

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitration Between
LABOR ASSOCIATION OF WISCONSIN, INC., on behalf of the
OZAUKEE COUNTY DEPUTY SHERIFFS' ASSOCIATION, LOCAL 115

and

OZAUKEE COUNTY

Case 85
No. 68142
MIA-2838

Decision No. 32592-A

Appearances:

Benjamin M. Barth, Labor Consultant, Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin 53022, on behalf of the Ozaukee County Deputy Sheriffs' Association, Local 115.

SmithAmundsen, LLC, by Ronald S. Stadler, 4811 South 76th Street, Suite 306, Milwaukee, Wisconsin 53220, on behalf of Ozaukee County.

ARBITRATION AWARD

The Labor Association of Wisconsin, Inc., hereinafter, the "Association," is the exclusive collective bargaining representative of all permanent regular full-time sworn personnel employed by the Ozaukee County Sheriff's Department. The Association petitioned the Wisconsin Employment Relations Commission to initiate interest arbitration with Ozaukee County, hereinafter, the "County," with respect to an impasse between the Association and the County pursuant to Sec. 111.77(3), Stats. The parties selected the undersigned, David E. Shaw, to issue a final and binding award, and he was appointed by order of the Commission dated March 2, 2009. A hearing was held before the undersigned on June 23, 2009 in Port Washington, Wisconsin, at which time the parties were given the opportunity to present testimony and documentary evidence, as well as argument, in support of their respective positions. The hearing was not transcribed. The parties filed post-hearing briefs by September 21, 2009.

Based upon consideration of the statutory criteria set forth in Sec. 111.77(6), Stats., the evidence, and

the arguments of the parties, the undersigned makes and issues the following Award.

ISSUES

The only issue in dispute are the wages for 2008, 2009 and 2010. The parties' final offers are as follows:

Association: Effective 1/1/08 - 3.0%
Effective 1/1/09 - 3.0%
Effective 1/1/10 - 3.0%

County: Effective 1/1/08 - 2.75%
Effective 1/1/09 - 2.75%
Effective 1/1/10 - 2.90%

Both parties' final offers include the parties' tentative agreements.

POSITIONS OF THE PARTIES

Association

The Association asserts that Secs. 111.77(6)(a) and (b), Stats., are not in dispute, and therefore are not relevant to a determination of which final offer is the more reasonable.

Subsection 111.77(6)(c), Stats., requires consideration of the taxpayers' ability to afford the costs of the parties' final offers. While the County introduced evidence and testimony regarding the financial status of the County, it has not produced any credible evidence that it cannot afford the Association's final offer, nor is there anything in the record to firmly demonstrate that the County would have difficulty in meeting the Association's final offer. The County's numerous exhibits were not actuarial in nature, but rooted in speculation, conjecture, and falsities. Further, Association witness Jerri Behnke testified that the County never claimed an inability to pay the Association's final offer.

This subsection also directs the Arbitrator to consider the interests and the welfare of the public in making a determination. In this case, the public interest is well served if the citizens and taxpayers of the County are provided with public servants who are well-paid and of high spirits and morale. Law enforcement employees within the comparable communities are well aware of the wage increases and benefits received by their counterparts and interact professionally on a daily basis. During this interaction there are obviously discussions regarding wages, hours and conditions of employment.

Next, the Association asserts that wage increases received within other comparable police departments should be given substantial weight. It notes that Sec. 111.77(6)(d), Stats., does not specifically direct the Arbitrator to take into consideration the wages, hours, and conditions of employment of employees within the same community, as does Sec. 111.70(4)(cm)7e, Stats., a criterion under the interest arbitration statute for non-protective employees. The difference in the statutes clearly indicates that the drafters of Sec. 111.77(6), Stats., recognized the need to distinguish the special characteristics and needs of law enforcement employees when comparing to employees in other positions within the same community. This distinction between law enforcement units and other bargaining units within the same

community has been recognized by arbitrators for years. Arbitrator George R. Fleischli observed in Portage County, Dec. No. 25971-A, (Fleischli, 9/89):

Logically, there is a sound basis for comparing law enforcement personnel with other law enforcement personnel. Not only is the nature of their work significantly different than that which is performed by blue-collar and white-collar employees in the same community, **a separate statutory procedure exists**, and has existed for many years, for the establishment of their wages, hours, and working conditions. (Emphasis added)

Arbitrator Raymond E. McAlpin also noted that internal comparables are not directly comparable to police units, with the exception of firefighters, and stated that while he would consider the internal settlements, they would not have determinative value in determining which final offer is most appropriate. Beaver Dam, Dec. No. 31704-A, (McAlpin, 7/07).

The Association notes that throughout the parties' negotiations, it consistently argued that its final offer was supported by settlements received by other law enforcement employees within the comparable communities. This argument is consistent with the statutory criteria and arbitrators have generally relied very heavily on the wages, hours and conditions of employment enjoyed by similar employees in comparable communities in making their awards.

Regarding what constitutes the appropriate comparables, the Association asserts that Racine County and Fond du Lac County should no longer be considered among the comparables. The Association cites Arbitrator Rose Marie Baron's discussion of the factors that arbitrators consider in adopting external comparables:

This arbitrator believes that there is a need for objective criteria to select comparables in order to dispel the notion that parties can first advocate their position and then search out comparisons that will support their goals. Appropriate comparisons should serve to ensure stability in future bargains and eliminate forum shopping. In adopting external comparables, arbitrators have considered such factors as size of municipality, geographic proximity, economic conditions, similar tax levy, and union affiliation. Evidence of factors as residence of current work force and commuting patterns, the scope of recruitment for open positions, and number of applicants, demonstrates whether proposed comparables are in the same labor market as the City.

City of Mosinee, Dec. No. 30547-A, (Baron, 10/03).

The Association notes that the existing comparables were established in Arbitrator Gundermann's 1990 Award involving these parties and asserts that a lot can change in 19 years, especially in light of current events. The Association asserts that Fond du Lac County and Racine County are no longer appropriate comparables to Ozaukee County based on the size of the municipality, geographic proximity, economic conditions, and the tax levy of the counties used in the previous arbitration awards.

The evidence shows that Fond du Lac County and Racine County had the two lowest *Per Capita Personal Income* in 2006. With regard to geographic proximity, neither Fond du Lac County or Racine County share a contiguous boundary with Ozaukee County. Therefore, the Association would propose only using Sheboygan County, Washington County and Waukesha County as the primary comparables based upon all of them sharing a contiguous boundary with Ozaukee County. Further, looking at the

2004 - 2009 *Property Tax Rates* and the *Estimated Property Taxes on a \$125,000 Home* also suggests that Fond du Lac County and Racine County are no longer appropriate comparables.

Regarding the cost of living criterion under subsection (6)(e), the Association notes that the CPI at the time final offers were certified was 3.8%. While that was higher than both the Association's and the County's final offers, the Association's final offer of 3% was more in line with the CPI, while the County's final offer was more than 1% below the CPI. Clearly, the Association's offer is closer to the CPI and therefore, more reasonable.

Regarding subsection (6)(f), the overall compensation presently received by these employees is consistent with that received by other public employees in the same community and in comparable communities. The Association's evidence clearly established that the overall benefit level received in Ozaukee County is average at best in comparison to the external comparables.

The Association asserts that there have been no changes in circumstances during the arbitration proceeding and that therefore, subsection (6)(g) is not a determining factor in this proceeding. Similarly, there are no other factors to be taken into consideration and therefore, subsection (6)(h) also has no application.

Using Sheboygan County, Washington County and Waukesha County as the primary external comparables, and Cedarburg, Grafton, Mequon, Port Washington and Thiensville as the secondary comparables, the Association asserts that the average wage increase for the primary set of comparables is 3.0% and the average wage increase for the secondary set of comparables is 3.1 % for 2009. Thus, the Association's offer of 3% is the same as the primary comparables and .1% below the secondary comparables, while the County's offer is below both sets of comparables. For 2010, only one of the primary comparables and three of the secondary comparables have settled. Those settlements are as follows: Waukesha County (2.0%/1.0%), Grafton (3.25%), Cedarburg (3.0%), and Mequon (4.0%), for an average of 3.31%. Thus, the County's offer does not come near the wage increases of the external comparables, while the Association's offer is more in line with those comparables and therefore is more reasonable.

The Association contends that the County's reliance on an internal settlement pattern should be given no weight. The Association asserts that the County showed no flexibility in bargaining on any economic issues that would exceed the internal settlements it had reached with its other bargaining units. To award the County its final offer based on the internal settlements flies in the face of the legislative intent of the arbitration process and would seriously impede the give-and-take of the collective bargaining process, not to mention the severe financial and morale impact on the law enforcement employees required to put their lives on the line every day in their service to the community. If the County is successful, there is nothing to stop them from reducing benefits in future negotiations, perhaps by convincing another group of employees to agree to a reduction in benefits for a wage freeze in return for a promise of no layoffs. Different bargaining units enjoy different levels of power and have different sets of concerns and each must be allowed to determine what is, and what is not, worth fighting for. This has been recognized by arbitrators in the past. Citing, County of Goodhue, Minn., (Arbitrator Francis E. Kapsch, Sr.) Case No. 81-PN-955-A (8/81); City of River Falls, (Boyer, 10/84). The Association notes that those other groups of employees reached their agreements voluntarily, and presumably they reached an agreement they felt was fair.

The Association concludes that the foregoing illustrates the reasonableness of its final offer when weighed in light of the statutory criteria set forth in Sec. 111.77(6), Stats., and requests that the Arbitrator accept the Association's final offer.

County

The County first addresses the Association's efforts to change the external comparables, asserting that it has long been held that, "comparables should not be disturbed as it would have a negative impact on the parties... . By significantly changing the comparables this predictability is removed, thus precluding the parties from making a reasoned judgment." Ozaukee County (Sheriffs Department), Decision No. 26220-A (Gundermann, 5/90). The County notes that in the 1990 arbitration that established the existing comparables the Association argued against changing the comparable group, asserting that, "those comparables should not be disturbed as it would have a negative impact upon the parties." The County asserts that unless the Association can offer a valid reason to change the comparable pool, that pool should remain the same as in the 1990 Gundermann Award.

With regard to the statutory criteria set forth in Sec. 111.77(6), Stats., the County first asserts that subsections (6)(a), (b) and (g) are not relevant in this proceeding, while consideration of subsections (6)(c), (d), (e) and (f) weigh in favor of selecting the County's final offer.

Looking first at wage comparisons, the County asserts that an "apples to apples" analysis requires a comparison of actual wage rates and the amounts generated by the parties' final offers, as opposed to merely comparing the percentage of the proposed increases. The County's proposed 2.75% increase generates a larger actual increase compared to the 3% increase in Sheboygan County, due to Ozaukee County's higher wage rates. Even if percentage increases are considered, the percentage increases given by the three primary comparables still support the County's final offer. Waukesha County settled on a 2% /1% split wage increase for 2008 - 2010. However, that contract was voluntarily settled in June of 2008, well before the current economic conditions existed and under a climbing CPI. Sheboygan County's deputies received a 3% increase in 2008 under their 2007 - 2008 contract; however, the County is proposing a 3% increase in 2009 and only a 2% increase in 2010. Of the three primary comparables, only Washington County's deputies received 3% increases in both 2008 and 2009; however, it will remain ranked as the third lowest paid deputies between the four counties.

As the Association's exhibits show, Ozaukee County exceeds the top monthly wage rates for all positions paid to any of the primary comparables. The wage increases proposed under the County's final offer are sufficient to keep its deputies the highest paid compared to the primary comparables. That is true for all three years.

Regarding the secondary comparables, the contracts that were settled prior to the current economic climate generally have increases in the 3% range. Again, it is actual dollars that must be considered. The County had the third highest top rates among the six secondary comparables in 2007. Under the County's final offer, it will go to the fifth highest for the top patrol rate in 2009, and would go to fourth highest under the Association's final offer. This change among the secondary comparables is not sufficient to counter the fact that under the County's final offer its deputies remain the highest paid among the primary comparables.

With respect to the internal comparables, the County notes that its offer meets or exceeds the wage

increases voluntarily accepted by the County's three other bargaining units. This is significant as, "Most arbitrators have concluded that an employer's ability to negotiate a successful voluntary agreement with the unions which includes the same terms that it proposes in arbitration is a factor to be accorded significant weight, if not controlling weight, absent some unusual circumstances surrounding such agreement(s) that reduces its persuasive value." Rice Lake Schools, Dec. No. 32191-A (McGilligan, 4/08); citing, City of Tomah, Dec. No. 31083-A, (Yaeger, 2/05).

The Association's offer would exceed all of the internal settlements. Seeking increases which exceed all other internal comparables raises significant equity considerations, in that one unit seeks to be treated more favorably than others. Unless the Association can justify abandoning the internal comparable pattern established in the County, the Arbitrator should select the final offer which more closely resembles the internal pattern - the County's. "The general well established rule in these circumstances is that an internal settlement pattern should control unless it can be demonstrated that adherence to that pattern would cause unreasonable and unacceptable wage relationships relative to the external comparables. Waukesha County (AFSCME), Dec. No. 29929-A, (Vernon, 4/00). The County asserts that this rule is even more pronounced in this case as the deputies are the highest paid hourly employees in the County. They will remain in that position and earn substantially more than all the other county employees under the County's final offer. They will be given a larger percentage increase, and since the average deputy makes so much more than other county employees, they will receive an even greater increase in terms of real dollars. Since the Association cannot show that the County's final offer causes unreasonable or unacceptable wage relationships when compared to the external comparables, the County's offer should be selected based upon the controlling internal settlement pattern.

Overall compensation must also be considered, including the various benefits the employees receive. These include lower employee contributions toward health insurance, higher uniform allowance, additional vacation time, and a higher maximum accumulation of sick leave. These additional benefits significantly increase the deputies' overall compensation, despite the fact that their underlying wages already exceed many of the external primary comparables.

Under the parties' final offers, Ozaukee County's deputies will contribute 11% of the premium cost for their health insurance plan. Among the primary comparables, Washington County's employees will contribute 15% of the premium cost of their health insurance plan, while Sheboygan County and Waukesha County deputies will contribute 10% of the premium cost, for an average of 11.67% employee contribution among the three primary comparables. Thus, Ozaukee County deputies will be contributing .67% less than the average among the primary comparables. Given the relatively "close call" among the primary comparables, it is appropriate to consider the peripheral comparables. While both Racine County and Fond du Lac County currently require a 10% employee contribution towards health insurance premiums, both have provisions in their current agreements for significant increases in that contribution. Racine County is scheduled for an increase to 15% employee contribution in 2009, while Fond du Lac County is scheduled for an increase to 14% in 2010. Currently, at the 11% contribution rate, Ozaukee County Deputies contribute \$74.66 per month for a single plan and \$203.85 per month for a family plan. An increase to the average of 14 1/2 % would result in those employees being required to contribute \$98.42 per month for a single plan and \$246.33 a month for a family plan. By not having such an increase in their contribution toward the health insurance premium, these employees would save \$285.12 for a single plan and \$509.76 for a family plan in 2010. This is a significant advantage to the Association's members and must be taken into consideration in weighing

the final offers.

The County's deputies also receive the most generous uniform allowance among the primary comparables. Association members receive \$705 per year, while Washington County deputies received only \$575 per year, Waukesha County deputies received \$550 per year, and Sheboygan County deputies receive \$490 per year. This is an average uniform allowance among the three primary comparables of \$538, or \$167 less than Association employees receive per year, for a total of an additional \$501 over the life of the agreement.

Association members also receive approximately 40 additional hours in vacation time beginning in the first year and continuing throughout their career compared to the primary comparables. The exhibits show that Association members receive between 34.7 and 40 additional vacation hours at the specified levels of seniority over the average of the primary comparables. While the Association will point out that their increased vacation was bargained into the contract to replace the use of compensatory time, the benefit to Association members cannot be disputed or discounted. They do not have to work any overtime to earn the additional week of vacation, and they lost nothing in deleting their comp time, instead gaining a free week of vacation.

Additionally, the Association's members enjoy a significant advantage over the primary comparables when it comes to accrual of sick leave. Association members can accrue 1200 hours of sick leave over the course of their careers, while Sheboygan and Waukesha County deputies can only accumulate 960 hours and Washington County deputies are limited to only 480 hours. This not only provides the additional sick leave available to these employees, but also increases the amount available to be paid out upon retirement or banked for post-retirement health care.

With regard to the interests and welfare of the public and the financial ability of the municipality to meet these costs, the County asserts that both considerations weigh in favor of selecting its final offer. First, if the County's final offer is selected, the County will spend approximately \$49,000 less over the course of the agreement compared to the Association's final offer. The additional wages the County would have to pay under the Association's final offer might decrease the frequency and effectiveness of the services provided to the public. This would not be in the best interest of the public. Further, given the small difference in the cost of the proposals, the difference would be unlikely to affect the attractiveness of the positions to either current bargaining unit members or to new, qualified applicants. This is evidenced by the increasing number of applications received by the County for positions covered by this agreement. Between 2006 and 2009 the number of applications received by the County increased from 81 to 137, and is expected to continue increasing over the next several years. Second, though the cost differential between the two final offers is relatively small, given the current state of the economy and the extreme budget deficits faced by almost every governmental unit, even the smallest increase in costs can have a detrimental impact on the unit of government and its current and future ability to provide services to the public. Therefore, this criterion weighs in favor of the County's final offer.

Last, the cost of living criterion also favors selecting the County's final offer. The overall cost of living has actually decreased in recent years, with the CPI decreasing 1.3% between June 2008 and June 2009. Of the categories tracked under the CPI, transportation decreased 14.3%, while energy decreased 27.3%. Thus, Association members are not only receiving a substantial wage increase under the County's offer, given the budget deficits faced by governmental units, but they are also enjoying a 1.3%

decrease in the overall cost of living. This general decrease in the cost of living, combined with the lower tax rates enjoyed by Association members, favors the County's proposed lower wage increase.

The County concludes that the comparable pool should remain the same as in the previous arbitration and that based upon these comparables, the County's final offer, which maintains these deputies as the highest-paid among the primary comparables and only slightly changes their position among the secondary comparables, and which meets or exceeds the settlements among the internal comparables, should be selected. In addition, the overall compensation received by these employees, the cost to the County and the cost of living factors also weigh in favor of selecting the County's final offer.

Association Reply

The Association responds that the County's initial brief contains misstatements and distortions of the facts. The County's assertion that its proposed wage increase is fair and more closely resembles a voluntary agreement ignores the fact that regardless of which offer is accepted, the Association's members lose ground among the comparables. The Association's members have been near or at the top of the comparables for a number of years and were second out of the six secondary comparables in 2007, but will fall to third out of the six in 2008 and fourth out of the six in 2009, even under the Association's offer. Under the County's offer, they will fall to fourth out of six in both 2008 and 2009. Further, Association Exhibit 700 shows that the average increase among the primary comparables was 3.0% in 2008 and 2009, and 3.05% in 2008 and 3.1% in 2009 among the secondary comparables, for an average among the two sets of comparables of 3.03% in 2008 and 3.1% in 2009. Thus, the Association will lose ground under either offer.

Next, the County's assertion that since the Association's final offer would exceed all the internal comparables in the County, selection of its final offer would be inappropriate based upon those internal comparables, ignores the fact that under Sec. 111.77(6)(d), Stats., the more appropriate set of comparables for protective status employees are other protective status employees. Unlike Sec. 111.70(4)(cm)7e, Stats., subsection (6)(d) does not direct an arbitrator to specifically take into consideration the wages, hours, and conditions of employment of employees within the same community. The difference in the statutes clearly indicates that the drafters of Sec. 111.77(6), Stats., recognized the need to distinguish the special characteristics and needs of law enforcement employees when compared to employees holding other positions within the same community. Throughout the negotiations, the Association argued that its final offer was supported by settlements received by other **law enforcement** employees within the comparable communities, consistent with the statutory criteria.

The County asserts that the average of the three primary comparables for employee contributions to health insurance is 11.67%, and that therefore, their deputies pay .67% less than the primary average. The County now wants to use percentages and ignore the dollar amounts, however, Association members paid the second-highest contribution toward health insurance both in terms of percentage and dollar amounts among both the primary and secondary comparables.

The County's assertion that Association members will receive approximately 40 additional hours in vacation time beginning in the first year of the agreement and throughout their careers compared to the primary comparables, ignores the fact that the County offered the additional week of vacation in return for discontinuation of compensatory time, which the Association accepted as part of a voluntary settlement. It is absurd that the County now uses the additional vacation as part of its argument against

the Association.

The County has asserted that, "Given the current state of the economy and the extreme budget deficits being faced by almost every governmental unit, even the smallest increase in costs can have a detrimental impact on the unit of government and its current and future ability to provide services to the public at large." This argument ignores the fact that Sec. 111.77(6), Stats., does not contain the "greatest weight" or "greater weight" factors contained in Sec. 111.70(4)(cm)7, Stats. Association witness Jeri Behnke testified that the County never argued that it has an inability to afford the final offer of the Association. Therefore, the County's argument regarding budget deficits must be ignored, as Sec. 111.77(6), Stats., does not include consideration of such a factor. In South Milwaukee (Fire), Dec. No. 31675-A, (Oestreicher, 10/06) Arbitrator John Oestreicher concluded that, "Neither the "greatest weight" nor the "greater weight" is relevant to arbitration awards under Section 111.77. The rules governing collective bargaining and arbitration proceedings for protective service employees have always been different than those for other public employees in Wisconsin. The Legislature has recognized that Unions representing the police and firefighters should not be subjected to the same financial constraints as teachers under the QEO and other public employees because such constraints would make it difficult for municipalities to attract and retain qualified professional protective service personnel. The public interest requires professionalism and continuity of service for municipal employee uniformed service units." As Sec. 111.77, Stats., is silent with respect to the "greatest weight" and "greater weight" factors, any argument that the County has made regarding those factors should be ignored.

The Association disputes the County's assertion that the "interests and welfare of the public" factor favors selection of the County's final offer. The interests and welfare of the public are better served if the employees earn a fair and comparable wage and maintain high morale. If the County's offer is selected, it will send a message to the other comparable communities that major changes to benefits are obtainable through arbitration, and would consequently be a deterrent to engaging in meaningful contract negotiations. If members continually receive below average wage increases and benefit changes, department morale will almost certainly suffer. The Association's members feel so strongly about this contract that they have been willing to forgo a wage increase since 2007 in order to fight for a wage and benefit package that they feel is fair and equitable, and to maintain existing benefits that have been bargained for in past negotiations. Conversely, the County is not forced to suffer a similar financial hardship and has been able to use the money that would have been paid out to its officers for other purposes, or placed in an interest-bearing account for the County's sole benefit.

The Association concludes that as its offer more closely resembles the settlements granted in other comparable communities, its offer should be selected. As a consequence, the Association's members will view the settlement as fair and equitable, which will in turn have a positive effect on officer morale and esprit de corps, which will serve the interests and welfare of the public.

County Reply

The County responds that its final offer meets or exceeds the voluntary agreements it reached with its other bargaining units and allows the deputies to remain the highest compensated of the primary comparables. Further, the other relevant statutory criteria also favor selection of the County's final offer. The Association's final offer is dependent upon its request to alter the comparable pool. That request must be rejected, as the Association has not shown any reason, much less a compelling reason,

to deviate from the comparable pools upon which the parties have relied for the past 19 years.

The County asserts that both the internal and external comparables favor selection of its final offer. With regard to the external comparables, the Association simply averaged data for the primary and secondary comparables to compare to the County's final offer. By definition, primary comparables are to be given greater weight than secondary comparables. Averaging the two sets of comparables without the appropriate weighting destroys any meaningful distinction between primary and secondary comparables. Further, the Association cites five secondary comparables and only three primary comparables. Therefore, when averaging the two sets of comparables, the secondary comparables actually receive significantly more weight than the primary comparables under the Association's analysis. This is contrary to the general premise that secondary comparables are not even to be considered, much less given more weight than the primary comparables, unless the primary comparables do not provide sufficient data. Marathon County (Sheriff's Department), Dec. No. 22462 (Malamud, 1/86). A full analysis of both the percentage and actual dollar wage increases among the external comparables supports the County's final offer. Further, it is important to note that from the time those agreements were reached and the present, the CPI has decreased 1.3%, further enhancing the County's final offer.

The County asserts that a review of the actual wage increases for 2008 - 2010 among the primary comparables shows that the percentage wage increase its deputies would receive under the County's final offer is second highest among those comparables. This, combined with the fact that Ozaukee County's deputies already receive the highest actual wages among the primary comparables, outweighs any small difference in the percentages.

The County notes that under both the County's and the Association's final offers, these employees would slip among the secondary comparables. However, this is not sufficient to overcome the fact that these employees would remain the highest paid among the primary comparables. The primary comparables are to be given greater weight because they are more closely associated and more similar to Ozaukee County than are the secondary comparables. Under the Association's final offer, the deputies would slip from third to fourth among the secondary comparables, while they would slip from third to fifth under the County's final offer. This difference of one position between the two final offers among the secondary comparables is insufficient to overcome the fact that these employees remain the highest-paid among the primary comparables.

With regard to the internal comparables, the County asserts that it is entirely appropriate to utilize internal comparables to evaluate the final offers. Under the County's final offer, the deputies would receive higher percentage wage increases than the OPEIU and Lasata Care Center bargaining units and would receive the same percentage wage increases as the Highway bargaining unit. The County does not dispute the importance of the services the Sheriff's Department provides, however, it remains true that they are already the highest compensated bargaining unit in the County, and under the County's final offer would continue to separate themselves from the rest of the bargaining units. Even the Association recognized in its brief that the internal comparables must be considered, though it argues that they are not dispositive. Even if the internal comparables are not dispositive, they are persuasive.

The County asserts that while both the internal and external comparables support the County's final offer, between those two sets of comparables, the internal comparables and the specific settlement pattern that has developed for the bargaining units in the County must be given much greater weight

than the external comparables factor. There are a plethora of arbitration decisions in which arbitrators have relied heavily on internal comparables in weighing the final offers. In Monroe County (Sheriff's Department), Dec. No. 31363-A (Arbitrator Malamud, 12/05), the arbitrator set forth the occasions on which internal comparables are to be given greater weight and on which occasions external comparables are to be given more weight:

Ordinarily, internal comparability would be accorded much greater weight than external comparability factors... When the internal comparable percentage increase would substantially impact a defined category of employees such as law enforcement officer, negatively, as in this case doubling the rate below average, or pushing it upward above the average to the same extent, the Arbitrator gives external comparability greater weight.

Thus, the default is to award internal comparables much greater weight unless the internal comparable percentage increase would substantially impact the subject employees. In this case, the same or similar comparable percentage increase has been offered to and agreed to by all of the bargaining units in the County, and the County's final offer would keep these employees as the highest-paid among the primary external comparables. Therefore, as there is no substantial impact on the subject employees, the default of according much greater weight to the internal comparables must control in this case.

The County asserts that the Association has failed to show any justification for disturbing the comparable pool on which the parties have bargained and relied since 1990. The Association asks the Arbitrator to eliminate two comparable counties, thereby disturbing any stability and predictability the parties have cultivated over the past 19 years. Further, it was at the Association's urging that Racine County was added as a comparable county in the 1990 arbitration. Now, when that county's data fails to support their current needs, the Association desires to discard that county from the comparable pool. This is precisely the type of "forum shopping" which must be avoided by keeping the comparable pools consistent.

The reasons provided by the Association for altering the comparables are completely unpersuasive. First, the Association argues that "a lot can change in 19 years, especially in light of today's current events." However, the Association fails to note a single change that has actually occurred over the past 19 years and how such a change affects this arbitration. Further, the Association asserts that based on the fact that Fond du Lac and Racine counties had the lowest per capita personal income of the six counties in 2006, it does not make sense to include them as comparables. However, looking at the 1990 arbitration, when the Association insisted that Racine County be included as a comparable, and the arbitrator found that Fond du Lac County was an appropriate, albeit a tertiary, comparable, the rankings were almost precisely the same. The only difference in the rankings among the six counties is that Sheboygan County moved from sixth to fourth, which is not sufficient to justify eliminating two counties from the comparable pool.

The Association also asserts, without any argument outside of simply providing the data, that the property tax rates for Ozaukee, Racine and Fond du Lac counties between 2004-2009 suggest they are no longer appropriate comparables. However the data actually demonstrates that they are still appropriate. For each year in that time span Ozaukee ranked fourth, Racine ranked fifth, and Fond du Lac ranked sixth and are separated by a mere \$2.38 (5%) in the property tax rate. The fact that these counties rank as they do is entirely appropriate, as a good set of comparables falls both above and below the subject county in order to provide a range of comparables. Thus, the data actually suggests

that the counties are still appropriate comparables. This is also true of the data the Association provided concerning the estimated property taxes on a \$125,000 home.

Regarding consideration of the factors under subsection (6)(c), the County asserts it has a greatly reduced financial ability to meet the increased costs proposed by the Association due to the present state of the economy. It does not require actuarial data to know that every dollar is at a premium for municipalities in the present economy, as arbitrators have recognized in recent decisions. While the County is able to afford the Association's proposal, this is not the statutory criterion set forth by the legislature. The criterion does not ask whether the County is able to afford the Association's offer, rather, it states that the arbitrator must take into account the "financial ability of the unit of government to meet these costs." In a recent decision, Arbitrator Greco stated, "while the City under factor (c) above, has the financial ability to currently afford the Association's final offer, the future tells a different story..." City of Cudahy, Dec. No. 31376-A (Greco, 6/06). Given the state of the economy, the future of all municipalities is currently cloudy, including Ozaukee County's. Even the relatively minor difference between the two offers (\$49,000), is a significant amount of monetary resources, given the present state of the economy and the budget shortfalls and deficits facing municipalities. For example, saving that difference could be used to keep another individual employee of the County employed for the next year.

With regard to the "interests and welfare of the public," while the Association asserts their final offer will result in well-paid public servants with high spirits, thereby serving the interests of the public, it is doubtful whether the spirits of these public servants will be greatly affected by a .25% difference in their salaries. For most of these employees, this amounts to a difference of \$5.40 per biweekly paycheck. Also, they would remain the highest paid among the primary comparables. Even if the deputies' morale would be lowered if the County's offer was selected, if the Association's final offer is selected the morale of the County's other employees will suffer, as they did not receive such a generous percentage increase and because they voluntarily agreed to a lower wage increase. They will feel as if they were cheated by voluntarily agreeing to a settlement. Since the morale issue cuts both ways, it does not weigh in favor of either party.

In his recent decision in the City Cudahy, supra, Arbitrator Greco combined both elements under subsection (c) into a single analysis: "The interests and welfare of the public thus support the City's... proposal because it is in the best interests of [the] taxpayers to rein in the City's ever escalating... costs for members of the Police Department." It is in the best interests of the County's taxpayers to rein in the County's expenditures, especially when the reduction in expenditures is highly unlikely to affect the quality or quantity of services they are likely to receive.

Looking at the CPI factor under subsection (6)(e) and the change in the CPI since the parties' final offers were certified under (6)(g), the CPI has decreased significantly since that time, going from 3.8% at the time final offers were submitted to 2.5% by May of 2009. As the County's final offer of 2.75% exceeds the current CPI by .25% and the Association's offer exceeds the CPI by .50%, this factor weighs in favor of the County's final offer.

With regard to overall compensation, the Association's assertion that its exhibits clearly establish that the deputies' overall compensation is "average at best" is factually untrue. The deputies paid .67% less towards health insurance than the average of the primary comparables and will not be subject to an increase in those contributions, as will the primary comparables during the life of this agreement. The

deputies will also receive an extra \$501 in uniform allowance over the course of the agreement, they will receive 37 to 40 additional vacation hours over the average of the primary comparables, and they are allowed to bank 400 additional hours of sick leave over the average of the primary comparables. These additional benefits are certainly not insignificant and must be taken into account in weighing the parties' final offers.

The County concludes that the Association has failed to offer any compelling reason to alter the comparable pool, and that the statutory criteria, including external and internal comparables, the interests and welfare of the public, the financial ability of the County to meet costs, the cost of living, and overall compensation weigh in favor of selecting the County's final offer.

DISCUSSION

Section 111.77 (6), Stats., directs the Arbitrator to consider and give weight to eight factors under that provision in reaching his decision as to the final offer that is to be selected and incorporated into the parties' agreement. In this case, the parties agree that subsections (a) and (b) are not relevant in determining which final offer should be selected, and therefore, the Arbitrator will not consider those factors in reaching his decision.

Subsection (6)(c)

This subsection requires an arbitrator to consider, "The interests and welfare of the public and the financial ability of the unit of government to meet these costs." The Association notes that the County has not asserted that it has an inability to pay the cost of the Association's final offer and argues that the interests and welfare of the public are best served by having deputies who are well paid and of high spirits and morale. In that regard, the Association argues that selecting the Association's final offer, which more closely resembles the settlements granted in the comparable municipalities, will have such a positive affect on officer morale and esprit de corps. Conversely, the County argues that in the current economic times the interests and welfare of the public are best served by reining in County expenditures, and that while the County is not claiming that it would be unable to pay the cost of the Association's final offer, the \$49,000 difference that would be saved by selecting the County's final offer could be used to maintain the level of services the County provides. The County also doubts that its deputies' morale would be seriously affected if the County's final offer was selected, since they would remain the highest paid deputies among the primary external comparables. The County also asserts that selecting the Association's final offer would adversely affect the morale of the rest of the County's represented employees, sending them the message that it was unwise of them to have voluntarily reached agreement with the County on the wage increases they received.

The Arbitrator agrees that given the current economic conditions facing governments at all levels, it is in the best interests of the public for government to reduce its expenditures, especially where it is possible for it do so without reducing the level of services it provides. While the Association makes a valid point that the interests and welfare of the public are well served by having law enforcement personnel with good morale and who are paid sufficiently well that the Department is able to keep and attract well-qualified personnel, but like the County, the Arbitrator doubts that the small difference in the percentages of the wage increases the parties are proposing, .25% in 2008, .25% in 2009, and .1% in 2010, are enough to seriously affect the morale of these deputies. Especially since these deputies would remain the highest paid among the primary external comparables, as well as, the highest paid

employees among the County's represented employees. The County also has demonstrated that it has had no problem in attracting qualified applicants for jailer vacancies in the Ozaukee County Sheriff's Department, with the number of applicants increasing each year, and there is no evidence of retention problems in the Sheriff's Department. The Arbitrator also agrees that the morale of the County's other represented employees could suffer and that their willingness to reach a voluntary agreement with the County in the future could be negatively impacted, if the Association's final offer was selected. As will be discussed more fully below, in most circumstances, treating the various groups of employees consistently is a valid goal and well serves the interests of employee morale and the collective bargaining process, and therefore, the interests of the public. For these reasons, it is concluded that this factor favors selection of the County's final offer.

Subsection (6)(d)

It is with regard to the application of the factors under this subsection that the parties have their greatest dispute. First, the Association asserts that the peripheral external comparables of Fond du Lac County and Racine County formerly used by the parties are no longer valid comparables. Obviously, the County disagrees. The parties' sets of comparables were established in Arbitrator Gundermann's 1990 Award: Primary (Sheboygan, Washington, and Waukesha counties); Secondary (Cedarburg, Grafton, Mequon, Port Washington, and Thiensville); Peripheral (Fond du Lac and Racine counties).

The Association notes that the parties' comparables were established in 1990 and asserts that many things have changed in the 19 years that have passed since then. However, the Association fails to identify any specific change that would affect the comparability of those two counties with Ozaukee County. Further, the Arbitrator has reviewed the comparability data submitted by the parties in this regard and finds that it does not support the Association's contention that those counties are no longer as comparable as they were. In looking at the property tax rates in Fond du Lac, Racine, Ozaukee, Sheboygan, Washington, and Waukesha counties, Fond du Lac and Racine counties' rates are closer to the property tax rates in Ozaukee County for 2007 and 2008 than are the rates in Sheboygan and Washington counties. This is also true as to the property taxes on a \$125,000 home in those counties. The Association also cites the *per capita personal income* (PCPI) in those counties as demonstrating Fond du Lac's and Racine's lack of comparability; however, while their level of disparity with Ozaukee County is noted (-\$23,893 and -\$21,607, respectively), it is also noted that there is a wide disparity between the PCPI in Sheboygan and Washington counties and that in Ozaukee County (-\$21,397 and -\$17,019, respectively). With regard to population, the projected 2010 population figures indicate that Fond du Lac County (103,044) will be the closest to Ozaukee County (88,841) in population, with the rest of the counties being anywhere from 30,559 to 303,357 greater in population.

Arbitrators have generally held that an established set of comparables should not be disturbed absent some change in circumstances making them no longer comparable to one another. The Association has not demonstrated that there has been such a change in the comparability of Fond du Lac and Racine counties with Ozaukee County. Therefore, those counties will remain as the third, or peripheral, set of comparables.

The parties also disagree as to the propriety of considering and giving weight to the County's internal comparables under subsection (6)(d). The Association notes that unlike Sec. 111.70(4)(cm)7e, Stats.,

which sets out the comparability factors in interest arbitration of disputes involving non-protective service public employees in Wisconsin, Sec. 111.77(6)(d) does not specifically direct the arbitrator to make a comparison 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 generally in public employment in the same community...." The Association asserts that this demonstrates the Legislature's intent to limit comparison of protective service employees to other protective service employees. While that may be the strongest comparison, given the unique duties and responsibilities of protective service employees, the Arbitrator does not read subsection (6)(d) to preclude a comparison of the wages, hours, and conditions of employment of the subject protective service employees with those of non-protective service employees. Indeed, that subsection directs the arbitrator to not only compare the wages, hours and conditions of employment of the subject employees with those of "other employees performing similar services", but also with those of "other employees generally" "[In] public employment in comparable communities." While the statute does not specifically mention "other employees generally" in the same community, the Arbitrator does not find that lack of specificity to preclude a comparison with such employees.

Regardless of whether subsection (6)(d) is read to permit such a comparison, subsection (6)(h) is sufficiently broad to include the internal comparisons for consideration in these cases. That provision directs the arbitrator to consider:

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.

Certainly, how a municipal employer treats its other represented employees compared to how it proposes to treat the subject employees has traditionally been taken into account, both in the collective bargaining process and in interest arbitration in Wisconsin. Therefore, consideration of a comparison of the wages, hours and conditions of employment of these protective service employees with those of the County's represented non-protective service employees is appropriate.

In this case, the County has reached voluntary agreements with its three other groups of represented employees. Those agreements include wage increases that in one case (Highway) is the same as the County proposes here, and in the other two cases (Lasata Care and OPEIU units) are less than the County is proposing in this case. As the County points out, arbitrators have consistently followed the well established rule that "an internal settlement pattern should control unless it can be demonstrated that adherence to that pattern would cause unreasonable and unacceptable wage relationships relative to the external comparables." Waukesha County (AFSCME), Dec. No. 29929-A (Vernon, 4/00). Further, arbitrators have recognized a municipal employer's valid interests in equity and the fair treatment of all of its employees, and considered the negative impact on those interests and morale when one group of employees gets more than the rest. Arbitrators have also noted the negative impact of one group receiving more than what the other employees had voluntarily agreed to on the employer's credibility and on future negotiations. It being generally accepted that those employees would be reluctant to reach a voluntary agreement with the employer in the future for fear that if they did, the employer would then offer more to its other employees.

As the Association's final offer exceeds any of the voluntary settlements the County has reached with

its other represented employees, the internal settlement pattern strongly favors selection of the County's final offer, absent a showing that following that settlement pattern would create an unreasonable or unacceptable wage relationship between the wages of these employees and the wages of the external comparables.

Looking then to the external comparables. Beginning with the primary external comparables - Sheboygan, Washington and Waukesha counties, the Arbitrator agrees that the different sets of external comparables should be considered separately, as the five secondary comparables would otherwise outweigh the three primary comparables. Further, the primary external comparables are so due to their being the same unit of government as Ozaukee County, as well as their being contiguous to the County. Hence, they are more comparable to the County than are the municipalities within the County that make up the secondary comparables. A review of the settlements among the primary comparables reveals the following:

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Sheboygan	3.0% (\$124)	3.0% (\$128)	-
Washington	3.0% (\$137)	3.0% (\$141)	-
Waukesha	2/1% (\$140)	2/1% (\$143)	2/1% (\$149)
	Average (Actual) = 2.83%		
	Average (Lift) = 3.0%		
Association	3.0% (\$148)	3.0% (\$153)	3.0% (\$158)
County	2.75% (\$136)	2.75% (\$141)	2.9% (\$151)

In fashioning the above chart the Arbitrator relied upon Association Exhibits 700 and 701. The chart shows that the County's offer is .08% below the average actual percentage wage increase among these comparables and .25% below the average lift in the wage rates, for both 2008 and 2009. In response to the County's argument that those settlements should be given less weight due to their having been reached before the current economic crisis became known, this Arbitrator respectfully disagrees. It was already well-known in 2008 that this Country, and indeed the World, was in a deep recession, and that governments at all levels were facing serious budget deficits.

Regardless of the County's proposed lower percentage increases, due to Ozaukee County Deputies having the highest wage rates in all of the classifications among the primary external comparables, even with the County's lower percentage wage offer its deputies would receive a \$25.00 larger actual dollar increase in their monthly wage rate than the deputies in Sheboygan County (over 2008 and 2009), only \$1.00 less of an increase in their monthly wage rate than the deputies in Washington County (over 2008 and 2009), and only\$4.00 less of an increase in their monthly wage rate than the deputies in Waukesha County (over 2008 - 2010) on the top rate for Patrolman. Using the Association's figures, the Association's offer would raise the top monthly wage rate for Patrolman in Ozaukee County to \$513 above the average in 2008 and \$528 above the average in 2009, while the County's offer would raise that rate to \$501 above the average in 2008 and \$503 above the average in 2009. Under either party's offer, the Ozaukee County Deputies remain the highest paid among the primary external comparables.

The Arbitrator concludes from the foregoing that while a comparison of the percentage settlements among the primary external comparables would seem to support the selection of the Association's final offer, the impact of those slightly larger percentages is more than offset when one looks at the actual dollars generated by those percentages and the fact that these deputies will continue to be the highest-paid among the primary comparables in all of the classifications for the life of the agreement under either party's final offer. Therefore, it is concluded that the primary external comparables support the selection of the County's final offer.

Looking at the settlements among the parties' set of secondary comparables, and again using the top wage rate for Patrol, shows the following:

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Cedarburg	2.5/1% (\$173)	3.0% (\$153)	3.0% (\$157)
Grafton	3.25% (\$161)	3.0% (\$153)	3.25% (\$171)
Mequon	3.0% (\$147)	4.0% (\$202)	4.0% (\$210)
Port Washington	3.0% (\$149)	3.0% (\$154)	-
Thiensville	2.5% (\$118)	2.5% (\$120)	-
Average (Actual)	2.95%	3.1%	3.42%
Average (Lift)	3.05%	3.1%	3.42%

As may be seen, the settlement pattern among the secondary comparables is more pronounced and strongly favors the Association's position, especially in 2009 and 2010. Further, under the Association's final offer, Ozaukee County would go from ranking second in 2007 to ranking third in 2008 and ranking fourth in 2009, while under the County's final offer the deputies would rank fourth in 2008 and fifth in 2009. Ozaukee County would go from being \$61 above the average monthly wage rate for the top Patrol rate in 2007 to \$59 above that average in 2008 and \$56 above that average in 2009 under the Association's offer, while it would go to \$47 above that average in 2008 and \$31 above that average in 2009 under the County's offer. Thus, unlike the case with the primary comparables, the County would not maintain its ranking among the secondary comparables under the County's final offer, albeit that would also be the case under the Association's offer, though the deputies would slip one less rank each year under the latter. For these reasons, it is concluded that the secondary comparables strongly support the Association's final offer.

With regard to the peripheral comparables of Fond du Lac and Racine counties, the Arbitrator finds there is little guidance from them, as neither party submitted evidence as to the settlements reached in those counties, beyond the County's submission of the hourly wage rates for the various classifications for 2007, 2008 and 2009. A review of those rates for the top Patrol rate shows that Ozaukee County would remain second to Racine County in 2008 and rise to first among these comparables in 2009 under either party's offer. Thus, the peripheral comparables do not support the selection of one offer over the other.

It is concluded that the internal comparables and settlement pattern strongly support the County's final offer, and that the primary external comparables also favor the County's offer, while the secondary external comparables strongly support the Association's final offer. It is then a matter of which set of comparables should be accorded the most weight. The Arbitrator finds that while Ozaukee County's deputies would lose ground among the secondary comparables in terms of both ranking and dollars,

they would still remain above the average among those comparables. More importantly, it must be remembered that those municipalities are secondary comparables, and that these deputies would remain the highest paid deputies among the primary comparables under either offer. For this reason, the Arbitrator does not find the change in the County's ranking among the secondary comparables to be a sufficient basis upon which to accord that change in ranking more weight than the primary comparables and the internal settlement pattern in the County. This is regardless of whether the internal settlement pattern is considered under subsection (6)(d) or subsection (6)(h).

Subsection (6)(e)

Both parties argue that the cost of living factor supports their respective positions. The Association noting that the CPI was at 3.8% at the time the parties' final offers were certified, argues that its proposed 3.0% wage increases more closely reflected the cost of living at the time. Conversely, the County notes that the CPI had decreased by 1.3% by the time of hearing in this matter and argues that its proposed lower percentage increases still exceed the CPI, but by less than that of the Association's proposed increases, making its offer the more preferable. Given the decrease in the CPI from the time final offers were certified in this case to the time of the hearing, and pursuant to the directive under subsection (6)(e) that the Arbitrator consider "[C]hanges in any of the foregoing circumstances during the pendency of the arbitration proceedings," one must conclude that this factor favors selection of the County's final offer. Although it is again noted that the parties' final offers are not that far apart when the actual dollars they generate are considered.

Subsection (6)(f)

This subsection directs the Arbitrator to consider "The overall compensation presently received by the employees...." The Association asserts that these deputies' benefits are "average at best" in comparison with the external comparables, while the County asserts that they are well above average. A review of the exhibits in this regard shows that Ozaukee County Deputies contribute the second-highest dollar amount toward health insurance premiums among the primary comparables and contribute the highest amount among the secondary comparables; that these deputies have a maximum sick leave accumulation that is the highest among the primary comparables and the second-highest among the secondary comparables, with the most generous sick leave payout among the primary comparables and one of the highest among the secondary comparables; that they receive a uniform allowance that is higher than the comparables; that they have the lowest number of paid holidays among the primary comparables and are tied for lowest among the secondary comparables; and that they have the highest maximum number of vacation days among the primary comparables and are tied for highest among the secondary comparables. While the Association notes that the extra week of vacation was in return for the Association's agreeing to give up the compensatory time provision, it is nevertheless a benefit they will receive, and for which they will not have to work overtime hours in order to earn it.

The Arbitrator gleans from all this that, when viewed as a whole, these deputies receive an overall compensation package that is above average, especially when viewed in light of their direct wage compensation, and especially as to the primary external comparables, though somewhat less so as to the secondary comparables. It is concluded that this factor favors selection of the County's final offer.

Summary

It is apparent from the foregoing that a majority of the relevant statutory factors favor selection of the County's final offer, even though the County's proposed wage increases are below the external settlement patterns when viewed in terms of percentages. This is due in large part to the present state of the economy in this State and Nation, the internal settlement pattern within the County, and more importantly, to the fact that Ozaukee County Deputies will continue to be the highest-paid in all classifications among the primary external comparables, while at the same time they will continue to enjoy generally above average overall compensation.

Based on the foregoing, the evidence, and the arguments of the parties, and having considered the statutory criteria under Sec. 111.77(6), Stats., the Arbitrator makes and issues the following

AWARD

The parties are directed to incorporate the final offer of Ozaukee County, along with their tentative agreements, into their 2008 - 2010 Agreement.

Dated this 2nd day of November, 2009 at Oregon, Wisconsin.

David E. Shaw
Arbitrator