STATE OF WISCONSIN

BEFORE THE ARBITRATOR

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IN THE MATTER OF INTEREST ARBITRATION	**OPINION AND AWARD**
between	
BUFFALO COUNTY	**WERC Case 77, No. 66547, MIA-2752**
and	**Decision No. 32131-A**
WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION	**Gil Vernon, Arbitrator**

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APPEARANCES:

On Behalf of the County: Mindy K. Dale, Attorney – Weld, Riley, Prenn, and Ricci, S. C.

On Behalf of the Union: Robert West, WPPA Consultant

I. BACKGROUND

The Employer, Buffalo County, is a municipal employer under Wis. Stats. 111.77. Buffalo County, among the most picturesque in Wisconsin is located in the west central part of the state and borders the Mississippi River. The Wisconsin Professional Police Association ("WPPA" or "Union") represents law enforcement employees in the Sheriff's Department including deputies, investigators, and correctional as well as communications' officers. There are a total of eighteen people in the unit.

The County and Union were Parties to a collective bargaining agreement covering the years 2005 and 2006. They were not completely successful in negotiating a successor agreement and, ultimately, the Union filed a petition on December 18, 2006, with the Wisconsin Employment Relations Commission ("WERC") requesting that an impasse be declared and that final and binding arbitration be initiated pursuant to Section 111.77(3) of the Municipal Employment Relations Act. The WERC conducted an investigation on February 20 and May 14, 2007, and on July 17, 2007, the investigation was closed. The Parties on July 31, 2007, were ordered to select an Arbitrator. The undersigned was ultimately selected and his appointment was ordered by the WERC on August 23, 2007.

An arbitration hearing was scheduled and held on October 29, 2007. Post hearing briefs and reply briefs were filed, the last of which was received on January 8, 2008.

II. ISSUES

The final offers cover both health insurance and wages. However, the only difference between the Parties' offers concerns the amount wage rates should be increased over the last contract. Both Parties agree that the wage rates should be raised 2% effective January 1, 2007. Both Parties agree wage rates should increase by 2% effective January 1, 2008. However, the Union proposes, in addition, that there by a 1% mid-year increase effective July 1, 2007 and another 1% increase July 1, 2008. Thus, the wage proposals stack up as follows:

	2007	2008
County	2% (1-1-07)	2% (1-1-08)
Union	2% (1-1-07) 1% (7-1-07)	2% (1-1-08) 1% (7-1-08)

The Parties also agree as to which other municipal employer should be used for comparability purposes. They are the counties of: Clark, Dunn, Jackson, Monroe, Pepin, Pierce, and Trempealeau.

The County calculates the cost of the wage increases including some specific wage classification adjustments agreed to by the parties on a percentage basis to be:

	2007	2008
County	2.84%	2.63%
Union	3.26%	3.65%

On a total compensation basis, the County calculates the costs of the offers to be (including health insurance savings for 2007 and certain assumptions for 2008 health insurance):

	2007	2008
County	2.15%	3.15%
Union	2.50%	4.01%

On a dollar basis, the difference between the offers, for wages only, for 2007 is $2815 and for 2008 it is $7312 or a total of $10,127 for both years. On a total package basis, including certain assumptions concerning health insurance increases, the County estimates the difference between the offers is $15,576.

III. STATUTORY CRITERIA

ARBITRAL CRITERIA

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 the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment generally in public employment in the same community and in comparable communities.

f. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employes, 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.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. 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.

IV. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

The Union presents its argument in the form of a criteria-by-criteria analysis of the applicable statutory factors to be considered by the Arbitrator. As a general observation, they note that unlike other municipal bargaining laws, the statute applicable here does not require the Arbitrator to give more weight to one than the other, nor does it necessarily require that each factor be considered equal. The importance of each factor is left up to the Arbitrator.

The first criteria is not applicable in the Union's view. As for the stipulations of the Parties, the Union believes it is in their favor that they have already made concessions on health insurance that have actually reduced the cost of health insurance in year one of the contract (2007) and will hold increases to 5.84% in year two (2008), which is well below typical increases.

The next criteria addressed is the "interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement." In this regard, the Union anticipates that the Employer will rest its case on the financial inability of the County to meet the cost of the Association's final offer. However, the County has not significantly argued that it cannot meet the cost, just that the budget is tight. While the levy limits were at 2% at the time the County formulated its budget, the limit was recently increased to 3.86%. This certainly provides Buffalo County with increased flexibility to meet the Association's final offer. The interests and welfare of the public are also always served when public safety has the best well trained, fairly treated officers possible. The sheriff's department has deteriorated in the face of conditions and the Union fears if there is no investment in officers now it will be too late to catch-up later. In this case, the County offers a wage increase that is at the low end of the comparables. The difference between the final offers is a cost of about 1% and a real contract end lift of 2%--a relatively small difference in terms of cost and wage level. Indeed, the difference amounts to about $10,000 in wages over two years. They believe it best to grant the comparable increase sought by the Association, which can be easily met now as opposed to deferring the raise to a later time. Steady, predictable increases without peaks and valleys represent the public interest and welfare.

Concerning factors d, e and f (the various comparisons to other employees), the Union says these are the most important considerations and where they primarily rest their case. First, they say there is no internal pattern as most bargaining units are in arbitration at the same 2% County offer (save one dissimilar unit). Thus, the external comparables should control.

Concerning the external comparables, a review of the settlements externally for 2007 (all but one is settled) shows that of those settled for 2007, four of the six settled have agreements at exactly the 2-1 split offered by the Association in Buffalo County; one of the settlements is for 3% with an extra 1% lift on December 1, 2007. The remaining settlement is a wage freeze in Trempealeau County. Clearly, this is an outlier in terms of comparable settlements and does not dictate the settlement pattern. For

2008, three counties are unsettled. Of the four settlements, two are at the 2-1 split proposed by the Association and the other two are at a greater amount of 3%. Clearly, on the strength of percentage settlements among the agreed upon comparables, the Association's final offer must win.

This is particularly true at the important benchmark position of Deputy. A review of the data shows Buffalo County Deputies' top wage falling 43 cents behind the average at the turn of the century. By 2006, that deficit had increased to $1.13. If the Employer's final offer were to prevail at $19.73, the Buffalo County Deputies would fall to $1.62 behind the average. If the Association's final offer is chosen, the rate of $19.92 (year-end lift of 3%) would still be $1.43 less than the average of the comparables. No matter which offer is selected, the Buffalo County Deputies lose ground to the average. It is submitted that there is nothing in this record that justifies their losing ground at a greater level than that already found in the Association's sub-average final offer. Moreover, the Association has mitigated the cost of its offer by using splits instead of beginning-of-the-year rates, and it proposes percentage increases, which for a below average wage means it will not generate the real dollars of the upper half.

The next three criteria addressed are: (1) the cost of living; (2) overall compensation, and; (3) changes during the pendency of the proceedings. In reverse order, the Union says the last criteria isn't applicable because the Parties agreed to close the record two weeks following the hearing. The "overall compensation" factor favors them since there is no significant difference within the comparables to justify a substandard wage increase and because the Union agreed to cost savings health insurance changes.

Last, concerning the "catch-all" statutory criteria, the Union says this is a classic argument between an Employer that declares budget struggles and a Union that seeks the same as other workers doing similar work within the same general geography. All things considered, including the fact the Association mitigated its offer by seeking a mid-year increase of 1% instead of placing it at the front end, thereby reducing the cost impact by half. The advantage must fall to the Association. In summary, the Association's final offer represents the most reasoned approach to providing wage levels that are fair and will not put the County into a tragic catch-up position in the future. This wage proposal is fair to the taxpayer, as it provides mitigation for cost by using splits, and when coupled with cost savings from health insurance represents a more than reasonable package.

B. <u>The County</u>

At the outset, the County draws attention to the fact the Parties have already agreed (in each of their final offers) to an adjustment in the 2006 start and 6-month rates for both the Deputy Sheriff and Split Deputy/CCO positions--to a start rate of $15.59 and a 6-month rate of $16.03--which are equivalent to the 2006 rates for the Corrections/Communications Officers. Those rates become the base from which the 2007 rates are calculated.

There were also favorable changes concerning health insurance. There was an increase from 75% to 80% of the health insurance premium for employees hired after January 1, 2003, effective January 1, 2008. There was also (effective January 1, 2008) HRA available in conjunction with a high deductible ($500 single, $1000 family) plan. The County will contribute to the HRA $250 for employees with single coverage and $500 for employees with family coverage. Employees are responsible for the first $250/$500 of the single/family deductibles and may be reimbursed for the remaining $250/$500 from their HRA account. HRA contributions not used toward the deductible roll over from year to year and are available to the employee at retirement.

In view of these changes and the County's financial and fiscal constraints, it is argued that its final offer is most reasonable. The County contends the most important statutory criteria (the one which must carry primary weight) is "the interest and welfare of the public and the financial ability of the unit of government to meet these costs."

In short, they submit the County simply cannot continue to provide wage increases in excess of its allowable increase in revenue. They note the state limit on new tax revenue is 2% for 2007. Thus, their offer is consistent with that. Their offer too for 2008 is reasonable because at the time it was certified 2% levy limits resulted in an increase in total tax levy revenue of only $104,473 in 2006 and $106,134 in 2007--at a time when anticipated total County expenditures exceeded $15 million in both 2006 and 2007.

While the dollar difference between the offers is arguably not large, it is a significant number for only 15% of the County's workforce, given a total tax levy increase of only $104,473 in 2006 and $106,134 in 2007. The Union's demand puts additional constraints on an already tight budget. The Union's demand also follows on the heals of a year (in 2006) when all County wages increased 2.75%, plus $.25 in the top step, at the same time the 2% limit in new tax monies became effective. The pinch in 2006 caused multiple budgetary responses including: (1) reducing the work hours for all County employees in 2006 by 64 hours per person; (2) not filling positions vacated by resignations or retirement including the position of County Administrator; (3) buying used equipment; (4) centralized purchasing; (5) time saving/manpower saving equipment; (6) deferring road reconstruction to unrealistic terms; (7) delaying building improvements, and (8) reducing overtime. They have also faced unexpected increases in fuel and insurance costs.

The County was therefore forced to be conservative in its proposed wage increase for 2007 when dealing with a total tax levy increase of only $106,134. The cost of the Union's wage proposal is simply not sustainable without the County digging itself even further into a fiscal hole.

Concerning 2008, the County budget had not been set as of the date of the hearing and it was just discovered the levy limit will increase to 3.8%. The County anticipated that the extra revenue will go to restoring cuts in the courthouse improvement budget, computer upgrades in the finance department ($27,000), and improved computer mapping software in the law enforcement department ($30,000). The 3.86% tax levy increase amounts to a revenue increase of only $208,937 for 2008. The increased cost of wages and benefits for law enforcement alone for 2008 is $38,579. And that does not include the cost of an additional law enforcement position. Obviously, even a 3.86% tax levy increase will not provide enough additional tax revenue in 2008 to ease the County's financial worries.

Another factor in favor of its offer is that it will maintain internal consistency. Indeed, they argue that on this basis alone its offer should be selected. The County has four other bargaining units: the Courthouse, Human Services Paraprofessional, Human Services Professional, and Highway units. Two of those four units--the Human Services Paraprofessionals and Professionals--voluntarily settled on the same 2% wage increase proposed under the County's offer. The Courthouse and Highway units, as well as this unit, are holding out. Those units are scheduled for arbitration also; the County's final offers include the same 2% wage increases as under the County's final offer here. The County has always endeavored for internal consistency. It has not always been successful. For example, in 2003-2004 the law enforcement unit received larger wage increases in both years than the other units. And, again in 2006, this unit was the only internal group to receive a wage adjustment (an additional $.25) in excess of the 2.75% increase received by all other bargaining units. Given the wage adjustments received by the law enforcement unit in excess of the internal comparables in recent years, deviating from the wage pattern set by the human services units from the 2007-08 contract term would have a hugely negative effect on the County's ability to achieve voluntary settlements in the future. Several arbitration cases are cited as to the importance of internal consistency.

The County also contends that in addition to being reflective of the County's revenue limitations, it is also within the mainstream of external comparables. While its offer may appear to be somewhat conservative when compared to settlements among the external comparables, it does not stand alone as a reflection of the fiscal restrictions experienced by numerous public sector entities. In contrast, for example, Dunn and Pierce Counties' populations grew 2.43% and 3.08% respectively reflecting their much closer proximity to the Minneapolis/St. Paul metropolitan area. And with a total County population in 2006 of only 14,142--the second lowest of the external comparables--Buffalo County is obviously not adding any significant number of taxpayers to its tax rolls.

The wage increases in other counties range from a wage freeze in Trempealeau County to the higher split increases in Jackson County of 3%/1% for the deputy unit and 2%/2% for the comparable CCO unit. Yet it is noteworthy that the second increase in Jackson County does not occur until December (rather than the typical July), thereby significantly decreasing the actual cost in 2007. Moreover, Trempealeau and Monroe counties support the County's proposed 2% increase in 2007. Also mitigating the 2%/1% splits in Pepin and Pierce is the fact they were negotiated in 2005 and the fact they ultimately had much higher levy limitations. Pierce County's growth, and resulting allowable tax levy increase, amounted to 6.9% over the 2006-07 budget terms, while Pepin's growth resulted in an allowable 5.49% levy increase over the same two-year period. In fact, Buffalo County was the only county among the comparables to be held to the minimum 2% tax levy increase each year due to low new construction growth.

Not to be forgotten are the increase in health insurance costs and the fact other counties have given higher wage increases in exchange for increased employee contributions. This freed up more money for wages. For example, in Dunn County, employees agreed to an additional 1% employee contribution toward health insurance premiums in both 2007 and 2008 in exchange for a 2%/1% split increase in 2007 and a 3% increase in 2008. Similarly, Jackson County deputies agreed to increase employee premium contributions from 2% to 5% in 2007, in exchange for a 3% increase on January 1 and a 1% lift on December 1. In contrast, in Buffalo County both the coverage and level of contribution remains the same in 2007, and in 2008 there will be no negative monetary impact on employees when implementing the HRA plan. In fact, they will receive an additional benefit when the County contributes $250 single/$500 family to employee HRA accounts. It is also significant that Jackson County's wage rates have been the lowest of the external comparables for the CCO position and have been second lowest for the deputy position in recent years. The Employer contribution increased for those hired after January 1, 2003.

The Employer expects that the Union will argue that external comparables support a wage increase in excess of 2%, and the Union will likely argue that its proposed 2%/1% wage increases are more reflective of external comparisons. The County says it can not entirely disagree. However, as for the argument that Buffalo County wages are considerably below the average and may even be losing ground, the County says this is not surprising in Dunn and Pierce County given they fall under the influence of the Minneapolis/St. Paul metropolitan area. Both are ranked as the largest, and fastest growing, based on population, with populations 2-3 times larger than Buffalo County and both also have the highest equalized value among the comparables. Buffalo's equalized value of $865,678,200 is dwarfed by that of Pierce County, at $3,065,739,500 and Dunn County, at $2,672,380,900. Similarly, Buffalo County's average income (based on adjusted gross per tax return) in 2005 ranked 55th in the State of Wisconsin at $33,061, compared to Pierce County's ranking of 9th in the State at $47,180. Dunn County's average income of $37,633 ranked 37th. Buffalo County is not in the same league.

Further, the Union has provided no evidence, nor made an argument, that retention is a problem, and specifically that any retention problem might be related to low wages. Indeed, Buffalo County has never been a wage leader and an analysis of the wages paid among the external comparables reflects a significant variation between the lowest and highest. Yet, Buffalo County wages are not the lowest. Buffalo County wages paid to patrol deputies have risen in rank from second lowest in 2002 to third lowest in 2004, maintained that ranking in 2006, and under the County's final offer will continue as third lowest. For the CCO position, the County has consistently ranked second lowest, and it will remain second lowest in 2007. The County's final offer represents a valid effort to provide reasonable wage increases within its ability to meet those increased costs.

Last, the County argues that the cost of living criterion supports the County's offer. The 2.4% CPI increase in 2006 is slightly closer to the 2.5% total cost under the Union's final offer, while the 2.3% CPI increase in 2007 is decidedly closer to the 3.15% total cost under the County's final offer than it is to the 4.01% increase under the Union's offer. As such, the County's final offer is more reasonable when measured against the cost-of-living index.

In summary, it is submitted that the County's proposed wage increase is reasonable given its fiscal constraints, not to mention some improvements in health insurance.

V. **<u>OPINION AND DISCUSSION</u>**

This case is usual in some respects and unusual in others. In some respects, it is not unusual for internal comparables to favor the Employer's offer and the external comparables to favor the Union's offer. Although in this case, an internal pattern has not completely emerged with only two of the five County bargaining units having settled at 2.0%. On the other hand, the external pattern in 2007 has completely bloomed with only one unsettled out of seven. Six of the seven settled at or above the Union's offer. For 2008 only three out of seven have settled but again at or above the Union's offer.

This case is unusual in the respect that the information the Parties had, at the time of the submission of final offers, concerning the County's financial status dramatically changed by the time of the hearing. The County anticipated an annual levy limit of 2% the exact amount of its offer. Just days before the hearing, the state effectuated a budget that raised the levy limit to 3.86%. This will yield the County an additional $208,937 in available tax levy monies.

This case is also unusual in that the offers are so very close. The difference is accounted for by the effect of a one percent raise in the second half of 2007, the lift into the second year and the effect of the one percent raise in the second half of 2008. The difference in salary for both years is a little over $10,000. The difference in total compensation is a little over $15,500.

The answer to the competing considerations is simply not as easy a saying, as the Union suggests, "oh the levy limit increased from 2.0% to 3.86% therefore the County can afford our offer." Buffalo County has some very real problems and these are problems not faced by most of the comparable counties. Buffalo County is dead last in the key statistic of new construction growth from 2006 to 2007 and was only one of two counties below the 2.0% benchmark. It has engaged in many meaningful and prudent austerity measures with very real long term implications. These problems did not evaporate with the stroke of the Governor's pen and another $200,000 in levy limits.

These financial challenges weigh against the idea that the bargaining unit members need as much of a wage increase as similar law enforcement employees in comparable counties. However, the amount of the increase is only part of the story. The actual wage rates or wage levels are important too. Buffalo County deputies and jailers have historically been paid less than similar employees in comparable counties. This is not to suggest that they should be a wage leader or even average. Buffalo County in many financial respects is not typical and is below average.

Nonetheless, the wage levels and the impact of the final offers must be considered. It is not an exaggeration to say while very close to the Union's offer the County's offer makes a bad situation worse. Even the Union's offer results in the deputies and jailers falling further behind the wage rates compared to similar employees in similar counties.

The County doesn't dispute that law enforcement employees in Buffalo County have below average hourly wage rates. Instead they: (1) tweak the Union's calculation of how far behind they are, and; (2) contend that the resultant disparity is not enough to justify the Union's offer.

Concerning the average wage rates, the County notes that Monroe County has not settled for 2007. They draw attention, on this basis, that the Union left Monroe County out of their calculations of the average wage rates. Because Monroe County has had, historically, a low wage rate for deputies, with them not figured into the average, the disparity is exaggerated. The Employer assumes a 2% increase in Monroe County and calculates the average disparity average to be $1.26 per hour rather than

$1.62 under their offer calculated by the Union. This is a difference of only 6%. The Employer suggests a disparity of 10%-15% might be significant enough to justify the Union's offer.

The County's reply brief touches on one of the critical questions in this case. How much of a negative wage disparity between the wages in Buffalo County and comparable counties is too much or unacceptable?

The Arbitrator "noodled" about this for some time. He makes this observation. Employees don't spend percentages at the grocery store. They spend dollars. Even at a $1.26 per hour negative disparity to the average wage rate for deputies, this represents $2564 per year or over $200 per month. At $1.62 per hour, this is $3296 per year. Also when Buffalo County is compared to its important neighbors, Pepin and Trempealeau Counties (also river counties whose northern reaches are also influenced by the Eau Claire County economy and southern reaches by LaCrosse County) the deputy in Buffalo County will slip further under the Employer's offer.

Wages are also only part of the story. Overall compensation must be considered. Even with some improvements in health insurance, the Buffalo County employees pay 20% of their health insurance premium which is much more (by every indication in this record) than other employee law enforcement personnel who generally are earning more money.

The Arbitrator recognizes that there will be pain caused for both parties no matter which offer he chooses. And, he is required to pick one. Regardless of which he picks, somebody is going to have to "do without".

Given the relative impact and implications of awarding either of the final offers and when weighing the evidence of this record in the context of the statutory criteria, it is the conclusion of the Arbitrator that the competing considerations slightly favor the Association's offer. It is not the Arbitrator's function to set priorities for the County's budget. However, there are a number of items Buffalo County indicated it might consider restoring given the increase in levy limits that could be adjusted in someway to accommodate the slightly higher cost of the Union's proposal and to keep its negative wage disparity from growing worse. The evidence shows, for instance, the County with the increased levy would consider buying two separate computer and software upgrades which would cost approximately $27,000 to $30,000 each.

Lastly, the Arbitrator intends no broad effect from this decision on the pending cases with other units, particularly with regard to which deserves more weight--internal or external settlements. That debate was resolved here on an analysis of: (1) the particular wage disparities between this bargaining unit and comparable units, and; (2) the particular evidence in this record.

AWARD

The final offer of the Union is accepted
and to be made part of the Parties'
2007-08 collective bargaining agreement.

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Gil Vernon, Arbitrator

Dated this 28th day of February 2008.