

**ILLINOIS LABOR RELATIONS BOARD
INTEREST ARBITRATION
JULES I. CRYSTAL
ARBITRATOR**

**COOK COUNTY STATE'S
ATTORNEY'S OFFICE,**

Employer,

and

Case No. S-MA-08-238

**ILLINOIS FRATERNAL ORDER OF POLICE
LABOR COUNCIL,**

Union.

DECISION AND AWARD

Appearances on behalf of the Employer

Jacob M. Rubinstein, Esq.
Meckler Bulger Tilson Marick & Pearson, LLP
123 N. Wacker Drive - Suite 1800
Chicago, IL 60606
Michael A. Kuczvara, Jr., Esq.
Cook County State's Attorney's Office
500 Richard J. Daley Center
Chicago, IL 60602

Appearances on behalf of the Union

Gary Bailey, Esq.
Kimkea Harris, Esq.
Illinois Fraternal Order of Police Labor Counsel
5600 S. Wolf Road
Western Springs, IL 60058

This matter came to be heard before Arbitrator Jules I. Crystal on the 12th day of September 2011, 5600 S. Wolf Road, Western Springs, Illinois 60058. Jacob Rubinstein presented for the Employer and Gary Bailey presented for the Union.

I. INTRODUCTION

The parties in this matter are the Illinois FOP Labor Council (hereinafter “the Union” or “FOP”), and the Cook County State’s Attorney’s Office (hereinafter the “Employer” or “SAO”), whose most recent collective bargaining agreement (hereinafter “Agreement” or “Contract”) expired on November 30, 2008. Although the parties have engaged in negotiations for a new agreement, they were unable to successfully resolve certain issues. This has resulted in the instant impasse arbitration, which is being held pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1, *et seq.* (hereinafter referred to as “the Act”), and is subject to certain agreed-upon modifications set forth in their Ground Rules and Pre-Hearing Stipulations (Jt.Exh.1). This impasse and resulting interest arbitration is the first ever to occur for this bargaining unit, and constitutes the fourth successive collective bargaining agreement between the parties. (Tr. 33, 131-32).

The parties selected the undersigned Arbitrator to serve as the sole member of the arbitration panel in this matter, waiving their respective rights to appoint an Employer and Union delegate to the panel. Jt. Exh. 1, ¶ 3. The parties have stipulated that there are no procedural matters at issue, and that the Arbitrator has jurisdiction and authority to rule on the mandatory subjects of bargaining submitted to it as authorized by the Act. *Id.* at ¶¶ 4 and 5. At the hearing held on September 12, 2011, both parties were given the opportunity to present such evidence and argument as they desired, and chose to present their cases in narrative fashion as opposed sworn testimony by witnesses. The parties submitted post-hearing briefs, which were received on October 31, 2011, after which the record was closed. The parties have directed that the tentative agreements they have reached with respect to other proposals be incorporated into the Arbitrator’s Award in this matter. Jt. Exh. 1, ¶7.

II. ISSUES IN DISPUTE

The parties submitted the following issues to the Arbitrator, stipulating that they are mandatory issues of bargaining and economic issues within the meaning of Section 14(g) of the Illinois Public Labor Relations Act, and that the Arbitrator must choose either the County’s offer or the Union’s proposal on each issue:

- | | |
|-------------------------------|--|
| 1. Article XIII, Section 13.2 | Effect of Recall on Sick Time Accumulation |
| Article XXV, Section 25.1B | Effect of Recall on Sick Time Accumulation |
| 2. Article XXIV, Section 29.4 | Annual Wages |

3. Article XXIV, Section 29.5 Equipment Allowance (Vests)
4. Article XXIV, Section 29.5 Equipment Allowance (Increase in Allowance)

The parties submitted the following issues to the Arbitrator, stipulating that they are mandatory issues of bargaining and non-economic issues within the meaning of Section 14(g) of the Illinois Public Labor Relations Act, and that the Arbitrator may choose either party's proposal or he may formulate his own provision on each issue:

1. Article VII, Section 7(d) Definition of Seniority
2. Article VII, Section 7.1 Use of Seniority for Shift And Assignment Bids
Article XXXI, Section 31.1 Use of Seniority for Shift And Assignment Bids
3. Article XIII, Section 13.2 Increase Recall List Expiration
4. Article XXIV, Section 24.8 Specify FTO Qualification
5. Article XXVII, Section 27.5 Military Leave (Tentative Agreement Reached)
6. Article XXXI, Section 31.2 Temporary Transfers (Eliminate exceptions; clarify maximum length)
7. Article XXXIII, Section 33.1 Term of Agreement (Tentative Agreement Reached)
8. Appendix Re-Attach Residency Letter (Tentative Agreement Reached)

III. STATUTORY FRAMEWORK

This interest arbitration is governed by the criteria set forth in Section 14 of the Act. *See* 5 ILCS 315/14. The relevant provisions of Section 14 are as follows:

ILLINOIS PUBLIC LABOR RELATIONS ACT 5 ILCS 315/1 et seq.

Section 14(h) Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.

(2) Stipulations of the parties.

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

(4) Comparisons 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.

In the discussion that follows, while the factors most determinative of the outcome of this Interest Arbitration are highlighted, it should be noted that all the statutory factors, including all of the parties' stipulations, have been considered in reaching this Decision and Award.

IV. ARBITRAL CONSIDERATIONS

A. Comparables

Comparables are a critically important factor in assisting an Arbitrator in reaching a decision and award. They provide objective factors that allow the Arbitrator to flesh out economic distinctions of similarly-situated communities. Section 14(h)(4)(a) of the Act requires that the Arbitrator base his or her findings, decision and award on a comparison of the employees involved in the arbitration with other employees performing similar services in comparable

communities. *See* 5 ILCS 315/14(h)(4)(a). Thus, comparables are imperative in assisting the Arbitrator to reach a resolution on the issues before him.¹

In this matter, the Union has not proposed that consideration be given to specific internal comparables -- *i.e.*, similar employees within the Employer. Instead, the Union has proposed external comparables consisting of officers from eight different bargaining units of law enforcement officers employed jointly by Cook County and the Cook County Sheriff and one bargaining unit of police officers employed by the Cook County Forest Preserve District. (Union Exh. 10.) The Union also has provided several arbitration awards in support of its proposed set of comparables.

Similar to the approach taken by the Union, the Employer does not rely on internal comparables. Instead, the Employer has proposed external comparables consisting of sworn investigators employed in nearby Northeastern Illinois counties -- specifically, investigators employed by the State's Attorney's Offices of Du Page, Kane, Will and Lake Counties. In essence, the Employer seeks comparables that are based on "employees performing similar services."

In determining the appropriate external comparables, Section 14(h)(4)(A) of the Act provides that an interest arbitrator may take into account the "[c]omparison 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 in public employment in comparable communities." 5 ILCS 315/14(h)(4)(A). Although the Act provides little direction regarding what constitutes "comparable communities," interest arbitrators have reasonable discretion to consider various factors in determining comparable communities. *See* Edwin Benn, *A Practical Approach to Selecting Comparable Communities in Interest Arbitration Under the Illinois Public Labor Relations Act*, ILLINOIS PUBLIC EMPLOYEE RELATIONS REPORT, Autumn 1998, at 2.

In assessing the proposed comparables in this case, each party's comparable pool has been measured against the wage proposals. Here, however, both parties have proposed a wage increase of 8.5% over the life of the contract, resulting in two final wage proposals that are not so dissimilar. Since the Act provides that the Arbitrator may, in part, base his or her award on a

¹ The record herein reveals that the parties relied upon, and presented evidence with respect to, comparables primarily for the purposes of economics -- and specifically with respect to wages. Regarding other impasse issues, the undersigned has given appropriate consideration to the comparable data in the record.

comparison of the employees involved in the arbitration with other employees performing similar services in comparable communities, the question turns on whether the work of the comparables is substantially similar to, or different from, one another. *See Village of Rock Falls and IAFF, Local 3291*, S-MA-94-163 (Nathan, 1995).

It is important to note, for comparison purposes, that the SAO's Office is the second-largest prosecutor's office in the United States, employing approximately 1,500 individuals. (Employer Exh.1; Tr. 127). The Investigations Bureau of the SAO consists of approximately 130 sworn personnel with full police powers who provide investigative and logistical support to the SAO. (Employer Exh. 2). The members of the bargaining unit at issue in this case are non-supervisory Investigators in Salary Grades Investigator I (SA1) and Investigator II (SA2) on Cook County Salary Schedule XXVII. (Union Exh. 8, Appendix A). The general responsibilities of Investigators lie in three areas: (1) providing investigative and logistical support to Assistant State's Attorneys' in their preparation of cases; (2) complementing local law enforcement efforts by providing investigative assistance, expertise and technical resources; and (3) conducting investigations of specialized offenses which are not necessarily handled by other law enforcement agencies.

It is the Union's position that Cook County law enforcement is an appropriate comparable because *sworn* personnel should be compared to other *sworn* personnel. As a counter to the Employer, the Union contends that inasmuch as demographic evidence is lacking, the SAO has failed to meet its burden to show that its proposed comparable pool is sufficiently similar. In particular, the Union points to the absence of documentation that demonstrates collar county investigators are in fact sworn personnel and that they perform similar investigative duties. The Union in essence believes it is comparing *apples-to-apples* and that *its* comparable pool is more adequately supported by the data and by arbitral precedent.

One remaining issue which has been addressed in only a limited way in this proceeding pertains to retroactive pay as it relates to comparable communities. The Employer contends that should the Union's wage proposal be adopted, it will result in a retroactive pay increase of 5.5% for 105 Investigators. The Employer asserts further that an award of retroactive pay would be detrimental to the County's financial state and ultimately result in layoffs in order to comply with such award. (Employer's Brief, at 18-20). In contrast, the Union asserts that its proposal will result in a nominal retroactive payment that will have no adverse impact on the County's

finances. The Union notes further that its proposed retroactive pay will constitute the first pay raise since June 1, 2008. (Union's Brief, at 26).

The record here does not articulate how either of the parties' proposed comparables impacts, or otherwise relates to, the issue of retroactive pay. More specifically, neither the testimony nor the proffered exhibits provide documentation of how the comparables and similarly-situated communities have been impacted by an award frontloaded with retroactive pay. In the absence of an analysis of the impact of retroactive pay on comparables, the undersigned is left to rely on arbitral precedent in assessing the appropriate comparables. The Union has provided several interest arbitration awards identifying the appropriate comparable communities for Cook County. See *Forest Preserve District of Cook County and Illinois Fraternal Order of Police Labor Council*, L-MA-01-007 (Stallworth, 2005); *County of Cook and the Sheriff of Cook County (Corrections Unit) and MAP, Chapter 222*, L-MA-99-001 (Yaffe, 2000); *County of Cook and the Sheriff of Cook County (Fugitive Unit) and Illinois Fraternal Order of Police Labor Council*, L-MA-99-102 (Berman, 2001); *County of Cook and the Sheriff of Cook County (Corrections Unit) and Teamsters, Local 700*, L-MA-09-016 (Nathan, 2011). In these awards, the comparable communities that are now proposed by the Union have been analyzed, and they were deemed the appropriate comparable communities. Given the extensive arbitral precedent, as well as the absence of countervailing demographics, the undersigned selects the Union's set of comparables to assist in resolving the outstanding economic issues.

B. Financial Exigency

There is no question that Cook County, and in general, much of the State of Illinois, are experiencing great economic distress. In 2010 Arbitrator Edwin Benn, relying on economic studies, characterized the economic collapse "...as the greatest recession experienced by the [U.S.] since the Great Depression of 1929." *County of Cook and Cook County Sheriff and AFSCME Council 31*, Arb. Ref 10.116, at 9). Arbitrator Harvey Nathan acknowledged the fragility of the economy in a recent award involving the Cook County Correctional Officers, stating:

[T]he economy is in a hole and having trouble crawling out. Indeed, some arbitrators, including the undersigned, had expressed the opinion in earlier cases that by now the economy would have improved. Instead, we have witnessed the reduction in the valuation of the County's debt, as well as that of the United States.

County of Cook & Cook County Sheriff and Teamsters Local 700, L-MA-09-016, at 9 (Union Exh.15).

Arbitrator Benn also discussed the recession's specific impact on Cook County's finances, noting that in 2011, the year that the hearing in his case took place, Cook County revenues were projected to be less than the actual total revenues in 2007, while the County's costs for employee salaries and benefits were expected to increase above 2007 levels, despite a reduction in the number of employees. *County of Cook and Cook Country Sheriff, supra*, at 12-14; Union Exh.15.

Today the state of Cook County's finances does not present a brighter outlook. The Employer has provided comprehensive information about the County's financial state of affairs. The Employer asserts that, as of May 2011, Cook County revenues were approximately six percent short of its projected budget for the year. (Employer Exh. 8, at 3-5). This represents a shortfall amounting to more than \$46 million less than half way through the year. *Id.* The Employer also presented information about the 2012 budget. In particular, the preliminary budget estimates for Cook County show that in 2012, the County may have to confront a deficit that is more than double 2011's already-enormous deficit of over \$116 million, with a projected shortfall of some \$315 million. (Employer Exh. 9). In addition, the downgrade in Cook County's debt rating will have a significant impact on financial affairs, adversely affecting some \$3.5 billion of outstanding Cook County bonds. (Employer Exh. 10, at 1-2.) The Union acknowledges these economic constraints but does not believe the poor economy should be a factor in the instant award.

Section 14(h) requires the Arbitrator to consider "the interests and welfare of the public and the financial ability of the unit of government." It is this statutory criterion that permits the Arbitrator to consider the employer's ability to cover its costs. The undersigned submits that while the economic crisis in Cook County is a factor that can directly impact the final award, the record does not reflect an *inability to pay*. Rather, the record indicates that the Employer is concerned, and rightly so, how the Union's proposal will impact the long term financial health of the County. In the interests and welfare of the public, the undersigned submits that the poor financial state of Cook County shall be considered with respect to the decision and final award herein.

C. Breakthrough and Status Quo Considerations

During the hearing in this case, and thereafter in the parties' briefs, the subject of *breakthrough* and *status quo* proposals was raised. In this respect, the Union and the Employer

argued that certain of the opposing party's proposals should be rejected because (1) the proposal constituted a *breakthrough* (which, under arbitral precedent, requires the proposing party to meet an exceptionally heavy burden before its proposal can be accepted by an arbitrator), and/or (2) the proposal represented a change in the *status quo* (which requires a somewhat lesser burden to be met). Either in support of, or in opposition to, each party's respective positions, both parties quoted from highly-respected arbitrators who have addressed both types of changes and who have laid out *general* principles that have been relied on, and expanded upon, over the years.

While many advocates, and indeed many arbitrators, have tended to blur the distinction -- a proposed *breakthrough* change does of course involve a break with the *status quo* -- language from awards addressing true *breakthrough* issues is often referenced to support a party's opposition to relatively minor changes to existing provisions. This is understandable since determining whether a proposed change constitutes a *breakthrough* or a simple change in the *status quo* is not always a simple process. In any case, either party opposing the proposed change to the contract language will argue that the proposing party has not made its case -- in essence, the proposing party has not adequately justified why the arbitrator should add language to and/or delete language from the parties' contract. Pared to its essentials, the basic argument from the party who opposes the change is that, whatever may be the precise burden, it has not been met.

In the instant case, the Employer noted during the hearing and in its brief that only two of the issues requiring resolution are *breakthrough* proposals. In particular, the Employer contends that the Union's proposals to make seniority the primary consideration in shift assignments, unit transfers and job bidding, *and* the re-crediting of sick leave for employees recalled from layoff, are *breakthrough* proposals. Both parties, however, have argued that certain aspects of the opposing party's proposals should be rejected and the *status quo* retained because justification for the proposal was not established, without specifically characterizing the proposal as a *breakthrough* proposal.

The undersigned emphasizes that interest arbitral precedent in Illinois and elsewhere has, as Arbitrator Steven Briggs remarked, "overwhelmingly embraced the *status quo* concept over the last few decades." *Village of Brookfield and Illinois Fraternal Order of Police Labor Council*, Case No. S-MA-07-141 (2008), at 23. Arbitrator Briggs succinctly summarized this concept and its rationale:

The status quo represents stability, and changes to it are more appropriately made by the parties themselves through the give and take of free collective bargaining than they are by third party neutrals in impasse resolution procedures. After all, the parties return to the bargaining table on a regular basis, giving them repeated opportunity to adjust various elements of the employment package as dictated by changing needs and circumstances. Interest arbitrators are reluctant to make drastic changes to the status quo, on the basis of evidence usually presented in just a few short hours, when the parties themselves can always revisit a troublesome issue during the next round of contract negotiations. The exception, of course, is when a party shows “compelling need” for change right away.

City of Carbondale and Illinois Fraternal Order of Police Labor Council, S-MA-04-152 (2005) *Id.*, at 23-24.

With respect to the manner in which *breakthrough* proposals differ from simple changes to the *status quo*, Arbitrator Peter Meyers has enunciated an assessment that is widely shared among arbitrators. In evaluating whether corrections officers and corrections sergeants should receive sworn status, Arbitrator Meyers commented as follows:

[I]t is critical to note that the Union apparently is proposing breakthrough language, which would involve not only a change in the status quo, but would require the development of contractual language in a substantive area that the parties have not considered in prior contract negotiations and have not previously included in their collective bargaining agreements. This is a very different thing than a proposal to change the status quo represented by negotiated contractual language. In general, breakthrough are not normally granted in interest arbitration proceedings, based on the rationale that demands for new and/or unusual types of contract provisions preferably should be negotiated. If interest arbitration is to serve its proper function as a method of settling labor-management disputes, proposed breakthrough language should not be automatically rejected simply because it is new. To adequately support the adoption of the breakthrough language, however, the party proposing it must meet a more stringent standard than is applied to a proposal to change existing contractual language.

County of Tazewell and Tazewell County Sheriff and Illinois FOP Council, S-MA-09-054 (2009), at 29.

It is widely accepted that when a party proposes a change to *existing* contract language, a sound basis for changing the *status quo* must be demonstrated by the party making the proposal, but that when a party proposes *breakthrough* language, strong evidence establishing the reasonableness and soundness of that proposal must be presented. Many arbitrators have been guided by the sound principle that “a party proposing breakthrough language also must provide evidence

that the parties have engaged in arms length negotiations on the issue prior to the interest arbitration proceeding.” *Id.* at 30.

The undersigned is of the opinion that the arbitral roadmap in this area, while not always delineating a consistent route, does send a message to the parties as to what they can expect in interest arbitrations that take place in the public sector. Unlike interest arbitrations in the private sector, where the varied rules frequently permit arbitrators to come very close to dispensing his or her own brand of industrial justice, that is not the case with interest arbitrations that are convened pursuant to the Act. Accordingly, the provisions of the Act, and the extensive body of arbitral law that has developed by public sector interest arbitrators in Illinois, will be applied in the instant case.

V. ANALYSIS

The following is an analysis of each of these disputed issues in turn, in light of the applicable statutory factors, the evidence, and the parties' respective arguments in support of their proposals.²

A. Economic Issues

As for the following issues that are, as the parties agree, economic in nature, this Arbitrator is bound to select the position of one or the other party as the appropriate language for inclusion within the parties' new collective bargaining agreement.

1. Recall and Sick Leave (Two Sections)

The Union has made two proposals bearing on recall from layoff and the re-crediting of Investigators' prior sick leave. The Employer seeks to retain the *status quo*. The parties' proposals are as follows:

Article XIII, Section 13.2: Recall	
Union	Employer
Investigators who are laid off shall be placed on a recall list for a period of twelve (12) months. When there is a recall, Investigators who are eligible for recall shall be given seven (7) calendar days' notice thereof by Certified or Registered Mail, return receipt requested, with a copy of the Council. The Investigator must notify the Chief Investigator or his designee of his intention to return to work within three (3) business days after receiving a notice of recall. If an Investigator fails to respond to the recall notice as required	Status Quo

² In the comparative proposals that are set forth below, language that either party proposes to be *added* is bolded and underlined, and language that either party desires to be *changed* or *deleted* is lined out.

by this Section, his name shall be removed from the recall list. <u>Any Investigators recalled from layoff shall be re-credited the sick leave they had accumulated on the day of their layoff.</u>	
--	--

Article XXV, Section 25.1: Sick Leave	
<p>Union</p> <p>B. Sick leave may be accumulated to equal, but at no time to exceed, one hundred seventy-five (175) working days. Severance of employment terminated all rights for the compensation thereunder <u>but any Investigators recalled from layoff shall be re-credited the sick leave they had accumulated on the day of their layoff.</u> 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 Investigator is using that already accumulated.</p>	<p>Employer</p> <p>Status Quo</p>

In arguing the merits of its proposal, the Union references paragraph 8 of the Act, which requires the Arbitrator to include among his or her considerations “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 the private employment.” 5 ILCS 315/14(h). The FOP argues that “[c]ertainly the MOST traditional factor for determining conditions of employment that require changing a provision in an existing collective bargaining agreement is evidence that a problem has actually occurred with the current language.” (Union’s Brief, at 11). Relying on *County of Kankakee and Sheriff of Kankakee County and Illinois Fraternal Order of Police Labor Council, S-MA-07-046* (Kohn 2009), the FOP asserts that in those cases where a party is able to show that during the term of the last contract a problem has occurred regarding particular language (or the absence of such language), that party should be successful in obtaining such change if it is able to establish the following:

- (1) the existing language is not working as anticipated;
- (2) the existing language has created operational hardships for the employer or equitable issues for the union; and
- (3) the party seeking to maintain the *status quo* has resisted attempts to address the issue.

The Union notes in its post-hearing brief that during the hearing it had identified instances where, upon return from layoff, some employees were credited with their past sick leave

accumulations and others were not. (Union’s Brief, at 11; Tr. 52). The Union asserts further that during the hearing it heard for the first time that “the Employer is treating Investigators returning from layoff status differently on purpose” -- i.e., that if Investigators are recalled *after* 12 months, they lose their sick leave, and if they are recalled *within* 12 months, their sick leave is restored. The Union contends that this is an “arbitrary ‘rule’” which creates an inequity and “has no basis in policy, regulation or contractual provision.” (Union’s Brief, at 11).

In further support of its proposals, the Union notes that the Agreement contains no language to suggest that employees forfeit *any* accumulated benefits in the event of a layoff. The Union asserts that through its current proposals, it is not seeking to have Investigators earn additional sick leave while they are on layoff status -- rather, its proposals are merely to provide Investigators with the sick leave they earned *prior* to their layoff. (Union’s Brief, at 12).

The Union urges that the standard set forth in *Village of Posen and Illinois Fraternal Order of Police Labor Council, S-MA-09-182* (Fletcher, 2011), be followed in the instant case, and it quotes the following comments of Arbitrator John Fletcher:

Thus, for purposes of the Arbitrator’s following analysis, where the Union has established verifiable support from statutory criteria for departing from *status quo*, and the Employer’s existing rights under other contractual provisions are not harmed by the change, change will be awarded

Id. at 9. (Underlining in original) (Union’s Brief, at 12).

The FOP thus argues that the statutory criteria support its proposal, the existing language has shown that it “needs to be refined because it has created inequitable results, [and that] traditional factors taken into consideration in negotiations favor the Union’s final offer.” (Union’s Brief, at 12). Moreover, the Union contends that its proposed change will not “harm” any other contractual rights of the Employer. Finally, the FOP asserts “that the Employer has refused to address the issue.” (Union’s Brief, at 12).

The Employer, in seeking to maintain the *status quo*, points out that there is an *existing* rule on sick leave restoration, which SAO Counsel commented on at the hearing: “It’s a very simple rule. Sick Leave restoration follows the 12-month layoff recall period. So, in other words, if you’re laid off and recalled within 12 months, your sick leave [is] restored to what it was before you were laid off.” (Tr.154-55). The Employer reiterates this position in its post-hearing brief wherein it highlights the existing contractual provision which “provides that an employee recalled

to duty within 12 months of layoff (i.e., within the contractual 12-month recall period) is entitled to have “prior service credit restored.” (Employer’s Brief, at 29; Union Exh. 8, Section 7.1).

The Employer characterizes the FOP’s proposal as “based not on reality but on a misapprehension of an existing rule [and a]s such, the Union clearly has fallen far short of meeting the heavy burden necessary to justify a change in the *status quo*.” (Employer’s Brief, at 29). Employer’s Counsel also cites an award issued by Arbitrator Fletcher, *Illinois Fraternal Order of Police and County of Cook/Cook County Sheriff (Fugitives Unit Investigators)*, L-MA-96-007 (1998), which includes an observation by Arbitrator Fletcher that an interest arbitrator should not award a *breakthrough* proposal absent compelling justification. The Employer submits that because the FOP has failed to prove that the existing system is broken, the Union’s *breakthrough* proposal should be rejected.

DECISION: The current collective bargaining agreement permits an Investigator who is laid off to be placed on a recall list for 12 months. Should an Investigator position become available during the recall period, Investigators are recalled to duty in reverse order of their layoff. The Investigator’s sick leave is restored if the Investigator is recalled within the 12 month period. The evidence establishes that, in some circumstances, the Employer will extend the restoration period beyond the 12 months. Thus, rather than treating Investigators who return from layoff status in an “arbitrary” manner, as the Union contends, the SAO has been acting entirely consistent with the language in the parties’ Agreement. (Tr. 154-55; Union Exh. 8, Section 7.1).

The record reveals neither an inequity, nor an arbitrariness, in the manner in which the SAO has addressed the re-crediting of sick leave. Moreover, evidence that any grievances or unfair labor practice charges have been filed, or any complaints have been made, regarding the manner in which the SAO has re-credited sick leave -- or *failed* to re-credit sick leave -- is absent, thus suggesting an implicit acceptance by both parties of the manner in which sick leave re-crediting has been handled. I note, too, that the record reveals no evidence that this matter has been the subject of serious discussions at the bargaining table. The fact that the two provisions which the Union is now asking the Arbitrator to modify have been present, unchanged, in successive collective bargaining agreements between the parties (Union Exhs. 28, 29), suggests

that the parties have not found a need to tamper with this issue. Simply put, there is no evidence of *problems* with the provisions the Union seeks to have this Arbitrator change.³

AWARD: The Employer’s proposal to retain the status quo is adopted.

2. Wages

The parties’ respective positions with respect to wages do not vary greatly from one another, with both proposals equaling 8.5% at the conclusion of the new contract. The focus of the proposals is on the *effective* date of the increases. Following is a comparison of the parties’ proposals:

Article XXIX, Section 29.4: Annual Wages	
<p>Union Effective the first full pay period after <u>12/1/08 – 2.0%</u> general across the board wage increase on all paid hours retroactive to that date.</p> <p>Effective the first full pay period after <u>12/1/09 – 1.5%</u> general across the board wage increase on all paid hours retroactive to that date.</p> <p>Effective the first full pay period after <u>12/1/10 – 2.0%</u> general across the board wage increase on all paid hours retroactive to that date.</p> <p>Effective the first full pay period after <u>12/1/11 – 2.0%</u> general across the board wage increase on all paid hours retroactive to that date.</p> <p>Effective the first full pay period after <u>6/1/12 – 1.0%</u> general across the board wage increase on all paid hours retroactive to that date.</p> <p>In addition, the Employer will pay a non-compounded \$500.00 cash bonus for all Investigators in pay status on the date the Cook County Board approves this Agreement per past practice.</p> <p>In all cases, wages shall be as set forth in Appendix A of this Agreement.</p>	<p>Employer Effective the first full pay period after <u>6/1/09 – 1.0%</u> general across the board wage increase on all paid hours retroactive to that date.</p> <p>Effective the first full pay period after <u>6/1/10 – 1.0%</u> general across the board wage increase on all paid hours retroactive to that date.</p> <p>Effective the first full pay period after <u>12/1/10 – 0.5%</u> general across the board wage increase on all paid hours retroactive to that date.</p> <p>Effective the first full pay period after <u>6/1/11 – 1.5%</u> general across the board wage increase on all paid hours retroactive to that date.</p> <p>Effective the first full pay period after <u>12/1/11 – 2.0%</u> general across the board wage increase on all paid hours retroactive to that date.</p> <p>Effective the first full pay period after <u>6/1/12 – 2.5%</u> general across the board wage increase on all paid hours retroactive to that date.</p>

³ The undersigned does not disagree with the sentiments expressed by Arbitrator Fletcher in *Village of Posen, supra*, which are relied upon by the Union. Interest arbitrators should, in certain instances, be willing to entertain (and award) meaningful changes to specific contract language that may not have been fully negotiated at the bargaining table. However, there must be *some* evidence of conduct on the opposing party’s part that at least suggests that full negotiations on the issue would not be fruitful. In *Village of Posen*, Arbitrator Fletcher confronted evidence that the employer had engaged in “‘stonewalling’ [of] meaningful discussions on all issues brought by the Union [and i]n fact, the record establishes that the Village steadfastly declined to entertain the Union’s proposals [even] with regard to correcting typographical errors and outdated references that had absolutely no measurable impact on the contract at all.” *Id.*, at 7-9 (underlining in original). The record herein discloses no evidence of comparable conduct by the SAO.

As the above-table demonstrates, the wage increases in the Union's proposal is frontloaded and amount to a 5.5% retroactive wage increase. Alternatively, the Employer's proposal is aimed at avoiding significant increases in retroactive pay that are embedded in the Union's proposal. The Employer asserts that the 5.5% in retroactive pay the Union seeks would devastate Cook County and creates a real risk that Investigators will be laid off. The Employer further asserts that there is no basis in either party's comparables for demanding, as the Union has, that 5.5 percent of the total 8.5 percent of wage increases (*i.e.*, almost 65 percent of the increases) be retroactive inasmuch as the data show that the Investigators are paid at the top of their peers of all comparables.

Besides comparisons with similar employees, Section 14 of the Act requires that the Arbitrator consider the effect of the local cost of living. The record demonstrates that, for the last seventeen years, the wages of the employees in the instant bargaining unit have kept pace with the cost of living. As demonstrated in the record, since the Investigators first organized in 1996, across-the-board wage increases have averaged roughly 3.0% over the past sixteen years. (Employer Exh. 3). These across-the-board wage increases are slightly more than cost of living increases, which have averaged just under 3.0% since 1996. *Id.*

In proposing their wage proposals, the parties presented evidence regarding the cost of living as measured by the Consumer Price Index ("CPI"), one measure of the cost-of-living commonly used in interest arbitration. The Employer has utilized CPI figures for the past seventeen years to document how Investigator salaries have fared with respect to the inflation rate. During this period, the Investigators' wages have generally kept pace with inflation. Alternatively, the Union urges the undersigned to measure the CPI beginning in 2008 -- the beginning of the Agreement, which also is the start of the Employer's fiscal year. The Union notes that this measure of the cost of living is commonly accepted in interest arbitrations, citing *Village of Bellwood and Illinois FOP Labor Council, S-MA-06-219* (Perkovich 2009); *City of Loves Park and Illinois FOP Labor Council, S-MA-04-175* (Simon, 2006)(Union Brief, at 23-24). The Union further explains that under its proposal, the Investigators will see a salary increase, but one that is less than the rate of inflation. (Union Brief, at 24).

The use of CPI data of longer duration provides more definite data points in determining cost-of-living changes. The Employer argues that the year-to-year comparison proposed by the

Union should be rejected because the data points are less precise and speculative. In support of its contention, the Employer showed that wage increases received by the Investigators have rarely corresponded precisely with local cost-of-living changes on a year-by-year basis, an occurrence prompted by the fact that the cost-of-living has fluctuated widely on a year-by-year basis.

The undersigned agrees that the forecasting of future changes in the cost of living, several years out, as the Union seeks to do, is far too speculative. For example, the Employer demonstrated that the local CPI-U increased by 3.9 percent in 2000, but less than a third as much -- by only 1.2 percent -- the following year. In 2006, it increased by just 0.7 percent, but then increased by 4.7 percent in 2007, and then shrank by 0.6 percent in 2008. (Employer Exh. 3). Nevertheless, while the Union's final wage proposal would result in a salary increase, this increase would be slightly less than the rate of inflation. The Employer's final wage proposal for the first year, on the other hand, is significantly below the cost-of-living and would cause Investigators to experience a significant salary decrease compared to inflation.

The Employer has placed emphasis on the state of the County's finances. While the record does not reveal an *inability to pay* scenario, the undersigned is cognizant of the financial difficulties facing the County. Public entities, however, have a continual responsibility to engage in fiscal responsibility. Every public entity has a duty to its citizens to strategically and prudently manage its financial affairs not just for the next fiscal year, but successive fiscal years. In *County of Tazewell and Sheriff of Tazewell County and Illinois FOP Labor Council, S-MA-09-054* (Meyers, 2009), Arbitrator Meyers, in emphasizing the inherent obligation of all governmental entities to be fiscally responsible, explained how "fiscal prudence" is not a criterion to be relied upon in interest arbitration under Section 14(h). Arbitrator Meyers commented as follows:

If it ever were acceptable for a government entity to depart from prudent handling of taxpayer dollars, it certainly is not acceptable under the current economic conditions. Every dollar counts and must be spent wisely... A need for prudence is not the same as a claimed inability to pay, and the Employer's arguments in favor of continued prudence cannot be accepted as tipping the scales in favor of its proposals on this issue...

Id., at 10-11.

Under the Employer's wage proposal, Investigators will receive a smaller retroactive paycheck, and thus County finances are not as measurably impacted. The Union's final proposal, on the other hand, includes a larger retroactive payout. This payment, however, is not a

windfall -- it is delayed payment in view of the fact that the last pay increase for Investigators was over three years ago. Of the two proposals, the undersigned is of the opinion that the Union proposal best takes into account the pertinent statutory considerations.

AWARD: The Union’s wage proposal is adopted.

3. Equipment Allowance (Safety Vests)

It is important to note at the outset that the undersigned is aware of the public’s concern over the safety of individuals who work in law enforcement or law enforcement-related fields. There is an expectation that, within the obvious strictures of financial and operational considerations, law enforcement personnel will be provided with the level of protection that they require, and deserve. Counsel for both parties made clear that their clients shared this assessment.

The Union proposes alternative provisions: The purchase of a safety vest for each Investigator *or* an increase in the equipment allowance that would enable Investigators to purchase a new safety vest. The Employer seeks to retain the *status quo*. The parties’ proposals are as follows:

Article XXIX, Section 29.6: Safety Vests	
Union	Employer
<p><u>Effective December 1, 2011, the Employer agrees to purchase a safety vest for each Investigator who so requests, and will replace the vest as needed or as recommended according to manufacturers’ specifications. The vest must, at minimum, be rated as a Level II(a). In the event an officer wishes to have a different vest, he/she may purchase his/her own. Those Investigators who opt not to have a vest purchased for him/her shall not be required to wear a vest.</u></p>	<p>Status Quo</p>

Article XXIX, Section 29.5: Equipment Allowance	
Union	Employer
<p>Effective on December 1, 2003, the Employer agrees to pay One Hundred Fifty Dollars (\$150.00) at the beginning of each fiscal year to Investigators covered by the bargaining contract. <u>Effective on December 1, 2009, the Employer agrees to pay Three Hundred Dollars (\$300.00) at the beginning of each fiscal year to Investigators covered by the bargaining contract.</u> The Equipment allowance is to be paid in one lump sum after the first full pay period on or after December 1.</p>	<p>Status Quo</p>

The Union is seeking “to have the Employer take responsibility for providing (or reimbursing for the cost of) an essential piece of equipment for a modern law enforcement officer: a ballistic vest.” (Union’s Brief, at 28). The Union acknowledges that “[i]t has NOT been through negotiations that the Union presents this tapered and narrow proposal, but it has been created after a long and careful examination of the critical facts.” (*Id.*) The Union asserts that its proposal that the Employer provide Investigators with vests is narrowly focused and contains “restrictions” that will minimize the Employer’s financial liability. These restrictions are as follows:

Restriction #1: This is not an annual purchase, but only upon expiration of the manufacturer’s warranty or otherwise as needed. The purchased of the vest is only when there the existing vest is damaged and must be replaced or when the manufacturer’s warranty (usually five years) has expired.

Restriction #2: This is not an automatic purchase, but only when the employee makes such a request. There are employees who want to buy their own special vests. This proposal allows those employees the right to make their own purchase as long as the Employer has no responsibility for any reimbursement. This proposal also allows those employees who wish not to wear a vest the right to do so, again reducing the cost to the Employer.

Restriction #3: This vest must be at least a Level IIa. There are all kinds of vests on the market, including those at Level III that can apparently stop bullets fired by rifles. Some cost thousands of dollars. The Union’s proposal specifies a Level IIa vest, which the most commonly provided by law enforcement agencies. Such vests cost between \$500 and \$700.

Union’s Brief, at 28-29.

The Union’s *alternative* proposal addresses the safety vest issue in a different manner. According to the Union, this proposal represents a way that the Employer will be in a position to budget more accurately -- by increasing the existing equipment allowance by \$150.00 -- thereby allowing the individual Investigator to have the necessary funds available to him or her when and if a vest is purchased. (Tr. 76-77). The Union acknowledges that under this second proposal, all the Investigators would be receiving more money regardless of whether they buy or do not buy a new vest. (Union’s Brief, at 29).

The Union contends that the interests and welfare of the public dictate that the Employer accept responsibility for the safety of its employees, and that the Employer cannot seek to avoid its obligation to provide Investigators with an essential part of their uniform/equipment. The

Union asserts that neither of its safety vest proposals impinge upon any other contractual rights of the SAO, and that the Employer has offered no “sensible explanation as to its indifference, relying on custom and cost as the foundation of its failure to act.” (Union’s Brief, at 30).⁴

The Union argues that it has shown that statutory criteria support its proposal and that the existing language needs to be “refined” because it has created inequitable results. The FOP adds further that it has shown that the Employer has refused to address this issue. Thus, in order to rectify the injustice to the Investigators of having to provide their own vests,” the Union urges that the Arbitrator select one of the Union’s two alternative proposals.” (*Id.*).

The Employer notes that unlike most law enforcement personnel, SAO Investigators work in civilian attire and are not required to own, maintain or wear uniforms. It asserts that the existing \$150 annual equipment allowance that Investigators receive under the Agreement is intended to assist with the cost of replacing safety vests and with the purchasing of other work-related equipment such as gun belts and holsters. (Tr. 155-56). The Employer points out that while safety vests are an optional item of equipment for Investigators, each Investigator is in fact furnished a Halo Level II safety vest at the time of his or her initial hire. (Tr. 77-78, 126).

In its brief, the Employer highlights the fact that while the manufacturer’s warranty on the vest is five years, this warranty does not necessarily represent the vest’s useful life. Quoting from the National Institute of Justice (NIJ), the Employer states that “heat, moisture, ultraviolet and visible light, detergents, friction, and stretching may all contribute to the degradation of fibers used in the manufacture of body armor [and that b]ody armor manufacturers design their armor and provide care instructions to minimize the effects of these degrading properties.” (Employer’s Brief, at 13). The Employer makes further reference to age-regression studies conducted by the NIJ’s Technical Support Working Group pertaining to the vests’ protective capabilities. (Employer’s Brief, at 14),⁵ The Employer contends that based on these studies, there is no evidence that a properly-cared-for vest spontaneously ceases protecting its wearer once the five-

⁴ The Union commented in its brief that the invoice the Employer offered into evidence (Er. Exh.13) showed that it bought a vest for someone who was NOT an employee (Tr. 185-86), and that “[e]vidently, there are budgeted funds for such discretionary purchases despite the Employer’s testimony to the contrary.” (Employer’s Brief, at 30).

⁵ The Employer cites <http://www.nij.gov/topics/technology/body-armor/research.htm>.

year warranty expired. Indeed, argues the Employer, based on the NIJ testing, “[t]here is no clear correlation between armor age and penetration rate.” (Employer’s Brief, at 14).⁶

The Employer takes the position that if an Investigator wishes to replace the SAO-issued safety vest, whether at the five-year mark or at some other interval, he may do so at his or her own expense. (Tr. 70-71.) The Employer adds, however, that “Investigators need not use the equipment allowance [provided in the Agreement] to replace items of equipment, including safety vests, damaged in the line of duty because the CBA provides for such replacement at no cost to the Investigator. (Employer’s Brief, at 14; Union Exh. 8, at 10).

DECISION: The collective bargaining agreement currently provides an annual equipment allowance of \$150 to assist with the cost of replacing safety vests. The record establishes that should a safety vest be damaged in the line of duty, it will be replaced by the Employer at no cost to the Investigator. In its final offer, the Union now seeks a change in the *status quo* that would either increase the equipment allowance by an additional \$150 annually, or require the Employer to replace the safety vest at the request of an Investigator.

As noted earlier, it is generally accepted that when one party seeks a departure from the *status quo*, the record must contain *some* evidence that bargaining over the proposed change has taken place. As Arbitrator Harvey Nathan has noted, “Parties cannot avoid the hard issues at the bargaining table in the hope that an arbitrator will obtain for them what they could never negotiate themselves.” *County of Will and Sheriff of Will County and AFSCME, Local 2961, S-MA-88009* (1988), at 51-52. The party seeking the change has a significant burden, in that the party must “demonstrate, at a minimum (1) that the old system and procedure has not worked as anticipated when originally agreed to or (2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union) and (3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.” *Id.*

The Union concedes that it has not engaged in negotiations over either of its proposals. The Union further notes that its proposal that requires the Employer to provide vests to Investigators upon request, “was created after a long and careful examination of the facts.” (Union’s Brief, at 28). This “investigation” no doubt was undertaken in good faith, and it

⁶ The Employer cites http://www.ojp.usdoj.gov/bvpbasi/docs/SupplementII_08_12_05.pdf

produced results that led to the proposals that the Union is making herein. One can only speculate, however, as to what the outcome would have been if the results of the Union's investigation had been made an integral part of the parties' *contract negotiations* -- a condition precedent to presenting such a significant proposal in an interest arbitration. In this respect, there is nothing in the record to suggest that the Employer would have resisted bargaining over this critical safety issue and engaging in a thorough review of the operational, practical and financial considerations of the Union's proposal.

In addition to the foregoing critical consideration pertaining to the absence of this proposal from the negotiating process, I note that the record discloses no evidence portraying a *broken* system or procedure, or a perceived defect in the current contract provision -- a provision which has been present, in its current form, through successive bargaining agreements. Further, there is no evidence that a grievance or unfair labor practice charge has been filed, or that complaints have been made, asserting that Investigators have been subjected to a hardship or inequity. Through these dual proposals, the Union is, in effect, seeking to have the Arbitrator substitute his judgment for that of the parties before the *bargaining process* has run its course -- a course of action that is inconsistent with the Act and with arbitral precedent.

The undersigned submits that even if the bargaining issue described above did not exist, there is one remaining consideration that directs this Arbitrator to reject the Union's proposals -- that pertaining to the unknown costs to the Employer. The record does not reflect information with respect to the economic impact of the Union's proposal for replacement of the safety vest. The Union claims that the restrictions it proposed at hearing provide sufficient protection for the SAO. It is apparent, however, even with the restrictions, that the specific costs resulting from acceptance of this proposal are speculative. The proposal and restrictions provide no guidelines or ground rules for requesting a new safety vest, or for denying such request, thus setting the stage for grievances and additional arbitration expense for both parties. In this respect, the cost of a safety vest appears to range between \$500 and \$700. On the high end, replacement for the entire bargaining unit could result in an unforeseen expenditure of \$73,500, an added cost that has been addressed in this proceeding in only a limited manner. Thus, the Union's proposal for the Employer to provide vests *whenever needed*, even with the restrictions, adds open-ended costs and additional financial uncertainty that should be fully discussed (with an attempt at resolution)

by the parties at the negotiating table -- and not (at least at *this* time) in an interest arbitration forum.

With respect to the Union's alternative proposal, based on the evidence proffered at the hearing, the additional \$150.00 (to be added to the current \$150.00 equipment allowance) could result in an additional \$15,750 in costs to the Employer. There is no basis to assume that these funds would necessarily go towards safety vests, as the Investigator could simply utilize the additional allowance for *other* expenditures that the Investigator, utilizing his or her own good judgment, determines are necessary or more important.

In light of the absence of *any* evidence that either of the proposals was explored at the negotiating table (let alone evidence of a *quid pro quo*), or that immediate action is required to remedy an urgent problem that cannot wait until bargaining begins on a new contract, or that other comparable bargaining units have the benefit the Union now seeks, the undersigned is reluctant to add additional costs which are not fully known and/or for which there is no guarantee will be utilized in the manner envisioned by the Union. Finally, as noted earlier, the record herein indicates that at least insofar as safety vests damaged in the line of duty, the Employer has indicated that such vests will be replaced "at no cost to the Investigator." (Employer's Brief, at 14.)

AWARD: The Employer's proposal to retain the status quo is adopted.

B. Non-Economic Issues

As for the following non-economic issues, this Arbitrator may choose one of the positions advanced by the parties for inclusion within their new collective bargaining agreement, or the Arbitrator may fashion a different resolution as a compromise.

1. Seniority

There are three proposals pertaining to Seniority, one proposed by the Employer, two proposed by the FOP. With respect to the first of these proposals, the Employer seeks to add an additional paragraph Article VII, Section 7.1, pertaining to the seniority date of supervisors who are demoted back into the bargaining unit. The Union seeks to retain the *status quo*. The parties' proposals are as follows:

Article VII, Section 7.1: Seniority Defined	
Union Status Quo	Employer <u>(e) In the event that the Employer demotes a Supervisor in the Investigations Bureau to the rank of Investigator, the demoted Supervisor's seniority under Section 7.1(d) above for layoffs and other purposes will be his or her continuous length of full-time service in a sworn rank (i.e., Investigator, Line Supervisor, Senior Supervisor, Deputy Chief or Chief) with the Employer.</u>

The Employer's proposed additional language provides that the time an individual spends in the Investigations Bureau in a sworn rank should not be forfeited once he or she leaves the bargaining unit. More specifically, if an Investigator is promoted out of the bargaining unit, and thereafter, because of budgetary considerations is demoted back into the Investigators' unit, the Investigator's seniority should be that which he or she held at the time of the promotion. At hearing Counsel for the Employer emphasized the inherent unfairness of a skilled, long-term Investigator, who has performed outstanding work for many years and who is thereafter promoted, but thereafter, through no fault of his or her own, is demoted back to the Investigator's unit. (Tr. 149-150).

As explained by Employer's Counsel at the hearing (Tr.149-152) and set forth in the SAO's post-hearing brief (Employer's Brief, at 33-34), the genesis for this proposal was a round of budget cuts that forced the States Attorney's Office to reduce the number of positions within the bargaining unit of Line Supervisors (to whom the Investigators' report) -- a unit that is represented by a different local of the same Union represented by the Investigators. Rather than lay off those Line Supervisors whose positions had been eliminated, the Employer placed these individuals into vacant Investigator positions, thereby including them in the bargaining unit that is involved in the instant proceeding. The Investigators' Agreement, however, does not include language pertaining to the seniority rights of those demoted Line Supervisors who enter the Investigator's bargaining unit. As noted by counsel for the Employer, the Fraternal Order of Police Labor Counsel, advocating on behalf of the demoted Line Supervisors, requested that the SAO attempt to reach an agreement with the Investigators' bargaining unit that would result in the recognition of the seniority of the demoted Line Supervisors so that such seniority would include all service in the SAO, in any sworn Investigations Bureau rank. The SAO's proposal to the Investigators' unit for such recognition was rejected.

Thereafter, in an effort to reach a compromise, the SAO arranged for a three-party bargaining session seeking to mediate an agreement on this issue. During this three-way meeting, the SAO proposed a compromise wherein the demoted Line Supervisors would receive seniority credit for the time they spent in the Investigator rank before promotion to Line Supervisor. Although accepted by the Line Supervisors' bargaining unit, the proposal was rejected by the Investigators' unit.

In the instant arbitration the SAO seeks to ensure that all service in any sworn Investigations Bureau rank counts towards seniority in the Investigator's bargaining unit, thus making certain that no Investigations Bureau supervisor is denied credit for years of service to the SAO "simply because he or she had the misfortune of being demoted due to the elimination of a position [resulting from] budget cuts." (Employer's Brief, at 34).⁷

The FOP takes the position that once an individual voluntarily leaves the bargaining unit, that departure terminates the seniority rights of such individual. The Union contends that notwithstanding the fact that budgetary considerations prompted the layoffs of the Line Supervisors -- something which was never contemplated in prior contracts or prior years -- does not warrant the Arbitrator from modifying the contract language or the well-accepted seniority practice. (Tr. 80-83).

In its brief, the FOP references Arbitrator Benn's Award in *County of Cook and the Sheriff of Cook County (Day Reporting) and the Illinois Fraternal Order of Police Labor Counsel*, L-MA-02-008 (2003). In that case the Union sought three modifications to the parties' seniority provision, one of which involved changing seniority from time in the bargaining unit to time with the County. The Union asserted that the implementation of this change would not result in any costs or burdens on the Employer. The County objected to the proposed change, arguing that there was no basis for deviating from the *status quo* -- that it had been computing seniority based on the current language for years without any problems, that to change the method computation would result in additional work and problems for the Employer and unfairly reduce the seniority

⁷ The Employer has indicated that should the Arbitrator exercise his authority to fashion his own compromise with respect to this non-economic proposal, the SAO offers for adoption the compromise that was discussed at the three-party meeting and initially proposed by the SAO: "In the event that the Employer demotes a Supervisor in the Investigations Bureau to the rank of Investigator, the demoted Supervisor's authority under Section 7.1(d) above for layoffs and other purposes will be his or her continuous length of full-time service in the rank of Investigator with the Employer whether before or after certification in the Investigators bargaining unit." (Employer's Brief, at 34).

status of many employees, and that there had been no disputes based on the seniority computation.

In his award Arbitrator Benn acknowledged the accepted interest arbitral principal that when a change to the *status quo* is sought, the burden is on the party seeking the change to justify the change -- “in simple terms, that means that the FOP must show that the current system is not working.” *Id.*, at 9. Addressing the specific issue before him, Arbitrator Benn remarked:

The FOP has not shown that the manner in which seniority is defined results in a broke seniority system that needs repair. No concrete examples of unworkable or inherently unfair situations have been presented. The FOP’s reasons for changing the language are theoretical, but theoretical or “good” ideas are not reasons for changing the *status quo* or changing language that came about through the negotiation process.

Id., at 9-10.

The FOP argues that the sentiments enunciated by Arbitrator Benn above are equally applicable to the SAO’s instant proposal. In addition, the Union urges that in circumstances where one party is departing from the *status quo*, the burden is on the party proposing such departure to show the special circumstances that require the new procedure or change, citing *County of Will and Sheriff of Will County and AFSCME, Local 2961, S-MA-88-009* (Nathan, 1988). Finally, the FOP urges this Arbitrator to take cognizance of the also widely-accepted arbitral principal that “[c]hanges to the *status quo* are warranted when it is clear that (1) the existing system is not working as anticipated; (2) the existing system has created operational hardships for the employer or equitable issues for the union; and (3) the party seeking to maintain the *status quo* has resisted attempts to address the issue.” (Union’s Brief, at 32, citing *County of Kankakee and Sheriff of Kankakee County and Illinois FOP Labor Council, S-MA-07-046* (Kohn, 2009)).⁸

The FOP argues that no “problem” exists and there has been no “incident of injustice” -- the Employer is seeking to change a contract provision solely for the “theoretical benefit of its upper management staff (who could one day get demoted when there is a change of administration) and for the theoretical detriment of those currently in the bargaining unit.”

⁸ The Union also cites *County of Kankakee* in support of its proposed changes to the Agreement’s Recall and Sick Leave sections. (Union’s Brief, at 11).

(Union's Brief, at 32). Accordingly, the Union requests the Arbitrator to maintain the *status quo* with respect to the Seniority provision.

DECISION: The undersigned is well aware of the importance and significance of seniority for any labor organization and its members. The concept that an employee who voluntarily departs the bargaining unit thereby terminates the seniority that he or she had accumulated while in the bargaining unit is a mainstay of most collective bargaining agreements. The undersigned recognizes, too, that the parties attempted to reach a compromise on this issue following the relatively recent event wherein there was a reduction in the number of positions within the Line Supervisor unit. While the undersigned can envision a variety of ways to forge a compromise on this issue,⁹ the undersigned is of the opinion, in agreement with the Union, that deviating from the *status quo* at this time, on such a critical contractual issue, is not appropriate.

The record in this proceeding does not make it "clear that (1) the system is not working as anticipated; (2) the existing system has created hardships for the employer or equitable issues for the union; and (3) the party seeking to maintain the *status quo* has resisted attempts to address the issue." *Country of Kankakee and Sheriff of Kankakee County and Illinois FOP Labor Council, S-MA-07-046* (Kohn, 2009). Moreover, I note that the record suggests that the events prompting the Employer's proposal represent a relatively recent and novel phenomenon -- i.e., current laid off Investigators *and* recently laid-off supervisors.¹⁰ For the undersigned to utilize his authority to draft a compromise provision at this time, resulting from budgeting considerations that have had an immediate (and perhaps one-time) effect would usurp the parties' opportunity to meet in an attempt to reach an agreement on their own -- an agreement wherein the various bargaining unit considerations and employer operational needs are addressed, and where the impact on all parties is taken into account.¹¹

AWARD: The Union's position to maintain the *status quo* is adopted.

⁹ Such compromises in this area have often included language whereby the "promoted" supervisor retains bargaining unit seniority for a limited period of time and/or retains bumping rights under very specific conditions.

¹⁰ The budget cuts resulting in the layoff among supervisors appear to have taken place in 2011. (Tr. 115-16; Union Exh. No. 6).

¹¹ The undersigned recognizes that such *negotiations* will likely take place during bargaining for a successor contract. Such negotiating forum would place the parties in the best position to (1) determine how any new proposed language would impact considerations bearing on budgetary and layoff issues (current *and* future), and (2) address questions regarding retroactivity.

2. Use of Seniority for Shift and Assignment Bids (Two Sections)

The Union proposes to make a change to the definition of seniority and the use of seniority for shift and assignment bids. The Employer proposes its own change (an addition) regarding the definition of seniority, and it seeks to maintain the *status quo* regarding the use of seniority for shift and assignment bids. The parties' respective proposals with respect to these provisions --Article VII (Seniority), Section 7.1: Seniority Defined (d), and Article XXXI (Job Bidding), Section 31.1: Job Bidding -- are as follows:

Article VII, Section 7.1: Seniority Defined	
<p>Union (d) Seniority, for the purposes, is defined as an Investigator's continuous length of full-time service as an Investigator with the Employer. Seniority shall be used when determining layoffs. Seniority within each unit shall also govern vacation preference. Seniority shall be considered as a reasonable the primary factor in making unit assignments and transfers. Unpaid leaves exceeding one hundred eighty (180) days shall be deducted from the total accumulated days of full-time service in determining seniority except Military leaves, leaves resulting from duty related injuries and leaves in accordance with the "Family and Medical Leave Act of 1993." All disciplinary suspensions of thirty (30) days or greater shall be deducted from seniority. If hired on the same date, seniority shall be determined by lottery.</p>	<p>Employer Status Quo</p>
Article XXXI, Section 31.1: Job Bidding	
<p>Union Prior to filling a new position or vacancy in a unit, except in the 26th and California Trial Support Section Units A, B, C, D, and E, the Employer will post the new position or vacancy on the bulletin boards provided for in Article 17. Investigators shall be permitted a period of not less than ten (10) working days to submit their names in writing for consideration. Reasonable consideration Consideration shall be given to seniority along with job-related training, job-related experience (relevant to the position being bid), documented competency and documented performance but seniority shall be the primary factor in making such assignments.</p>	<p>Employer Status Quo</p>

Through both of its proposals the Union seeks to make "seniority" the primary factor in job assignments. As noted in the Union's post-hearing brief, at present seniority is only a "consideration" in the overall process of determining job assignments, and "it is difficult to quantify just exactly how seniority is 'considered.'" (Union's Brief, at 34). The Union asserts that its proposal is an attempt to simplify the process.

The Union contends that *fairness* is at the heart of its proposals. While the Employer is required under the current Agreement to consider, along with seniority, a number of factors -- job-related training, job-related experience (relevant to the position being bid), documented performance -- the Union asserts that insufficient consideration is given to the Investigator's seniority. Those Investigators who have worked for ten to fifteen years, argues the Union, should be recognized for their experience and service when it comes to making job assignments. To the FOP, the years spent conducting investigations are more important than the particular focus of the work involved. The Union emphasizes that while the Employer may find an individual working at another law enforcement agency with specific skills in a specific area that may warrant the hiring of such individual, this should not mean that a skilled Investigator in one area of the SAO cannot be just as skilled in another, or that such Investigator would not be able to perform the tasks just as well, if not better, than someone hired from the outside.

As with respect to several of its other proposals, the Union, relies on arbitral principles that have been enunciated by Arbitrator Kohn and other arbitrators -- that changes to the *status quo* are warranted when it is clear that (1) the existing system is not working as anticipated; (2) the existing system has created operational hardships for the employer or equitable issues for the union; and (3) the party seeking to maintain the status quo has resisted attempts to address the issue. *County of Kankakee and Sheriff of Kankakee County and Illinois FOP Labor Council, S-MA-07-046* (2009).

The Union contends that the parties never intended that "the workplace would become stagnant and that whatever job assignment first given to an employee would remain with that employee for his/her career." (Union's Brief, at 35). Moreover, urges the Union, the current system is unfair to those investigators who have performed their job duties in a highly qualified manner. The Union thus argues that it has demonstrated that the statutory criteria support its proposals, and that "the Arbitrator should award the Union its Final Offer on Seniority to maintain the bargain the parties reached through negotiations." (Union's Brief, at 35).

The Employer contends that the Union's proposal mandating that seniority be the *primary* factor in unit and shift assignments would have an "insidious" effect on the "SAO's ability to fulfill its mission by forcing the SAO to make assignments based on seniority rather than ability." (Employer's Brief, at 29). Employer's Counsel points out in his brief that in the parties' negotiations for its initial collective bargaining agreement (1998-2001), "there was an extensive

give-and-take which produced the provision on job bidding [and that the] existing provision, which has remained unchanged through three contracts, embodies the eminently sensible principle that while seniority should be considered in making assignments, the experience, training and ability to do the job are equally important.” *Id.* The Employer contends that over the past 13 years, the current language has worked to balance the Union’s legitimate interests in making certain that seniority plays a role in assignments with the SAO’s own interest in ensuring that assignments are given to the most qualified Investigators.

The Employer characterizes the Union’s proposal and change as a *breakthrough* proposal, asserting that “the Union has fallen far short of meeting its burden to justify its demand that the Arbitrator destroy negotiated contract language with a decade-plus-long history.” (Employer’s Brief, at 30). The Employer relies on the sentiments expressed by Arbitrator Goldstein in *City of Burbank and IFOP Labor Council*, S-MS-97-56 (1998), quoting from Arbitrator Nathan’s award in *Will County Board and Sheriff of Will County*, S-MA-88-9 (1988):

While, obviously, value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it his function to embark upon new ground and create some innovative procedure or benefit scheme which is unrelated to the parties’ particular history.

City of Burbank at 11.

The Employer asserts that the Union’s proposal could threaten the SAO’s work and impede its efforts to prosecute all State misdemeanor and felony offenses in Cook County, with every one of its job assignments having the potential to positively or negatively impact its mission. (Employer’s Brief, at 30). Employer’s Counsel restated in his brief sentiments expressed during the hearing: “[J]ob assignments in the Investigations Bureau encompass more than just where an Investigator reports to work each day. Assignments are one of the primary means by which the SAO fulfills its duty to taxpayers, crime victims and victims’ families. Since 1998, job assignments have been made based on a sensible and fair mix of factors that include seniority. This formula has ensured that the SAO has the right Investigator assigned to the right person. Replacing this tried-and-true contract language with the Union’s unwarranted ‘seniority first’ proposal would hurt the SAO and the citizens of Cook County, while benefitting a few Investigators who have a surplus of seniority but a deficit of talent.” (Employer’s Brief, at 31; Tr. 162-165).

DECISION: While the undersigned would not characterize the potential impact of the Union's proposal to make seniority the "primary" consideration in making unit assignments and transfers as "insidious," as suggested by the Employer, this Arbitrator does recognize the critical difference the language proposed by the Union would (or at least *could*) make in the operation of the SAO's office. While here, too, the undersigned could draft language that protects the Employer's decision-making prerogatives and at the same time give a first nod to an Investigator's seniority, three primary considerations dictate to this Arbitrator that such compromise proposal is not appropriate at this time: First, the fact that the current language has been included, unchanged, in the parties' collective bargaining agreements for more than a decade is strongly suggestive, as noted by Employer's Counsel, that "the current language has worked to balance the Union's legitimate interests in making certain that seniority plays a role in assignments with the SAO's own interest in ensuring that assignments are given to the most qualified Investigators." (Employer's Brief, at 22). Second, the record in this proceeding reveals that no grievances have been filed over whether the SAO has given seniority its proper weight in job assignments (Tr. 161-62). Third, even in the absence of grievances, the Union's position would be enhanced if there were some evidence that an actual problem exists with the application of the current seniority language. Rather than a blanket assertion that the "current system is unfair to those investigators who have performed their job duties in a highly qualified manner," at least *some* evidence that a current problem exists -- and that the Union has attempted to rectify such problem -- is necessary.

In summary, at least two of the basic considerations arbitrators frequently require in order to adopt a union's proposed change to the *status quo* -- a finding that the existing system is not working as anticipated, and a finding that the system has created equitable issues for the union -- are absent. "No concrete examples of unworkable or inherently unfair situations have been presented." *County of Cook and the Sheriff of Cook County (Day Reporting) and the Illinois Fraternal Order of Police Labor Counsel, supra*, at 9.

AWARD: The Employer's proposal to retain the *status quo* for both provisions is adopted.

3. Recall List

The Union proposes to modify the contract language so that the time Investigators remain on the recall list is increased from 12 months to 24 months. The Employer seeks to retain the *status quo*. The parties' proposals are as follows:

Article XIII, Section 13.2: Recall	
<p>Union Investigators who are laid off shall be placed on a recall list for a period of twelve (12) twenty-four (24) months. When there is a recall, Investigators who are on the recall list shall be recalled in the reverse order of their layoff. Investigators who are eligible for recall shall be given seven (7) calendar days' notice thereof by Certified or Registered Mail, return receipt requested, with a copy to the Council. The Investigator must notify the Chief Investigator or his designee of his intention to return to work within three (3) business days after receiving a notice of recall. If an Investigator fails to respond to the recall notice as required by this Section, his name shall be removed from the recall list.</p>	<p>Employer Status Quo</p>

As part of the history pertaining to this proposal, the Union has referenced a situation in March 2008 when several Investigators were laid off. Although more than a year passed with some of these Investigators still on layoff, the SAO nevertheless recalled them (after more than 12 months had elapsed) when the need arose. The Union seeks in its proposal to incorporate what it terms the current practice, as “implemented by the Employer during the negotiations of this Agreement.” (Union’s Brief, at 36). As for the suggestion made during the hearing by Employer’s Counsel that this issue was not raised during the parties’ contract negotiations or that the FOP had never made a proposal on the subject, Union Counsel referenced a *counter*-proposal that the Employer made incorporating the 24-month modification. (Union Exh. 2, Tab 38; Tr. 182-84).¹²

The Union argues that inasmuch as the Employer has not offered any reason why the Union’s offer is now unacceptable (after it earlier had been proposed by the Employer), there is a demonstrated need for the existing language to reflect what is a “new and acceptable practice.” Moreover, argues the Union, the proposed change does not impair any other contractual rights of the Employer.

¹² Union Counsel acknowledged at hearing that he was not at the negotiating table and did not know whether this proposal was part of a *package*. The key purpose of the exhibit was to counter any suggestion that this proposal was a matter that was not discussed during contract negotiations. (Tr. 183-84).

The Employer asserts that the extension of the recall period from 12 to 24 months is nothing but a “good idea,” which Arbitrator Benn¹³ and other arbitrators have noted is insufficient to justify a change. The Employer emphasizes that this is especially true “because the parties’ bargaining history shows that in every instance when a position in the bargaining unit has become available, the SAO and the Union have agreed to recall laid-off Investigators even though they had been on layoff for more than 12 months.” (Employer’s Brief, at 29).¹⁴ The Employer contends that the good faith efforts by the parties as they address the issue on an *ad hoc* basis have fully addressed any concern the Union may have about fairness, and that, given this history, the Union has failed to prove that the “existing system is broken.”

DECISION: Through this proposal, the Union seeks to incorporate into the Agreement what it characterizes as a *current practice* -- a practice acknowledged by the Employer: “[T]he parties’ bargaining history shows that in every instance when a position in the bargaining unit has become available, the SAO and the Union have agreed to recall laid-off Investigators even though they had been on layoff for more than 12 months.” (Employer’s Brief, at 29).

The record is devoid of any evidence, however, that the *ad hoc* measures that have addressed individual circumstances have not been successful or that there has been any dissatisfaction with the ultimate results. On the contrary, the evidence in this record establishes that good faith negotiating and a sense of collegiality have diffused any potential *issues* with respect to the recall rights of Investigators, and that the parties’ *discussions* have resulted in positive results for bargaining unit personnel.¹⁵ The undersigned agrees with the Employer that the Union has failed to establish that the “existing system is broken.”

AWARD: The Employer’s proposal to retain the *status quo* is adopted.

¹³ Employer’s Counsel references Arbitrator Benn’s comments in *Cook County Sheriff/County of Cook and AFSCME Council 31*, Arb. Ref. 10.116 (2010), at 7.

¹⁴ The Employer acknowledged at hearing that the SAO has “in individual circumstances agreed with the Union to extend [the] recall period,” and that it was “happy to retain the flexibility to reach a deal with the Union on individual circumstances to extend that 12-month recall on a case-by-case basis.” (Tr. 154).

¹⁵ Without further evidence as to the circumstances of the Employer’s proposal (Union Exh. No. 38) -- e.g., whether it was part of a package, whether it was in response to a specific Union proposal -- the undersigned is not willing to give it significant weight.

4. FTO Qualifications

The Union seeks a change in Article 24, Section 24.8: FTO Pay, wherein a minimum number of years of experience would be required before an investigator may serve as a field training officer. The Employers seeks to retain the status quo. The parties' proposals are as follows:

Article XXIV, Section 24.8: FTO Pay	
<p>Union Two (2) hours overtime per day will be given to an Investigator acting in the capacity of field training officer. The hours designated to be paid under this section will not be counted towards the overtime cap designated in Section 24.4 under this Agreement. For purpose of this section, all field training officers must be state certified <u>and have been employed with the Employer for at least five (5) years as an Investigator.</u></p>	<p>Employer Status Quo</p>

Recognizing the importance of the work of the investigator serving as a field training officer (“FTO”), and the right of the Employer to exercise its discretion in the appointment of a FTO, the Union seeks to ensure that the individual selected is “someone with enough experience as an investigator to provide the type of advice and counsel a new employee needs.” (Union’s Brief, at 39). The Union adds that it is important that the FTO knows how things are done at the SAO -- “where you put your paperwork, what cubbyhole, what slot...[s]mall things are important [and] you need someone who’s been around” (Tr. 92) -- and how individuals interact with the SAO. The Union thus proposes that all FTO’s have five years of on-the-job experience as an Investigator.

The Union contends that the language which it proposes “recognizes the comments made the Employer’s Counsel that most FTOs have five years experience, but there could be unusual circumstances where an exception might have to occur.” (Union’s Brief, at 40). In this respect, the Employer’s Counsel acknowledges that it is “relatively rare ... that a FTO has fewer than five years experience with the State’s Attorney’s office” (Tr. 165), but that it needs the flexibility to assign FTOs not only on the basis of years of experience, but on the basis of talent, ability and special skills. The SAO requires the ability to place individuals in its office who have particular expertise and experience, without requiring that the individual have worked a minimum number of years as an Investigator.¹⁶

¹⁶ As one example where the need for such flexibility was shown to be necessary, Employer’s Counsel pointed to an Investigator who had been employed for fewer than five years with the SAO but who was a former FBI special

Taking the comments of Employer's Counsel regarding the need for flexibility to heart, the FOP has acknowledged that "there could be unusual circumstances where an exception might have to occur," and thus, has indicated that it would accept the words, "absent extraordinary circumstances" at the end of the language it had initially proposed. (Union's Brief, at 40).

The Union asserts that the statutory criteria support its proposal, and that it has shown that the existing language of the provision should be changed to reflect the current practice. Moreover, the Union asserts that no other contractual rights of the Employer will be harmed by the proposed change.

The SAO contends that the Union has not presented sufficient justification to warrant the change in the long-standing FTO qualification language, which has been in the parties' collective bargaining agreement since 2001. While the Employer acknowledges that generally FTOs have five or more years of experience, the SAO needs "the flexibility ...to assign FTOs not only on the basis of years of experience, but on the basis of talent and ability and special skills." (Tr. 165).

The Employer asserts that the special burden placed on a party seeking to make a significant change to the *status quo* has not been met. It relies on the basic interest arbitral principle that "[w]hen one side or another wishes to deviate from the status quo of the previous Collective Bargaining Agreement the proponent of that change must fully justify its position and provide strong reasons and a proven need," citing *County of Cook/Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council*, LLRB No. L-MA-96-009 (McAlpin, 1998). (Employer's Brief, at 32-33).

Finally, SAO's Counsel remarked at the hearing and notes in his post-hearing brief, that the provision at issue was never proposed or discussed during the parties' contract negotiations, and thus, there was no opportunity for the Employer to present a counter-proposal. (Employer's Brief, at 31; Tr. 165).

DECISION: While the Union has presented evidence that the additional language it proposes -- requiring that an individual have five years of employment with the SAO before the Employer may designate such individual as a field training officer -- is a "good idea," more is required before directing that such new requirement be added to the Agreement. The absence of any evidence that there have been problems with those individuals designated as FTOs is

agent and had been a specialist in mortgage fraud. Because of this individual's background, and the SAO's needs, this individual was hired to be a FTO in the mortgage fraud unit. (Tr. 164-65).

significant, as is the fact that the current provision has been in the parties' collective bargaining agreement since 2001. The undersigned also takes cognizance of the Employer's un rebutted assertions that the instant proposal was not made during the parties' contract negotiations. In light of these considerations, the undersigned will not substitute his judgment for that of the parties and thus will not direct that the proposed language, or any new language, be added to the existing provision.

AWARD: The Employer's position to retain the *status quo* is adopted.

5. Military Leave

The parties' tentative agreement (Tr. 20) is adopted.

6. Temporary Transfers

The Union seeks to amend Article XXXI, Section 31.2: Temporary Transfers by requiring that (1) the Employer and Union meet in those instances when there is to be a temporary assignment -- as opposed to meeting only when there are "extraordinary circumstances" as currently provided in paragraph 1 of this Section -- and (2) the temporary transfer of non-probationary employees last for a period not to exceed 90 days. The parties' proposals are as follows:

Article XXXI, Section 31.2: Temporary Transfers	
<p>Union</p> <p>1. The Employer will meet and confer with the Union prior to making any temporary assignments in <i>extraordinary circumstances</i>.</p> <p>2. The utilization of probationary employees (as defined in Section 1.3) under this section will be subjected to a meet and confer with the Employer and the Union. Both parties must mutually agree to the proposed transfer.</p> <p>3. <u>Non-probationary employees may be temporarily transferred for no more than Ninety (90) consecutive calendar days.</u> Return the transferred Investigator back to their original position after Ninety (90) days.</p> <p>4. Any Investigator transferred will be transferred only once per rolling calendar year.</p> <p>5. No consecutive assignments in a temporary position.</p> <p>6. Transfer grievances will begin at Step 3.</p>	<p>Employer</p> <p>Status Quo</p>

The Union proposes what it views as two small changes. The first change would be to paragraph 1 of Section 31.2 that would eliminate the phrase *in extraordinary circumstances*, thus making clear that the Employer is required to meet and confer should there be a need to make a temporary transfer. The second change to this Section would be in paragraph 3 making it clear

that non-probationary employees may be temporarily transferred for a period to last no more than 90 consecutive calendar days.

With respect to the change to paragraph 1, the Union asserts that if it is involved in the process *before* any temporary transfer takes place, it may be able to provide valuable assistance. The Union has suggested, for example, that Union leaders would be able to provide input regarding their knowledge of potential volunteers for an assignment, thus obviating a *forced* transfer. The FOP contends that Union leaders may be able to work with the individuals to find a reasonable accommodation in the event of a conflict or other issues, and they also may be able to assist in advising employees who are about to be transferred about their contractual rights. Asserting that meeting and conferring would be beneficial to both parties, Union Counsel notes the comments made by the Employer's Counsel's at hearing regarding the SAO's acknowledged willingness to meet and confer with the FOP on this issue. (Union's Brief, at 42; Tr. 167-168).

As for the second proposed change, the Union contends that based on the current language appearing in paragraph 3 -- "Return the transferred Investigator back to their original position after Ninety (90) days"-- the FOP assumes that it is clear that all temporarily-transferred Investigators are to be returned to their original positions after 90 days. Through its proposal, the Union seeks to add a sentence that clarifies this assumption, thus eliminating any doubt as to the time limitation. The proposed change to the existing language, asserts the Union, will "reflect a clear and acceptable practice," and will not negatively impact any other contractual rights of the Employer. (Union's Brief at 42).

The Employer asserts that the Union has provided no adequate justification for its proposed revisions. It argues that the language which the Union now seeks to modify was first negotiated by the parties in their 2001-2004 collective bargaining agreement. (Union Exh. 29, Section 31.2). The Employer asserts that this language has remained unchanged through the present and that the SAO has no knowledge of this provision being the source of any confusion or the subject of any grievances. Citing Arbitrator McAlpin's award in *County of Cook/Sheriff of Cook County and Illinois Fraternal Order of Police Labor Council*, LLRB No. L-MA-96-009 (1998), the Employer asserts that the Union has failed either to fully justify its position or to provide strong reasons and a proven need for the proposed change. (Employer's Brief, at 32).

DECISION: The undersigned acknowledges that the phrase "in extraordinary circumstances" is a phrase that may mean different things to different people under different

circumstances. While the Employer's desire to retain verbiage it may never utilize may appear arbitrary to the Union, I am struck by the fact that this phrase has been in the parties' collective bargaining agreements since 2001, as well as the fact that the record contains no suggestion that any grievances have been filed or complaints have been lodged regarding the interpretation of the phrase. In addition, the record discloses no instances of alleged inconsistent or arbitrary application. All of this may be explained by the Employer's willingness "to meet with [the Union]" (Tr. 167-68), without any apparent restrictions. While it may be difficult for one to fully appreciate the basis for the Employer's argument against conforming the language of this provision to its conduct, the avenue to address such change is at the negotiating table, at least initially. The undersigned will not substitute his judgment for that of the parties.

With respect to the Union's proposed additional language to paragraph 3, once again, while one may not fully appreciate the Employer's reluctance to clarify language that arguably is imprecise, the role of the Arbitrator in these cases is not to try to interpret what the parties' intended by language that has been present in successive bargaining agreements, apparently with neither party having voiced a complaint. It is understandable that the Union desires to add language that it believes will "eliminate any doubt" as to the maximum period that a non-probationary employee may temporarily be transferred -- thus "reflect[ing] a clear and acceptable practice." As noted by the undersigned with respect to language the Union desires to strike in paragraph 1 of this Section, the record in this proceeding discloses no hint that this provision has been the source of any grievances, complaints or other workplace issues.

AWARD: The Employer's proposal to retain the *status quo* is adopted.

7. Term of Agreement

The parties' tentative agreement (Tr. 23) is adopted.

8. Residency Letter

The parties' tentative agreement (Tr. 23-24) is adopted.

VI. CONCLUSION

In light of the relevant statutory factors, the competent and credible evidence in the record, and consideration of the arguments of the parties, this Arbitrator has determined that the terms forth in the Appendix hereto shall be incorporated into the parties' collective bargaining agreement, which shall remain in effect for the duration of the current Agreement.

/s/ Jules I. Crystal

Dated this 25th day of January, 2012
At Chicago, Illinois

Jules I. Crystal
Impartial Arbitrator

APPENDIX
(To Interest Arbitration and Award)

As set forth in the Decision and Award dated January 25, 2012, in the matter of the Interest Arbitration between the Illinois Fraternal Order of Police Labor Council and Cook County State's Attorney's Office, this Appendix to said Decision and Award sets forth the provisions that shall be incorporated into the collective bargaining agreement between the parties, which shall be effective from December 1, 2008, through November 30, 2012.

ARTICLE VII SENIORITY

Section 7.1: Seniority Defined

Status Quo retained.

ARTICLE XIII LAYOFF

Section 13.2: Recall

Status Quo retained.

ARTICLE XXIV HOURS OF WORK AND OVERTIME

Section 24.8: FTO Pay

Status Quo retained.

ARTICLE XXV SICK TIME

Section 25.1: Sick Leave

Status Quo retained.

ARTICLE XXVII LEAVES OF ABSENCE

Section 27.5: Military Leave

Agreement by Parties

ARTICLE XXIX PAYROLL, WAGES AND EXPENSES

Section 29.4: Annual Wages

Article XXIX, Section 29.4: Annual Wages

Effective the first full pay period after 12/1/08 – 2.0% general across the board wage increase on all paid hours retroactive to that date.

Effective the first full pay period after 12/1/09 – 1.5% general across the board wage increase on all paid hours retroactive to that date.

Effective the first full pay period after 12/1/10 – 2.0% general across the board wage increase on all paid hours retroactive to that date.

Effective the first full pay period after 12/1/11 – 2.0% general across the board wage increase on all paid hours retroactive to that date.

Effective the first full pay period after 6/1/12 – 1.0% general across the board wage increase on all paid hours retroactive to that date.

In all cases, wages shall be as set forth in Appendix A of this Agreement.

Section 29.5: Equipment Allowance

Status Quo retained.

ARTICLE XXXI JOB BIDDING

Section 31.1: Job Bidding

Status Quo retained.

Section 31.2: Temporary Transfers

Status Quo retained.

ARTICLE XXXIII DURATION

Section 33.1: Term of Agreement

Agreement by Parties

RESIDENCY LETTER

Re-attach

Agreement by Parties