

BEFORE THE ARBITRATOR

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IN THE MATTER OF THE PETITION OF  
CALUMET COUNTY

AND

Case 124 No. 63861  
MIA-2611  
Dec. No. 31487-A

WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION/LAW ENFORCEMENT  
EMPLOYEE RELATIONS DIVISION

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Appearances:	For the County	William Bracken, Esq. Davis & Kuelthau
	For the Association	Thomas W. Bahr Bargaining Consultant

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on January 31, 2006. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file Briefs. The arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the parties' briefs in reaching his decision.

ISSUES

The parties reached agreement on most of the terms to be included in the successor agreement. All of those tentative agreements are incorporated into this Award. The remaining open issues are:

Health Insurance:

The County contribution effective January 1, 2006, the premium share goes from a 95% employer contribution to 90% for health insurance premiums. The premium payment paid by the employee shall be reduced from 10% to 7.5% by completion of a risk assessment by the employee and eligible spouse if completed by November of the preceding year.

The Association proposes the same change, but with an effective date the first of the month following receipt of the Arbitrator's award.

Article XI – Holidays

The County proposes increasing, effective January 1, 2006, the number of floating holidays from two to three.

The Association proposes no change in current contract language.

Wages

The County proposes wage increases as follows:

- Effective 1/1/2004 – 2%
- Effective 7/1/2004 – 1%
- Effective 1/1/2005 – 3%
- Effective 1/1/2006 – 2% + \$0.15
- Effective 7/1/2006 – 1%

The Association proposes wage increases as follows:

- Effective 1/1/2004 – 3%
- Effective 1/1/2005 – 3%
- Effective 1/1/2006 – 3%

BACKGROUND

Calumet County is situated in Northeastern Wisconsin. The Police Employees are represented by the WPPA, hereinafter referred to as the Association. There are 18 sworn officers and 24 non-sworn officers in the bargaining unit. It is unusual to have a bargaining unit in the law enforcement field that includes both sworn and non-sworn officers. Calumet is unique in that regard.

Section 111 of the State Statutes establishes criteria to be used by an Arbitrator in an Interest Arbitration involving Law Enforcement Personnel. They are:

### 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:  
In public employment in comparable communities.  
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.

### DISCUSSION

As is typical in these types of disputes, not all criteria are relevant. The Arbitrator during the course of this discussion will only address some of the statutory criteria. Some of the criteria that do need to be discussed can be handled quickly. There is no question that the County has the lawful authority to issue the raises sought by the Association. Both sides concede that to be so in their briefs. The total difference in cost of the two proposals over three years

is less than \$15,000. Given the total compensation costs over the three years covered by this Agreement, \$15,000 is a very small percentage. Neither ability to pay nor the lawful authority of the County would prevent it from granting the raises sought by the Association. Hence, these issues need be addressed no further.

The total lift in both proposals is the same so COLA is not truly in issue, even though the Association has argued that this factor points in its favor. At the end of three years the employees will have received exactly the same wage increases regardless of the proposal adopted here. The County argues that Factor (f), total compensation favors its proposal. For this exact same reason, the Arbitrator finds this factor is not significant in this dispute. The Arbitrator will now address in varying detail external and internal comparables, stipulations of the parties and “other factors” in resolving this dispute.

#### Internal Comparables

The County has five bargaining units: Courthouse, Human Services Professionals, Highway & Parks, Homestead and Law Enforcement. All four of the other Units agreed to raise the employee contribution for Health Insurance premiums the same amount sought here. They have all settled their agreements for 2004-2006. A chart showing the percentage wage increase that was agreed to by the other Unions and the agreed upon change in floating holidays is set forth below:

	<u>2004</u>	<u>2005</u>	<u>2006</u>	
Courthouse	2% 1/1/04 1% 7/1/04	3% 1/1/05	2% + \$0.15 1/1/06 1% 7/1/06	Add day after Thanksgiving
Human Services	2% 1/1/04 1% 7/1/04	3% 1/1/05	2% + \$0.15 1/1/06 1% 7/1/06	Add day after Thanksgiving
Highway & Parks	2% 1/1/04 1% 7/1/04	3% 1/1/05	2% + \$0.15 1/1/06 1% 7/1/06	Add 1 floating holiday
Homestead	2% 1/1/04 1% 7/1/04	3% 1/1/05	2% + \$0.15 1/1/06 1% 7/1/06	Add 1 floating holiday
<u>Law Enforcement</u>				
County Offer	2% 1/1/04 1% 7/1/04	3% 1/1/05	2% + \$0.15 1/1/06 1% 7/1/06	Add 1 floating holiday
Union Offer	3% 1/1/04	3% 1/1/05	3% 1/1/06 + \$0.15 first of month after Arbitrator's award	No offer

As can be seen, all of the other units accepted the wage proposal made by the County here. This unit is the lone holdout. The County also demonstrated that this uniformity in settlements is not unique to the wage question. All of the other bargaining units have also accepted the other changes in health insurance and holidays that is proposed here.

The County argues that because internal comparables are so clearly in its favor that on this factor alone the Arbitrator should adopt its proposal. The Association counters by pointing out that this unit is a law enforcement unit and that arbitrators have routinely noted the difference between law enforcement personnel and non-law enforcement. When it comes to wages, it contends, arbitrators have given more weight to external comparables than internal comparables.

The Association is correct that externals have been given a great deal of weight when the unit in issue is a law enforcement unit. However, this unit,

as the Employer notes, is not the traditional law enforcement bargaining unit. It contains both sworn and non-sworn personnel. While it is true that deference is given to external comparables for wages for sworn officers, that is not true for non-sworn. Thus, only a part of the bargaining unit would fall within that premise. Furthermore, the rule of thumb is not that externals alone carry the day for a party. It is an important factor, but not the only one.

There can be no question that Internal Comparables strongly favors the Employer, and carries a great deal of weight. This is especially so when the pattern is as uniform as this one. As Cited by the Employer, Arbitrator Gil Vernon observed:

In municipalities that have a number of different bargaining units the internal pattern of settlements – if one exists – deserves a great deal of attention. This is well established and the reasons have been well expressed by Arbitrators across the state. A pattern of consistent increases agreed to by various bargaining units is a collective consensus of the appropriate influence all the various statutory criteria should have as a whole relative to the particular economic circumstances in any County. It really is a good yardstick for the proximate mix of all the factors as it subsumes all of them. As such, the internal pattern is more important than any single other criteria.

In a similar vein, Arbitrator Fleischi concluded:

On an issue such as the appropriate across the board wage increase which should be granted, internal comparisons (i.e., increases granted to other represented employees of the municipality) should, in the view of the undersigned, carry great weight, regardless of whether the bargaining unit consists of firefighting or law enforcement personnel (subject to the provision of Section 111.77 of the Wisconsin Statutes) or professional, blue collar, or white collar workers (subject to the provision of Section 111.70(cm)6, Wisconsin Statutes). Municipalities understandably strive for consistency and equity in treatment of employees.

While this Arbitrator is not prepared to forego an analysis of all the other factors and rule on the basis of this one factor alone, as requested by the County, the importance of this factor cannot be overlooked. The Association indeed has a very tall mountain to climb for it to ultimately prevail. Absent a compelling reason to deviate from the pattern, the County proposal must at the end of the day be adopted.

External Comparables

The parties could not agree upon the set of comparables to be used. The chart below lists the Counties that are proposed by the Association and the increases they received. All of the Counties are contiguous to Calumet.

	2004	2005	2006	
Outagamie		3%	3%	3%
Brown				
Manitowoc	3%		4%	
Fond du Lac	4%		3.5%	4%
Sheboygan	3%		2.5%	2.5%
Winnebago	3%		4%	4.5%
Average		3.2%	3.4%	3.5%

The Employer proposes a different set of comparables that it believes are closer in size to Calumet County than the ones offered by the Association. All of the Association’s comparables are considerably larger than Calumet. It is by far the smallest in population, tax base and number of employees. A chart prepared by the County that includes their list of comparables is set forth below:<sup>1</sup>

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<sup>1</sup> The Employer chart actually only includes four Counties as comparables, but uses sworn and non-sworn officer classifications in the comparison since this is a hybrid unit. The Arbitrator will follow that approach and has utilized the Employer chart as submitted.

Calumet County  
 Across-The-Board Wage Rate Increases  
 Calumet County Comparables  
 2004-2006

<u>County</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Fond du Lac (Protective)	4%/1% on top step only	3.5%	2%/2% split
Fond du Lac (Non-Protective)	3% correctional officers only 1% on top step	3.5%	2%2% split
Fond du Lac (Dispatch)	N/A	3.5%	2%/2% split
Green Lake	4/1/04 2%; 7/1/04 1%	3%/2% split	3%/2% split
Outagamie (Non-Protective)	3%	Unsettled	Unsettled
Outagamie (Protective)	3%	\$0.03 + 3.25%	\$0.03 + 3.25%
Waupaca (Law Enforcement)	3%	Unsettled	Unsettled
Waupaca (Corrections)	3%	3%	3%
Waupaca (Telecommunicators)	3%	3%	3%
Waupaca (Records Clerk)	3%	3%	3%
Waushara (Deputy Sheriffs)	3.5%	3%	2%
Waushara (Corrections)	3.5% except certain grandfathered corrections officers, dispatchers - 3%	Unsettled	Unsettled
Winnebago (Dispatch)	2.5% + \$0.15 10/1/04	3% + \$0.15 10/1/05	3%; 4/1/06 + \$0.20 10/1/06 - \$0.15
Winnebago (Law Enforcement)	2.5% +\$0.15 10/1/04	3% +\$0.15 10/1/05	3% + 4/1/06 +\$0.20 10/1/06 - \$0.15
Winnebago (Clerical)	2.5% +\$0.15 10/1/04	3% +\$0.15 10/1/05	3% + 4/1/06 + \$0.20 10/1/06 - \$0.15



The average increase for 2004 under the Employer chart is 3%<sup>2</sup>. In 2005, it was 3.2% and in 2006 it was 3%. Using the same approach, these numbers compare to the Association 3% offer and the County's 2.5%, 3% and 2.5%. The total lift for the comparables for the three years was an average of 3.1%, 3% and 3.3%. The lift under both offers is 3% per year.

The increase sought by the Association using its comparables is less than that given to the comparables. It is slightly less than the average of the comparables suggested by the Employer. There is no change in rank. Even if there were, that would not make a difference since the total lift is the same at the end of the contract under both proposals. The Arbitrator does find that the Association's 3% across the board increase is more in keeping with the comparables increases under both proposed sets of comparables than the County's offer. The 2.5% annualized increase in years one and three is also less than what others paid under either set of comparables. The Arbitrator, therefore, finds that this factor favors the Association because the comparables under either pool paid more than even the Association has proposed. Given the fact that this conclusion would be the same using either set, the Arbitrator shall defer selecting one set of comparables over the other. As noted the total lift is the same, so there is no proposal to catch-up to other jurisdictions, which would make resolution of this question necessary.<sup>3</sup> Consequently, it is not necessary to make that determination and as the Employer notes in its

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<sup>2</sup> Where there was a split increase, the second increase was divided in half to represent the actual increase over a full year.

<sup>3</sup> In City of Mosinee, Dec. 30177-A (2002) Arbitrator Malumud deferred selecting comparables on a similar basis.

brief, it may be better for the parties in future bargaining to leave that issue to a later day.<sup>4</sup>

### Stipulation of the Parties

The Association points out that almost every provision of the Agreement was voluntarily settled and that most of them had little or no cost to the County. It argues that a small increase in clothing allowance was the only real cost item. It contends that this factor favors its proposal. The Arbitrator under the Statute must consider the Stipulations of the parties. It is unclear precisely what this Section is intended to cover. The Arbitrator does take cognizance of the fact that most of the agreed upon provisions did have little cost to the County. Thus, this factor favors the Association. It is not, however, a very strong factor in this dispute.

### Other Factors

The members of this bargaining unit twice rejected the exact same proposal that the County has made here, even though their bargaining team had accepted these terms. The Arbitrator is to take into consideration “the determination of wages, hours and conditions of employment through voluntary collective bargaining.” That the bargaining team twice voluntarily accepted these very same terms is a factor in the County’s favor. As noted by Arbitrator Krinsky:

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<sup>4</sup> The County actually argued that a determination as to which set of comparable to use should be deferred because the internal comparables should be sufficient for it to succeed. While the Arbitrator did not go that far in his findings, he does agree that deferring this issue is best here. In reaching that conclusion, the fact that internal comparables so strongly favors the County position was an influential factor, albeit not the only one in the deferral decision.

It is the arbitrator's view that rejected tentative agreements should not be controlling of the outcome of interest arbitration cases. This is because either party's negotiators must have the freedom to attempt to negotiate a tentative agreement, even at the risk that it will be rejected by their constituents. For an arbitrator to decide that a rejected tentative agreement must be implemented through arbitrations, without seriously considering other evidence, would have the effect of making negotiators reluctant to take the risk of trying to reach a voluntary agreement because the price of a rejection would be reviewed as too high.

A tentative agreement which has been rejected is entitled to some weight, however, in the arbitrator's opinion, it is one of the things which is appropriately considered under statutory criterion (h), the "other factors" criterion which pertains to other factors normally taken into account in arbitration. The reaching of a tentative agreement is evidence that the negotiators mutually viewed the tentative agreement as a reasonable compromise to their differences. Neither party can then sustain an argument in arbitration to the effect that the terms of the tentative agreement are unreasonable.<sup>5</sup>

As noted, the County proposal is identical to the proposal made to the other four bargaining units. Perhaps, it was on that basis that this unit's bargaining team accepted the County offer. The earlier agreement between the bargaining teams is a factor to which this Arbitrator gives "some weight."

#### OTHER ISSUES

The Arbitrator has addressed the relevant factors involved in this dispute. Before summarizing these factors, the Arbitrator needs to address two other points raised by the parties in their briefs.

#### Health Insurance

The County has put forth an argument concerning the need to contain health care costs given the rapid rise in premiums. It addressed this extensively in its brief. The Arbitrator has reviewed those arguments, but finds them not relevant here. If the parties' proposals took different approaches as to how to address this

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<sup>5</sup> Vernon County Dec. No. 28751-A (2006)

problem, then it would be necessary to discuss this point. Given the fact, that the proposals are the same, except for the date of implementation, there is no reason to address this question. Obviously, the Union bargaining team and its members understood and agreed with the concept outlined by the County by including the changes in their offer.

### Quid Pro Quo

The Union argues that only adoption of its wage proposal would provide the needed quid pro quo for the change in health insurance contributions to which it has agreed. The County counters by noting that all four of the other bargaining units made the same change in health insurance and accepted the County's wage and holiday proposal as a sufficient quid pro quo. This they contend set the bar as to what was needed. The County further points out that the Association's bargaining team also felt that the proposed quid pro quo was sufficient when they agreed to it during negotiations.

The County argument is correct on both counts. The required quid pro quo has been established through bargaining in all five bargaining units. The Union wants to now raise the bar. That, in essence, is what it is seeking by its proposal. It is this Arbitrator's finding that it is not for him to raise the bar above what the parties themselves set.

### Conclusion

The County has sought to gain consistency within its five bargaining units. Four accepted the County proposal and ratified the Agreement. The fifth bargaining team accepted the proposal, but its members rejected it. The Arbitrator noted when discussing internal comparables that the Association had a tall mountain to climb to prevail. Upon reviewing all the factors, the Arbitrator

can find no basis upon which to conclude that the County's proposal is unfair or find any other reason why the County proposal should not be adopted. Internal consistency must carry the day here. The slight tip of the scales in favor of the Association for external comparables and the Stipulations of the Parties cannot get the Association to the summit of the mountain, which is where it needed to be to prevail. For that reason, the offer of the County is accepted.

AWARD

The proposal of the County together with the tentative agreements is adopted as the agreement for the parties.

Dated: April 24, 2006

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Fredric R. Dichter,  
Arbitrator