

BEFORE THE ARBITRATOR

In the Matter of the Petition of

Case 168 No. 64291
MIA-2631

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION\LA W ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

Dec. No. 31363-A

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

Heard: 8/24/05
Record Closed: 10/24/05
Award Issued: 12/23/05

MONROE COUNTY (SHERIFF'S
DEPARTMENT)

Sherwood Malamud
Arbitrator

APPEARANCES:

Thomas W. Bahr, Executive Director, WPPA\LEER Division, 340 Coyier Lane,
Madison, Wisconsin 53713, appearing on behalf of the Association.

Ken Kittleson, Personnel Director, Monroe County, 14345 County Highway B, Room
3, Sparta, Wisconsin 54656-4509, appearing on behalf of the Municipal
Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

The Wisconsin Professional Police Association\Law Enforcement Employee Relations Division, hereinafter the Association, and Monroe County (Sheriff's Department), hereinafter the County or the Employer, selected the undersigned from the panel of names submitted to them by the WERC. On July 14, 2005, the WERC appointed Sherwood Malamud to determine this dispute involving a unit of non-supervisory law enforcement personnel pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act. Hearing in the matter was held on August 24, 2005, at the Monroe County Courthouse in Sparta, Wisconsin. The parties agreed to submit original briefs on October 7 and they reserved the right to file reply briefs by October 24, 2005. The Association erroneously submitted its brief on October 17. The County objected to the Arbitrator's receipt of the brief. After the exchange of briefs by October 24, the Association indicated that it would not file a reply brief. Inasmuch as the delay in the filing of the Association's brief has not led to any delay in the issuance of this Award, the Arbitrator received and considered the Association's brief.

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

The Association Offer

Wages effective 1/1/05 increase by 3% ATB. Effective 1/1/06 increase by 2% ATB.
Effective 7/1/06 increase by 2% ATB.

Health Insurance - no change.

Add an additional section to Article 5 - Hours as follows:

The employees shall have the opportunity to select shifts by seniority within their classifications on an annual basis, on or before December 1st of year. The employee shall, as part of the selection process, provide the county with their first, second, and third preferred shift of work. The selection shall become effective in the first pay period in January of the following year.

The County offer

Wages effective 10/1/05 increase by 2% ATB. Effective 1/1/06 increase by 2% ATB.

Health Insurance - Effective 1/1/06 add a \$250 single/\$500 family deductible to the current health insurance coverage and plan effective 1/1/06.

Both parties propose to change the name of the department from police to sheriff's department.

STATUTORY CRITERIA

Sec. 111.77(6) provides that:

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 service 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

The parties exchanged initial proposals on August 23, 2004. They met on one occasion, on October 5, 2004. On December 17, 2004, the Association filed a petition for arbitration. WERC Investigator Shaw mediated with the parties on April 19, 2005, and he declared an impasse on June 16, 2005.

The parties agree on the comparables. The comparability pool was established through three arbitration awards issued over the period of 1984 to 1999 in cases arising between this Employer and this unit. Arbitrator Fogelberg in 1984, Engmann in 1997 and Bellman in 1999 set the group of five law enforcement units comparable to the Monroe County. The comparability group comprises three other contiguous counties to Monroe: Jackson, Juneau and Vernon, and the cities of Tomah and Sparta that are located in Monroe County. Monroe is by far the largest of the four counties with a population estimated in 2004 at 42,626. In 2004 the estimated population of the other counties are: 28,928 for Vernon; 25,470 for Juneau and 19,677 for Jackson. The

estimated per capita personal income in Monroe County in 2002 was \$23,193; in Jackson it was \$25,835; in Juneau it was \$22,950, and in Vernon County it was \$20,878.

The equalized value of Monroe County property increased by 8.6% from 2004- 2005, \$1.89 to 2.05 dollars. The equalized value of the other counties in the comparable group increased from 2004 to 2005, as follows: Juneau from \$1.54 to \$1.62 billion or 4.9%; Vernon from \$1.21 to \$1.35 billion or 11.52%; and Jackson from \$1.019 billion to 1.063 billion or 4.32%.

In terms of long-term debt, Monroe County accessed \$7.6 million out of \$89+ million available. Vernon has only \$380,000 of long-term debt from an allowable limit imposed by the state of \$57 million. Juneau has \$18.7 million of actual debt out of an allowable debt level of \$68.2 million. Jackson has \$4.5 million long-term debt out of an allowable debt limit of \$48.8 million.

Monroe County maintains the second largest law enforcement department with a total force of 37 or 1.5 law enforcement officers per thousand. Juneau County maintains a department of 41 officers, 2.3 law enforcement officers per thousand. Vernon County maintains a department of 26 officers or 1.2 law enforcement officers per thousand and Jackson a department with 22 law enforcement personnel or 1.7 per thousand. The City of Tomah maintains a department of 18 or 2.1 law enforcement officers per thousand and Sparta a department of 15 with 1.7 law enforcement officers per thousand.

At the arbitration hearing, neither party called any witnesses. At the end of the hearing, the parties agreed to close the record. If awards were to issue in the other Monroe County units in arbitration, they were not to be sent to the Arbitrator. No party reserved the right to submit additional evidence to the record.

In the analysis that follows, the Arbitrator includes the arguments of the parties, as appropriate, in the discussion of each of the statutory factors as applied to the final offers of the parties.

DISCUSSION

Wages--Introduction

The County's proposed increase of 2% effective October 1, the last quarter of the calendar year, generates a dollar increase for employees that is less than \$200 for the top patrol officer and costs the County 1/2%. The County proposes a 2% increase effective January 1, 2006, as well. With the exception of the dispatchers, who are represented by this Union, the WPPA\LEER Division, the other four units that are represented by AFSCME are in arbitration, as well. The Union in those four other units has proposed wage increases of 2% for all of 2005 and an additional 2% for all of 2006. The Association offer, here, for the members of this law enforcement unit, is higher than what is proposed by any other represented unit of employees in Monroe County. The Association offer in the Dispatcher unit is for 3% in 2005 and 2006. The Association proposes a 3% increase for all of 2005 and a 2% increase January 1, 2006, and an additional 2% increase July 1, 2006. The Association's offer is front loaded; it generates a lift of 7% over its two-year term. The cost of its offer is 3% in the first and slightly over 3% in the second year.

Wages--The Statutory Criteria

The lawful authority of the Employer and stipulations of the parties do not serve to distinguish between the final offers of the parties. The parties entered into no stipulations.

Interest and Welfare of the Public

With regard to the interest and welfare of the public criterion, the Association argues that its offer will support the morale of the bargaining unit members. It makes this argument without any evidentiary support.

The County relies heavily on this factor. It structured its argument in a manner that echoes the statutory criteria that governs the non-law enforcement units to emphasize the importance of this criterion to the ultimate disposition of this dispute.

The County notes that in the fall of 2004, it laid off some 26 employees in order to address a fiscal crisis. Each department, including the Sheriff's, had to cut costs totaling approximately \$200,000. The Employer placed in evidence a letter from the County Board Chair, Dennis Hubbard. In its brief, the Association objects to the letter. Since the record is closed, the Arbitrator treats the letter as argument filed prior to the briefing deadline, rather than an exhibit.

The matter referenced in the letter is already in the record submitted at the hearing. In material part, the County Board Chair notes:

The new state budget allows our annual tax levy to increase by 2% or the increase of new construction in our county, which is 3.84%. The 3.84% figure is equal to \$471,000, and this is the amount by which we are allowed to increase our 2006 tax levy. Our tentative budget for 2006 is near completion and will be just over \$44 million. . . .

Our major concerns are:

- High annual increases in health and dental insurance
- . . .
- Energy cost increases for natural gas, electricity, diesel fuel, and gasoline. . .
- . . .
- Delays in state and federal reimbursements make it necessary for the county to have moneys available to cover required expenses for up to 18 months before receiving final settlement.

It appears from the financial audit placed in the record by the County that these measures succeeded in restoring stability to the County's financial condition by building up its unrestricted reserve, the fund the County uses for operating cash. In 2004, that fund dwindled to such a low extent that the County had to take drastic measures; the layoffs and cuts referenced above.

The County argues that it has raised the levy by 15% and taxes by 12%. It emphasizes the extraordinarily tight financial environment in which it must operate due to the two-year freeze imposed by the legislature and governor.

The Association counters that an increase of 3.884% in new construction provides additional breathing room in which the County may operate. As a proportion of the total County budget, the increase in the total package of wages and insurance attributable to this unit eats up the proportionate share of the leeway generated by the new through the increases in insurance premiums approximating 12-12.5% and a wage demand by the Association of no less than 3% in each year.

The long-term financial picture of the County appears brighter, at least to this Arbitrator. The County does not carry much long-term debt. From the newspaper account submitted into the

record, it appears that the County used the unrestricted fund balance that should have been used to provide operational cash to cushion or minimize the amount of increase in the tax levy and rates.

Nonetheless, Monroe County is one of the municipal employers that raises its taxes and expenditures slowly and gets particularly hard hit by legislative freezes that severely limit its ability to weather normal increases in costs. The Arbitrator concludes that this criterion provides substantial support to the selection of the County offer over that of the Association.

Comparability

Union Exhibit 5D establishes the factual basis for the application of this criterion. In public employment, the average top patrol rate,¹ the year-end rate, paid by the comparables in the base year 2004 was \$17.81 per hour. That increased by \$.61 in 2005 or by 3.4%. For 2006, the rate increases to \$19.03 or another \$.61 per hour or by 3.3%.

In 2004, the hourly rate for top patrol in Monroe County, year-end, was \$17.29. Under the County offer, the rate increases to \$17.64 or \$.35 per hour in 2005. Again, employees would only receive that increase during the last quarter of 2005 under the County's offer. The rate increases to \$17.99 by \$.35 per hour in 2006.

Under the Association offer, the 3% proposed increase in 2005 would bring the hourly rate of top patrol to \$17.81, the wage level paid at the average of the comparables in 2004. In 2006, the 4% lift increases the rate to \$18.53 by \$.72 per hour.

The 2005 rate of \$17.81 places Monroe County at position number five among the six comparables, as does the County's final offer. However the County's final offer places the top patrol rate at \$.78 below the average as contrasted to what it was in 2004 at \$.52 below the average. Only Vernon County with a top patrol rate of \$17.09 is lower than Monroe County. In 2006, the rate in Vernon increases to \$17.60. Under the County's offer, it increases to \$17.99.

¹No objection was raised to the assumptions made by the Association, particularly that Juneau County, the county with the highest wage rates among these comparables, would increase wages by no less than 3% in 2005 & 2006.

However, the County's rate is \$1.04 below the rate of the average of the comparables. Under the Association offer, the rate is \$.50 below the average, only two cents better than where it started in the base year 2004.

Clearly, both the percentage and dollar increase generated by the Association's final offer more closely approximate the raises provided by the comparables to their patrol officers. Only Tomah provided an increase in rate below 3% from 2004 to 2005. It raised its rate that started in 2004 at \$.88 above the average by 2.5% to \$19.16 or \$.74 above the average in 2005. Both Jackson County and the City of Sparta increased the 2004 rates by 4 and 4.4%, respectively. The external comparables provide strong support for the Association final offer.

Although the Arbitrator usually discusses internal comparability under the "such other factors" criterion, that discussion occurs here to clearly juxtapose both internal and external comparability. Ordinarily, internal comparability would be accorded much greater weight than external comparability factors. Clearly, the Association offer substantially exceeds the pattern of 2% proposed in four of the other units. However, a 2% offer for all of 2005 and 2006 would only leave the Monroe County patrol officer further behind the average salary paid by comparable employers. No employer among the comparables increased wages by as little as 2%. As noted above, Tomah raised the Patrol rate in 2005 by 2.5%. It started at a much higher rate, \$.88 above the average. In 2006, it raised the wage level of the top patrol by 2.9%.

It is in this kind of case in which this Arbitrator provides greater weight to external comparables than the internal comparables. When the internal comparable percentage increase would substantially impact a defined category of employees such as law enforcement officer, negatively, as in this case doubling the rate below the average, or pushing it upward above the average to the same extent, the Arbitrator gives external comparability greater weight. In this case, the pattern increase in Monroe County of 2%, would have a substantial impact on the Top Patrol rate. It would place that rate at \$1.04 below the average, when in 2004, it was \$.52 below the average.

Arbitrator Bellman in his award between these parties, said it succinctly:

In the Arbitrator's view, the structure of the increase is far less important than its effect upon the employer and its employees. There is no apparent reason why these employees should lag behind their counterparts at comparable employers. How the increase is

given to other county employees placed them among their counterparts is not indicated by the evidence. The fact that both parties' offers in some sense exceed the rate of the increase in the cost of living is relevant but, in the judgment of the undersigned, does not justify adopting the Employer's offer which would cause this unit to fall further behind its comparable counterparts.
Monroe County, Dec. No. 29595-A (10/99)

Arbitrator Bellman selected the Union's final offer.

Cost of Living

The Association notes in its brief that there is a slight up-tick in the cost of living from July to September. The Midwest All Urban Consumers Index remained at 2.8%, however the Urban Wage Earner Index increased from 3.1 to 3.9%. This criterion provides some support to the Association final offer. This data has consistently provided that support. The Employer's half of 1% increase in dollars paid to its employees in 2005 is not supported by the CPI.

Changes in the Foregoing and Such Other Factors

Between December 10 and December 20, the Association forwarded the Awards of Arbitrators Vernon, Brotslaw and Torosian. To date, the Arbitrator received the award in INT/ARB-10377 of Arbitrator Vernon in the AFSCME Rolling Hills unit, the award of Arbitrator Brotslaw in the Professional Employees unit in the Human Services Department and the Paraprofessional unit in that department under INT/ARB-10380, Decision No. 31374-A, and the award of Arbitrator Torosian in INT/ARB-10342 under Decision No. 31362-A. In today's mail, the Arbitrator received the County's objection to the submission of these awards. The County's belated objection is well placed. The parties closed the record on August 24. The Arbitrator does not take into account the above referenced awards.

Health Insurance

The statutory criteria that serve to distinguish between the offers of the parties on this issue are: the interest and welfare of the public, comparability internal and external, and changes in the foregoing and such other factors. The Employer proposes to introduce into the insurance plan a deductible of \$250 for single and \$500 for family beginning January 2006. This plan change would reduce the premium under the Gunderson Lutheran Plan by 2.5% and by 6.5% under the Health Tradition Plan. Under both plans there is a \$30 co-pay for office visits and employees contribute 13% of the cost of premiums. The premium costs for single and family under the Gunderson Lutheran HMO is \$467 and \$1,098 respectively with the employee contribution of \$60.70 per month for single and \$142.74 per month for family. The 2005 rate under Health Tradition (Franciscan Skemp) HMO total premium is \$562.23 for single and \$1,352.15 for family. The employee contribution for single coverage is \$73.08 and for family it is \$175.78 per month. Monroe County employees already contribute substantially to the cost of health insurance.

Both parties address the issue of whether the County should be required to offer a quid pro quo for its proposed change to the health insurance plan. The County quotes Arbitrator Petrie from his award in City of Marinette, Dec. No. 30872-A (11/27/04), in which he concludes that a quid pro quo was not necessary in a situation in which health insurance premiums double from year to year. Such an increase in health costs made it the problem of both union and employer. Similarly, Arbitrator Engmann in City of Onalaska, Dec. No. 30550-A (10/10/03), observed that:

So it almost goes without saying that, with limited budgets caused by cutbacks in state aid and decreases in other revenues, a municipal employer can easily show that it has a legitimate problem of paying the increased and skyrocketing cost of health insurance premiums.

This Arbitrator has for many years strictly followed the quid pro quo paradigm in the application of the statutory criteria in determining interest arbitration disputes. This approach stems from this Arbitrator's experience that in most situations there has to be a reason for change. In order to obtain change, one must make it worth while for the other party to agree.

The cost of health insurance has skyrocketed at such a pace and consumed so many employer dollars allocated towards increases in employee wages and benefits that with rare exceptions, health insurance is everyone's problem, certainly, both Employer and Union. Health insurance is no longer the benign benefit that may increase total package costs by a half percent. Unfortunately, those days are long gone. In an era of annual increases in premiums of between 10 and 20%, employers and unions must work together to attempt to identify strategies to slow the

pace of the increase. A formal quid pro quo may not be necessary to address the increase in health insurance costs. However, proposals to deal with health insurance plan design and costs cannot be considered or evaluated in isolation. Proposals on plan design or contribution level must be considered together with the wage proposal.

The Employer attempts to slow the rate of increase through its deductible proposal. By itself, the Employer's proposal is not unreasonable. However, there is insufficient data in the record for the Arbitrator to ascertain the level of contributions made by other employees of comparable employers. The County is correct when it notes that all of the other comparables provide a plan with a health insurance deductible. There is no such plan here in Monroe County. Certainly, that point favors the selection of the Employer's offer.

Absent clear data on the level of contributions and the structure of the health insurance plan chosen by employees of comparable employers, it is difficult to evaluate whether employees of the comparable employers contribute towards premiums at a level of 13% and pay a \$30 per office visit co-pay fee.

The Employer refers to taxpayer outrage at first dollar coverage for hospitalization among those who work for private employers and who do not have coverage found here in Monroe County. Unfortunately, the data that supports that assertion, particularly with regard to the presence or absence of deductibles versus office co-pays for private employers that provide insurance is absent from this record.

Based on the evidence presented, the addition of a deductible and its reduction of the increase in premiums in both the Gunderson Lutheran plan selected by 70% of this bargaining unit and the other plan chosen by the other 30% is reasonable. There is no evidence to suggest that it unduly burdens these employees. The Association argues that the \$500 deductible represents 1.3% of a patrolman's income. One must incur the health costs in order to pay the deductible. Certainly, there is no data as to unit use and extent to which the deductible would be paid by employees should it be included as part of the two health insurance plans extant in Monroe County. In the long run, arresting the rate of increase works to the benefit of the employees in the unit as well as for the Employer. The Arbitrator concludes, therefore, that standing alone the Employer's offer is preferred on the health insurance issue.

As noted above, however, health insurance must be considered together with the wage proposal. The Employer's half of 1% offer in 2005, increasing patrol officers' pay by under \$200 in the last three months of the year when weighed against the health insurance deductible proposal lacks balance and fairness.

The Arbitrator expresses this view while at the same time according substantial weight to the financial condition of the Employer. It had a choice here. The Employer could have proposed a change to the health insurance plans by the inclusion of a deductible in the second year of a two-year agreement and prevailed. Or, in the alternative, it may have made its wage proposal, a 2% wage increase on October 1.

Summary

The Arbitrator finds in the above analysis that the external comparables strongly support selection of the Association offer. Internal comparability provides support for inclusion of the County's final offer in the successor agreement for calendar years 2005-2006. The external comparability factor in this case outweighs internal comparability. The cost of living factor provides some support for selecting the Association's final offer. The interest and welfare of the public factor provides strong support for the selection of the County's final offer, one in which the cost of the increase in the first year is minimized. If the wage issue were the sole issue in this case, the Arbitrator would have a difficult time balancing external comparability and the large reduction in the competitive level of salary paid to the top patrol officer in Monroe County as compared to the average wage paid by comparable employers by 2006. The doubling of the distance between the average generated by the Employer's offer would make it difficult to select its final offer, in this case. However, its financial condition, in the short run, would support the selection of the County's final offer on the wage issue.

The selection of the final offer for inclusion in the successor agreement for 2005-2006 is much simpler when health insurance is considered as an issue. Again, by itself, the Employer's proposal appears reasonable, in the absence of evidence documenting the level of contribution of employees of comparable employers towards their health insurance. The wage and health insurance offer of the Employer is untenable when considered together.

The Association proposes a language issue. Without calling any witnesses, it asserts that the language reduces to writing the parties' practice for inclusion in their agreement. Without

evidence as to the nature of the practice, this Arbitrator is extremely wary of including new contract language without knowing its full impact. The proposal appears to this Arbitrator to set forth a procedure for shift selection. It does not mandate the awarding of shifts by seniority. Shift selection in a 24-hour operation, particularly one involving law enforcement, may be burdensome, if done strictly on the basis of seniority. It may result in shifts, such as the day shift, with all senior employees on that shift and all new employees on the p.m. or night shift. If the Arbitrator considered the proposed language required shift selection by seniority without regard to any other consideration, the Arbitrator would not have selected the Association offer for inclusion in the successor agreement, despite the analysis above on the wage and health insurance issue.

The Arbitrator in this case is presented with an unusual situation in which both the Union and the Employer touch upon the shift selection problem. The County approach is more subtle. The parties have included in their agreement from at least 1994 through the 2004 agreement a letter of understanding that in material part reads, as follows:

It is the intent of the parties that matters relating to hours of work regarding bargaining unit employees shall be addressed and resolved by mutual agreement of the Local and the Department Head; accordingly, all matters/practices relating to hours of work under article 5 shall continue, unchanged, unless a change is mutually agreed upon by the Local and the Department Head.

The County discloses that it will not sign the letter for inclusion in the successor agreement. It argues the letter sunsets at the expiration of the 2004 agreement. With no witnesses called by either side, the Arbitrator has no idea what impact the County's position would have on the application of the "hours" article of the agreement. The Arbitrator cannot apply the statutory criteria to this issue and use it as the basis for selection of the final offer of the Association or the Employer for inclusion in a successor agreement.

Selection of the Final Offer

Under the statutory criteria, the Association's offer is preferred on the total package wage and health insurance issues. Accordingly, in the Award below, the Arbitrator selects the Association's offer for inclusion in the successor agreement.

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

AWARD

Under the statutory criteria at Section 111.77(6), Wis. Stats., and for the reasons discussed above, the Arbitrator selects the final offer of Wisconsin Professional Police Association\Law Enforcement Relations Division for inclusion in the successor agreement between the Association and Monroe County for calendar years 2005 and 2006.

Dated at Madison, Wisconsin, this 23rd day of December, 2005.

Sherwood Malamud
Arbitrator