

INTEREST ARBITRATION
ILLINOIS STATE LABOR RELATIONS BOARD

TEAMSTERS LOCAL 700

And

**LAKE COUNTY SHERIFF
AND COUNTY OF LAKE**

**ILRB No. S-MA-11-203
Correctional Officers**

OPINION AND AWARD
of
John C. Fletcher, Arbitrator
December 11, 2012

I. Procedural Background:

This matter comes as an interest arbitration between the Lake County Sheriff and the County of Lake (“the Employer” or “the County”) and Teamsters Local 700 (“the Union”) pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/314 (“the Act”). The record in this case establishes that there are five bargaining units in the Lake County Sheriff’s Office; the Correctional Officers, Correctional Sergeants, Peace Officers, Law Enforcement Sergeants and Law Enforcement Lieutenants. The Peace Officer unit is represented by the Fraternal Order of Police Labor Council for purposes of collective bargaining, and the four remaining groups are represented by Teamsters Local 700. All of the applicable collective bargaining agreements in the Sheriff’s Office expired on November 30, 2010, and the parties have brought before this Arbitrator certain impasse issues between the Employer and the Correctional Officers’ bargaining unit, which could not be resolved during negotiations and mediation for their subsequent contract.

The following disputed issues have their origin in the parties’ negotiations for a

Collective Bargaining Agreement (“CBA”) to succeed the Correctional Division contract that expired on November 30, 2010.¹ The Employer and Teamsters Local 700 are now at impasse as to the term of the new contract, which, by mutual agreement, will be in effect from December 1, 2010 through November 30, 2013. The parties also stipulate that general wage increases ultimately awarded by this Arbitrator in accordance with the prevailing “last best offer” on the economic impasse issue relative to Article 19, shall, where applicable, be paid retroactive to December 1, 2010.

A hearing was held on July 12, 2012 at the Lake County Sheriff’s Office, Waukegan, Illinois, after which the parties, on October 15, 2012, filed post-hearing briefs. At the hearing, the Union was represented by:

Kevin P. Camden, Esq.
Cass T. Casper, Esq.
Teamsters Local 700
1300 West Higgins Road, Suite 301
Park Ridge, Illinois 60068

Counsel for the Employer was:

A. Lynn Himes, Esq.
Paul Ciastko, Esq.
Scariano, Himes & Petrarca
Two Prudential Plaza, Suite 3100
180 North Stetson
Chicago, Illinois 60601

II. The Parties’ Bargaining History

The last collective bargaining agreement between the Employer and Correctional Officers was effective December 1, 2007 through November 30, 2010. During that period the Illinois FOP Labor Council represented Correctional Officers. At a later time, Teamsters Local 700 became the certified representative of this unit. The contract now

¹ Union Exhibit 2.

before the Arbitrator is the first full labor agreement between the Teamsters and the Sheriff for this unit of Correctional Officers.

The record establishes that the parties met on several occasions for purposes of exchanging proposals and engaging in bargaining. In addition, a pre-arbitration mediation was held with the Arbitrator, during which a number of additional outstanding issues were resolved. Tentative agreements were reached on all but the impasse issues named below, and these tentative agreements **are incorporated by reference into the Arbitrator's Opinion and Award**, pursuant to Pre-hearing Stipulation "C," in subsequent Section IV of this decision. Neither the Union nor the Employer asserts bad faith on the part of the other during the bargaining process, and the parties further stipulate that all procedural prerequisites for convening an interest arbitration to resolve remaining outstanding issues have been met or are waived. The parties also agree that the Arbitrator has jurisdiction and the sole authority to rule on all impasse issues, both economic and non-economic, in accordance with applicable Illinois statutes.

III. Statutory Authority and the Nature of Interest Arbitration

The statutory provisions governing the issues in this case are found in Section 14 of the Illinois Public Labor Relations Act. They will not be repeated here, as the Arbitrator is well aware that the parties are completely familiar with their terms and prevailing arbitral views. Also, the nature of Interest Arbitration will not be visited in any great detail, as this too has been dealt with extensively by a host of arbitrators, including this Arbitrator.

IV. The Stipulations of the Parties

PRE-HEARING STIPULATIONS AND AGREEMENTS

The parties agree the following shall govern their Section 14 and Article 29 impasse

resolution proceedings:

- A) **Arbitrator's Authority:** The parties stipulate the procedural prerequisites for convening the hearing have been met and that Arbitrator John C. Fletcher has jurisdiction and authority to rule on the issues set forth below including the express authority and jurisdiction to make adjustments to wages. Each party expressly waives and agrees not to assert any defense, right or claim that the Arbitrator lacks jurisdiction and authority to make such adjustments.
- B) **The Hearing:** The hearing will be convened on July 12-13, 2012 at 10:00 a.m., 25 South Martin Luther King, Jr. Avenue, Waukegan, Illinois. Section 14(d), requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment and IPLRA Section 14(b) of the IPLRA requiring the appointment of panel delegates have been waived by the parties. Arbitrator Fletcher shall be the sole arbitrator in this matter. The hearing will be transcribed by a reporter, which the Employer will secure, and the cost of the reporter's appearance and the Arbitrator's transcript copy shared equally by the parties. Should either party desire a copy of the transcript, it shall bear those costs.
- C) **Tentative Agreements and Final Offers:** The tentative agreements presented in this case shall be incorporated into the Arbitrator's Opinion and Award. Final offers on the remaining issues in dispute shall be exchanged by the parties at the start of the hearing. Once exchanged, final offers may not be changed except by mutual agreement, absent approval by the Arbitrator.
- D) **Evidence:** Each party shall be free to present its evidence in narrative and/or through witnesses, with advocates presenting evidence to be sworn on oath and subject to examination. The Union shall proceed first with its case-in-chief, followed by the Employer's case-in-chief. Each party may present rebuttal evidence. Neither party waives the right to object to the admissibility of evidence.
- E) **Post-Hearing Briefs:** Post-hearing briefs shall be submitted to the Arbitrator within sixty (60) days of receipt of the transcript of the hearing or such further extensions as may be mutually agreed or granted by the Arbitrator. The post-marked date of mailing shall be considered the date of filing. There shall be no reply briefs.
- F) **Decision:** The Arbitrator shall base his decision upon the evidence and argument presented and the applicable factors set forth in Section 14(h) and issue his award within sixty (60) days after submission of briefs or any agreed upon extension requested by the Arbitrator, retaining jurisdiction for purposes of implementing the award.
- G) **Continued Bargaining:** Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior to, during, or subsequent to the arbitration hearing.
- H) **Record:** The Arbitrator shall retain the official record of the arbitration proceedings until such time as the parties confirm that the award has been fully implemented.

V. Outstanding Issues

Economic Issues

1. New Article – Funeral Leave
2. Article 13, Section 13.2 – Work Day and Work Week
3. Article 13, Section 13.6 – Sixth and Seventh Day Work
4. Article 19 – Wage Rates
5. Article 20, Section 20.1 – Amounts (Holidays)
6. Article 20, Section 20.3 – Cash Payment (Holidays)
7. Article 20, Section 20.6 - Eligibility (Holidays)
8. Article 20, Section 20.7 – Holiday Observance
9. Article 23, Section 23.3 – Vacation Scheduling
10. Article 24, Section 24.1 – Insurance Benefits
11. Article 29, Section 29.1 – Field Training

Non-Economic Issues

1. New Article – Teamsters National Legal Defense Fund

2. New Article – D.R.I.V.E. Authorization and Deduction
3. Article 4, Section 4.1 – Management Rights
4. Article 25, Section 25.5 – Correctional Assignments
5. Article 28 – Employee Testing
6. Article 30, Section 30.2 – Union Steward Meetings
7. New Article 33 – Employee Fitness

VI. External Comparables

Section 14(h) of the IPLRA establishes eight factors for consideration by arbitrators when examining the suitability of last best offers in interest arbitration. As noted by Arbitrator Benn in *City of Chicago* none of the eight factors technically receives more attention under statutory language than the others. In this case, interestingly, neither party relied particularly heavily on the criterion of external comparability. The Union, however, did suggest a list of externally comparable bargaining units. However, the Union failed to offer sufficient substantiating evidence as to why the Arbitrator should consider them truly analogous for these statutory purposes. As Arbitrator Edwin Benn noted in *A Practical Approach to Selecting Comparable Communities in Interest Arbitrations Under the Illinois Public Labor Relations Act*, “From a practical standpoint, the determination of whether two communities are ‘comparable’ is important and most difficult.” Without demographic data supporting a parties proposed external comparables, the task is not difficult, it is nearly impossible. In this case, the Union offered the following list of proposed external comparables in its analysis of the parties’ respective final wage offers:

McHenry County Sheriff’s Correctional Officers
DuPage County Deputy Sheriff’s Correctional Officers
Winnebago County Correctional Officers
Sangamon County Correctional Officers
Cook County Corrections Officers CS2

However, the Union failed to submit *sufficient* data in support of their true

comparability to those Lake County employees in this bargaining unit. The record before the Arbitrator contains no analysis by the Union of county population, median income and housing costs, budgetary constraints, bargaining unit size and training requirements, geographic location, and/or scope of duties, all of which, while not completely comprehensive in terms of comparability factors, would have illuminated “contact points” between constructively similar bargaining units and this one. Thus, the true validity of the Union’s proposed comparables was not proven one way or the other in this record.

For its part, the Employer neglected to propose external comparables at all. Likely, this was deliberate, because there was significant argument in the County’s post-hearing brief concerning the unsuitability of the Union’s “anticipated” list of comparables. Yet, no viable alternatives were offered by the Employer. Thus, we do not have a problem with incongruent lists. Instead, we have one unilateral proposal (the Union’s), which the Employer argues is not applicable. If the Arbitrator adopts the County’s position on this point, the statutory criterion of external comparability will obviously be of no use at all in an analysis of the parties’ respective wage proposals.

In relevant part, the Employer first argues that the Union failed to establish comparability among the referenced groups pursuant to accepted factors such as population, household income and others already mentioned. That much has already been established as a matter of fact. Second, the Employer contends that Cook County and the Cook County Sheriff’s Office are not comparable to Lake County as employers for a number of reasons. Lake County, the Employer notes, has only 12 unionized employee groups and approximately 2,600 employees. On the other hand, the Employer argues,

Cook County employed 25,000 persons in 2007, 20,000 of who worked in some 90 different bargaining units. Sheer size alone renders the counties of Lake and Cook incomparable, the Employer insists.

As for DuPage County, the Employer notes that while it is arguably the closest to Lake County in terms of census and economic data, it is still not comparable to this bargaining unit in terms of their respective Sheriff's offices. Key, the Employer notes, is the fact that DuPage County Correctional Officers are sworn Peace Officers, and those in Lake County are not. Thus, the Employer argues, only the Peace Officer (Deputy Sheriffs) unit in Lake County, and not the Correctional Division, might be considered comparable to the proposed DuPage County unit. Lake County Sheriff's Deputies are, of course, paid significantly more than Correctional Officers given their job duties, the Employer notes, and thus, any comparison between a group of sworn Police Officers and this bargaining unit in terms of wages would be inappropriate.

With regard to the remaining counties of McHenry, Winnebago and Sangamon as proposed external comparables, the Employer has little to say about why the Arbitrator should not consider them similar for these discrete purposes. Indeed, because there is no data in this record for the Arbitrator to analyze on his own, he is left then, with only two choices. Either he can adopt the Union's comparable list (with modifications attendant to the Employer's legitimate rebuttal arguments concerning the overall unsuitability of Cook and DuPage Counties as comparables), or he can find that there are no externally comparable bargaining units for his purposes in this case, for lack of evidence supporting the Union's proposal.

After carefully considering the record and the parties' respective arguments, the

Arbitrator concludes that the first option is the more reasonable of the two. The Union did propose five external comparables, only two of which the Employer strongly argued should be struck from the list. The Arbitrator accordingly infers that the Employer would accept the remaining three counties; McHenry, Sangamon and Winnebago, as comparables. In ultimately adopting the Union’s list of proposed external comparables, modified by the removal of DuPage and Cook Counties for reasons stated herein above, the Arbitrator makes no finding as a matter of fact (or of useful precedent) concerning the true statutory comparability of the three remaining counties. Indeed, this record offers absolutely no data upon which to independently rely one way or the other. Instead, the Arbitrator concludes that because the Employer failed to expressly reject certain counties as comparables (when it had an opportunity to do so along with the others), their inclusion on the list was, at the very least, not patently inappropriate in the Employer’s view.

For all the foregoing reasons, then, the Arbitrator will consider the following bargaining units externally comparable:

McHenry County Sheriff’s Correctional Officers,
Winnebago County Correctional Officers,
Sangamon County Correctional Officer.

VII. Internal Comparables

Internal comparability has become an important statutory criterion. While interest arbitrators had ought to endeavor to avoid the trap of traditional (and expected) “me-too” arguments, from **both parties**, the fact remains that, in the present economic environment, context is important. Particularly in matters of wages, health insurance, specialty stipends, and vacation accrual, internal comparability serves as a critical starting

point for assessing various collective bargaining agreement provisions. This record establishes that there are five bargaining units in the Lake County Sheriff's Office:

Correctional Division – Corrections Officers
Correctional Division – Corrections Sergeants
Law Enforcement Division – Peace Officers
Law Enforcement Division – Sergeants
Law Enforcement Division – Lieutenants

The Illinois Fraternal Order of Police Labor Council represents the Peace Officer unit, and Teamsters Local 700 represents the remaining units for purposes of collective bargaining. All of the Sheriff's collective bargaining agreements expired on November 30, 2010, as previously noted, and every new contract went to interest arbitration for binding resolution of outstanding impasse issues. At this writing, awards have been issued for the Correctional Division Sergeants,² Law Enforcement Lieutenants,³ and Peace Officers,⁴ with the remaining two, including the instant case before this Arbitrator, have yet to be published.

With respect to the issue of wages in particular, all Lake County Sheriff's bargaining units will be considered internally comparable. However, it is noted here, and discussed in more detail below, Law Enforcement Lieutenants (whose contract has now been resolved) have their wages based on a mathematical formula driven by the Law Enforcement Sergeants' respective wage scales.⁵ And, as a matter of record, the Employer states that it proposed identical general wage increases for all of the Sheriff's

² S-MA-11-010 – *Teamsters Local 700 & Lake County Sheriff, Corrections Sergeants*, Gibbons, Arb.

³ S-MA-11-011 – *Teamsters Local 700 & Lake County Sheriff, -Law Enforcements Lieutenants*, McAllister, Arb.

⁴ S-MA-11-066 – *Illinois Fraternal Order of Police Labor Council & Lake County Sheriff's Department, Peace Officers*, Bierig, Arb.

⁵ See, S-MA-11-011, at p. 5. Also, Appendix B to the Sergeants Law Enforcement Division Agreement indicates that this is also the case for this Unit – Sergeants wages are driven by Peace Officers wages.

Department bargaining units; 0%, 2.5%, 2.0% in each of the three contract years respectively.⁶

The County also has a number of bargaining units outside the Sheriff's Office. AFSCME currently represents unionized employees in the Lake County Coroner's Office, and IUOE Local 150 represents unionized employees in the Maintenance, Health, and Public Works Departments. For purposes of analysis, all the County's unionized employee groups will be considered internally comparable as well, though the weight of collectively bargained contracts within the Sheriff's Department will be given the priority they deserve because it is obvious that the Employer sought to treat them similarly in its basic wage offer.

As set forth in more detail herein below, both parties, to some degree, rely on the statutory criterion of internal comparability in support of their respective arguments pertaining to certain impasse issues in this case. While not trustworthy as an exclusive or definitive benchmark on any single point, internal comparability will serve to establish the "norm" for this County in certain matters, and will thus provide context for any ultimate finding as to which "last best offer" should prevail on matters of economic interest to this bargaining unit.

VIII. Consumer Price Index (CPI) and Other Relevant Factors

To a degree, CPI will be considered in this case, though because the two final wage offers are relatively close over the term of the contract, it is of little real value in terms of a determinative statutory criterion in this case. The Union proposes across-the-

⁶ The Arbitrator has not been provided with a copy of the wage proposals made in the Units where supervisors' rates are based on the highest rate of pay of their subordinates, so he is unaware of the specifics of the Employer's proposal – was it a specific offer or was it tied in to the offer made to the subordinate unit?

board general increases of 2.5% in each of the three years of the Agreement term, while the County proposes 0%, 2.5% and 2.0 % respectively. According to the Union's evidence, the relevant CPI increased by approximately 2.5% between December, 2010 and December, 2011. Thus, the Union argues that a concomitant general wage increase in the first year of the contract is warranted. The Union did not argue that the CPI supports an identical general increase in the second year of the contract, because the Employer also proposed a 2.5% increase for that year. Instead, the Union opined that, "Both the Employer and the Union proposed 2.5 percent for year two, which itself is sufficient to constitute a stipulation that 2.5 percent be awarded in year two."⁷ Whether or not the Union's argument is sensible is not the point here. Instead, the Arbitrator observes that the Union did not specifically rely on CPI data in support of its year-two proposal.

As to the relevance of the CPI in year three of the contract, the Union relied on "Surveys of Professional Forecasters from the Federal Reserve Bank of Philadelphia," who predicted that the CPI will rise by some 2.7% in 2012. The Union acknowledges that CPI data for 2012 is currently available through May only. However, the Union submits, "[W]ith the ever-rising gas prices, the election cycle, and the currency crisis in Europe, the Union predicts that the CPI will continue to rise in subsequent quarters of 2012."⁸

The County, on the other hand, argues that the CPI does not appreciably favor either party's offer to the extent that it would outweigh the factors of internal and external comparability, as well as the interests and welfare of the public and the financial ability of the Employer to meet the costs of the Union's wage proposal. CPI, the Employer argues, is not a precise measurement of what employees are actually paying to live, but is

⁷ Union brief at page 15.

⁸ Id.

instead a gauge of relative changes in an “artificial benchmark.” In this case, the Employer argues, there is no evidence that the buying power of the correctional officers in particular will be much enhanced by selection of the Union’s proposal or much harmed by selection of the wage proposal submitted by the County. It must further be noted, the Employer argues, that inflation also impacts the County on the revenue side of the equation.

In sum, as set forth herein above, due weight and consideration will be given to the statutory criteria of external comparability (using the Union’s amended list of proposed comparables), internal comparability, relevant cost of living indices, and “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.”⁹

IX. The Issues

ECONOMIC ISSUES

New Article – Funeral Leave

The Union’s Final Proposal

The Union proposes the following language as a New Article:

“Employees shall be granted up to three (3) working days leave with pay in the event of the death of a spouse, child, mother, father, sister, brother, grandparent, father-in-law, mother-in-law, son-in-law, daughter-in-law, same sex partner, or member of the employee’s family who lives in the employee’s household.”

The Employer’ Final Proposal

⁹ 5 ILCS 315/14(h).

The Employer proposes to maintain the *status quo*.

The Position of the Union:

The Union proposes a new provision for funeral leave, arguing in relevant part that, “There is no viable counter-argument to the Union’s point that the need to attend a funeral for one of the listed family members is paramount.”¹⁰ The Union acknowledges that personal days are currently in the contract for just such a purpose, but argues that the County has often denied correctional officers personal time for “needs of service” reasons. This proposal, the Union argues, “ensures that a grieving employee is able to do so free and clear from concerns about denial of a personal day or possible discipline for missing work.”¹¹

For all the foregoing reasons, the Union urges the Arbitrator to adopt its final proposal for the above amendment to the parties’ Collective Bargaining Agreement.

The Position of the Employer:

At present, the Employer argues, bargaining unit employees use personal time for purposes of bereavement. That, the Employer notes, has been the case for more than 25 years, and the practice certainly predates these parties’ collective bargaining relationship. Departing from *status quo* is not warranted here because the Union failed to establish any need for doing so, the Employer argues. The Union, the Employer argues, offered no proof that personal time has ever been denied under these circumstances, and as such, there is no reason for granting this economic breakthrough.

The Employer accordingly urges the Arbitrator to deny the Union’s petition to depart from *status quo* on the issue of “Funeral Leave.”

¹⁰ Union brief at page 2.

¹¹ Id.

Discussion:

In order for the Arbitrator to find in favor of the Union on this issue there must be a showing that there is a proven need for the change or the proposal meets the identified need without imposing an undue hardship on the other party. In this case, this has not been established.

The Union offered no proof that there is a genuine need for “Funeral Leave” *per se*. The record before the Arbitrator demonstrates that personal time already afforded under this Collective Bargaining Agreement has been used to accommodate bereavement absences for more than 25 years, and in all that time *there have been no known complaints that personal time requests have ever been denied* in those circumstances.

On this issue, the Union, “the party seeking the change,” failed to show that the existing arrangement is insufficient, broken, or is failing to meet legitimate needs. Thus, the Union’s petition to depart from *status quo* is denied. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union’s proposal with respect to the new Article – Funeral Leave should be denied. Thus, it is so ordered.

Article 13, Section 13.2 – Work Day and Work Week

The Employer’s Final Proposal

The Employer proposes to amend Section 13.2 of the Agreement as follows:

C) Work Week and Work Schedules

~~*Out of the thirty five (35) week rotation there will be five (5) pay periods*~~

~~totaling only 74.25 hours. Corrections Personnel may, at their option, utilize accumulated benefit hours to bring the total hours of these pay periods to 82.50 hours not to exceed 62 hours per fiscal year. Corrections Personnel wishing to utilize their benefit hours in this way must submit a written request to jail administration.~~

The Union's Final Proposal

The Union proposes to maintain *status quo*.

The Position of the Employer:

In the summer of 2009, the Employer explains, Correctional Officers were assigned to work a thirty-six calendar day schedule of five days on – three days off; five days on – two days off; five days on – two days off; and five days on – two days off. For budgetary reasons, the Sheriff subsequently proposed changing Correctional Officers' work assignments to a fifteen calendar day schedule of five days on – three days off; and five days on – two days off, the same schedule the Sheriff's Officers, Highway Patrol, and Emergency Communications personnel were working. In the ensuing months, the parties participated in five negotiating sessions during which the proposed schedule change was discussed. On February 8, 2010, the matter was placed before the membership of the Corrections Unit for a vote, and the County's proposal was rejected by a very small margin. On February 10, 2010, the Sheriff notified Corrections Officers that effective April 1, 2010, all general housing Correctional Officers would be assigned to the 5/3 – 5/2 schedule anyway, and in due course, the Illinois FOP Labor Council, the Union representing the Unit at the time, filed a grievance contending that the County would violate the Agreement if the changes were implemented.

On March 26, 2011, this Arbitrator issued an Opinion and Award upholding the Employer's management right to change work schedules, and Corrections Officers have

been working the 5/3 – 5/2 rotation ever since. According to the Employer then, the instant “final” proposal to strike the existing language in Section 13.2 C simply reflects the fact that the schedule currently written in the Agreement is no longer the scheduled worked. “In this case, the Employer submits that the identified need is to have the language of the Agreement be consistent with the work schedule as determined by the Employer – a right which the Employer continues to maintain under the management rights provision (Article 4) of the Agreement.”¹²

At arbitration, Director of Support Services Kevin Lyons testified for the Employer that, “This schedule [in the current agreement] states that there’s a 35-week rotation. That’s not true. It states that there’s five pay periods totaling only 74.25 hours. That’s not true. The only thing that is true is that they can use benefit hours to bring the total up to 82 and a half hours, not to exceed 63 hours per fiscal year which does not total any portion of the schedule.”¹³

Thus, the Employer argues, “The Employer’s proposal should be adopted and the Agreement should be modified accordingly.”¹⁴

The Position of the Union:

The Union simply argues that the Employer’s proposed change in this instance is proof positive that the existing contract language is being violated. Thus, the Union urges the Arbitrator to reject the Employer’s obvious efforts to circumvent current contract provisions, and maintain *status quo*.

Discussion:

Because this is an economic issue, the Arbitrator is not privileged under the

¹² Emphasis added, Employer brief at page 25.

¹³ Id.

¹⁴ Id.

statute to draft replacement language for Section 13.2 which, as the Employer contends, “should be modified” in accordance with the findings of this Arbitrator in his Opinion and Award dated March 26, 2011. Surprisingly, the Employer proposed to strike this section in its entirety from Article 13 without proposing any alternate language actually codifying present practices. Should the Employer think the language should be struck in recognition of a management right preserved in this Arbitrator’s grievance findings, the County is reminded that, according to Kevin Lyons’ above-referenced testimony, at least some of Section 13.2 is still being applied as it was originally written. Thus, striking the section in its entirety without replacing it with alternate language would be tantamount to negating an existing negotiated provision, which the Arbitrator, of course, cannot do.

The Employer also made it clear in argument, as cited and emphasized herein above, that there was really no intent on its part to delete Section 13.2 from the contract altogether, but instead to modify it to accomplish the following specific purpose: “The identified need is to have the language of the Agreement be consistent with the work schedule as determined by the Employer.” Unfortunately, that is not what their final proposal accomplished within the strict confines of the Act.

Because this is an economic issue, the Arbitrator is constrained to select one entire final proposal over the other without modification or alteration. The Arbitrator cannot select the Employer’s final proposal for that reason. Doing so would negate a negotiated practice currently in place relative to the use of benefit hours to increase payable time, and thus, the entirety of Section 13.2 cannot be stricken from the present contract as the Employer has proposed.

The Arbitrator specifically stresses, however, that his selection of the Union’s

status quo proposal in no way suggests that the grievance issue already settled under existing Section 13.2 language is effectively nullified by the following Order, whether or not the Union agrees with the Arbitrator's findings in the relevant grievance award. **Therefore, the parties are urged to negotiate new Section 13.2 language reflective of current practices, as the Employer stated was their original purpose for proposing the instant amendment.**

For all the foregoing reasons, then, the Union's proposal to retain *status quo* is adopted. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Employer's proposal to strike Section 13.2 from the Agreement and thus depart from *status quo* should be denied. Thus, it is so ordered.

Article 13, Section 13.6 – Sixth and Seventh Day Work

The Employer's Final Proposal

The Employer proposes to amend Section 13.6 as follows:

An employee who is in pay status for seven (7) consecutive days within the work week as defined in Section 2c of this Article will be compensated for at the rate of time-and-one-half (1-1/2) for work performed on the sixth (6th) day, and on the seventh (7th) day. Voluntary schedule changes **and employee requested training** will be exempt from this provision.

The Union's Final Proposal

The Union proposes to maintain *status quo*.

The Position of the Employer:

Under current language, employee-requested training must be paid at the overtime rate if it takes place on an assigned rest day. As a consequence, the Employer explains,

employee requests for training on off-days have been customarily denied to mitigate overtime expenditures. The above proposal, the Employer argues, “is of benefit to both parties... To wit, an officer who would like to volunteer for additional training that is only available on their scheduled day off may now be approved to participate and will be paid, though at their regular rate. In turn, the Employer will receive the benefit of having better trained officers without having to incur the added cost of overtime.”¹⁵ The proposal, the Employer submits, does not impose undue hardship on the Union because overtime pay for rest-day training was never available to the bargaining unit in the first place. Thus, the Employer argues, the County’s final offer on this economic issue should be adopted.

The Position of the Union:

Again, the Union’s argument is uncomplicated; the Employer simply gave no explanation as to why the County urges this change in existing language. There is no indication in this record, the Union argues, that the Employer has good reason for scheduling officers for voluntary training on their rest days rather than on their regularly assigned work days, and thus, the Arbitrator should deny departure from *status quo* on this issue for lack of cause.

Discussion:

The Arbitrator is persuaded in favor of the Union on this economic issue. Indeed, as the Union argued, the Employer gave no reason for seeking the instant change other than it would be of “mutual benefit” to the parties. Obviously, the Union does not agree as to the “mutually beneficial” nature of this proposal, and thus the Employer, as the party seeking the change, was bound by statute and arbitral principle to defend its

¹⁵ Employer brief at page 26.

proposed departure from *status quo* with proof that the present system was not working. Such evidence is missing in this record.

This is an economic issue. In other words, there is real economic value in the present language; to wit, any bargaining unit member who attends voluntary training on his or her day off will be compensated at the prevailing overtime rate. Here, the Employer seeks to reduce that benefit significantly by paying officers in voluntary training on their rest days at the straight time rate.

Of course, the Arbitrator recognizes and appreciates the Employer's assertion that Section 13.6 has no real value to the Union because officers are not generally permitted to attend voluntary training on their rest days anyway. However, that, from a collective bargaining standpoint, is entirely beside the point. Section 13.6 contains a negotiated contractual benefit (overtime pay for training on rest days) for members of this bargaining unit. Thus, granting the Employer's petition on this issue would be tantamount to negating a negotiated benefit without good reason.

Moreover, there is a discretionary aspect of this issue that the Arbitrator is not certified to override without evidentiary support for doing so. The training at issue is "voluntary," and thus is discretionary on the part of the employee. On the other hand, rest day training is not presently being authorized by the Employer in order to keep overtime costs down. That represents a discretionary exercise of management rights. Here, the Employer has not indicated precisely how this present system is actually "broken." Again, interest arbitrators are cautioned to refrain from altering negotiated provisions just because one or the other party wants a better arrangement than they had before. That appears to be the case here.

The Employer has failed to establish a legitimate need to depart from negotiated *status quo* on this issue. As such, the Union’s Final Proposal to retain present Section 13.6 language is granted. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Employer’s proposed amendment of Section 13.6 language should be denied. Thus, it is so ordered.

Article 19 – Wage Rates

The Union’s Final Proposal

The Union proposes across-the-board general wage increases of 2.5% in each of the three contract years, retroactive to December 1, 2010.

The Employer’s Final Proposal

The Employer proposes the following general wage increases:

- 0.0% - Year One (retroactive to December 1, 2010)
- 2.5% - Year Two
- 2.0% - Year Three

The Position of the Union:

The Union argues that several statutory criteria support the reasonableness of its final wage proposal over that of the Employer. First, the Union asserts, “the Public Interest” favors its wage offer, in that “attractive wages are an important incentive to ensure that future applicants meet the same high standards of professionalism now met by the officers in this unit.”¹⁶

Second, the Union submits that the Consumer Price Index also favors its wage offer. In support, the Union argues that the CPI increased approximately 2.5% between

¹⁶ Union brief at page 14.

December 2010 and December 2011. Clearly, the Union opines, a parallel wage increase is therefore warranted for that contract year. There is no reason to rely on CPI data in support of its proposal for the second contract year, the Union asserts, because both parties offered identical 2.5% wage increases for that period. Thus, the Union reasons, the parties are effectively in agreement that the general economic climate between December 2011 and the present (December, 2012) merits an additional 2.5% increase.

According to the Union, its offer of 2.5% in year three of the contract is based on the Surveys of Professional Forecasters from the Federal Reserve Bank of Philadelphia, which estimate that the CPI will rise by 2.7% in 2012. The Union acknowledges that data was only available through May 2012 when these parties engaged in interest arbitration. However, the Union submits, “With the ever-rising gas prices, the election cycle, and the currency crisis in Europe, the Union predicts that the CPI will continue to rise in subsequent quarters of 2012.”¹⁷

Third, the Union argues that the statutory criterion of internal comparability favors its proposed general increases in all three contract years. While it is true that other collective bargaining agreements within the Sheriff’s Office are currently pending at interest arbitration, the Union admits, historic internal comparisons show that the Lake County corrections unit has historically lagged behind Lake County’s other law enforcement bargaining units both in terms of overall average hourly wages and annual salaries.¹⁸ The Union also argues that all Sheriff’s Department bargaining units except this one received general wage increases in the first year of the prior contract, and thus, the gap widened between correctional officer wages and those of others in the unionized

¹⁷ Union brief at page 15.

¹⁸ Union Exhibits 9 and 10

Sheriff's Department groups. Thus, the Union submits, "Parity dictates that this unit should now be given the increases it seeks in order to catch up to the other Lake County law enforcement units."¹⁹

Fourth, the Union argues that the statutory criterion of external comparability favors the Union's final wage offer. The Union argues that the Employer's proposal, if accepted, would place this bargaining unit behind Correctional Officers in McHenry County for the first time in "recent" history.²⁰ In contrast, the Union argues, its offer would keep this bargaining unit in tandem with McHenry County Correctional Officers without ever falling behind them in terms of relative ranking among externally comparable groups.

The Union also argues that this bargaining unit already lags far behind comparable groups in DuPage and Cook counties in terms of wages. (The Arbitrator has already decided that, for the above-stated reasons, Cook and DuPage Counties are not sufficiently comparable for our purposes in this case.)

"Overall compensation" also favors its final wage offer, the Union argues. All Lake County bargaining units have identical vacation benefits, and holiday benefits are substantively similar in all Sheriff's Office bargaining units. Furthermore, the Union notes, "All Lake County bargaining units are subject to the same health insurance plan."²¹ Because the Corrections Officers in this bargaining unit are the lowest paid of all the Lake County law enforcement groups, the Union argues, the "overall compensation

¹⁹ Union brief at page 16.

²⁰ Union brief at page 17. The Union does not explain what "recent" specifically means, and there is no proof of relative parity between McHenry County and Lake County Correctional Officers prior to 2007. However, the Union is correct in stating that since 2007, Lake County Correctional Officers have maintained a very slight edge over McHenry County Correctional Officers in terms of wages, and if the Employer's offer were adopted, that would no longer be the case.

²¹ Union brief at page 19.

factor” supports reduction in the wage “gap” separating them.

Finally, the Union rejects any potential argument on the part of the Employer concerning “inability to pay.” The County is financially solvent, the Union submits, and there is no evidence in this record that it has been unable to meet its obligations under all existing collective bargaining agreements. Thus, the Union argues, the Arbitrator should decline to consider any assertion on the part of the Employer that adopting the Union’s wage proposal would cause insurmountable fiscal hardship to the County.

For all the foregoing reasons, then, the Union urges the Arbitrator to adopt its final wage proposal.

The Position of the Employer:

Predictably, the Employer also argues that established statutory criteria favor its final wage proposal. With respect to the criterion of internal comparability, the Employer notes that all Sheriff’s Office bargaining unit agreements expired on November 30, 2010, and every relevant group went to interest arbitration with the matter of overall wages essentially unsettled. The Employer states that in every case, the County’s final general wage offer was identical: 0%, 2.5% and 2.0%.

As for unionized groups outside the Sheriff’s Office, the Employer explains that the County achieved negotiated concessions from IUOE Local 150 representing DOT employees, whereby contract increases due April 1, 2010 were deferred to December 1, 2010. In addition, the Employer explains, DOT members agreed to take six furlough days in 2011 in exchange for wage increases in that year.

In 2009, the Employer notes, the County bargained with Health Department and Public Works bargaining units, both of which are also represented by Local 150. In those

contracts, the Employer argues, bargaining unit members agreed to the same wage freeze imposed on the County's non-union employees in fiscal year 2010-2011 (which the County has only proposed in the first year of this contract), and a general wage increase of 2.5% in fiscal year 2012 as the result of reopener negotiations.

The Employer also argues that Local 150's other units were also subject to the wage freeze imposed on non-unionized employees for FY 2010-2011. However, the Employer explains, Facilities Operations' last contract expired on November 30, 2011, and the County and Local 150 have not yet to completed negotiations for a subsequent collective bargaining agreement.

The County also had three bargaining units represented by AFSCME, the Employer notes, but since Winchester House was privatized, the only remaining group represented by AFSCME is in the Lake County Coroner's office. Interest arbitration is underway at this time for that group, the Employer explains, and thus, the matter of wages is still open.²²

As to the criterion of external comparability, the Employer, for previously stated reasons, rejects the Union's reliance on Cook and DuPage Counties as comparables. With respect to the remaining comparables; McHenry County, Sangamon County, and Winnebago County, the Employer argues that the Lake County Correctional Officers' wage rate, whether based on the Union's proposal or the County's proposal, still places this bargaining unit favorably in terms of relative rank and overall earnings. With either offer, the Employer argues, members of this bargaining unit would still be making substantially more than their counterparts in Sangamon and Winnebago Counties, and

²² Since the Employer' post hearing brief was written, an interest arbitration award, S-MA-12-141, Jedel, Arb., was published for the AFSME unit in the Coroner's Office. The ultimate outcome of that case in the matter of wage increases will be visited below.

approximately the same as Correctional Officers in McHenry County. Thus, the Employer submits, final analysis of the parties' respective wage proposals in the context of possible external comparables also favors its three-year wage offer.

As to CPI, the Employer argues that it does not appreciably favor either party's offer to the extent that it outweighs other statutory criteria. CPI does not really measure what any particular individual pays to live, the Employer insists, but is instead an "artificial benchmark" of relative economic change. Here, the Employer argues, there is no evidence that the buying power of Correctional Officers will be appreciably enhanced by the Union's offer or, in the alternative, significantly diminished by the County's offer. Thus, the Employer submits, the essential worth of CPI, as a critical factor is minimal at best.

Finally, the Employer argues, the current economic climate favors the County's final wage offer over that of the Union. As recently as 2011, the Employer notes, interest arbitrators have continued to observe that forecasting the future in these uncertain times is, at best, problematic.²³ While there is no true assertion of "inability to pay" here, the Employer admits, in the end, "the public interest and welfare" criterion demands that the County avoid incurring the additional costs associated with the Union's final wage proposal, especially when there is no clear and convincing evidence that those monies would serve any useful purpose other than to justify the correctional officers' stated objective to maintain parity with the CPI.

For all the foregoing reasons, then, the Employer urges the Arbitrator to reject the Union's arguments and adopt its final wage proposal.

²³ See, e.g., County of Cook and the Sheriff of Cook County and Teamsters Local Union 700, ILRB Case No. L-MA-09-016 (Nathan, September 14, 2011); Village of Schaumburg and Schaumburg Fire Command Association, ILRB Case No. S-MA-10-299 (Hill, September 19, 2011).

Discussion:

After carefully analyzing this record and considering the arguments of the parties, the Arbitrator is persuaded that the Union's final offer is more reasonable on the economic issue of wages. In so concluding, the Arbitrator found the statutory criteria of internal and external comparability most persuasive. While others were certainly advanced by the parties as applicable, the Arbitrator ultimately found them to be of limited value in this particular case.²⁴

There is no indication in this record that either the Union's or the County's final wage offers would significantly impact public interests or management's ability to compete in the job market for qualified workers. Indeed, in the end, both offers were relatively close over the full course of the contract, though the Employer does state that the Union's final proposal would have cost the County an additional \$430,998 in wages. Clearly, as the Employer has openly acknowledged, there has been no serious advancing of an "inability to pay" defense, though the County maintained, as it also did in other recent cases, that it has effectively managed labor costs in a variety of ways for the express purpose of offsetting past general wage increases. Job reductions have been made and vacant positions have not been filled. Thus, even though the County has, in fact, authorized general wage increases in past years; the bilateral negotiating process obviously played a significant role in the ongoing "creative management" of labor costs.

In the end, the statutory criterion of internal comparability won the day. The Arbitrator concludes that the first place to look for internal comparability is in the Lake

²⁴ With this said, it should be noted that the Arbitrator takes particular note of CPI data for December 2010 – December 2011, that shows an increase of approximately 2.5%, (with some evidence that it may have been as great as 2.8%). In year one, the Employer's final offer was 0% while the Union's final offer was approximately the same as the CPI increase – 2.5%.

County Sheriff's Office. As previously discussed, all five of the unionized groups' bargaining agreements expired at the same time on November 30, 2010. Furthermore, all five bargaining units went to interest arbitration with some portion of the wage question unanswered. Of the five outstanding contracts, three have now been resolved.²⁵

On November 14, 2012, Arbitrator Thomas Gibbons issued his Opinion and Award in County of Lake and Lake County Sheriff's Department and Teamsters Local 700; ILRB Case No. S-MA-11-010 involving the Correctional Sergeants bargaining unit. In that case, however, the issue of general wage increases did not go to arbitration. As in this case, the Employer's final offer for general wage increases was 0%, 2.5%, and 2.0% in each of the three contract years respectively. The sole issue before Arbitrator Gibbons was the Union's proposal to revise the bargaining units step increases from 1.5% to 2%. The Union's proposal was rejected.

On November 9, 2012, Arbitrator Robert McAllister issued his Opinion and Award in County of Lake and Lake County Sheriff's Department and Teamsters Local 700; ILRB Case No. S-MA-11-011 involving Law Enforcement Lieutenants. In that case, too, the issue of general wage increases was not before the arbitrator. Instead, the sole matter of wage differentials was addressed. Law Enforcement Lieutenants and Sergeants receive premium and longevity pay that is directly linked to the wage rate of their highest paid immediate subordinates. Arbitrator McAllister did not award the Lieutenants the increase in wage differentials they were seeking, from 5% to 7.5% and noted that:

[T]he wage rate for both sergeants and lieutenants is, by agreement, established by what wages the deputies and the Employer negotiate. Currently, that contract is in the hands of an interest arbitrator,

²⁵ While neither party has formally cited these decisions to the Arbitrator, they may be considered by reason of Section 14(h)(7) of the Act, "Changes in any of the foregoing circumstances during the pendency of the Arbitration Proceedings."

and the decision therein by the interest arbitrator will determine the deputies' wage rates. As noted, the Employer has proposed a three (3) year contract with the annual base and steps increases of 0%, 2.5%, and 2%. The FOP proposal for the deputies' annual base and step increases is for 1.5%, 2.5%, and 2.5%.

Shortly after the McAllister Award was issued, the interest arbitration involving Deputies was concluded. On November 29, 2012, Arbitrator Steven Bierig issued an award in County of Lake County Sheriff's Department and the Illinois Fraternal Order of Police Labor Council; ILRB Case No. S-MA-11-066 involving Law Enforcement Peace Officers. That award granted the Union's Final Offer of 1.5% the first year, 2.5 % in the second and third years. The effect of awarding the Union's final offer as opposed to the Employer's final offer is to make the Union's final offer applicable to three of the five Sheriff's Department bargaining units that were engaged in negotiations and interest arbitration for wages effective December 1, 2010 – Deputies (of course), Sergeants and Lieutenants. Importantly, now, each of these three Peace Officer units will receive first year wage increases, instead of the 0% of the Employer's final offer.²⁶

As noted earlier Corrections Officers are below Peace Officers in pay ranking. Now that all three unites of Lake County Peace Officers are receiving a 1.5% increase in 2010, awarding the Employer's proposal of zero percent for that year for Corrections Officers would effectively push them further behind in relative parity between the units.

With regard to external comparability, the Arbitrator is also convinced that the Union's final wage proposal is more reasonable. Indeed, both proposals have little impact

²⁶ In the interest arbitration between AFSCME and the Lake County Coroner (S-MA-12-141) the Employer's final offer on wages was identical to what it proposed for Correctional Officers - 0% the first year, 2.5% the second year and 2.0% the third year. The Union's final offer was for 2.5%, 2.75%, and 3.0%. Arbitrator Jedel awarded the Union's final offer. (While there has been some discussion that the work in the Coroner's office is not comparable to work in Corrections, it is noted that the Employer in a footnote to its post-hearing brief observed that its final offer was identical to that it had proposed in the five Sheriff's Office units that were at the time in interest arbitration.)

on the relative standing of this bargaining unit with respect to other external bargaining units. For example the Employer's final offer would cause Correctional Officers in Lake County to fall behind those of McHenry County over the term of this contract, the ultimate variance between the two externally comparable groups is so minimal under either offer that it is really functionally immaterial. Revised Union Exhibit 12 establishes that Lake County Correctional Officers would maintain their #1 ranking among the four external comparables (Lake County, McHenry County, Sangamon County, and Winnebago County respectively) under the Union's proposal. At the end of the contract term, Lake County correctional officers would be earning 40¢ per hour more than their #2 ranking counterparts in McHenry County. Conversely, under the Employer's proposal, Lake County correctional officers would drop behind their counterparts in McHenry County by 60¢ per hour by the end of the contract term, and thus fall to second in the ranking. Under either proposal, Lake County Correctional Officers would continue to earn significantly more than #3 and #4 Sangamon and Winnebago Counties respectively. The relative difference in earnings between Correctional Officers in Lake and McHenry Counties is slight, and the two employee groups remain in virtual alignment under either proposal. This "statistical tie", therefore, indicates that external comparability should not trump the result developed by internal comparability, as it is the relationship among employees in Lake County that had ought to predominate over any relationship with employees in other counties.

For all the foregoing reasons then, the statutory criterion of internal comparability is overwhelmingly persuasive. Accordingly, the Arbitrator concludes that the Union's final wage offer is the more reasonable of the two proposals, and it is therefore adopted.

The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union’s final wage proposal should be adopted. It is therefore so ordered.

Article 20, Section 20.1 – Amounts (Holidays)

The Union’s Proposal

The Union proposes the following amendment to Section 20.1 of the Agreement:

~~Section 20.1 – Amounts~~

~~All employees may have time off, with full salary payment on all holidays as authorized by the County of Lake and documented in the Lake County Employee Policies and Procedures manual Section IV – Leaves of Absence, part 4.1 #1 “Paid Holidays”.~~

Section 20.1 – Definition

All employees have two types of holidays, “fixed” holidays and “floating” holidays. New Year’s Day, Memorial Day, Independence Day, Labor Day, Election Day, Thanksgiving Day, ~~the Day after Thanksgiving~~ and Christmas Day are *fixed* holidays. All other holidays are floating holidays.

- New Year’s Day
- Martin Luther King’s Birthday
- Lincoln’s Birthday
- Floating Holiday
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Election Day
- Veteran’s Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Day

The Employer’ Final Offer

The Employer proposes to maintain the *status quo*.

The Position of the Union:

The Union proposes to amend Section 20.1 and subsequent Section 20.3 “to standardize the fixed and floating holiday designation, and to clarify the payment options in each case.”²⁷ Currently, the Union explains, the County is able to designate floating and fixed holidays, which it does on an annual basis. According to the Union, its final offer on this issue would “better permit employees to determine in advance if they would like to try to work a holiday.”²⁸ Thus, the Union urges the Arbitrator to adopt the above-proposed modifications of Section 20.1.

The Position of the Employer:

The Employer rejects the Union’s stated desire to “get away from the annual change in County holidays being set out by the County Board and incorporate them into the Collective Bargaining Agreement so we know which are fixed and which are the floating holidays.” (Tr. 24-25.) The Employer submits that the Union failed to show any identifiable need to amend Section 20.1 language, and further established no proof that there has ever been confusion over which holidays are fixed and which are floating. For all the foregoing reasons, then, the Employer urges the Arbitrator to reject the Union’s final proposal and maintain Section 20.1 *status quo*.

Discussion:

The Arbitrator is persuaded by the Employer that the *status quo* should be maintained with respect to Section 20.1. Indeed, the Union presented no evidence that the existing language is particularly problematic, or that bargaining unit members are so confused on the issue of fixed and floating holidays that they are unable to understand

²⁷ Union brief at page 3.

²⁸ Id.

and apply their work schedules, and or volunteer to work on a holiday. Furthermore, the record establishes that holiday designations are established by the Lake County Board, and are universally recognized as such by all Lake County employees. Thus, incorporating any specific “holiday” designation into this Collective Bargaining Agreement would potentially destroy internal parity within all the County bargaining units.

For that and all the foregoing reasons, then, the Union’s final proposal on the economic issue of Holiday Designation is denied. The *status quo* is maintained, and the following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union’s proposed amendment of Section 20.1 language should be denied. It is so ordered.

Article 20, Section 20.3 – Cash Payment (Holidays)

The Union’s Final Proposal

The Union proposes the following amendment to Section 20.3 of the Agreement:

In lieu of equivalent time off as provided for in Section 2 above, an employee who works a **floating** holiday (~~except New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day~~) may choose to receive double time cash payment for work hours worked on the holiday. An employee who works **on a fixed holiday** ~~New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day~~ may ~~chose~~ **choose**²⁹ to receive double time and a half cash payment for hours worked on the holiday. When a holiday falls on a scheduled day off, the employee may be paid at his regular rate. Any accumulated holidays must be taken in time off or cash prior to the end of the fiscal year. Section 20.3 shall become effective

²⁹ The Arbitrator recognizes this specific notation as a correction of a typographical error in the prior contract.

at the time of contract ratification and shall not be applied retroactively.

The Employer's Final Proposal

The Employer proposes to maintain *status quo*.

The Position of the Union:

The Union states that its proposed amendment of Section 20.3 would permit bargaining unit employees to take the cash option on fixed and floating holidays (in lieu of merely “putting time on the books”), which would again better allow employees to determine in advance if they want to work on a holiday.

The Position of the Employer:

Again, the Employer argues that the Union offered no proof that the proposed language change is warranted. First, the Employer argues, the Union failed to establish any need for the change. Second, the Employer submits, current Section 20.3 language maintains corresponding parity among all unionized groups in the Sheriff's Department, and should thus be retained under the criterion of internal comparability.

Discussion:

After reviewing the record, the Arbitrator is persuaded in favor of the Employer on this economic issue. There has been no showing of need in the sense that the present language is untenable, confusing, or not, in practice, what was negotiated in the first place. The Arbitrator is further persuaded by the Employer's argument that the substance of Section 20.3 is consistent among all Sheriff's Department bargaining units. Therefore, absent any *bona fide* reason to depart from *status quo* in this bargaining unit alone, the criterion of internal comparability favors the Employer on this issue. Accordingly, for all the foregoing reasons, the *status quo* is maintained. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union’s proposed amendment of Section 20.3 language should be denied. It is so ordered.

Article 20, Section 20.6 - Eligibility (Holidays)

The Union’s Final Proposal

The Union proposes the following amendment to Section 20.6 of the Agreement:

To be eligible for holiday pay, the employee shall work ~~the employee’s last scheduled work day before the holiday and first scheduled work day~~ after the holiday, unless absence on the day ~~either or both of these work days~~ is for good cause and approved by the employer. It is understood by the parties that permanent part-time employees shall be eligible for holiday payment in accordance with the Lake County Personnel Policies and Procedures Ordinance on a pro-rated basis.

The Employer’s Final Proposal

The Employer proposes to maintain *status quo*.

The Position of the Union:

The Union argues that the proposed changes in Section 20.6 are meant to “comport with basic notions of fairness and common sense: if an employee works on a holiday, the employee should receive the holiday pay benefit.”³⁰ At present, the Union argues, existing conditions arbitrarily limit when the benefit may be received based on whether or not the employee has worked on days preceding and following the holiday. Such conditions, the Union submits, “do nothing to acknowledge that an employee who works on a holiday must give up celebrating the holiday for the Employer’s benefit.”³¹

³⁰ Union brief at page 3.

³¹ Id.

Accordingly, the Union urges the Arbitrator to adopt the above proposal.

The Position of the Employer

The Employer argues that the Union failed to meet its burden on the instant issue. As with each of its other proposals related to Article 20, the Employer argues, the Union did not establish any proven need for the suggested change. As such, the Employer urges the Arbitrator to maintain *status quo* with respect to proposed amendments to Section 20.6 of the Agreement.

Discussion:

The Arbitrator agrees with the Employer that the Union has failed to meet its burden on this economic issue. First, holiday pay eligibility, which is dependent upon some degree of “qualification”, is not uncommon in labor agreements, and as such, the Arbitrator cannot conclude that the existing language at issue, on its face, is patently unfair or imposes an undue and unexpected hardship on the employee.

Thus, for that and all the foregoing reasons, then, the Arbitrator rules in favor of the Employer that the *status quo* should be maintained. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union’s proposed amendment of Section 20.6 language should be denied. It is so ordered.

Article 20, Section 20.7 – Holiday Observance

The Employer’s Final Proposal

The Employer proposes the following amendment to Section 20.7 of the Agreement:

The parties agree that the positions covered by this Agreement are in

operations and facilities, which require continuous coverage. Therefore, all Holidays shall be observed on the calendar date designated as the Holiday, **except for those Corrections Officers assigned to a fixed Monday-Friday shift.**

The Union’s Final Proposal

The Union proposes to maintain *status quo*.

The Position of the Employer:

Under the present language, the Employer argues, correctional officers who regularly work Monday through Friday are not entitled to be paid for holidays that fall on the weekend. Notwithstanding this language, the Employer explains, the County has, in the past, chosen to pay these employees when a holiday falls on a weekend anyway. Director of Support Services Kevin Lyons, who testified for the Employer at the arbitration hearing, explained it this way:

“As we all know, that the past – this past year, Christmas, and I believe New Year’s, was on a Sunday. Correction officers assigned to Monday through Friday schedules would not have gotten paid for those days. And we didn’t think that that was fair that someone assigned to the bullpen or transport or a Monday through Friday schedule wouldn’t get paid. We paid them anyway, even though it wasn’t in the contract.” (Tr. 83.)

In essence, the Employer argues, the County’s proposal “simply incorporates its equitable practice (one that is a benefit and not a burden to the bargaining members) into the Agreement.”³² Thus, the Employer opines, the County’s proposal should be adopted and the Agreement modified accordingly.

The Position of the Union:

The Union argues that the Employers offered no explanation as to why, if the above stated purpose for amending Section 20.7 is true, the language of the County’s proposal could not more clearly reflect the supposed intent. Actually, the Union asserts,

³² Employer brief at page 27.

the precise wording of the Employer's proposal could be interpreted as exempting officers on fixed Monday through Friday shifts from receiving any holiday pay benefits. Because the Employer's proposal is confusing in that regard, the Union submits, it should be rejected and the *status quo* maintained.

Discussion:

The Arbitrator is persuaded by the Union's argument on this issue. Indeed, there is no reason to adopt language that could, down the road, be susceptible to more than one meaning. Certainly, fostering ambiguity is not the goal here, and if the Employer is sincere in simply wanting to correct Section 20.7 to reflect a current practice of paying all employees assigned to fixed Monday-Friday schedules holiday pay if that holiday falls on a weekend rest day, then these experienced negotiators should certainly be able to craft a provision acceptable to both sides which accomplishes that purpose. Indeed, it is a mystery why the Employer refused to do that. In any event, because this is an economic issue, the Arbitrator is not authorized to assist the parties in the stated end goal by drafting a new version of Section 20.7 to accommodate the Employer's stated purpose while at the same time assuaging the Union's concern that confusion could result from the contract modification.

One entire proposal must be accepted over the other under the Statute, and because the Union is not satisfied that the language drafted by the Employer could only be understood the intended way, the Arbitrator cannot, in good conscience, adopt the proposed departure from *status quo* as it stands right now. Consequently, the Employer's final proposal is rejected, and the *status quo* is maintained. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Employer's proposed amendment of Section 20.7 language should be denied. It is so ordered.

Article 23, Section 23.3 – Vacation Scheduling

The Union's Final Proposal

The Union proposes the following amendment of Section 23.3 of the Agreement:

1. Annual Vacation:

[Paragraph 1 *status quo*]

The vacation selection shall be done on a vacation bid list, and shall be picked by seniority on each shift in the Correctional Division of the Sheriff's Office for employees covered by this Agreement. The Employer shall start the bidding list by February 1st of each year. Employees have until ~~March~~ April 15th of each year to choose 1st and 2nd bids of vacation leave. The employer shall post the completed approved vacation list by ~~March~~ April 16th of each year. [Remainder of paragraph *status quo*.]

Each employee, upon notification to bid, will have up to five consecutive days to submit their first vacation bid. If said bid is not submitted within the five days, the effected officer will be passed and will not bid again until the completion of the first round of vacation bidding.

All employees covered by this Agreement, may make an initial first vacation selection of at least five (5) consecutive days, and no more than ten (10) consecutive days, if eligible, on the vacation bid list. Employees are restricted from second choice selections until all employees have made their first choice selections. ~~If second choice selections are made available by management~~ Second choice selections shall be made available by management, the employee's second selections cannot take priority over another employee's first choice selections ~~unless that employee waived their right to participate in the first round of vacation bidding.~~ [Remainder of paragraph according to Tentative Agreement.]

2. Time Off Requests

Any remaining rescinded time will be offered to the bargaining members by 1st come 1st serve basis. The posting of the rescinded time will be posted and visible for all bargaining unit members viewing from the date it

becomes available. Any such requests shall not be unreasonably denied. When staffing allows, employee(s) may be granted the same day off and allowed to use any benefit time. Excluding the use of sick time. The immediate supervisor will offer all previously denied employee(s) by submittal date and time, then continue on a 1st come 1st serve basis. No benefit time shall be unreasonably denied.
~~No vacation time shall be granted in less than one half (1/2) day increments and shall not be unreasonably denied.~~

The Employer's Final Proposal

The Employer proposes to maintain *status quo*.

The Position of the Union:

First, the Union argues that the proposed changes in vacation scheduling “are intended to ensure that employees who have reached the 330-hour vacation cap are able to use up more vacation in the year.” (Tr. 26.) The Union assures the Arbitrator that there is no intent in this final offer to increase overtime or to multiply the number of officers who may be off at one time. Instead, the Union submits, the above language mandating a second round of vacation bidding would allow bargaining unit members who have reached the cap to “meaningfully use and accrue vacation.”³³ The Union further asserts that at hearing, the Employer merely complained that the proposed provision granting each employee five consecutive days to bid vacations would be administratively untenable. Thus, the Union suggests, “The Arbitrator might be able to rewrite the language to allay the concerns of both parties.”³⁴

Second, the Union argues, the latter part of the proposal would permit bargaining unit members to utilize benefit time on demand when staffing allows. This is reasonable, the Union submits, because the new language expressly acknowledges that the Employer might have staffing needs that would preclude an employee from taking a day off on

³³ Union brief at page 4.

³⁴ Id.

demand. Furthermore, the Union argues, the proposal would also encourage the use of benefit time and thereby potentially lower costs associated with benefit time payouts on separation and retirement.

For all the foregoing reason, then, the Union urges the Arbitrator to adopt the new language and depart from *status quo* in accordance with the above proposal.

The Position of the Employer:

The Union has not met its burden on this issue, the Employer argues. First, the Union did not present any evidence that there is a proven need for the change, the Employer submits. For example, the Employer argues, there was no testimony as to the number of officers purportedly not able to take all their vacation. Neither, the Employer argues, was there any evidence that the County does not, or has not, offered “second choice selections” such that officers are unable to use all of their allotted vacation time.

Second, the Employer contends, this type of bidding process is not provided for in any of the Employer’s other collective bargaining agreements. Thus, the Employer argues, the Union cannot establish that other comparable groups have been able to achieve this provision.

Third, the Employer argues, the Union’s proposal is untenable from an administrative standpoint. In support, the Employer cites the testimony of Chief Megan Mercado, who explained at the arbitration hearing that there would simply not be enough time on the calendar for every employee were to take a full five days to select their vacation schedules.

As for allowing time off on demand, the Employer also insists that the Union failed to meet its burden. As with the above suggestion, the Employer argues, the Union

did not demonstrate any proven need for the proposed change. Moreover, the Employer argues, this language does not appear in any of the other Sheriff's Office collective bargaining agreements. Thus, for that and all the foregoing reasons, the Employer urges the Arbitrator to deny the Union's proposed amendment of Section 23.3 and maintain *status quo*.

Discussion:

The Arbitrator affirms the Employer's position that the Union failed to establish a statutory basis for amending Section 23.3 of the current Agreement as proposed. The Arbitrator understands that the Union's proposal may be more desirable to the bargaining unit, but that is not what this particular process is meant to address. Here, the Union argued that correctional officers are not able to use all their earned vacation under the present language. However, there is no proof in this record that that is actually true. Moreover, there is no evidence that employees in this bargaining unit have ever been able to take time off "on demand," even in the event the needs of service might permit. There is no proof that bargaining unit members are suffering demonstrable hardship under the existing language and the Employer has failed to duly address that fact in bargaining.

For all the foregoing reasons, then, the Arbitrator concludes that Section 23.3 should not be amended as proposed. Accordingly, the Employer's petition to maintain *status quo* is granted. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposed amendment of Section 23.3 language should be denied. The *status quo* is maintained. It is so ordered.

Article 24, Section 24.1 – Insurance Benefits

The Employer’s Final Proposal

The Employer proposes to amend Section 24.1 of the Agreement as follows:

- a. Bargaining Unit employees under this agreement shall continue to receive the same health, life, dental and other insurance benefits at the same employee/department premium cost as all other Lake County employees. ~~The employee contribution to health insurance shall not exceed 10% of the total premium. Effective 12/01/05, the employee contribution to health insurance shall not exceed 15% of the total premium.~~

The Union’s Final Proposal

The Union proposes to maintain *status quo*.

The Position of the Employer:

The purpose of the County’s proposal is two-fold, the Employer argues. First, the Employer notes, the County seeks to align the Corrections Officers’ Agreement with the insurance language contained in each of the other four bargaining units within the Sheriff’s Office. Currently, the Employer argues, the only difference between the Correctional Officers’ Agreement and the other four contracts in the Sheriff’s Office is that the Correctional Officers’ Agreement includes the phrase that the County seeks to delete. Furthermore, the Employer argues, making the above change would also align this bargaining unit with other unionized group contracts outside the Sheriff’s Office, and as a result, all County bargaining unit employees would receive the same health, life, dental, and other insurance benefits at the same premium cost.

Second, the Employer argues, the County also seeks to delete the 15% cap language in an effort to adjust for continually escalating healthcare costs. The Employer argues further that there are “numerous decisions where interest arbitrators have

overwhelmingly adopted the principle that internal comparability is a compelling and key factor when analyzing an employer's final health insurance offer, even if that final offer results in extra costs to employees.³⁵ Thus, for that and all the foregoing reasons, the Employer urges the Arbitrator to adopt the above amendment of Section 24.1 of the Agreement.

The Position of the Union:

The Union does not dispute that healthcare costs have been on the rise in recent years. However, the Union argues that the Employer failed to demonstrate how those costs could not be met with the current 15% cap on employee premium contributions as set forth in the expired Agreement. Deductibles and co-pays have increased, the Union argues, and thus employee out-of-pocket expenditures have escalated anyway. Additional employee contributions to premiums would cause undue hardship on this bargaining unit, the Union argues, and thus, the 15% cap should remain in place for the duration of the new contract. The Union accordingly urges the Arbitrator to deny the Employer's proposal and maintain *status quo*.

Discussion:

After reviewing the record and the arguments of the parties, the Arbitrator is persuaded that the Employer's proposal with respect to Section 24.1 more suitably addresses a legitimate need to address health care cost reform in this bargaining unit, and the statutory requirement that the Arbitrator duly consider "the interests and welfare of the public and the financial ability of the unit of government to meet those costs." The Arbitrator specifically isolates this bargaining unit relative to "health care cost reform,"

³⁵ See, e.g.; Village of Schaumburg & Metropolitan Alliance of Police Chapter 195, (Yeager, 2007); City of Elgin & Local 439, IAFF, (Krinsky, 2005); Elk Grove Village & Metropolitan Alliance of Police, (Goldstein, 1996).

because the record establishes that no other bargaining unit in the Sheriff's Office is capped on employee contributions to insurance premiums.³⁶

It is well settled now, that uniformity of agreement language among various county bargaining units is distinctly advantageous to employee and employer alike, in that by virtue of size, municipalities and counties (as whole entities) have more buying power when they are negotiating large group contracts. Thus, the concept of uniform countywide health care options is not merely convenience-driven. Neither, in the Arbitrator's opinion, is it representative of unwillingness on the part of the Employer to bargain in good faith over this important issue. Moreover, the skyrocketing cost of health care in general is well known, indeed it is beyond disputing. Certainly the Arbitrator recognizes that no employee, public or private, wants to pay more for health care in general, never mind for coverage identical to that which he or she previously enjoyed for a lesser amount. However, as noted, the cost for that same level of care has risen substantially in recent years, and there may come a time when the present 15% cap is insufficient to make up at least some of that difference.

What is important here, is that agreed upon language in existing Section 21.1 states that, "Bargaining unit employees under this agreement shall continue to receive the same life, dental and other insurance benefits at the same employee/dependent premium cost as all other Lake County employees." If the 15% cap is left in this contract, as the Union proposes, and if for some unforeseen reason employee premium contributions must exceed that percentage (county-wide), Section 24.1 as it now exists will be

³⁶ See, Employer Exhibit B, CBA for Correctional Sergeants (Article 21 at page 51); Employer Exhibit C, CBA for Law Enforcement Peace Officers (Article 24 at page 60); Employer Exhibit D, CBA for Law Enforcement Sergeants (Article 21 at page 48); Employer Exhibit E, CBA for Law Enforcement Lieutenants (Article 21 at page 51).

internally conflicting. Certainly, it is not reasonable to think that Lake County, because Section 24.1 in this contract alone caps premium contributions, must renegotiate insurance coverage for the entire county to line up with this one contract if premium contributions ever had to exceed the 15% limit. Indeed, that is the only way every sentence of existing Section 24.1 could maintain its integrity if left the way it is in that event.

No other bargaining unit in the Sheriff's office has this language in its contract right now, and thus, according to the criterion of internal comparability and well-settled arbitral instruction, the Arbitrator is guided to find the Employer's proposal more reasonable than the Union's on this economic issue of health insurance.

For all the foregoing reasons, then, the Employer's petition to amend Section 24.1 in accordance with its final proposal is granted. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Employer's proposed amendment of Section 24.1 language should be adopted. It is so ordered.

Article 29, Section 29.1 – Field Training

The Union's Final Proposal

The Union proposes the following amendment to Section 29.1 of the Agreement:

Any Field Training Officer (FTO) or any other officer assigned a probationary Correctional Officer and acting in the capacity of Correctional Field Training Officer will receive ~~2~~ three (3) hours of additional straight pay for each day acting in such capacity. Any Corrections Officer training another non-probationary Corrections Officer in a specific sub-classification and/or assignment will receive three (3) hours of additional straight time pay for each day training.

The Employer’s Final Proposal

The Employer proposes to maintain *status quo*.

The Position of the Union:

The Union argues, “There are many instances where a more senior officer may train another officer about work functions at a new post. Fairness simply dictates that officers should receive the compensation given to Field Training Officers when they are performing similar, training-type work.”³⁷ The Union further argues that the existing language is susceptible to abuse because the Employer may simply avoid paying premium pay for training altogether, by assigning training work to an officer who is not a Field Training Officer.

For the foregoing reasons, the Union urges the Arbitrator to depart from *status quo* and adopt the above amendment to Section 29.1.

The Position of the Employer:

Here, the Employer again argues, as it has on other final offers from the Union, that there has been no demonstration of a proven need for the proposed change, and neither has the Union established that other units in the Sheriff’s Office have been able to achieve the same concession from the County. Furthermore, the Employer argues, the Union’s proposal would impose an undue hardship on the County in the form of additional payroll costs. Accordingly, the Employer urges the Arbitrator to reject the Union’s proposal and maintain *status quo*.

Discussion:

It was incumbent on the Union to demonstrate to the Arbitrator that the disputed provision no longer functions as it was intended, or that it has caused unforeseen and

³⁷ Union brief at pages 4-5.

undue hardship on members of this bargaining unit. There is no such evidence in this record. Accordingly, the Arbitrator rules in favor of the Employer to maintain *status quo*.

The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposed amendment of Section 29.1 language should be denied. The *status quo* is thus maintained. It is so ordered.

NON-ECONOMIC ISSUES

New Article – Teamsters National Legal Defense Fund

The Union's Final Proposal

The Union proposes to add the following language as a New Article:

The Employer agrees to deduct from the paycheck of all employees covered by this Agreement who voluntarily authorize in writing, the amount of \$7.25 on a monthly basis for participation in the Teamsters National Legal Defense Fund. The Employer shall transmit to Teamsters Local 700 on a monthly basis, in one check, the total amount deducted along with the name of each employee on whose behalf a deduction is made.

The Union agrees to indemnify the Employer and to hold the Employer harmless from and against any claims made against the Employer resulting from its compliance with or obligations under the paragraph above, including but not limited to reimbursement for monies deducted in accordance with the paragraph above which are disputed by the employee. The Union, Teamsters Legal Defense and the Employer further agree that all disputed deductions are to be resolved among the Union, Teamsters Legal Defense, and the employees themselves without the involvement of the Employer.

The Employer's Final Proposal

The Employer proposes to maintain *status quo* to the extent that the new contract will not contain the above proposed language.

The Position of the Union:

The Union proposes the above amendment for payroll deductions for its legal defense fund. At the hearing, the Union argues, it was explained that the County already makes deductions for voluntary life and disability insurance, dependent care, and deferred compensation. Since that system already exists, the Union argues, addition of a new deduction would create no undue administrative burden on the Employer. Additionally, the Union argues, the proposed clause also fully indemnifies the County in the unlikely event a claim is brought against it based on such deductions.

For all the foregoing reasons, the Union urges the Arbitrator to adopt the proposal for this new Article.

The Position of the Employer:

The Employer argues that this proposal should be rejected for lack of statutory support. The Union, the Employer argues, has neither demonstrated a proven need for the change, nor has it shown that other units within the Sheriff's Office have been able to achieve the same provision. Furthermore, the Employer argues, there has been no *quid pro quo* offered for this new language.

The Employer further argues that, notwithstanding the Union's indemnification language, there is still a potential for hardship if the County is called upon to defend against a lawsuit or resolve a dispute between the Union and its members or others as a result of this proposed agreement modification. More specifically, the Employer argues, there is no way for the Union to really ensure that any disputes related to the proposed deductions will be resolved between the Union and its members "without the involvement of the Employer." In addition, the Employer argues, there are sure to be additional personnel costs associated with time spent implementing and maintaining this

new monthly deduction.

For that and all the foregoing reasons, then, the Employer urges the Arbitrator to maintain *status quo*.

Discussion:

After reviewing the record and the arguments of the parties, the Arbitrator is persuaded that the *status quo* should be maintained. The Union has, as the Employer argued, neither demonstrated a need for this change nor shown that any other bargaining unit in the Sheriff's Office has achieved similar provisions in their collective bargaining agreements. The Employer also notes that the Union offered no *quid pro quo* for this new contract amendment.

For all the foregoing reasons, then, the Union's proposal to include the above-referenced new article for payroll deduction of Legal Defense contributions is denied. The *status quo* is maintained. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposal to incorporate this new Article into the Collective Bargaining Agreement should be denied. The *status quo* is maintained. It is so ordered.

New Article – D.R.I.V.E. Authorization and Deduction

The Union's Final Proposal

The Union proposes to add the following language as a New Article:

The Employer agrees to deduct from the paycheck of all employees covered by this Agreement who voluntarily authorize in writing, contributions to D.R.I.V.E. D.R.I.V.E. shall notify the Employer of the amounts designated by each contributing employee that are to be

deducted from his or her regular paycheck on a biweekly basis. The Employer shall transmit to D.R.I.V.E. National Headquarters on a monthly basis, in one check, the total amount deducted along with the name of each employee on whose behalf a deduction is made, the employee's social security number, and the amount deducted from the employee's paycheck.

The Union agrees to indemnify the Employer and to hold the Employer harmless from and against any claims made against the Employer resulting from its compliance with or obligations under the paragraph above, including but not limited to, reimbursement for monies deducted in accordance with the paragraph above which are disputed by the employee. The Union, D.R.I.V.E. and the Employer further agree that all disputed deductions are to be resolved among the Union, D.R.I.V.E., and the employees without the involvement of the Employer.

The Employer's Final Proposal

The Employer proposes to maintain *status quo* to the extent that the new contract will not contain the above proposed language.

The Position of the Union:

The Union proposes the above amendment for payroll deductions for its Democratic, Republican, Independent Voter Education fund. At the hearing, the Union argues, it was explained that the County already makes deductions for voluntary life and disability insurance, dependent care, and deferred compensation. Since that system already exists, the Union argues, addition of this new deduction would create no undue administrative burden on the Employer. Additionally, the Union argues, the proposed clause also fully indemnifies the County in the unlikely event a claim is brought against it based on such deductions.

For all the foregoing reasons, the Union urges the Arbitrator to adopt the proposal for this new Article.

The Position of the Employer:

As in the previous issue (Legal Defense Fund), the Employer argues that this proposal should be rejected for lack of statutory support. The Union, the Employer

argues, has neither demonstrated a proven need for the change, nor has it shown that other units within the Sheriff's Office have been able to achieve the same provision. Furthermore, the Employer argues, there has been no *quid pro quo* offered for this new language.

For that and the foregoing reason, then, the Employer urges the Arbitrator to maintain *status quo*.

Discussion:

After reviewing the record and the arguments of the parties, the Arbitrator is persuaded that the Union's proposal should be denied and the *status quo* maintained for the same reasons as stated herein above relative to the Union's Legal Defense Fund. Thus, the Arbitrator rules in favor of the Employer to maintain the *status quo*. The Union's final proposal is rejected. The following Order so indicates.

Order

For all the foregoing reasons relevant to the Union's Legal Defense Fund, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposed inclusion of this new Article should be denied. The *status quo* is maintained. It is so ordered.

Article 4, Section 4.1 – Management Rights

The Union's Final Proposal

The Union proposes the following amendment to Section 4.1

- M.) To eliminate, ~~contract~~ and relocate work or transfer work to maintain efficiency.

The Employer's Final Proposal

The Employer proposes to maintain *status quo*.

The Position of the Union:

At arbitration, the Union stressed that its reason for proposing the above modification of Article 4 stemmed from a dispute under the prior agreement concerning the County's subcontracting of jail reception work. While that matter was resolved, the Union admits, the bargaining unit has become aware that the Employer is presently considering subcontracting other work traditionally performed by correctional officers in external transport and central control operations. The Union has already had one substantial grievance over the subcontracting of bargaining unit work, and further disputes appear to be on the horizon, the Union argues. "In order to protect the integrity and strength of the bargaining unit," the Union argues, the instant proposal should be adopted.

The Position of the Employer:

First, the Employer argues, the grievance issue referenced by the Union at arbitration was "amicably resolved." Second, the Employer argues, there was no proof offered in this record that the County intends to contract out recognized bargaining unit work in the future. As the Union correctly acknowledged, the Employer stresses, the right to contract out work under certain circumstances is an established management right in this contract, and the Union cannot simply strike it just because it wants a more favorable arrangement with the County.

Furthermore, the Employer argues, the Union failed to show that its proposal would meet any identified need without imposing undue hardship on the Employer in the form of limiting management's ability to direct and control its operations. In addition, the Union failed to demonstrate that other comparable groups within the Sheriff's Office

have been able to achieve such a provision, the Employer argues, which they have not.

For that and all the foregoing reasons, then, the Employer urges the Arbitrator to reject the Union's proposal and maintain *status quo*.

Discussion:

Traditionally, work disputes are handled through the grievance process, and this, in the end, appears to be a grievance issue. The Arbitrator understands and appreciates the Union's desire to protect the integrity of this bargaining unit. It is axiomatic that doing so is any union's obligation and ultimate goal in a represented workplaces. With regard to the word "contract" in the parties' Management Rights provision, the parties have already demonstrated their ability to resolve disputes under this particular language within the parameters of their established grievance procedures. Certainly it can be said that contracting is a contentious issue in general, and the Employer is correct in stating that the Union cannot simply strike language the parties have already agreed to just because there may be problems with it down the road.

In this setting, the only way the Arbitrator can (or should) depart from negotiated *status quo* is when there has been a showing that the present language does not work. Therefore, for the Union to prevail in this instance, there must be support for the proposed change. On this issue, no such support has been substantiated. Thus, for that and all the foregoing reasons, the Arbitrator is persuaded in favor of the Employer that the *status quo* should be maintained.

The Union's proposed amendment to Section 4.1 of the collective bargaining agreement is denied. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union’s proposed amendment of Section 4.1 should be denied. The *status quo* is maintained. It is so ordered.

Article 25, Section 25.5 – Correctional Assignments

The Union’s Final Proposal

The substantial changes in Section 25.5 proposed by the Union in its Final Offer are incorporated herein by reference as if fully written.

The Employer’s Final Proposal

The Employer proposes to maintain *status quo*.

The Position of the Union:

According to the Union, the proposed amendments to Section 25.5 are warranted for both administrative and functional reasons. First, the Union argues, assignments according to what is “fair and equitable” are far too subjective. Indeed, the Union argues, the term itself is vague and subject to many interpretations. In contrast, the proposed lottery system, the Union argues, eliminates subjectivity by randomizing training and assignment selection.

The Union further argues that its proposed limitations on new-hire assignments are intended to “buff the advantages of seniority by ensuring that the more senior officers have a right to perform the more preferred assignments.”³⁸ Finally, the Union submits, the proposed five-year limitation on assignments to specialty units ensures that all members of the bargaining unit have an opportunity to perform specialty work. The proposal benefits both parties, the Union insists, by ensuring that all employees remain familiar with the various work assignments throughout the jail. Thus, for all the foregoing

³⁸ Union brief at page 7.

reasons, the Union argues, the instant proposed changes in Article 25 should be adopted.

The Position of the Employer:

The Employer argues that the Union’s final offer relative to Article 25 should be rejected on all points. Once again, the Employer argues, the Union has not demonstrated a proven need for any of the suggested changes, in that it failed to present testimony or other evidence in support of its assertions that the present system is too subjective, or in the alternative is not working the way it was intended. Neither, the Employer argues, has the Union shown that other units within the Sheriff’s Office have been able to achieve these same provisions. Most importantly, the Employer argues, the Union’s proposed changes “strike at the heart” of the County’s management right to assign work and direct the working force.

The Employer submits that “luck of the draw” is not the way to determine training and reassignment schedules, especially in light of the fact that the parties have previously negotiated reasonable guidelines for making these kinds of determinations. Assignments, the Employer argues, should be based on the Employer’s need to maintain a level of consistency in its operations. Furthermore, the Employer argues, the current language also allows less experienced officers the opportunity to gain experience working a variety of assignments.

For all the foregoing reasons, then, the Employer argues that the instant proposal should be denied and the *status quo* maintained.

Discussion:

The Arbitrator is persuaded by the Employer that *status quo* should be maintained. This is true for several reasons. First, the provisions at issue were negotiated,

and thus it was incumbent on the party seeking change (in this case the Union) to demonstrate that some circumstance has changed, or that the present system is functionally flawed in a meaningful way and needs correcting. In this case, the Union has proposed a number of significant changes in Section 25.5 that totally turn the present system on its head. In fact, the Union's proposal does not even remotely look like the terms the parties have at present, so its burden to show a basis for departing from *status quo* so drastically was heavy indeed. Unfortunately, nothing in the way of proof was ever offered in this record indicating that work assignments should not be made in the future the way they are now.

The Arbitrator understands that the Union's ideas on this issue might be constructive, and perhaps even more efficient or workable. However, that is not the point. The Arbitrator is not privileged in this process to essentially allow one or the other party to entirely re-write a work rule, never mind one that does, as the Employer argues, cut to the heart of negotiated and retained management rights simply because in might make sense on some level. That is precisely what the Union appears to urge here.

As the Employer argues, the Union offered no proof that the present negotiated provisions are not working, or in the alternative are causing undue hardship on the bargaining unit. Furthermore, there is no indication in this record that any other Sheriff's Office bargaining unit has achieved a similar work rule provision. Additionally, there has been no showing by the Union that the Employer has continually exercised its contractually permitted "fair and equitable" discretion in an arbitrary and capricious manner to the extent that that management privilege is no longer tenable in the contract.

For that and all the foregoing reasons, then, the Arbitrator rules in favor of the

Employer that the *status quo* should be maintained. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposed amendment of Section 25.5 should be denied. The *status quo* is maintained. It is so ordered.

Article 28 – Employee Testing

The Employer's Final Proposal

The Employer proposes to replace existing Article 28, in its entirety with the following new language:

DRUG AND/OR ALCOHOL TESTING

The Labor Committee and the Lake County Sheriff's Office are committed to the principle that professionalism in the Sheriff's Office can only be maintained through a drug free work environment.

SECTION 28.1. RANDOM TESTING. All members of the Union shall be subject to random drug testing. Members shall be assigned a permanent number and selection of those to be tested shall be determined by a random drawing conducted by the Sheriff and the presence of a selected Labor Committee Union member. The Sheriff will be permitted to have four random drawings per year with a maximum of ten persons per drawing.

SECTION 28.2. RANDOM SELECTION. Union members will be selected for a random testing in the following manner all Union members will be assigned a permanent (body) number and all (body) numbers will be placed into a cylinder style mixer, provided by the TEAMSTERS at their expense, and the Sheriff, or his designee, will then, without looking pick the desired number of balls from this device. The selection of numbers will be witnessed by a member of the Labor Committee selected by the executive board of the Labor Committee. After a Union member is selected, the testing will proceed as described in Appendix C of the contract.

SECTION 28.3. LABOR COMMITTEE REPRESENTATION. When a Union member is requested to submit to a drug test he shall have the right to have a Union Steward present during such test so long as it does not unreasonably delay the test, and he shall be given at least some of the reasons for the test in writing. If the Union member waives his right to a Labor Committee representative such waiver shall be in writing.

SECTION 28.4. SECOND TEST. The Union member shall have the right to a second urine sample, if requested, or a blood sample, be taken at the time of the first sample and retained for possible testing should the initial test prove positive. The Union member being tested shall be given a copy of his test(s) results when such test(s) results become available.

SECTION 28.5. HANDLING OF SAMPLES. The body fluid samples shall be properly marked sealed and shall be signed by the Union member being tested, a Union Steward if requested, and a representative of the Sheriff. The sample will be transported, mailed, or delivered to a certified courier of the NIDA Laboratory by the Union Steward and a Representative of the Sheriff.

SECTION 28.6. SECOND TEST AND DISCIPLINE. If a Union member tests positive for illegal drugs or of abuse of prescribed drugs according to NIDA Standards, a second sample, if taken, shall be tested as soon as possible. If the test(s) is positive, the Sheriff may discipline the Union member and/or direct the Union member to seek assistance through the Employee Assistance Program.

SECTION 28.7. ALCOHOL. An employee under the influence of alcohol, as described in this Section shall be subject to discipline, up to and including discharge. An employee who tests at a level of .03 or greater on the BAC standard, shall be subject to discipline, up to and including discharge. Employees testing at levels greater than .000 but less than .03 BAC shall not be disciplined and may remain at work, at the Union member's discretion only if assigned to non-enforcement duties in the station.

SECTION 28.8. TESTING FOR SPECIALIZED UNITS. All members of the Union voluntarily assigned to any specialty unit or assignment may be required to submit to drug testing as a condition of their continued assignment. Such testing shall be limited to no more than four required tests per year.

SECTION 28.9. TESTING FOR PROMOTION. All members of the Union will be required to submit to a drug test as part of the promotion examination to the rank of sergeant.

SECTION 28.10. CONFIDENTIALITY. All drug testing and employee assistance shall be held in the highest confidence by the County and the Labor Committee officials involved.

SECTION 28.11. PAYMENT FOR TESTING. All drug testing shall be at the County's expense and shall be conducted while the Union member is on duty or is being paid.

SECTION 28.12. CONSTITUTIONAL RIGHTS. Nothing in this Article shall be construed to limit a Union member's constitutional rights.

The Union's Final Proposal

The Union proposes to maintain *status quo*.

The Position of the Employer:

A drug and alcohol policy providing for random testing would be more effective than practices currently in place, the Employer argues. While there is not a significant problem with the Sheriff's Correctional Officers, *per se*, the Employer argues, the Sheriff believes that his employees should be accountable not only to themselves and to their partners but also to the public to insure that the Sheriff's officers are drug-free.

The Employer further argues that, “It is absolutely crucial that the public’s confidence in the Sheriff’s Department and the officers be at the highest level.” There have been a number of highly publicized and unfortunate incidents which have taken a toll on public confidence in general, the Employer argues, and the County must have a policy in place in which there is incentive for Correctional Officers to remain drug and alcohol free while on or subject to duty. The Employer also argues that it should not be forced, in this unique circumstance, to wait until the system breaks down (in the statutory sense) before repairs are made. The present system does not allow for random testing, the Employer argues, and that is what is needed to ensure a drug and alcohol free workplace.

For all the foregoing reasons, the Employer urges the Arbitrator to adopt the proposed modification of Article 28.

The Position of the Union:

The Union argues that a complete “overhaul” of Article 28 is not warranted based upon this record. The Employer, the Union argues, offered no example demonstrating how the lack of random and/or reasonable suspicion testing has created a problem for the County. Moreover, the Union argues, County witnesses offered no explanation as to how the existing Drug and Alcohol provisions are not adequately addressing the Employer’s need to maintain a drug and alcohol-free workplace. Finally, the Union argues, no other bargaining unit in the Lake County Sheriff’s Department is subject to random drug and alcohol testing.

For that and all the foregoing reasons, the Union urges the Arbitrator to reject the proposed departure from Article 28 *status quo*.

Discussion:

As previously noted, breakthrough departures from *status quo* are not impossible in this forum when a need for change has been substantiated, *but the need must be substantiated*. In this particular case, the Employer seeks contractual authority to implement random drug and alcohol testing, *for Union members*.³⁹ However, the Employer has not demonstrated the existing system has not worked as anticipated or that the existing system has created operational hardships for the employer.⁴⁰ The tests this process places on the parties had ought to be applied to both sides, not just one. As was noted above certain new proposals or changes that the Union was seeking were rejected because they failed to meet the fundamental tests arbitrators have been following in State of Illinois interest arbitrations for many years. The Employer's failure to satisfy these tests with regard to its proposal for mandatory drug and alcohol testing is fatal to its case here. And, for the record it is noted that Arbitrator Bierig, has rejected the Employer's request for mandatory drug testing in S-MA-11-066 for the Sheriff's Peace Officer Unit on essentially the same grounds as this Arbitrator does here.⁴¹

For all the foregoing reasons, then, the Union's proposal is adopted. The

³⁹ The Arbitrator is mystified as to why the Employer's proposal seems on its face to be directed solely to Correctional Officers who are Union members (*see*, 28.1 "All members of the Union shall"; 28.2 "Union members will"; etc.). Does this mean that it is the intent of the Employer that Correctional Officers who are not members of the Union would be excused from random testing under its proposal? *Expressio unius est exclusio alterius* –the expression of one thing is the exclusion of another. When Section 28 was being prepared it would have been just as easy to use the terms "Correctional Officer" or simply "employee" throughout its text, instead of repeatedly using "Union member". The consequences of having in place a proposal that on its face only subjected Union members to testing are many, including the withdrawal from Union membership of an individual who abuses drugs or alcohol, so as to be excluded for random testing.

⁴⁰ *See, City of Burbank*, S-MA-97-956 (Goldstein, 1998). In testimony in this arbitration seeking justification of its proposal for random testing, the Employer's witness, Kevin Lyons, did not assert that a problem is present in the existing language in the Agreement. (Tr. 78 ff.)

⁴¹ S-MA-11-066, at p. 27. "The Employers acknowledge that currently there is no evidence of existing drug problems, and proposes to act preemptively. This position is logical, but insufficient to change the *status quo*. I do not find the random drug testing policy in place for non-union employees to be sufficiently compelling reason to award a significant change to the Employers absent a compelling showing of necessity regarding the Bargaining nit members."

following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the *status quo* be maintained and that the language of Article 28 not be changed. It is therefore so ordered.

Article 30, Section 30.2 – Union Steward Meetings

The Union’s Final Proposal

The Union proposes to amend Section 30.2 of the Agreement as follows:

Management shall allow ~~(4)~~ up to three (3) Union Stewards per shift to attend a scheduled union meeting during working hours, provided that the Union Stewards ~~uses accumulated benefit time, and provided that the union Steward~~ give Management a minimum of three (3) calendar days notice, and provided that the Union Stewards ~~is~~ are not absent from duty more than ~~two (2)~~ three (3) hours. The attendance of these meetings is subject to a maximum of (12) per calendar year, and is subject to verification.

The Employer’s Final Proposal

The Employer proposes to maintain *status quo*.

The Position of the Union:

The Union proposes altering the language of Article 30, which governs stewards’ attendance at Union business-related meetings. The instant bargaining unit is large, the Union argues, and it is vital that Local 700 be afforded a time to meet with all of its stewards at once for purposes of communicating information. “To ensure that communications are clear, consistent and not altered through rumor or second-hand accountings, in-person meetings with all stewards at one time are vital,” the Union

argues.⁴²

For all the foregoing reasons, then, the Union urges the Arbitrator to adopt the proposed amendment and depart from *status quo*.

The Position of the Employer:

The Union's proposal, the Employer argues, should be rejected for the same reasons noted above, in that the Union has neither demonstrated a proven need for the change, nor shown that other units within the Sheriff's Office have been able to achieve this same provision. Moreover, the Employer argues, the Union's proposal would also likely cause an undue hardship on the County in terms of staffing and overtime. In support, the Employer cites Director of Support Services Kevin Lyons' testimony at the arbitration in which he explained as follows:

Q. Take a look at the Union's last non-economic proposal number 9 regarding meetings, Section 30.2.

A. Yes, sir.

Q. What's the Employer's position on this proposal?

A. That nowhere in here does it say that there's adequate staffing to not cause hire-backs for three hours.

Q. Would this result in additional overtime?

A. Yes, sir.

Q. How so?

A. If we take three people out of working units for three hours, that's three people we'd have to hire back to replace.

Q. So it would create staffing issues?

A. Yes, sir.⁴³

For all the foregoing reasons, then, the Employer argues that the Union's proposal should be rejected and the *status quo* maintained.

Discussion:

After reviewing the record and the arguments of the parties, the Arbitrator is

⁴² Union brief at page 8.

⁴³ Tr. 88-89.

persuaded by the Employer that the *status quo* should be maintained. Certainly, the Arbitrator understands and appreciates the Union's desire to foster communications in this bargaining unit. However, Section 30.2 has already been negotiated for that specific purpose, and the Union has not offered any evidence that, there is a proven need for the change, or the proposal meets the identified need without imposing an undue hardship on the other party. In this record there is no proof that present practices are insufficient to meet specific needs in the bargaining unit. Director Lyon's testimony at arbitration is not contested by the Union. Lyon's noted that if the Employer were to permit three correctional officers to be absent for three hours during a single shift for purposes of conducting Union business, the Employer would have to fill their vacancies on overtime. Thus, the Union's proposal would cause staffing problems, and would also cause the Employer to incur additional labor costs. Therefore, for all the foregoing reasons, the Arbitrator rules in favor of the Employer to maintain *status quo*. The Union's proposal is rejected. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Union's proposed amendment of Section 30.2 should be denied. *Status quo* is maintained. It is therefore so ordered.

New Article 33 – Employee Fitness

The Employer's Final Proposal

The Employer proposes a New Article 33.

FITNESS

SECTION 33.1. PHYSICAL FITNESS. The Sheriff may establish reasonable physical fitness goals and standards. Such goals and standards shall be made known to Union personnel at least sixty (60) days prior to their implementation,

and shall take into consideration the Union members age and gender.

SECTION 33.2. TESTING STANDARDS. The physical training standards for the Lake County Sheriff's Office shall be detailed and shall duplicate fitness tests and accepted standards as published by the Illinois Law Enforcement Training and Standards Board.

SECTION 33.3. TESTING OF EMPLOYEES. All members of this Union are required to participate in a fitness test once every twelve months. Tests will be conducted and monitored by members of the Lake County Sheriff's Office. Fitness tests will be administered on an annual basis. Corrections Officers will be given no less than sixty (60) days notice of the scheduled test date. Corrections Officers shall be excused from participating in the taking of his/her test upon presentation of a written excuse from a physician. Upon written release from the same physician, the employee will be administered a fitness tests no less than 60 days of receipt of the physicians release, or sooner if mutually agreed. The physical fitness test administered by the Sheriff's Office will not serve as a basis for determining a Union member's fitness for duty. The test is not a task specific or directly job related. However, nothing in this section limits the ability of the Sheriff to require training for Union member's who fail to maintain the minimum standards.

SECTION 33.4. THE PHYSICAL FITNESS TEST. The physical fitness test shall consist of the physical requirements established during the pre-employment testing process for Corrections Officers.

SECTION 33.5. MONITORING TEST PROCEDURE. During the test procedures, each test will be monitored by a member of the Union and a representative of management. The Union and management will select their own representatives to monitor the tests. Union representatives monitoring the test of another employee shall be on non-duty time. Should a disagreement arise on a pass/fail judgment a third monitor agreed on by both the Union and management will be asked to monitor a retest of the subject in question after a suitable rest period of no less than fifteen minutes be given to the member in question. If a member is required to retest due to a discrepancy between the monitors, the first test would not count against the members as a first fail situation.

SECTION 33.6. COMPENSATION FOR TEST PROCEDURE. Whenever possible, the test will be given during a Union member's on duty time. If a Union member is scheduled to take the test during his off duty time, he will be compensated at the overtime rate of one and one half (1 ½) hours their regular strait time hourly rate of pay for all hours worked with a (2) hour minimum call back to be paid at the rate of time and one half (1 ½) their regular strait time hourly rate of pay.

SECTION 33.7. WORKOUT FACILITY. The County shall keep and maintain a basic workout facility which shall be available to Union members at all times. In the event the County fails to keep and maintain a basic workout facility available to Union members, this appendix shall become null and void until such time as the County reinstates a basic workout facility.

SECTION 33.8. NO DISCIPLINE. The Sheriff and the Union are committed to physical fitness as but one means of encouraging healthy, productive, and physically competent law enforcement professionals. The Sheriff and the Union encourage all law enforcement Union members to become physically fit and to maintain their fitness during their length of service. Although the Sheriff expects all law enforcement Union members to apply their best efforts to maintain

physical fitness, no discipline shall be administered against any Union member who fails to successfully pass the annual physical fitness test.

The Union's Final Proposal

The Union proposes to maintain *status quo*.

The Position of the Employer:

At the outset, the Employer acknowledges that the Sheriff currently has a fitness program. However, the Employer argues, there has not been full participation among Sheriff's Department employees, and thus, the County seeks to address this issue in the collective bargaining arena. The proposed policy, the Employer notes, provides goals and measurements for fitness, and there is little doubt that the need for officers to maintain an above-average level of health is imperative.

The Employer lists the many benefits of good health, such as stress relief, and reductions in injuries, illness, sick time use, and, of course, health care costs. Moreover, the Employer argues, "Improved health would allow officers to perform their duties and responsibilities more efficiently and effectively, thus providing better service for the residents of Lake County." The community as a whole would benefit from having physically fit officers maintaining security at the Lake County Jail, the Employer argues, and thus, for that and all the foregoing reasons, the Arbitrator is urged to adopt the new Article 33 in its entirety.

The Position of the Union:

The Union argues that Lake County already has a "health plan," and the Employer has failed to establish how it is insufficient to meet the needs of the County and/or the community. Thus, the Union urges the Arbitrator to reject the Employer's petition for a new Article 33, and maintain *status quo*.

Discussion:

After reviewing the record and the arguments of the parties, the Arbitrator is persuaded by the Union that the Employer failed to substantiate a need for Article 33. In this case, it is the Employer who failed to show there is a proven need for the change or the proposal meets the identified need without imposing an undue hardship on the other party. Certainly, no one can argue that advancement toward general health and wellness is not an eminently worthy pursuit. Furthermore, it is axiomatic that law enforcement personnel are often confronted with dangerous and often unexpected situations that require rapid response and physical endurance. However, in this case, the Employer failed to specifically establish the extent to which Lake County Correctional Officers are falling short of the mark in their ability to adequately perform their duties and responsibilities from the standpoint of fitness. Thus, the Employer has failed to establish a proven need for the proposed change.

As to the matter of undue hardship, it must be noted first that an identified need precedes any consideration as to whether a proposed change presents difficulties for the other party. Here, as previously noted, no specific need has been identified. Thus, whether or not this proposal creates hardship for the bargaining unit is really beside the point. As to *quid pro quo*, the record does not establish that any has been offered. Of course, it is hard to imagine what might be viewed as a viable “trade” for a fitness policy, as the Employer’s proposal is really neither comparable to, nor connected with, any other Section in the contract. However, because wellness is such an important goal in this particular workplace, it would behoove the Employer to get creative on this issue. Perhaps, for example, the Employer could have accepted the Union’s non-economic

proposals on Legal Defense and D.R.I.V.E. payroll deductions in exchange for this Article 33 petition. That is just a suggestion, of course, but the Arbitrator's point is this; the sword wielded so often by the Employer in many of the above issues cuts both ways. Here, the Employer is guilty of the very practice it has objected to on the part of the Union. The Employer has proven no substantiated need for Article 33 in this record, and further, has offered no evidence that any other bargaining unit in the Sheriff's Office has agreed to similar provisions.⁴⁴ Thus, there is no statutory or arbitral support for the Employer's proposal.

For that and all the foregoing reasons then, the Employer's final proposal is rejected. The *status quo* is maintained. The following Order so indicates.

Order

For all the foregoing reasons, which are incorporated herein as if fully rewritten, the Arbitrator concludes that the Employer's final proposal for a New Article 33 should be denied. *Status quo* is maintained. It is so ordered.

X. TENTATIVE AGREEMENTS

The parties' tentative agreements and pre-hearing mediation accords as set forth in the record and in the transcript of the July 12, 2012 arbitration hearing are incorporated herein as if fully rewritten.

XI. SUMMARY OF ORDERS

Economic Issues

New Article – Funeral Leave – **Employer**
Article 13, Section 13.2 – Work Day and Work Week - **Union**
Article 13, Section 13.6 – Sixth and Seventh Day Work - **Union**
Article 19 – Wage Rates – **Union**
Article 20, Section 20.1 – Amounts (Holidays) – **Employer**

⁴⁴ It is noted that Arbitrator Bierig also rejected the Employer's request for a similar proposal.

Article 20, Section 20.3 – Cash Payment (Holidays) – **Employer**
Article 20, Section 20.6 - Eligibility (Holidays) – **Employer**
Article 20, Section 20.7 – Holiday Observance - **Union**
Article 23, Section 23.3 – Vacation Scheduling – **Employer**
Article 24, Section 24.1 – Insurance Benefits – **Employer**
Article 29, Section 29.1 – Field Training – **Employer**

Non-Economic Issues

New Article – Teamsters National Legal Defense Fund – **Employer**
New Article – D.R.I.V.E. Authorization and Deduction – **Employer**
Article 4, Section 4.1 – Management Rights – **Employer**
Article 25, Section 25.5 – Correctional Assignments – **Employer**
Article 28 – Employee Testing – **Union**
Article 30, Section 30.2 – Union Steward Meetings – **Employer**
New Article 33 – Employee Fitness - **Union**

XI. CONCLUSION AND AWARD

The foregoing Orders represent the final and binding determination of the Neutral Arbitrator in this matter, and it is therefore directed that the parties' Collective Bargaining Agreement be amended to incorporate previously agreed upon modifications along with the specific determinations made above.

John C. Fletcher, Arbitrator

Poplar Grove, Illinois, December 11, 2012