

BEFORE THE ARBITRATOR

In the Matter of the Petition of
WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LAW ENFORCEMENT EMPLOYEE
RELATIONS DIVISION
To Initiate Arbitration Between
Said Petitioner and
POLK COUNTY

Case 115
No. 67012 MIA-2792
Decision No. 32364-A

Appearances:

Mr. Robert E. West, Wisconsin Professional Police Association Consultant, 2001 Gilbert Road, Madison, Wisconsin 53711, on behalf of the Association.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Ms. Mindy K. Dale, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, on behalf of the Employer.

ARBITRATION AWARD

Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter referred to as the Association, and Polk County, hereinafter referred to as the County or Employer, met on several occasions in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on December 31, 2006. Said agreement covered all full-time Field Officers employed in the Sheriff's Department, excluding the Chief Deputy and Administrative Lieutenant. Failing to reach such an accord, the Association on June 1, 2007, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties on January 31, 2008, issued an Order, dated February 22, 2008, wherein it

determined that the parties were at impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of five arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on April 2, 2008, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted a hearing in the matter on June 5, 2008, at Balsam Lake, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. Initial briefs and reply briefs were filed and exchanged and the record was closed on July 27, 2008.

THE FINAL OFFERS AND STIPULATIONS OF THE PARTIES:

The Employer and Association final offers are attached and identified as attachment “A” and “B,” respectively. Each final offer includes a list of the tentative agreements reached by the parties.

BACKGROUND:

The instant law enforcement unit is comprised of approximately 25 Deputy Sheriff’s, also commonly referred to as Field Officers. There are two other bargaining units in the Sheriff’s Department covering the “Communications/Support staff” and “Corrections Officers”

employees. Additionally, the County has collective bargaining agreements with four AFSCME units, a public health unit, a registered nurse unit and a licensed practical nurse unit. In all, there are approximately 412 represented employees in the County.

Except for the instant unit, all of the internal units have reached settlement for calendar years 2007 and 2008. They settled for a 3% across-the-board wage increase each year along with a change in health insurance. The instant unit has agreed to the same insurance change as the other units, but proposes a graduated scale wage increase each year consisting of a 2.5 increase for deputies with less than 5 years of service, a 3% increase for those employees with 5 years of service but fewer than 10 years of service, and a 4% increase for those employees with 10 years or more of service. The County proposes an across-the-board increase of 3% each year.

At the hearing, the County and Union presented exhibits in support of their positions and reviewed and explained the exhibits to the Arbitrator. Additionally, the County, in further support of its position, offered the testimony of Sheriff Timothy Moore. He testified that the Sheriff's Department is very competitive with its external comparables, that the salary level has not been a problem in retaining deputies, and that the current wage schedule and wages of the deputies are very competitive with their external comparables. Further, the addition \$1.00 per hour differential for all hours assigned to conduct field service training is reasonable and needed because (1) the need to train recruits has increased over the years because applicants as a whole have less experience than before and (2) the program itself has progressed and is more comprehensive than in the past.

POSITIONS OF THE PARTIES:

The following is a summary of the positions of the parties and does not purport to be a complete statement of all the arguments presented.

Association's Position

Although the County has two issues in addition to wages in its final offer, the determinative issue is wages. This is borne out by the fact that at the hearing the Employer rejected the opportunity to achieve agreement on the two remaining items when offered by the Association.

With respect to the wage issue, the final offers of the parties are nearly identical in terms of cost. The County proposes a 3% across-the-board increase while the Union proposes a graduated scale increase. When comparing the two, the only issue in salary is for those employees with less than 5 years and those with 10 years or more. The parties agree on the rate for the middle range of employees. This case therefore is not a matter of determining the appropriate wage cost but one of determining the appropriate placement of the money allotted.

The County will argue that the internal pattern supports the 3% across-the-board increase. The Association argues that this assertion is balanced by the 4% raise given to the Sheriff and the enormous disparity of increases given to the management employees since 1999 when compared to the Polk County Deputies. The County will argue that the Sheriff's raise was due to the need to catch up with the externals and the Chief Deputy. The Association argues that the Deputies have lost some rank to the comparable averages since 1999 and that a small adjustment to the allocated wage increase is appropriate.

The Association submits the following:

The most relevant data for the Association argument is contained in Employer Exhibits 52 and 53 and Association Exhibit 1. A review of Association Exhibit 1 reveals that the maximum rate in 1999 for the Polk County Deputies was \$0.68 above the average and ranked them in the second position. By 2006 the Polk County Deputies were only \$0.30 above the average and had fallen to third in ranking. A review of the salary schedule shows a differential from minimum to maximum of about 10.4%. The maximum wage rate increased from 1999 to 2005 by 21.8%. Therefore a deputy starting at the beginning rate in 1999 and progressing through the grid to 2005 and enjoying the schedule increases would have increased his/her earnings by 32.2%. Now we look at the management wage increase which include both grid movement and schedule increases. Employer Exhibit 54 reveals the Sheriff wage has increased from \$41,818.00 in 1999 to \$65,230.00 an increase of 56%. This same Exhibit provides data for the Chief Deputy showing a 48% increase as that salary increased from \$53,597.00 to \$79,607.00 over that same period. Finally the Exhibit shows the Lieutenant wage increasing from \$47,689.00 to \$64,701.00 (sic) an increase of 35%. Based on this record evidence it is clear that supervisor salaries have out distanced the bargaining unit wages by a considerable amount since 1999.

The County is posed to argue that the supervisory increases were justified based on rankings with the comparables and that the 4% allocated to the Sheriff was justified on that same basis. Again we turn to the data. According to post-hearing Employer Exhibit 53 (corrected) the Sheriff was number two in his rank within the primary comparables. And in 2008 he retained the number two position closing the difference with number one by \$1,657.00. In 2007 the Chief Deputy blows the competition away with a number one ranking and none of the other primary comparables are even close and he retains that ranking in 2008. Finally the Lieutenant maximum wage in both 2007 and 2008 is not even close to any of the primary comparables as he earns nearly \$20,000 more than the nearest County.

The data shows that, without question, Polk County has determined that front line law enforcement supervisors should be the highest paid of all the comparables and with raises in excess of the bargaining unit and other supervisory employees the Sheriff will soon give up his second ranking in exchange for the number one slot.”

What the Association is asking is that the allocated dollars for raises be distributed by placing the amount equivalent to what the Sheriff received (4%) to the maximum step for Deputies (10 years of service). The Association’s offer proposes a little less for the beginning steps in order to increase the career earnings level. The Deputies number three ranking will

remain the same, but the gap two and three will close slightly. The Deputies will return to the relationship it had in 1999 when compared to the average. The Association's final offer attempts to mitigate cost while providing an increase which maintains the significant differential with their supervisors.

The County will argue that supervisors are not a true comparable and will argue that the non-law enforcement internal comparables should prevail. The Association cites Arbitrator Raymond McAlpin's rationale to the contrary in a recent decision¹ wherein he refused to rely on internal comparables, with the exception of firefighters, in a police arbitration because he did not find that a Department of Public Works (DPW) unit and police unit have enough in common to be in any way directly comparable. He therefore considered the police supervisors' settlement and firefighters' settlement in determining the appropriateness of each offer.

The Association contends that the relationship of supervisors and the front line Sheriff's Deputies is unique to law enforcement. So when the Employer decides to provide a significantly higher salary to those police supervisors than that provided for the Deputies, it must be for a strong and clearly articulated reason to not produce resentment and frustration that can lead to a breakdown in morale and team work. The Employer has not presented the requisite justification for disparate treatment. The Sheriff's salary is not behind his comparables. Neither are the two other management positions.

Statutory Criteria

¹ City of West Bend, Case 63599, No. 63599, MIA-2598, Decision No. 31003-A.

The Association analyzes the final offers using the statutory criteria. The Association notes that given the positions and arguments of the parties' criteria a, b, e, f, g and h are really not relied upon or determinative in this case.

The Association argues that criterion c, Interest and Welfare of the Public, favors the Association. The public is always best served when public safety has the best well-trained officers possible. Also, a competitive wage is important and inequity is bad for good morale. Equity is best served by the Association's final offer. The County's offer fails to acknowledge a significant gap that has grown between supervisors and experienced Deputies and as such must be rejected.

With respect to criterion d.1, the parties have agreed on external primary comparables. As the parties' final offers are very close in terms of cost, the comparables do not significantly favor either offer and the internal supervisor comparison is much more compelling and clearly favors the selection of the Association's final offer.

Based on the above, the Association requests that its final offer be selected as the more preferred.

County's Position

This unit has not been to arbitration previously. Polk County has been to arbitration only once, in 1989 with the AFSCME unit. In that case, the Arbitrator found the following counties to be "primary" comparables: Barron, Burnett, Dunn, Pierce and St. Croix. He also found the following counties as "secondary" comparables: Chippewa, Rusk, Sawyer and Washburn. It is the County's position that both the primary and secondary external comparables support its final offer.

The external comparables clearly support wage increases of 3% or less (Employer Exhibit 30). Therefore, the County's proposed wage increase of 3% meets or exceeds every external comparable in both 2007 and 2008. Further, unlike the external comparables, the County's 3% is not a split increase which results in a 3% lift but a lower increase in actual annual wages. The County's 3% actually results in a 3% increase in take-home pay each year. None of the comparables support the Associations's demand for a 4% increase for more senior employees.

It is also the County's position that its final offer maintains internal consistency and should be selected on that basis alone. All five of the other County bargaining units have voluntarily agreed to the same 3% wage increase offered by the County, including two other units of Sheriff Department employees represented by WPPA. The Association's wage proposal is a deviation from the internal settlement pattern which provides a more generous 4% wage increase for more senior employees and, if accepted, would risk unrest among other bargaining units which voluntarily agreed to a 3% wage increase for all employees.

The County cites numerous arbitration awards in which arbitrators have held that when a pattern exists among internal settlements, that pattern must be given significant weight and should be respected. Problems result when one unit is given preferential treatment over another unit.

In the 2004-2006 agreements and the current 2007-2008 contract term, all Polk County represented employees have been treated equally with respect to wage increase. The only exception was in 2004 when the nurses unit was given a market adjustment. The Association's wage demand represents a departure from the internal settlement pattern and acceptance of its offer will surely create havoc in future bargaining.

Arbitrators have required that the party seeking to deviate from an internal pattern must have good reason to justify the deviation. The burden is upon the Association in this regard. The Association's explanation is that the Sheriff received a 4% increase in both 2007 and 2008 and that the Deputies deserve the same. Further, it claims the maximum rate for Deputies has lost ground with the external comparables since 1999.

The County argues that the increase received by the Sheriff has no bearing on the instant dispute. The reason the Sheriff received a 4% increase each year was because his salary was not keeping pace with the salaries of two supervisory officers, the Chief Deputy and the Lieutenant. The supervisory officers move through an 8-step wage grid. The Sheriff's salary is a fixed amount determined by the Board. There is no step movement increase. As a result, the Chief Deputy receives a higher salary than the Sheriff and the margin is increasing. Meanwhile, the Lieutenant has been catching up to the Sheriff (Employer Exhibit 52). Even with a 4% increase to the Sheriff, the 2006 disparity of \$13,825 between the Chief Deputy and Sheriff will not decrease in 2007 and 2008.

The same is true with the Lieutenant comparison. The Lieutenant is getting closer and closer to the Sheriff's salary. In 2007, the Lieutenant received \$5,385 less than the Sheriff, but in 2008 the disparity decreased to \$3,523. The 4% increase in the Sheriff's salary was warranted to reduce the salary compression arising between the Lieutenant and the Sheriff.

With respect to the Association's claim that the unit is falling behind, the County argues otherwise and argues that Polk County wage rates exceed the majority of the external comparables. The County asserts that unless the Association can demonstrate that its wages are lagging significantly, it cannot prevail.

The evidence demonstrates that there clearly is no unacceptable wage disparity when compared to the externals. Polk County minimum and maximum wage rates rank second only to St. Croix County. When longevity is added to the maximum rate, Polk County exceeds all external comparables except St. Croix and Pierce counties. This, however, is not a wage catch-up situation.

The Association claims Polk County Deputies are losing rank with the external comparables because they were ranked second in 1999 but slipped to third in 2002 and have remained there ever since. The reason for the slippage, however, is because Pierce County added a 3% longevity factor to the maximum which moved them ahead of Polk County. The County submits that this does not justify the Union's 4% offer because it takes a Pierce County Deputy 15 years to reach the longevity rate, whereas a Polk County Deputy reaches the maximum wage rate after only six years. Employer Exhibit 34 provides a historical comparison beginning in 2000 and establishes that Polk County wages have not lost ground and will not under the County's final offer.

The Association has not proven a deviation is warranted and, therefore, its final offer increase in excess of all internal and external comparables is not warranted.

Further, the Association's final offer changes the structure of wage schedules and there a change in status quo. The parties gradually reduced the 20-year/20-step schedule in 1989 to the present six step in 2000. There is no reason to add a step back through arbitration; it should be through negotiations and voluntary settlement.

In addition, maintaining a competitive starting wage rate is important to the recruiting process. Under the Association's offer, the starting rate would only increase 2.5% as compared to the County's 3%. It is important to keep the starting rate competitive.

Remaining Issues

Adding \$1.00 per hour for field training is reasonable and responsive to prior Union requests.

Field training is a voluntary task, and the County has come to the realization that compensation for field training is warranted, both in order to have enough officers willing to conduct training and to reward them for the additional responsibility.

The last issue, direct deposit of pay checks for new hires, is consistent with both internal and external comparables. The other County units reached voluntary settlements on this issue.

Similarly, the external comparables fully support direct deposit. Of the primary comparables only one does not have contract language providing same; among the secondary comparables, all have some form of direct deposit.

Based on the above, the County urges that its proposal on the two items is more reasonable than the Association's.

With respect to the application of other statutory criterion, the County argues that the "Interest and Welfare of the Public" criterion favors the County's final offer because it provides the same wage increase as provided to all employee groups. If the Association were successful, bargaining units will be reluctant to settle first on the theory that early settlements will be a starting point for more preferential treatment.

The County agrees with the Association that the cost-of-living criterion has little significance in this case and should be given no weight.

Based on the above, the County requests that its final offer be selected by the Arbitrator.

Association's Reply Brief

The Association argues that the County justifies the Sheriff's increase, which is larger than the internal comparables, by using the Chief Deputy and Lieutenant's salaries. The Sheriff's salary is not out of line with external comparables. With the rapidly accelerating salaries of management, higher than unit Deputies, the County has determined that the Sheriff must catch up. The County ignores the bargaining unit that has lagged behind all management increases. The Association has proposed a modest salary increase in line with the Sheriff so it too can gain back some small ground when compared to the Lieutenant and Chief Deputy.

The County also argues that minimum salary is important for recruitment. Recruits, however, look at more than minimum salary when considering the position. They look at what the career levels of wage will produce. They only spend one year at the minimum and most of their career at the maximum. The Association's offer will better retain quality officers than the County's offer.

The County argues vigorously for its two items: \$1.00 per hour for training and pay check deposit. The County completely ignores the Association's offer to amend its offer to accept the County's offer and now attempts to bolster its final offer with these items.

The Association acknowledges that this is a unique case. The internal comparables support the County offer. The external comparables are a toss up. The unique circumstances here are the middle management salary levels and increases. Over the past nine years, these middle management positions have been receiving wage increases far in excess of the Deputies and the Sheriff. The County recognizes the problem when it comes to the Sheriff, but not the Deputies. The Association now asks for equal treatment with the Sheriff.

Employer's Reply Brief

The Employer re-emphasizes that both the internal and external settlement patterns support the County's final offer. The Association at the hearing claimed that it was the 4% increase in the Sheriff's salary that was the driving force behind its 4% wage demand. Now, in its brief, it argues that its final offer is justified because of historical comparisons with the salaries and salary increase of not only the Sheriff, but also the non-represented positions of Chief Deputy and Lieutenant. This, however, does not justify its wage demand.

The Association compares the Deputies to the Sheriff's salary. However, the Association's reliance on 1999 as the benchmark for comparison is skewed by the Sheriff's low salary in 1999. There was such a disparity in 1999 that a major adjustment was made. Between 2000 and 2005 the Sheriff's salary increased in 15% far less than the 22% increase in maximum Polk County Deputy wage during the same time period.

Further, the Association contends that the County's reason for providing a 4% increase for the Sheriff is because of a need to catch up to the comparables. There is no evidence to support the Association's claim. The Sheriff in 2007 and 2008 ranks second, the same ranking as that of the Deputy wages.

Also, the Association's comparison with supervisory salaries fails to recognize the longer hours expected of Sheriff's Department management and supervisory personnel and the overtime available to bargaining unit members. The non-represented supervisory personnel salaries are based on a 2,340 hour work year. Neither they nor the sheriff receive overtime pay. The unit members with a 2,068 hour regular work schedule receive overtime pay for all additional hours.

Lastly, the Employer again emphasizes that external comparisons in rank and average wage from 1999 to 2008 do not justify the Association's wage proposal. In a case like this, where Polk County is already a wage leader, a loss in ranking of any one position and a slight

deviation from the “average” internal wage rate does not justify a wage increase which exceeds all internal and external comparables.

With respect to the two other items in issue, the Employer argues that the Association’s final offer must be evaluated on its merits, not on the County’s refusal to allow the Association to modify its final offer after the hearing.

DISCUSSION:

Section 111.77, Wis. Stats., directs the Arbitrator to give weight to the following arbitral criteria in reaching a decision:

- (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 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.

The parties' final offers place three items in issue: (1) wage increases for 2007 and 2008, (2) \$1.00 per hour additional pay for Deputies performing field service training, and (3) direct deposit of paychecks for new hires. However, the parties agree, as does the Arbitrator, that the major and determinative issue in this case is the wage issue. That is to say, whichever party prevails in the wage issue will be deemed to have the more reasonable final offer regardless of the outcome of the two other issues.

Further, the determinative criteria relied upon by the parties are the internal comparables, external comparables and the interests and welfare of the public. In this regard, the Arbitrator has considered the other statutory criteria but does not find them to be influential in deciding the items in issue.

This is a case where much of the facts are not in dispute. The parties are basically in agreement over the appropriate set of external comparables. The County has been to arbitration only once, in 1989, in which the Arbitrator established the following primary external comparables: the counties of Barron, Burnett, Dunn, Pierce and St. Croix. The Arbitrator determined the following counties to be the secondary set of comparables: Chippewa, Rusk, Sawyer and Washburn.

There is no disagreement over the internal and external settlements. With respect to the internal comparables, all of the County's other five units voluntarily agreed to 3% wage increases for 2007 and 2008. This includes two other units of the Sheriff Department employees

represented by the instant Association. The internal comparables, therefore clearly support the Employer's final offer of the same 3% increase.

Normally, arbitrators give internal patterns of settlement great weight and follow the pattern unless there is good reason to deviate. This is to provide stability to the bargaining process and to promote the morale of employees that results from the equitable treatment of employees.² This, however, is not a hard and fast rule. The undersigned, in previous awards, has held that significant weight should be given to the internal pattern and that if there is no compelling reasons to deviate from the internal pattern of settlements, then the internal pattern prevails.³

Here, the Union argues the good reason to deviate from the pattern is the "internal" comparison within the Sheriff's Department between the wage increases offered to the Deputies and the wage increases granted to the Sheriff. Further, the Association argues that the two supervisory positions of Chief Deputy and Lieutenant have received dramatic increases over the years and now rank number one among the comparables by a wide margin, especially the Lieutenants. It is the Association's position that the Deputies should receive the same 4% increase as the Sheriff and that they deserve the same treatment as granted to the supervisors. Further, it is argued, a 4% increase is supported by the external comparables.

The Arbitrator certainly understands the Association's concern that the disparity in treatment may have a detrimental effect on the morale of the Deputies. Further, although the

² City of Madison (Firefighters), Dec. No. 21345 (11/84); City of New Berlin, Dec. No. 27293-B (2/93); and City of Tomah, Dec. No. 31083-A (2/95).

³ The County of Rock (Department of Public Works), Dec. No. 31679-A (3/29/07); Sawyer County, Dec. No. 31519-A (9/20/06); and Langlade County (Sheriff's Department), Dec. No. 29916-A, (1/01).

Arbitrator agrees with the Employer that unit employees are not, and should not, normally be compared to supervisory or managerial employees, there should be some reasonable relationship maintained between the wage rates of the ranks in a law enforcement unit.

Here, the extra 1% increase to the Sheriff seems reasonable given the great disparity between his salary and the higher salaries of the Chief Deputy and Lieutenant. Further, he remains ranked second among the comparables, some \$4,100 behind his counterpart in St. Croix. On the other hand, the Chief Deputy and Lieutenant are ranked number one and are clearly far ahead of the comparables, especially the Lieutenant. However, the Chief Deputy and Lieutenant received the same 3% increase offered to the Deputies. So the issue of the amount of disparity between them and the deputies is not new, it has been present for some time. But, the growing disparity is a matter that may have to be addressed in the future.

Importantly, however, the Deputies compare well with their external comparables and that, in the final analysis, is a more significant factor and carries more weight than comparison with the Sheriff and higher supervising ranks in the Department. In this regard, the Employer's final offer of a 3% increase in 2007 and 2008, is the same or better than all of the settlements among the primary and secondary comparables. Among the primary comparables in 2007, all settled for a 2%/1% split. Among the secondary comparables, there were two settlements with a 2%/1% split, one settlement at 3% and one settlement at 2%.

For 2008, among the primary comparables, four of the comparables received a 2%/1% split increase and one received a 3% increase. Among the secondary comparables, two received a 2%/1% split increase, one at 3% and one at 2%.

Clearly, with respect to the wage increase itself, the Employer's offer is more reasonable than the Association's graduated increase of 2.5 – 4.0% which costs \$5,400 more than the

Employer's. The Association's total compensation cost is .8% higher in 2007 and .18% in 2008 (Employer Exhibit 7). Thus, unless there is a catch-up factor, there is no reason to deviate from the pattern of settlements already established among the external comparables.

In this regard, the Association argues that the Polk County Deputies have fallen in rank from two to three since 1999 and that their differential from the average hourly rate of the comparables has slipped from a plus 68 cents in 1999 to plus 30 cents in 2006 (Association Exhibit 1).

With respect to the importance of rankings, the undersigned agrees with Arbitrator Byron Yaffe's following analysis:⁴

. . . though the parties' offers result in some change in the benchmark ranking of the District amongst its comparables, in the undersigned's opinion such ranking changes should not be given significant weight, particularly, where, as here, the District remains in the mainstream of the comparable benchmarks. If such changes were not allowed to occur, catchups and other legitimate salary schedule adjustments would never be allowed to occur without a spillover effect on comparable district schedules. In the undersigned's opinion, such an effect would be both illogical and inequitable.

Quite clearly, while comparison of rankings is important, it in itself is not determinative. The weight given to the movement in ranking must be determined in context of all factors.

Here, the Association correctly argues that Polk County's rank dropped from second to third in 2002. But, as pointed out by the Employer, this was because Pierce County added a 3% longevity factor to its maximum rate. The 3% longevity, however, is first available after 15 years of service whereas the maximum rate at Polk County is reached after only 6 years of

⁴ Wittenberg-Birnamwood School District (Teachers), Dec. No. 27299-A (1/93).

service. Further, Pierce County Deputies undoubtedly gave up something of value, monetary or otherwise, to get the longevity payment.

The Association's final offer would basically restore Polk County's number two ranking (Pierce County would remain 1 cent more, \$24.32 versus \$24.31). To do so, the Association's graduated 4% increase would increase the relative standing of Polk County Deputies as measured by the average hourly wage rate of its comparables to its highest differential.⁵ Again, using Association's Exhibit 1, the differential in 1999 was plus 68 cents and in 2002 when Pierce County replaced Polk County as number two, the differential was 50 cents. Since 2002, the differential was: 38 cents in 2003, 32 cents in 2004, 27 cents in 2005, and 30 cents in 2006. The Association's offer would dramatically increase the differential to 76 cents in 2008 while the Employer's offer would raise it to 37 cents. Both offers improve the differential, but the Association's makes a substantial gain. The Employer's offer restores the differential to the 2003 level while the Association's establishes a new high at 76 cents.

When evaluating the reasonableness of the two final offers, the Arbitrator is, of course, limited to the statutory criteria. The Arbitrator has reviewed all of the criteria, but finds the only ones that are relevant in this case are the ones relied upon by the parties: internal comparables, external comparables and the interests and welfare of the public. The internal comparables overwhelmingly favor the Employer. Therefore, the internal established settlement pattern of 3% must be honored unless there is a compelling reason not to. Here, there is no such reason. The external comparable settlement pattern among the primary comparables is a 3% average increase; either up front or a 2%/1% split. The secondary comparables are somewhat lower.

⁵ The wage rate data entered into evidence only goes back to 1999.

The Association seeks to break the internal and external patterns because (1) the Sheriff received a 4% increase and over the years the two supervisory positions of Chief Deputy and Lieutenant have received higher increases than the Deputies; and (2) it seeks to regain its number two ranking it lost in 2002. For reasons discussed above, the Arbitrator finds no supporting justification for the Association's graduated 4% increase (which costs more than 3%) based on ranking.

The Arbitrator agrees with the Association that the increases given to the Sheriff and the two supervisors over the years creates a morale problem for the Deputies and that the interests and welfare of the public are not well served with a law enforcement unit with morale problems. But, a comparison with supervisory employees is not generally considered unless the supervisors are a represented unit. It could then be considered as a negotiated internal settlement. This is not to say that the disparity between the supervisory ranks and the represented ranks may never be considered, but here (although it may have to be addressed in the future) it is not enough to outweigh the statutory criteria of the internal and external pattern of settlements, especially when they are as strong as they are in this case.

Based upon the application of the statutory criterion to the parties' final offers and the evidence presented with regard thereto, the Arbitrator finds the Employer's final offer to be the more reasonable of the two final offers based on both the internal and external comparables.

AWARD

The Employer's final offer is to be incorporated in the 2007-2008 collective bargaining agreement between the parties, along with those provisions agreed upon during negotiations, as

well as those provisions in their expired agreement that they agreed were to remain unchanged.

Dated at Madison, Wisconsin, this 3rd day of September, 2008.

Herman Torosian, Arbitrator

APPENDIX "A"

**POLK COUNTY'S
FIRST FINAL OFFER
TO THE
WISCONSIN PROFESSIONAL POLICE ASSOCIATION
(LAW ENFORCEMENT EMPLOYEE RELATIONS)
ON BEHALF OF THE
POLK COUNTY SHERIFF'S DEPARTMENT
FIELD SERVICES ASSOCIATION
LOCAL #201**

RECEIVED

NOV 5 2007

**WISCONSIN EMPLOYMENT
RELATIONS COMMISSION**

For a 2007-2008 Agreement

November 1, 2007

All terms and conditions of the 2005-2006 Agreement shall remain, except as stated in the tentative agreements (attached), and as proposed for modification herein:

1. **ARTICLE XVI – PAY PERIOD**

Add two new sentences to read:

Direct deposit shall be mandatory for all employees hired after ratification of the 2007-08 Agreement and optional for other employees. If an error is made and an individual employee is overpaid on a check that is direct deposited, the County shall work with the employee to develop a recoupment schedule.

2. **APPENDIX A**

a. Wages: 1/1/07 3% across-the-board increase
 1/1/08 3% across-the-board increase

b. Field training officers shall receive \$1.00 per hour differential for all hours assigned to conduct field service training.

APENDIX "B"

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of a Negotiation Dispute

Between

Polk County

And The

Polk County Sheriff's Department Field Services Association, WPPA/LEER

Case 115 No. 67012 MIA-2792

FINAL OFFER OF THE ASSOCIATION

The Association hereby presents its' Final Offer on all issues in dispute for a successor Agreement to commence on January 1, 2007 and remain in full force and effect through December 31, 2008.

1. All provisions of the 2005-2006 Agreement and attachments thereto between the parties not modified by way of any previous tentative agreements, and/or by this final offer shall be included in the successor Agreement between the parties for the term of said Agreement.
2. The term of the Agreement shall be for the period of January 1, 2007 through December 31, 2008. All dates relating to term shall be modified to reflect said term.
3. ARTICLE 4, Section 1 - WAGES
 - a. The Association proposes that all rates of pay set forth in Article 4, Section 1 of the 2005-2006 Agreement as of December 31, 2006 for each classification be increased by the following rates:

Effective January 1, 2007:

2.5% increase for those employees with less than 5 years service

3% increase for those employees with 5 years of service but fewer than 10 years of service.

4% increase for those employees with 10 years or more of service.

- b. The Association proposes that the rate of pay in effect as of December 31, 2007 for each classification be increased by the following rates:

Effective January 1, 2008:

2.5% increase for those employees with less than 5 years service

3% increase for those employees with 5 years of service but fewer than 10 years of service.

4% increase for those employees with 10 years or more of service.

4. All tentative agreements from November 2, 2006 and December 18, 2006
5. All tentative agreements from the September 19, 2007 mediation session excluding the County wage offer.
6. Continue all memorandums of agreement.

For the Association

Date

December 20, 2007

TENTATIVE AGREEMENTS
TENTATIVE AGREEMENTS
BETWEEN
POLK COUNTY
AND THE
WISCONSIN PROFESSIONAL POLICE ASSOCIATION
(LAW ENFORCEMENT EMPLOYEE RELATIONS)
ON BEHALF OF THE
POLK COUNTY SHERIFF'S DEPARTMENT
FIELD SERVICES ASSOCIATION
LOCAL #201

From November 2, 2006, and December 18, 2006,
Bargaining Sessions, as subsequently amended by the Parties

1. ARTICLE III – GRIEVANCE AND ARBITRATION PROCEDURE

Section 6 Request for Arbitration

Amend to read:

The party requesting the grievance proceed to arbitration shall notify the other party in writing, and must within fifteen (15) calendar days petition the Wisconsin Employee Relations Commission to appoint an arbitrator from their staff provide a panel of five (5) arbitrators from which the parties may strike unless the parties can mutually agree to submit the names of three arbitrators to the WERC, from which the WERC will be requested to make an appointment. The parties shall have the opportunity to strike first from the panel on an alternating basis. The party requesting the arbitrator shall pay the filing fee. The parties shall each bear the cost of filing as required by the WERC.

Note: The parties shall agree to flip a coin to determine who strikes first for the first time after the effective date of this agreement.

2. ARTICLE V – SICK LEAVE

a. Amend Section 2, Sick Leave Accumulation, paragraph (a), as follows:

- (a) All regular full-time employees shall accrue earn sick leave each pay period at the a rate equivalent to twelve (12) days per year one (1) day of each month of employment. If an employee takes unpaid leave of absence during any portion of a payroll period, the accrual shall be prorated for that pay period

3. ARTICLE VI – LEAVES OF ABSENCE

a. Section 1 Requests for Leave.

Add sentence to read:

Applications for a leave of absence for family or medical reason may also be made to Human Resources.

- b. Section 3 Compensation/Benefits During Leave
Amend second sentence to read:

Any ~~earned but unused~~ accrued paid leave available to the employee . . .

4. **ARTICLE VII – ~~FUNERAL~~ BEREAVEMENT LEAVE**
(Change “funeral leave” to “bereavement leave” throughout contract)

5. **ARTICLE X – WORKER’S COMPENSATION BENEFITS**
Add sentence to read:

In addition to any rights under the Family and Medical Leave Act, an employee’s health insurance shall be continued while the employee is receiving supplemental worker’s compensation pay with the employee being responsible for paying the employee’s share of the insurance premiums. Thereafter, employee may maintain health insurance by paying the full premium under COBRA, if applicable.

6. **ARTICLE XIII – VACATIONS**

- Section 1 Vacation Accrual Rate
Delete current language and replace with:

Employee shall earn paid vacations according to the following schedule:

- A. Employees shall accrue vacation pay each pay period at a rate equivalent to twelve (12) days per year when they begin their employment.
- B. Employees shall accrue vacation pay each pay period at a rate equivalent to eighteen (18) days per year after their sixth (6th) anniversary date.
- C. Employees shall accrue vacation pay each pay period at a rate equivalent to twenty-four (24) days per year after their eleventh (11th) anniversary date.
- D. If an employee takes unpaid leave of absence during any portion of a payroll period, the accrual shall be prorated for that pay period.

A vacation day shall be defined as equal to the amount of hours established in the employee’s current position and regular workday.

7. **ARTICLE XIV – HEALTH INSURANCE**

Section 2. Employee Eligibility

Delete current language and replace with:

Employees who are eligible for benefits will be covered under the County health insurance policy provided they make application for this insurance within the first thirty-one (31) days of employment. To the extent the application, eligibility and enrollment provisions of the County Health Insurance Policy are in conflict with this Section, said provisions of said policy shall supersede the provisions of this Section. It shall be the responsibility of the Employer to notify the employee of the application requirements within five (5) days of employment. Eligible employees who do not make application for this insurance within thirty one (31) days of employment shall be subject to late enrollment provisions as described in the Polk County Employee Health Benefit Plan booklet. Coverage dates will be administered as per the Polk County Employee Health Benefit Plan booklet.

8. **ARTICLE XXI – HOURS OF WORK, SCHEDULES, AND OVERTIME**

Section 2 Overtime.

a. Amend third sentence in second paragraph as follows:

Any unused compensatory time remaining in the employee's compensatory bank on Payroll 25 after the first pay period in December of each year in excess of seventeen (17) hours shall be paid monetarily.

b. Delete third paragraph as this language is no longer necessary:

~~Any earned but unused compensatory time balances owed to employees prior to January 1, 1994, shall count toward the thirty four (34) hour limit in this section. Any pre 1994 balances still not taken by the end of the calendar year however, shall not be paid out but shall be carried over to the succeeding year.~~

9. **APPENDIX A**

Any pay increases are to be effective beginning the first payroll period after the date set for the increase.