

BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

WASHINGTON COUNTY (SHERIFF'S DEPARTMENT)

and

WASHINGTON COUNTY DEPUTY SHERIFFS' ASSOCIATION

WERC Case 167, No. 164, MIA-2808
Decision No. 32426-A

Appearances:

Cross Law Firm, S. C., by Andrei Ciobanu, Esq., 845 N. 11th St., Milwaukee, WI 53233, appearing on behalf of the Association.

Davis & Kuelthau, S. C., by Nancy L. Pirkey, Esq., 111 East Kilbourn, Suite 1400, Milwaukee, WI 53202, appearing on behalf of the County.

ARBITRATION AWARD

The Union has represented a bargaining unit of Sheriff's Deputies for many years. On November 30, 2007, the County filed a petition with the Wisconsin Employment Relations Commission requesting arbitration with respect to the replacement for the parties' collective bargaining agreement expiring December 31, 2007. Following mediation by a member of the Commission's staff, the Commission determined by order dated May 15, 2008 that arbitration was required. The undersigned was appointed by Commission order dated June 3, 2008.

A hearing was held in West Bend, Wisconsin on October 3, 2008, at which time the parties were given full opportunity to present their evidence and arguments. Briefs were filed by both parties, and the record was closed on November 10, 2008.

Statutory Criteria to be Considered by Arbitrator

Section 111.77(6)

- (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) Comparisons of the wages, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours and

conditions of employment of other employees performing similar services and with other employees generally:

1. In public employment in comparable communities.
2. In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in the public service or in private employment.

The Employer's Final Offer

ARTICLE XIV -- UNIFORM ALLOWANCE

Revise the language of Section 14.01 to reflect the following uniform allowance:

Effective January 1, 2008 \$550

Effective January 1, 2009 \$570

APPENDIX "A" SCHEDULE OF COMPENSATION

Revise the salary schedules in Appendix "A" to provide the following wage increases:

Effective January 1, 2008 3.00% across-the-board increase

Effective January 1, 2009 3.00% across-the-board increase

The Union's Final Offer

ARTICLE XIV -- UNIFORM ALLOWANCE

Revise the language of Section 14.01 to reflect the following uniform allowance:

Effective January 1, 2008 \$530

Effective January 1, 2009 \$550

APPENDIX "A" SCHEDULE OF COMPENSATION

Revise the salary schedules in Appendix "A" to provide the following wage increases:

Effective January 1, 2008 3.00% across-the-board increase

Effective January 1, 2009 3.00% across-the-board increase

AND

Each deputy assigned to the second, third, or swing shift shall be paid an additional 0.25 cents per hour.

Stipulations

Not shown above are numerous items in the final offers which are identical in both. Among these, one item, a residency requirement, constituted a new article, proposed in the Employer's final offer and not included in the Association's final offer. At the hearing, with the consent of the County, the Association modified its final offer to adopt the County's proposal on this item. Also, one item, a change in health insurance provisions initiated by the Employer, while itself stipulated to, figures largely in the background of the disputed items, as discussed below. It is also clear from the record as a whole that both parties accept that the "0.25 cents per hour" in the Association's proposal means \$.25 per hour, not one quarter of one cent.

The Employer's Position

The County argues that the internal comparables strongly support the County's final offer, noting that for 2008, three bargaining units are settled at 3%, the nonrepresented employees received the same, the County prevailed in one arbitration case at the same figure, one bargaining unit received a split increase costing 2.5% for the year with a rollup effect of 3%, and two other units are not settled. Significantly, the County argues, none of these settlements involved any new benefit similar to the shift differential the Association seeks here, while all the settlements include the same changes to health insurance which the parties stipulated to in this case. The County argues that one bargaining unit, at Samaritan Health Center, has a shift differential of one dollar per hour for second or third shift, which is not new, but that corrections and communications officers, Highway Department laborers (during the winter months) Park Department golf course employees (during the summer months), and several categories of nonrepresented employees including registered nurses, custodians, mental health specialists and acute care workers, work a variety of shifts outside of the day shift, without payment of any shift differential. The County points particularly to the corrections officers and communications officers, who work the same schedule as deputy sheriffs, including weekends and holidays, without any shift differential. For 2009, the County argues, the pattern is the same, except that fewer units are settled.

The County argues that it has striven mightily to maintain consistency in benefits across bargaining units and has demonstrated that it has done so successfully in health insurance premium sharing, vacations, funeral leave and holidays (totaling 11 in each unit, though in varying proportions as to whether they are fixed or floating holidays). The deputy sheriffs, however, receive a more generous sick leave payout provision upon retirement than any

other bargaining unit. The County argues that internal comparability is widely accepted as being of primary importance, particularly where one party seeks a new benefit with no quid pro quo.

With respect to external comparables, the County notes that there have been many previous interest arbitration cases involving the Deputy Sheriffs' Association or other unions and Washington County, and that a consistent comparable pool has long been established. The comparable pool includes Dodge County, Fond du Lac County, Ozaukee County, Sheboygan County and Waukesha County. The County argues that for 2007, the last year for which all numbers are known, Washington County's maximum deputy sheriff pay rate was \$26.39, \$.54 above the average of the other counties, placing Washington County third among the six. Similarly, at the maximum pay rate for investigator, the County computes that in 2007 Washington County paid \$28.26, \$.85 higher than the average of the other counties, again placing Washington County third among the six in ranking. For 2008 and 2009, the County computes Washington County as continuing to pay more than the average of the other units for both classifications, although not all the counties are settled. The County further argues that it is significant that the only counties which pay a shift differential, i.e. Dodge, Fond du Lac and Sheboygan, are the three which pay lower wages than Washington County. The County argues that the cost-of-living factor is neutral, given that the parties agreed on a 3% per year wage increase.

The County contends that the Association is clearly seeking a new benefit here, and that it has neither demonstrated the need for change, nor provided a quid pro quo for the proposed change, nor demonstrated clear and convincing evidence, the classically required "three-pronged" test used by many arbitrators. In particular, the County takes issue with the Association's effort to prove a need for the change through testimony that deputy sheriffs miss family events, work weekends, work many holidays, and as a result have trouble sleeping and are suffering marital problems or other indications of stress. The County argues that the proof offered was not only extremely vague, but that there was no linkage between the concept of a shift differential and any of the problems articulated, and further that prospective employees were well aware of the working conditions before they accepted a position as a deputy sheriff. The County also argues that the lack of a quid pro quo is unambiguous.

As to the uniform allowance, the County notes that it is proposing a larger increase in the uniform allowance than the Association is, and that even the Association's figure places Washington County deputies second among the six in 2008 or third among the six in 2009, while the County's offer places the deputies second among the six counties in both years. The County argues, with respect to health insurance and other benefits, that it is well up among the comparables overall, while acknowledging that the other counties do have lower employee premium shares for 2009, as of now, than the County's 15%. The County argues that health insurance comparisons on a more subtle level are difficult to make because of numerous differences between the policies. As to vacations, holidays, WRS retirement provisions, funeral leave, retiree health insurance benefits, and sick leave, the County argues that it either has the same benefit level for each respective item as the other counties, or a slightly better one than the average. The County argues that the Association's numerous exhibits intended to demonstrate that Washington County is not in financial

hardship are entirely off the point, since the County has not made an inability-to-pay argument.

At bottom, the County argues, the issue is whether the Association can justify the demand for a new benefit, under circumstances when no other comparable bargaining unit either internally or externally is receiving anything comparable as a new benefit. The County argues that the Association's claim to be offering a quid pro quo is vague, but appears to be based on its agreement to health insurance plan modifications, but that every other bargaining unit agreed to the same health insurance changes with no new benefit. Furthermore, the County argues, numerous arbitrators have found, in the years since rapid increases in health insurance premiums became a fact of life, that such increases themselves change the status quo, in such a way as to make an effective response a joint responsibility of the employer and the union. This means that the changes necessary to keep health insurance costs under some sort of control are no longer regarded as the kind of change which itself justifies a quid pro quo. Finally, the County argues that the Association's data concerning rising crime rates and citations issued, as well as the argument that qualified officers are becoming difficult to find, fail to provide any reason for distinguishing Washington County from those counties surrounding it.

The Association's Position

The Association begins with the observation that for 2009, it agreed to revise the previous dollar caps on County health insurance contributions to reflect an 85% to 15% split, imposing on employees a larger share of health insurance costs. The Association characterizes the present situation as one in which the County seeks to increase the employees' share of the health insurance premiums, placing the burden of justifying a major change on the County, and in turn justifying what the Association characterizes as its request for a quid pro quo. The Association argues that the County has not shown a compelling need to change the deputies' health plan, and it is therefore only equitable that the County should offer a quid pro quo in return for that change. Similarly, the Association argues that for its proposed uniform allowance increase and shift differential proposal, it is offering a substantial quid pro quo, in the form of acceptance of the County's health insurance scheme.

The Association further argues that the Sheriff's Department has had a very difficult time hiring and retaining suitable candidates, pointing to several exhibits indicating that a minority of proposed candidates were hired, and that out of the most recent batch of eight deputies hired, two resigned shortly afterwards. The Association also points to a statement by the Sheriff to the effect that it has become difficult to hire the right people because they have better paying jobs available. This takes place, the Association argues, in the context of strong population growth in the County as well as difficult working circumstances, in which deputies are coping with a rise in crime in the area and a higher probability that night shifts will involve violent and dangerous calls. The Association also argues that surrounding counties offer educational incentives to attract and retain suitable candidates, which Washington County does not.

The Association points to three counties with lower median incomes than Washington County, i.e. Sheboygan, Fond du Lac and Dodge, as offering educational incentives and shift differentials which Washington does not offer. The Association argues that in Washington County, the large disparity between deputies' wage levels and median county income makes it more important that such incentives be offered. The Association offers a number of documents to indicate that the County can afford the Association's proposal. The Association also argues that a number of exhibits show that in demographic terms, Washington County is much more similar to Ozaukee or Waukesha County, both of which pay more than Washington County, than it is to the other three counties in the comparable pool. Furthermore, the Association argues, the educational incentives (in the form of 100% paid tuition, fees, books, and parking for classes at accredited institutions) substantially raise overall earnings for the deputies in the counties where those are paid. The Association calculates the overall compensation of deputies in all the surrounding counties as being higher than Washington County deputies' compensation, arguing that the difference is made up of a different combination of shift differentials, higher hourly pay, better health insurance terms, dental insurance, and educational incentives, depending on which county is compared.

With respect to the internal comparables, the Association contends that the Highway Department laborers, golf course, custodians and janitors, mental health specialists and acute care workers are not appropriate comparisons to the sheriff's deputies because they work under vastly different conditions on very different types of work. The Association argues that the Health Care Center employees, by comparison, also deal with emergencies, and do receive shift differentials, and much larger ones (one dollar per hour or more) than the Association is seeking here. The Association also argues that arbitrators have found that the "three-pronged" test is triggered only if the proposed change is "substantial", and contends that the \$.25 shift differential is not substantial, "because it would amount to about \$520 per deputy or roughly one percent of base pay."

The Association further argues that the increase in cost of living has been "vertiginous" in the applicable period, pointing to fuel price increases in the early months of 2008, as well as food price increases in 2008, which the Association describes in terms of price increases of rice and wheat, and which, the Association states, "will certainly continue in 2009." The Association argues that the interests and welfare of the public favor adopting the Association's offer, because improving recruitment and retention of deputies better prepared to handle the new wave of violent crime is important, and while the \$.25 shift differential is not a major cost, it is a significant incentive for prospective law enforcement candidates to pick Washington County as their place of employment. The Association concludes by arguing that the County can easily afford the costs of the Association's proposal, based on exhibits demonstrating that the County's budget has increased substantially, and that the County has recently committed to a long series of construction and other initiatives.

Discussion

One factor which is not normally discussed till later in the series of considerations in the case of this type should be noted first, under the current circumstances. The economy-wide

changes during the pendency of this proceeding have been radical. Clearly, prospects for a wide variety of indicators affecting general perceptions of different types of employment have changed dramatically for the worse since this proceeding was filed. This was hardly, however, something the parties could anticipate, and the Association's arguments concerning the desirability of employment as a deputy sheriff in Washington County deserve a thorough answer on all the other grounds even though, a few months after those arguments were made, a great number of qualified people might view the prospect of such a job with a new appreciation. Similarly, the very recent concerns about possible deflation do not make absurd the concerns about inflation that were prevalent only a year ago; it is sufficient to the immediate purpose, however, simply to note that the settlement pattern of 3% internally, and roughly the same among the external comparables, is sufficiently consistent to answer in the negative the Association's contention that the inflation rate helps to justify its shift differential proposal.

Viewing the overall data on compensation as between the external comparables, I am unable to find support for the Association's contention that Washington County deputies are badly compensated. The counties that offer the shift differential, in particular, pay less than Washington County in wages, in each case by a larger margin than the shift differential in any of those counties would add to the average pay of a deputy. The value of the educational incentive in those counties, meanwhile, is literally incalculable, because there are no data as to the rates at which deputies take advantage of the benefit where it is offered. The health insurance contribution rate of 15% for 2009 is clearly larger than in the other counties which have settled for 2009, but only two comparable counties have settled. And the balance of wages and benefits overall, while difficult to calculate with any exactitude, does not leave me with the impression that Washington County deputies are notably lacking compared to their peers. It is also worth noting that a new benefit costing \$520 per year per person for most of the bargaining unit is not what most people would describe as insubstantial.

More compelling, however, for purposes of a new-benefit proposal (which is clearly not a "catch up" item enjoyed by every comparable) is the relative consistency of the internal settlement pattern. Simply put, where the Health Care Center employees are the only Washington County employees with a shift differential, and where bargaining units representing the vast majority of Washington County employees are settled on the same wage percentage terms and with the same health insurance provisions as the deputies, the often-cited importance of internal consistency greatly outweighs such evidence of better benefits among some of the external comparables as the Association has been able to muster. Meanwhile, the Association's brief reads as if the Association rather than the County were proposing the larger uniform allowance increase; the annual cost factor is minor compared to the shift differential proposal, but to the extent that the County's proposal is more generous, it represents another bit of evidence that the County's benefit package overall is not deficient.

The Statute's Weighing:

The lawful authority of the Employer is not in issue. The stipulations of the parties include a health insurance change for 2009 which materially affects sheriff's deputies, but also includes a 3% wage increase, and the combination is self-evidently not so adverse to employee interests as to have been rejected in the bulk of the other internal comparables, whether voluntarily or in arbitration. The interests and welfare of the public favor the Employer's proposal because of a lack of proof that the shift differential would be responsive to the difficulty of hiring alleged by the Association. The County has the financial ability to meet either proposal. External comparability favors the Employer's proposal because of the lack of evidence of any clear pattern of higher wages and benefits elsewhere, the lack of any quid pro quo offered by the Association for the shift differential proposal, and the relatively high level of the uniform allowance proposed by the Employer. Internal comparability favors the Employer's proposal because the vast majority of other employees in Washington County bargaining units are under the same health insurance change and percentage wage increases, with no new benefit improvements to match the Association's shift differential proposal. The CPI favors the Employer's proposal because of the evidence that the overall balance of the settlements adequately compensated for inflation early in 2008, even ignoring downward changes since then. The overall compensation factor also favors the Employer's proposal, because of the lack of a demonstrated need for the introduction of a shift differential or of a quid pro quo for that proposal. The factor of "changes.... during the pendency of the arbitration proceedings" dramatically favors the Employer's proposal, for reasons discussed above. Finally, the catchall "other factors" were not argued.

Summary

Even before the late-2008 upheaval in the economy, I find that the Association's proposal for the introduction of a shift differential was not well justified, based on the evidence of the balance of wages and benefits externally, and even more based on the consistency of settlements (together with one arbitration award favoring the Employer) internally, which included the same central terms of employment as were stipulated to by the parties here, without any comparable new benefit. The County's relative generosity on the uniform allowance merely underlines this. The extraordinary economic changes since the hearing in this proceeding (which occurred during a longer delay post-hearing than normal, which was due to illness of the Arbitrator rather than any action of the parties) add emphasis to the result, but the result would have been the same even if economic conditions had been stable.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

That the final offer of the County shall be included in the parties' 2008-2009 collective bargaining agreement.

Dated at Madison, Wisconsin this 18th day of February, 2009

By _____
Christopher Honeyman, Arbitrator