

**STATE OF WISCONSIN  
BEFORE THE ARBITRATOR**

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**In the Matter of Arbitration**

**OPINION AND AWARD**

**Between**

**ONEIDA COUNTY  
(SHERIFF'S DEPARTMENT)**

**Case 132  
No. 56323  
MIA-2205**

**And**

**Decision No. 29472-A**

**WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION, LEER DIVISION**

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**APPEARANCES:**

**On the behalf of the County:** Cary L. Jackson, Personnel Director -  
Oneida County.

**On the behalf of the Union:** Richard T. Little, Bargaining Consultant -  
Law Enforcement Relations Division of the Wisconsin Professional Police  
Association.

**1. BACKGROUND**

After being unsuccessful in their attempts to negotiate a successor to the Parties' collective bargaining agreement convening the years 1995-97, the Union filed a petition on June 30, 1998, requesting that the Wisconsin Employment Relations Commission to initiate final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act, with regard to the impasse existing between the Parties with respect to wages, hours, and conditions of employment of law enforcement personnel. On August 20, 1998, a member of the Commission's staff conducted an informal investigation which reflected that the Parties were at impasse. Thereafter, the investigator advised the Commission that the Parties were at impasse on the existing issues as outlined in their final offers. On October 7, 1998, the investigator transmitted those offers along with the advice to the Commission and closed the investigation on that basis.

On October 14, 1998, the WERC ordered the Parties to select an arbitrator from a list provided by the Commission. The undersigned was selected by the Parties, and his appointment

was ordered by WERC on October 26, 1998. A hearing was scheduled and held on February 2, 1999. Post-hearing briefs and reply briefs were filed. The last brief was received April 13, 1999.

## II. FINAL OFFERS AND ISSUES

The issues in dispute are duration of the contract, the amount of the wage increase over the proposed term, a proposal by the Employer to restructure the wage schedule, and a proposal by the Union to adjust the Civilian Dispatcher classification effective October 1, 1998.

Concerning duration, the Union proposed a one-year contract covering 1998. Concerning wages, they propose the wage rates on the existing schedule be increased 3% across the board effective December 27, 1997. On top of the 3% wage increase, a scale adjustment is proposed for the Civilian Dispatcher effective October 1, 1998, as follows:

<u>Start</u>	<u>First Year</u>	<u>Second Year</u>	<u>Third Year</u>
\$11.028	\$11.409	\$11.79	\$12.171

The Employer proposed a contract duration of two years (1998 and 1999). For the classifications of Detective Sergeant, Sergeant, and Patrolman; the County proposes a 3.17% (or 3.18% increase depending on rounding) increase for these same three classifications.

For the Civilian Dispatcher position, the Employer, like the Union, proposes a greater-than-typical increase for the Dispatcher Classification. This classification in 1998 would be rated as follows:

<u>Start</u>	<u>First Year</u>	<u>Second Year</u>	<u>Third Year</u>
\$10.08	\$10.58	\$11.08	\$11.58

For the classifications of Jailer/Correction Officer, Clerk/Matron, and Secretary, the Employer proposes a wage structure change. To summarize, in the first year they propose that the starting, first-year, and second-year rates be rolled back and that the top rates (third year) be given a lesser increase than the 3.0% granted the other classifications. The following reflects these per rate reductions (in dollars and percents) and the amount of the increase at the top step:

<u>Classification</u>	<u>Start</u>	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>	<u>4th Year</u>
Clerk/Matron	(\$1.87) -15.66%	(\$1.35) -10.74%	(\$0.52) -4.06%	\$0.26 +2.01%	

Jailer	(\$1.87) -15.66%	(\$1.35) -10.74%	(\$0.52) -4.06%	\$0.26 +2.00%
Secretary	(\$0.67) -6.56%			(\$0.73) 0.00%

For 1999 the Employer proposes varying increases for these classifications. They are as follows:

<u>Classification</u>	<u>Start</u>	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>	<u>4th Year</u>
Detective	\$0.51	\$0.52	\$0.53		
Sergeant	3.17%	3.17%	3.18%		
Sergeant	\$0.51	\$0.51	\$0.52		
	3.17%	3.18%	3.17%		
Patrolman	\$0.43	\$0.46	\$0.47	\$0.48	\$0.49
	3.17%	3.18%	3.17%	3.17%	3.17%
Clerk/Matron	\$0.32	\$0.30	\$0.28	\$0.26	
	3.17%	2.68%	2.28%	1.94%	
Jailer	\$0.32	\$0.30	\$0.28	\$0.26	
	3.17%	2.68%	2.28%	1.95%	
Civilian\$0.32	\$0.34	\$0.35	\$0.37		
Dispatcher	3.17%	3.18%	3.17%	3.17%	
Secretary	\$0.28	\$0.26	\$0.24	\$0.22	
	2.93%	2.59%	2.29%	2.01%	

### **III. RELEVANT STATUTORY CRITERIA**

111.77(6) In reaching a decision the arbitrator shall give weight to the following factors.

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding the wages, hours and

conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.
  2. In private employment in comparable communities.
- (e) The average consumer price for goods and services, commonly known as the cost of living.
  - (f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused times, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
  - (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
  - (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

#### **IV. ARGUMENTS OF THE PARTIES (SUMMARY)**

##### **A. The Union**

It is the position of the Union that its offer is more reasonable. They analyze the offers criteria by criteria. Regarding the first criteria (“the lawful authority of the Employer”), the Union notes no argument has been raised by either Party that the Employer does not have the authority to lawfully meet the Association’s final offer. Additionally, neither the Employer’s exhibits nor testimony provided any indication that any legal deficiencies exist. Accordingly, they submit this criterion should not affect the Arbitrator’s decision. Similarly they do not believe the second criterion (“stipulations”) should have any impact because the record and discussions at hearing clearly indicate that the agreed-upon amendments to the various sections of the agreement are more a matter of housekeeping than substantive contractual improvements.

The next criteria addressed by the Union is “the interest and welfare of the public.” The Association asserts that its final offer best serves the citizens of Oneida County by recognizing the need to maintain the morale and health of its

law enforcement offers and thereby retaining the best and most-qualified officers.

In summary, police work is an awesome responsibility for which the maintenance of a high level of morale is imperative. The Association asserts that acceptance of the Employer offer will have the detrimental effect of creating a wage scale that must be considered as confusing, unwarranted, and finally, mathematically incorrect. Moreover, the offer gains no support from internal or external comparisons, nor can anything in the Employer offer be construed as a valid quid pro quo for this change. Therefore, the Association's final offer which provides fair wage increase to all members of the bargaining unit for 1998 must be deemed more reasonable.

The next statutory criteria is the Employer's "financial ability" to meet the cost of the Union offer. In this connection it is noted that the financial ability of the Employer to meet the fiscal impact of the contract has not been brought forth by the Parties as an issue. Additionally, at no time did the Employer allege that it does not have the economic resources to fund either of the final offers submitted by the Parties. Thus, inability to pay is not a factor and should not be considered by the Arbitrator.

The next criteria (the comparison of wages and working conditions) draws much attention from the Union. First, it believes it has selected the most appropriate group of law enforcement comparables. In addition to the Employer's group, the Union offered comparisons to Marinette, Oconto, Shawano, and Taylor counties. These should be included, it is asserted, because they are substantially equal in the following areas: population, geographic proximity, mean income of employed persons, overall municipal budget, total complement of relevant department personnel, and wages and fringe benefits paid such personnel. It is also appropriate to include these counties because many of the contiguous counties have not reached contractual agreements for 1999 (1998 in some cases) thereby limiting the relevant value of the comparisons.

Against this comparable group, it is argued that the Association's final offer is supported by the comparables. The differences relate to the appropriate wage scale for the classification of Civilian Dispatcher, the appropriate wage scale for the classification of Corrections Officer, the appropriate wage scale for the classification of Secretary, the duration of the successor agreement, and package costs.

Concerning Civilian Dispatcher, it is suggested that the Parties are in apparent agreement that the current scale is in need of adjustment, as each has proposed additional increases over and above the general across-the-board wage increases. Although the Association offer is greater, it delays implementation to October 1, 1998, thereby reducing overall cost for 1998. In support of its offer, the Association points to: (1) the asserted fact that the job duties and responsibilities of this classification have changed dramatically since 1999, (2) the asserted fact there has been high turnover in this position, and (3) the fact the exhibits show that the telecommunication employees in Oneida County are paid well below their counterparts in other counties. They further note that the Association proposal will only have the effect of bringing base wages for this classification near the average of the comparables for 1998.

Regarding Corrections Officers, they highlight the fact that the Employer's offer reduces the pay scale for all but the employees at the top step. Under the Employer offer, those individuals who are currently at the top of the classification scale can expect a 2% wage increase in each of the two years. There is no comparative evidence in the record that supports such a proposal. Five employees will experience wage cuts ranging from -4.06% to -15.66%. Nothing in the Employer's exhibits justifies this change. The only alleged justification offered by the County is the opening of the new jail; however, employees shouldn't be penalized by this fact, and the Employer offers nothing that may remotely be considered a quid pro quo.

Regarding the Secretary position, the Association, like with Correction Officers, notes that its 3% offer is also supported by the general increases provided to the comparable departments. As for the Employer's offer, once again its offer dramatically reduces the current pay scale without any "logical basis." This is in spite of evidence showing there is any problem with the current wage scale and again, the Employer's offer is without a quid pro quo.

The next issue addressed by the Union is the duration of the agreement. They state that they understand that interest arbitrators are reluctant to fashion an award that will cause the Parties to immediately return to the bargaining table. The Association understands that the new jail facility creates an unusual circumstance under which the Parties may be faced with difficult negotiations. However, faced with the extremely unreasonable position of the Employer, no other course is available. Thus, duration should not be an issue, in their opinion.

An analysis of the package cost also supports the Association's final offer. The Employer, the Association claims, is using an invalid costing method that tries to hide the fact that it has a baseless offer. As for internal comparisons, it is maintained that the internal comparables submitted by the Employer should not be considered primary comparables in these proceedings. Yet even the internal comparisons lend support to the Association offer because law enforcement personnel are unique.

The next criteria addressed is "the cost of living." The best measure of the weight to be given the cost of living is the cost of comparable settlements. These comparisons favor the Association as their offer closely conforms with the voluntary settlements with a generated cost factor, including roll-ups, of 2.74% under the Association's costing methods for 1998. Even the CPI favors the Association's offer.

The last two criteria addressed by the Association are "overall compensation" and "changes in circumstances." With respect to the first of these, it is argued that the benefit levels of the employees in the Oneida County Sheriff's Department compare favorably to their law enforcement counterparts with various degrees of accomplishment; however, no benefit elevates the members of the Association to any position giving cause to find its final offer as unreasonable. With respect to the last criteria, the Association notes the County claims it made a mathematical error in its final offer. It is the Association's position that while the Parties may have some latitude in making corrections to exhibits offered during the course of these types of proceedings, the same cannot be said for the certified final offers. The Parties cannot, and should not, be held responsible for divining the "intent" of the other's offer. If allowed, the "pandora's box" condoning the Parties to characterize any final offer as a mistake, is opened. The legislative intent under Sec. 111.77(4)(b) makes no allowance for such changes.

## **B. The County**

The Employer considers the most important issue before the Arbitrator to be restructuring the hourly wage schedule. The amount of the wage increase is secondary in importance because both final offers result in increases to incumbents that are "real life" in light of the consumer price index.

Regarding the issue of which employers should be considered “comparable,” the Employer notes this has been previously decided. Only one set of comparables has been used. They include Forest, Langlade, Lincoln, Price, and Vilas counties, along with the City of Rhineland. These comparables were used by both Parties in each of the last three arbitrations. By trying to include Oconto, Shawano, Taylor, and Marinette, the District, accuses the Association, of trying to “cherry pick.” These four counties are too far to be considered in the same labor market. Moreover, Oconto and Shawano are immediately contiguous to large, industrialized counties.

The County, like the Union, reviews the offers criteria by criteria. Of the criteria with little bearing on the dispute are: (1) lawful authority; (2) stipulations; (3) interest, welfare, and ability to pay; (4) private employment; and (5) overall compensation.

One of the issues of secondary importance is length of contract. However, on this point the County believes its two-year offer is more reasonable than the Union’s one-year offer. First, it is noted that all of Oneida County’s bargaining units are settled through the year 2000. Two of the units, Nurses and Highways, are settled through the year 2001. Lincoln County’s Jailers and Dispatchers are settled through the year 1999. Forest, Langlade, Lincoln, Price, and Vilas are settled through 1998. Moreover, the historical data shows a pattern of multi-year agreements. Multi-year agreements give increases in a more timely manner and reduced the stress produced by more frequent bargaining and impasses.

Because the County’s and Association’s final offers are identical for the classifications of Detective Sergeant, Sergeant, and Patrol Officer, the County believes the primary issue in this arbitration is the hourly wage structure for the classifications of Correction Officer, Secretary, and Civilian Dispatcher. Concerning the classification of Clerk/Matron, it is noted, it is paid at the rate of a Correction Officer but does not perform any of the duties of a Correction Officer. The only incumbent in the position was grandfathered in the position when the Secretary positions were created. As testified at hearing, the incumbent Clerk/Matron performs only secretarial duties.

The County reviews each of these classifications separately. First, with respect to Correction Officers, they draw attention to the fact the maximum rate in Oneida County far exceeded the comparable average. For instance, in 1997 the County’s maximum average hourly wage rate (\$13.12) was 16.91% above the



average of the comparables (\$11.22). Both offers for 1998 keep Oneida ranked No. 1. The Association has failed to provide the Arbitrator any logical reason why this disparity should be allowed to continue. At the maximum hourly wage rate, the difference between the County's offer and the Association's offer is very small, only \$.13 or .9%. Given the disparity between the average and the two offers, clearly the County's offer is more reasonable.

They also address the disparity between Oneida County's starting Correction Officer hourly wage rate and the average, which is even greater. In 1996 the starting hourly rate for an Oneida County Correction Officer (\$11.52) was \$2.24 above the average (\$9.28) or 19.43% greater than the average. In 1997 the starting wage rate for an Oneida County Correction Officer was \$11.95 while the average was \$9.71, resulting in a disparity of 18.76%. In 1998, assuming the highest possible rates in the comparables, the County's offer is .05% below the average. The Association's offer becomes 21.4% above the average.

The County also asserts that it has structured its changes so as to eliminate any negative impact on incumbent Correction Officers. All incumbent employees would receive at least a 2% pay increase the first day of the new contract. A 2% hourly wage increase on top of a wage scale that is already 12% to 13.9% above the average is a fair and reasonable increase. It is also argued that even though a quid pro quo is not necessary, the County offers one. The County offers to increase the Civilian Dispatcher hourly wage schedule by 8.52% at the top and by 5.79% at the bottom in 1998.

Concerning Secretaries, the rates in Oneida County are also above average. In 1997 the County's maximum average hourly wage rate (\$10.76) was 8.6% above the average (\$9.91) of the comparables, and again, the County was first in the rankings. Projecting into 1998 and assuming a 3% increase in two unsettled comparables, the average becomes \$10.21, with the County's proposal of \$10.97 becoming 7.4% above the average and the Association's proposal of \$11.08 becoming 8.4% above the average.

The disparity is even more dramatic at the starting rate. In 1997 the Oneida County's starting hourly wage rate for a Secretary was \$10.22 while the average was \$8.87. This was a difference of \$1.35 or 15.27% higher than the average. Projecting into 1998 on the basis of a 3% increase in the unsettled comparables, the average becomes \$9.14 with the County's proposal of \$9.55

becoming 4.5% above the average and the Association's proposal of \$10.527 becoming 15.18% above the average. Again it is maintained that the County has structured its proposed changes to eliminate any negative impact on incumbent Secretaries. All incumbent Secretaries would receive at least a 2% pay increase the first day of the new contract.

In connection with Civilian Dispatchers, the County reviews data (not including Price County which doesn't have a Civilian Dispatcher) which shows the 1997 top rate of pay for Oneida County Dispatchers is \$.29 or -2.63% below the average while the 1997 start rate is \$.19 or -1.91% below the average. This does not justify the catch-up proposed by the Association, but the greater-than-average increases proposed by the County are offered as a quid pro quo. The County's offer would take the top rate from \$.29 below the average to \$.31 above the average in 1998, or from fourth place to second. Likewise, the County's offer would take the hire rate from \$.19 below the average to \$.07 above the average in 1998, or from third place to second. The Association's offer is unreasonable. The Association's proposal would increase the starting rate by 13.5% and jumps the County to the top of the rankings. At the top end, the Association's proposal would increase the top wage rate by 14.06%. The Association offers no quid pro quo for this drastic increase. Moreover, employee turnover is not a justification because the evidence shows this was the result of poor performance, etc., and not due to wages. The evidence shows the County has an abundance of applicants for its job vacancies.

Regarding the cost-of-living factor, the Employer points out that the CPI for 1998 was 1.2%. The County offer is clearly preferable in this regard.

The County does address the criteria that directs the Arbitrator to consider "changes in any of the foregoing circumstances during the pendency of the arbitration proceedings." Specifically, the County Board of Supervisors has created 17 new positions in the classifications in dispute in this arbitration. Fourteen new Correction Officer positions, two Dispatcher positions, and one Secretary position have been approved with an effective date of June 1, 1999. It is for this reason that it is imperative that the wage structure for the Correction Officer and Secretary classifications be brought into competitive balance before new employees are hired.

Last, the Employer addresses a typographical error in the final offer. The hourly rates listed in their offer are correct, but the annual rate was incorrectly

calculated for the 1998 classification of Correction Officer and Civilian Dispatcher and only for the third-year step. Clearly, because the employees are hourly rated and because the Parties agree the stated hourly rate is correct, it should prevail. Thus, the County requests the Arbitrator to issue a decision on the merits of the Parties' final offer and to give no consideration to the typographical error.

## **V. OPINION AND DISCUSSION**

The Arbitrator prefers the Employer's offer: (1) because it is two years in duration and covers the current year, (2) because it moderates abnormally high starting wage rates in the Secretary and Correction Officer classifications to closer to average levels, (3) because it boosts the Dispatcher rates, and (4) because having market-based starting wage rates established in 1999 is critically important because of the significant expansion of positions at the jail effective June 1, 1999. As noted in the record, 14 new Correction Officers, 2 Dispatchers, and 1 Secretary will be hired.

There can be no doubt that while it is only one factor, comparability drives most interest arbitration cases. This case is no different except it shows that comparability is a two-edge sword. For instance, the Association justifies its greater-than-typical Dispatcher's proposal on the basis of market comparability. The Arbitrator has no debate with their analytical approach. The framers of the statute in their wisdom established comparability as one of the criteria because it is an extremely important and extremely useful indicia of appropriate wage levels. Indeed, it is commonly used in day-to-day life. If a dentist, doctor, lawyer, or sawyer moves to Rhinelander to establish a business, they decide to charge for their services in large part based on a comparison of what others providing the same service charge.

The Arbitrator, while he agrees with the Association that comparability is an important factor, he must say that this principal applies with equal force to all classifications, not just Dispatchers. When looking at the wage rates for Correction Officers and Secretaries in the appropriate comparable group, the evidence is compelling that some wage moderation is appropriate, especially at the starting rates.<sup>1</sup> Wage differentials in the neighborhood of 15% warrant

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<sup>1</sup>The appropriate comparable group is Vilas, Price, Forest, Lincoln, Langlade, and City of

attention whether positive or negative. The Arbitrator, while agreeing wage moderation is appropriate under these circumstances, makes no finding as to the future or the Employer's argument that this is just the beginning of a process.

The Employer offer is preferred because it does provide moderation and because it does it now. It no doubt would be more difficult to hire employees in 1999 if the Association's offer were accepted because 1999 rates would have to be bargained and the potential for delay in that process is high. Indeed, the Parties have been without a contract and current employees have been without a raise since the end of 1997. It is also important that the moderation be in place now because of the hirings for the new jail. If the Union's proposal for starting rates for 1998 was accepted, the new employees would have to be hired at those rates pending negotiations for 1999, and it would be nearly impossible to roll back starting and first-year rates once employees were in place at the higher rates. Strong equity concerns are established when a rate reduction is imposed. The time to do it is now before employees are hired, not after. In this regard, it is noted that there are five incumbent Corrections Officers employed at steps less than the maximum. However, the Employer's proposal does not involve any reduction in their present earnings. Due to their placements under the Employer's offer, they all experience an increase in their wage rates.

Last, in awarding for the County, the Arbitrator does so on the basis of the hourly figures not only in their wage schedule but on their placement sheets. Any erroneous calculation of yearly figures is plainly immaterial.

**AWARD**

The final offer of the Employer is awarded.

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Gil Vernon, Arbitrator

Dated this 26 day of May, 1999.