

BEFORE THE ARBITRATOR

In the Matter of the Petition of:

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

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

VERNON COUNTY

Case 109 No. 56827
MIA-2212

Dec. No. 29579-A

Heard: 7/13/99

Record Closed: 8/23/99

Award Issued: 10/22/99

Sherwood Malamud
Arbitrator

APPEARANCES:

Richard T. Little, Bargaining Consultant, WPPA/LEER Division, 9730
W. Bluemound Rd., Wauwatosa WI 53226, appearing on behalf of
the petitioning Union.

Klos, Flynn & Papenfuss, Chartered, Attorneys at Law, by
Jerome J. Klos, 318 Main St., P. O. Box 487, La Crosse, WI
54602-0487, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

Vernon County Professional Police Association, WPPA/LEER Division, hereinafter the Union, and Vernon County Sheriff's Department, hereinafter the County or the Employer, reached an impasse in their negotiations for a successor to the 1997-1998 Collective Bargaining Agreement. The parties selected and on April 22, 1999, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to determine this dispute pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act. Hearing in the matter was held on July 13, 1999, at the Vernon County Courthouse in Viroqua, WI. Post-hearing briefs and reply briefs were exchanged through the Arbitrator and the record in the matter was closed on August 23, 1999. This Award is issued pursuant to Sec. 111.77(4)(b) form 2 in that:

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

SUMMARY OF THE ISSUES IN DISPUTE

Introduction

On some of the matters which the parties include in their final offers, they agree, and there is no difference between them on those issues. The matters not in dispute, but included in the parties' final offers are: **duration**-2 years 1/1/99 through 12/31/2000; **wages**-3% ATB in each of the two years of the Agreement; **night shift premium**- 15¢/hour for second shift and 20¢/hour for third shift.

The issues in dispute are:

1. Sick Leave

In 1999, the first year of the Agreement, both the Union and the County propose to retain the provision placed in the predecessor agreement as the result of an interest arbitration award: 112 day cap on the accumulation of sick days, and upon retirement, the conversion of 25% of the days accumulated to be used to pay for retiree health insurance.

In 2000, the second year of the Agreement, the Union proposes to increase the sick leave accumulation to 120 days and increase the conversion formula, upon retirement from 25% to 50%, to pay for health insurance under the County group health plan.

The County proposes to maintain the status quo.

2. Holidays

- A.** The County proposes to rename the holiday identified as Good Friday to the Friday
- B.** Both the County and the Union propose to increase the number of holidays from 8 to 9 by adding Veterans day as an additional holiday.
- C.** The Union proposes that employees may request to use earned holidays for compensatory time off.

The Union's proposal in C. is the matter in dispute. The County rejects the Union's proposal. It proposes to maintain the status quo.

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 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
- (f) The overall compensation presently received by the employees, including 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 fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

BACKGROUND

Vernon County is located in the southwest quadrant of the State. The Mississippi establishes its western border. La Crosse and Monroe counties border Vernon to the north. Juneau and Sauk are contiguous to Vernon on its eastern border. Richland lies to the east and south, and Crawford completes the counties contiguous to Vernon. The population of Vernon County is approximately 26,000. It covers an area of 795 square miles.

In their negotiations for a successor to the 1997-1998 Collective Bargaining Agreement, the parties resolved the wage and shift premium issues which are readily subject to resolution by the application of the above statutory criteria.

What remains are issues not easily costed and which are not subject to analysis under all of the statutory criteria. Nonetheless, both the Union and the County submitted evidence and argument applying the comparability criterion to the salary levels of the Vernon County Deputy Sheriffs, with and without longevity, as contrasted to the salary levels and percentage increases paid by comparable Employers to their deputy sheriffs. The County argues that the criterion, the interest and welfare of the public, supports the adoption of its offer for the following reasons. The Employer paints a picture of a County with limited resources based, in part, on data from 1996. The number, size and land in farms in Vernon County, in milk production per cow and per capita income establishes the limited resources available in Vernon, in sharp contrast to the comparables, to support its funding of governmental activities. In 1996 tax delinquencies soared. The tax effort of the Vernon County taxpayer stands out, because Vernon County is second only to Richland County in full value per \$1000 of assessed value taxed to fund governmental activities. Only Ashland, Pepin and Milwaukee counties of Wisconsin's 72 counties maintain an average full value tax rate per \$1000 on land that is higher than Vernon County.

The Employer attempts to convince the Arbitrator that it has provided, in its offer, every increase in economic benefit that it can afford. It makes this argument without mounting an inability to pay argument. Although the sick leave issue has an economic cost, that cost will not be assumed during the term of the successor Agreement. The Union's demand to take time off rather than pay for a holiday, has the potential of reducing the County's personnel costs. Given the nature of the matters that remain at issue, the Arbitrator concludes that the exhibits that address the County's relative tax base and effort, generally support the Employer's position to deny the Union's offer. However, that evidence is tangential to the determination of the specific matters at issue, here.

DISCUSSION

____ At the outset it is worth noting, that the following statutory criteria do not serve to distinguish between the final offers of the parties: (a) The lawful authority of the employer; (b) Stipulations of the parties; (c) The interests and welfare of the public; (e) The cost of living; and (g) Changes in the foregoing. The parties include references to the above criteria in their arguments. For example, the Union argues that its proposal is supported by the interests and welfare of the public criterion, in that it would enhance the

morale of the work force. This claim is made in the absence of any testimony from deputies concerning their morale or any studies that reflect that increasing sick leave accumulations from 112 to 120 days would have any impact on deputy morale. In the analysis that follows, the Arbitrator refers to the pertinent arguments of the parties as he addresses the two remaining points of disagreement between the parties, sick leave accumulation and payout and the permissibility of a deputy's request for time off instead of pay for earned holidays.

Comparables

Arbitrators Dichter, in his 1997 Interest Award concerning the Employer's Highway Department employees, and Arbitrator Michelstetter in his 1997 Award involving this Deputy Sheriffs unit which established the terms and conditions for the 1997-1998 expired Agreement, reference the same group of eight counties as comparables. The group of comparables are: Crawford, Iowa, Jackson, Juneau, Monroe, Richland, Sauk and Trempeleau counties. Both Sauk and Monroe are larger in population and tax base than Vernon. However, there is no evidence in this record to suggest altering this group of comparables. The Arbitrator relies on this comparability group in the Award below.

In Exhibits 23(a) thru (i), the Employer presents results of a survey it conducted among counties included in the group of comparables, as well as, counties not included in the comparability group. Due to the heavy reliance on non-comparable employers in the survey, the Arbitrator accords the survey no weight in the analysis that follows.

Sick Leave Accumulation and Percentage Payout on Retirement

All of the comparables, including Vernon County, provide for the accumulation of sick leave at the rate of one day per month. The cap on sick leave accumulation among the comparables falls in a range between 90 and 130 days. Vernon County's cap of 112 days falls in the middle of that range. There is no evidence in this record that the cap of 112 days has caused any employee any hardship or had any negative impact on bargaining unit employees. There is no evidence to suggest that any deputy is at or near the cap that may justify increasing the cap by 2/3 of one year's accumulation to 120 days.

The thrust of the Union's demand is its proposal to increase the payout on retirement from 25% to 50%. Association Exhibit 18 establishes that at the maximum payout, Vernon County's 28 days is the lowest among the comparables. The Union's proposal to increase the cap on the number of sick days that may be accumulated with the increase in the percentage of payout

would increase the payout to 60 days. If the Union's proposal were adopted, three of the eight comparables, Monroe with 32.5, Jackson with 45 and Crawford with 50 days provide fewer days for the payout benefit on retirement.

The Union's offer would place sick leave payout within the middle of the group of comparables. The external comparables provide some support for the adoption of the Union proposal.

The Employer established that with the exception of some classification changes, the Employer settled with its other three units at 3%. The Union seeks to obtain additional benefits and break the pattern of settlement through arbitration. The Employer attempts to limit the matters that separate units with varying interests may bargain over. Were arbitrators to deny proposals unique to a particular unit on the ground that other units did not change their agreements other than to increase wages, it would undermine the right of a unit to bargain. The perspective of the Courthouse or Highway units concerning sick leave payout differs from that of Sheriff's Deputies. The Deputies have a lower retirement age. Sick leave payout reduces the number of years an employee may have to fund health insurance premiums from his own resources until medicare kicks in. To deny the Deputy Sheriff unit the opportunity to bargain over an issue in which they possess a unique perspective simply because other bargaining units of employees did not raise the issue in their negotiations, deprives the Deputies of the opportunity to bargain. Accordingly, the internal pattern of settlement has no bearing on the determination of the sick leave issue.

In addition to the sick leave accumulation and payout data described above, the Union presented data relative to hours of work, longevity, health insurance, uniform allowance, vacations and holidays which serve as a basis for the application of the overall compensation criterion. Vacation accrues in the first and second years of employment in Vernon County at a pace similar to the other comparables. Vernon provides 18 days of vacation after eight years of service as do Sauk and Iowa counties. Vernon provides a maximum of 24 days vacation after 18 years of service, the longest period of service required from among the comparables to qualify for 24 days of vacation.

It is difficult to ascertain from Association Exhibit 22, how the 25% employee contribution towards health insurance compares to the comparables. The uniform allowance of \$400 falls in the middle of the amounts provided at this benefit which range among the comparables from \$300 to \$500.

The Deputy in Vernon County like the Deputy in Sauk and Richland work 2068 hours annually. The Deputies of Juneau and Crawford counties work 1946 annually. The Deputies of Monroe and Trempeleau counties work 2080 hours annually. The work year of the Vernon deputy falls in the middle of the number of hours worked by deputies in comparable counties.

It is the longevity benefit that places the Vernon County Deputy in the middle of the comparables in salary, i.e., base pay plus longevity, and enables the Vernon County deputy to increase his compensation over time. In Vernon County the top deputy increases by an additional 2% for each three years of additional service. After 15 years on this longevity schedule, a deputy receives 10% of his base rate in longevity. This compares with longevity payments that top out at 600/year in Richland or 4% after 20 years of service in Crawford, and 12% in Sauk County after 25+ years of service. The longevity benefit voluntarily agreed to by the Union and County through the Union's agreement to a wage freeze establishes an overall compensation package that is favorable to Vernon County. This criterion provides some support for the adoption of the County's position.

In the context of the overall compensation and cost of living criteria, the Arbitrator considers the Employer's argument concerning the costing of the Union's sick leave accumulation and payout proposal. The Employer costs the increase in the benefit as if twenty-eight sick days generated by the percentage increase to 50% plus the increase in sick days accumulated would all be paid out in the second year of the Agreement. As a result, the County projects a second year total package cost in excess of 20%. The Arbitrator rejects this approach. It bears no relation to the expenditures of the County. However, the Arbitrator rejects the Union's approach which suggests that there is no cost to the benefit. There is a cost. At some point in time, the Employer will have to pay the benefit.

Whether or not the Employer establishes a fund to meet the future costs of this benefit, it is possible to express those costs in present day terms. The Employer should be able to establish a rate of experience for sick leave usage and a rate of turnover of personnel. This will indicate the number of current employees who are likely to retire and how far in the future that will occur. It will also suggest the amount of sick leave the employee will have available for payout to contribute toward health insurance. The calculation should account for future inflation, using the current rate of inflation. This figure may be discounted at the rate of the current percentage increase, 3% in this case. Although there is insufficient data available to make this calculation in this case, should the parties believe that it may have a noticeable impact on future personnel costs, this method suggests a manner for attributing the costs of the benefit during the term of a particular contract.

The Arbitrator finds that the criterion, such other factors... is determinative of this issue. The Union attempts to change the status quo in a case in which the benefit under review was first placed in the parties' Agreement in the one that has just expired. There is no evidence of any problem with the language or its application. In essence, the Union wants to

improve the benefit. Arbitrator Michelstetter made the following trenchant observations about the Union's demand to include the payout provision in the 1997-1998 Agreement:

The Union's position is supported by virtually all of the external comparables. Jackson and Trempeleau counties do not have any similar benefit. These two comparables support the position of the Employer. The Employer's position is supported by all of the internal comparables. There really is no dispute that this Employer has had long-standing inflexible opposition to establishing any benefit using unused sick leave. The parties have routinely settled without it. I note that in the recent settlement, the parties successfully engaged in substantial quid pro quo bargaining to establish a unique longevity plan in exchange for a wage freeze.

There is substantial merit in the Union's position as to this proposal when viewed from the public interest criterion. This unit is different from other bargaining units in that sheriff's deputies have an earlier retirement age and do not have the availability of Medicare immediately available upon retirement. The public interest in this benefit is in making reasonable efforts to facilitate the retirement of sheriff's deputies when they reach retirement age and choose to retire. This is a particularly relatively small department with a high level of responsibility. The public benefits by having officers fully committed to their work. Further, the cost of the benefit in this unit is partially offset by the savings in the Employer will obtain when it hires replacements at the beginning of the salary schedule.

Nonetheless, the party seeking to establish a new benefit has to show that circumstances have changed such that there is a need for a new benefit and that its proposal is appropriate to fill the need. Alternatively, it must show that it has offered an equivalent qui pro quo for its offer. The Association has not offered a qui pro quo. Further, it has not shown that there has been a change in circumstances or that there is anyone who is likely to retire during the term of this agreement if this benefit is adopted. The Union has not met it (sic) burden here. Accordingly, the Employer's position adopted. Vernon County, Dec. No. 28984-A (Michelstetter, 6/97)

Nothing has changed. There may be some employees closer to retirement. There is no evidence to suggest that a retirement would occur during the term of this Agreement. The Union did not offer any qui pro quo to include its proposal in the expired Agreement. It offers none in this case. Arbitrator Michelstetter found for the Employer on this issue, but he selected the Union's final offer. Arbitrator Michelstetter's perceptive analysis is determinative of the Union's proposal, here. The demand to improve this benefit in the next agreement absent any need or any quid pro quo for the improvement merits strong arbitral rejection of the proposal.

Holidays

Nine holidays are celebrated in Vernon County. Only Iowa and Richland counties among the group of comparables do not permit the use of earned holidays for time off. Normally, holidays provide a break and time off from work. The portion of this proposal that is in dispute reads as follows:

Employees, at their option, may request to utilize earned holidays as compensatory time off. All remaining . . .

The Union proposal continues the payout of holidays, except for holidays taken as time off. The Union imposes no contractual requirement on the Employer to grant an employee's request for time off instead of pay. Comparability, overall compensation and such other factors are the criteria which serve to distinguish between the offers of the parties.

As noted above, the Vernon County Deputy Sheriffs have a vacation schedule that tops out at 24 days after 18 years, approximately, a third from the bottom in the amount of vacation received by Deputy Sheriffs. Six of the eight comparables permit the use of holidays in some form to permit deputies to take time off rather than cash. The comparability criterion, as does the overall compensation criterion, support the adoption of the Union's proposal. Deputy Sheriffs must work on some number of holidays. Vernon does not lead, but in fact follows the group of comparables as to the amount of vacation it provides to its deputies.

Just as the principal purpose of sick leave is to provide time off with pay to a sick employee, the primary purpose of a holiday is to provide additional time off, rather than pay, to employees during the work year. Here, the Employer does not permit the utilization of holidays to meet its primary purpose. Under, the such other factors criterion, the Employer position runs counter to the purpose of the holiday. The Employer insistence on pay only

twists the necessity of deputies working on some holidays, but in all probability not on all holidays, into a requirement that they receive time off for no holidays.

The Union's proposal does not require the Employer to grant an employee's request for time off. The proposal permits the Sheriff, without meeting any contractual standard, to grant an employee's request to use earned holidays to obtain some additional time off. For the reasons stated above, the Arbitrator concludes that the applicable statutory criteria provide strong support for the inclusion of the Union's Holiday proposal in the successor Agreement.

SELECTION OF THE FINAL OFFER

In the above discussion, the Arbitrator concludes that the statutory criteria provide strong support for the inclusion of the Employer's proposal to retain the status quo on sick leave accumulation and payout in the successor Agreement. The Arbitrator concludes, as well, that the statutory criteria provide strong support for the inclusion of the Union's Holiday proposal in the successor Agreement.

The outcome of this case turns on which, if any, proposal should be accorded greater weight. The Union's attempt to improve a benefit immediately after inclusion in the Agreement, without a showing of need or a quid pro quo for the demand, favors the Employer's position. However, the cost of the sick leave proposal is deferred, while the modest Union proposal to use earned Holidays to obtain additional time off rather than pay will actually save the Employer money. The Union's sick leave proposal has two components, an increase of the sick leave accumulation from 112 to 120 days and the doubling of the payout from 25% to 50%. The parties treat the sick leave proposal as the major issue in this dispute. Since the Arbitrator favored the Employer's position on that proposal, the Arbitrator selects its final offer for inclusion in the successor Agreement.

Based on the above discussion, the Arbitrator issues the following:

AWARD

Under the statutory criteria at Sec. 111.77(6), *Wis. Stats.*, and for the reasons discussed above, the Arbitrator selects the final offer of Vernon County, which together with the stipulations of the parties, are to be included in the Collective Bargaining Agreement between Vernon County and the Vernon County Professional Police Association, WPPA/LEER Division for calendar years 1999 and 2000.

Dated at Madison, Wisconsin, this 22nd day of October, 1999.

Arbitrator