STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

RACINE COUNTY DEPUTY SHERIFF'S ASSOCIATION

For Final and Binding Arbitration Involving
Law Enforcement Personnel in the Employ of

RACINE COUNTY (SHERIFF'S DEPARTMENT)

Case 209
No. 64429
MIA-2649

Decision No. 31752-A

Appearances:

Rebecca D. Boyle, Fuchs, DeStefanis & Boyle. S.C., Attorneys at Law, 620 North Mayfair Road, Milwaukee, Wisconsin 53226-4253, appearing on behalf of the Racine County Deputy Sheriff's Association.

William R. Halsey, Long & Halsey Associates, Inc., 829 South Green Bay Road, Suite 106, Racine, Wisconsin 53406, appearing on behalf of Racine County.

ORDER REGARDING INTEREST ARBITRATION PROCEEDING

On January 27, 2005, the Racine County Deputy Sheriff's Association filed a petition with the Wisconsin Employment Relations Commission seeking interest arbitration pursuant to Sec. 111.77, Stats. of a dispute between the Association and Racine County as to the terms of a successor to their 2002-2004 agreement. Commission Investigator Daniel Nielsen met with the parties on April 21, August 15 and December 15, 2005 in an ultimately unsuccessful effort to mediate the dispute. By June 7, 2006, the parties then submitted their final offers for a 2005-2006 agreement to Investigator Nielsen and on June 15, 2006 he advised the Commission that the parties were at impasse.

On June 27, 2006, the Commission issued Findings of Fact, Conclusion of Law, Certification of Results of Investigation and Order Requiring Arbitration in this matter. The

parties thereafter selected Thomas L. Yaeger as the interest arbitrator. On August 1, 2006, the Commission appointed Yaeger as arbitrator to issue a final and binding award pursuant to Sec. 111.77(4)(b), Stats., by selecting the final offer of the Association or the County.

After conducting hearing in the matter and reviewing the parties' final offers and written argument, Arbitrator Yaeger advised the parties by letter dated March 27, 2007 that he was unsure as to whether the County's offer as to employee health insurance premium contribution was "definite" and was referring that issue to the Commission for resolution before he proceeded any further.

The parties thereafter agreed that the Commission should, if possible, resolve the issue as to the content of the County's final offer based on the record made before the interest arbitrator and that record was received by the Commission on April 18, 2007.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

ORDER

The County's final offer is interpreted but not modified to propose that the employee contribution to the health insurance premium shall be 10% for the duration of the 2005-2006 agreement.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of May, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/
Judith Neumann, Chair

Paul Gordon /s/
Paul Gordon, Commissioner

Susan J. M. Bauman /s/
Susan J. M. Bauman, Commissioner

RACINE COUNTY (SHERIFF'S DEPARTMENT)

**MEMORANDUM ACCOMPANYING ORDER
REGARDING INTEREST ARBITRATION PROCEEDING**

The Legislature has given the Commission the general responsibility of administering the Municipal Employment Relations Act. That responsibility specifically includes administration of the interest arbitration provisions of Sec. 111.77, Stats. that apply to bargaining units of law enforcement personnel and fire fighters, respectively.

Here, the parties are proceeding to establish a 2005-2006 agreement pursuant to the interest arbitration provisions of Sec. 111.77(4)(b), Stats. which provide in pertinent part that:

> The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

When read in conjunction with Sec. 788.10 (1)(d), Stats. which in pertinent part requires issuance of a "final and definite" award, the Court has concluded that although an interest arbitrator can interpret and restate a final offer to make it "definite", the arbitrator cannot "modify" an offer. LA CROSSE PROFESSIONAL POLICE ASSOCIATION V. CITY OF LA CROSSE, 212 Wis. 2D 90 (Ct. App., 1997).

Given our role as administrators of Sec. 111.77, Stats., Arbitrator Yaeger has properly referred a dispute to us regarding the meaning of the County's offer so he can then evaluate said offer in light of the Sec. 111.77, Stats. criteria and also avoid any claim in subsequent litigation that he "modified" the County's offer if it is incorporated into his award. See generally, CITY OF FENNIMORE, DEC. NO. 30454-B (WERC, 9/03); CITY OF MADISON, DEC. NO. 30009-B (WERC, 9/01)

We proceed to resolve this dispute.

The expired 2002-2004 agreement between the parties provided:

> 16.02. Employees will contribute ten (10) percent of the premium for coverage selected by the employee.
>
> and
>
> A.08. The County will renew the 90/10 insurance co-pay agreement under a continuation of the provisions in Article XVI for the term of the successor agreement.

The Association's final offer for the 2005-2006 contract does not propose a change in the foregoing contract language. County's final offer for the 2005-2006 agreement proposes to

amend 16.02 to increase the employees' health insurance premium contribution from 10% to 15% but does not propose a change in A.08.

The dispute over the meaning of the County's final offer emerged when the Association argued to Arbitrator Yaeger that he could not select the County's final offer because it included an increase in the current level of employee health insurance premium contribution that conflicted with the prior A.08 commitment by the County to maintain the current contribution level in "the successor agreement" to the 2002-2004 contract. The County responsively asserted that A.08 as contained in the 2002-2004 contract was not an enforceable commitment and contended that the Arbitrator should proceed to decide the dispute based on the specific proposed increase contained in the County's final offer.

We conclude that A.08 in the 2002-2004 agreement binds the County as to the level of employee insurance premium contribution to be included in the successor 2005-2006 agreement and thus precludes the County from proposing to increase the level of employee contribution beyond 10%. Thus, Arbitrator Yaeger should proceed to issue his award on the understanding that the County's final offer should be interpreted as including a proposal to retain the employee insurance premium contribution at 10%.

The County credibly cites its specific proposal to increase the level of premium contribution to 15% as evidence of the actual intent of its offer. However, the County's agreement to A.08 in the 2002-2004 contract clearly and unambiguously obligated the County to maintain the 10% premium contribution "for the term of the successor agreement." - in this instance, the 2005-2006 agreement pending before Arbitrator Yaeger. In the face of this pre-existing obligation, the County did not have the right to propose to alter the 10% premium contribution level.

When reaching this conclusion, it is apparent that we have rejected the County's general claim that A.08 is unenforceable. A.08 simultaneously created both: (1) an obligation (also reflected in 16.02) to pay 90% of the employees' health insurance premiums during the term of the 2002-2004 contract; and (2) an obligation to pay 90% of the premium during the successor agreement. In effect, A.08 simultaneously created part of two separate contracts. Whatever doubt there may have been about the legitimacy of simultaneously creating all or part of two contracts was put to rest in HOFFMAN V. WERC, 243 Wis. 2D 1, (Ct. App., 2001) when the Court held that creation of two entire contracts at the same time did not violate the Municipal Employment Relations Act and indeed that such "integration" of contracts promoted collective bargaining and labor peace. While HOFFMAN did not involve the Sec. 111.77, Stats. provisions under which these parties are proceeding, we see no persuasive basis for concluding that the Court's holding would not apply here-particularly where, unlike HOFFMAN, it is only a part of two contracts that is created by A.08.

We have also rejected the County's argument that the Association waived its right to argue the enforceability of A.08 by failing bring the issue to the Commission prior to proceedings before Arbitrator Yaeger. Both sides agree that the impact of A.08 was discussed

by the parties during the 2005-2006 bargain with the Association asserting that A.08 precluded inclusion of any County proposal to increase the 10% contribution level and the County disagreeing with the Union's view. Thus, even assuming that the enforceability issue can be waived, either side could have brought the issue to the Commission for resolution. Instead, both sides apparently chose to take their chances on persuading the interest arbitrator that their view of A.08 was correct.

In summary, given the impact of A.08, we have interpreted the County's offer for the 2005-2006 contract as continuing the level of employee contribution toward health insurance premiums at 10%. Given the impact of A.08, our interpretation does not constitute a "modification" of the County's offer contrary to Sec. 111.77(4)(b), Stats.

The matter now returns to Arbitrator Yaeger for decision or receipt of supplemental argument from the parties.

Dated at Madison, Wisconsin, this 9th day of May, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/
Judith Neumann, Chair

Paul Gordon /s/
Paul Gordon, Commissioner

Susan J. M. Bauman /s/
Susan J. M. Bauman, Commissioner

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