff and Recall – **Arbitrator**
- Section 4.7 – Job Postings – **Arbitrator**
- Section 5.1 – Rates of Pay - **Union**
- Section 6.1 – Designation of Holidays – **Joint Employers**
- Section 6.2 – Holiday in Vacations – **Union**
- [JE Section 7.3] – Holiday Pay for Holidays Not Worked – **Union**
- Section 7.1 – Vacation Leave – **Joint Employers**
- Section 8.1 – Hospitalization Insurance – **Joint Employers**
- Section 8.2 – Sick Leave – **Joint Employers**
- Section 8.3 – Disability – **Union**
- Section 9.1 – Bereavement Leave – **Union**
- Section 9.3 – Jury Duty – **T/A (Tr. 173)**
- Section 9.4 – Election Day – **Joint Employers**
- Section 9.5 – Personal Days – **Joint Employers**
- Section 10.5 – Union Leave – **Joint Employers**
- Section 10.10 – Use of Benefit Time – **Union**
- Section 10.11 – Educational Fund – **Joint Employers**
- Section 12.1 – Discipline – **Joint Employers (offered as Sections 13.1, 13.2, 13.3)**
- Section 12.2 – Appeals Procedure – **Joint Employers**
- [JE Section 13.5] – Disciplinary Action Form – **Joint Employers**
- Section 13.1 – No Discrimination – **Arbitrator**
- Section 13.11 – Uniform Allowance – **Union**
- Section 13.12 – Special Training – **Joint Employers**
- [JE Section 15.25] – Drug and Alcohol Testing – **Joint Employers**
- Section 14.1 – Term – **Joint Employers**

XIII. CONCLUSION AND AWARD

The foregoing Orders represent the final and binding determination of the

Neutral Arbitrator in this matter, and it is therefore directed that the parties' Collective Bargaining Agreement be constructed to incorporate all previous tentative agreements and all specific determinations stated herein above.

John C. Fletcher, Arbitrator

Poplar Grove, Illinois, December 26, 2013

APPENDIX A

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

**METROPOLITAN ALLIANCE OF POLICE
CHAPTER #507**

REPRESENTING

TELECOMMUNICATION SUPERVISOR

**COUNTY OF COOK/SHERIFF OF COOK COUNTY
(AS JOINT EMPLOYERS)**

EFFECTIVE _____ THROUGH _____

Table of Contents

PREAMBLE.....

ARTICLE I.....

RECOGNITION.....

Section 1.1 Representative Unit:.....

Section 1.2 Union Membership:.....

Section 1.3 Dues Checkoff:.....

Section 1.4 Fair Share:.....

Section 1.5 Religion Exemption:.....

Section 1.6 Indemnification:.....

ARTICLE II

EMPLOYER AUTHORITY

- Section 2.1 Employer Rights:
- Section 2.2 Employer Obligation:
- Section 2.3 Union and Employer Meetings Regarding Health Care:
- Section 2.4 Integrity of the Bargaining Unit:
- Section 2.5 Union and Employer Meetings:

ARTICLE III

HOURS OF WORK AND OVERTIME

- Section 3.1 Purpose of Article:
- Section 3.2 Regular Work Period:
- Section 3.3 Regular Work Days:
- Section 3.4 Compensatory Time and/or Overtime Compensation:
- Section 3.5 Overtime Work Distribution:
- Section 3.6 Lunch Breaks:
- Section 3.7 Acting Director:

ARTICLE IV

SENIORITY

- Section 4.1 Definition of Seniority:
- Section 4.2: Termination of Seniority:
- Section 4.3: Seniority List:
- Section 4.4: Promotion and Shift Assignment:
- Section 4.5: Layoff and Recall:
- Section 4.6: Job Posting:

ARTICLE V

- Section 5.1 Rates of Pay:

ARTICLE VI

HOLIDAYS

- Section 6.1 Designation of Holidays:
- Section 6.2 Holiday in Vacation:
- Section 6.3 Eligibility:

ARTICLE VII

VACATIONS

- Section 7.1 Vacation Leave
- Section 7.2 Vacation Preference and Scheduling:

ARTICLE VIII

WELFARE BENEFITS

- Section 8.1 Hospitalization Insurance:
- Section 8.2 Sick Leave:
- Section 8.3 Disability Benefits:
- Section 8.4 Life Insurance:
- Section 8.5 Pension Plan:
- Section 8.6 Dental Plan:
- Section 8.7 Vision Plan:

Section 8.8 Hospitalization – New Hires:
Section 8.9 Flexible Benefits Plan:
Section 8.10 Employee Assistance Program:
Section 8.11 Insurance Opt Out:
Section 8.12 Doctor’s Statement:

ARTICLE IX

ADDITIONAL BENEFITS

Section 9.1 Bereavement:
Section 9.2 Maternity/Paternity Leave:
Section 9.3 Jury Duty:
Section 9.4 Personal Days:
Section 9.5 Requests for Time Off:

ARTICLE X

LEAVES OF ABSENCE

Section 10.1 Regular Leave:
Section 10.2 Seniority on Leave:
Section 10.3 Military Leave:
Section 10.4 Retention of Benefits:
Section 10.5 Family Medical Leave Act:
Section 10.6 Educational Leave:
Section 10.7 Veterans’ Convention:
Section 10.8 Approval of Leave:
Section 10.9 Use of Benefit Time:
Section 10.10 School Conference and Activity Leave:

ARTICLE XI

GRIEVANCE PROCEDURE

Section 11.1 Policy:
Section 11.2 Definition:
Section 11.3 Grievance Meetings:
Section 11.4 Representation:
Section 11.5 Grievance Procedure Steps:
Section 11.6 Time Limits:
Section 11.7 Stewards:
Section 11.8 Union Representatives:
Section 11.9 Advance Step Filing:
Section 11.10 Expedited Arbitration:

ARTICLE XII

DISCIPLINARY ACTION POLICY AND PROCEDURE

Section 12.1 General Statement:
Section 12.2 Purpose:
Section 12.3 Policy:
Section 12.4 Disciplinary Action Form:
Section 12.5 Removal of Discipline:

ARTICLE XIII

MISCELLANEOUS

Section 13.1 No Discrimination:.....
Section 13.2 Americans with Disabilities Act:.....
Section 13.3 Health and Safety:
Section 13.4 Paychecks:
Section 13.5 Bulletin Boards:
Section 13.6 Personnel Files:
Section 13.7 Union and Employer Meetings:.....
Section 13.8 Meeting Rooms:
Section 13.9 Partial Invalidity:.....
Section 13.10 Courses and Conferences:
Section 13.11 Uniform Allowance:.....
Section 13.12 Travel Reimbursement Policy:.....
Section 13.13 Bilingual Pay:
Section 13.14 Residency Requirement:.....

ARTICLE XIV.....
ALCOHOL AND DRUG TESTING.....

ARTICLE XV.....
DURATION.....
Section 15.1 Term:.....