STATE OF ILLINOIS
IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

COUNTY OF COOK and COOK COUNTY
SHERIFF

and No. L-MA-99-013

ILLINOIS FRATERNAL ORDER OF
POLICE LABOR COUNCIL

APPEARANCES:

Tom Sonneborn and Becky Dragoo on behalf of the Labor Council
Katherine Paterno and Maureen Feerick on behalf of the Employer

This is an interest arbitration proceeding pursuant to Section 14 of the IL Public Labor Relations Act. The parties stipulated that this proceeding is controlled by Section 14 of the Act, except as otherwise agreed upon. This award affects the collective bargaining agreement between the parties covering the period December 1, 1998 through November 30, 2001.

The affected bargaining unit consists of Investigator IIs assigned to the Day Reporting Center of Cook County Sheriff's Department of Community Supervision Intervention (DCSI). The parties' first Agreement covered the period December 1, 1995 through November 30, 1998.

There are four departments in the Sheriff's Office. They are the Sheriff's Police Department, the Department of Corrections (DOC), the Court Services Department, and the Department of Community Supervision and Intervention (DCSI).

The DCSI was created in 1992 to administer programs for low risk, nonviolent offenders outside the Department of Corrections. There are four major divisions in DCSI, including the Day Reporting Center, the Electronic Monitoring (EM) Program, the Pre Release Center, and the Sheriff's Work Alternative Program.

The EM Unit is the largest of DCSI's programs. They are part of the correctional officer bargaining unit. Prior to a recent interest arbitration award they were on the same pay grade as the Day Reporting Investigators. However, as a result of said award, they were placed on a different pay grade.

The Day Reporting Investigators and the Fugitive Unit are currently on the same pay grade, and the wages of both units are currently the subject of interest arbitration proceedings.

Participants in the EM Program are confined to their residence by the use of non removable ankle devices that are electronically monitored. EM investigators monitor participants, and search for AWOL participants before referring such matters to the DCSI Fugitive Unit.

Participants who successfully complete the EM Program are then considered for the Day Reporting Program.

The Day Reporting Program has an average daily population of 500 participants, who are generally male, low risk, and nonviolent. The Day Reporting Center offers counseling, and opportunities for education and employment. The Center is open only during daytime hours Monday through Friday.

Thirteen investigators in the unit do case investigations, involving heavy telephone contact and preparing and updating reports, as well as meeting with participants on a weekly basis. Another 13 investigators provide security and are assigned to established posts at and around the Center. Security investigators perform field work on an as needed basis, which does not appear to occur on an every day basis.

Two investigators process new participants, review case records, work on the data system, and answer the phone. One investigator serves as a job placement recruiter. Two investigators review candidates for the program to ensure their low risk non violent status.

There have been no incidents or violence which have affected unit personnel since the program began.

A hearing in the matter took place on July 20, 2000. The Joint Employers designated John Kalchbrenner as their arbitration panel delegate, and the FOP designated Kevin Camden as its delegate. Post hearing exhibits and briefs were submitted by the parties and the record was closed on October 11, 2000.

The following unresolved issues are the subject of this proceeding: rates of pay, sick leave, uniform allowances and vests. The parties agree that all unresolved issued are economic.

RATES OF PAY:

The Employer proposes a 4% general increase effective the first full pay period after December 1, 1998, a 3% general increase effective the first full pay period after December 1, 1999, and a 3% general increase effective the first full pay period after December 1, 2000.

The Labor Council proposes a 4% general increase effective December 1, 1998, a 3% general increase effective December 1, 1999, and a 5% general increase effective December 1, 2000. It also proposes that retroactive amounts shall be due no later than sixty (60) days following the issuance of the award.

EMPLOYER POSITION:

The Employer's wage proposal is identical to the pattern offered to law enforcement personnel working in Cook County, which is higher than the pattern provided to non law enforcement employees. The Sheriff's police officers have accepted the Employer's wage offer.

With over 30 current pay plans and 27,000 employees it is an administrative burden to the County to create a different pay plan for each separate bargaining unit.

The FOP accepted the Employer's wage offer for the State's Attorney's Office investigators, the DOC Internal Affairs Division investigators, and the Court Services Department investigators.

A comparison with similar positions among external comparables indicates that the Day Reporting Investigators rank high when looking at starting salaries and maximum rates, and that would remain the same under the Employer's wage offer.

It is well settled that the single most significant statutory factor to be considered in evaluating economic proposals is comparability with other employees similarly situated. Arbitrators have frequently found internal comparisons to have paramount significance, especially where historical parity relationships have existed. Interest arbitrations have striven to avoid awarding contract terms that would break or disrupt existing patterns, or that otherwise would constitute a breakthrough unlikely to have occurred in negotiations.

Until the recent interest arbitration award in the correctional officers unit, Electronic Monitoring (EM) investigators have been in the same pay grade as all other Sheriff unionized investigatory units. Only one other investigatory unit, the Fugitive Unit, has not accepted the Employer's wage proposal.

The FOP's suggestion that the Employer agreed to pay the Day Reporting investigators the same as the EM investigators during the negotiation of their initial contract is misleading and implausible. There is no "me-too" clause in either Agreement, and the Employers never agreed to compensate those groups the same. The fact that investigators in various units are on the same pay grade simply maintains internal consistency and minimizes administrative burden.

The FOP offers no compelling reasons that would justify altering the internal consistency of the investigatory units of the Sheriff's Office.

The FOP's wage proposal also amounts to regressive bargaining since it never offered said package at the bargaining table.

The Employer's wage package is also appropriate because the Day Reporting investigators' duties have been reduced, yet they still receive the same amount of pay. Further, the investigators' duties carry little risk.

There is no historical pattern or practice between the Day Reporting Investigators and the Police Officers, Correctional Officers, or Deputy Sheriffs. Consequently, the Correctional Officers' arbitration award should not be deemed a precedent in this matter. Furthermore, the Correctional Officers' arbitration award appears to have been based upon the premise that a pay gap had widened over time between the Correctional Officers and Police Officers. The decision did not reference a pay gap relating to the EM investigators. Likewise, the

Day Reporting investigators, who did not organize until 1995, cannot claim a pay relationship to the Correctional Officers and Police Officers. In fact, the FOP has provided no evidence to support the Day Reporting Investigators being compared to other positions within the Sheriff's Office.

Specifically, the FOP has not shown a similarity in training, risk, and stress in the basic job assignments of the various employe groups listed in its comparables.

On the retroactivity issue, which was not proposed by the FOP during negotiations, all pay plans within the County are effective the first full pay period after the date specified.

FOP POSITION:

External comparability should not play as significant a role in this matter as internal comparability, and that is because the Day Reporting program is relatively unique. As a result, external comparisons are difficult, if not impossible to make.

Nearly all of the employees in this unit are former Correctional Officers. Though the Employers have chosen to hire civilian employees in addition to existing sworn personnel, they have "risen the bar" above Correctional Officers by requiring employees to have experience both in the drug and psychiatric units.

The Agreement covering Correctional Officers also covers Investigator IIs, who are on a distinct and higher wage scale. When the Employers and the FOP negotiated wages for the Investigator IIs in the Day Reporting Unit, they agreed to place them on the same wage scale on which the EM Investigator IIs in the CO unit were placed.

The Employers' wage proposal would thus undercut the "salary relationship" which was established by the parties themselves. And it is generally accepted that interest arbitrators are generally inclined to embrace comparability groups historically used by the parties themselves.

The recognition that Investigator IIs should be paid on a level higher than Correctional Officers has continued to be acknowledged by the

Employers since the parties concluded their last round of negotiations.

The same widening pay gap that the arbitrator acknowledged between Correctional Officers/Investigator IIs and the County Police Officers also exists between the Investigator IIs in the Day Reporting Unit and the Police Officers. As has been recognized by this arbitrator and others, the automatic application of percentage increases to differing salaries will inevitably result in wage disparities among the Sheriff's Department employees.

Also, the County has negotiated increases exceeding its offer here in numerous other units. Following the issuance of an award by another arbitrator in the DS II case, (Benn, L-MA-99-003) awarding the Union's wage proposal of 5.5, 5.5 and 5.5% increases, the County voluntarily agreed to the same increases for the Court Security Sergeants. The County has also provided other employees additional moneys by moving them to different pay scales.

DISCUSSION:

The undersigned's recent interest arbitration award in the Correctional Officers' (CO) unit was intended to prevent an increasingly widening gap between the pay ranges of County Sheriff Police Officers and Corrections Officers which appeared to have occurred over a significant period of time as a result of recurring similar percentage increase settlements which were applied to both units. In effect, the third year component of the award amounted to a catch up award intended to maintain the pay relationship which existed between the two units over time. It was not justified based upon other considerations.

Because of the final offer nature of IL Statute under which the award was issued, the undersigned had no choice but to award the same 3rd year increase to the EM Investigators in the CO unit, even though the record did not support the need for, or in fact, a basis for that much of an increase for said employees, based upon comparability and/or other relevant statutory criteria. As a result, in the undersigned's opinion, the EM Investigators in the CO unit experienced a somewhat unjustified windfall.

The undersigned is thus confronted with the dilemma of either exacerbating the consequences of that unjustified windfall by

awarding the FOP's third year proposal herein, or creating a disparity between the pay of EM Investigators and Day Reporting Investigators, who the parties at one time apparently believed should be paid similarly. In this regard the undersigned believes the latter consequence is the lesser of two evils. This is so since the Employer's offer here is more consistent with what other Investigators in the County are being paid, what many other County Sheriff employees have settled for, and cost of living considerations. In addition, although external comparability evidence in this proceeding cannot be deemed determinative because of both reliability and comparability considerations, it is apparent from the record that the Day Reporting Investigators are relatively well paid based upon such considerations.

Though it must be conceded that the undersigned's awards in this matter and in the CO unit have created some potential problems for both the Employers and affected employees, the difference in wages between the two sets of employees will only be in effect for one year, and the parties will soon have an opportunity to address the issue of the comparability of EM, Day Reporting, and other Investigators in the next round of negotiations, and if necessary, in the interest arbitration process. It should be noted in this regard that the instant record contains little evidence, or for that matter argument, pertinent to the comparability of the various types of investigators employed by the Sheriff and the County. Perhaps it is time for the parties to look at that issue, and its consequences, seriously.

Assuming arguendo that the retroactivity issue can be treated as a distinct economic issue in this proceeding, the FOP proposal appears not to be supported based upon internally comparable practices, bargaining history, or evidence of any serious, legitimate problems arising from the status quo in this regard.

AWARD:

The Employers' pay proposal shall be incorporated into the parties' Agreement. The FOP's proposal that retroactive pay be issued within 60 days is denied.

SICK LEAVE:

The Employer proposes that employees off duty for forty (40) consecutive work hours or more for health reasons shall submit to their department head a doctor's certificate of proof of illness.

The Labor Council proposes remaining with the status quo, which provides that employees off duty for forty (40) consecutive work hours or more for health reasons may be required to undergo examinations by the Employer's physician before returning to work, at the Employers' cost.

EMPLOYERS POSITION:

A policy which does not require an employee to submit documentation verifying illness until the employee returns to work allows individuals to take extensive leaves which may not be legitimate. Such leaves place a burden on the Employers in that a staffing shortage may be created. Ultimate discipline of employees in such cases does not recoup the days improperly taken, nor does it compensate co-workers who have suffered the burden of working short staffed.

What the proposal represents is an effort by the Employers to bring uniformity to the enforcement of this regulation throughout its agencies.

It is unlikely that any illness which requires an absence of 40 consecutive work hours or more is not serious enough to require some contact with a medical professional. In addition, since employees are provided with health insurance through the Employers, no significant costs are borne by the employees as a result of this policy. Furthermore, nothing in the policy precludes an employee from contacting a physician by telephone in order to obtain the necessary verification.

FOP POSITION:

There is no evidence that unit employees are abusing sick leave, or even that the Employer has had occasion to send employees to a

physician to verify an illness. The Employers' proposal is also burdensome and overreaching.

DISCUSSION:

A change in the status quo in a matter such as this should be based upon a demonstrated legitimate problem, the unwillingness of the other party to address such problem in a reasonable fashion, and a reasonable and generally comparable proposed solution to the problem. None of these ingredients are evident in this record. Therefore, in the undersigned's opinion, the Employers simply have not made a case justifying the adoption of their proposal in this regard.

AWARD:

The Employers' proposal is denied and the status quo in this regard will remain in effect.

UNIFORM ALLOWANCE (AMOUNT):

The Labor Council proposes that the uniform allowance be increased to $700 effective fiscal year 1999.

The Employer proposes the status quo in this regard, which amounts to a $650 uniform/equipment allowance for each fiscal year of the agreement.

EMPLOYER POSITION:

Sworn members of the Unit are seldom required to wear their uniforms. In addition, other comparable internal law enforcement units receive allowances of either $600 or $650.

There is also little wear and tear on the equipment used by the investigators. They do not carry firearms in the Center, and there have been no incidents of violence since the Program began.

The current allowance received by members of this group in fact well exceeds the annual cost of maintaining a uniform for occasional wear and inspection.

FOP POSITION:

The uniform allowance has not been increased since 1998.

DISCUSSION:

Neither evidence of need nor internal comparability support the FOP's request in this regard.

AWARD:

The FOP's request is denied and the status quo shall remain in effect in this regard.

UNIFORM ALLOWANCE (VESTS):

The Labor Council proposes that all unit employees be provided with a bulletproof vest by December 1, 2000, and that replacement of such vests shall be made in accordance with the manufacturer's recommendation.

The Employer proposes the status quo in this regard, wherein employees are not provided with such vests pursuant to the terms of the Agreement.

EMPLOYER POSITION:

This proposal is not a matter subject to interest arbitration under the Act because a vest, not required for safety, is a piece of equipment not the subject of arbitration under Section 14 of the IL Public Labor Relations Act unless it involves a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties.

If said issue is deemed to be arbitrable, safe performance of the duties of Day Reporting Investigators does not require use of a bullet proof vest. Almost all of the work of an investigator is done on site. Investigators work in the field only rarely, and then only by the investigators assigned to the security component, all of whom are sworn personnel. Thus, the seven civilian investigators at the Center are assigned either as case or monitoring investigators not required to do off site work.

No Day Reporting Investigator has ever been injured doing field work, nor has there been an incident of on site violence since the inception of the Program.

Since the responsibility for AWOL participants was given to the Fugitive Unit, the issuance of individual vests stopped, and six vests in a variety of sizes were purchased and made available to the investigators.

None of the other comparable units have agreements which include bullet proof vest provisions. The Sheriff's Police Officers receive a $650 uniform allowance and do not have a provision requiring the Employers to provide bullet proof vests.

FOP POSITION:

Sworn employees are provided with guns and required to take firearms training, and then are expected to be prepared to use them without a vest. Investigators are required to make home visits. The officers' concern about their safety during field checks is a serious one. Loaner vests do not work for everyone in the unit.

DISCUSSION:

The parties have not adequately litigated the arbitrability of this issue, but assuming arguendo that the issue is arbitrable, the record does not demonstrate that a serious problem exists in this regard, based upon hazards and risks, and/or a lack of availability of suitable vests for those who choose to wear them. Furthermore, internal comparability supports the reasonableness of Employers' position on this issue.

AWARD:

The FOP's proposal in this regard is denied.

Dated this 4th day of ~~November~~ December, 2000 in Chicago, IL 60640

Byron Yaffe
Chair, Arbitration Panel

Kevin Camden

Concurring on the award of sick leave and dissenting with the award of rates of pay and uniform allowance (amount & vests).

John Kalchbrenner