EDWARD B. KRINSKY, ARBITRATOR

In the matter of the Petition of	:	
	:	
Monroe County Professional Police Association	:	
	:	
For Final and Binding Arbitration Involving	:	Case 196
Law Enforcement Personnel in the Employ of	:	No. 67004 MIA-2791
	:	Decision No. 32254-A
Monroe County	:	

Appearances: Mr. Richard W. Terry Representative Wisconsin Professional Police Association / LEER Division, for the Association

Mr. Ken Kittleson Personnel Director, for the County

By its Order of October 18, 2007 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator "to issue a final and binding award... pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act" to resolve the impasse between the above-captioned parties.

A hearing was held at Sparta, Wisconsin on March 25, 2008. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The record was completed with receipt by the arbitrator of the parties' briefs on April 28, 2008.

Facts:

The parties are in disagreement over the terms of their January 1, 2007 through December 31, 2008 Agreement. There are two issues in dispute: wages, and a 1994 Letter of Understanding. Both parties included changes in health insurance in their final offers, but they are in agreement about those changes.

With respect to wages, the County proposes:

> 2007: 2% across the board wage increase effective 1/1/07
>
> 2008: 2% across the board wage increase effective 1/1/08 and an additional 0.5% across the board wage increase effective 7/1/08, and add a $ 100 single / $ 200 family deductible to the current health insurance coverage that applies to areas not covered by current co-pays and wellness exemptions, effective 1/1/08

With respect to wages, the Association proposes:

2007: 2.0% across the board wage increase effective 1/1/07
1.0% across the board wage increase effective 7/1/07

2008: 2.0% across the board wage increase effective 1/1/08
1.0% across the board wage increase effective 7/1/08

With respect to the Letter of Understanding, the County proposes:

> "Continue memorandums of agreement with the exception of the December 15, 1994 Letter of Understanding, which would expire at the end of the contract hiatus period."

With respect to the Letter of Understanding, the Association proposes:

> "Continue all memorandums of agreement including the December 15, 1994 Letter of Understanding."

The December 15, 1994 Letter of Understanding states:

> Monroe County and the Monroe County Professional Police Association hereby enter into this Letter of Understanding regarding certain matters relating to hours of work which are not specifically provided for in the express terms of Article 5 of the applicable Collective Bargaining Agreement. This letter of understanding shall remain in effect during the term of the 1995 to 1996 Collective Bargaining Agreement. Accordingly, the parties hereby agree to the following:
>
> 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 Letter of Understanding has been in effect continuously, without change, since 1994. In accordance with its terms, the parties have reached agreement in the past on issues involving 12-hour shifts and vacation schedules.

It is undisputed that in its initial and subsequent bargaining proposals in the current dispute, the County made no mention of deleting or discontinuing the Letter of Understanding. The subject was not discussed. The County inserted the issue for the first time in its final offer. In its initial proposal, the County included the following language: "(The county reserves the right to add to, delete from, and/or modify the

above proposals during the course of collective bargaining negotiations.") The Association argues that by not discussing the Letter and then by inserting its proposed deletion for the first time in its final offer, the County is circumventing the bargaining table and playing "gotcha," a strategy which the arbitrator should not endorse.

The County argues that the Letter abrogates management's rights with respect to scheduling and assigning. Since its inception, the County argues (without any supporting evidence), it has been trying to eliminate the Letter. The County argues, again without supporting evidence or testimony, that the Letter should be allowed to sunset because it was "an olive branch extended between a former Sheriff and former union president, neither of whom is currently employed by the department." The County argues, again without supporting evidence or testimony, that on one occasion at some time in the past, a deputy refused a shift change because the Sheriff hadn't gotten the Union's agreement to the change. The Association argues that the County has presented no evidence of any problem caused by the existence of the Letter of Understanding and the County has no justification for proposing that it be deleted. It is undisputed that the County did not offer a *quid pro quo* to the Association for agreement to discontinue the letter.

It is undisputed that the County bargains with seven bargaining units. In five of them, including a unit of dispatchers represented by the Association, there have been voluntary settlements reached on the same wage and health insurance terms which have been offered to the Association in the current dispute. The same terms have been implemented for the County's non-union employees. In the County's view, this uniform pattern of internal settlements should serve as a compelling basis for awarding in favor of the County's final offer. The Association argues that the only meaningful comparisons which should be considered in establishing wages for law enforcement officers are those settlements reached with the external comparison law enforcement units.

The parties are in agreement about which units should be used for the purpose of comparisons: Jackson, Juneau and Vernon Counties, and the cities of Sparta and Tomah.

The data submitted by the parties show the following percentage increases for the comparables:

2007

Jackson	3.0%	1/1/07
Juneau	2.75%	1/1/07
Vernon	3.25%	
Sparta	3.6%	
Tomah	2.0%	

2008

Jackson	3.0%	1/1/08.
Juneau	n.a.	
Vernon	3.25%	1/1/08
Sparta	3.0%	
Tomah	2.0%	

Data presented on wage rates show that during 2005-2006 the top patrol wage in the unit ranked 5th among the external comparisons. For 2007-2008 under either party's final offer, the unit will continue to rank 5th among the external comparisons.

At the end of 2006 the median wage for top patrol among the 5 external units was $ 19.22, and the bargaining unit's top wage was $ 18.53 which was $ .69 below the median.

At the end of 2007 the median wage for top patrol among the 5 external units was $ 19.91. Under the Association's final offer the top wage would be $ 19.09 (.82 below the median), while under the County's final offer the top wage would be $ 18.90 ($ 1.01 below the median)

At the end of 2008 the median wage for top patrol among the 5 external units will be $20.52. Under the Association's final offer the top wage will be $ 19.66 (.86 below the median), while under the County's final offer the top wage will be $ 19.38 ($ 1.14 below the median).

The Association argues that in recent years the wages of the bargaining unit have deteriorated in relation to those paid by the external comparables, and the County's final offer will result in further deterioration. The Association asserts that it is not asking the arbitrator to award catch-up pay, but is only asking to slow the erosion of wages. The Association notes that the position of the bargaining unit is further disadvantaged by the fact that officers do not receive longevity payments as they do in addition to wages in both Juneau and Vernon Counties. The County argues that it has had no shortage of applicants for positions in the unit at the level of wages offered. It emphasizes the importance of implementing uniform wage increases among its bargaining units, which is the 4.5% lift in wages which it has offered over two years, in contrast to the 6% lift which would result from implementation of the Association's final offer.

The County notes also that its offer to all of its bargaining units included the .5% increase in July, 2008 which, it argues, was offered as a *quid pro quo* for the increases in deductibles in the health insurance plan. The County argues that the 1% wage increase in July, 2008 contained in the Association's final offer greatly exceeds the value of the increased deductibles.

The Association presented consumer price information from the federal Bureau of Labor Statistics. Using the index for All Urban Midwest Consumers, the annual increase during 2005 was 3.2% and for 2006 it was 2.4%. Using the index for Midwest Urban

Wage Earners and Clerical Workers, the annual increase during 2005 was 3.4% and for 2006 it was 2.4%

Discussion:

In making his decision, the arbitrator is obligated to give weight to the statutory factors in Sec. 111.77(4)(b) of the Municipal Employment Relations Act. Several of these are not in dispute or were not argued by the parties in the current dispute and will not be considered further: (a) lawful authority of the employer; (b) stipulations of the parties; that portion of (c) pertaining to "the financial ability of the unit of government to meet the costs of any proposed settlement; (f) comparison of wages, hours and conditions of employment [with] "other employees in private employment in the same community and in comparable communities"; (h) overall compensation presently received by the municipal employees...;(i) changes in circumstances during the arbitration proceedings. The remaining factors are discussed below.

Factor (c) includes "the interests and welfare of the public." The Association argues that "the interests and welfare of the public are...best served when public safety has the best well-trained, fairly treated officers possible." The Association argues that its wage offer which prevents further wage deterioration in relation to other law enforcement units best serves the interests and welfare of the public. Moreover, it argues, it is in the public's interest to increase wages gradually so as to avoid the larger increases which will be necessitated in the future to correct more serious wage disparities such as result from the County's final offer.

Factor (d) pertains to comparison of wages, hours and conditions of employment of the bargaining unit with those of "other employees performing similar services." These are the comparisons with the external law enforcement units. Viewed in terms of across the board percentage increases, the Association's offer is more in line with the settlements of the external comparables than is the County's offer. While the Association's offer results in some deterioration of the wages of bargaining unit officers in comparison to the median wage paid by the external comparables, the County's offer results in significant deterioration. Both final offers result in the bargaining unit continuing to rank 5th among the 6 law enforcement units.

Factor (e) pertains to comparison of wages, hours and conditions of employment of the bargaining unit with those paid "generally in public employment in the same community and in comparable communities." It is under this factor that the internal comparisons are considered. As discussed above, the County's final offer is identical to what has been offered and accepted by 5 of the County's 7 bargaining units. The Association's final offer would result in a wage percentage lift of an additional 1 1/2% in comparison with what the other internal bargaining units have accepted. This factor clearly favors the County's final offer.

Factor (g) is consideration of the "cost of living." The Agreement in dispute here is for the years 2007-2008. What is most relevant, in terms of the cost of living, is what changes occurred in that measure during the prior contract period which the parties would then have taken into account in formulating their bargaining proposals for 2007-2008. The cost of living index from the beginning of 2005 until the end of 2006 rose 5.7% (3.2% in 2005 x 2.4% in 2006) according to one index, and 5.9% (3.4% in 2005 x 2.4% in 2006) according to the other index. If only wage offers are considered, the County's proposed wage increase is 4.3% (2.0% in 2007 x 2.25% in 2008) during 2007-2008 and the Association's proposed wage increase is 5.1% (2.5% in 2007 x 2.5% in 2008). Both parties' proposed wage increases are below the increase in the cost of living, but the Association's is more in line with the change. The County presented total cost data for its final offer. During the period 2007-2008 the package increase is 5.7% (2.2% increase in 2007 x 3.4% in 2008) which is in line with the increase in the cost of living for the 2005-2006 period. The package cost of the Association's final offer was not calculated by either party. The Association calculates its wage proposal to cost approximately $21000 more than the County's wage proposal over the two year period, and thus the Association's total package offer is probably slightly above the cost of living increase.

Factor (j) is "such other factors...which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through...arbitration..." This factor is relevant to the parties' dispute over the Letter of Understanding. The parties bargained that letter in 1994 and by its terms it continued through 1996. No evidence was presented about the nature of the bargain which produced the Letter, or about what trade-offs, if any, were made when the parties agreed to its terms, or about what problems existed which it was meant to address. In their subsequent bargains, through the Agreement which ended at the close of 2006, the parties continued to make the Letter of Understanding part of their Agreement. No evidence was presented about the nature of any discussions which occurred at the bargaining table during those years. If the County's assertions are correct that there were prior efforts to discontinue the letter, but it remained in effect, then obviously the Letter was viewed by the Association as of value and affording protections to its members which it did not want to give up. However, as previously indicated, this is speculation given the absence of any specific evidence about what occurred and why. Given the 14 year history of this Letter, renewed in each Agreement by the parties, it is the arbitrator's view that if it is to be modified or deleted at this point, it should be as the result of bargaining, not through arbitration unless there are persuasive reasons to do it that way, and no such persuasive reasons have been presented to do it through arbitration. No persuasive evidence or testimony was presented to demonstrate that the existence of the Letter of Understanding has caused difficulties for the parties, or that there is now a problem which can only be remedied by the elimination of the Letter.

Under the statute, the arbitrator is required to select one of the parties final offers in its entirety. As is not unusual in such disputes, this is a close case. The internal comparables clearly favor the County's final offer, while under the Association's final offer the wages of the bargaining unit, compared with the external units are kept at a

level which avoids further deterioration in wages. Were wages the only issue, the arbitrator would be inclined to favor the County's position of maintaining uniformity in its wage settlements, particularly where five other bargaining units have come to terms voluntarily, and would be so inclined notwithstanding that the Association's final offer maintains wage relationships with comparable law enforcement units significantly better than does the County's final offer. There is a second issue, however, the Letter of Understanding which tips the scales in the Association's favor. Given the long history of this bargained Letter, and the lack of any discussion or bargaining about it in the current round of bargaining prior to its proposed deletion by the County in its final offer, the arbitrator views the Association's final offer, which maintains the Letter in effect, as preferable.

Based upon the above facts and discussion, the arbitrator hereby makes the following AWARD:

The Association's final offer is selected.

Dated this 8th day of May, 2008 at Madison, Wisconsin

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Edward B. Krinsky
Arbitrator