
In the Matter of an Interest
Arbitration Between:

RACINE COUNTY (DEPUTIES)

and

Case 209
No. 64429
MIA-2649
Dec. No.31752-A

RACINE COUNTY DPEUTY SHERIFF'S
ASSOCIATION

APPEARANCES:

Long & Halsey Associates, Inc., by Mr. William Halsey, appearing on behalf of the
County

Fuchs, DeStefanis, & Boyle, s.c., by Mr. John F. Fuchs and Rebecca D. Boyle,
appearing on behalf of the Union

ARBITRATION AWARD

Racine County, hereinafter the County or Employer, and the Racine county Deputy Sheriff's Association, hereinafter the Association, reached impasse in their collective bargaining for a 2005-2006 collective bargaining. They submitted their final offers to the Wisconsin Employment Relations Commission and the Commission certified their impasse/final offers and provided them with a panel of ad hoc arbitrators from which they selected the undersigned to hear and resolve their bargaining impasse. A hearing in the matter was held on November 9, 2006 in Racine, Wisconsin and the parties filed post-hearing briefs the last of which was received on January 15, 2007. In reviewing the parties' arguments in preparation of my Award I concluded that they presented a question of whether the County' final offer was a "definite" offer as required by the statutes. Consequently, I returned the matter to the Commission for their resolution of that question.

The Commission reviewed the matter and issued its decision on May 9, 2007. As part of their decision the Commission returned the matter to me for “decision or receipt of supplemental argument. The undersigned contacted the parties to determine if they wished to submit supplemental argument and was advised by e-mail on July 1, 2007 that they did not.

BACKGROUND:

The parties final offers reflect that the two areas that the parties were unable to reach agreement are wages and health insurance. Regarding health insurance there are three sub areas in dispute: 1) the level of premium contribution for employees 2), health insurance while on duty disability and whether the time spent on duty disability counts as credible service, 3) employee premium contribution levels for health insurance upon retirement and minimum years of credible service necessary in order to be eligible to continue to participate in the County health insurance program upon retirement.

The County’ final offer provides:

- 1). Amend Article 16.02 to read as follows:

Effective January 1, 2006 employees will contribute **fifteen (15)** percent **of** the premium for the coverage selected by the employee. The payment will be made through payroll deduction from the first two paychecks of each month.

- 2). Amend Article 18.03(a) by adding the following language to the end of that paragraph:

Any employee retiring under the Wisconsin Retirement Plan after the implementation date of the 2005-2006 contract shall be entitled to be continued under the County’s group health insurance plan by paying a percentage of the premium based on years of service. The following premium requirements apply to all employees retiring on or after the implementation date of the 2005-2006 contract. The other provisions specified above continue to apply.

- 25 years & over of service 5%
- 20, 21, 22, 23, 24 years of service 10%
- 15, 16, 17, 18, 19 years of service 20%
- 10, 11, 12, 13, 14 years of service 25%

After the implementation date of the 2005-2006 contract, employees retiring with less than 10 years of service will not be eligible for County retirement insurance.

Effective January 1, 2015 any employee retiring under the Wisconsin Retirement Plan shall be entitled to be continued under the County's group health insurance plan by paying a percentage of the premium based on years of service. The following premium requirements apply to all employees retiring on or after January 1, 2015. The other provisions specified above continue to apply.

- 25 years & over of service 5%
- 20, 21, 22, 23, 24 years of service 10%
- 15, 16, 17, 18, 19 years of service 20%

After January 1, 2015 employees retiring with less than 15 years of service will not be eligible for County retirement insurance.

3). Amend Article 18.04 to read as follows:

18.04 Insurance/Retirement: When a deputy is forced to retire because of a disability he/she will be eligible to continue to participate in the insurance program at the 85/15 rate regardless of how many years of service the deputy has. When the affected deputy reaches his/her normal retirement age, the following schedule will apply:

- Over 25 years & over of service 5%
- 20, 21, 22, 23, 24 years of service 10%
- 15, 16, 17, 18, 19 years of service 20%
- 10, 11, 12, 13, 14 years of service 25%
- 5, 6, 7, 8, 9 years of service 40%
- 1, 2, 3, 4 years of service 50%

4).Amend Article 32 by changing "2002" to **"2005"** and by changing "2004" to **"2006"**.

5).Amend Schedule "A" Wages as follows:

Effective January 1, 2005 increase all rates by 2%

Effective January 1, 2006 increase all rates by 1%

Effective July 1, 2006 increase all rates by 1%

The Union's final offer provides:

- 1) Amend Article 18.03(a) by adding the following language to the end of that paragraph:

Any employee retiring under the Wisconsin Retirement Plan after the implementation date of the 2005-2006 contract shall be entitled to be continued under the County's group health insurance plan by paying a percentage of the premium based on years of service. The following premium requirements apply to all employees retiring on or after the implementation date of the 2005-2006 contract. The other provisions specified above continue to apply.

25 years & over of service 5%
20, 21, 22, 23, 24 years of service 10%
15, 16, 17, 18, 19 years of service 20%
10, 11, 12, 13, 14 years of service 25%

- 2). Amend Article 18.04 to read as follows:

18.04 Insurance/Retirement: When a deputy is forced to retire because of a disability he/she will be eligible to continue to participate in the insurance program at the 85/15 rate regardless of how many years of service the deputy has. When the affected deputy reaches his/her normal retirement age the applicable schedule will apply, and both years of active service and years on duty disability retirement will be counted as years of service.

- 3). Amend Article 32 by changing "2002" to **"2005"** and by changing "2004" to **"2006"**.

- 4). Amend Schedule "A" Wages as follows:

Effective January 1, 2005 increase all rates by 2%

Effective January 1, 2006 increase all rates by 2%

Effective July 1, 2006 increase all rates by 1%

The differences in the parties' offers can be summarized as:

Wages: The Union proposes a 2% increase effective January 1, 2006 as compared to the County's proposed 1% increase effective January 1, 2006.

Employee Health Insurance: The County proposes to increase the employees' health insurance premium contribution from 10% to 15% effective January 1, 2006 and the Union does not propose to change the existing language requiring that employees contribute 10% of the monthly total premium cost.

Retiree Health Insurance: Both parties have agreed that employees with less than 10 years of service will not be eligible to continue to participate in the County's health insurance program, and the County also proposes that effective January 1, 2015 employees with less than 15 years of service with the County will no longer be able to participate, whereas the Union proposes no change in the eligibility requirements beyond those it has proposed (employees with less than 10 years service are no longer eligible). In addition the Union proposes that unlike under the 2002-2004 contract when "employees forced to retire because of disability" reach normal retirement age "years on duty disability retirement will be counted as years of service" for purposes of determining eligibility to continue to participate in the County health insurance program. The County does not propose any change in what service is counted in determining eligibility to continue to participate in the County health insurance program.

SUMMARY OF THE PARTIES' ARGUMENTS:

The County argues that the Union's contention that a comparison of the wage increases granted by its external comparables supports its final offer is flawed because the County contract includes payment of longevity which far exceeds any of the comparables. It argues that when these longevity payments are taken into account it is readily apparent that the County deputies are paid at or near the top of the comparables. It also contends that its wage proposal in this bargaining unit with minor variations is the same as was accepted by five of the six other bargaining units. The wage settlements it reached with its attorneys and nurses are identical to its final offer in this bargaining unit. And, the only difference between its offer in this case and the agreements in the courthouse and human services units is that while the ATB percentage increases are the same there is a cents per

hour minimum for each ATB increase because of their lower pay relative to the other bargaining units. In the case of the LPN unit a \$1 per hour (2.5%) increase was granted effective January 1, 2006 because that unit is the lowest paid of all county bargaining units and the LPN is one of the lowest paid positions in any bargaining unit.

Health Insurance:

The County argues that the escalation of health insurance costs and the settlements it has already achieved among five of the six other bargaining units justifies selection of its final offer. It states that after plan design changes which were tentatively agreed to were voted down in the courthouse and human services bargaining units the County changed its approach to the health insurance problem by attempting to have employees cover more of the cost through premium sharing. The County and unions agreed in those two bargaining units as well as in other three bargaining units that effective January 1, 2006 the employees share of the total health insurance premium would be increased from 10% to 15%. Those five bargaining units also agreed that employees retiring with less than 10 years of service would no longer be eligible to participate in the County's health insurance program effective with the ratification of those agreements. Those five bargaining units also agreed that effective January 1, 2015 employees retiring with less than 15 years of service would no longer be eligible to participate in the County's health insurance program. The other bargaining unit represented by Teamsters Local 43 is also in arbitration and the County has made the same final offer there as it made in this bargaining unit. The County argues that because its final offer in this bargaining unit is the same as those ratified by five of the six other bargaining units it should be adopted in this unit as well.

The County also argues that after comparing the impact the increases in premium costs to employees among the various bargaining units the Deputies fare better than most of the other settled bargaining units and thus its final offer is equitable when compared to the other units. The County also disputes the need for an analysis of the external comparables because other arbitrators have stated that internal settlements should be given great weight. In this case the County has reached settlements with five of its six other bargaining units.

Regarding the County's final offer concerning retiree health insurance it contends that its offer attempts to mitigate the growth in the retiree population by restricting

eligibility of employees with less length of service. The parties have agreed employees retiring with less than 10 years of service should immediately be prevented from participating in the County health insurance plan. The County also wants to limit participation in the future - 2015 – to employees retiring with less than 15 years service. It contends that even with these changes the insurance benefit for retirees is far in excess of any of the external comparables. Two of the comparables provide no retire health insurance benefit, two provide coverage up to age 65 and one allows continuing coverage with all retirees paying 40% of the premium cost after age 59.

The County also argues that the evidence and testimony in this case demonstrate that the County has a serious problem of expenditures exceeding revenues over the 1999 to 2005 time period. And, even though the problem was mitigated for 2005 there remains a substantial deficit in the health insurance reserve fund without any indication these costs will not continue to rise in the future.

The County concludes that the arbitrator should give the internal comparability significant weight in deciding this case inasmuch as the County reached voluntary settlements with all but two of its bargaining units. And, if the arbitrator does consider the external comparable counties the consideration should include a review of the benefits and expenses associated with retiree health insurance. Finally, the County believes that using a percentage share of health insurance premiums for employees is the most equitable way because both parties then share proportionately in future cost increases.

The Union contends that the statutory criteria relating to expenditure limitations and economic conditions are not applicable in this case. There was no testimony from the County's witnesses that indicated a County inability to absorb the costs of the benefits as proposed by the Union because of the levy limits. Further, the testimony of County witnesses established that the County budget did not meet or exceed the applicable levy limits and the overall costs of health insurance had actually stabilized rather than increased for the contract period. And, there was no increase in allocation in the 2007 County budget for health insurance for active employees. It argues for the same reasons that the factors 7r. a and b are not applicable because the financial ability of the government to meet the costs of the proposed settlement is either irrelevant or weighs in favor of the Union's final offer.

The Union also argues that an examination of the external comparables relative to both wages and insurance clearly demonstrates that the deputies' wages lag behind its similarly situated counterparts. And, the Association's final offer more adequately than the County's would accomplish a level of "catch up" necessary to bring the deputies nearer to the wages and insurance benefits of their counterparts. The welfare of the public is best served by recognizing the need to maintain the morale and health of employees and thereby retaining the best and most qualified employees. Further, the Union offered testimony as to the negative impact on working conditions caused by reduced staffing and the importance of adequate health insurance benefits to attract and retain qualified applicants. For these reasons the Union concludes the interests and welfare of the public criteria supports adoption of the Union's final offer.

Regarding its wage proposal the Union argues that with the exception of Outagamie County, Racine County deputies lag significantly behind their counterparts and the wage lifts requested by the Association does little to bridge the gap between Racine deputies and their counterparts. And, the wage differential is even more significant when compared with the significant differentials in health insurance benefits between the County and its comparables. The County deputies' health insurance premiums under the County's offer will exceed that paid by deputies in any of the comparable counties by at least \$143.00 per month. The County acknowledges that the cost to the employees of the increase in premium contribution will exceed a wage lift even for an employee with a \$50,000 annual salary. So the County's wage offer would result in a net wage loss to Association members and, therefore, the County's offer should be rejected.

Concerning the County's health insurance proposal it would require employees to pay more in percentage premium contribution than any of the comparables. Kenosha and Rock counties require no employee contribution toward premium and Winnebago and Outagamie Counties have capped the amount of the employee premium contribution at \$160 and \$140 per month respectively. So Association members would be paying between \$.90 and \$1.45 per hour more than any other of the comparables. Thus, the Union contends that the discrepancy in the net wage differentials between the Counties based upon wage and insurance costs alone overcomes any other fringe benefit differentials

among the comparables including longevity. The longevity increase represents \$.22 per hour and does little or nothing to alter the overall picture.

Regarding health insurance benefits for retirees, the Union argues that Kenosha County extends the benefit to individuals retired on work-connected disability and to retirees between the ages of 53 and 65 at no cost to the employee. Rock County provides health insurance to retirees at age 53 until Medicare eligibility in a declining percentage based upon age (53-56 = 100%; 57-58 = 80%; 59- Medicare age = 60%) Brown County provides health insurance to retirees between the ages of 52 and 62 without regard to length of service and to disability retirees between ages 50 and 55 with declining percentage contributions for ages 56 to 62 and is 25% from age 62 to 65. The evidence concerning what the comparables provide supports adoption of the Union offer.

The Union also argues that the County's offer seeks contract concessions from the Association, but without an accompanying *quid pro quo*. The County is seeking a 33 1/3 % increase in the employee health insurance premium contribution and eliminates entirely the contractual benefit provided to duty disability retirees, but has not established the necessary prerequisites to justify this change in the status quo. Here the County has not established there is a significant and unanticipated problem inasmuch as the rise in health insurance premiums was in existence at the time the predecessor agreement was negotiated and prior to this contract period the County has been able to address its health insurance expenditures through a number of factors. The Union believes that in this case an appropriate *quid pro quo* is required, the County has offered none and, accordingly, its final offer should be rejected.

It contends that even more significantly the parties' predecessor agreement provided that the County would renew the 90/10 co-pay provision in Article 16 "for the term of the successor agreement". Clearly, in signing the predecessor agreement the County affirmed that it would continue the 90/10 co-pay agreement for the term of the 2005-2006 agreement. Merely because this language appeared in numerous predecessor agreements does not give it any less weight or make it any less binding as a promise between the parties to be applied to this 2005-2006 agreement.

Also, the County's primary argument that the other bargaining units have accepted the proposed changes in wages and health insurance is unpersuasive. The Command Staff,

arguably the most comparable, has not come to agreement with the County. The fact that it is awaiting the outcome of this bargain seems to suggest that the County's offer is inherently inadequate and unfair. Also, none of the other settled units is sufficiently similarly situated to this unit. And, the non-represented employees of the County were required to pay only 10% of the premium for health insurance and are not being asked for an increase in their contribution until 2007. The County seeks to justify this fact by arguing that those employees received a single 2% -5% wage increase over the two year period, but 64% of those employees were still eligible for merit increases in the year they did not receive an ATB increase. So the non-represented employees will receive cash in their pockets because they do not have to make an increased contribution for health insurance. Thus, because of the numerous discrepancies within the internal comparables they do not provide sufficient justification for the County's offer.

Last, the Union argues that under either its offer or the County offer, even before consideration of the increase in health insurance premium costs, employees will suffer a loss ranging from \$41 to \$65 per month after adjusting for the affects of inflation and double that under the Employer's wage offer. Then there is the additional \$94.35 per month cost attributable to the increase in health insurance premium contribution. Thus, an employee with the family plan health insurance will suffer approximately a \$200 per month wage loss under the Employer's offer.

For all of the above reasons the Union requests that the arbitrator select its final offer for the 2005-2006 agreement.

DISCUSSION:

As noted earlier herein the undersigned, after receipt of the parties brief and during his evaluation of the parties' final offers concluded he was unsure of whether the County's final offer regarding its proposal to increase the employees' contribution toward the health insurance premium from 10% to 15% was "definite". Consequently, he referred the matter back to the WERC for resolution. The WERC then reviewed the record made before the undersigned and concluded that

"A.08 in the 2002-2004 agreement binds the County as to the level of employee insurance premium contribution to be included in the successor

2005-2006 agreement and thus precludes the County from proposing to increase the level of employee contribution beyond 10%. Thus, Arbitrator Yaeger should proceed to issue his award on the understanding that the County's final offer should be interpreted as including a proposal to retain the employee insurance premium contribution at 10%."

Thus, the most significant difference in the parties' final offers is no longer inasmuch as the 2002-2004 employee health insurance premium contribution level of 10% will remain unchanged in 2005-2006.

The three remaining differences in the parties' final offers are the amount of the ATB wage increase to be effective January 1, 2006. The Union is proposing a 2% increase whereas the County's proposal is for a 1% ATB increase. Their wage proposals are otherwise the same. The second difference in their offers is that the County is proposing that effective January 1, 2015 in order to be eligible to continue to participate in the County health insurance program an employee must have at least fifteen years of service with the County at the time of his/her retirement. The third and last difference is that the Union is proposing that an employee who is forced to retire because of a disability will have those years spent on disability retirement counted as years of County service in determining eligibility to continue to participate in the County health insurance program after reaching his/her normal retirement age.

The arbitrator in determining which final offer to select is required to apply the following statutory criteria:

Section 111.77(6) Wis. Stats.

* * *

- (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 prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration 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.

WAGES:

The parties' final offers on wages differ only in the size of the ATB wage increase effective January 1, 2006. The Union's final offer provides for a 2% increase effective 1/1/06 whereas the County offer is for a 1% increase effective 1/1/06. That means that for 2006 the Union is proposing a total increase of 3% (2% + 1%) whereas the County's total proposed increase for 2006 is 2% (1% + 1%). Regardless which offer is selected neither offer is out of line in terms of the applicable CPI. Also, there has been no showing the County would be unable to meet the costs associated with the Union's final wage offer.

Furthermore, the interest and welfare of the public will not, in the undersigned's opinion, be adversely affected by selection of either party's final offer on wages.

The Union contends that its offer is supported by the external comparables in terms of both other ATB wage settlements as well as the fact that the Deputies are paid less than their comparables and are in need of catch-up. The County argues that the deputies longevity is a significant factor when evaluating the comparables wage levels and that its offer is supported by the internal comparables.

First, when looking at the ATB wage increases granted to deputies among the cited comparables it reveals that for 2006 Winnebago County deputies were granted a 3% increase, Outagamie deputies received a 3.4% increase and Rock County deputies also received a 3% increase. So, the Union's final offer has support among the comparables for which data has been presented.

However while a close examination of the comparable wage data submitted by the Union shows that the deputies are paid less at various levels of the wage schedule, that is not the case when one analyzes/compares the wages at the schedule maximums between the County and the cited comparables. The wage schedule for Racine County deputies is a 10-step schedule with the 10th step, the schedule maximum, achieved after 10 years service. Kenosha County has a six-step schedule with schedule maximum reached after 84 months or 7 years. Rock, Brown and Outagamie Counties have six step schedules with the schedule maximum achieved after 6 years. In Winnebago County the schedule maximum is reached after 3.5 years. Once the Racine schedule amounts which are stated in terms of monthly wages are converted to hourly wages the hourly schedule maximum under the County's offer for 2005 will be \$27.47 and in 2006 will be 28.02. Those schedule maximums compare to the other comparables for which data has been supplied as follows:

	<u>2005</u>	<u>2006</u>
Rock	25.03	25.79
Brown	----	---
Outagamie	22.48	23.24
Kenosha	26.63	---
Winnebago	22.19	---

Thus, the data does not present a persuasive case for the Union's contention that Racine County deputies are in need of catch-up raises, even with out regard to the longevity. The County has argued longevity should receive considerable attention because its longevity plan is much more generous than its comparables. However, the undersigned would note that the amount is 1% for employees at the schedule maximum of 10 years service. This is not, in the undersigned's opinion, much of a consideration.

To the contrary, the County's final offer on wages is the same in some cases and very similar in others as what it has successfully negotiated with five of the six other represented bargaining units in the County. The settlements the County reached in the Attorney and RN bargaining units are identical to what it is proposing for this bargaining unit. In the Courthouse and Office Employee and the Human Services bargaining units the same percentage increases were agreed to with there being a cents per hour minimum increase because of the number of lower paid positions in those bargaining units. Then in the Ridgewood/LPN bargaining unit the ATB increase for 2006 was 2 ½% and the County explained the increase as being granted catch-up for the LPN's in that bargaining unit as they are the lowest paid employees of any County bargaining unit. Thus, it appears that the settlements among the internal comparables support the County's final offer on wages. And, as will be discussed later internal comparability is entitled to significant, if not controlling, weight in evaluating final offers.

Equally as significant is that this bargaining unit will not be required to contribute an additional 5% toward their health insurance premium in 2006 as will the employees in the other five settled bargaining units. As the Union argued regarding the merits of the County offer, that represents a significant amount of money as a percentage of their wages and they are one of the higher paid bargaining units. Consequently, in terms of reasonableness and equity the County's offer, under the circumstance that developed, is clearly the more reasonable and equitable.

Thus, even though the Union's final offer on wages enjoys support among the external comparables, there is not a persuasive case that deputies are in a catch-up position with respect to their external comparables and internal comparability supports the County's wage offer. For these reasons the County's wage proposal is favored.

RETIREE HEALTH INSURANCE:

The County is proposing that starting on January 1, 2015 employees with less than fifteen years of service with the County will no longer be eligible to continue to participate in the County health insurance program when they retire. It contends that even with these changes the insurance benefit for retirees is far in excess of any of the external comparables because two of the comparables provide no retiree health insurance benefit, two provide coverage up to age 65 and one allows continuing coverage with all retirees paying 40% of the premium cost after age 59. It also argues that the escalation of health insurance costs and the settlements it has already achieved among five of the six other bargaining units justifies selection of its final offer. It asserts that its offer attempts to mitigate the growth in the retiree population by restricting eligibility of employees with less service with the County thereby holding down future costs.

Regarding this County proposal, it is true that five of the six other bargaining units, at the time of the hearing in this matter, had agreed to the change being proposed by the County. As so many before me have said, the interest arbitration law was designed with the idea of producing awards that represent what a voluntary settlement would have looked like if the parties had been able to achieve it. One predictor of what that result would look like is other settlement(s) negotiated by an employer with other of its represented employees. Because such a settlement involves one of the parties to the arbitrated dispute it receives considerable weight in determining which of the parties' final offers most closely resembles the voluntary settlement that was achieved through bargaining. And as most arbitrators have concluded, including this one, an employer's ability to negotiate to a successful voluntary agreement with other unions for the terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstance surrounding such an agreement(s) that diminishes its persuasive value.¹ See arbitrator Vernon in Winnebago County, Dec. No. 26494-A (6/91); arbitrator Malamud in Greendale School District, Dec. No. 25499-A(1/89); arbitrator Nielsen in

¹ I stated in City of Marshfield, Dec. No. 30726-A "The undersigned believes that internal comparability in matters of a fringe benefit as significant as health insurance should, aside from the greatest weight and greater weight factors, receive paramount consideration".

Dane County (Sheriff's Department), Dec. No. 25576-B (2/89); arbitrator Kessler in Columbia County (Health Care), Dec. No. 28960-A (8/97); and arbitrator Torosian in City of Wausau (Support/Technical), Decision No. 29533-A, (11/99). In this case, the County did just that. It achieved voluntary settlements with five of its other represented bargaining units regarding its proposal to require 15 years service starting in 2015. And, as I stated in Marshfield, unless there is some basis for distinguishing the factors that drove the five other settlements on this issue from those present in this bargain, such that internal comparability is not the paramount consideration, the outcomes should be the same. There has been no such evidence presented in this case. Therefore, in the undersigned's opinion the settlements the County reached with five of the six other bargaining units are very significant and entitled to substantial, if not controlling, weight in the deliberative process of deciding which offer to select. Therefore, the County's proposal to add the following language in Article 18.03(a) is favored:

“After January 1, 2015 employees retiring with less than 15 years of service will not be eligible for County retirement insurance.”

The Union's proposal concerning employees who are forced to retire on account of a disability is to provide that the time spent as a disability retiree will count as service with the County for determining eligibility to participate in the County health insurance program when they reach normal retirement age. Neither the current contract language nor the record evidence in this case makes clear what kind of disability qualifies for the benefit. The current language of Article 18.04 provides:

“18.04 Insurance/Retirement: When a deputy is forced to retire because of a disability, he/she will be eligible to continue to participate in the insurance program at the 90/10 rate regardless of how many years of service the deputy has. When the affected deputy reaches his/her normal retirement age, the applicable schedule will apply.”

The Union has not adduced any internal or external comparability data in support of its proposal to modify the eligibility requirements. The effect of such a proposal would mean that any employee who is forced to retire because of a disability would continue to accrue years of service while disabled and no longer working for the County prior to their normal retirement age. Clearly, that additional service credit impacts the level of the

benefit they would be eligible to receive upon reaching normal retirement age as well as whether they are eligible to participate at all. Thus this proposal, if adopted, would result in a substantial change in the benefit currently available to deputies.

Poelmann testified that both parties agree that the language of Article 18.04 regarding the premium sharing levels is to be modified to change “90/10” to “85/15” in the 2005-2006 contract. Notwithstanding that agreement, the County proposes no change in the language of 18.04.

Poelmann also testified concerning the Union’s proposal to modify the language of 18.04. His testimony was couched in terms of a duty disability, and gave an example of the impact of the proposal. He testified that an employee who went on duty disability after nine years of service with the County would not be eligible to participate in the County insurance program upon reaching normal retirement age. He also testified that employee Wawizynikowski who was hired into the department in 1996, was shot while on the SWAT Team in 2003 and went on duty disability. At the time of his injury Wawizynikowski had 7 years with the Department and when he reaches his normal retirement age of 50 or 53 without a penalty and his duty disability time is not counted he will not be eligible for the retiree health insurance program. Poelmann said that under the Union’s proposal Wawizynikowski would be eligible. Poelmann also testified that the Union’s proposal, if adopted, improves the willingness of employees to assume the risk of taking a bullet.

However, a careful reading of the existing language of 18.04 reveals that the clause is applicable in the case of any disability retirement, not just a disability incurred in the line of duty as a deputy, e.g. shot while making an arrest. If the clause were only to apply in the case of a duty disability the undersigned might be inclined to favor such a proposal. But, if it applies to any disabling condition that prevents an employee from working, e.g. paralyzed from falling off a ladder while trimming a tree at home, then a more significant burden would be placed upon the Union to establish a need for the change and the existence of internal and/or external comparable support for such a proposal.

While the parties may have an understanding, or there is bargaining history or some other evidence to establish that this language is only applicable in the case of a duty incurred disability that is not clear from the Union’s proposal or the existing contract

language. That is why it is imperative for the proponents of new language to make it very clear the intent of what is being proposed. In this case, that would need to be made clear, if that was the intent, that the proposed language would only be applicable in the case of a duty-incurred disability, e.g., an employee who was shot while attempting to arrest an individual. That, however, is not evident from the proposal, and therefore, because the language could be read to apply in the case of any disability as discussed above, the undersigned does not favor the Union's proposal.

Based upon the evidence, testimony, arguments, and application of the statutory criteria contained in Section 111.77 (6) to the facts of this dispute the undersigned enters the following

AWARD

The County's final offer is selected and shall be incorporated into the parties' 2005-2006 collective bargaining agreement.

Entered this 4th day of September 2007.

Thomas L. Yaeger

Thomas L. Yaeger
Arbitrator