

BEFORE THE ARBITRATOR

In the Matter of the
Interest Arbitration between

SHEBOYGAN COUNTY

And

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

Case 323 No. 58310
MIA-2295
Decision No. 29900-A

INTEREST ARBITRATION AWARD

Appearances:

Ms. Louella Conway, Personnel Director, on behalf of the County.

Mr. Thomas Bahr, Business Representative on behalf of WPPA/LEER.

The above-captioned parties, hereinafter referred to as the County and the Association respectively, have been parties to a series of collective bargaining agreements throughout the years. The Association filed a petition to initiate compulsory final and binding arbitration pursuant to Sec. 111.77(4)(b), Stats., with respect to an impasse between it and Sheboygan County (Sheriff's Department). The undersigned was selected from a panel provided by the Wisconsin Employment Relations Commission. Hearing was held in Madison, Wisconsin on September 27, 2000. No stenographic transcript of the proceedings was made. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on December 1, 2000. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

ISSUE AND FINAL OFFERS:

The Arbitrator is charged with selecting a final offer for incorporation into the parties' collective bargaining agreement.

COUNTY'S FINAL OFFER

1. Tentative Agreements as Attached
2. Two Year agreement – January 1, 2000 to December 31, 2001

3. Uniform Allowance: Increase Uniform allowance by \$10.00 effective January 1, 2000 – Increase Uniform Allowance by \$10.00 effective January 1, 2001¹
4. Wages 3% Across the Board Effective January 1, 2000
 3% Across the Board Effective January 1, 2001

ASSOCIATION'S FINAL OFFER

1. Stipulation to Tentative Agreements, as attached.
2. Wages Effective January 1, 2000, 3.5% increase to all classifications
 Effective January 1, 2001, 3.5% increase to all classifications

STATUTORY CRITERIA:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.77(6)), Wis. Stats., as follows:

- a. The lawful authority of the municipal 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 wages, hours and conditions of employment of the employees involved in the arbitration proceedings with 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 prices 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 time, 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.
- 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.

¹ This item is also included in the Stipulated Items between Sheboygan County and the Law Enforcement Association Employees.

POSITION OF THE PARTIES:

County

The County agrees that the external comparable counties are not in dispute. They are Brown, Calumet, Dodge, Fond du Lac, Manitowoc, Outagamie, Ozaukee, Washington and Winnebago Counties. In its view, there is only one issue of contention and that is wages. According to the County, one of the main criteria to be given weight is a comparison of the wages, hours, and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services with the same employer.

The County has established a wage that it believes to be competitive and comparative with internal ranks of employees. Within the Sheriff's Department, there are deputies, the supervisory staff and the management employees. The wage increases for the supervisory unit of the Sheriff's Department, as well as for the management staff in the Sheriff's Department are a 3% across-the-board increase effective January 1 of both 2000 and 2001. Maintaining the increase at 3% for this unit is of utmost importance because it maintains an equitable spread of pay between the levels of responsibility of the individuals in the department. A greater increase would provide disparity and wage compression between the ranks creating discord in the departmental operation and working relationships of the various employees in the department.

The County notes that the Supervisors Association settlement and its final offer are nearly identical. This settlement supports the internal equity argument of the County. Six of the contracts with respect to its bargaining units are settled at 3% for 2000 and several of them are settled at 3% for 2001. This, it submits, is a strong pattern among the internal comparables. The County also notes that the County Board approved 3% across the board increases in 2000 and 2001 for its unrepresented personnel.

Looking at the external comparables, or those employees performing the same duties for other counties, the County claims that this bargaining unit has made substantial progress in increasing their pay to become more competitive in comparison to the other counties. In looking at the ten counties, Sheboygan's starting rate has been maintained at sixth or seventh (with ten being the top and one being the lowest) demonstrating an above average start rate for the unit. The top rate comparison is much more dramatic. Sheboygan has ranked second of the ten and in 1998 moved to number five. This demonstrates that the bargaining unit employees have moved up and done well with regard to pay increases over the past four years. In the County's view, the 3% across-the-board increase continues to keep the pay rates comparable and is an equitable adjustment.

With respect to its offer to adjust the uniform allowance by \$10.00 for each year, the County notes that the bargaining unit ranks third among the comparables. It claims

that a very generous uniform allowance offsets out-of-pocket expenses and therefore allows greater take home pay for individuals.

The County also points out that, except for the counties with an HMO that do not require a contribution, Sheboygan has the lowest contribution of any of the comparable counties. The contribution by bargaining unit members is minimal in comparison and the County's insurance coverage is generous. Furthermore, the minimal contribution may be taken pre-tax under Section 125.

Pointing to the Association list of settlements that are presently in place for the various counties, the County notes that the average overall increase when taking the settled contracts for 2000 is 3.246%, which is .25% below that of the Association's final offer. Here again, the 3% proposal of the employer more closely represents the actual averages of the package cost proposed for the deputies. The increase of 4.43% in Calumet County skews the averages considerably since most of the other increases average 3%. Calumet County's increase may be justified by noting that its rates are the lowest in the top rate comparison of all the comparables and it needed to catch up. In the County's view, a proposed across-the-board increase which is greater than all the other average increases, except one, cannot be construed to makeup the average increases utilized by the comparables.

In summary, the County argues that the 3% across the board increase negotiated or given to the other County employees must be given great weight. The County's final offer is equitable and reasonable. Catch up is not an issue here. Comparing the external comparables, without consideration of Calumet County, the average settlement hovers around 3%, so that the external comparables do not support a greater increase than the 3%. The County's benefit package regarding health insurance contributions grants County employees greater take home pay than employees in the comparable counties. Moreover, the uniform allowance is one of the best of the comparables which offsets the costs of providing clothing and other items related to employment with corresponding greater take home pay. Given the average wage increase, even with catch up in Calumet County, the final offer of the County is closer to the average than the Association's final offer. There is nothing to support an increase greater than the average of the comparables.

In response to Association arguments that acceptance of the County's offer will create morale problems within the department, the County claims that a pay increase for the deputies which is more than the other employees in the department received will create greater disparity between the ranks in the department. Noting that the Supervisory Association settled voluntarily at 3% for each year, the County maintains that there could be no greater reason for finding that the final offer of the employer is more reasonable, than supervisors working along side of bargaining unit employees daily.

In addressing the contention that the 24-hour coverage by the Sheriff's Department is "unique," the County points to the three health care facilities which it

operates who also provide 24-hour, 365 day coverage each year and their voluntarily agreed to 3% across the board increases for 1999, 2000, and 2001.

With respect to the external comparables, some of these counties' increases reflect catch-up which distort the average increases granted by comparable counties. The Sheboygan deputies have gained ground over the past years and the Association brief concedes that the County's offer will bring the pay rates 6 cents above the average, so that the trend continues in the 2000/2001 labor agreement.

With respect to the health care costs impact on the total package, the County acknowledges that comparable counties have seen much greater increases in the health care costs than Sheboygan County has, but, nevertheless, the pay increases have hovered around 3% with increased employee contributions toward health insurance as well. The County has not increased the contribution to health insurance and is still offering a 3% across the board increase. Therefore, the County's offer is more reasonable.

Association

According to the Association, neither party has raised an argument that the County does not have the authority to lawfully meet the Association's final offer. The Association does note the five items which were agreed to during negotiations, noting that the stipulations contain some housekeeping items along with two additional items affecting vacation and uniform allowance. Neither party attached a specific cost or savings to these items and the agreed-upon items should receive no weight in the arbitrator's decision.

The Association asserts that its final offer best serves the citizens of the County by recognizing the need to maintain the morale and health of its deputy sheriffs and retaining the best and most qualified deputies. Morale and unit pride are important intangibles where law enforcement officers of one department work side by side daily with officers of other departments. The Association views the comparison of law enforcement officers similarly situated as the most prevalent comparison. It believes that external comparables should be the determinative factor.

Sheriff's Department employees provide 24-hour service year round and this distinguishes them from other County employees. Moreover the types of issues with which law officers deal cannot be found in other types of municipal employment. The Association points to both high crime rates and ratios of clearance of crimes in the Sheboygan department as contrasted to comparable departments. To continue the excellent performance, a high level of morale is imperative and may be jeopardized by the County's final offer.

The Association notes that the County has not alleged an inability to pay the costs of the Association's final offer, but rather the County has an "unwillingness" to pay. Therefore, inability to pay is not a factor and should not be considered.

With respect to the external comparables, the Association notes that the appropriate comparability group is not at issue. The comparable departments have been clearly identified in previous awards, the most recent of which was MIA-1942 issued by Arbitrator Dichter, 1/96. The Association insists that its final offer is supported by the external comparables, noting that under its offer, deputies could rise to \$.15 above the average of the comparable departments, while the County's offer would only result in the deputies receiving \$.06 above the average. If just this portion of the package is considered, the Association's position is more consistent with the settlements of the majority of comparable departments for 2000 than is the County's position. Looking at the 2001 settlement pattern clearly favors the Association's proposal. Under the County's 2001 wage offer, the percentage offered is at the bottom of the comparables and also takes the deputies' relative wage back to a level not seen since 1996.

To support its offer, the Association points to the stability of health care costs enjoyed by the County, i.e., minimal increases, which has not been the case with other comparable counties. The County has not recognized this factor when comparing the impact of total package costs to other employer's settlements.

The Association maintains that the internal comparables submitted by the County should not be considered primary comparables in these proceedings. Recognizing that the County will assert a historical internal settlement pattern, the Association contends that recent arbitral opinion and the instant facts dictate that internal comparables be given limited weight.

Citing a decision by Arbitrator Fleischli in Portage County (Sheriff's Department), Case 73, No. 41434, MIA-1366, 9/89, in which he suggests that law enforcement personnel may be properly considered independently from other internal comparisons, the Association notes that the County's supposed uniform bargaining policy regarding wage increases for represented personnel does not paint a complete picture. No mention of benefit levels other than wage is provided. No mention of the cost impact of the other settlements is available with one exception which does not reveal the percentage impact for 2000. Benefit levels other than wages must also be considered when relying upon internal comparisons and no such data has been provided. Thus internal comparables should be given limited weight. Moreover, to rely exclusively on internal settlements would suggest that the other criteria contained within sec. 111.77(6), stats., are irrelevant. Unless the County can point to a strong justification for using just the wage component of internal comparisons, there is no question that the Association's offer is more reasonable.

The information provided by the Association with respect to the Consumer Price Index, when coupled with the standard set by the external wage settlements and the strong need for "at least parity," suggests that this standard must be deemed to favor the Association's offer. The Association is cognizant of the current economic climate and has framed its offer in a fair and equitable manner. The overall benefit levels enjoyed by its members are not cause for a conclusion that its offer is unreasonable.

In response to County assertions that the other two groups of employees performing similar services, supervisory deputies and managerial deputies are similar employee groups, the Association stresses that aside from being deputy sheriffs, therein the commonality ends. There are differences in duties performed and statutory differences as well. Management employees do not have a collective bargaining agreement and are not, by statute, entitled to one. Supervisory employees have a collective bargaining agreement, but lack standing to avail themselves of any type of dispute resolution in the event that they cannot reach agreement with management. To say that the settlement of these two groups should be the main criteria is not supported by the applicable statute. Moreover, the County has not shown arbitral precedent supporting such a notion.

Although conceding that the settlement with the other bargaining units within the County must be taken into consideration, the Association claims that the County assertion that this should control is also flawed. There is, and always will be, a disparity of wages between the different bargaining units as well as non-represented employees. Adopting the County's notion that all employees should be treated identically, would eliminate the need for distinctions in such matters as retirement plans, dispute resolution and criteria used to ascertain appropriate bargaining units.

The Association avers that "catch-up" is a factor in that its offer brings the deputies closer to the average wage of their comparable pool than does the County's offer. With regard to the level of contribution towards health insurance, the Association stresses that the County has, in contrast to most of the other comparable counties, had minimal increases in its health care costs and there is no evidence that any change is forthcoming.

The primary issue is one of wages. Under the County's final offer, the average wage at the conclusion of the agreement would be 46 cents per hour below the average wage of comparable deputies. To adopt the County's final offer would undermine the efforts the parties have made in an attempt to bring the wages for the bargaining unit to at least average that of the external comparables and should be rejected.

In conclusion, the Association submits that its final offer is the more reasonable proposal and should be adopted.

DISCUSSION:

The first two statutory criteria or factors, (a) the lawful authority of the Employer and (b) the Stipulations of the parties along with factor (g) changes in the foregoing circumstances during the pendency of the arbitration proceedings, do not support either offer over the other.

With respect to factor (c), the County does not make an ability to pay argument, but both parties maintain that the interests and welfare of the public are better served by

their respective offers. There is merit to both parties' arguments. This is the case because the Association is correct in its assertion that morale will be higher within a well-paid law enforcement unit that must deal with high crime rates and continue a high clearance rate for such crimes. The County, however, makes an equally cogent case for its contention that a pay increase for the deputies, which is more than that granted other employees in the department, will create some disparity and possible morale problems between the ranks in the department. Both of these arguments are really sub-arguments of the parties' respective comparability arguments and do not strongly favor either offer. They will be addressed more fully below.

With respect to statutory factor (e), the average consumer price for goods and services, the information provided by the parties, differed. Looking at May of 2000, the County's table for U.S. City averages was 3.3% for urban wage earners and clerical workers and 3.1% for all urban consumers. Milwaukee averages for February were 2.3% and 2.2% respectively. Association charts, which reflect Midwest Urban CPI's for May of 2000, were 3.5% for urban wage earners and clerical workers and 3.2% for all urban consumers. Pursuant to the Association's chart for the months of April through August 2000, the indexes for all urban consumers varied from 2.9% in August, 3.2% in May, 4.3% in June, 3.6% in July and 3% in August. Because the Midwest Urban CPI's may more appropriately reflect the cost of living in Sheboygan and not Milwaukee, it is concluded that this factor slightly favors the Association's offer. It is not, however, determinative.

This case presents the classic tension between "internal" and "external" comparables.

Analysis of factor (d), the external comparables, demonstrates that the bargaining unit, while traditionally lagging somewhat behind the average, has made great strides in the last ten years in reaching the average of the comparable departments, at least with respect to top patrol officer pay. While it rose to fourth in the rankings in 1998, it fell back to sixth out of the comparables in 1999. Significantly, both wage offers for 2000 would raise the top pay for deputies above the average of the comparable departments and retain the ranking of sixth of the comparables, the Sheboygan deputies in that classification receiving 15 cents more than the average under the Association's offer and 6 cents more under the County's offer. Since both offers retain the County's general ranking and are in excess of the average, neither wage offer is favored for 2000 among the external comparables.

Only in 2001 is the impact of the two proposals significant. This is because less is known about where the Sheboygan deputies will eventually rank given the number of unsettled comparable units for 2001. Of the known voluntary agreements for 2001, under the County's 3% wage offer, Sheboygan ties for last with Manitowoc County, while the other three settled counties have agreements for 2001 wage increases of 4%, 3% and an additional 1% mid-year, and 3.4%. The remaining four are unsettled. Under the Association's offer, Sheboygan's increase at 3.5% is less than the 4%, worth slightly more than the 3%-1% split, and more than the 3.4% increase agreed to in Outagamie

County. For the second year, 2001, the external comparability criterion favors the Association's offer given what is known of the settlement pattern at the time of hearing.

With respect to factor (f), both sides point to certain aspects of the health care and total package benefits of the comparables, to support their offers. The Association points to the relatively stable, low health care and associated costs to the County over the years as contrasted to the comparables' costs. It insists that the County has not recognized this savings and offered any portion thereof to the deputies as wages. The County, on the other hand, points to the fact that bargaining unit employees have only been required to make a minimal contribution to the cost of their health insurance coverage as compared to deputies in the comparable units, and are thus left with greater additional discretionary funds than employees in comparable units. Review of Association Exhibit 35 and County Exhibits 16 and 17 support both contentions. The health insurance cost and contribution aspects of the overall compensation package offered, therefore, do not support either final offer.

With respect to an annual hours-of-work comparison for the top deputy, it appears that Sheboygan County deputies work 1,947 hours annually which is the same as hours worked by employees in three other counties and greater by 2 hours than hours worked by the employees in one other county. The other five counties work 2085, 2008, 2020, 2027, and 2080 annually. This suggests that the Sheboygan deputies work the second lowest number of hours per year. Tables indicating benefits comparisons of shift differential, where it is reflected in hours, and entitlement to annual vacation benefits based upon years of service, suggest that Sheboygan enjoys a higher benefit level than the average for the comparables with respect to both benefits. Both parties agree that Sheboygan will rank third out of the comparables with respect to the uniform allowance pursuant to the stipulation of the parties. Because Sheboygan employees already enjoy relatively generous benefits this criterion slightly favors the County.

With regard to criterion (h), such other factors, internal comparability must be considered. It cannot seriously be disputed that the County has achieved voluntary settlements with five other bargaining units for year 2000 wage increases of 3%, the Courthouse unit being the single unsettled exception. The County has achieved voluntary settlements at 3% for 2001 in three of those units. It has also voluntarily settled with the Law Enforcement Supervisors at 3% for both 2000 and 2001. Statutory bargaining differences for this unit, namely the unavailability of interest/arbitration procedures, suggest that this voluntary agreement not receive the same consideration as the agreements in the other internal bargaining units. However, there is no question that the wages received by the supervisors who are working along side the deputies should be considered as part of factor (h). The County argues that to break the internal pattern would create inequities and resentments. The County has achieved a pattern of settlement on wages at 3% for 2000, and at 3% for 2001 among the internal bargaining units which have voluntarily settled an agreement covering 2001 as of the date of the arbitration hearing in this matter. Its offer to the deputies is the same as that offered to the other internal units. This "other factor" of internal comparability strongly favors the County's offer.

Therefore, of the above criteria, the average cost of consumer goods provides some support for the Association's offer. The consideration of the over-all compensation package provides some support for the County's offer. Both wage proposals are equally reasonable with respect to 2000. What is known with respect to the external comparables for 2001 supports the Association's offer. The other factors criterion, namely, internal comparability, provides substantial support for the County's offer.

The general rule as to whether external or internal comparables should prevail is that the internal settlement pattern should control unless it can be demonstrated that adherence to that pattern would cause unreasonable and unacceptable wage relationships relative to the external comparables.² As Arbitrator Malamud observed:

Patterns of settlement are difficult to achieve. Where they are achieved, this Arbitrator finds such patterns persuasive, if not determinative of the dispute. Arbitrators may refrain from following a settlement pattern pegged to a certain percentage increase, where it is demonstrated by compelling evidence that the wage rate of a particular classification(s) of employees are *substantially* above or below the rates paid by comparable employers to employees in similar classifications. The wage levels of a particular group or classification of employees may be analyzed to determine the relationship between the market wage rate for the particular classification of employees, which are the subject of the interest arbitration proceeding, substantially less, less, equal to, greater or substantially greater than the rates paid to employees in identical or similar classification employed by comparable employers?³

The question of what is a substantial disparity between the average and the wage levels generated by the proposals of the parties is not fixed at a particular or specific level. As noted above, no substantial disparity exists between the average and either offer for 2000. While the settlement pattern for 2001 is largely unknown because four of the comparable counties remain unsettled at the time of hearing, what is known is that the County's wage offer is one percent less for 2001 than the highest settled comparable. Therefore, it cannot be concluded, at least at this time, that there is compelling evidence that the comparable deputy wage rates of Sheboygan County will be substantially below the rates paid by comparable employers to their deputies at the end of 2001.

Certainly any deviation from the average at the end of the calendar year 2001 may have to be addressed by the parties in the next bargain. However, here, where an internal wage pattern of 3% for each year exists, and it is not a substantial deviation from the

² Waukesha County, Decision No. 29622-A (Vernon, 4/2000).

³ Village of Greendale, Decision No. 29632-A (Malamud, 2/00) citing City of Green Bay (Water Utility), Dec. No. 28070-A (Malamud, 11/94).

average in the first year and does not substantially deviate from the known settlements for the second year, the County pattern should prevail.

While both offers are reasonable, the County's offer is preferred for the reasons set forth above.

AWARD

That the County's final offer is adopted as the award in this proceeding and incorporated into the parties' 2000-2001 collective bargaining agreement along with the stipulations of the parties.

Dated this 15th day of December, 2000, in Madison, Wisconsin.

Mary Jo Schiavoni, Arbitrator