

ILLINOIS LABOR RELATIONS BOARD INTEREST ARBITRATION BEFORE ARBITRATOR BRIAN CLAUSS

COUNTY OF COOK AND COOK COUNTY SHERIFF))	
)	
Employer)	
)	
and)	Case No. L-MA-11-003
)	
ILLINOIS FRATERNAL ORDER OF POLICE)	
LABOR COUNCIL)	
)	
Union)	

APPEARANCES

For the Union:	Gary Bailey, Attorney Illinois Fraternal Order of Police Labor Council
For the Employer:	Peter Kramer, General Council, On behalf of the Cook County Sheriff
	Paul O’Grady, Attorney, Querrey & Harrow On behalf of Cook County
	Melissa Sobota, Attorney, Querrey & Harrow On behalf of Cook County

The Arbitration of the above-captioned matter was heard on January 13, 2012 at 10:00 a.m. at the office of Querrey & Harrow, Ltd. located at 175 W. Jackson, Suite 1600, Chicago, IL. 60604. At the arbitration, the parties stipulated to this Arbitrator’s jurisdiction and authority. The parties were given the opportunity to present evidence and arguments regarding the matter. Both parties orally presented their cases to the Arbitrator.

This is an interest arbitration under authority of Section 14 of the Illinois Public Labor Relations Act (IPLRA). 5 ILCS 315/14. The purpose of this proceeding is to resolve remaining

disputed issues between the County of Cook, the Cook County Sheriff (“Employer/County/Sheriff”), and the Illinois FOP Labor Council (“Union”) to determine the terms and conditions of a new collective bargaining agreement (“CBA”) between the parties covering the Officers and some civilian employees in the Office of Professional Review (“OPR”), Department of Corrections. The parties’ prior CBA expired on November 30, 2008, but all terms and conditions continued in full force and effect while the parties attempted to negotiate a successor CBA. The OPR unit contains both sworn and non-sworn personnel; there are approximately three non-sworn personnel and the rest of the members are sworn. The sworn members are in the Investigator and Senior Investigator titles and the civilian members are in the Administrative Assistant III title. The sworn members of the OPR unit are responsible for investigating allegations of criminal and professional misconduct against the Personnel in the Cook County Sheriff’s Office.

Issues

Initially the parties had the following issues in dispute:

For the Employer: Section 8.8 Family Responsibility Leave (economic); Section 9.4 Military Leave (non-economic); Section 12.4 Sub-Contracting (economic); Section 13.4 Overtime Work (economic); Section 14.2 Wage Rates (economic); Article XVII Welfare Benefits- Mercer Proposal (economic); Section 17.2 Insurance Opt-Out Program (economic); Section 17.3 Sick Leave (non-economic); Section 18.2 Personal Days (non-economic); Section 18.3 Mileage (non-economic); New Section- Printing Collective Bargaining Agreements (economic); New Section- Residency Requirement (economic).

For the Union: Section 1.1 Representative Unit (non-economic); Section 4.3- New Section- Negotiations (economic); Section 5.3 Grievance Procedure Steps (non-economic); Section 5.4 Time Limits (non-economic); Section 5.5 Discovery (non-economic); Section 5.6 Impartial Arbitration Procedure (non-economic); Section 6.1 Discipline Investigation (non-economic); Section 6.3- New Section- Conclusions and Findings (non-economic); Section 8.1 Definition of Seniority (non-economic); Section 9.4 Military Leave (non-economic); Section 11.1 Available Training (economic); Section 12.1 Health and Safety (economic); Section 13.2 Regular Work Periods (economic); Section 13.3 Compensatory Time

(economic); Section 13.4 Overtime Work (economic); Section 13.5 Court Time (economic); Section 13.6 Call Back Pay (economic); Section 13.7- New- Shift Differential (economic); Section 14.1 Job Classification (economic); Section 14.2 Wage Rates (economic); Section 15.1 Designation of Holidays (economic); Section 15.2 Holiday Compensation (economic); Section 15.3 Holidays as Vacations (economic); Section 16.1 Vacation Leave (economic); Section 17.2 Health Insurance Opt-Out Program (economic); Section 17.3 Sick Leave (economic); Section 17.4 Disability Benefits (economic); Section 18.2 Personal Time (economic); Section 18.4- New- Use of Leave Time (economic); Section 19.1 Term (non-economic).

The positions of each of the parties are as follows:

Section 1.1 Recognition

Employer: Status quo

Union:

~~The Employer recognizes the Labor Council as the sole and exclusive representative for all employees of the Employer in the defined bargaining unit described as: All Internal Affairs Investigators of the Department of Corrections of the Cook County Sheriff's Department and the County of Cook. Excluding all supervisors, managerial, and confidential employees and all other employees of the County of Cook and Sheriff of Cook County. In accordance with Illinois State Local Labor Relations Board case Number L-RC-98-018.~~

The Employer recognizes the Labor Council as the sole and exclusive representative for the bargaining union including all Investigators and Senior Investigators employed by the County of Cook and the Cook County Sheriff's Department in the Office of Professional Review. The unit excludes Cook County Police Officers of any rank, all other employees employed by the County of Cook and the Cook County Sheriff's Department in the Office of Professional Review.

Section 4.3 Negotiations (New)

Employer: Reject Union's Proposal

Union:

Duly authorized bargaining Committee members, as defined in this article, shall be allowed time off without loss of pay for the purposes of contract negotiations.

Section 5.3 Grievance Procedure Steps

Employer: Status quo

Union:

A grievance shall be filed at or above the level from which the aggrieved action originated. Grievances must be submitted on an approved Grievance Form, (attached herein as Appendix D). The steps and time limits (shown as calendar days) as provided in the Employer's Grievance Procedure are as follows:

Step	Submission Time Limit (calendar days)	To whom submitted	Time Limits (work days)	Response time (Work Days)
1	10 days	Deputy Chief Assistant Executive Director	5 Days	5 Days
2	10 days	Chief Investigator	10 Days	10 Days
3 2	10 days	Sheriff/Designee or Chief of HR/Designee Executive Director or Chief of Human Resources	20 Days	20 Days
4 3	30 Days	Arbitrator	As scheduled	30 Days

At each Step of the Grievance Process the Employer must issue a written response within the required time limit. If the answer is satisfactory or if the employee fails to advance the grievance within the required time limit after the answer is issued or due, the grievance procedure is concluded.

It is understood that all disciplinary matters may be appealed through the grievance procedure in this Agreement.

Section 5.4 Time Limits

Employer: Status Quo

Union:

The initial time limit for presenting a grievance shall be ten (10) days and the same limit shall apply to the submission times at Step 2 and 3. The scheduling of an arbitration hearing, shall be governed by mutual agreement with the arbitrator. An arbitrator's award shall be submitted to the parties within thirty (30) days of the close of the hearing. Time limits may be extended by mutual agreement, in writing, between the employees and/or the Labor Council and the Employer.

Section 5.5 Discovery

Employer: Status Quo

Union:

Upon written request by the employee, of his/her authorized representative, the Employer shall provide discovery information requested prior to Step 3 2 meeting; however, the Employer may delete "confidential" information which he/she deems to be sensitive for release at that stage of the proceedings; however, all information regardless of its' sensitivity shall be released to the Union in the event of an arbitration hearing.

Section 5.6 Impartial Arbitration Procedure

Employer: Status Quo

Union:

Only the FOP Labor Council may request arbitration under this Agreement. If the Labor Council is not satisfied with the Step 3 2 answer to a grievance involving an alleged violation of the contract or transfer, it shall within ten (10) days after receipt of the Step 3 2 answer submit in writing to the Employer notice that the grievance is to enter impartial arbitration. The Labor Council and Employer shall attempt to reach an agreement on an arbitrator within ten (10) days after filing for arbitration. If the Labor Council and the Employer fail to reach an agreement on an arbitrator within ten (10) days, the Employer and the Labor Council may request the Federal Mediation and Conciliation Service to provide a panel of arbitrators. Each of the two parties will confer within seven (7) days of receipt of the arbitration panel to alternatively strike one (1) name at a time from the panel until only one (1) name remains; the remaining name shall be the arbitrator. The party striking first shall be determined by a toss of the coin. The Labor Council and the Employer will make arrangements with the arbitrator to hear and decide the grievance without unreasonable delay.

In fashioning his/her award in discipline grievances, the arbitrator shall determine whether there was just cause to impose the discipline; and, may sustain the discipline imposed by the Employer, reduce the discipline (including reduction to a reprimand), including the application of options granted or denied with regard to the discipline, or exonerate the employee; but, in no event shall the arbitrator have authority to increase disciplinary action in question. The arbitrator shall issue a written decision within thirty (30) days after close of the hearing, or the submission of the post-hearing briefs (if applicable), which ever is later.

All decisions of the arbitrator shall be final and binding on the parties.

Expenses for the arbitrator's services and the expenses which are common to both parties to the arbitration shall be borne equally by the County and the Labor Council. Each party to an arbitration proceeding shall be responsible for compensating its own representatives and witnesses.

The arbitrator, in issuing his/her opinion, shall not amend, modify, nullify, ignore, or add to the provisions of this Agreement. The issue or issues to be decided will be limited to those presented to the arbitrator in writing by the Employer and the Labor Council. The arbitrator's decision must be based solely upon his/her interpretation of the meeting or application of the express relevant language of the Agreement.

Section 6.1 Discipline Investigation

Employer: Status Quo

Union:

The Employer shall not take any disciplinary action against an employee without just cause. Any employee covered by the terms of this Agreement shall be afforded all of the rights enumerated by the Uniformed Peace Officers Disciplinary Act (Bill of Rights) 50 ILCS 725/1 et seq. In addition, employees who are subject to investigation which may lead to discipline shall be afforded all of the rights and privileges granted under *Weingarten v. NLRB*, 420 US 251

(1975), 43 L.Ed.2d 171, 95 S.Ct. 959 and *Morgan v. Central Management Services*, ISLRB (1PERI 2020).

An employee may not be de-deputized or have his star taken from him during the course of an investigation when no disciplinary action has yet been taken.

Random testing under the Sheriff's Drug Free Workplace Policy shall not be subject to the provisions of 50 ILCS 725/1, *et seq* or the rights and privileges granted under *Weingarten v. NLRB*, 420 US 251 (1975), and *Morgan v. Central Management Services*, ISLRB (1 PERI 2020).

Section 6.3 Conclusions and Findings (New)

Employer: Reject Union Proposal

Union:

No employee, upon review of his case work, shall be required to change a conclusion or finding without his voluntary concurrence.

Section 8.1 Definition of Seniority

Employer: Status Quo

Union:

For purposes of the Article, seniority in the bargaining unit is defined as an employee's length of service within the defined bargaining unit; however, for purposes of earned benefits and pension, the employee's seniority shall be defined as the length of most recent continuous employment with either the County of Cook and/or the Cook County Sheriffs Office. Seniority within the bargaining unit shall be established based on date of appointment. **For a period of continuous employment with either the County of Cook and/or the Cook County Sheriffs Office seniority shall exclude any time not in the bargaining unit but shall be cumulative for all time spent in the bargaining unit.** In the event of a tie between two or more bargaining unit members, seniority shall be determined by the use of the County identification number, with the lowest number having greatest seniority.

Section 8.8 Family and Medical Leave

Employer:

Employees shall be granted family medical leave in accordance with the Family Medical Leave Act.

Any employee granted a family and medical leave must use available benefit time such as sick, vacation, personal and compensatory time when invoking FMLA. Employees may not opt to be put into zero (0) time status until all accrued benefit time has first been used when on an approved Family Medical Leave.

Union: Status Quo

Section 9.4 Military Leave

Employer:

Investigators who enter the armed services of the United States shall be entitled to all the re-employment rights ~~provided for in the Universal Military Service and Training Act of 1951, as amended~~ in accordance with State and Federal laws.

An Investigator who has at least six (6) months or more of continuous service and is a member of the Illinois National Guard or any of the Reserve Components of the Armed Forces of the United States, shall be entitled to leave of absence with full pay for limited service in field training, cruises, and kindred recurring obligations. Such leave will normally be limited to eleven (11) working days in each year **or as extended in accordance with Cook County Policy on Military Leave**. The employee will notify the employer at least twenty (20) days prior to the leave date when possible.

Union:

~~Investigators who enter the armed services of the United States shall be entitled to all the re-employment rights provided for in the Universal Military Service and Training Act of 1951, as amended.~~

~~An Investigator who has at least six (6) months or more of continuous service and is a member of the Illinois National Guard or any of the Reserve Components of the Armed Forces of the United States, shall be entitled to leave of absence with full pay for limited service in field training, cruises, and kindred recurring obligations. Such leave will normally be limited to eleven (11) working days in each year. The employee will notify the employer at least twenty (20) days prior to the leave date when possible.~~

Employees who enter the armed services of the United States, or who are members of the National Guard or any of the Reserve Components of the Armed Forces of the United States shall be entitled to all the rights and privileges conferred by any applicable federal or state law, Act, Executive Orders, resolutions, or regulations. The policies of Cook County shall also apply insofar as these do not lessen the rights and privileges enumerated above.

Section 11.1 Available Training

Employer: Status Quo

Union:

All courses and training programs available through the County will be posted on all bulletin boards where notices to employees are normally posted. These postings will be for a period of not less than ten (10) working days prior to the course or program opening for application. The Employer agrees to provide all appropriate training to all personnel commensurate with their duties and responsibilities, and, further agrees to continuously update such training in order that the employees may develop the skills knowledge and abilities needed in the performance of their official duties.

All employees shall be given the opportunity to take sufficient training to qualify for the position of Peace Officer under the laws of the State of Illinois. Failure to pass such

training shall not be cause for discipline. All employees who successfully complete training necessary for Peace Officer status shall have this status duly recognized by the employer.

Section 12.1 Health and Safety

Employer: Status Quo

Union:

The Employer will continue to make reasonable provisions for the health and safety of its employees during their hours of employment. The Employer also appreciates suggestions from employees concerning health and safety matters, and will meet periodically with the Labor Council to discuss same.

In the event bargaining unit members are required to perform assignments which might cause safety concerns, an affected employee may request to be provided with a car, a partner from the bargaining unit and a radio, and such requests shall not be unreasonably denied.

The Employer shall supply employees with protective armor providing level 3 protection and which meet manufacturers specifications.

Section 12.4 Sub-Contracting

Employer:

It is the general policy of the Employer to continue to utilize its employees to perform work they are qualified to perform. The Employer may, however, subcontract where circumstances warrant. The Employer also reserves the right to enter into mutual aid and assistance agreements with other units of government. The Employer agrees not to sub-contract bargaining unit work or replace bargaining unit employees. This provision is not intended to prevent the Employer from reducing the work force in the event mutual aid or police service provided by the Employer to other governmental entities cease.

In the event bargaining unit positions will be effected, the Employer will advise the Labor Council at least ~~three (3) months~~ **thirty (30) days** in advance of such contemplated changes and will discuss such contemplated changes with the Labor Council, pursuant to the Illinois Public Labor Relations Act of 1984. The Employer will work with the Labor Council in making every reasonable effort to place adversely affected employees into other bargaining unit positions. The Labor Council reserves all rights granted by this Agreement and the Act.

Union: Status Quo

Section 13.2 Regular Work Periods

Employer: Status Quo

Union:

~~The normal work day shall consist of eight (8) consecutive hours. The normal work week shall consist of forty (40) hours in a seven (7) day work week (Sunday through Saturday);~~

~~with two or more consecutive days off. The Labor Council shall be provided at least thirty (30) days notice prior to any proposed change in the hours worked or work schedules from those which existed as of December 1, 1998, and may, in the Labor Council's sole discretion, issue a demand to bargain over any such change. In the event no agreement is reached on the contemplated changes in the hours worked or work schedules, the Labor Council reserves the right to move the issue directly to impasse arbitration, pursuant to the provisions of the Illinois Public Labor Relations Act.~~

~~It is understood that the Employer may adjust the duty hours of bargaining unit members by up to three (3) hours of operational needs.~~

1. **There shall be a ten (10) hour schedule for Investigators and Senior Investigators, not to include AA's.**
2. **This schedule shall be on a six (6) month trial period. Within sixty (60) days of the end of the trial period, either party may give the other party notice that they would like to cancel or renegotiate the schedule.**
3. **Shifts shall be bid by seniority and shall be effective quarterly.**
4. **There shall be four shifts as follows:**
 - a. **6am-4pm Monday through Thursday**
 - b. **2pm-12am Monday through Thursday**
 - c. **6am-4pm Tuesday through Friday**
 - d. **2pm-12am Tuesday through Friday**
5. **Leave time, vacation, compensatory time, sick time, and personal time shall all be translated to hours.**
6. **Holidays will be paid at 8 hours with the day off, but the employee may bring their hours up to ten on a holiday by using 2 hours of vacation, personal, or compensatory time.**
7. **Disciplinary suspensions are in 8 hour days.**

Section 13.3 Compensatory Time and/or Overtime Compensation

Employer: Status Quo

Union:

- A. For the purpose of calculating overtime, all compensated hours, except sick leave, shall be counted as hours worked. ~~Investigators~~ **Employees** shall receive overtime at the rate of time and one-half (1 ½) their normal hourly rate of pay for all hours ~~in excess of eight (8) per day or forty (40) per week~~ **outside of their regularly scheduled hours.**
- B. Effective upon ratification and Board Approval, at the ~~Investigator~~ **employee's** option, time and one-half (1 ½) overtime may be accumulated as compensatory time due, calculated at the overtime rate, in lieu of pay. All compensatory time due earned, from what ever source, shall be accumulated to a maximum of two hundred forty (240) hours. All hours earned in excess of two hundred forty (240) shall be paid in cash.
- C. Compensatory time off may be used in time blocks of one (1) hour or more, at a time mutually agreed to between the ~~Investigator~~ **employee** and his/her supervisor.

Section 13.4 Overtime Work

Employer:

- A. After Duty Hours may be offered to employees on the basis of seniority among employees who request such work. Each employee shall be selected in turn according to his or her place on the After Duty Hours list, by rotation. An employee requesting to be skipped when it becomes his or her turn to work After Duty Hours shall be rotated to the bottom of the list. An employee who works After Duty Hours shall also be rotated to the bottom of the list. After Duty Hours may be denied to an employee for just cause. It is understood that, for operational necessities, the Employer may, absent volunteers, order any employee to perform After Duty Hours, by reverse seniority.
- B. Investigators may be ordered to work overtime provided that such mandatory overtime shall be limited to either emergency conditions, which cannot be deferred or which cannot be performed with other members of this bargaining unit, or because of abnormal peak loads in activities of the Department. The Sheriff, or his designee, will attempt to assign overtime on a voluntary basis to those bargaining unit members who normally work in the affected unit or area of assignment. Such voluntary overtime shall first be offered on a departmental seniority basis. It is the intention of the parties that overtime will be distributed equitably among the Investigators in the same job classification within a department or operating unit, as far as practicable.
- C. **The County shall refuse overtime that would result in more than 40-hours of overtime in any pay period, or would result in more than 624 hours of overtime in a fiscal year, except for situations of operational necessity as determined by the County.**

Union:

- A. After Duty Hours may be offered to employees on the basis of seniority among employees who request such work. Each employee shall be selected in turn according to his or her place on the After Duty Hours list, by rotation. An employee requesting to be skipped when it becomes his or her turn to work After Duty Hours shall be rotated to the bottom of the list. An employee who works After Duty Hours shall also be rotated to the bottom of the list. ~~After Duty Hours may be denied to an employee for just cause.~~ It is understood that, for operational necessities, the Employer may, absent volunteers, order any employee to perform After Duty Hours, by reverse seniority.
- B. ~~Investigators~~ **Employees** may be ordered to work overtime provided that such mandatory overtime shall be limited to either emergency conditions, which cannot be deferred or which cannot be performed with other members of this bargaining unit, or because of abnormal peak loads in activities of the Department. The Sheriff, or his designee, will attempt to assign overtime on a voluntary basis to those bargaining unit members who normally work in the affected unit or area of assignment. Such voluntary overtime shall first be offered on a departmental seniority basis. It is the intention of the parties that overtime will be distributed equitably among the ~~Investigators~~ **employees** in the same job classification within a department or operating unit, as far as practicable.

Section 13.5 Court Time

Employer: Status Quo

Union:

~~Investigators~~ **Employees** who attend court while off-duty on behalf of the Employer, shall receive two (2) hours of overtime pay or the actual hours worked, whichever is greater.

Section 13.6 Call Back Pay

Employer: Status Quo

Union:

~~Investigators~~ **Employees** who are called back to work, shall receive two (2) hours of overtime pay or the actual hours worked, whichever is greater.

Section 13.7 Shift Differential (New)

Employer: Reject Union Proposal

Union:

The rate of pay for work on the 2:00 p.m. to midnight shift and for all contiguous continuing hours of work shall be 2% higher than the employees' regular rate of pay as set out in Appendix A.

Section 14.1 Job Classifications

Employer: Status Quo

Union:

~~Investigators~~ **Employees** shall receive the salary provided for their job classifications. ~~Investigators~~ **Employees** will be increased to the appropriate step upon completion of the required length of service within the pay grade and job classifications. Longevity rate increases shall be based upon length of service with the Employer (Cook County). No other person or persons shall be permitted to perform the work of this bargaining unit job classifications, except in emergency situations or circumstances beyond the control of the Employer; nor shall the Employer transfer ~~Investigators~~ **employees** from other positions within the County or the Sheriff's Department to do bargaining unit work.

With their consent, employees in the bargaining unit may be detailed to other assignments both within and outside of the employer. Such details shall be temporary and the employee's wages and benefits shall not be decreased. Detailed employees shall continue to accrue seniority in the bargaining unit.

Section 14.2 Wage Rates

Employer:

All Investigators who were members of the bargaining unit as of December 1, 2008 and who are still in pay status with the Employer as of the date of the County's ratification of this Agreement, or who have retired from the bargaining until subsequent to December 1, 2008, shall

receive retroactive wage increases as in Appendix A. In addition, Investigators shall receive longevity Step increases in accordance with the Wage Schedule herein attached as Appendix A.

Sworn Members shall receive the following wage increases:

Effective June 1, 2009	1.00%
Effective June 1, 2010	1.00%
Effective December 2, 2010	0.50%
Effective June 1, 2011	1.50%
Effective December 1, 2011	2.00%
Effective June 1, 2012	2.50%

Non-Sworn Members shall receive the following wage increases:

Effective December 1, 2008:	0%
Effective December 1, 2009:	0%
Effective December 1, 2010:	0%
Effective January 1, 2011:	2.25%
Effective June 1, 2012:	3.75%

Union:

Investigators shall receive wage increases as follows:

Effective December 1, 2008	2%
Effective December 1, 2009	1.5%
Effective December 1, 2010	2%
Effective December 1, 2011	2%
Effective June 1, 2012	1%

Senior Investigators will receive wages at a rate of 5% above that of Investigators for equivalent length of service with Cook County and/or the Sheriff's Department of Cook County.

All ~~Investigators~~ **employees** who were members of the bargaining unit as of December 1, 2008 and who are still in pay status with the Employer as of the date of the County's ratification of this Agreement, or who have retired from the bargaining unit subsequent to December 1, 2008, shall receive retroactive wage increases as in Appendix A. In addition, ~~Investigators~~ **employees** shall receive longevity Step increases in accordance with the Wage Schedule herein attached as Appendix A.

Section 15.1 Designation of Holidays

Employer: Status quo

Union:

- A. The following days are hereby declared holidays for all Investigators in the bargaining unit:
1. New Year's Day- January 1
 2. Martin Luther King's Birthday- 3rd Monday in January
 3. Lincoln's Birthday- February 12

4. President's Day- Third Monday in February
 5. Pulaski Birthday- 1st Monday in March
 6. Good Friday- Friday before Easter*
 7. Memorial Day- Last Monday in May
 8. Independence Day- July 4
 9. Labor Day- First Monday in September
 10. Columbus Day- Second Monday in October
 11. Veterans Day- November 11
 12. Thanksgiving Day- The fourth Thursday in November
 13. Christmas Day- December 25
- * For Fiscal Years 1999 and 2000 only

It is the intent of the Board of Commissioners of Cook County that all salaried Cook County ~~Investigators~~ **employees** be granted thirteen (13) holidays, or equivalent paid days off per year. Holidays will be celebrated on the day on which it actually occurs; however, should a certain holiday fall on a Saturday, the preceding Friday shall be set as the holiday; should a certain holiday fall on a Sunday, the following Monday shall be set as the holiday.

- B. In addition to the above, any other days or part of a day shall be considered a holiday when so designated by the Board of Commissioners of Cook County.
- C. For Fiscal Year 2001, Good Friday shall be eliminated as a fixed holiday. Effective December 1, 2000, in addition to the holidays listed, an employee shall be credited with one (1) floating holiday on December 1 of each year which must be used by the employee between December 1 and November 30. The floating holiday may not be carried over in the next fiscal year by the employee. The floating holiday will be scheduled in accordance with the procedure for vacation selection as set forth in this Agreement. Use of the floating holiday is restricted to a full day increment.

Section 15.2 Holiday Compensation

Employer: Status Quo

Union:

- A. If a scheduled holiday coincides with an ~~Investigator's~~ **employee's** regular day off, the ~~Investigator~~ **employee** shall receive one (1) day compensatory time due in lieu of the holiday pay.
- B. ~~Investigators~~ **Employees** whose regular work schedule coincides with any of the six major holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day) and the ~~Investigator~~ **employee** works on said holiday, the ~~Investigator~~ **employee** shall receive one and one half times their hourly rate of pay, for all hours worked, plus an additional eight (8) hours of compensatory time due.

Section 15.3 Holidays as Vacations

Employer: Status quo

Union:

If a holiday falls within an ~~Investigator's~~ **employee's** scheduled vacation, such ~~Investigator employee~~ will be carried as "Holiday."

Section 16.1 Vacation Leave

Employer: Status quo

Union:

- A. All ~~Investigators~~ **employees** shall be granted paid vacation, based on their years of service with the Employer as follows:

<u>Anniversary Of Employment</u>	<u>Days of Vacation</u>	<u>Maximum Accumulation</u>
1 st through 6 th	10 working days 80 working hours	20 Working days 160 working hours
7 th through 14 th	15 working days 120 working hours	30 working days 240 working hours
15 th or more	20 working days 160 working hours	40 working days 320 working hours

- B. Accruals will be carried out in accordance with the bi-weekly payroll system.
- C. ~~Investigators~~ **Employees** may use only such vacation leave as has been earned and accrued. The heads of the County offices, departments, or institutions may establish the time when the vacation shall be taken.
- D. Any ~~Investigator~~ **employee** of the County of Cook who has rendered continuous service to the City of Chicago, the Chicago Park District, the Forest Preserve District, the Metropolitan Water Reclamation District of Greater Chicago and/or the Chicago Board of Education shall have the right to have the period of such service credited and counted for the purpose of computing the number of years of service as ~~Investigators~~ **employees** of the County for vacation credit only. All discharges and resignations not followed by reinstatement within one (1) year shall interrupt continuous service, and shall result in the loss of all prior service credit. Credit for such prior service shall be established by filing, in the Office of the Comptroller of Cook County, a certificate of such prior service from such former place or places of employment.
- E. In the event an ~~Investigator~~ **employee** has not taken vacation leave as provided, by reason of separation from service, the ~~Investigator~~ **employee**, or in the event of death, the ~~Investigator's~~ **employee's** spouse or estate, shall be entitled to receive the ~~Investigator's~~ **employee's** prevailing salary for such unused vacation periods.
- F. In computing years of service for vacation leave, ~~Investigators~~ **employees** shall be credited with regular working time plus the time of duty disability.

- G. Any ~~Cook County Investigator~~ **employee** who is a re-employed veteran shall be entitled to be credited with working time for each of the years due to Military service. The veteran's years of service for purposes of vacation time in the year of return to employment with Cook County shall be the same as if employment had continued without interruption by Military Service.
- H. Holidays recognized by the Board of Commissioners of Cook County are not counted as part of a vacation.

Article XVII Welfare Benefits

Employer: Mercer Proposal

Union: Status quo.

Section 17.2 Health Insurance Opt-Out Program

Employer:

~~Effective December 1, 1999, the Employer agrees to pay \$800 per year (payable in a lump sum) at the beginning of each fiscal year) to eligible Investigators who opt out of the Employer's health insurance programs; provided that, prior to opting out, any such Investigator must demonstrate to the Employer's satisfaction that he/she has alternative health insurance coverage. In the event the eligible Investigator who has opted out should lose their alternative health insurance coverage, the Investigator may enroll, or be reinstated to the Employer's health benefit program.~~

~~Any Investigator who opts out of the Employer's health insurance benefit programs may request that in lieu of a payment to the Investigator, this opt out be credited to a medical flexible spending account.~~

Union:

Effective December 1, 1999, the Employer agrees to pay \$800 per year (payable in a lump sum) at the beginning of each fiscal year) to eligible ~~Investigators~~ **employees** who opt out of the Employer's health insurance programs; provided that, prior to opting out, any such ~~Investigator~~ **employee** must demonstrate to the Employer's satisfaction that he/she has alternative health insurance coverage. In the event the eligible ~~Investigator~~ **employee** who has opted out should lose their alternative health insurance coverage, the Investigator may enroll, or be reinstated to the Employer's health benefit program.

Any ~~Investigator~~ **employee** who opts out of the Employer's health insurance benefit programs may request that in lieu of a payment to the ~~Investigator~~ **employee**, this opt out be credited to a medical flexible spending account.

Section 17.3 Sick Leave

Employer:

- A. All Investigators covered by the terms of this Agreement, shall be granted sick leave with pay at the rate of one (1) working day for each month of service. Accruals will be carried out in accordance with the bi-weekly payroll system. Accrued sick leave will carry over if Investigators change offices or Departments within the County as long as there is no break in service longer than thirty (30) days.

- B. Sick leave may be accumulated to equal, but at no time to exceed, one hundred seventy-five (175) working days (1400 hours, calculated as eight hour work days), at the rate of twelve (12) working days, or ninety-six (96) working hours, per year. Records of sick leave credit and use shall be maintained by each office, department, or institution. Amount of leave accumulated at the time when any sick leave begins shall be available in full, and additional leave shall continue to accrue while an Investigator is using that already accumulated.
- C. Sick leave may be used for illness, disability incidental to pregnancy, or non-job related injury to the Investigator; appointments with physicians, dentists, or other recognized practitioners; or for serious illness, disability or injury, in the immediate family of the Investigator. Sick leave shall not be used as additional vacation leave. Sick leave may be used as maternity or paternity leave by Investigators.
- D. An Investigator who has been off duty for ~~forty (40) consecutive work hours~~ **three (3) consecutive work days** or more for any health reason ~~may be required to undergo examination by the Employer's physician before returning to work, at the Employer's cost~~ **will be required to provide a doctor's statement s proof of illness to the County's physician, and may be required to undergo examination by the facility's and/or County's physician before returning to work.** For health related absences of less than ~~forty (40) consecutive work hours~~ **three (3) consecutive work days**, a doctor's statement or proof of illness will not be required except in individual instances where the Sheriff has sufficient reason to suspect that the individual did not have a valid health reason for the absence. If indicated by the nature of a health related absence, examination by the Employer's physician may be required to make sure that the Investigator is physically fit to return to work. The Employer may visit the home of the Investigator for the purpose of verifying the injury or medical reason, whenever doubt exists as to the validity of the absence.
- E. If the health of the Investigator warrants prolonged absence from duty, the Investigator will be permitted to combine his/her vacation, sick leave, and personal days, and/or invoke the provision of the Family and Medical Leave Act as provided in this Agreement.
- F. The Investigator may apply for disability under the rules and regulations established by the Retirement Board.

Union:

- A. All ~~Investigators~~ **employees** covered by the terms of this Agreement, shall be granted sick leave with pay at the rate of ~~one (1) working day~~ **eight (8) working hours** for each month of service. Accruals will be carried out in accordance with the bi-weekly payroll system. Accrued sick leave will carry over if ~~Investigators~~ **employees** change offices or Departments within the County as long as there is no break in service longer than thirty (30) days.

- B. Sick leave may be accumulated to equal, but at no time to exceed, ~~one hundred seventy-five (175) working days (1400 hours, calculated as eight hour work days)~~, at the rate of ~~twelve (12) working days~~, or ninety-six (96) working hours, per year. Records of sick leave credit and use shall be maintained by each office, department, or institution. Amount of leave accumulated at the time when any sick leave begins shall be available in full, and additional leave shall continue to accrue while an **Investigator employee** is using that already accumulated.
- C. Sick leave may be used for illness, disability incidental to pregnancy, or non-job related injury to the **Investigator employee**; appointments with physicians, dentists, or other recognized practitioners; or for serious illness, disability or injury, in the immediate family of the Investigator. Sick leave shall not be used as additional vacation leave. Sick leave may be used as maternity or paternity leave by **Investigators employees**.
- D. An **Investigator employee** who has been off duty for forty (40) consecutive work hours or more for any health reason may be required to undergo examination by the Employer's physician before returning to work, at the Employer's cost. For health related absences of less than forty (40) consecutive work hours, a doctor's statement or proof of illness will not be required except in individual instances where the Sheriff has sufficient reason to suspect that the individual did not have a valid health reason for the absence. If indicated by the nature of a health related absence, examination by the Employer's physician may be required to make sure that the **Investigator employee** is physically fit to return to work. The Employer may visit the home of the Investigator for the purpose of verifying the injury or medical reason, whenever doubt exists as to the validity of the absence.
- E. If the health of the **Investigator employee** warrants prolonged absence from duty, the **Investigator employee** will be permitted to combine his/her vacation, sick leave, and personal days, and/or invoke the provision of the Family and Medical Leave Act as provided in this Agreement.
- F. The **Investigator employee** may apply for disability under the rules and regulations established by the Retirement Board.

Section 17.4 Disability Benefits

Employer: Status quo

Union:

Investigator Employees incurring any occupational illness or injury will be covered by Workers' Compensation insurance benefit. **Investigator Employees** injured or sustaining occupational disease on duty, who are off work as a result thereof shall be paid Total Temporary Disability Benefits pursuant to the Workers' Compensation Act. Duty Disability and ordinary disability benefits will be paid to **Investigators employees** who are participants in the County Employee Pension Plan; disability benefits will be reduced by and Worker's Compensation benefits received. Duty Disability benefits are paid to the **Investigator employee** by the Retirement Board when the **Investigator employee** is disabled while performing work duties. Benefits

amount to seventy-five percent (75%) of the ~~Investigator~~ **employee's** salary at the time of injury, and begin the day after the date the salary stops. The ~~Investigator~~ **employee** will not be required to use sick time and/or vacation time for any day of duty disability. **However, the employee, at his option, may use any such paid leave time while awaiting determination of the position regarding the nature of the injury leave, which time shall be returned to the employee if the determination of the County is that the nature of the injury or illness is duty disability.**

Ordinary disability occurs when a person becomes disabled due to any cause, other than injury on the job. An eligible ~~Investigator~~ **employee** who has applied for such disability compensation will be entitled to receive not less than fifty percent (50%) of salary. The first thirty (30) consecutive days of ordinary disability are compensated for only by the use of any accumulated sick pay and/or vacation pay credits unless the ~~Investigator~~ **employee** and the Employer otherwise agree.

Section 18.2 Personal Days

Employer:

~~All Investigators shall be permitted thirty two (32) hours off with pay each fiscal year. Investigators may be permitted these thirty two (32) hours off with pay for personal leave for such occurrences as observance of a religious holiday or for other personal reasons. Such personal days shall not be used in increments of less than one half (1/2) day at a time. No more than thirty two (32) hours may be used in a fiscal year. Employees will accrue personal days at the rate of 1.23 hours per pay period (bi-weekly). Two (2) personal days may be used for observance of religious holidays prior to accrual, to be paid back in the succeeding two (2) fiscal quarters. No more than four (4) personal days may be used in a fiscal year.~~

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

Personal days may be used consecutively and/or as additional vacation leave with permission from the Sheriff/designee. Personal days off shall be scheduled in advance to be consistent with operating necessities and the convenience of the Investigator and are subject to approval of the Sheriff or his designee.

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

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

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

Union:

~~All Investigators-employees shall be permitted thirty two (32) hours off with pay each fiscal year. Investigators-Employees may be permitted these thirty two (32) hours off with pay~~

for personal leave for such occurrences as observance of a religious holiday or for other personal reasons. Such personal days shall not be used in increments of less than one half (1/2) day at a time. No more than thirty two (32) hours may be used in a fiscal year.

Personal days **time** may be used consecutively and/or as additional vacation leave with permission from the Sheriff/designee. Personal days off shall be scheduled in advance to be consistent with operating necessities and the convenience of the Investigator and are subject to approval of the Sheriff or his designee.

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

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

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

Section 18.3 Mileage

Employer:

County employees, with prior permission of their Department Head may use private vehicles for County business and shall do so in accordance with the Cook County Vehicle Policy Ordinance.

The Employer shall reimburse Investigators using their personal automobile for work in accordance with the Cook County Travel Reimbursement policy. Such rate shall be adjusted, as necessary, to ensure that employees are paid the maximum allowable by the County.

Union: Status Quo

Section 18.4 Use of Leave Time (New)

Employer: Reject Union Proposal

Union:

Employees may use vacation time, sick leave, compensatory time, and personal days in minimum increments of one hour.

New Section: Printing Collective Bargaining Agreements:

Any and all costs related to the printing of collective bargaining agreements in booklet form shall be divided equally between the County and the Union provided the booklets are printed by the Cook County Digital Graphics department.

The Union may opt to print collective bargaining agreements for their members at a facility other than the Cook County Digital Graphics Department. However, the Union will be solely responsible for the cost of printing the Agreements.

Union: Reject addition

NEW SECTION: Residency Requirement

New hires working for the County of Cook must be in compliance with the Cook County Residency Ordinance.

Please note: Current employees who reside outside of the County on December 5, 2000, are exempt from provisions of the Residency Requirement in accordance with the Cook County Residency Ordinance.

Union: Reject Addition

Section 19.1 Term

Employer & Union Agree to the Following:

This Agreement shall become effective on December 1, 2008 and shall remain in effect through November 20, 2012. It shall automatically renew itself from year to year thereafter unless either party shall give written notice to the other party not less than ninety (90) calendar days prior to the expiration date, or any anniversary thereof, that it desires to modify this Agreement.

In the event such written notice is given by either party, this Agreement shall continue to remain in effect after the expiration date until a new Agreement has been reached.

Analysis

Section 14(h) of the IPLRA lists the following factors for consideration in interest arbitration:

- (h) Where there is no agreement between the parties,... the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
 - (1) The lawful authority of the employer.
 - (2) Stipulations of the parties.
 - (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
 - (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
 - (5) The average consumer prices for goods and services, commonly known as the cost of living.
 - (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization

benefits, the continuity and stability of employment and all other benefits received.

- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in 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.

Each of these factors are to be considered by the Arbitrator when determining what the appropriate award will be. However, depending on the facts and circumstances of the case, certain factors may be given more weight than others. The two primary factors at issue in this case are the interests and welfare of the public and the financial ability of the government to meet those costs as well as the internal comparison of wages, hours and conditions of employment of employees performing similar duties within the County. As has already been discussed at length by other arbitrators and economists, the economy is in bad condition and is having a very difficult time recovering from the recession. The economy has impacted public employers especially hard and has resulted in thousands of layoffs and other reductions in order for the public employers to meet their budgets. The County has not been immune from the impact of the recession and is currently facing a significant budget deficit for the upcoming year.

As far as internal comparables are concerned, as has been discussed by prior arbitrators, Cook County is a unique animal in terms of its size, income, staff, and structure and there are no other counties in the state quite like it.¹ Therefore, historically, arbitrators have generally compared the wage patterns between the different sworn County units, as well as between different non-sworn County units. In this case, there are two competing wage patterns

¹ There have been arguments made and relied upon recently that compare Will County to Cook County, but such a comparison is not necessary here.

established by two different interest arbitrators, Benn and Nathan, that have been issued for the Employer's sworn units recently. They are summarized as follows:

<u>Benn Award</u>		<u>Nathan Award</u>	
Effective December 1, 2008	2.00%	Effective June 1, 2009	1.00%
Effective December 1, 2009	1.50%	Effective June 1, 2010	1.00%
Effective December 1, 2010	2.00%	Effective December 1, 2010	0.50%
Effective December 1, 2011	2.00%	Effective June 1, 2011	1.50%
Effective June 1, 2012	1.00%	Effective December 1, 2011	2.00%
Total	8.50%	Effective June 1, 2012	2.50%
		Total	8.50%

The wage package for the non-sworn, civilian units is as follows:

Effective December 1, 2008	0%	
Effective December 1, 2009	0%	
Effective December 1, 2010	0%	
Effective January 1, 2011		2.25%
Effective June 1, 2012	3.75%	
Total		6%

The Union requests that I follow the Benn pattern for all bargaining unit members, including the non-sworn administrative employees, and the County requests that I follow the Nathan pattern for the sworn members and the civilian 6% package for the non-sworn members. Both the Nathan and Benn wage patterns result in a net wage increase of 8.5% over the term of the contract; the difference is that the Nathan award is back-loaded to reduce the amount of back-pay. In light of the current economic situation and the County's assertions that it cannot afford the extensive amounts of back-pay awarded by Benn, I select the Employer's (Nathan) wage pattern.

The Union has also requested an additional 5% pay differential for members in the title of Senior Investigator. The Union contends that because the Senior Investigators are responsible for overseeing the work of the Investigators and administrative employees, they deserve a

guarantee that they will earn at least 5% more than the Investigators. The Employer maintains that the Senior Investigators are on a separate pay scale and do make more than the Investigators and that the Senior Investigators will continue to advance in pay and remain on a higher pay scale than the Investigators by giving them the same percentage increases as the Investigators. Without addressing the merits of both parties' arguments, I reject the 5% pay differential due to the current economic climate².

As far as the recognition clause is concerned, I recognize that since the expiration the last CBA, the Union filed a representation petition and a unit clarification petition with the Illinois Labor Relations Board to include Senior Investigators and three Administrative Assistants to the bargaining unit. (L-UC-09-006 and 26 PERI 120). The Labor Board granted both of the Union's petitions and included the Senior Investigators and the three Administrative Assistants in the bargaining unit over the employer's objections. Therefore, I find in favor of the Union regarding Section 1.1, with the following modifications. I find the language of that section should read as follows:

Section 1.1 Recognition

The Employer recognizes the Labor Council as the sole and exclusive representative for the bargaining union including all Investigators and Senior Investigators employed by the County of Cook and the Cook County Sheriff's Department in the Office of Professional review. The unit excludes Cook County Police Officers of any rank, all other employees employed by the County of Cook and the Cook County Sheriff's Department in the Office of Professional Review.

² My holding does not preclude the Union from again making an argument for a pay differential in future negotiations. My award should not be read to have any bearing on either party's arguments on the merits of the request for the wage adjustment in the future.

As used throughout this Agreement, the term “employee” shall mean someone employed in the following titles in the Office of Professional Review: Senior Investigator, Investigator, and Administrative Assistant, which are covered by this Agreement.

I find in favor of the Employer and reject the Union’s proposal to add Section 4.3, Negotiations because the Union failed to demonstrate a need for the additional language of Section 4.3 in the CBA.

I find in favor of the Union with respect to Section 5.3, with the following changes based on the parties’ discussion during the interest arbitration:

Section 5.3 Grievance Procedure Steps

A grievance shall be filed at or above the level from which the aggrieved action originated. Grievance must be submitted on an approved Grievance Form, (attached herein as Appendix D). The steps and time limits (shown as calendar days) as provided in the Employer’s Grievance Procedure are as follows:

Step	Submission Time Limit (calendar days)	To whom submitted	Time Limits Meeting (<u>calendar</u> days)	Response time (<u>Calendar</u> Days)
1	10 days	Deputy Chief Assistant Executive Director/designee	<u>7</u> Days	<u>7</u> Days
2	10 days	Chief Investigator	10 Days	10 Days
3 2	10 days	Sheriff/Designee or Chief of HR/Designee Executive Director or Chief of Human Resources	<u>21</u> Days	<u>21</u> Days
4 3	30 Days	Arbitrator	As scheduled	30 Days

At each Step of the Grievance Process the Employer must issue a written response within the required time limit. If the answer is satisfactory or if the employee fails to advance the grievance within the required time limit after the answer is issued or due, the grievance procedure is concluded.

It is understood that all disciplinary matters may be appealed through the grievance procedure in this Agreement.

For consistency with the changes in Section 5.3, I accept the Union's proposed changes for Sections 5.4, 5.5, and 5.6. (See below)

Section 5.4 Time Limits

The initial time limit for presenting a grievance shall be ten (10) days and the same limit shall apply to **the** submission times at Step 2 ~~and 3~~. The scheduling of an arbitration hearing, shall be governed by mutual agreement with the arbitrator. An arbitrator's award shall be submitted to the parties within thirty (30) days of the close of the hearing. Time limits may be extended by mutual agreement, in writing, between the employees and/or the Labor Council and the Employer.

Section 5.5 Discovery

Upon written request by the employee, of his/her authorized representative, the Employer shall provide discovery information requested prior to Step 3 2 meeting; however, the Employer may delete "confidential" information which he/she deems to be sensitive for release at that stage of the proceedings; however, all information regardless of its' sensitivity shall be released to the Union in the event of an arbitration hearing.

Section 5.6 Impartial Arbitration Procedure

Only the FOP Labor Council may request arbitration under this Agreement. If the Labor Council is not satisfied with the Step 3 2 answer to a grievance involving an alleged violation of the contract or transfer, it shall within ten (10) days after receipt of the Step 3 2 answer submit in writing to the Employer notice that the grievance is to enter impartial arbitration. The Labor Council and Employer shall attempt to reach an agreement on an arbitrator within ten (10) days after filing for arbitration. If the Labor Council and the Employer fail to reach an agreement on an arbitrator within ten (10) days, the Employer and the Labor Council may request the Federal Mediation and Conciliation Service to provide a panel of arbitrators. Each of the two parties will confer within seven (7) days of receipt of the arbitration panel to alternatively strike one (1) name at a time from the panel until only one (1) name remains; the remaining name shall be the arbitrator. The party striking first shall be determined by a toss of the coin. The Labor Council and the Employer will make arrangements with the arbitrator to hear and decide the grievance without unreasonable delay.

In fashioning his/her award in discipline grievances, the arbitrator shall determine whether there was just cause to impose the discipline; and, may sustain the discipline imposed by the Employer, reduce the discipline (including reduction to a reprimand), including the application of options granted or denied with regard to the discipline, or exonerate the employee; but, in no event shall the arbitrator have authority to increase disciplinary action in question. The arbitrator shall issue a written decision within thirty (30) days after close of the hearing, or the submission of the post-hearing briefs (if applicable), which ever is later.

All decisions of the arbitrator shall be final and binding on the parties.

Expenses for the arbitrator's services and the expenses which are common to both parties to the arbitration shall be borne equally by the County and the Labor Council. Each party to an

arbitration proceeding shall be responsible for compensating its own representatives and witnesses.

The arbitrator, in issuing his/her opinion, shall not amend, modify, nullify, ignore, or add to the provisions of this Agreement. The issue or issues to be decided will be limited to those presented to the arbitrator in writing by the Employer and the Labor Council. The arbitrator's decision must be based solely upon his/her interpretation of the meeting or application of the express relevant language of the Agreement.

I accept the Union's proposal for Section 6.1 with the following modifications:

Section 6.1 Discipline Investigation

The Employer shall not take any disciplinary action against an employee without just cause. **Investigators and Senior Investigators** covered by the terms of this Agreement shall be afforded all of the rights enumerated by the Uniformed Peace Officers Disciplinary Act (Bill of Rights) 50 ILCS 725/1 et seq. In addition, employees who are subject to investigation which may lead to discipline shall be afforded all of the rights and privileges granted under *Weingarten v. NLRB*, 420 US 251 (1975), 43 L.Ed.2d 171, 95 S.Ct. 959 and *Morgan v. Central Management Services*, ISLRB (1PERI 2020).

An employee may not be de-deputized or have his star taken from him during the course of an investigation when no disciplinary action has yet been taken.

Random testing under the Sheriff's Drug Free Workplace Policy shall not be subject to the provisions of 50 ILCS 725/1, et seq or the rights and privileges granted under *Weingarten v. NLRB*, 420 US 251 (1975), and *Morgan v. Central Management Services*, ISLRB (1 PERI 2020).

I reject the Union's proposed language to add Section 6.3, Conclusions and Findings, of the CBA because the Union failed to provide sufficient information to justify the need for this additional language in the CBA. However, the parties have agreed to address this issue internally should it arise during the term of this CBA.

I reject the Union's proposal to change Section 8.1, Definition of Seniority. Interest arbitration is a very conservative process; therefore, if a party wants to change the status quo at the interest arbitration level (as opposed to bargaining for the change), the party seeking the

change must demonstrate why the change is needed. In this case, I find that the Union failed to meet its burden of demonstrating why its changes to Section 8.1 were necessary.

I accept the parties agreement to modify Section 8.8, Family and Medical Leave. Based on the parties' agreement during the interest arbitration, the language of Section 8.8 will now read as follows:

Employees shall be granted family medical leave in accordance with the Family Medical Leave Act.

Any employee granted a family and medical leave must use eighty (80) hours of available benefit time such as sick, vacation, personal and compensatory time when invoking FMLA. Employees may not opt to be put into zero (0) time status until all accrued benefit time has first been used when on an approved Family Medical Leave.

The parties agreed to amend the language of Section 9.4, Military Leave, to be consistent with other collective bargaining agreements between the County and its units of employees. The parties agreed that the language of Section 9.4 will now read as follows:

Section 9.4 Military leave

Employees who enter the armed services of the United States, or who are members of the National Guard or any of the Reserve Components of the Armed Forces of the United States shall be entitled to all the rights and privileges conferred by any applicable federal or state law.

The Union withdrew Section 11.1 during the course of the arbitration.

The parties agreed to leave Section 12.1, Health and Safety, as the status quo. However, the parties further agreed to draft a memorandum of agreement regarding the application of an award issued by Arbitrator Benn in a grievance arbitration over this topic. The parties agreed that this memorandum of agreement will be incorporated in a separate document to be drafted independently by the parties.

I reject the Union's proposal for Section 13.2, Regular Work Periods. The Union failed to demonstrate the need for the hour and schedule change and the Employer demonstrated that the Union's requested change in the work schedule were not workable because the Employer could not supervise the increased shift hours. Therefore, I reject the Union's request to change the status quo in Section 13.2.

The Union withdrew Section 13.3, Compensatory Time and/or Overtime Compensation during the course of the Arbitration.

I accept the Union's proposal for Section 13.4, Overtime Work, and reject the County's proposal because the County failed to present adequate evidence for why the change in the status quo is necessary at this time. (See below)

Section 13.4 Overtime Work

- C. After Duty Hours may be offered to employees on the basis of seniority among employees who request such work. Each employee shall be selected in turn according to his or her place on the After Duty Hours list, by rotation. An employee requesting to be skipped when it becomes his or her turn to work After Duty Hours shall be rotated to the bottom of the list. An employee who works After Duty Hours shall also be rotated to the bottom of the list. ~~After Duty Hours may be denied to an employee for just cause.~~ It is understood that, for operational necessities, the Employer may, absent volunteers, order any employee to perform After Duty Hours, by reverse seniority.

- D. ~~Investigators~~ **Employees** may be ordered to work overtime provided that such mandatory overtime shall be limited to either emergency conditions, which cannot be deferred or which cannot be performed with other members of this bargaining unit, or because of abnormal peak loads in activities of the Department. The Sheriff, or his designee, will attempt to assign overtime on a voluntary basis to those bargaining unit members who normally work in the affected unit or area of assignment. Such voluntary overtime shall first be offered on a departmental seniority basis. It is the intention of the parties that overtime will be distributed equitably among the ~~Investigators~~ **employees** in the same job classification within a department or operating unit, as far as practicable.

I accept the Union's language changes to Sections 13.5 and 13.6, Court Time and Call Back Pay because the Union's modifications were merely clean-up provisions and did not substantively change the application of either section. (See below)

Section 13.5 Court Time

~~Investigators~~ **Employees** who attend court while off-duty on behalf of the Employer, shall receive two (2) hours of overtime pay or the actual hours worked, whichever is greater.

Section 13.6 Call Back Pay

~~Investigators~~ **Employees** who are called back to work, shall receive two (2) hours of overtime pay or the actual hours worked, whichever is greater.

I reject the Union's proposal to add Section 13.7, Shift Differential. The Union is requesting an additional economic benefit that the Employer maintains it cannot afford. For the reasons discussed in my analysis for the wage increases and because the Union failed to provide sufficient evidence to support the shift differential, I reject the Union's proposal for Section 13.7.

I accept the Union's proposed changes to the first paragraph of Section 14.1, Job Classification. However, I reject the Union's proposed addition of the second paragraph of Section 14.1. Therefore, the language of Section 14.1 will now read as follows:

Employees shall receive the salary provided for their job classifications. **Employees** will be increased to the appropriate step upon completion of the required length of service within the pay grade and job classifications. Longevity rate increases shall be based upon length of service with the Employer (Cook County). No other person or persons shall be permitted to perform the work of this bargaining unit job classifications, except in emergency situations or circumstances beyond the control of the Employer; nor shall the Employer transfer **employees** from other positions within the County or the Sheriff's Department to do bargaining unit work.

I accept the Union's proposed changes to Section 15.1, but make the following modifications to the Section based on the parties' discussions and agreement during the interest arbitration:

Section 15.1 Designation of Holidays

a. The following days are hereby declared holidays for all ~~Investigators~~ **employees** in the bargaining unit:

1. New Year's Day- January 1
2. Martin Luther King's Birthday- 3rd Monday in January
3. Lincoln's Birthday- February 12
4. President's Day- Third Monday in February
5. Pulaski Birthday- 1st Monday in March
6. Memorial Day- Last Monday in May

7. Independence Day- July 4
8. Labor Day- First Monday in September
9. Columbus Day- Second Monday in October
10. Veterans Day- November 11
11. Thanksgiving Day- The fourth Thursday in November
12. Christmas Day- December 25

It is the intent of the Board of Commissioners of Cook County that all salaried Cook County ~~Investigators~~ **employees** be granted thirteen (13) holidays, or equivalent paid days off per year. Holidays will be celebrated on the day on which it actually occurs; however, should a certain holiday fall on a Saturday, the preceding Friday shall be set as the holiday; should a certain holiday fall on a Sunday, the following Monday shall be set as the holiday.

- b. In addition to the above, any other days or part of a day shall be considered a holiday when so designated by the Board of Commissioners of Cook County.
- c. In addition to the holidays listed, an employee shall be credited with one (1) floating holiday on December 1 of each year which must be used by the employee between December 1 and November 30. The floating holiday may not be carried over in the next fiscal year by the employee. The floating holiday will be scheduled in accordance with the procedure for vacation selection as set forth in this Agreement. Use of the floating holiday is restricted to a full day increment.

I accept the Union's clean-up language changes to Sections 15.2 and 15.3, Holiday Compensation and Holidays as Vacation, because the Union's modifications were clean-up and did not substantively change the meaning of either section. (See below)

Section 15.2 Holiday Compensation

- a. If a scheduled holiday coincides with an ~~Investigator's~~ **employee's** regular day off, the ~~Investigator~~ **employee** shall receive one (1) day compensatory time due in lieu of the holiday pay.
- b. ~~Investigators~~ **Employees** whose regular work schedule coincides with any of the six major holidays (New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas Day) and the ~~Investigator~~ **employee** works on said holiday, the ~~Investigator~~ **employee** shall receive one and one half times their hourly rate of pay, for all hours worked, plus an additional eight (8) hours of compensatory time due.

Section 15.3 Holidays as Vacations

If a holiday falls within an ~~Investigator's~~ **employee's** scheduled vacation, such ~~Investigator~~ **employee** will be carried as "Holiday."

For the reasons discussed regarding the Union’s proposed changes to Section 13.2, Regular Work Day, I reject the Union’s proposal to modify the substance of Section 16.1, Vacation Leave by changing the computation and use from days to hours. However, I accept the clean-up language changes the Union made to the rest of Section 16.1- i.e., to change the word “investigator” to “employee.” (See below)

Section 16.1 Vacation Leave

Employer: Status quo

Union:

I. All ~~Investigators~~ **employees** shall be granted paid vacation, based on their years of service with the Employer as follows:

<u>Anniversary Of Employment</u>	<u>Days of Vacation</u>	<u>Maximum Accumulation</u>
1 st through 6 th	10 working days	20 Working days
7 th through 14 th	15 working days	30 working days
15 th or more	20 working days	40 working days

J. Accruals will be carried out in accordance with the bi-weekly payroll system.

K. ~~Investigators~~ **Employees** may use only such vacation leave as has been earned and accrued. The heads of the County offices, departments, or institutions may establish the time when the vacation shall be taken.

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

M. In the event an ~~Investigator~~ **employee** has not taken vacation leave as provided, by reason of separation from service, the ~~Investigator~~ **employee**, or in the event of death,

the ~~Investigator's~~ **employee's** spouse or estate, shall be entitled to receive the ~~Investigator's~~ **employee's** prevailing salary for such unused vacation periods.

- N. In computing years of service for vacation leave, ~~Investigators~~ **employees** shall be credited with regular working time plus the time of duty disability.
- O. Any ~~Cook County Investigator~~ **employee** who is a re-employed veteran shall be entitled to be credited with working time for each of the years due to Military service. The veteran's years of service for purposes of vacation time in the year of return to employment with Cook County shall be the same as if employment had continued without interruption by Military Service.
- P. Holidays recognized by the Board of Commissioners of Cook County are not counted as part of a vacation.

The parties agreed to modify Section 17.2, Health Insurance Opt-Out Program. I accept the modification and note that the language for this section will now read as follows:

The Employer agrees to pay \$800.00 per year to eligible employees who opt-out of the Employer's health benefit program. The \$800.00 will be paid in one lump sum at the beginning of each fiscal year. Prior to opting-out of such program, the employee must demonstrate to the Employer's satisfaction that he/she has alternative healthcare coverage. Any employee electing to opt-out of the Employer's health benefit program may request that in lieu of a payment to the employee, this amount be credited to a medical flexible spending account. Eligible employees who lose their alternative healthcare coverage may enroll in or be reinstated to the Employer's health benefit program. **Covered employees may not opt-out if their spouse or domestic partner is also a County employee.**

I accept the clean-up language modifications the Union proposes to Section 17.3, Sick Leave. (See below)

Section 17.3 Sick Leave

- A. All ~~Investigators~~ **employees** covered by the terms of this Agreement, shall be granted sick leave with pay at the rate of ~~one (1) working day~~ **eight (8) working hours** for each month of service. Accruals will be carried out in accordance with the bi-weekly payroll system. Accrued sick leave will carry over if ~~Investigators~~ **employees** change offices or Departments within the County as long as there is no break in service longer than thirty (30) days.
- B. Sick leave may be accumulated to equal, but at no time to exceed, ~~one hundred seventy-five (175) working days (1400 hours, calculated as eight hour work days),~~ at the rate of ~~twelve (12) working days,~~ or ninety-six (96) working hours, per year. Records of sick leave credit and use shall be maintained by each office, department, or institution.

Amount of leave accumulated at the time when any sick leave begins shall be available in full, and additional leave shall continue to accrue while an ~~Investigator~~ **employee** is using that already accumulated.

- C. Sick leave may be used for illness, disability incidental to pregnancy, or non-job related injury to the ~~Investigator~~ **employee**; appointments with physicians, dentists, or other recognized practitioners; or for serious illness, disability or injury, in the immediate family of the Investigator. Sick leave shall not be used as additional vacation leave. Sick leave may be used as maternity or paternity leave by ~~Investigators~~ **employees**.
- D. An ~~Investigator~~ **employee** who has been off duty for forty (40) consecutive work hours or more for any health reason may be required to undergo examination by the Employer's physician before returning to work, at the Employer's cost. For health related absences of less than forty (40) consecutive work hours, a doctor's statement or proof of illness will not be required except in individual instances where the Sheriff has sufficient reason to suspect that the individual did not have a valid health reason for the absence. If indicated by the nature of a health related absence, examination by the Employer's physician may be required to make sure that the ~~Investigator~~ **employee** is physically fit to return to work. The Employer may visit the home of the Investigator for the purpose of verifying the injury or medical reason, whenever doubt exists as to the validity of the absence.
- E. If the health of the ~~Investigator~~ **employee** warrants prolonged absence from duty, the ~~Investigator~~ **employee** will be permitted to combine his/her vacation, sick leave, and personal days, and/or invoke the provision of the Family and Medical Leave Act as provided in this Agreement.
- F. The ~~Investigator~~ **employee** may apply for disability under the rules and regulations established by the Retirement Board.

The parties agreed to amend the language of Section 17.4 in the following way:

~~Investigator~~ **Employees** incurring any occupational illness or injury will be covered by Workers' Compensation insurance benefit. ~~Investigator~~ **Employees** injured or sustaining occupational disease on duty, who are off work as a result thereof shall be paid Total Temporary Disability Benefits pursuant to the Workers' Compensation Act. Duty Disability and ordinary disability benefits will be paid to ~~Investigators~~ **employees** who are participants in the County Employee Pension Plan; disability benefits will be reduced by and Worker's Compensation benefits received. Duty Disability benefits are paid to the ~~Investigator~~ **employee** by the Retirement Board when the ~~Investigator~~ **employee** is disabled while performing work duties. Benefits amount to seventy-five percent (75%) of the ~~Investigator~~ **employee's** salary at the time of injury, and begin the day after the date the salary stops. The ~~Investigator~~ **employee** will not be required to use sick time and/or vacation time for any day of duty disability. **However, if, after twenty-one (21) days of the injury, the County has not yet made a determination as to**

the employee's duty disability application, the Union may request a labor-management meeting to discuss the status of the County's review.

Ordinary disability occurs when a person becomes disabled due to any cause, other than injury on the job. An eligible ~~Investigator~~ **employee** who has applied for such disability compensation will be entitled to receive not less than fifty percent (50%) of salary. The first thirty (30) consecutive days of ordinary disability are compensated for only by the use of any accumulated sick pay and/or vacation pay credits unless the ~~Investigator~~ **employee** and the Employer otherwise agree.

I accept the Employer's proposal for Section 18.2, Personal Days. The County argued that the Employer has modified the manner in which it calculates personal time and that calculation is accurately reflected in its proposal. However, the actual hours of personal time has not changed; therefore, I accept the Employer's proposal for Section 18.2 with the modification that the word "investigator" will be changed to "employee." (See Below)

Section 18.2 Personal Days:

~~All Investigators shall be permitted thirty two (32) hours off with pay each fiscal year. Investigators may be permitted these thirty two (32) hours off with pay for personal leave for such occurrences as observance of a religious holiday or for other personal reasons. Such personal days shall not be used in increments of less than one half (1/2) day at a time. No more than thirty two (32) hours may be used in a fiscal year. Employees will accrue personal days at the rate of 1.23 hours per pay period (bi-weekly). Two (2) personal days may be used for observance of religious holidays prior to accrual, to be paid back in the succeeding two (2) fiscal quarters. No more than four (4) personal days may be used in a fiscal year.~~

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

Personal days may be used consecutively and/or as additional vacation leave with permission from the Sheriff/designee. Personal days off shall be scheduled in advance to be consistent with operating necessities and the convenience of the Investigator and are subject to approval of the Sheriff or his designee.

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

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

Severance of employment shall terminate all rights to accrued personal days

I accept the Union's proposal for Section 18.4, Use of Leave Time. I find that since the Employer is changing the calculation of personal time to an hourly rate of accrual in Section 18.2, the Union's proposal to add Section 18.4, which allows employees to take personal time in hour increments, makes sense. I find both sections go hand-in-hand together. Therefore, since I have accepted the Employer's proposal for Section 18.2, I accept the Union's proposal for Section 18.4. (See below)

Section 18.4 Use of Leave Time (New)

Employees may use vacation time, sick leave, compensatory time, and personal days in minimum increments of one hour.

The Employer withdrew its proposals for Printing Collective Bargaining Agreements and Residency Requirements, Section 12.4- Subcontracting, and 18.3- Mileage, without prejudice; therefore, I will not address those issues any further.

Award

1. The Joint Employer's proposal for wages is selected.
2. The Union's proposal for Section 1.1, Recognition, is accepted, as modified.
3. The Union's proposal to add Section 4.3, Negotiations, is rejected.
4. The Union's proposal to change Section 5.3, Grievance Procedure Steps, is accepted, as modified.
5. I also accept the Union's modifications to Section 5.4.
6. I also accept the Union's modifications to Section 5.5.
7. I also accept the Union's modifications to Section 5.6

8. The Union's proposal regarding Section 6.1, Discipline Investigation, is accepted, as modified.
9. The Union's proposal to add Section 6.3, Conclusions and Findings, is rejected
10. The Union's proposal to modify section 8.1, Definition of Seniority, is rejected.
11. The Parties' agreements to modify Section 8.8, Family and Medical Leave, and Section 9.4, Military Leave, are accepted.
12. The Union's proposal to change Section 13.2, Regular Work Periods, is rejected.
13. The Union's proposal for Section 13.4, Overtime Work, is accepted.
14. The Union's proposal to clean-up the language in Sections 13.5, Court Time is accepted.
15. The Union's proposal to clean-up the language in Section 13.6, Call Back Pay is accepted.
16. The Union's proposal to clean-up the language in Section 15.2, Holiday Compensation is accepted.
17. The Union's proposal to clean-up the language in Section 15.3, Holidays as Vacation is accepted
18. The Union's proposal to clean-up the language in Section 17.3, Sick Leave is accepted.
19. The Union's proposal to add Section 13.7, Shift Differential, is rejected.
20. The Union's proposal for Section 14.1 is modified as discussed above.
21. The Union's proposal for Section 15.1, Designation of Holidays, is accepted as modified.

22. The Union's proposal to change Section 16.1, Vacation Leave is rejected in part and accepted in part.
23. The Employer's proposal to modify Section 18.2, Personal Days is accepted
24. The Union's proposal to add Section 18.4, Use of Leave Time is accepted.
25. The Employer's request to withdraw the Personal Days proposal is accepted.



Brian Clauss
Arbitrator
July 11, 2012