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Interest Arbitration
Under the

Illinois Public Labor Relations Act

COUNTY OF COOK AND
COOK COUNTY SHERIFF,

Joint Employer

and

ILLINOIS FRATERNAL ORDER
OF POLICE LABOR COUNCIL (FOP),
Fugitive Investigators,

Union

Case No. L-MA-99-102
Arbitrator's File 00-114

Issue: Wages

Herbert M. Berman,
Neutral Arbitrator

Thomas Sonneborn,
Union Arbitrator

John Kalchbrenner,
Employer Arbitrator

Becky S. Dragoo,
Union Representative

Katherine A. Paterno
Wayne C. Rollag,
Attorneys for Employer

11/14/01
Draft to Parties: 10/18/01

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Opinion and Award

I. Statement of the Case

Cook County and the Sheriff of Cook County are joint employers; Cook County is the "appropriating body and the Sheriff...[is] the...elected official with county-wide law enforcement responsibilities" (Hearing Transcript, p. 69).¹ The Sheriff's Office consists of four departments: The Sheriff's Police Department; the Department of Corrections; the Court Services Department; and the Department of Community

¹ In the remainder of this Opinion and Award, I shall refer jointly to Cook County and the Sheriff of Cook County as "the Employer." I shall cite the transcript as "Tr. ____." I shall cite Union Exhibits as "UX ____," Employer Exhibits as "EX ____," and the one Arbitration Exhibit as "AX A."

Services and Intervention (DCSI) (Tr. 69). This interest arbitration concerns the wages of a unit of about 28 Fugitive Unit Investigator IIs (FUIs) employed in DCSI and represented by the Fraternal Order of Police (FOP).

On May 16, 1995, the Illinois Local Labor Relations Board (ILLRB) certified FOP as the "exclusive representative" of "Full time Investigator IIs employed in the Fugitive Unit within the Department of Community Supervision and Intervention of the Sheriff's Office," excluding "all supervisory, managerial and confidential employees and all other employees excluded by the Illinois Public Labor Relations Act and all employees within any existing collective bargaining units" (UX 4; see also Article I, Section 1.1 of the parties' 12/01/95-11/30/98 collective bargaining agreement (UX H)).

In 1995, the parties agreed on a three-year contract covering all terms of employment except wages (UX 14, at 1).² On September 15, 1998, arbitrator John Fletcher, adopted the Employer's final wage offer (UX 14, at 15):

Wages

Effective 12/1/95	2 % general wage increase ³
	1 % upgrade increase for new pay plan
Effective 11/30/96	1 % general wage increase

² The Fletcher Award was introduced into evidence as Union Exhibit 14 and Employer Exhibit 24. I shall cite the Fletcher Award as Union Exhibit 14.

³ At page 3 of his Opinion, arbitrator Fletcher wrote that the "Employers' offer represents general wage increases of 3% [my emphasis] effective December 1, 1995...." In Appendix A attached to arbitrator Fletcher's Opinion and Award, the "Joint Employers' Final Offer for D.C.S.I. Fugitive Unit," the wage increase "effective 12/1/95" is 2%. I shall assume that the reference on page 3 is a misprint.

Effective 12/1/96	4 % general wage increase
Effective 12/1/97	<u>3.5%</u> general wage increase
Total	11.5%

Longevity Steps

Effective 12/1/95 increase the percentage increase between steps as follows:

After 10 years: Increase longevity step increase from 2.1% to 4%

After 15 years: Increase longevity step increase from 1% to 4%

After 20 years: Increase longevity step increase from 1% to 4%

Establish a new 25-year longevity step at 4% above the 20-year longevity step.

After their 1995-98 agreement had expired, the parties again agreed on three-year agreement covering all terms and conditions of employment except wages (AX A). Pursuant to the Illinois Public Labor Relations Act (the "Act") (5 ILCS 315/1, et seq.), the parties submitted the issue of wages to an arbitration panel consisting of Union Arbitrator Thomas Sonneborn, Employer Arbitrator John Kalchbrenner, and Neutral Arbitrator Herbert Berman (AX A).

II. The Final Offers

A. FOP's Final Offer

[E]ach step of the 12/1/97 salary plan contained in Appendix A of the agreement be increased by the following amounts:

Effective 12/1/98:	4.5%
Effective 12/1/99:	4.5%
Effective 12/1/00:	4.5%

[A]ll increases be fully retroactive to December 1st of each year on all hours paid. Retroactive amounts to be paid by separate check within forty-five days of the issuance of the Arbitrator's Award. Any employee who has left the employ...of the County since December of 1998 but prior to the issuance of the Award shall receive a pro-rata share of retroactive amounts due under the Award.

B. The Employer's Final Offer

Effective the first full pay period after 12/1/98 (FY 99): 4.0%

Effective the first full pay period after 12/1/99 (FY 00): 3.0%

Effective the first full pay period after 12/1/00 (FY 01): 3.0%

III. Applicable Provisions of the Act

Section 14(g) of the Act provides that "[a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 14(h) sets out the factors used to evaluate economic proposals:

1. The lawful authority of the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
4. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - A. In public employment in comparable communities.
 - B. In private employment in comparable communities.
5. The average consumer prices for goods and services, commonly known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The critical factors in economic interest arbitration are contained in paragraphs 3 through 6. The "standards relied upon most frequently and given the greatest weight by interest arbitrators are: (1) comparability; (2) the cost of living; and (3) the ability to pay. The different emphases placed on those standards, as well as the other standards that are included in public sector interest arbitration statutes, generally depend upon the economic circumstances that exist in the jurisdiction at the time of the arbitration proceeding."⁴ The "most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions."⁵

IV. Summary of Relevant Evidence

A. The Employer

1. Overall Structure

Cook County employs about 27,000 people, 21,000 of whom are employed in 87 unionized bargaining units (Tr. 67). The

⁴ Arvid Anderson, Loren Krause & Parker A. Denaco, "Public Sector Interest Arbitration and Fact Finding: Standards and Procedures," Tim Bornstein, Ann Gosline & Marc Greenbaum, eds., *Labor and Employment Arbitration*, 2nd ed. (New York: Matthew Bender, 1998), Vol. II, chap. 48, §48.05[1].

Sheriff employs about 6000 law enforcement personnel, divided into four separate departments (Tr. 67-9):

- The Sheriff's Police Department (SPD)
- The Department of Corrections (DOC)
- The Court Services Department (CSD)
- The Department of Community Service and Intervention (DCSI)

The Fugitive Investigator Unit under consideration is part of DCSI.

2. Structure of DCSI

In December 1992, the Sheriff established DCSI "to plan, manage and administer all programs (except Boot Camp) for inmates outside...DOC" (UX 6, at 3). DCSI is "composed of "four major divisions: Electronic Monitoring (EM); the Day Reporting Center (DRC); the Pre-Release Center (PRC); and the Sheriff's Work Alternative Program (SWAP)" (UX 6, at 3). "[H]eadquartered at the South Campus," DCSI also "maintains its own Fugitive Unit to locate and reincarcerate AWOLs from its programs" (UX 6, at 3).

FOP represents Day Reporting Investigators and Fugitive Unit Investigators in separate bargaining units under separate contracts (Tr. 27). The Metropolitan Alliance of Police (MAP) represents Electronic Monitoring Investigators and Department of Corrections employees (Tr. 27).

⁵ *Ibid.*, at §48.05[2].

By letter dated April 21, 1997 (UX 13), Charles Anderson, Special Assistant to President-Labor for the Bureau of Administration of Cook County, proposed to move the—

...Investigator II job classification covering Fugitive Unit and Day Reporting bargaining unit members from the Cook County Pay Plan Schedule I...to the newly created Investigator II (Intensive Supervision) Pay Schedule and same step they would have occupied had they remained on Schedule I....

FOP accepted the proposal as it applied to "Day Reporting Investigator II," thereby agreeing to place "Day Reporting Investigator IIs and Electronic Monitoring Investigator IIs on the same pay scale even though they were on different contracts" (Tr. 27). Believing that job duties of Fugitive Unit Investigators were "distinguishable from the Day Reporting and EM Investigators," and that they should be paid more than other FUI IIs, FOP rejected the Employer's proposal as it applied to the Fugitive Unit Investigators (Tr. 28-9). The dispute with respect to the wages of FUI IIs was referred to arbitrator John Fletcher for resolution (see UX 14).

3. The Four Divisions of DCSI

(a) The Electronic Monitoring Unit

Electronic monitoring "is the home incarceration of defendants by use of a non-removable anklet that is monitored 24 hours per day. The monitoring effort is supported by periodic, unannounced face-to-face home visits from EM personnel" (UX 6, at 3). Only those charged with non-violent offenses are allowed to participate in the EM program. "Since its inception in 1989, EM has become the nation's largest pre-trial monitoring program with over 30,000 inmates having participated in

the program, 81% of whom have completed the program successfully" (UX 6, at 3).

(b) The Day Reporting Center

Offenders considered nonviolent are assigned to the Day Reporting Center (DRC) for job training, drug counseling and other services (Tr. 8; see also UX 6, at 3). DRC Participants "are mostly drawn from Electronic Monitoring and are ordered to report daily until their cases are disposed in court" (UX 6, at 3). "The DRC expects the following of its participants: mandatory daily attendance, no new arrests, attendance at all court dates, drug testing, and prohibition of all gang affiliations" (UX 6, at 3). "Contracted social service agencies offer on-site program services that include intensive outpatient drug treatment; life-skills management; individual and group counseling; violence prevention; G.E.D.; acupuncture; and job readiness and placement" (UX 6, at 3).

(c) Pre-Release Center

The Pre-Release Center opened in September 1993 as a "treatment center for less serious substance abuse offenders, and serves as one of the Sheriff's rehabilitative programs at DCSI" (UX 6, at 3). The "specific intent" of the Pre-Release Center is "to break the cycle of drug addiction and crime" (UX 6, at 3).

(d) The Sheriff's Work Alternative Program

"SWAP takes mostly post-conviction misdemeanants and minor felons and uses them as no-cost manpower directed at

difficult, temporary manual labor in communities throughout Cook County" (UX 6, at 3).

4. The Bargaining Unit

There are three investigative units within DCSI: Day Reporting Investigators; EM Investigators; and Fugitive Unit Investigators—the bargaining unit under consideration (Tr. 68).

Fugitive Unit Investigators "are primarily responsible for apprehending the low-risk, nonviolent program participants ...absent without leave" (Tr. 68). Currently, there are 28 Fugitive Unit Investigators in a unit budgeted for 29 (Tr. 67; UX 8). The "chief of the Fugitive Unit reports directly to the deputy director of the Electronic Monitoring program" (Tr. 68).

Until 1994, EM Investigators apprehended DCSI detainees who went AWOL (Tr. 11, 15). After the workload increased, the Employer "created the Fugitive Unit" by transferring several EM Investigators to the Fugitive Unit and hiring additional Fugitive Investigators (Tr. 12). Fugitive Unit Investigators locate and apprehend violators of the Electronic Monitoring, Day Reporting, Female Furlough, and the Mothers Maternity Programs (Tr. 16; UX 9). In 1998, 28 Fugitive Unit Investigators arrested or cleared 97.2% or 2066 of 2126 AWOLs declared during the preceding year (UX 9). The arrest statistics for 1999 and early 2000 may be summarized as follows (UX 9):

12 months preceding 3/31/99: cleared 98.7% or 2108 of 2136 AWOLs declared during the preceding year

12 months preceding 6/30/99: cleared 101% or 2063 of 2043 AWOLs declared during the preceding year.

12 months preceding 7/31/99: cleared 101.8% or 2008 of 1972 AWOLs declared during the preceding year.

12 months preceding 9/30/99: cleared 102.4% or 1946 of 1900 AWOLs declared during the preceding year.

12 months preceding 10/31/99: cleared 101.1% or 1936 of 1914 AWOLs declared during the preceding year.

12 months preceding 11/30/99: cleared 102.8% or 1955 of 1901 AWOLs declared during the preceding year.

12 months preceding 1/31/00: cleared 101.3% or 1950 of 1925 AWOLs declared during the preceding year.

12 months preceding 4/30/00: cleared 99.7% or 1996 of 2003 AWOLs declared during the preceding year.

5. Comparing Various Units of Investigator IIs

Fugitive Unit Investigators are classified as Investigator IIs. Other Investigator IIs paid at the same rate as Fugitive Unit Investigators are employed in the Day Reporting Center and in the Electronic Monitoring Unit (UXs 10 & 11).

(a) Investigator IIs in DRC

The job description of Investigator IIs in the Day Reporting Center provides in relevant part (UX 10):

Under the immediate direction of supervisor or designee, this position is responsible for the supervision of program participants. Duties include:

Security of physical plant, premises and Department property;

Monitoring of participant behavior and compliance with program rules and expectations;

Maintenance of program records and ensuring their confidentiality;

Selection and process[ing] of new program participants;

Obtain and verify participant information;

Field work as needed;

Preparation of written reports;

Other duties as assigned.

* * *

B. JOB DESCRIPTION

The successful applicant will be responsible for the safety and security of participants, officers and staff of the Day Reporting Center. They will also be responsible for the security of the physical plant and other department property. This shall include perimeter and off site security and may involve the use of vehicles.

DRC Investigators do not "apprehend...people who are AWOL from the Program, and they are not involved in the types of criminal activity that...Fugitive Investigators, by virtue of their job, are involved in" (Tr. 19).

(b) Investigator IIs in EMU

The job description of Investigator IIs in the Electronic Monitoring Unit provides in relevant part (UX 11):

IV. RESPONSIBILITIES

A. GENERAL

1. Processing Department of Corrections Detainees for placement of the Electronic Monitoring program.
2. Transporting new program participants to their place of residence and installation of monitoring equipment.
3. Maintenance of monitoring equipment and equipment inventory control.
4. Scheduling authorized absences for program participants in accordance with program guidelines.
5. Conducting random unannounced home checks on all program participants.

6. enforcement of all program rules and regulations.
7. Maintain, review and record all subpoenas, writs, court orders, and sentences of program participants.
8. Dispatching EM field units to conduct investigations pursuant to unit Special Orders.

"In general," EM Investigator IIs "process Department of Correction detainees for placement" (Tr. 20). On the basis of the detainee's record and the charges pending against them, EM Investigators determine the detainees' placement and then transport them to "their place of residence and install the electronic monitoring device on them and...maintain the equipment and monitoring of those individuals" (Tr. 20-1). EM Investigators "schedule random, unannounced home visits..., schedule authorized absences...and in general maintain, review, and record...all of their court appearances, subpoenas, et cetera" (Tr. 21). At one time, EM Investigators searched for AWOL participants; currently, however, if EM Investigators cannot find an AWOL participant simply by checking out his or her home, "they hand [the search] over to the Fugitive Investigators" (Tr. 21-2).

EM Investigators are part of a bargaining unit of Correctional Officers represented by the Metropolitan Alliance of Police (MAP), but they are paid more than Correctional Officers (Tr. 20).

(c) Fugitive Unit Investigator IIs

The Job Summary for DCSI Fugitive Investigator reads (UX 12):

The major function of the position is to aggressively investigate and apprehend defendants missing from D.C.S.I. Programs (AWOL's) as well as assist in all unusual investigations which include jail escapes, jail disturbances and any other erroneous release from custody.

The DCSI Fugitive Unit Mission Statement dated March 3, 2000 reads (UX 15, at 2) [corrected for grammar, punctuation and diction]:

The Department of Community Supervision and Intervention Fugitive Unit was established primarily for the purpose of locating, apprehending and returning to the Department of Corrections violators of the various Cook County Sheriff's Programs that are outside the Department of Corrections. The D.C.S.I. Fugitive Unit is an investigative unit responsible for developing information for the purpose of identifying and finding a violator and determining whether he/she should be returned to the Department of Corrections. The goal of the unit is to assure that the community is safe while maintaining successful Sheriff's Programs. These goals are to be accomplished through cooperative efforts developed with other Criminal Justice Agencies.

The DCSI Fugitive Unit Investigator II Job Description provides (UX 12):

D.C.S.I. Investigator II personnel are primarily responsible for the investigation and apprehension of persons who have violated a D.C.S.I. program including those that have been declared A.W.O.L.

The investigators also may be assigned to investigations of persons who have escaped custody of the Department of Corrections or Department of Court Services and any other investigations involved in the apprehension of individuals from Cook county Sheriff's Department or programs.

When assigned to an investigation personnel will be responsible for obtaining a file from the Unit requesting assistance. The investigators will prepare a file for The D.C.S.I. Fugitive Unit, with the file including all available Jail Records,

Court Records, Arrest Records and Photographs. The investigators will conduct background checks updating any records that are a part of the file. Request up dated photographs and become familiar with the circumstances of the investigation.

Upon completion of the file and backgrounds it will be the investigators duties to locate and apprehend the wanted fugitive by checking any and all addresses connected to the fugitive. Investigators will be familiar with common telephone etiquette and courtesy. It is the responsibility of the investigators to prepare reports with the results of the investigation and completing an In Custody report when the fugitive is captured or the case is closed. The investigators will be interacting with various units of the Cook County Sheriff's Department as well The Chicago Police Department and other law enforcement agencies.

Investigators will familiarize themselves with agencies such as The Illinois Department of Public Aid, The Secretary of States Office, hospitals, other governmental agencies, as well as public businesses and associations that may be of help in locating wanted fugitives. Investigators are obliged to be knowledgeable in Court Procedures as well as Probation and Parole Procedures.

D.C.S.I. Fugitive Unit Investigators must be prepared to work on all three shifts and have a working knowledge of the geography of the City of Chicago, Cook County, Individual Suburbs of Cook County and the Collar Counties bordering Cook County.

D.C.S.I. Fugitive Investigators must be Sworn Personnel and will provide their own equipment including proper firearms. The investigators also must have a valid Illinois Drivers License.

DCSI FUGITIVE UNIT JOB DESCRIPTION

The apprehension of pretrial detainees who have been released from the Cook County Jail on Administrative Mandatory Furlough (AMF). This process consists of the following procedures:

As a condition of AMF, detainees are placed on one of the following programs: Electronic Monitoring Program (EMP), Day Reporting Program (DRP) or Sheriff s Female Furlough Program (SFFP.) When a detainee flees from one of said programs, a case file is turned over to the Dept. of Community Supervision and Intervention (DCSI) Fugitive Unit. A DCSI Fugitive Investigator then uses Law Enforcement Administration Data System (LEADS,) National Criminal Information System (NCIC,) Secretary of State (SOS,) Cook County Clerks terminal, in-house computer, to compile information as to the possible whereabouts of Fugitive subjects. Investigator also obtains Chicago Police arrest information. A history card from each respective program is compared with all other criminal history informa-

tion. The Fugitive investigator then goes into the "field," armed with all the above and checks any or all available addresses in anticipation of apprehending subject fugitive. Once the Fugitive Investigator makes contact, in the area in which Fugitive is known to frequent, more leads, such as additional addresses, Public Housing Complexes, drug houses and/or street corners where narcotic sales are prevalent. The vast majority of Fugitive cases relate to subjects on these programs charged with Felony Drug charges. Therefore, investigations are usually conducted in high crime areas in the most dangerous neighborhoods of Chicago. Often times when the Fugitive Investigator locates subjects in residences, the subject hides in the house in closets, cabinets, under beds, in attics, basement, even behind furnaces, etc. This puts the investigator at high risk since the Fugitive subject may possibly be armed and has the element of surprise on his/her side. This, as well as confrontations caused by family members and/or friends of the Fugitive subject, contribute to the high risk, stressful work environment. When Fugitive subjects are located on the street, the apprehension is often a result of foot chases, sometimes through abandoned buildings, stores, businesses and/or pursuit of the Fugitive subjects who break into homes while fleeing investigators.

In addition to the above, the Fugitive Unit handles special investigations such as escapes from the Cook County Dept. of Corrections, inadvertent releases, escapes from the Criminal Courts, as well as subject who escape from Cook County Dept. vehicles.

The majority of subjects who have fled one of the DCSI Programs in which the apprehension is assigned to Fugitive Investigators, the Fugitive subjects become "wanted" on Felony warrants issued by the Circuit Court of Cook County. This assimilates the Investigators' duties to that of the Cook County Sheriffs Police Fugitive Warrants Section. In the past Sheriffs Police Fugitive Warrants Section and the DCSI Fugitive Section have in the past, and still continue to work together.

The "primary function of the Fugitive Unit investigator is to apprehend detainees who have violated program rules of the Electronic Monitoring or the Day Reporting program or have otherwise gone AWOL" (Tr. 81). Making, on average, three arrests a day (Tr. 83, 88), Fugitive Investigators spend about 70 percent of their time of "apprehending AWOL Electronic Monitoring participants" and about "20 percent...apprehending" AWOL Day Reporting Participants (Tr. 89). Arrest warrants are

usually issued for the arrest of those accused of "very serious crimes" (Tr. 90). Those subject to "live warrants" cannot participate in any DCSI program (Tr. 90). Participants in the Day Reporting and Electronic Monitoring programs are placed on Administrative Mandatory Furlough or I-Bond (EX 22) (Tr. 89).

Union Exhibits 21 through 62 are memoranda, arrest reports and other documents generated between August 1993 and October 2000 that refer either to dangerous incidents involving Fugitive Investigators or to arrests made by Fugitive Investigators of supposedly dangerous individuals. Union Exhibits 21 through 42 concern incidents occurring before 1998, and the parties disagreed about whether evidence concerning the incidents referred to in these exhibits was presented to arbitrator Fletcher. It is undisputed that Union Exhibits 21-42 were not presented to arbitrator Fletcher (see Tr. 84). Exhibits 21 through 23 and Exhibit 34 pertain to arrests made in 1993; Exhibits 24 and 25 pertain to arrests made in 1994; Exhibits 27 through 31 pertain to arrests made in 1995; Exhibits 32-33 and 35-36 pertain to arrests made in 1996; and Exhibits 36-42 pertain to arrests made in 1997. For the most part, no Fugitive Investigator was threatened or assaulted by the person arrested or anyone else. On one occasion, Fugitive Investigator Patrick Moriarty chipped a bone in his finger while pursuing and "subduing" a fugitive who had run away (UXs 27 & 28).

A number of these exhibits are duplicative, referring to the same incident or arrest. Several of those arrested were

hiding or running away. One individual arrested in 1994 was accused of sexual assault (UX 25). Another, arrested in 1995, had escaped while under guard at a hospital (UX 26). In 1995, a prisoner who had escaped from electronic monitoring was found and arrested (UX 28). Also, in 1995, one prisoner who had escaped from a DOC bus was arrested (UX 29). Other, similar incidents are reported in the exhibits produced by the Union, including a report that a fugitive had been shot dead (although not while resisting arrest) (UX 33). Other fugitives were arrested while carrying concealed guns or hiding illegal drugs (see, e.g., UXs 38-39, 47, 56). One accused of murder and another of aggravated firearm battery were arrested by Fugitive Investigators (UXs 50 & 53).

A "small percentage of individuals...are placed into the DCSI programs pursuant to a judge's order" (Tr. 97). A screening process (EX 22) determines whether other arrestees will be eligible for an I-Bond and referred to DCSI (Tr. 90). An arrestee whose background indicates any of the following is ineligible for any DCSI program (EX 22):

1. Current Charges (check box if applicable)

AGG BATTERY	ARMED ROBBERY
ARMED VIOLENCE	AGGRAVATED ARSON
ARSON	ATTEMPT MURDER
ESCAPE	KIDNAPPING
MURDER	RAPE
STALKING	CLASS X DRUG POSSESSION
DOMESTIC BATTERY (MORE THAN TWO OVER PAST TWO YEARS)	
AGGRAVATED DISCHARGE OF A FIREARM	
FELONY SEXUAL OFFENSE	

2. BOND (check box if applicable)

MORE THAN \$300,000	CASH OVER \$10,000
---------------------	--------------------

3. CRIMINAL HISTORY (check box if applicable)
- A. PREVIOUS CONVICTION FOR:
- | | |
|----------------|----------------|
| HOMICIDE | KIDNAPPING |
| SEXUAL OFFENSE | ARSON |
| ESCAPE | ATTEMPT MURDER |
- B. ACTIVE ORDER OF PROTECTION
- C. CONVICTION WITHIN PAST FIVE YEARS FOR:
- | | |
|---------------|--------------------|
| ARMED ROBBERY | AGGRAVATED BATTERY |
|---------------|--------------------|
4. PSYCHIATRIC (check box if applicable)
- IN-PATIENT PSYCHIATRIC TREATMENT WITHIN PAST FIVE YEARS
5. OTHER (check box if applicable)
- | | |
|-----------------------------|-----------------------------|
| ACTIVE WARRANT | INS HOLD |
| PRIOR AWOL FROM E.M.U. | MITTIMUS INSTRUCTS "NO EMP" |
| NOT RESIDENT OF COOK COUNTY | NEW ARREST WHILE ON E.M.U. |

The information from which DCSI Assessments are derived is contained in a national computer database known as "LEADS" (see, e.g., UXs 59-62) (Tr. 91-2). Data for LEADS is compiled from a "arrest card" filled out by a police officer at the time of the arrest; the information contained on the arrest card and fed into LEADS is not verified (Tr. 93). Convictions may or may not be included (UX 59-63).

To cover weekends, Fugitive Unit employees are scheduled on an eight-day cycle—six days on and two days off (Tr. 82). The Fugitive Unit day shift, composed of thirteen investigators, works 7:00 A.M. to 3:00 P.M.; the afternoon shift, composed of eight investigators, works 3:00 P.M. to 11:00 P.M.; and the night shift, composed of seven investigators, works 11:00 P.M. to 7:00 A.M. (Tr. 82).

One investigator on each shift acts as an assistant supervisor and two investigators on the day shift "perform mainly clerical functions and are responsible for following up

leads on outstanding cases" (Tr. 82). Employer Counsel described her understanding of the duties and responsibilities of the field investigators (Tr. 83):

The remainder of the investigators, who usually work in teams of two, are responsible for creating and following up leads for each of the cases assigned to them. This usually involves checking the computer databases such as LEADS and making telephone contacts. The investigator teams then drive unmarked cars to last known addresses or places frequented by AWOL participants.

Upon arriving at a home, some residents will call the Chicago Police Department before allowing the Fugitive Unit investigators to enter the premises.

Some days no arrests are made. However, on...average, three arrests are made per day or one per shift. These arrests refer to EM or Day Reporting program violators. [In] most cases the violator is taken into custody without incident. In other instances, the violator is taken into custody using reasonable force. ...

"There have been instances when defendants committed serious crimes while AWOL, including murder, armed robbery and aggravated assault. Ninety-nine percent of AWOL participants are apprehended, with more than 75 percent caught within 24 hours after being listed" (UX 7, at 8). Fugitive Investigators are "sworn personnel" who "provide their own equipment including proper firearms" and "carry a badge that identifies them as Fugitive Investigators" (Tr. 24-5). Fugitive Investigators are "recertified annually for range training" (Tr. 25). They "have to have a working knowledge of the geography of the City of Chicago, Cook County, individual suburbs of the county, and the collar counties" (Tr. 24). Fugitive Investigators also have to investigate the AWOL fugitive and interview his family, friends and acquaintances (Tr. 24). They may also

"research National Criminal Information System, SOS records, and Cook County Clerk's terminals" to compile information" (Tr. 26). They go to the area "where the fugitive is known to frequent...such as...public housing complexes, drug houses and/or street corners where narcotic sales are prevalent..." (Tr. 26).

B. Internal Comparisons

1. History

(a) *Cook County/Cook County Sheriff & Illinois Fraternal Order of Police, L-MA-96-007 (Investigators II-Fugitive Unit) (Fletcher 1998) (UX 14)*

As noted, the ISLRB certified the Union as exclusive bargaining agent for Fugitive Investigators on May 16, 1995 (UX 4). Unable to reach agreement on wages, the parties invoked interest arbitration, selecting arbitrator John Fletcher as their "neutral arbitrator" (see UX 14).

Final wage proposals were:

	<u>Employer</u>	<u>Union</u>
12/01/95	2.0%	4.0%
11/30/96	1.0%	4.0%
12/01/96	4.0%	4.0%
12/1/97	3.5%	4.0%
Totals	11.5%	16.0%

Citing three prior awards,⁶ arbitrator Fletcher adopted the Employer's final offer (UX 14, at 14). He rejected the Union's argument that "Fugitive Investigators should be compared with Sheriff's Police Officers" and adopted the

⁶ *Cook County/Cook County Sheriff & Teamsters Local 714, L-MA-94-005 (McCalpin 1994); Cook County/Cook County Sheriff & Teamsters Local 714, L-MA-95-001 (Goldstein 1995); and Cook County/Cook County Sheriff & Teamsters Local 714, L-MA-97-005 (Berman 1998).*

Employer's argument that "they are more appropriately compared with Investigators in the DCSI Electronic Monitoring and Day Reporting Units" (UX 14, at 11):

While...Fugitive Investigators may, at times become involved in the apprehension of violent criminals, the data proffered by the Union simply do not support any suggestion that this is a major portion of the work.

At page 11, arbitrator Fletcher pointed out that while,

...there is the possibility of human error, it is evident efforts are made to limit participation in the Electronic Monitoring and Day Reporting Programs to persons who are not likely to be violent. Specifically, anyone charged with a violent crime or having a history of violent criminal activity is ineligible for these programs. The evidence further shows that these persons, when they are fugitives as a result of being AWOL from the program, generally seek to elude the Investigators rather than resist arrest.

On the other hand, arbitrator Fletcher noted at page 11 that,

...the Sheriff's Police Officers regularly deal with offenders of various sorts, from traffic violators to violent criminals. They are regularly involved in crimes in progress. While the Fugitive Investigators might be exposed to the same risks as the Police Officers, *...the frequency of such exposure [is] a distinguishing characteristic [my italics]*. Furthermore, the...Police Officers are required to have substantially more training than the Fugitive Investigators.

Noting that "Fugitive Investigators have historically been paid at the same rates as EM Investigators and Day Reporting Investigators," and citing arbitrator Goldstein's award in L-MA-95-001, for the principle that "the Panel should not award 'breakthroughs' that would substantially change the status quo in the absence of substantial and compelling justification" [underlining in original], arbitrator Fletcher held

that there was "insufficient justification to warrant discontinuing the parity that has existed between the Fugitive Investigators and other two units" (UX 14, at 12). Arbitrator Fletcher held that "internal comparability favors the Employers' proposal." He also noted that with the exception of Dallas County, Texas, the "Employers' wage proposal places the Fugitive Investigators at a high competitive level with respect to employees of other jurisdictions" (UX 14, at 13).

(b) Cook County/Cook County Sheriff & Metropolitan Alliance of Police, Cook County Correctional Officers, Chapter #222, L-MA-99-001 (Yaffe 2000) (EX 25)

Replacing Teamsters Local 714, the Metropolitan Alliance of Police (MAP), Chapter 222, was certified as the bargaining representative of the Cook County Sheriff's Correctional Officers on December 23, 1998 (EX 25, at 1). The bargaining unit consisted of about 2450 Correctional Officers and 200 Electronic Monitoring Investigators (EX 25, at 1).

The Teamsters agreement expired November 30, 1998, and MAP and the Employer reached impasse on a proposed three-year agreement (EX 25, at 1). Among the unresolved issues were wages. The parties selected arbitrator Byron Yaffe to resolve their dispute.

The Union proposed an annual 5% pay increase and the Employer proposed a 4% pay increase in the first year and a 3% increase in each of the next two years (EX 25, at 6). Arbitrator Yaffe adopted the Employer's proposal of a first-year 4% increase and a second-year 3% increase; and the Union's proposal of a 5% third-year increase (EX 25, at 10):

[I]nternal comparability...justif[ies] continuation of a difference in the pay of Correctional Officers and Police Officers, based, at least in part, on differences in training, required experience, and duties/responsibilities. However, when one examines the history of the pay relationship between these two units, it becomes apparent that the pay gap between these two units has widened over time based upon identical percentage increases which have been imposed upon different pay schedules with different pay ranges. In the undersigned's opinion, more of the same would only widen that gap, unjustifiably. Therefore, in order to maintain some stability in the pay relationship between these two units, the undersigned believes that it would be fair and appropriate to grant the Employer's pay proposal for the first two years of the Agreement..., and the Union's wage proposal for the third year.... Granting the Union's proposal in the third year of the Agreement will hopefully help return the parties' pay relationship to what it previously has been, while at the same time minimizing the financial/cost impact on the Employer.

The undersigned does not believe that this award constitutes a dramatic change or breakthrough in the relationship between the parties. Instead, it constitutes an effort to maintain some stability in the dollar to dollar pay relationship—which has unjustifiably been expanded over time—between these two law enforcement units... (UX 25, at 10-11.)

2. External Comparisons

The Employer submitted comparisons between the Cook County Investigator classification and seemingly similar classifications in fourteen other jurisdictions (EX 27):

<u>Jurisdiction</u>	<u>Title</u>	<u>Minimum</u>	<u>Rank</u>	<u>Maximum</u>	<u>Rank</u>	<u>Date</u>
Los Angeles CA	Deputy Sheriff	\$41,257	1	\$60,168	1	7/1/00
Cook County IL	Investigator	\$36,432	4	\$53,806	2	12/1/00
Maricopa County AZ	Probations Surveillance	\$30,576	10	\$53,560	3	7/1/00
IL DOC	Corrections Patrol Agent	\$35,784	5	\$51,840	4	7/1/00
Hennepin County MN	Deputy Sheriff	\$39,096	2	\$48,372	5	1/1/00

San Diego County CA	Probation Officer	\$37,964	3	\$46,169	6	6/30/00
Middlesex County MA	EM Systems Officer	\$32,500	8	\$44,960	7	7/1/99
Wayne County MI	Sheriff's Police Officer	\$26,836	12	\$44,436	8	12/1/99
Dallas County TX	Warrant Research Investigator	\$33,840	7	\$42,180	9	1/1/00
Hamilton County OH	EM Enforcement Officer	\$25,500	14	\$42,000	10	1/1/00
Dade County FL	Correctional Officer	\$24,988	15	\$41,553	11	9/1/00
Marion County IN	Merit Deputy	\$30,661	9	\$40,976	12	4/11/00
Hampden County MA	Community Corrections Officer	\$34,500	6	\$39,500	13	7/1/00
Baltimore County MD	Correctional Officer	\$27,952	11	\$35,479	14	7/1/00
Philadelphia County PA	Warrant Investigator	\$26,184	13	\$28,573	15	7/1/00
ARITHMETIC MEAN		\$32,269		\$44,905		
MEDIAN		\$33,840		\$44,960		

Although not "disputing the external comparables proposed by the County," the Union argues that they should not be "given as much weight as internal comparisons among Cook County law enforcement employees" (Un. Brief, 22):

1. It is difficult to compare "Cook County employees with those far-flung across all regions and economies of the United States"; and

2. The parties used "internal comparisons when they...agreed to place the Day Reporting Investigators and EM Investigators on a pay scale that represented salaries in excess of those paid to correctional officers.

C. Recent Cook County Settlements and Proposals

Employer Exhibit 26 details the Cook County contract settlements and Employer proposals covering law enforcement units:

4% across-the-board increase effective 12/1/98
 3% across-the-board increase effective 12/1/99
 3% across-the-board increase effective 12/1/00

MAP: Police Officers (Settled)
FOP: Day Reporting Investigators (Proposed)*
FOP: Fugitive Unit Investigators (Proposed)
MAP: Cook County Hospital Sergeants (Proposed)
MAP: Oak Forest Hospital Security Officer (Proposed)
Teamsters Local 726: Oak Forest Hospital Sergeants
 (Proposed)
MAP: Correctional Officers (Proposed)†
AFSCME: Correctional Sergeants (Proposed)°
FOP: States Attorney's Office Investigators
 (Settled)
FOP: Department of Corrections Internal Affairs
 Investigators (Settled)
FOP: Court Services Department Internal Affairs
 Investigators (Settled)

*Submitted to interest arbitration 7/20/00.

†Submitted to interest arbitration; arbitrator awarded wage increases of 4%, 3% and 5% each year of 3-year term.

°Arbitrator awarded Employer's wage proposal.

V. Summary of Arguments

A. the Union

The Union writes (Un. Brief, 31):

Many of the responsibilities of the Fugitive Investigator are similar to [those] of a Sheriff's Police officer or detective. Like a police officer they must be knowledgeable in court procedures including probation and parole procedures. They must have a working knowledge of the geography of the entire city, county, and surrounding suburbs. They run background checks on wanted fugitives, as well as maintaining contact with other state agencies, public businesses and associations. They are licensed to carry a firearm. They aggressively investigate cases with the sole purpose of apprehending-arresting-and returning the wanted fugitive to jail."

The Union also notes that the job description for Fugitive Investigator underscores that these employees "are regularly faced with high risk, dangerous situations" and "are expected to take appropriate police action when they observe any criminal activity" (Un. Brief, 32). The Union suggests that "the chance of a Fugitive Investigator encountering a violent criminal or dangerous situation is as great if not greater than that of a police officer," that, in fact, the "chances of a police officer" "running into a violent criminal" while "patrolling the streets of Skokie, Westchester, or Gurnee" are "no greater than [those] of a Fugitive Investigator" (Un. Brief, 39). In addition, the Union points out, Fugitive Investigators "have received in excess of 600—and in some instances 700 hours of training"—a level of training beyond the "400 hour correctional officers training" (Un. Brief, 33).

Finally, the Union notes that a 4.5% increase each year for three years "will move Fugitive Investigators ahead of the Day Reporting and EM Investigators" but will "not come even close to achieving 'parity' with the Sheriff's Police, the Court Security Officers or the State's Attorneys Investigators" (Un. Brief, 40). The Union's "intent...is not to place these employees on equal footing with other sworn law enforcement employees of the County," but it is "a modest attempt to compensate the Fugitive Investigators more appropriately for their job duties and responsibilities" (Un. Brief, 40).

B. The Employer

In support of its "total package deal of 4%-3%-3%," the Employer argues:

- The "Union's wage package should be rejected in its entirety because it is indicative of bad faith bargaining," as it is an example of "regressive bargaining": "At the last minute," the Union modified its final wage proposal at the bargaining table from 4%-4%-3% to 4.5%-4.5%-4.5%, increasing the difference between the competing final offers from 1% to 2¹/₂% (Emp. Brief, 23-4).
- "The Investigators' duties, training, and the type of DCSI participant [have] not changed since the Fugitive Unit's creation" and "no comparison to the Sheriff's Police Department duties can be made" (Emp. Brief, 24).
- In bargaining with respect to the "three major divisions of the Sheriff's Office," the parties have developed "pattern bargaining" in terms of a hierarchy with the Sheriff's Police at the highest level followed by the DOC and Court Services Department (Emp. Brief, 25).
- "Police Officers assigned to the Fugitive Warrants Section of the Sheriff's Police Department are certified as Police Officers by the State and the Merit Board and have received training the Sheriff's Police Training Academy" (Emp. Brief, 25). Sheriff's Police positions "are filled by promotion from the roster of Correctional Officers, Deputies, and DCSI Investigators" (Emp. Brief, 25). DCSI Fugitive Investigators are certified only "by the State and Merit Board as either a Correctional Officer or Deputy" (Emp. Brief, 25). A Police Fugitive Warrant Officer has historically had ten years [previous] experience on the job," has "usually been assigned to uniform patrol and later works in the one of the specialized units in the Sheriff's Police Department, such as Gang Crimes or the Narcotics Unit" (Emp. Brief, 25).

In essence, the Employer argues that the duties of the Sheriff's Police and Warrant Servers are more hazardous and difficult than the duties of Fugitive Unit Investigators—that

the former, unlike Fugitive Unit Investigators, go "after murderers, kidnappers, rapists and other violent criminals" ineligible for DCSI, extradite "felons from jurisdictions around the country," and take part in "joint operations with other law enforcement agencies" (Emp. Brief, 26-7).

VI. Concluding Discussion and Findings

Because this unit of Fugitive Investigators is not readily comparable to cited units in other, "far-flung" jurisdictions, external comparisons are of little value. Accordingly, I shall confine my analysis to the internal comparisons suggested by the parties.

Since 1988, Sheriff's employees have been paid on the basis of a three-tiered salary structure: Sheriff's Police are the highest paid, followed in order by Correctional Officers and Court Services Deputies. DCSI was created in 1992; the Fugitive Unit under review was carved out of DCSI in 1994; and the wages of DCSI employees have never been structurally related to those of other Sheriff's employees.

The FI II wage schedule is contained in Appendix A of the parties' 1995-98 Agreement:

DEPARTMENT OF HUMAN RESOURCE
INVESTIGATOR II (FUGITIVE)

	12/1/95		11/30/96		12/1/96		12/1/97	
	Hrly	BiWkly	Hrly	BiWkly	Hrly	BiWkly	Hrly	BiWkly
1 st Step	14.602	1618.16	14.748	1179.84	15.338	1227.04	15.875	1270.00
2 nd Step	15.300	1224.00	15.453	1236.24	16.633	1330.64	16.633	1330.64
3 rd Step	16.028	1282.24	16.188	1295.04	17.425	1394.00	17.425	1394.00
4 th Step	16.802	1344.16	16.978	1357.60	18.267	1461.36	18.267	1461.36
5 th Step	17.615	1409.20	17.791	1423.28	18.503	1480.24	19.151	1532.08
After 1 yr at Maximum Rate and 5 years of Service	18.435	1474.80	18.169	1489.52	19.364	1549.12	20.042	1603.36
After 1 yr at Maximum Rate and 10 years	19.172	1533.76	19.364	1549.52	20.139	1611.12	20.844	1667.52
After 1 yr at Maximum Rate and 15 years	19.939	1595.12	20.138	1611.04	20.944	1675.52	21.677	1734.16
After 1 yr at Maximum Rate and 20 years	20.737	1658.96	20.944	1675.52	21.782	1742.56	22.544	1803.52
After 1 yr at Maximum Rate and 25 years	21.566	1725.28	21.782	1742.56	22.544	1803.52	23.446	1875.68

Perhaps, as the Union suggests, a Fugitive Investigator is just as likely to "run into a violent criminal" as a Skokie, Westchester or Gurnee police officer (Un. Brief, 39).⁷

⁷ Westchester and Skokie are in Cook County, Illinois. Gurnee is in Lake County, Illinois.

In the end, however, I concur with the Employer that the overall scope of the job of the Sheriff's Police, coupled with their more advanced training and risk of danger in apprehending violent offenders, distinguishes them from Fugitive Unit Investigators.

As arbitrator Fletcher wrote (UX 14, at 11-12):

While the Employers acknowledge there is the possibility of human error, it is evident efforts are made to limit participation in the Electronic Monitoring and the Day Reporting Programs to persons who are not likely to be violent. Specifically, anyone charged with a violent crime or having a history of violent criminal activity is ineligible for these programs. The evidence further shows that these persons, when they are fugitives as a result of being AWOL from the program, generally seek to elude the Investigators rather than resist arrest. The Union's witness, Investigator 11 Patrick Moriarty, testified the fugitives often hide in closets and under beds, or flee by jumping out of windows or driving away. When asked if he has ever been injured, he replied that he has broken a couple of fingers and other Investigators have broken arms and wrists apprehending fugitives. It is not clear, however, if these injuries were incurred during a chase or during a physical confrontation with a fugitive.

In contrast, the Sheriff's Police Officers regularly deal with offenders of various sorts, from traffic violators to violent criminals. They are regularly involved in crimes in progress. While the Fugitive Investigators might be exposed to the same risks as the Police Officers, the Panel finds the frequency of such exposure to be a distinguishing characteristic. Furthermore, the record sufficiently establishes that Police Officers are required to have substantially more formal training than the Fugitive Investigators. The Police Officers are required to have an additional 440 hours of academy training above the 400 hours they received as Correctional Officers or Deputy Sheriffs, while the Fugitive Investigators receive only 40 hours of additional training when transferred to the DCSI. This additional training translates into the expectation that Police Officers would have a higher skill level, which, in turn, would warrant higher compensation.

One can only applaud the work of the Fugitive Investigators. The evidence presented here shows that they have consistently apprehended most, if not all, AWOLs. Nevertheless, the evidence regarding Fugitive Investigators' training and dangerous, or potentially dangerous, working conditions is not substantially distinguishable from similar evidence presented to arbitrator Fletcher. Although, as the Union notes, "each and every" Fugitive Investigator has received training in excess of the 40 hour minimum and there were examples of potential or actual danger faced by Fugitive Investigators, Fugitive Investigators do not generally have to track down and arrest violent criminals, investigate or halt street crime, or perform other hazardous jobs routinely expected of Police Officers.

As the Employer pointed out, much of the evidence produced by the Union dealt with incidents that occurred before fiscal year 1998-99, the final year of the three-year contract reviewed by arbitrator Fletcher. Although it is unclear whether evidence related to these incidents was presented in some form to arbitrator Fletcher, it is clear that the exhibits submitted here (UXs 21-42) were not presented to him. Under these circumstances, I am reluctant to credit evidence that could have been presented to and considered by arbitrator Fletcher. In a sense, the Union would impeach arbitrator Fletcher's Award by reason of evidence that would have been material and relevant had it been—although it was not—submitted to him. To concur in this approach would imperil the

viability of virtually any award made by any arbitrator. In a later proceeding involving the same or similar issue, either party could attack the opinion underlying the initial award simply by presenting arguably material and relevant evidence it had withheld, overlooked, or failed to discover. In short, I do not consider it appropriate to consider *new evidence* relevant to issues raised and considered in a prior award.⁸ In any event, the pre- and post-1998 evidence relating to arrests made by Fugitive Investigators does not persuade me that the work of Fugitive Investigators is significantly comparable to the work of police officers. As noted, many of the documents the Union presented are cumulative, dealing with different aspects of the same incident; closely examined, it is readily apparent that these documents stand for neither the many or sinister dangers routinely faced by Fugitive Investigators, but for their rarity and relative harmlessness. I do mean to suggest that Fugitive Investigators work in a totally benign and controlled environment. They do not; for after all, they must often venture into marginal neighborhoods and apprehend criminals—even if those sought may be considered petty criminals. But the evidence simply failed to demonstrate that Fugitive Investigators routinely, or often, come face-to-face with danger.

⁸ Nor, of course, in the absence of evidence that the prior award was defective, would I reconsider *old evidence* raised and considered in the prior award.

Obviously, not all Cook County Sheriff's Police have to face danger. Some have desk jobs. Some are administrators. Some are evidence technicians, psychologists or other specialists who may never have to make an arrest, serve a warrant, or face an angry, violent offender. And, as the Union suggests, many police officers on patrol work in relatively safe neighborhoods. But I cannot divide the Sheriff's Police into various categories and compare them one-by-one, specialty by specialty, to the Fugitive Investigators under consideration. I have been asked to compare a small unit of specialized investigators to large police units containing many specialized positions. On balance, I can only suggest that *as a generality* Fugitive Investigators cannot be compared to police officers; *as a generality*, Fugitive Investigators' responsibilities, training, and exposure to danger are different from those of the Sheriff's Police.

I also recognize that the Union's offer would not "place these employees on equal footing with other sworn law enforcement employees of the County" (Un. Brief, 40), and that there are factors that distinguish them from the Day Reporting and EM Investigators with whom they now have parity. Nevertheless, I must choose one offer or the other. I cannot compromise their differences; and as the Employer suggests, the distinctions between Fugitive Investigators and other investigative units are insufficient to set aside the "the internal consistency of the investigatory units of the Sheriff's Office" (Emp. Brief, 21).

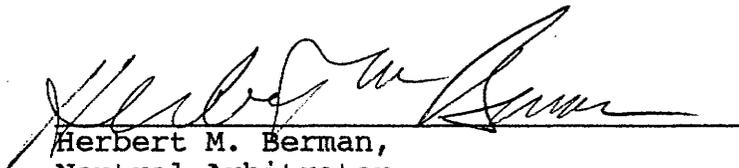
Award

For the reasons set forth, a majority of the Panel adopts the Employer's final wage offer herein as follows:

Effective the first full pay period after 12/1/98
(FY 99): 4.0%

Effective the first full pay period after 12/1/99
(FY 00): 3.0%

Effective the first full pay period after 12/1/00
(FY 01): 3.0%



Herbert M. Berman,
Neutral Arbitrator
Draft to Parties: 10/18/01
Date: 11/14/01

I concur:

I dissent:

/s/ John Kalchbrenner
John Kalchbrenner,
Employer Arbitrator
Date: 10/24/01

Thomas Sonneborn,
Union Arbitrator
Date: