

EDWARD B. KRINSKY, ARBITRATOR

In the Matter of Interest Arbitration Between	:	
	:	
Waupaca County (Sheriff's Department)	:	
	:	
and	:	
	:	
Waupaca County Law Enforcement Officers'	:	Case 125 No. 60244 MIA-2407
Association, Local 2771, WCCME, AFSCME,	:	Decision No. 30371-A
AFL-CIO	:	

Appearances: Davis & Kuelthau by Mr. James R. Macy , for the County

Mr. Gerald D. Ugland Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, for the Association_

By its Order of August 29, 2002, the Wisconsin Employment Relations Commission [WERC] appointed Edward B. Krinsky as the arbitrator to issue "...a final and binding award... pursuant to Sec. 111.77(4)(b)of the Municipal Employment Relations Act, to resolve the impasse between the above-captioned parties.

A hearing was held at Waupaca, Wisconsin on November 1, 2002. A transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed with the exchange by the arbitrator of the parties' reply briefs on March 11, 2003.

On August 22, 2000 the Association petitioned the WERC to determine whether the positions of Transport/Paper Service Deputy [Transport Officers] employed by the County should be included in the existing bargaining unit of law enforcement officers [consisting of Patrol Officers, Investigators, and Patrol Sergeants]. On November 9, 2000 the County agreed to a voluntary accretion of Transport Officers into the existing bargaining unit, and on November 10th the WERC dismissed the Association's petition. The accretion was effective September 6, 2000. This arbitration involves a dispute over what changes should be made to the Agreement as a result of the accretion to the bargaining unit.

There are four issues in dispute: wages, subcontracting, benefit accrual and professional improvement:

Wages: The County proposes that wages for 2001 "remain as pursuant to County wage classification...: 87% - \$ 13.0463; 90% - \$ 13.4965; 95%-\$ 14.2462; 100% - \$ 14.9959.

Additional wages to be negotiated for 2002 as part of the re-opener of the Agreement.

The Association proposes "the wage rate of \$16.50 effective the date of accretion, September 6, 2000 and increased by three percent (3.0%) effective January 1, 2001: Hiring Rate 85% = \$ 14.0250; After 12 months 90%= \$ 14.8500; After 24 months 95%=\$ 15.6750; After 36 months 100%=\$ 16.5000. Additional wages to be negotiated for 2002 as part of the re-opener of the Agreement.

Subcontracting: The existing subcontracting language, in Article III - Management Rights states:

The County possesses the right to operate County government and all management rights repose in it, but such rights must be exercised consistently with the other provisions of this contract. These rights which are normally exercised by the County or the Sheriff include, but are not limited to the following:

...

F. To contract out for goods or services except that the County, prior to taking such action, agrees to negotiate with the Association if such action has an effect on the bargaining unit.

The County proposes to modify Section F of Article III to read:

F. To contract out for goods or services except that the County, agrees to negotiate the impact if such action has an effect on the patrol officers and/or investigator/sergeant positions. Nothing in this section or article shall limit the Sheriff's right to determine how transport duties are to be performed including the right to contract out for such services.

The Association does not propose any change in the subcontracting language of the Agreement.

Benefit Accrual: The County proposes no changes in the Agreement with respect to benefit accrual.

The Association's proposal includes the following which, it states in its final offer, is not meant to be "final language."

The seniority of incumbent employees in Transport Officer positions for the purpose of benefit accrual shall date from their initial day of hire in a regular full-time or regular part-time position with the Employer.

Professional Improvement: The County proposes to add the following language to Article XVII of the Agreement , the Professional Improvement Program [PIP]: "This Article does not apply to Transport Officers."

The Association proposes no changes to the Agreement with respect to the PIP.

In making his decision, the arbitrator is required by statute to "give weight to" the factors enumerated in 111.77(6), Wis Stats. The parties did not make arguments or present evidence with respect to several of these factors, and they are not considered further: (b) stipulations of the parties; that portion of (c) pertaining to the financial ability of the unit of government to meet these costs; and that portion of (d) which involves comparisons with wages, hours and conditions of employment in private employment in comparable communities. The arbitrator has considered the other factors in his analysis, below.

Wages: The County argues that Transport Officers are separate and distinct from Patrol Officers and should be paid accordingly. It argues that when the Transport Officer position was created by the County in 1995 the purpose was to save on overtime costs of Deputies. It argues, "There was never any intention to allow any overlap of duties and responsibilities between the two job classifications." While acknowledging that there are some duties and responsibilities in common, the County argues that there are many duties done by Patrol Officers which are not done by Transport Officers:

The County cites figures for the years 1999-2001 pertaining to duties, which it argues clearly show the distinction between the two categories of employees. During that period Patrol Officers handled fewer than 10% of transports, and fewer than 22% of process. They handled 99% of complaints and accidents, and 100% of citations. The remainder of each function was handled by Transport Officers. The County acknowledges that Transport Officers and Patrol Officers must have the same certifications and qualifications, but argues, "... the job descriptions and the actual duties performed by these two positions do not mirror each other...[and] nothing has changed by way of job duties for the Transport Officers to support the wage increase sought by the Association," which the County calculates to be 13.3% for 2001, in contrast to the 3% increase which it proposes. It argues that an increase of this magnitude is not justified, "...especially...given the County's current health insurance premium increases and budget restraints...There is no justification or documentation in the record which warrants an additional wage increase simply because the Transport Officers have been accreted into the Law Enforcement bargaining unit." It argues that the Association "has not provided any evidence or identified any change in work duties or responsibilities, nor has it offered a quid pro quo, to justify this substantial pay increase... The Association provided no proof that the job duties are becoming increasingly dangerous or, more importantly, that the Transport Officers are taking on more responsibilities associated with Patrol."

The County notes the use by the Association of contiguous counties as comparables for making wage comparisons (The County appears not to differ with the Association about which counties are comparables). It takes issue with these comparisons as not comparing apples with apples, however. That is, the County acknowledges that Patrol Officers in these counties transport prisoners and serve papers, but it emphasizes that the Association has not provided any information about the amount of time spent by Patrol Officers in these jurisdictions doing the types of duties done by the County's Transport Officers. It argues, "There is absolutely no evidence that finds the duties held by patrol officers in other counties mirror the job duties of the Transport Officers in Waupaca. Thus there is a reason for the distinction in pay."

In 2000 the County reclassified the Transport Officers from Grade 6 to Grade 8 on its Non-Represented Employee Salary Structure and gave them the same 3% increase which was given to both non-represented employees and represented employees for 2001. The County argues further that the 3% increase to Transport Officers is consistent with the wage increases bargained for 2001 with the other County bargaining units, which was given also to the County's non-represented employees. "The Association has not demonstrated why this unit should receive a substantially higher increase in wages than that received by other County units."

The County argues that if the Association's final offer is selected, the result will be that the wage increase given to Transport Officers in September, 2000 is 13.3%, plus another 3% in 2001. It views this as excessive, and particularly when the only thing that has changed is that the Transport Officers have been made a part of the bargaining unit. There has been no change in duties, responsibilities or in the work environment.

The Association argues that Transport Officers and Patrol Officers are similar. While not proposing the same wage rate for the two classifications, the Association is proposing that the Transport Officers' wage be brought to a level much more in line with that of Patrol Officers than is now the case. The Association notes that the following items are identical in the job descriptions of the two classifications:

Minimum Qualifications:

- ¥ Must be 18 years of age and U.S. Citizen
- ¥ Of good moral character
- ¥ Must never have been convicted of a federal felony or any offense which if committed in Wisconsin could be punished as a felony unless the applicant has been granted an absolute and unconditional pardon.
- ¥ Must hold valid Wisconsin driver's license with good driving record.
- ¥ Must be a resident of Waupaca County on or before completion of probationary period.

Education:

1. High school diploma or GED and Associates Degree in law enforcement and/or qualified under the "Grandfather" act. Sixty (60) college credits from an accredited university or college.
2. State certified an/or State certifiable.

Experience: None

Necessary Knowledge, Skills and Abilities:

1. Proficient in the use of sidearms, police shotguns, batons, chemical agents, portable radio, and handcuffs.
2. Proficient in the operation of a patrol car, mobile radio, speed detection equipment, emergency equipment, measuring devices, video camera if so equipped, and transport restraints.
3. Ability to read and use county and state maps.
4. Knowledge of county roads and highway systems.
5. Skill in establishing and maintaining cooperative working relations with fellow officers and the public.
6. Ability to demonstrate leadership and sympathy in a wide variety of public crises.
7. Courage and good judgment.
8. Knowledge of Wisconsin vehicle and criminal law, Wisconsin Juvenile Code; proper procedures of arrest, search and seizure; first aid techniques, report preparation skills, basic vehicle mechanics and driving skills; and appropriate courtroom procedures.
9. Ability to communicate and react properly using common sense under normal, as well as pressure, situations and to get along well with others.

The Association notes also that the "Essential Duties" of both positions include the following:

[Transport Officers] Transport of prisoners and other persons required to be transported under court orders.

[Patrol Officers]Transport inmates to and from medical appointments, health care facilities, court appearances, etc. .

[Transport Officers] Serve criminal and civil process, subpoenas, and other process as required.

[Patrol Officers]Serve process papers and warrants

Enforce all laws and ordinances with respect to the Federal and State statutes and County ordinances.

Assist local peace officers in their enforcement activities.

Testify in court on criminal and civil matters.

Maintain radio and/or telephone contact with the Department and inform dispatch of location and reason upon leaving the squad.

Assist motorists in trouble.

Ability to work swing shifts, including holidays and weekends.

Tools and Equipment Used: Squad car, firearms, police shotgun, speed detection equipment, emergency equipment, baton, handcuffs and restrain belts, mobile and portable radio, video equipment, measuring devices, chemical agents, flashlight, telephone, computer, copy machine, fax machine, calculator, typewriter.

Physical Demands:

1. Must have 20/20 vision or correctable to 20/20
2. Must be in good physical condition
3. Must be able to lift and/or drag 100 pounds
4. Must be able to perform work from a standing position for periods of one hour or more during a shift
5. Must be able to occasionally perform work involving strenuous strength and agility (i.e., breaking up a fight or chasing an individual on foot who is evading arrest).

Working Environment [the items are identical, but are listed in different order in the two descriptions]: Personal hazard due to facing armed suspects, high speed responses or chases and traffic direction especially at night. Position includes riding in vehicle, standing, walking, running, and physical force may be required at times. Ability to communicate both verbally and in writing. Exposure to all weather conditions. Could include working with smoke, fumes, hazardous chemicals and/or clients with infectious diseases. May require climbing, swimming and working cramped spaces.

The Association argues that while the two jobs are not identical, "...the similarities are significant and striking."

The arbitrator notes that the only "essential duty" of the Transport Officer description which is not included in the essential duties of Patrol Officer is: "Conduct Sheriff Sales as required by law." The Patrol Officers have some essential duties which are not essential duties of Transport Officers: "Adequately and carefully patrol the areas assigned, and to familiarize themselves with those areas; Conduct investigations of accidents and criminal investigation of a crime scene and protect the crime scene, if needed, until relieved of such duty; Prepare accurate and concise accident and complaint reports; Render first aid to accident victims, gather evidence, prepare reports and restore, as quickly as possible, the traffic handling ability of the roads involved." However, two of the Patrol Officers' essential duties are included in the "Peripheral Duties" of Transport Officers: Operate alcohol detecting equipment; and Provide assistance during various special events, including traffic direction, crowd control and security. In addition, the two classifications have four identical "peripheral duties": Assist in jail operations; Type supplemental reports as deemed necessary; Tag car kill deer; and Perform other related duties as required or assigned.

The Association presented evidence about how transports and process serving are done in the comparable counties:

In Marathon County transports are done by Deputies who are paid the same as Patrol Officers. Paper service is done by a Deputy and a Detective. They are paid at the Patrol Officer and Detective Officer rates respectively for that work. There is a reduced rate paid to some supplemental, retired employees.

In Outagamie County, transports and paper service are done by Patrol Officers paid at the Patrol Officer rate. There is also a full-time and a part-time, non-sworn process server who were paid \$16.41 in 2000.

In Shawano County transports are done by Patrol Officers, paid at the Patrol Officer rate. Patrol Officers also do warrants, evictions, and civil process where needed immediately. There are also civilians who are paid an hourly (\$9 and \$8) rate, who work less than 600 hours per year.

In Waushara County transports are done by a Detective Transport Officer who is paid at the Deputy rate (i.e. Patrol Officer rate). Deputies are used for process serving.

In Winnebago County transport is done by Court Services Deputies, who are paid at the Patrol Officer rate. There is a Police Officer/Process Servicer who is paid at the Patrol Officer rate.

The Association notes that notwithstanding the County's upgrade of the Transport Officers' wage rate in 2000, these employees "...are and have been very underpaid." Even under the Association's final offer, as of the date of accretion the Transport Officers receive \$ 1.25 less per hour than Patrol Officers, "despite the pattern of external comparables where all of them pay the deputy or Patrol Officer or even the detective wage rate for transports. The Patrol Officer wage rate is the most common wage arrangement for process service, though civil process in two circumstances is done by civilians at a lower wage rate." The Association argues that its proposed increase is what "is necessary if the Transport Officers are going to be brought within range of those who do the same kind of work in the surrounding counties." The Association notes that its proposed increase for 2001 is 3%, which is, in effect, a cost of living increase, and is "what the employees would have received even if they remained as non-represented employees."

With regard to the rates proposed by the Association in relation to the comparables, Waupaca County would rank sixth of seven without longevity being included, and seventh of seven with longevity. The Association's proposal would result in "some catch-up," it argues, while the County's final offer would leave the employees at the bottom. "The Employers offer would result in a last place ranking (7 of 7)...\$1.59 per hour below the bottom rate..."

The Association argues, "It is clear that the predominant wage rate for sworn officers assigned prisoner, inmate and mental health transport responsibilities are paid patrol wages. The [Association's] proposal is to move in that direction, but to be conservative, to simply bring...Waupaca...within range of the patrol wage rate, within range of the externally comparables positions assigned the same type of duties."

The Association argues that the County's arguments about difficult economic conditions in 2002 should have no bearing on this arbitration, which is about the effects of the accretion in 2000. Those economic conditions may be relevant to the 2002 bargain, but not to this one.

The data presented about the comparables establishes that the duties performed by the County's Transport Officers are done in those other counties by Patrol Officers. What neither party has established is the amount of time per day, or per week, that Patrol Officers in those counties perform transport or paper service duties. There is no evidence that any Patrol Officers in those counties spend all of their time, or a substantial amount of it, performing these duties. Whether the time spent by particular Patrol Officers is large or small, it is significant that they receive the Patrol Officer rate for performing those services. Viewed from a different perspective, the arbitrator has no basis to assume that the comparable counties have any more or less volume of transport and paper service work than does Waupaca County, and, with the exceptions noted above, these counties have opted to have this work done by Patrol Officers.

In the present case, the Association has recognized that while there is some overlap in duties, it is the case that the duties of Transport Officers in Waupaca County are different from those of Patrol Officers. It argues persuasively, however, that given the fact that the qualifications and certifications of both groups are identical, that there is substantial overlap in essential and peripheral duties, and that Transport Officers face great risks and dangers at times, the wages of Transport Officers should be much closer to those of Patrol Officers than is now the case. It is only now, because the Transport Officers have been accreted to the bargaining unit, that the Association is in a position to bargain that result. It appears to be the case that the County has up until now paid its Transport Officers considerably less than is paid for that work in the comparable counties, and the Association's position is reasonable that the situation should be corrected. The Association emphasizes that implementation of its final offer would place the Transport Officers behind the Patrol Officers in the County by \$ 1.25, in recognition of the differences existing in their schedules and duties, and more than \$ 2.00 below the lowest Patrol Officer rate paid by the comparable counties.

The County is correct that there has been no change in the duties of Transport Officers, only an accretion to the bargaining unit. The County views the lack of any change in duties as support for its position that there is no justification for a wage increase of the magnitude proposed by the Association. The County emphasizes also that prior to the accretion it raised the grade level of the Transport Officers and gave them the general increase as well. The fact remains, however that even after that improvement, the wage rate offered to Transport Officers in the County's final offer (\$14.9959 at the 100% rate) is far below the wage being paid in the comparable counties for performance of that work.

The County is also correct that the wage increase being sought by the Association for Transport Officers is far in excess of the wage increases given to the County's other bargaining units. That argument is not as persuasive as it might otherwise be, because this is an accretion and a one time correction affecting just four employees. It is not a general wage increase being given to the entire bargaining unit. There is no change to the wage rate paid to the remainder of the bargaining unit under either final offer.

The County is also correct that in Waupaca County there is a substantial difference in the duties assigned to the two classifications, and in the way the employees are scheduled. As mentioned above, in the arbitrator's view, that fact provides justification for having different pay rates. The issue which must be decided is how much that disparity should be.

An important aspect of this dispute is the parties' disagreement about how their wage proposals should be evaluated. The Association is proposing a 3% increase for 2001 above the \$ 16.50 maximum wage rate which it proposes be effective on the September 6, 2000 accretion date. In its view, what occurred prior to that date should not be given any weight. The County argues that in evaluating its proposal of no additional wage increase between the date of accretion and the end of 2001, it must be kept in mind that the County gave Transport Officers a substantial increase in 2000 through

reclassification and the same 3% increase which it gave to other non-represented employees and to represented employees in other bargaining units.

The arbitrator does not view the increase in 2000, given prior to September 6th, as of great significance because it was not bargained. Had it been bargained, then a persuasive argument could now be made that the parties had considered the need for catch-up for these employees, and had agreed on the appropriate placement for 2000. The County's adjustment in 2000 does not represent agreement by the parties that the new placement was appropriate, because the Association did not represent the Transport Officers in 2000 prior to September 6th. The County had complete discretion over what it paid Transport Officers, and what adjustment to implement. The County concluded, apparently, that Transport Officers were not being paid adequately and it reclassified them, effective January 1, 2000 to a level which it viewed as more appropriate. At the 100% level, the rate was increased from 13.0817 to 14.5591, an increase of 11.3%. The cost of that increase was figured into the County's 2000 budget.

In interest arbitration what is normally looked at by the arbitrator when considering wage proposals is the position of the affected employees at the start of the bargaining period, and the reasonableness of the proposed wage increases, both in absolute terms and in comparison to other employees both within the jurisdiction and in comparable jurisdictions. In the present case it is the period from the date of accretion through 2001 which is in dispute. As mentioned above, a recently bargained catch-up raise would be entitled to great weight, because it would reflect mutual agreement on a proper placement, and there would then have to be very persuasive justification given for yet another catch-up increase. That is not the situation here, however, since the reclassification was not the result of bargaining.

For the period from September 6, 2000 through the end of 2000, the County offers no wage increase, and the Association offers an increase of over 13.33%. The Association proposes an additional 3% on January 1, 2001 which is the increase which the County paid to its other employees, non-represented and represented, effective in January, 2001.

The internal comparison bargaining units did not get an increase in September, 2000. The external comparison units did not receive wage increases in September, 2000. Thus, simply based on a comparison of across-the-board increases for 2000, the County's final offer would be more reasonable, since the County gave a wage increase for calendar year 2000 which was identical to what was given to the internal comparables, and there is no evidence that it is out of line with what was paid by the external comparables. However, an analysis confined to dollar or percentage wage increases paid by the comparables fails to take account of the relative wage rates of the County's Transport Officers in comparison to the wage rates paid to employees doing similar work in the County and in the comparable jurisdictions. That analysis is particularly important in a situation in which the affected employees have newly acquired bargaining rights.

The Association has shown that even after implementation of its final offer, the wage rate paid to Transport Officers will be considerably behind what Patrol Officers are paid in comparable jurisdictions and will rank either last or next to last. Under the County's offer they will rank last and be even further behind in terms of the wage rate. The Association argues persuasively, that the relative wage placement of the Transport Officers needs further adjustment both in relationship to Patrol Officers in the County, and to those in the external comparables. Viewed in this context, the 13.33% increase for Transport Officers in September, 2000 is reasonable, notwithstanding the prior efforts of the County in 2000 to adjust their wage rates.

The record in this case persuades the arbitrator that the similarities in the job descriptions of the County's Transport Officers and Patrol Officers, with respect to qualifications and essential and peripheral duties, are such that their wage rates should be in closer proximity to one another than now exists. While the record establishes that the day to day assignments, duties and risks faced by these two classifications are not identical, and justify a higher wage rate for Patrol Officers than for Transport Officers, the difference in their wage rates should be narrowed further. In this connection, the arbitrator views it as relevant that in the external comparables, Patrol Officer rates are paid to employees who do transports and serve papers as a regular part of their duties. Even if, for argument's sake, the County is correct that the proportion of the time spent doing those activities is much less per individual than is the case with the County's Transport Officers, those duties are viewed in those jurisdiction as appropriately done by Patrol Officers and paid at Patrol Officer rate.

The County cites economic difficulties which the County had to face in 2002 and argues that the anticipated loss in shared revenues, the need for it to cut budgets and the continuing escalation of health insurance premiums, are additional reasons why it is not reasonable to pay the Transport Officers what the Association is proposing. The arbitrator is not persuaded by the economic evidence presented that the catch-up adjustment to four employees for the last four months of 2000 should not be made, and the 3% additional increase for 2001 proposed by the Association is a reasonable increase. Undoubtedly, the economic difficulties faced by the County will affect the bargaining of the 2002 re-opener, but the current dispute is over what should be done in 2000 and 2001.

Subcontracting: The County argues that its proposed modification of the Agreement was imperative in order to maintain the existing rights of the Sheriff, as they relate to transport functions. The existing subcontracting language, if it were to cover Transport Officers, would give them benefits which they do not now have, according to the County. It argues further that the Association's offer, "...would be an unconstitutional infringement upon the Sheriff's rights, and therefore would be illegal." The County argues that its proposal maintains the status quo with respect to the subcontracting language as it affects law enforcement personnel. Under its proposal, it argues, "There will be no change in the method by which the parties have handled subcontracting for either the Law Enforcement employees or the Transport Officers."

The Association argues that there is no reason for the parties to change the existing subcontracting language, since the accretion to the bargaining unit does not change the statutory rights that the Sheriff already has. To the extent that the Sheriff does not have the right to limit subcontracting, "...there is no reason why the Transport Officers should have provision any different from Patrol Officers or Detectives." The Association argues further that arbitration is not the proper forum in which to argue that a proposal is illegal, and the County could have sought a Declaratory Ruling from the WERC if it thought that inclusion of the Transport Officers under the existing subcontracting language would be an illegal infringement of the Sheriff's statutory or constitutional rights. In this connection, the Association argues that in its view, there would be no such infringement. The Association analyzes the provisions of subcontracting language in the comparable external bargaining units, and finds no language comparable to what the Employer is proposing. It states, "This Employer wants unique language which none of the external comparables have seen a need to incorporate." Implementation of the County's proposed modification would amount to a denial by the County that there are legitimate subjects which could be bargained concerning the rights of Transport Officers if some of their work were to be subcontracted. The Association argues also that the language proposed by the County deletes benefits enjoyed by the law enforcement employees, language which requires prior notice of subcontracting and the opportunity to negotiate issue relating to the proposed subcontracting. In addition, the Association argues, the County has proposed this reduction of benefits without offering a *quid pro quo* for this reduction.

The Association is correct that the County's proposal takes away a benefit which the Association has enjoyed, whether or not that was the County's intent. Under the existing language, the County is obligated contractually to negotiate with the Association over the impact of subcontracting prior to entering into the subcontracting arrangement. The County's proposed modification continues the obligation to negotiate the impact of subcontracting, but removes the obligation to do such negotiation prior to doing the subcontracting.

The County's arguments in support of its modification are based on its assertion that without such modification the existing language, after the accretion of the Transport Officers into the bargaining unit, might be read to infringe on the statutory and/or constitutional rights of the Sheriff. It is not clear to the arbitrator that the County is correct in this regard, and he is not persuaded by the County's arguments. Moreover, if the Association's final offer is implemented, the County would still have the ability to seek a Declaratory Ruling from the WERC or make arguments in a court proceeding urging that the existing language should not be enforced because of its (alleged) limitation on the rights of the Sheriff.

On the issue of subcontracting language, the arbitrator favors the Association's position.

Benefit Accrual: The County argues that the Association's final offer does not contain final language, is ambiguous and if implemented, will result in grievances.

The Association describes its final offer on this issue as "an implementation statement" to apply to all benefits where seniority applies. The Association acknowledges that not all of the applications of seniority are spelled out in the Agreement, and some have been implemented based on past practice. This fact, it argues, should not be counted against the Association's proposal. The Association's proposal, which the County did not address in its final offer, is made in order to define the seniority of Transport Officers, so that this important matter is not left to the County's unilateral discretion.

The arbitrator agrees with the Association that the seniority date for benefit accrual purposes should be negotiated, not determined unilaterally by the County. The problem with the Association's final offer is that it does not contain specific contract language establishing seniority for benefit accrual, either generally or as applied to specific benefits. It is conceivable (the arbitrator does not know it to be the case) that different benefits are, or have been, administered differently with respect to the effective date used in their calculation, and that would underscore the need for specific language.

The County is correct that the Association's proposal is vague and ambiguous since it does not specify contract language. The County is concerned, also, that implementation of the Association's final offer will lead to the filing of grievances.

The possibility of grievances being filed is not a concern to the arbitrator, because the likelihood of grievances being filed may be just as great based upon management's unilateral determination of benefit accrual if there is no change in the existing contract language.

The arbitrator views both final offers on this issue as unsatisfactory, but he prefers the County's offer because it makes no change in the status quo. The Association's proposal is not a proposal of contract language, and does not bring clarity to the situation.

Professional Improvement Plan [PIP]:

The existing PIP is geared to law enforcement officers. The "Purpose" states: "In view of the demands placed on law enforcement officers..." and the payments are for credits earned in the "Police Administration Program" or "The Police Science Technology Curriculum".

The County proposes to not include Transport Officers in the existing PIP. It argues that the Association did not seek a separate PIP for the Transport Officers, and thus "The Association is basically requesting a benefit to Transport Officers which is not tailored to their specific job duties and responsibilities." The County argues that its proposal is not meant to exclude Transport Officers from having a PIP. Rather, it

argues, the existing plan was bargained for law enforcement personnel, and Transport Officers are not entitled to it "simply due to their accretion into that bargaining unit." It argues that the parties can bargain about a PIP for Transport Officers, noting that there is a separate PIP which was bargained for Correctional Officers in their agreement. The County argues also that in the current economic climate it does not want to incur additional costs, and it does not want to simply give the Transport Officers a PIP, at the County's sole expense, "which is customized for Patrol Officers." The County recognizes that two of the four Transport Officers have four year degrees, but argues "that does not mean the County will not incur future costs as a result of the Association's proposal."

The Association argues that the County is not justified in excluding Transport Officers from the existing PIP, noting that Transport Officers are required to be law enforcement certified, be able to enforce the law, and have patrol responsibilities as secondary requirements (see discussion of Wages, below). Moreover, it argues, the amount of money involved to include them is "modest." It notes that given the fact that two officers already have four year degrees, "the cost of tuition and books is not a factor for those officers." The Association argues, "It is not unreasonable for the [Association] to expect that Transport Officers will receive professional improvement reimbursement and compensation on the same basis as other employees who have to attain and maintain the same qualifications."

The County argues that its final offer does not deprive any employee of an existing benefit. Patrol Officers continue to be covered by the PIP. Transport Officers are excluded from the PIP, but they have no PIP entitlement now.

In the arbitrator's view, the County's position is not unreasonable, but it also would not be unreasonable to include the Transport Officers in the existing PIP, either permanently, or temporarily until a separate PIP were negotiated, given the similarities of the job descriptions, and some overlap in duties. There is merit to the Association's argument that it would have been more reasonable for the County to negotiate a separate PIP for Transport Officers rather than to simply exclude them from the program. The cost of inclusion would not be significant, at least during the period involved in this arbitration.

The arbitrator views both final offers on this issue as reasonable. Given that this is a minor economic issue compared with the wage issue, the PIP issue by itself and/or in combination with other issues will not be determinative of the outcome of the arbitration. Therefore, the arbitrator does not favor one final offer more than the other on this issue.

The statute requires the arbitrator to select the entire final offer of one party. In his view the arguments favoring the Association's final offer with respect to wages and subcontracting outweigh the arguments which favor the County's final offer on benefits accrual. Based on the above facts and discussion, the arbitrator makes the following AWARD:

The final offer of the Association is selected.

Dated this ____ day of April, 2003 at Madison, Wisconsin

Edward B. Krinsky
Arbitrator