STATE OF WISCONSI
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the
Interest Arbitration Between

OUTAGAMIE COUNTY

ARBITRATOR'S DECISION
AND AWARD
Case 256 No. 57415
INT/ARB 8711
Milo G. Flaten, Arbitrator

and

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION (WPPA/LEER)

Dec. No. 29790-A

SCOPE AND BACKGROUND

This arbitration arises out of a statutorily authorized procedure in the state of Wisconsin designed to promote employment peace amongst public employees. The statute recognizes three major interests involved, namely: That of the public, the employee and the employer. To this end the statute sets forth a method whereby unresolved collective bargaining disputes can be decided with binding finality.

In Outagamie County, Wisconsin, a bargaining unit consisting of the employees of the Sheriff's Department who do not have the powers of arrest and who are organized and recognized as a union local of the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, reached an impasse in its negotiations with its employer, Outagamie County. (For purposes of this document, the two parties will henceforth be referred to as "the Union" and "the Employer.")

Under the procedure set forth in the Wisconsin law, the parties certified their final offers to the Wisconsin Employment Relations Commission which submitted them to a panel of neutral arbitrators from which Milo G. Flaten was chosen to arbitrate the dispute and issue a final and binding award. Thereafter, a hearing was held in Appleton, Wisconsin, following which both sides submitted briefs and reply briefs to the arbitrator.

Appearing for the Union was Richard T. Little, bargaining consultant, and Richard Thal, general counsel. The Employer was represented by Attorney Roger E. Walsh of Milwaukee, Wisconsin.

STATUTORY REQUIREMENT

> "The arbitrator shall adopt without further modification the final offer of one of the parties on all disputed issues submitted ... which decision shall be binding on both parties and shall be incorporated into a written collective bargaining agreement."

BACKGROUND

The parties to this dispute have met many times to discuss the issues between them that were unresolved. The record shows that negotiation sessions have been held on at least six separate occasions. It can further be presumed that many more informal discussions in hallways, by telephone and the like have been conducted over the same period. Two of the final negotiation meetings were conducted by a representative of the Wisconsin Employment Relations Commission who concluded the parties were at impasse. Thus, it can be presumed that there were no surprises nor occasions where some individual on either side was not thoroughly apprised of the feelings and positions surrounding the

case. In fact, the Union membership actually conducted two membership votes on contract proposals submitted to it by its bargaining committee.

Thus, many of the economic and non-economic issues, including wages, increased clothing allowance and insurance, have been resolved. It is the two remaining issues, that of the addition of two floating holidays and the creation of a fixed rather than a rotating work shift for the Employer's telecommunicators (sometimes called "dispatchers") which is before the arbitrator for resolution and decision.

In this connection, the Union requests that the new contract should provide two additional paid floating holidays for its employees after they have completed one year of employment. For a basis supporting its request, the Union cites the holiday benefits given both to employees from other counties (external comparables) and employees working for other departments within the Employer's force (internal comparables). While it concedes that comparable counties provide almost the same number of holidays to their employees, that fact does not take vacation days into consideration. To make a meaningful comparison, the Union argues, consideration should also include the vacation days of the external comparables. The Union reasons that the two benefits, holidays and vacations, should be considered together because both provide paid time off. An extra vacation day is nearly identical in terms of its cost to an employer and its value to an employee. The Union then cites other counties for external comparables

where the employer grants at least two more days of annual vacation to its employees than does the instant Employer.

To this contention, the Employer argues that at one juncture during the negotiation sessions the Union actually made a vacation demand which it later abandoned. To now attempt to tie in a last minute demand for additional holidays with additional vacation time only emphasizes the weakness of the Union's case, the Employer argues. This is because there is no support from either external or internal comparables. If the Union was so concerned with the level of its vacation benefits, the Employer concludes, it would not have dropped its vacation proposal in the first place. Instead, the Employer declares, it now comes in, lamentably late, with a last-minute proposal for two additional floating holidays.

On the question of a straight shift for the telecommunicators, the Union declares that an overwhelming majority of the employees have expressed a desire to work on non-rotating shifts. Further, it argues, the proposal does not create overtime, so its implementation would cost the county nothing. In fact, the Union points out, all of the external counties comparable to the Employer's county have agreed to operate with permanent work schedules. The reason for this, points out the Union, is that most telecommunicators are female, 15 out of 21 in the Employer's county. And it's especially difficult for women to balance work and family responsibilities with constantly changing work hours.

The Employer, on the other hand, argues that the Union's demand for a trial period of fixed shifts should not be awarded by an arbitrator but should come as a result of voluntary collective bargaining between the parties themselves. Furthermore, it asserts, the Union's shift proposal is so vague and lacking in detail that it is sure to lead to costly, time-consuming litigation down the road. This is evidenced, the Employer points out, by the wide divergence of opinion on the subject amongst the telecommunicators themselves. In fact, four telecommunicators quit their jobs last year alone over the question of a fixed shift.

But the most important reason for being against a new shift system is there would not be enough time to properly evaluate the proposed change due to the long delay caused by the Union's failure twice to ratify the recommendations of its own bargaining committee.

The Employer asserts that after the Union caused long delays, it upped the ante significantly each time without offering any concessions in return. The Employer points out that Wisconsin arbitrators over the years have generally held when one side wishes to deviate from the terms of the previous collective bargaining agreement, the proponent of that change must fully justify its position. If it cannot do so, an adequate *quid pro quo* must be offered to balance the change. The Union should not be allowed to gain through arbitration that which it has been unable to gain through collective bargaining, the Employer

concludes.

DISCUSSION

Initially, the Employer granted the Union's request to change the shift arrangements so the telecommunicators would be working on a permanent work schedule. It did so reluctantly, however, because the change would result in the junior, least-experienced dispatchers all working the 3:00 p.m. to 11:00 p.m. shift. Nevertheless, after the arrival on the scene of the State Mediator, the Employer finally agreed to institute a permanent work shift on an experimental basis. The Employer reluctantly agreed but only if it could try out two different types of permanent work shifts, each to be of a year's duration. It should be noted, however, that the Union's demand was not made during the lengthy bargaining period between the two parties. It was only after the State Mediator arrived on the scene that this Union demand was inserted in the case.

Despite the dalliance of the Union and the questionable bargaining tactics it used in raising a new issue late in the bargaining, the Employer finally agreed to experiment with two different methods of shift assignments for telecommunicators. It did so reluctantly, however, because the demanw as made so late in the negotiations, the Employer thought it was unfair. But, in the interest of reaching an overall settlement, the Employer gave in. Then, after the first rejection by its membership, the Union once fagain made an entirely new demand asking for two additional floating holidays.

After months of bargaining with lengthy discussions and colloquy back and forth, the Union for the first time makes a demand which was never even presented to the Employer's bargaining team.

This observer must agree with the Employer that such a tactic is improper and unreasonable in the realm of collective bargaining.

That observation aside, this observer must still follow the edicts of the statute which delineates not only the duties of arbitrators in Wisconsin interest arbitration cases but the factors to consider and even the specific weight to attach to each factor. Many of these statutory criteria are appropriate to the instant case, others have no applicability.

One of the three factors to be considered which is to be given weight by an interest arbitrator is comparisons of the Union employee's wages, hours and working conditions with other employees performing similar services for public employers in comparable communities.

Also comparisons with private employers are to be made. Since the hearing unearthed no competent evidence regarding wages, hours and working conditions in the private sector, this observer can concentrate on comparables with other public employees both within and without the Employer's county.

Strong reason exists for using the same class of employees within the Employer's county for comparison. County employees are sure to compare their lot with that of other employees working for

the Employer. Unions have found, for instance, that the imposition of different wages and benefits for workers doing their work for the same employer causes trouble both for employers and union members. Elkouri and Elkouri, *How Arbitration Works*, 4th ed., p. 808.

To grant the Union's deman at this time would almost be impossible, since neither the Union's demand nor the existing contract provide for a cash payment for unused floating holidays. To allow all employees their four floating holidays in the waning months of the year 2000 would leave most of the daily duties unmet. Worse yet, it could mean the floating holidays for the year 2000 would be lost entirely if all 109 employees couldn't squeeze them in, given the constant daily responsibilities of their jobs. This observer, therefore, agrees that administration of the floating holidays would be difficult, if not impossible.

Furthermore, when there is more than one bargaining unit, in the absence of compelling circumstances, late settlements above a pattern established earlier penalize the employees who settled through voluntary negotiations. Here, all of the other bargaining units have settled their contracts. Since 106 of the 109 employees in the instant bargaining unit work the same hourly schedule as the ones which have settled, they will receive the same number of holidays that will be granted to the four AFSCME bargaining units and to nearly two thirds of the employees in the Deputy Sheriff's Association. Clearly, the internal comparables in the Employer's work force provide no support for the Union's

demand for two additional floating holidays.

Since the list of comparable counties provided by the Union (including the two counties which the Employer contends are not comparable) do not provide its employees the 12 or 14 holidays requested by the Union, the external comparables only average about one-half day more in holiday benefits than the Employer's. That is not enough basis on which to grant the Union's demand.

It is important to note that the Employer has shown it is agreeable to establish a fixed work shift for its telecommunicators. In fact, fixed shifts were included in the Employer's two tentative settlement offers. The Employer conceded this fact when it declared, "The only real issue is the two additional floating holidays," at the conclusion of its initial brief. The only reason the Employer opposed the Union proposal in these proceedings was to clarify the language concerning implementation of the plan. By selecting the Employer's final offer, the delay will enable the parties to specifically assign duties and avoid litigation over who is to go where and when. Implementation can be made in a more relaxed atmosphere so the parties may have the opportunity to observe and intelligently select a plan to lessen the fears on both sides.

DECISION

Because the other internal employees of the Employer have already settled their contracts with the Employer and since the record jas produced no compelling reason to grant the Union's request for two more floating holidays and because the Union

membership sent its bargaining committee back to the bargaining table with an entirely new demand after protracted bargaining in which that demand was never before mentioned and since the statutory criteria is more in accord overall with the Employer's final offer than is the Union's, the Arbitrator is constrained to select the Employer's final offer as the one most reasonable.

AWARD

On the evidence presented at the hearing and on the briefs and reply briefs submitted to the arbitrator, and based on the criteria contained in Section 111.77, Wis. Stats., the final offer of the Employer is selected as the more reasonable and the Arbitrator directs that its terms be incorporated into the 1999-2000 collective bargaining agreement in its entirety.

Dated this 29th day of July, 2000.

Milo G. Flaten, Arbitrator