

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

MARINETTE COUNTY (SHERIFF'S
DEPARTMENT)

Case 180 No. 59665
MIA-2385

Dec. No. 30176-B

Heard: 12/5/01
Record Closed: 4/16/02
Award Issued: 6/11/02

Sherwood Malamud
Arbitrator

APPEARANCES:

Thomas Bahr presented the case and wrote the brief, Gary Wisbrocker, Business Agent, and John Parr, WPPA/LEER Division, 9730 W. Bluemound, Suite 21, Wauwatosa, Wisconsin 53226, appeared on behalf of the Association.

James A. Morrison, S.C., Attorney at Law, 2042 Maple Avenue, P.O. Box 406, Marinette, Wisconsin, 54143-0406, appeared on behalf of the Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter the Association, and Marinette County (Sheriff's Department), hereinafter the County or the Employer, reached an impasse in their negotiations for a successor to the 1998-2000 Collective Bargaining Agreement. The parties selected and on August 15, 2001, 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 December 5, 2001, at the Marinette County Courthouse in Marinette, Wisconsin. The Arbitrator exchanged post hearing briefs and reply briefs and closed the record in this matter on April 16, 2002. 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

Health Insurance

The Association proposes to maintain the status quo; no contribution toward the cost of the monthly premium for single coverage.

The County offer on this issue appears in its letter to the staff investigator for the WERC, Lauri A. Millot, as follows:

On behalf of Marinette County, I would like to modify our final offer in one respect. Marinette County would agree to hold the insurance premium for its employees constant for the year 2001 at the same level as it was for the year 2000 provided that all employees, family, married and single, pay 5% of the premium cost.

Wages

The Union proposes to increase the December rate by 4% in each of the following years effective on January 1: 2001, 2002 and 2003

The County proposes to increase the year end rate by 3% in each year, 2001, 2002, and 2003.

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 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 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 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 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.

BACKGROUND

Marinette County had a population of 43,504 in 2000. The geographic area of the county comprises 1,402 square miles. It is substantially larger in area than comparable counties (See below). The average square mile area of the county comparables agreed to by the parties is 701 square miles. Oneida County is second in size to Marinette at 1124 square miles. Marinette maintains a department of 30 law enforcement personnel. Waupaca County has the largest department with 45 deputies.

Over the decade of 1990-1999, Marinette experienced the largest decline in crime, 31.3% as contrasted to the seven other counties included in the comparables. However, violent offenses increased over that decade by 81.8%, from 11 annually in 1990 to 20 in 1999.

The seven counties that both the Employer and the Association agree are comparable to Marinette are: Calumet, Door, Kewaunee, Oconto, Oneida, Shawano, and Waupaca counties. The Association adds the City of Marinette and the City of Peshtigo, which are both located in Marinette County, as comparables. The Association argues that Marinette County and these two municipalities share the same labor market. The County objects to the inclusion of the cities of Marinette and Peshtigo in the comparability grouping of county units.

Ordinarily, the Arbitrator does not include municipal police departments in the comparability grouping for a county law enforcement unit, a Sheriff's Department. However, in the arguments of the Association and the Employer, both freely reference both cities in the comparability and other arguments they make. For that reason, in this case only, the Arbitrator references the cities of Marinette and Peshtigo as a secondary comparable in the analysis below.

If the two cities proposed by the Association are included, all seven counties and the two cities settled their agreements for their law enforcement personnel for calendar year 2000, the base year in this case, and 2001, the first year of the three year successor Agreement. The Arbitrator requires a minimum of five settled comparable units to establish a basis for comparison. Including the cities of Marinette and Peshtigo, there are five units settled for 2002, the two cities and three counties. Only Kewaunee County has settled for 2003. There is sufficient data to support the application of the comparability criterion for both the first year and second year of this successor agreement, calendar years 2001 and 2002.

POSITIONS OF THE PARTIES

The Association Argument

The Association argues that it is in the best interest of the public to maintain the intangible, morale and unit pride, at a high level. The Association intimates that since Deputy Sheriffs work side by side with the

City of Marinette police, County Deputies should receive the same pay as the City of Marinette police.

The Marinette Deputies work more hours than other County employees. The Association addresses the County's internal comparability argument by noting that law enforcement personnel deal with issues that differ substantially from those dealt with by other County employees. Marinette has the highest crime rate among the comparables. An officer must exercise care, judgment, and caution in the performance of his job. The actions of a deputy are subject to scrutiny.

The Association's final offer maintains the status quo on the health insurance issue. The Employer fails to provide a reason for the change it proposes on the insurance issue. Although only three individuals take single coverage, it impacts the entire unit. Individuals may elect to go to single coverage during the course of their career with the department. The Employer's proposal stands as a stumbling block to an employee seeking to make that change.

The County's offer of 3% differs from its offer to the other units in the County. In this unit, the 3% wage offer is decreased by the County's demand that employees pay 5% towards the health insurance premium for single coverage. In the other County units, there is no deduction from the 3% offer. The Employer's offer to the Deputies is less than its offer to the other units. The Association claims that the County has failed to provide a quid pro quo for its demand that employees taking single coverage pay 5% of the premium costs.

The Union notes that when it was formulating its offer, the Consumer Price Index Midwest Urban Wage Earners And Clerical Workers ranged between 2.6 to 4.1%. Its offer falls within that range.

There is nothing in the Association's offer which makes it unreasonable. In this regard, the Association maintains that the overall compensation criterion supports the selection of its offer.

The Association complains that the Employer manipulates its self-funded health insurance program to prop up its offer. The Arbitrator should not tolerate such manipulation. It should not be condoned. The Association concludes that its offer is fair and reasonable and should be selected for inclusion in the successor Agreement.

The County Argument

The County notes that premiums must cover actual expenses and administrative costs of the basic plan. It self insures. Future costs and expenses are determined by the plan administrator who advises the Employer on the amount that premiums should increase. In 2000, the administrator suggested that the Employer increase premiums 30%. Nonetheless, the Employer maintained the rates in 2001 at the 2000 level.

With regard to the proposal that employees who take single coverage health insurance pay 5%, the Employer notes that of the three employees in this unit who took single coverage, one retired.

The Employer argues that the criterion the interest and welfare of the public supports its position. The County references Governor McCallum's budget message that provides for the elimination, or at best, the severe reduction of shared revenue over the next two years. This would effect the ability of the County to meet the Association's demands. The Employer acknowledges there is no evidence on this issue, inasmuch as, the budgetary crisis and the Governor's and legislature's approach to that crisis developed well after the close of the hearing in this matter.

The Employer argues that health insurance is the most important issue and comparability the most important factor in the determination of this dispute. The cost of health insurance in Marinette far exceeds the cost of that benefit among the comparables.

Furthermore, the Employer notes that all of its other collective bargaining units have all settled agreements with wage increases of 3%.

Those employees already pay 5% toward the cost of premiums for single coverage.

The Employer asks why Deputy Sheriffs should fare any better than other employees of Marinette County. The Employer references several decisions. Arbitrator Oestreicher in Door County (Courthouse), Dec. No. 30096-A (10/01) found for the employer based on external and internal comparables. In the City of Eau Claire, Arbitrator Engmann, Dec. No. 29948-A, based his award on internal comparables and the failure of the union to note why law enforcement personnel should be treated any differently than other employees. Similarly, Arbitrator Honeyman in the City of Green Bay (Police Department), Dec. No. 29983-A found for the employer on the basis of internal comparability. The Employer notes Arbitrator Vernon's statement of principle: an 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." Waukesha County, Dec. No. 29622-A (2/2000).

The Employer argues that if one looks to the base year 2000 and the first year of the agreement, 2001, the comparison of premium contribution toward health insurance can be seen. In the City of Marinette the Employer's contribution is \$583.25 in calendar year 2000. In Marinette County it is \$900.11.

The Employer argues that its employees work more than some and less than others. Similarly, it argues that the level of overall compensation in terms of benefits such as longevity, sick leave and its payout, uniform allowance, holidays, and vacation are greater than some and less than others.

The County notes that there is no evidence in this record to support the Association's morale argument. The County Administrator's statement concerning the sales tax predates the state's fiscal crisis. This argument should receive no weight.

Should the Arbitrator include the cities of Marinette and Peshtigo in the comparability grouping over the objection of the Employer, it notes that it compares well on wages and benefits paid by these two municipalities.

The Employer concludes that its offer is consistent with the pattern of settlement that Marinette County established with its other units. The settlements among other comparable employers support the County's offer. Accordingly, the Employer concludes that the Arbitrator should adopt the Employer's final offer for inclusion in the successor Agreement.

DISCUSSION

Introduction

Each party presented arguments on all the statutory criteria. The Arbitrator concludes that the criteria, "the Lawful Authority of the Employer" and "the stipulations of the parties" do not serve to differentiate between the parties' offers. In the analysis that follows, the Arbitrator proceeds to weigh each factor on the two issues in dispute.

Health Insurance Contribution

The Employer proposes that employees who obtain single coverage for health insurance pay 5% toward the monthly cost of premium. The Association resists this change. It argues that the Employer has not demonstrated a need for the change. It questions the adequacy of the quid pro quo offered. The Association proposes to maintain the status quo.

The Arbitrator concludes that the criteria, such other factors, comparability and overall compensation bear on this issue.

This Arbitrator has required parties proposing to change the status quo demonstrate a need for the change, offer a quid pro quo for the change, and be able to demonstrate that it has done so through the presentation of adequate proof.

In this case, the Association challenges the demonstration of need made by the Employer. At the outset of bargaining, only three employees were subject to the 5% contribution for single coverage.

The Arbitrator concludes that the Employer has shown a need for the change. All other employees of the Employer make the 5% contribution toward premium for single coverage. The need to establish consistency in the administration of this important benefit is sufficient to meet the first of the three-pronged test articulated above.

The Employer has offered a quid pro quo. It continues the same level of premiums for single and family coverage despite the advice it received from its plan administrator that it increase premiums 30% to offset increasing costs.

The Association counters. It argues that manipulation of premiums by the Employer should not be encouraged or ratified by the Arbitrator. The Employer's actions reflect that either its premium level has been too high or that at some point in the near future it will have to increase premiums substantially to cover self-induced losses to this self-insured plan.

The Arbitrator shares the Association's concern for the manipulation and the short-term deferral of premium increases. Nonetheless, one of the most difficult issues for an arbitrator to determine is the adequacy of a quid pro quo offer. At the end of the day, employees experience some savings. They did not pay additional premium for the increase in costs anticipated for calendar year 2001. The Employer has demonstrated through adequate proof that a need exists for the change and that the Employer offers a quid pro quo for that change. Accordingly, the Arbitrator concludes that the "Such other factors" criterion supports the adoption of the Employer's final offer.

Comparability, Overall Compensation and Such Other Factors

Marinette County offers two health insurance plans to its employees, Plan W and Plan H. Plan W is a negotiated health insurance program. The

Employer unilaterally introduced Plan H. It is not obligated to offer or to continue to offer Plan H. Plan H is a PPO program which employees may elect to take with full premiumS paid for by the Employer.

The Arbitrator compares Plan W to plans offered by the comparables. The Employer's contribution toward the premium for family coverage far exceeds the contribution level of any other comparable. In the base year 2000, Marinette County contributes over \$900 towards premium for family coverage. The next highest contribution by an employer is in Oconto County which contributes \$730.43 toward health insurance premiums of its employees. In 2001, the Employer's contribution for family coverage increases to \$1225.56. Waupaca with the next highest premium level in 2001 contributes \$760.19 for a PPO plan. The rate for single coverage in 2001 is \$416.15 in Marinette County. In Waupaca County, the contribution is \$316.63 for single coverage under a PPO plan.

In terms of the total cost of wages and the health insurance benefits, Marinette County's cost of health insurance benefits for Plan W exceeds that paid by any comparable county or the two cities proposed as comparables by the Association.

The internal comparable criterion supports the adoption of the Employer's offer that employees contribute 5% toward the cost of single coverage. All other employees already pay 5% for single coverage.

Summary

The criteria such other factors, internal comparability, external comparability and overall compensation criteria support the inclusion of the Employer's offer on the health insurance contribution issue in the successor Agreement.

Wages

Marinette County's deputies work 2,085.71 hours per year. The hourly

rate for a top Deputy is \$17.32 in the base year 2000, sixth among the comparables including the cities of Marinette and Peshtigo. It is fifth out of seven counties when the two cities are excluded.

Association Exhibit 15G does not contain the rate for Calumet County's top patrol officer. Exhibit 33, the 2001 contract for its law enforcement personnel indicates that the 84-month step 6 hourly rate for patrol officer is \$19.41. When Calumet County's rate is included among the seven comparable counties, the average hourly rate is \$17.83. If the cities of Marinette and Peshtigo are included, the average rate increases to \$17.85 in calendar year 2001.

The Association's proposal would bring the hourly rate in Marinette to \$18.01, 16 to 18 cents above the average. The County's offer leaves the rate at or 2¢ below the average in 2001.

In 2002, the cities of Marinette and Peshtigo, as well as Kewaunee, Oneida and Oconto counties have settled. The average hourly rate of those settled comparables is \$18.35. The Association offer would bring the rate to \$18.73, 38 cents per hour above the average. The County's offer places the rate 1¢ above the average.¹

The Association presents evidence comparing the rates paid by the comparables to their top Investigator and Sergeants. There are two Investigators and four Sergeants in the Marinette County unit. The cities of Peshtigo and Marinette do not have the classification of Investigator. Oneida County has a Detective Sergeant classification which in 2002 tops out at an hourly rate of \$20.65. If this rate is included, then the average hourly rate paid by the seven comparable counties in 2001 is \$19.24. The Association offer in 2001 brings the rate for Investigators to \$18.62, 62 cents below the average. The Employer offer brings the rate to \$18.44, 80 cents below the average for the two Investigators in its unit. There is inadequate data on which to base a comparison for calendar years 2002 and 2003 at the

¹ Only the Kewaunee contract is settled for 2003.

Investigator classification.

A comparison of the rates paid by the comparables to Sergeants, as contrasted with the rates paid to the four Sergeants in this unit, suggests the following. Calumet County does not have a Patrol Sergeant classification nor does Oconto County. The average hourly rate paid by the comparables at the Sergeant classification is \$18.19. The Association offer brings the Sergeant's rate to \$19.04, 86 cents above the average. The County's offer brings the rate to \$18.85, 67 cents above the average in 2001. Again, there is inadequate data, for settlements that concern the Sergeant classification for calendar year 2002.

Summary

The interest arbitration statute for law enforcement tends to favor offers that bring salaries closer to the average. The Employer offer maintains the top patrol rate at or slightly below the average in both 2001 and 2002. The Association offer, on the other hand, places the rate above the average in both years.

At the Investigator classification, the rates under both offers leave it well below the average. At the Sergeant classification, the Employer offer is closer to the average than the Association's. The comparability criteria demonstrate a clear preference for the inclusion of the Employer offer in the successor Agreement.

Such Other Factors - Internal Comparability

This Arbitrator analyzes internal comparability under the such other factors criterion. All the other county units settled at 3%. The difference is that in the other units, the employees already pay the 5% premium for single coverage. The Employer's offer in this case is part and parcel of a clear settlement pattern. The proposal that law enforcement pay 5% in this contract is significant only in that the Marinette Deputy Sheriffs have been able to put off making this contribution until now. The Arbitrator concludes

that the internal comparability criterion provides strong support for the selection of the Employer's offer.

Cost-of-Living

The Association references an award by Arbitrator Kerkman who held that the cost-of-living criterion is best measured by comparable settlements. That measure appears in the comparability criterion. It is under that criterion that the level of salary and/or the percentage increase paid in a particular year is compared and contrasted. The cost-of-living criterion provides a measure of the increase in costs that a wage earner incurs when he purchases a basket of goods and services.

The Cost-of-Living criterion has a built-in time lag. The increase in the Consumer Price Index for calendar year 2000 establishes the percentage increase for the following year. Since the Consumer Price Index is a market basket measure, the Arbitrator applies this measure to the total package cost rather than the wages only portion of each offer. The total package increase in the cost of the Association offer in 2001 is 7.9%. The Employer's offer generates a total package cost increase of 1.98%. The Association offer in 2002 generates a total package cost increase of 3.7%; the Employer's 3.06%.

The Association introduced the Midwest Urban Index of the CPI as the appropriate Index to assess the parties' offers. In 2000, the index increased by 3.6%. The Employer's offer is approximately 1.8% below the increase in the cost-of-living. The Association's exceeds that increase by 3.3%. In 2001, the increase in the cost-of-living for Urban Wage Earners And Clerical Workers under the Midwest Urban Index was 7/10 of 1%. The Employer's offer exceeds that increase by just under 2.3%, while the Association's exceeds the increase in the cost-of-living by 3%. The total package cost of the Employer's offer more closely approximates the increase in the cost of-living for the first two years of the successor Agreement. The cost-of-living criterion supports the inclusion of the Employer's final offer in the successor Agreement.

Interest and Welfare of the Public and Changes in the Foregoing

The Association argues that its offer will maintain Deputy morale. The Employer counters that there is no evidence in this record on this point. The Employer argues that the Arbitrator should take into account the potential loss of state shared revenue which will greatly impact the Employer's ability to meet the Association's economic demands. The Employer acknowledges that there is no evidence on this point in the record. The Governor gave his budget message post hearing. As of the writing of this Award, the budget bill is pending before the legislature. Whether and the extent to which state shared revenues will be eliminated or substantially decreased has not been determined.

The Arbitrator considers the Employer's argument under the changes in the foregoing during the pendency of these proceedings criterion. The County's argument, at this point, is speculative. Furthermore, there is a countervailing argument. Local government, whatever cuts in shared revenue they experience, will be under substantial pressure to fund, support and train first responders, such as law enforcement personnel, in this post 9/11 era. The Arbitrator concludes that these two arguments offset one another. In the end, these arguments, which are not addressed in the record, do not provide a basis for selecting either final offer for inclusion in the successor Agreement.

Overall Compensation

The Arbitrator finds that benefits, such as uniform allowance, longevity, sick leave payout, and shift differential, are less in Marinette County than in the comparables. Holidays in Marinette are slightly more than the average, and vacations, particularly for a deputy that remains in the Department for most or all of his career, is more generous than most of the comparables. However, the substantially greater cost of health insurance in this unit as contrasted to the comparables serves as a substantial counterweight at this criterion. On balance, the Arbitrator concludes that this criterion provides some support to the selection of the Association's

final offer for inclusion in the successor Agreement.

Summary - Wage Issue

The comparability criterion, internal comparability, and the cost-of-living criterion all provide strong support for the inclusion of the Employer's final offer on the wage issue in the successor Agreement. The overall compensation criterion provides some support to the inclusion of the Association's final offer. Based on this record, the Arbitrator concludes that the statutory criteria provide greater support for the selection of the Employer's over the Association's final offer on the wage issue.

SELECTION OF THE FINAL OFFER

Under the statutory criteria, the Employer's offer is preferred both on the health insurance and wage issues. Accordingly, in the Award below, the Arbitrator selects the Employer's 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 Marinette County, which together with the stipulations of the parties, shall be included in the Collective Bargaining Agreement between Marinette County and the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division for calendar years 2001, 2002 and 2003.

Dated at Madison, Wisconsin, this 11th day of June, 2002.

Sherwood Malamud
Arbitrator