

BEFORE THE ARBITRATOR
In the Matter of the Interest Arbitration
Proceedings Between:

Sheboygan County Law Enforcement
Employees Association, WPPA-LEER

ARBITRATION AWARD

and

Sheboygan County (Sheriff's Dept.)

Case 397
[No. 68372]
MIA-2850
Dec. No. 32720-A

ARBITRATOR: A. Henry Hempe

APPEARANCES:

For the Association: **Richard W. Terry**, RWT Strategies, 6111 Rivercrest Drive, McFarland, WI 53558.

For the County: **Michael J. Collard**, Sheboygan County Human Resources Director, 508 New York Ave. Room 336, Sheboygan WI 53081.

INTEREST ARBITRATION AWARD

The *County of Sheboygan* (hereinafter referred to as "County" or "Employer") and the *Sheboygan County Law Enforcement Association*, an affiliate of the Wisconsin Professional Police Association, Law Enforcement Employee Relations Division (hereinafter referred to as "Association," "Union," or "Deputies") are parties to a two-year collective bargaining agreement that ran from January 1, 2007 through December 31, 2008. With the development of an apparent bargaining impasse over the terms and conditions of a successor agreement, the Union petitioned the Wisconsin Employment Relations Commission (WERC) to direct the initiation of final and binding interest arbitration. Following an investigation and mediation efforts by WERC Attorney-Mediator, Stanley H. Michelstetter, and his determination that a bargaining impasse existed, on April 17, 2009, the WERC issued an order initiating final and binding interest arbitration pursuant to Sec. 111.77, Stats., for the purpose of resolving the bargaining impasse. On May 5, 2009, the WERC issued an order appointing the undersigned as the Arbitrator in this matter.

The matter was brought before the undersigned Arbitrator for hearing on July 22, 2009, during which the parties were given full opportunity to present all relevant evidence and arguments. The parties submitted Initial Briefs and Reply Briefs. The last Brief was received by the arbitrator on or about September 14, 2009.

BACKGROUND

Sheboygan County is a quasi-municipal corporation of the State of Wisconsin. Established in 1838, it is located in Eastern Wisconsin on the western shores of Lake Michigan. The County covers a land area of 513.7 square miles that is abutted by Manitowoc County on the north, Calumet County on the northwest, Fond du Lac County on the west, Washington County on the southwest, and Ozaukee County on the south. A significant portion of the county's land area is used for farming.

As of census year 2000, Sheboygan County had a population of 112,640 residing in its 3 cities, 15 towns, and 10 villages. With a reported 2000 census population of 50,792, the City of Sheboygan is the largest of the County's three cities and serves as the county seat. The other two cities, Plymouth and Sheboygan Falls, report populations of "over 8,000" and 6,772, respectively.

Sheboygan County is the home of several well-known companies and manufacturing plants, including Kohler Co., J.L. French, Pentair, West Bend, Thomas Industries and Aurora Health Care. Like other American areas, however, by summer of '09, the countywide community was troubled by an unemployment rate that had almost risen to a double-digit figure, with the county seat suffering an even greater percentage of job losses and unemployment. More recently, buoyed by an approximate \$30 million dollar economic incentive package from the state, county officials have publicly expressed hopes for construction of a new manufacturing plant at the county airport – a development that some believe could ultimately create some 2,000 new jobs in the next ten years.

The Sheriff's Deputies bargaining unit consists of some 55 sworn law enforcement personnel with powers of arrest. Sheboygan County has seven other bargaining units in addition to that of the Deputies, namely, Public Health/Community Programs (professionals), Highway Department Employees, Health Care Facilities Employees, Registered Nurses, Supportive Services Employees, Social Workers, and a supervisory law enforcement unit.¹ Voluntary settlements have been reached with five of the seven entitled to interest arbitration.

The parties were unable to reach a voluntary settlement to a successor agreement in their collective bargaining. They were, however, able to achieve tentative agreements to four items, leaving only wages in dispute. The final offer of each party includes the four tentative agreements to which the parties had reached agreement in bargaining.

FINAL OFFERS

¹ Under Wis. Stats. 111.70(8)(a) and (b), law enforcement supervisors (other than those employed by 1st class cities or counties having a population of 500,000 or more) are permitted to organize and bargain collectively, but are not entitled to interest arbitration.

Employer:

All terms of the Labor Agreement between Sheboygan County and the and the Sheboygan County Law Enforcement Employees covering January 1, 2007 through December 31, 2008 to remain in effect except as follows:

1. Article 10 – Wages, Wage Administration, and Work Week. Revise to provide for across-the-board pay increases of 2.95% effective January 1, 2009 and 2.05% effective January 1, 2010.

2. New Article. Add a new Article to the agreement, to read in its entirety as follows:

LEAVE FOR UNION PROGRAMS

Association members designated to attend union/association programs, but not limited to conventions, shall be granted time off for attendance at these programs, subject to the limitations of this Article. The member may use vacation or holiday time if available to attend such programs. Unpaid leave may be requested and will not result in loss of seniority. The County may limit the number of employees permitted to be absent from work to three at any single time. No employee may be granted more than one week off per year under this Article. The Association will compensate the County for any overtime expense, including payroll tax and retirement benefit costs, which may result from time off granted pursuant to this Article.

3. Article 21 – Uniform Allowance. Revise the first sentence of the paragraph numbered 7 by deleting the phrase “and all uniform items” and inserting in its place the phrase “and those uniform items originally issued.”

4. The County agrees that members will have four, instead of two, opportunities each year, in March, July, October and December, to modify deferred compensation contribution amounts.

5. Article 33 – Term. Revise to provide for a two-year agreement commencing January 1, 2009 and ending December 31, 2010.

Association:

The Association proposes that all provisions of the 2007-2008 Agreement except as modified by the Tentative Agreements (attached) and by this offer be included in this successor Agreement for the term of January 1, 2009 through December 31, 2010.

1/ Wages

January 1, 2009	ATB increase of 1%
July 1, 2009	ATB increase of 3%
January 1, 2010	ATB increase of 1%
July 1, 2010	ATB increase of 2%

TENTATIVE AGREEMENTS

1/ New Article:

Leave for Union Programs: Association members designated to attend union/association programs, but not limited to conventions, shall be granted time off for attendance at these programs, subject to the limitations of this Article. The member may use vacation or holiday time if available to attend such programs. Unpaid leave may be requested and will not result in loss of seniority. The County may limit the number of employees permitted to be absent from work to three at any single time. No employee may be granted more than one week off per year under this Article. The Association will compensate the County for any overtime expense, including payroll tax and retirement benefit costs, which may result from time off granted pursuant to this Article.

2/ Article 21 – Uniform Allowance. Revise the first sentence of the paragraph numbered 7 by deleting the phrase “and all uniform items” and inserting in its place the phrase “and those uniform items originally issued.”

3/ Deferred Compensation: Increase the opportunities to modify deferred compensation contribution amounts from the two current dates of July and December to four dates of March, July, October and December.

4/ Article 33 – Term: Revise to provide for a two-year agreement commencing January 1, 2009 and ending December 31, 2010.

SUMMARY OF FINAL OFFERS

At the hearing of this matter the parties stipulated their respective final offers were virtually identical except for the competing wage proposals.

STATUTORY AUTHORITY

The parties sharply differ as to the appropriate statutory criteria to be followed by the arbitrator.

County

The County simply lists Wis. Stats. 111.70(4)(cm) 7, 7g, and 7r.

Sec. 111.70(4)(cm) 7. – 7r. reads as follows:

7. “Factor given greatest weight.” In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislature or administrative officer, body or agency which places limitations on expenditures which may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator’s or panel’s decision.

7g. “Factors given greater weight.” In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. “Other factors considered.” In making any decision under the arbitration procedures

authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in generally in public employment in the same community and in comparable communities.
- f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.
- g. The average consumer prices for goods and services commonly known as the cost of living.
- h. The overall compensation presently received by the municipal 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.
- i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceeding.
- j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties in the public service or in private employment.

Association

The Association finds the appropriate criteria to be utilized by the arbitrator in Wis. Stats. 111.77(6). That statute provides as follows:

- (6) In reaching a decision the arbitrator shall give weight to the following factors:
 - (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 those 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 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, arbitrations or otherwise between the parties, in the public service or in the private sector.

ARGUMENTS OF THE PARTIES

County:

The County begins with the assertion that the arbitrator must take into account the statutory criteria set forth in Wis. Stats. 111.70(4)(cm).

The County believes its offer represents a very modest reaction to the current labor market and is consistent with other settlements the County has reached with or proposed to other bargaining units.

Relying on Wis. Stats. 111.70(4)(cm) 7, 7g and 7r as the relevant statutory authority in this matter, the County asserts that its “offer is clearly favored by the factors recited therein and should be awarded.”

The County notes that under state law it is subject to a tax levy cap for 2010 that is only 3% greater than the tax levy for 2009. The County believes that pursuant to Sec. 111.70(4)(cm) 7., arbitral consideration of this expenditure limitation should be given “the greatest weight.” While denying that County is unable to pay the wages proposed in this matter by the Association, the County argues that over time the County’s wage expense will grow faster than the County’s ability to levy its property tax. With both the anticipated \$1.2 million revenue loss from outside revenue sources and increased expenses imposed by the state budget, the County argues it will be placed in a fiscal hole that it cannot make up by imposing a higher tax levy than the law allows. Ultimately, the County continues, there will need to be a reduction of public services. The County believes this is exactly the kind of situation the legislature must have had in mind when it inserted the “greatest weight” factor in Sec. 111.70(4)(cm).

The County uses the word “bleak” to describe the economic conditions within its jurisdiction. Pointing to a June ’09 countywide unemployment rate of 9.7% that spiked in the City of Sheboygan to 12.4%, the County explains the employment in the manufacturing industries on which the community is dependent has suffered greatly, with job losses in the hundreds. The County believes that pursuant to Sec. 111.70(4)(cm) 7g, consideration of the County’s economic conditions must be given “greater weight.”

The County contends its offer is also favored by Factor 7r.c (Interests and Welfare of the Public). Conceding that “it is generally in the public interest to have contented and adequately paid public employees,” the County nonetheless argues that as the public is currently feeling the direct impact of the stressed economy to a degree not felt by public employees, resentment of public employees is high. The County asserts that across the state, settlements that would normally attract no public attention are now drawing spirited debate. Granting law enforcement

employees a 4% wage lift in 2009 would result in driving a wedge further between the benefited employees “and the public they so well protect and serve.” Echoing editorials from the *Sheboygan Press* and *HTPNews.com* out of Manitowoc, the County is sure the public believes it is in its interest for local government employees “to receive a wage freeze or perhaps a pay cut, rather than a raise as if current conditions represented business as usual.”

The County projects its internal comparables as strongly favoring the County’s offer. The County points to the settlements it has reached with five out of its seven bargaining units having interest arbitration rights. Some of the settled units, says the County, will receive across-the-board wages “equivalent” to those the County is offering the deputies and some will receive less, but “in most cases with some countervailing advantages.”

The County offers the following unit-by-unit settlement picture: Public Health/community programs – 2.95% on 1/1/09 and 2.05% on 1/1/2010; Highway Employees – 2.75 in 2009 and 2.05 in 2010, plus an additional 10 cents/hour for employees hired after 1/1/96; Health Care – 2% for four years (’09 – ’12) with a County promise not to sell its nursing home through December 31, 2012; Registered Nurses – 2% in 2009 and 2.05% in 2010, but no covenant not to sell facility and increase in health insurance premium shares to be paid by newly hired nurses; Supportive Services (tentative agreement) – 2.75% on 1/1/09 and 2.05% on 1/1/10.

The County acknowledges it remains unsettled with its Social Workers unit, but has made an offer including a 2.95% wage increase in 2009 and 2.05% in 2010, and further notes that the Social Workers Final Offer is 2% on 1/1/09, 1% on 7/1/09, 2% on 1/1/2010 and 1% on 7/1/2010. This, the County explains, amounts to only a 3% lift each year, or 1% less than the wage lift proposed by the deputies.

The County urges the arbitrator to place great weight on its internal comparables. The County argues that if one employee group obtains more in interest arbitration than other employee groups have received in voluntary settlements, employees would receive a powerful incentive to eschew voluntary settlements to the detriment of labor peace.

According to the County, the external comparables should be given a reduced weight because all of the comparable settlements were reached in what the County describes as vastly different and far stronger economic conditions than currently exist. The County opines that when this is considered in conjunction with the local economic conditions, the County’s internal comparables “are nearly dispositive of this case.”

Turning to external comparable wage rates, the County relates that seven of the nine comparable counties have settled or completed interest arbitration with their respective law enforcement units for 2009.

Focusing first on wage lifts (which the County deems “far more important” than immediate budget impact), the County asserts the 2009 wage lifts for the panel of county comparables average out to 3.4%, or 0.6% lower than the wage lift proposed by the Association. The County acknowledges its own proposal of a 2.95% wage increase for 2009 results in a wage lift of only 2.95%, but argues this result (though lower) is closer to the average of the

comparables' wage lifts than the wage lift proposed by the Association.

The County reports only four counties submitted results for 2010 wages, each showing a 3% wage lift (identical to the 2010 wage lift proposed by the Association). However, with only four comparable counties reporting wages for 2010, the County contends that these results are insufficient to establish a pattern and should be given little weight.

As to actual impact on the county budget, the County concedes the 2009 budget impact of the Association's 2009 wage proposal is 2.5%,² which is lower than the average 2009 budget impacts of the external county comparables (3.05%) and lower than the impact of the County's own 2009 wage proposal³ on the County's 2009 budget. However, the County points out that its offer is much closer to the average of the comparables than is the Association's proposal.

Thus, whether comparing 2009 wage lifts or 2009 budget impacts the County concludes its offer is closer to the average of the comparables for 2009.

The County suggests that under the factor requiring examination of external comparables, the County's offer is preferable for 2009, but the Association's offer may be deemed preferable for 2010. Given this result, the County submits this factor should be considered at least a draw. However, the County adds, since there are more wage results from the comparables for 2009 than for 2010, "this factor should be interpreted by the arbitrator to slightly favor the County's offer."

The County also evaluates the parties' wage proposals by comparing the total lift over the entire *two*-year term of the putative contract. Using this measurement, the County calculates the average two-year wage lift of the comparables to be either 6.09% or 6.10%, the two-year wage lift of its own offer at 5.06% and that of the Association at 7.17%. From this data the County concludes its offer "is just a little bit closer to the norm."

Clearly unhappy with the use of external comparables under existing economic circumstances, the County urges that they be accorded relatively little weight on the grounds that all of the comparable external settlements were reached under sunnier economic skies.

The County next turns to comparisons with private companies. Claiming the private sector has reacted more quickly and strongly than the public sector, the County cites evidence in the record indicating that on a national level private companies are cutting costs by cutting wages or cutting jobs. Job cuts in the private sector are reported to be largely through employee furloughs. The County views this perspective as strongly favoring the County's position.

The County believes the consumer price index analysis to be used by the arbitrator should focus on the previous one-year period immediately prior to the term of the new contract. The County reads the CPI-U (All Urban Consumers) and CPI-W (Urban Wage Earners and Clerical Workers) as indicating a *decrease* in the cost of living of 0.32% for the entire year

² Wage increases of 1% on 1/1/09 and 3% on 7/1/09.

³ Wage increase of 2.95% on 1/1/09.

running from the end of calendar 2007 to the end of calendar 2008. This, in the County's view, provides strong support for the County's offer.

Examining overall compensation, the County asserts its overall compensation and benefit package is generous when compared to the comparables. According to the County, in 2008, the County's starting wage for patrol officers was 42 cents/hour higher than the average for the comparable group and the County's maximum wage for patrol officers was \$1.16/hour higher than the average. In addition, with respect to benefits Sheboygan County deputies fare as well or better than those in comparable counties, including vacation schedules, paid holidays, clothing allowance, and unused sick leave conversion.

The County lists the following relevant circumstances that changed during the pendency of this matter: 1) No improvement to local economic conditions and in some respects they are worse; 2) a number of other bargaining units have reached voluntary settlements with Sheboygan County since this case was filed.

Association

The Association begins with its statement of the statutory criteria to be utilized by the arbitrator in this proceeding are contained in Wis. Stats. 111.77(6).

The Association describes its efforts in this case as attempting to slow the erosion of Sheriff's deputies wage rates as compared to comparable law enforcement personnel.

The Association believes the Employer's offer is predicated on the settlements it reached with most of its internal bargaining units. The Association notes the County has a tax levy rate that has been reduced for at least the last two years, has \$10 million in the bank, has not utilized its taxing ability to the maximum, and employs deputies that are paid over \$1.50/hour below the average of the comparables.

The Association further notes that the County does not claim an inability to pay the Association's wage proposal. The Association acknowledges that the County's unemployment rate has grown, but contends it is not out of line with other comparable counties. According to the Association, the County is attempting to use the unfortunate, albeit improving, economic times to justify an inadequate wage offer.

The Association believes the external county comparables support its Final Offer. According to the Association, the 2009 average wage increase for the stipulated comparables amounts to a 3.33% increase, compared to the 2.95% increase offered by the Employer, and the 2.5% cost of the Association's offer that proposes a 1% and 3% split.

For 2010, the Association continues, the comparable average wage increase is 3% compared to the 2.05% increase offered by the Employer and the 2% cost of the Association's offer that proposes a 1% and 2% split.

According to the Association, the Association's Final Offer merely reduces the maximum

rate gap from \$1.56/hour to \$1.46/hour while the Employer's offer widens the rate gap from \$1.56/hour to \$1.72/hour.

The Association asserts the interests and welfare of the public is best served when the public has well-trained police officers that are treated fairly. The Association perceives the Employer's offer as politically popular, along the lines of "the cheaper, the better." The Association argues that the interests and welfare of the public are best served by disciplined, equitable, and predictable wage adjustments without large peaks and valleys that can be met without undue hardship, as opposed to deferral of the increase to a later time.

The Association acknowledges the weakened economy, increased unemployment among various private sector employers, as well as revenue reductions to the County resulting from the State budget.

Nonetheless, the Association argues, it is unfair to expect the deputies to shoulder any fiscal burden created (in the Association's view) in large part by the Employer's action of reducing tax levies in the two years prior to 2009. The Association claims its Final Offer recognizes the Country's current economic situation by using the device of wage increase "splits" instead of year-beginning increases to provide a lift that will benefit both parties, but minimize the cost impact on the taxpayers.

In an attempt to provide a two-year cost analysis of each party's Final Offer, the Association uses what it terms a "worst case" cost analysis method. Under this method, the Association starts by assuming that every deputy is at the salary maximum and receives the longevity listed in Employer's Ex. C-5. Reaching an assumed base cost of \$3,291,288.00, then following through with the multiplication math necessary to apply each party's respective proposal to the assumed base cost, the Association computes the total difference between the parties' offer for the two-year contract term to be \$20,023.

The Association adds that the actual cost will be less because all deputies are not at the top rate assumed in the Association's hypothetical. Yet the Association believes the example demonstrates that the deputies' "falling wage rates" can be corrected at a minimal cost to the Employer.

The Association perceives the deputies "in a race to the bottom – not to midpoint," contending that if they simply get the same annual percentage as the comparables they lose salary ground. The Association claims it is currently ranked seventh out of eight settled comparables.

The Association notes the County's offer for 2009 costs more than that of the Association, but fails to provide the lift necessary to lessen the salary erosion it perceives. Continuing, the Association argues that inasmuch as the average wage increase for 2010 among the County's comparables is 3%, the County's offer of 2.05% is not only inappropriate, but disrespectful and noxious. The Association argues its own offer replicates the same 3% lift found in the 2010 comparables, but does so in a cost effective 1%-2% split.

The Association perceives no persuasive need for what it views as the County's inadequate offer, other than the County's desire to make up revenue resulting from the reduced tax levies it established over the past two years. The Association describes this case as involving an unwillingness to pay, not an inability to do so. The Association asserts the County has not offered any "super-benefits" or any sort of *quid pro quo* for its lower wage offer. The Association describes all of the benefits currently received by the Sheboygan County deputies (i.e., health insurance, longevity, vacation, holidays, clothing allowance and sick leave) as within the mainstream of benefits provided by the comparable counties to their deputies.

The Association disagrees with the County's view that the internal comparables are more important than the external ones and therefore should be determinative. The Association contends the operative "comparison" criteria for the deputies are contained in Wis. Stats. 111.77(6), and clearly indicates that comparisons of the wages, hours and condition of employment of the Sheboygan County deputies are to be made with other employees *performing similar services* and with other employees generally. Citing arbitral authority that non-sworn bargaining units are not directly comparable to law enforcement units,⁴ the Association underscores that none of the Internal Comparable examples offered by the Employer in this matter involve police or law enforcement personnel.

The Association invokes the collective bargaining agreement of the City of Sheboygan's police officers and detectives as a "secondary comparable," noting the City is the County's largest city and the county seat. The City has not yet settled a CBA for 2010. The Association demonstrates a wage disparity between the City police unit and the County deputies that in 2005 was \$1.03/hour (to the deputies' detriment), but by 2008 had risen to \$1.13/hour. Under the County's offer to the deputies for 2009, the disparity between the two units would rise to \$1.18/hour (to the deputies detriment), but under the Association's proposal would reduce the wage gap to 0.92/hour.

County benefits in a few instances are equal to those the City agreed to provide its officers, but in other cases appear to lag behind the City, with one exception: County longevity pay exceeds that provided in the City's police contract, but only with respect to deputies hired before 1/1/98. Simply put, the Association summarizes, the City pays more and has better benefits for its police than the County provides for its deputies. The Association argues this mirrors the wage disparity between Sheboygan County and the panel of comparable counties.

The Association denies that the current state of the economy justifies the County's offer. It charges the County's use of unemployment figures as creating a smokescreen intended to camouflage the continued erosion of deputy wages, without even the dignity of a mutually accommodating agreement.

The Association asserts that County taxpayers will not suffer if the County does not prevail in this matter, arguing that at worst the County might have to dip into its huge reserves or raise taxes to their 2007 level. The ability of the County to pay the Association's proposal is not in question, the Association asserts, pointing to the County's acknowledgment that it was

⁴ *City of West Bend*, Case No. 63599, MIA 2598, Dec. No. 31003-A (McAlpin, 2/05)

making no “inability to pay” argument.

The Association points to the relatively high unemployment rates of the comparable counties, and notes that even Manitowoc County, with the highest unemployment rate (10.8%) of the comparables (including Sheboygan County), voluntarily settled with its deputies at 3% increases for 2009 and 2010. In fact, the Association continues, the comparable counties, with both smaller and larger rates of unemployment than Sheboygan County, have settled for higher amounts than those the Association is seeking in this proceeding.

The Association dismisses the County’s argument that “had the comparables known what the unemployment rate would be these settlements would not have happened.” The Association characterizes this argument as conjecture and supposition, adding that it is difficult to know what other parties would or would not have done under different circumstances.

Moreover, the Association points to evidence in the record that the County could be on the cusp of a turnaround, with a possible development at the County airport that county officials suggest could bring 2,000 new jobs to the County. The Association suggests that if the labor history between the parties were any measure, it would be illogical to assume this Employer will voluntarily agree to “catch-up” increases in the future. When times were good, the Association charges, the Employer reduced its tax levy rate and increased its reserves.

Finally, the Association argues, the Association’s Final Offer is favored by the cost of living statistics. The Association finds the CPI-U figures calendar year 2008 compute to a cost of living increase of +3.66%,⁵ which favors the Association’s position. However, the Association continues, although these CPI figures favor the Association’s offer, as an additional measure of the Cost of Living, consideration of the pattern of settlements among the primary comparable counties provides additional strength to the Association’s position. Specifically, the Association explains, the CPI-U annual increase from 2007 to the end 2008 [198.123 to 205.382] of 3.66%, the pattern of settlements for 2009 (3.33% increase) and the 3.00% increase for 2010 marks the Association’s Final Offer as more nearly representing the Cost of Living.

County (Reply)

The County claims astonishment at the Association’s use of a hypothetical maximum wage rate that “is \$4.24/hour higher than the supposed maximum.” The County asserts there are twice as many employees making more than the maximum than are making less. According to the County, the reason for what the County terms “this bit of misdirection” by the Association is that the Association ignored longevity. The County describes longevity pay as a major component of Sheboygan County deputy pay, while other counties no longer pay it or offer only a minor amount. With longevity of 12.5%, the County asserts the true maximum for a

⁵ The Association first finds the difference between the *annual* 2007 CPI-U figure listed (198.123) and the *annual* 2008 CPI-U figure listed (205.382), each as reported by the Bureau of Labor Statistics. The difference is 7.259. [205.382 – 198.123 = 7.259] To then obtain the percentage showing increase or decrease from the entire 2007 calendar year requires dividing this by the annual 2007 CPI-U figure [198.23.]. 7.259 divided by 198.123 = 3.66, representing a 3.66% cost of living increase in the entire 2008 calendar year compared to the entire 2007 calendar year.

Sheboygan County deputy is \$27.60/hour.

The County also quarrels with the figures used for starting wages in other counties, asserting that in some cases the figure shown as the starting wage was in effect for only a portion of the calendar year to which it was linked. The County additionally complains that the Association does not show a starting rate for Calumet County, because the contract was not settled, adding that since the final offers of each of the parties in the Calumet dispute as to 2008 wages were identical, those numbers may be safely used. For Ozaukee County, for which the Association also did not show a starting wage, the County used the starting wage based on the Union's final offer in arbitration (slightly higher than the County's). For Washington County, the bargaining agreement does not contain a starting wage because probationary employees are not considered part of the bargaining unit. However, says the County, the actual starting wage is \$19.67.

The County contends its summary of starting wages shows Sheboygan County's starting deputy wage as \$0.42 above the average. It regards the Association's "repeated wailing and gnashing of teeth" as to the failure of Sheboygan County to fairly compensate its law enforcement officers "as nothing but histrionics."⁶

The County asserts that the Association's Final Offer contains a wage lift considerably higher than in any comparable county, except for Brown County. For 2009, the County contends the Association's lift would be 4.03%. The County finds the norm to be 3.00, except for Brown County. The County's 2009 wage offer of a 2.95 lift is very close to that figure. Since the Association disavowed that its offer was intended as "catch-up" the lift it includes is not justified.

Finally, the County accuses the Association of not seriously addressing the "Greater Weight" factor. Reasserting its apparent belief that the provisions of Wis. 111.70(4) (cm) 7., 7g and 7r, govern this procedure, the County asserts the provisions of subs. 7 and 7g require the arbitrator to give greatest weight to expenditure and revenue limitations imposed by state law and greater weight to the economic conditions than to any other factor except the legal authority of the employer.

The County asserts, "inability to pay is not one of the statutory factors" – indeed, is not relevant to the public sector.⁷ The County believes that in order to protect the public from unwarranted tax increases, the legislature has directed arbitrators to consider economic conditions as a substitute for economic ability or inability to pay in the private sector. The lawful ability to raise taxes has nothing to do with economic conditions, according to the County. The municipality's lawful authority to tax is relevant only with respect to the "greatest weight" factor of Wis. Stats. 111.70(4)(cm) 7., the County contends.

⁶ County's Reply Brief at p. 4.

⁷ County's Reply Brief at p. 6. Alleging the concept comes from private sector labor law under which an arbitrator determines whether the wages requested can be supported without bankrupting the company or causing it to lose too much in sales to survive, the County argues. "Such concerns" the County asserts, "are not relevant in the public sector."

Finally, the County urges the arbitrator to recognize that five out of the seven Sheboygan County non-supervisory bargaining units have accepted the County's proposals that are either close to or lower in economic value than the County is offering the deputies.

Association Reply

The Association sharply and strongly disagrees with the County's contention that the arbitrator's decision in this matter is governed by the factors listed in Wis. Stats. 111.70(4)(cm). The Association notes the specific focus of the County on Factor 7 (Greatest Weight) and Factor 7g. (Greater Weight).

The Association agrees that Wis. Stats. 111.70 applies to Sheboygan County's internal, non-sworn bargaining units. But Wis. Stats. 111.70 and the factors recited therein (including Factor 7 and 7g) do not apply to the represented, internal bargaining unit of Sheboygan County deputies, the subject of this arbitration proceeding, the Association avers.

The Association points to the wording of Sec. 111.77 entitled "Settlement of disputes in collective bargaining units composed of law enforcement personnel and firefighters" The Association argues the Wisconsin Legislature has drawn a clear distinction between the factors that arbitrators are to use in deciding cases involving law enforcement personnel (and firefighters) and the factors to be used in deciding cases involving non-sworn bargaining units.

The Association argues that since the parties in this matter stipulated to the comparable communities to be used and neither party attempted to compare the Sheboygan County deputies with employees in private employment, the comparison of Sheboygan County's deputies should be limited to the law enforcement personnel in the stipulated communities. The Association concedes that the County did not stipulate to the Association's nomination of the City of Sheboygan Police Department as a comparable, just as the Association did not stipulate to utilizing the County's non-sworn internal units as comparables.

However, the Association points out that the City of Sheboygan police bargaining unit is a law enforcement unit as are the deputies, and thus subject to the same arbitration factors of Sec. 111.77 as the Sheboygan County deputies. Therefore, if comparisons with the County's other internal bargaining units and the City are to be considered by the arbitrator, the Association maintains a comparison with the City of Sheboygan's police unit should have greater weight than comparison with the non-sworn internal bargaining units of the Employer.

The Association does not know and offers no explanation as to whether the Employer's reliance on Sec. 111.70 was a simple error or a tactical ploy. The Association summarizes the facts it believes unchanged by any of the Employer's statements: Sheboygan County deputies are at or near the bottom in many areas, including wages; the percentage increase among the comparables for 2009 is 3.33%; the cost of the Employer's offer is 2.95%; the Association offer has a smaller budget effect of 2.5%, but provides a much needed lift that is missing in the Employer's 2009 offer. For 2010, the average increase among the comparables is 3%; the Employer's offer provides a 2.05% increase; the Association's offer provides a 3% lift by means

of a 1% - 2% split, for a cost of 2%.

The Association finds the Employer's argument that finds lift more important than cost to be duplicitous, pointing to the Employer's initial brief and the Employer's continued complaint about cost of the Association's offer and its potential effect of the County budget. The Association finds the Employer's concern over cost to be hollow, reiterating that the fiscal difference between the two offers over the two-year period is only \$20,000, a point the Association made in its initial brief. The Association again notes the Employer's statement that it has reduced its tax levy for the past two years, has more than \$10 million in reserve, and budgeted \$200,000 as a contingency fund for fiscal 2009.

The Association disputes the Employer's contention that the settlements in the comparables would not have been reached in today's economy. In any event, the Association argues, the facts compel acknowledgment that the settlements reached by the comparables are the wage rates that are and will be in effect for them. The only question is how far these comparable wage rates will continue to lead the wage rates of the Sheboygan deputies. If the County's offer is selected, at the point the economy recovers these deputies will be dreadfully behind their peers in the comparables.

In a final summary, the Association asserts the arbitrator should select its Final Offer because: 1) it most closely resembles what the parties should have agreed to based on the relative ranking of the deputies with the comparables; 2) the pattern of settlements among the comparables strongly supports the adoption of the Association's Final Offer; 3) when the settlement pattern of the comparables is merged with the CPI as a measure of Cost of Living, the Association's offer is preferred; 4) the County's Final Offer increases the wage disparity between the Sheboygan County deputies and the comparables, while the Association's Final Offer merely slows the increasing differential; 5) the overall compensation of the Sheboygan County deputies is not superior to that enjoyed by their colleagues in the comparables; 6) the Employer is not claiming inability to pay, but demonstrates an unwillingness to pay. In fact, the Association asserts the County has abundant resources to meet the Association's Final Offer.

DISCUSSION

Three housekeeping matters require attention before embarking on a discussion of the merits of the competing proposals: 1) the applicable factors the arbitrator is statutorily directed to follow in reaching a decision; 2) whether to consider County's non-protective service employee units as "internal comparables"; and 3) whether to consider the City of Sheboygan's police department as a "secondary external" comparable.

I turn first to the statutory issue that has arisen between the parties.

Arbitration Criteria: Wis. Stats. 111.70(4)(cm) or 111.77(6)?

Anomalous is one way to describe the disagreement between the parties as to the appropriate statutory criteria to guide the arbitrator in this case, for at this stage of a public sector interest arbitration proceeding the parties involved usually have been able to reach agreement at least as to which statutory directives should be applied.

In this case, however, the County proposes the arbitrator use the criteria contained in Wis. 111.70(4)(cm). Contrary to the County's view, the Association vigorously contends the appropriate statutory criteria to be utilized by the arbitrator are found in Wis. Stats. 111.77(6). The statutes respectively proposed by each party are printed in their entirety, above. The difference between them is significant.

This is principally due to the fact that Wis. Stats. 111.70(4)(cm) includes two factors, Factors 7 and 7g, not found in Wis. Stats. 111.77(6).⁸ Factor 7 directs the arbitrator to give the greatest weight to state laws or directives that place limitations on municipal expenditures or revenue collections. Factor 7g directs the arbitrator to give "greater weight" to economic conditions in the jurisdiction of the municipality than any of the (other) factors specified in subd. 7r.

It is a fundamental rule of statutory construction that the legislative intent is best found in the actual words of the statute. In this case, the words of Wis. Stats. 111.77 are unmistakably clear, and selection of the correct statutory section in this matter is not difficult. The County's preference for Sec. 111.70(4)(cm) is understandable, but simply in error, for Wis. Stats. 111.77 is explicit in its direction that Sec. 111.77(6) is the appropriate criteria to be applied by the arbitrator.

Application of Wis. Stats. 111.77 to the bargaining unit involved in this matter is first evident in the section's title, which reads: "**Settlement of disputes in collective bargaining units composed of law enforcement personnel and firefighters.**" The first sentence following this title nails down any possible ambiguity: "In fire departments and city *and county law enforcement agencies* municipal employers and employees have the duty to bargain collectively in good faith, to refrain from strikes or lockouts *and to comply with the procedures set forth below.*" (Emphasis supplied)

Quite obviously, Sec. 111.77(6) is one of the "procedures set forth below." Just as obvious is the fact that the Sheboygan County Law Enforcement Association consists of "county law enforcement personnel." It is equally clear that Sheboygan County is the "municipal employer" referenced in the opening sentence of Sec. 111.77. Thus it follows that the provisions set forth in Sec. 111.77 govern this procedure.

If some other good faith interpretation can be logically reached, the County would have been well advised to explain it to the arbitrator. But the arbitrator is required to apply the law as it is written and pertains to the matter in dispute, not some alternate version that one of the parties finds more useful or wishes were applicable.

⁸ The two versions also show minor variations of wording and a rearrangement of the "comparability" factors that do not impact the issue of which version applies to the law enforcement unit involved in this proceeding.

Non-Protective Occupation Participant Units as Internal Comparables

The parties have stipulated to a nine-member panel of external comparables consisting of the following counties: Brown, Calumet, Dodge, Fond du Lac, Manitowoc, Outagamie, Ozaukee, Washington and Winnebago. However, the Association has declined to stipulate to comparing the Sheboygan deputies to other internal bargaining units or non-represented employees of the County on the grounds that only the deputies are protective service (occupation) employees⁹ (i.e., law enforcement personnel or firefighters), and the County's other internal unit employees do not perform services similar to those provided by the deputies. Since Sec. 111.77(6)(d) directs a comparison of protective service units under this statute with "other employees performing similar services," the Association complains that using non-protective service employees as internal comparables does not comply with this statutory directive.

I find, however, the Association's apparent objection to using the County's other internal bargaining units as comparables to the deputies' unit goes to weight, not admissibility.

For subsection 111.77(6) also directs comparisons be made between the protective occupation participants it covers "and other employees generally" – language that seems broad enough on its face to compare both non-represented employees and internal non-protective service employee units with protective service units. In making this comparison, however, the arbitrator is expected to exercise reasonable, discretionary judgment as to the appropriate weight to be accorded any comparisons, including employment duties, conditions and requirements of employment, and consideration of exposure to risks to personal health or safety to which employees in non-protective service units may not be normally exposed.

Adding City of Sheboygan P.D. as a Secondary Comparable

The Association has proposed adding the City of Sheboygan police department as a secondary comparable. The Association argues that the advantage the City has as a comparable over the County's internal bargaining units is that the City of Sheboygan's police bargaining unit consists of law enforcement personnel and its contract with the City was obtained under the statutory aegis of Sec. 111.77.

The County argues against the addition, contending, "there is no sufficient need to deviate from the well-established list of nine county comparables."¹⁰

In a year 2000 interest arbitration involving these same parties, the parties stipulated to the same nine-county panel of external comparables.¹¹ Their current stipulation names the same

⁹ Wis. Stats. 40.02(48)(am) specifically includes fire fighters, police officers and deputy sheriffs in the general category of "protective occupation participants" which represents a legislative determination that members of this category have duties that require frequent exposure to a high degree of danger or peril and require a high degree of physical conditioning. (See Wis. Stats. 40.02(48)(a).

¹⁰ County's Initial Brief at p. 14.

¹¹ *Sheboygan County and Wisconsin Professional Police Assn.*, Dec. No 29900-A (Schiavoni, 2000). In this case, neither party suggested any changes or additions as to the array of comparables.

nine-county panel. However, the Association suggests that the City of Sheboygan be added as a “secondary comparable” in addition to the nine-county panel. The last time an effort to expand the external comparables beyond the nine county panel occurred in 1996, when Arbitrator Dichter denied the Association’s request to add Kenosha County as a primary external comparable, finding a lack of geographic proximity to be significant.¹²

Geographic proximity is not a problem with respect to the City of Sheboygan. In a sense, the City is the heart of the County and serves as the county seat. With this intimate, indeed conjoined, geographic proximity, the City begins to assume the shape of a possibly useful hybrid, geographically far closer to the County than any of the surrounding nine-county externals – yet as a separate municipal employer, obviously not an internal comparable.

By itself, the geographic overlay of the City on a Sheboygan County map is an insufficient basis for using the City as a secondary comparable. But other similarities between the two communities also suggest an appropriate comparability of the City with the County. Similarities such as population, proximity, mean income, budget, number of employees and total wage and fringe benefits are typically considered by arbitrators in determining appropriate external comparables.¹³ I consider some of them now.

According to its website, Sheboygan County has a reported 2000 census population of 112,640. The City reports a year 2000 census population of 50,792. Subtracting the City’s population from that of the County leaves the County with 61,848 residents (as of year 2000). Thus, the respective populations served by each unit appear reasonably similar in size.

The County deputy sheriff’s bargaining unit consists of 55 law enforcement personnel. The size of the City of Sheboygan’s police union is not directly reported on the Department’s website, but scrutiny of the Department’s Table of Organization suggests a bargaining unit of somewhere between 50 and 60 officers.¹⁴ No information was supplied that provides a basis for comparison of the mean income of City and County residents or the size of the respective units’ budgets. However, based on information provided by Sheboygan County, it appears the County and its county seat city of Sheboygan also share the same reduced economic conditions.

Wage and benefit levels reported by the Association show the County deputies trailing their professional colleagues on the City’s police force in some areas, only somewhat behind in others, and equal or almost equal in still others (although 24 deputies hired before 1998 appear to do better in longevity pay than their professional colleagues in the City and considerably better than their 31 intra-department colleagues hired after 1/1/98).¹⁵ Both the City and County law enforcement units are represented, recognized bargaining units and have collective bargaining agreements with their respective employers. Although the wages and benefits provided by these agreements are not equal, neither are they grossly disproportionate to either group and do reflect similarities in certain areas.

¹² *Wisconsin Professional Police Assn., and Sheboygan County (Sheriff’s Dept.)*, Dec. No 48476 (Dichter, 1996)

¹³ *Supra.*

¹⁴ The current collective bargaining agreement between the City of Sheboygan and the Sheboygan Professional Police Association indicates the bargaining unit consists of two classifications: detective and police officer.

¹⁵ That number will continue to diminish and finally disappear as these veteran officers begin to retire.

Finally, using the City as at least a secondary comparable would enable a comparison to be made between two geographically conjoined units whose members perform similar law enforcement services. To a limited extent, adding the City even as a secondary comparable would fill the need for a “close-to-home” comparable whose employees perform services similar to those of the Sheboygan County deputies.

Given the geographic intimacy of the two law enforcement groups, the apparent similarity of their respective sizes, the comparable sizes of the respective populations served by each unit, the similar, traditional law enforcement services performed by each, the employment of each group by a municipal government, and the representation of each by a labor organization that has negotiated collective bargaining agreements in each jurisdiction, may or may not be sufficient for the City to be added to the panel of *primary* external comparables for law enforcement personnel.

In my opinion, however, the data does provide a sufficient basis to add the City of Sheboygan at least as a useful *secondary* comparable in this dispute, particularly in the absence of any actual internal County comparable that performs protective occupation services.

The primary nine-county panel of external comparables will, of course, remain as stipulated by the parties.

The Factors: Wis. Stats 111.77(6) (a) – (h)

Factor (a) looks to the authority of the employer. Neither party believes this factor has any significance in this dispute.

Factor (b) inquires as to stipulations of the parties. At hearing the parties stipulated that the respective final offers of the parties are identical. The parties also reached an earlier stipulation that the nine-county panel of external comparables used by the parties in previous interest arbitrations be included as external comparables in this matter. However, the Association declined to stipulate to the use of the County’s internal comparables, and the County declined to stipulate to adding the City of Sheboygan as a secondary comparable. These issues have been addressed by the arbitrator in an earlier section.

Factor (c) directs the arbitrator to consider and give weight to the interests and welfare of the public and the financial ability of the unit of government to meet these costs.

The County flatly denies that “inability to pay” is one of the statutory factors, alleging the concept comes from private sector labor law under which an arbitrator determines whether the wages requested can be supported without bankrupting the company or causing it to lose too much in sales to survive. “Such concerns,” says the County, “are not relevant in the public sector.” “Inability to pay” has been replaced by “local economic conditions,” according to the County.¹⁶

¹⁶ County’s Reply Brief at p. 6.

Notwithstanding the County's denial, the plain words of Factor (c) do exist. Moreover, in this arbitrator's view, bankruptcy concerns are as relevant to a public sector unit of government as to the private sector company. Public entity bankruptcy generally results in the affected unit of government going into receivership. It is a major disaster for the public, a disaster that Factor (c) is designed to forestall by requiring the arbitrator to determine whether the unit of government has the ability to pay the costs that either final offer would engender, a determination that may require arbitral reference to applicable state expenditure and revenue limitations when "ability to pay" is in issue.

Neither have local economic concerns replaced this factor, in either Sec. 111.77 or the County's preferred Sec. 111.70(4)(cm).¹⁷ Obviously, there is a connection. If local economic conditions result in a substantial reduction of property tax revenue the ability of the local governmental authority to cover its necessary costs would be obviously impaired. This, of course, would in turn create immense difficulties to the governmental unit within that taxing district that could ultimately even include bankruptcy.

In this case, the County continues to point to the distressed economic condition and high unemployment in the area. Significantly, however, although the County does list anticipated expenditure increases and revenue decreases, at the arbitration hearing on this matter, the County specifically disclaimed any intention of making an "inability to pay" argument, and acknowledged having ample funds in the bank and a \$200,000 contingency or reserve fund in its 2009 budget. Neither has the County rebutted or denied the Association's "worst case" calculation that over the two-year term of the successor agreement, the respective final offers of the parties were only \$20,000 apart.

At the same time, the Association's wage proposal seems to indicate an awareness of and sensitivity to the County's reduced revenue expectations or to the current rate of County unemployment. Notwithstanding the Association's belief that Sheboygan County deputies are lagging behind many of their comparable professional colleagues in both wages and benefits the Association constructed an offer that actually had a lesser immediate 2009 cost impact (2.5%) on the County budget than did the County's own wage offer increase (2.95%). With a similar approach to 2010, the Association's wage proposal cannot be fairly described as "catch-up;" it does, however, allow the deputies to maintain their *status quo* ranking without the greater wage slippage that would occur under the County's proposal.

In effect, by splitting its wage increase proposals into four increments over the two-year contract period, the Association defers the actual payment of portions of its proposed wage increases by six months, in both 2009 and 2010. It is, of course, in 2010 and thereafter that the wage "lifts" built into the Association's proposal will have to be paid and have a greater cost impact on the county budget than would occur under the County's offer, but the Association's forbearance provides the County with a longer period of economic convalescence without undue

¹⁷ The identical factor also appears in the County's preferred statutory factors in Sec. 111.70(4)(cm). It is true that in Sec. 111.70(4)(cm), Factor 7r. (local economic conditions) are to be given "greater weight" than Factor 7r.c., but has not replaced it.

penalty to the deputies. Based on the entire record, it seems clear the County does not lack the ability to pay the Association's proposal.

Politically expedient natterings for wage freezes or reductions may serve political needs, in some cases. They do not necessarily reflect, much less best serve, the interests and welfare of a public that continues to demand and require continued dedicated, competent, and courageous protection from its law enforcement officers, particularly in distressed economic times. Neither do they acknowledge the direct relationship between equitable, competitive and reasonable wage policies and the maintenance of high employee morale and motivation.

Notwithstanding the County's opinion as to public resentment of public sector employees, in this case thoughtful, cost conscious County residents, mindful of both their continued need for the protection their deputies provide and the inferior wage rates they are paid in comparison to their surrounding professional colleagues, may actually regard the Association's offer as best serving the interests and welfare of the public. Some might even reflect that if the deputies drop further behind their external comparables, in the end, the County will have an even greater amount of ground to make up to make in future years.

Finally, I am not insensitive to the distressed economic situation manifested in the area by near record unemployment. But in the absence of evidence to the contrary, it seems clear the County has the ability to meet the costs of either final offer. The County's prediction of public resentment following any wage increase to law enforcement personnel is as subjective as speculating on public appreciation of their deputies, but given the County's admitted financial ability to cover the costs of the Association's offer, the relative restraint of the Association's wage proposals, and the presumably enhanced employee morale and motivation the Association's offer would create, Factor (c) would appear to support the Association's offer.

Factor (d) requires the arbitrator to consider and give weight to a comparison of wages, hours and conditions of employment of the employees involved in the proceeding with the wages, hours and conditions of employment of other employees performing similar services and other employees generally 1) in public employment in comparable communities and 2) in private employment in comparable communities.

Public Employment in Comparable Communities

The Association contends its offer is not intended as a "catch-up" proposal, but only a means of stopping a continued erosion of Sheboygan County deputy sheriffs' wages as evidenced by the external comparables.

The County counters by noting that as of 1/1/08, the average starting rate of pay for the nine-county panel of comparables plus the Sheboygan County deputies comes to \$20.69, putting Sheboygan County \$0.42 *above* the starting pay average for the comparables, a fifth place rank

within the comparables.¹⁸ Computing the maximum pay rate by adding longevity pay (“where applicable”) to the maximum base rate of \$24.53, the County comes up with \$27.60, which, it calculates, places the Sheboygan deputy sheriffs \$1.16 *above* the average wage rate for all nine county comparables plus Sheboygan County itself, and awards them third place out of the 10.¹⁹

The Association’s figures for the nine county comparables plus the Sheboygan County deputies vary considerably from those reported by the County.²⁰ Some variation may be explained by the absence of starting rates in the Association’s Table for either Calumet or Ozaukee Counties, both of which are involved in interest arbitration proceedings of their own.²¹ The Association calculates an average starting deputy pay rate for the nine county comparables of \$21.10 or a penny below the Sheboygan County’s starting pay rate for 1/1/08 of \$21.11.²²

Making sense out of the *maximum* wage average of the nine comparable counties reported by the parties presents a greater challenge. The Association’s comparison includes only base wages of \$24.53, without adding longevity maximums. But the County’s comparison includes the addition of maximum longevity payments to the base maximum wage “where applicable,” from which it concludes that the maximum pay for Sheboygan County deputies is \$27.60/hour.

The County does not identify the county comparables that it credited with longevity pay, although this does not present a major problem. Actually, four of the external comparables appear to have some form of it.²³ The real difficulty in making meaningful comparisons of pay maximums that attempt to include longevity pay is two-fold: 1) there is no longevity consistency among the comparable counties that have longevity systems. Some are based on an hourly amount, others on a percentage of base pay,²⁴ and the number of years required to receive longevity pay considerably varies, as do the amounts paid; 2) the two-tiered longevity arrangement provided in the Sheboygan deputies’ contract with Sheboygan County creates a substantial disparity with respect to longevity pay within the subject bargaining unit itself, in which 24 deputies hired prior to 1/1/98 are covered by a substantially more generous longevity pay system than the 31 deputies hired after that date.²⁵

Thus, the County is only half-right – actually slightly less than half-right – in claiming its longevity pay raises the deputies’ maximum pay level to \$27.60/hour. The County’s own exhibit shows that with the exception of five detectives who receive a higher base rate than deputies, of the 55 members of the deputies’ bargaining unit only two are currently receiving the maximum reported by the County,²⁶ and only an ever declining minority consisting of the 22 remaining

¹⁸ Ex. C-52.

¹⁹ Ex. C-52.

²⁰ Some differences may be attributed to the Association lists figures in effect on 12/31 of the year listed. The County’s figures are those in effect on 1/1/08. Thus, units receiving mid-year wage improvements would be shown on the Association’s exhibit, but not on the County’s.

²¹ The County inserted rates for Calumet and Ozaukee Counties based on final offers of the parties in those cases.

²² Ex. A-7(a).

²³ Association Ex. 7(d). The City of Sheboygan also offers longevity pay.

²⁴ Ex. A-4.

²⁵ Ex. C-5

²⁶ Ex. C-52. Under the current CBA between these parties, the \$27.60 represents base pay of \$24.53 plus longevity

deputies hired *before* 1/1/98 will be eligible to receive this valuable longevity benefit once they complete the requisite 25-years of service.²⁷

Put another way, attempting to merge longevity pay in any comparison analysis leaves *slightly more* than half the bargaining unit with a *potential* maximum level considerably *less* than \$27.60/hour. Given this mixed result for even the members of the Sheboygan deputies' own unit as well as the substantial variations in longevity pay within the comparable counties, I regard the Association's comparison of only maximum base wage rates as offering a more accurate picture of maximum wage potential than attempting to factor a generous longevity pay for which more than 50% of the current bargaining unit members will never become eligible (a percentage that will continue to increase as the deputies hired prior to 1/1/98 continue to retire).

It does not appear the Association's offer would even provide any immediate (or even a short range) catch-up to the midpoint of the comparables. Structured with split wage increases, the Association's offer focuses on providing what appears to be a needed lift to maintain the Sheboygan deputies' current wage ranking without losing further ground. The split increases have the additional advantage of a lesser immediate fiscal impact on the County's 2009 budget and only a slightly higher cost in 2010, without abandoning the deputies to a further downward wage drift. In addition, the pattern of external settlements shows an average of wage increases of 3.33% for 2009 and 3.00 % for 2010. The Association's offer is far closer to these averages than the County's offer.

For these reasons, I conclude external county comparables clearly favor the Association's wage proposal as more reasonable than that offered by the County.

I have included the City of Sheboygan as a secondary comparable. As the Association points out, a wage disparity between the deputies and the City police officers has grown from \$1.03 an hour in 2005 to \$1.13 an hour in 2008. Under the County's offer, the wage disparity would grow to \$1.18 an hour; under the Association's offer, the disparity would be reduced to \$0.92 an hour. I note that the City's longevity provisions are roughly equal only to those provided by the County to deputies hired *after* 1/1/98.

I also note a *Sheboygan Press* August 2009 story (Ex. C-20) relating that the City of Sheboygan Common Council has made 2009 and 2010 city budget cuts totaling \$1.4 million. Although the Council apparently will be considering future job cuts, the story did not indicate that the Council is contemplating job layoffs or wage reductions for the city's police department.

pay of 12.5% in recognition of at least 25 years of service. The maximum base rate for deputies is \$24.53 effective 1/1/08. Detectives receive a maximum base rate of \$26.15. For employees hired *prior* to 1/1/98, longevity is figured in 5-year increments, up to a maximum of 25 years. Longevity payments start at 5 years of service with a 2.5% of base add-on, which increases in increments of 2.5% every 5 years up to a 12.5% maximum.

²⁷ Under the two-tier longevity system now covering the deputies, the largest financial longevity recognitions that employees hired *after* 1/1/98 could receive is \$20/month following 15 years of continuous service (\$240 annually, 11 ½ cents/hour), \$30/month after 10 year (\$360 annually, 17 cents/hour), and \$40/month (\$480 annually, 23 cents/hour). When converted to an hourly amount and added to the base maximum wage of \$24.53/hour, the results do not come close to the hourly maximum of amount of \$27.60 the County reports for this group of employees hired after 1/1/98.

The County also argues that the nine county comparables are more favorable to the represented employees because their respective labor contracts were negotiated in an easier economic climate. The County does not believe these contracts would be settled at similar levels in today's economy, but offers no evidence in support of its opinion, at least as to law enforcement personnel.

In any event, speculation such as this is pointless because it does not overcome the plain comparison directives of Sec. 111.77(6)(d). That section requires the arbitrator to make comparisons of the parties' respective offers in the dispute before him or her with comparable communities as to the wages and benefits that *actually* exist, not the wages and benefit settlements that might have been reached had economic circumstances been different. In effect, the County is asking the arbitrator to engage in a form of guesswork as to what level the comparables *would have settled* had their crystal balls granted perfect economic foresight, which this arbitrator declines to do.

Private Employment in Comparable Communities

Neither party cites any wage rates for employees performing similar services in the private sector.

The County continues to emphasize the disconcerting unemployment rates in both Sheboygan County and its county seat, the City of Sheboygan. The Association points out that that unemployment rates are similarly high or higher in the comparable counties as well as an apparently viable prospect of a major airport development at the County airport. Both parties appear to agree the economic distress is not merely a local or even regional phenomenon that is limited to Sheboygan County and its comparables, but nationwide in scope.

In summary, the evidence as to the private employment perspective is mixed, reflecting continued pessimism from the County, and a guarded optimism from the Association. For the most part, the County appears to see no end to the current dismal economic situation.²⁸

To the extent that the respective private employment perspectives offered by the parties may favor either offer, I find the offers are equally benefited and accord each offer equal weight.

Internal Comparables

The County emphasizes that five of its seven represented collective bargaining units (entitled to interest arbitration) have agreed to settlements to successor agreements for essentially the same wage package offered to the deputies. The County accurately observes that if the Association's offer were to be selected the law enforcement employees would receive more in wage increases during the term of the contract than any other group or bargaining unit of

²⁸ One of the County exhibits offered a bit more heartening view. Ex. C-8 is a copy of the June issue of *Wisconsin Economic Outlook*, a journal published by the Wisconsin Department of Revenue. In a page 1 "Executive Summary," the journal offer two "good news" predictions: 1) the national recession remains, but the bottom is in sight; 2) Wisconsin employment and personal income expected to start recovery in 2010.

County employees.

While each of these internal units appears to provide essential services to the people of Sheboygan County, intending no derogation of their obvious value to the County, I note none are protective occupation participants (e.g., police, deputy sheriffs, firefighters).

The County's desire to provide a uniform wage increase to all its employees is understandable. From a bookkeeping standpoint it is, of course, far simpler. Moreover, in some cases, hard feelings may be avoided when all County employees are treated alike, and in many instances arbitrators find such patterns persuasive. As Arbitrator Milo Flaten observed a number of years ago:

“It is important that municipalities, especially the size of the municipality at hand, should attempt to have consistency and equity in the treatment of its employees.”²⁹

That goal is no less important today. But consistency with respect to treatment of internal units is not always equitable. It basically requires a “one size fits all” approach that appears to assume all employees perform similar tasks, require similar training and share similar risks. This, of course is not always an accurate assumption, and is not particularly helpful in a case where, as here, the deputies are the only “protective occupation participants” employed by the County, and perform substantially different tasks, require different training, and frequently encounter dangers to their personal safety not normally encountered by more general service employees.

Undoubtedly, this is what led Arbitrator George Fleischli to declare twenty years ago that law enforcement personnel may be considered independently from other internal bargaining unit comparisons.³⁰ Other arbitrators have reached the same conclusion. Arbitrator Raymond McAlpin explained:

“The City relies to a great extent on its internal pattern. This arbitrator has found in a number of arbitrations that internal comparables generally are not directly comparable to police units with the possible exception of firefighters and, in this case, police supervisors. These units are involved in public safety and are often put at great personal risk in carrying out their assigned duties.”³¹

As to these types of situations, Arbitrator Sherwood Malamud suggested:

“Arbitrators may refrain from a settlement pattern pegged to a certain percentage increase where it is demonstrated by compelling evidence that the wage rate of a particular classification(s) of employees are substantially above or below the rates paid by comparable employers to

²⁹ *Wauwatosa Professional Firefighters Association, Local 1923, and the City of Wauwatosa*, Dec. No 27869-A (Flaten, 1994).

³⁰ *Portage County (Sheriff's Department)*, Dec. No. 41434, MIA-1366 (Fleischli, 9/89)

³¹ *City of West Bend*, MIA 2598, Decision No, 31003-A (McAlpin, 2/05)

employees in similar classifications. The wage levels of a particular group or classification of employees may be analyzed to determine the relationship between the market wage rate for the particular classifications of employees which are the subject of the interest arbitration proceeding.³²

This is not to say internal units consisting of general service, as opposed to protective service, employees should be discontinued as comparables with the deputies' unit. The question is rather *how much weight* should be assigned to internal comparables, where, as here, there exist dissimilarities of the respective positions' responsibilities, training, physical requirements and hazards.³³

In this matter, the Employer has demonstrated a credible, consistent pattern of 2009-2010 wage increases with five of its internal bargaining units and is essentially attempting to impose the same pattern on the deputies. The County's effort to obtain a consistent pattern of wage increases with all of its bargaining units is understandable.

Yet none of the members of five settled units are engaged in protective occupation participation, none are subject to the same Sec. 111.77(6) arbitration criteria as the Sheboygan deputies in this matter, and the record is silent as to how their settlements ranked with their comparables. Considering the considerable dissimilarity of employment requirements, duties and risks to personal safety assumed by and expected of the deputies, as well as the erosive effect the County's offer would have not only on its deputies' wages, but presumably their morale vis-à-vis the external comparables, I do not find the five internal comparables cited by the County determinative on the issue of wages for the deputies. In the end, whatever presumptive weight these internal comparables may have is overcome by the weight I accord to the external comparables, and serves to tip the support of Factor (d) in favor of the Association's offer.

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

The parties agree, and I concur, that the appropriate basis for comparing CPI changes with contract proposals is the prior one-year experience.³⁴ In this case, the successor agreement will commence on 1/1/09, so the calendar year prior to that on which scrutiny should be focused is 2008.

Both parties submit the Department of Labor, Bureau of Labor Statistics Consumer Price Index – All Urban Consumers (CPI-U) for calendar 2008. The index consists of a table that delivers month-to-month consumer price listings for each year beginning with calendar 2000. The listings are stretched horizontally across the page. Following the December listings are

³² *Village of Greendale*, Dec. No. 29632-A (Malamud, 2/00), citing *City of Green Bay (Water Utility)*, Dec. No. 28070-A (Malamud, 11/94).

³³ *City of Wauwatosa & Wauwatosa Professional Firefighters, Local 1923, IAFF*, No. 68532, MIA 2859 (Hempe, 8/05).

³⁴ See *Buffalo County*, Decision No. 31484-B (Hempe, 5/06); *City of Madison (Police)*, Dec. No. 28826-A (Malamud, 5/97); *City of Racine (Wastewater)*, Dec. No. 24266-A (Mueller, 1/88); *Walworth County (Sheriff's Dept.)*, Dec. No. 19811-A (Zeidler, 2/83).

three separate columns, the first with the heading “Annual,” the second with the heading “HALF 1, and the third with the heading “HALF 2.” The reader is left on his or her own to compute the actual percentage of increase or decrease in the cost of living the data indicates.

The County compares the Index figures for December 2007 (200.227) and 2008 (199.582), concluding, “this represents a decrease in the cost of living of 0.32% for the entire year.”³⁵ The County’s alleged decrease is apparently obtained by dividing the difference between the 2007 and 2008 December figures (0.645) by the higher December 2007 figure of 200.227. This results in a rounded off quotient of 0.0032 or 0.32%.

The Association uses the same CPI-U for calendar 2008 and concludes that, contrary to the County’s claim of a decrease in the cost of living for the entire calendar year 2008, there was a 3.66% increase. The apparent basis for the Association’s result is obtained by dividing the difference between “Annual” figure listed for 2007 (198.123) with the 2008 “Annual” figure immediately underneath the 2007 figure listed in the same column (205.382). The difference is 7.259. When that is divided by the 2007 “Annual” figure, the quotient is 0.0366, which represents a 3.66 cost of living annual increase in the cost of living of the entire calendar year of 2008.

The result the County obtains demonstrates *only* that in the month of December 2008 the cost of living was slightly below the cost of living in the previous December. It is a comparison between only those two months, and cannot be validly interpreted as including the months in-between those two separate Decembers (which included significant price spikes in the March through September months in 2008).

The County believes the Consumer Price Index – Urban Wage Earners and Clerical Workers (CPI-W) is a more appropriate table, and claims the results are similar to the ones it obtained from the CPI-U data. But the County appears to have used the same method for interpreting the CPI-W as it did in interpreting the CPI-U. Using the County’s method that compares only the two Decembers (2007 and 2008) with each other instead the January to December entire year data shown in the “Annual” column also gives a result showing the December 2008 cost of living was less than the December 2007 cost of living, not the 2008 January to December change. The latter change shows a cost of living *increase* of 3.91%.

The Association did not submit any calculations from the CPI-W.

I am not an economist. However, based on prior experience in interpreting data from the Bureau of Labor Statistics I believe the Association’s method of interpreting the CPI data is correct. The Association’s calculations indicate a 3.66% increase in the 2008 cost of living increase for the entire calendar year 2008 (January 1, 2008 through December 31, 2008) is accurate, and thus discard the decrease the County reports. A phone call to the on-duty employee at the Bureau in Washington by either party can confirm this.

On this basis I find Factor (e) supports the Association’s wage offer.

³⁵ County Initial Brief at p. 17.

Factor (f) focuses on 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.

The County asserts its overall compensation and benefit package is generous when compared to the comparables, citing vacation schedules, paid holidays, and unused sick leave payout. The Association contends the Sheboygan County deputy benefits fit in the mainstream of all the county comparables.

Apart from wage rates, examination of the comparables in this area reveals a picture of neither past County improvident generosity nor insensitivity to legitimate employee needs (presumably shaped, in part, by the other county comparables). In the area of health insurance, for instance, the range of comparable county employer premium contributions runs from 85 to an apparent 100%: Sheboygan County pays 90%. A comparison of paid holidays (including “personal days” and “floating holidays”) shows a similar midstream result: the range of paid holidays starts with a low of 9 and moves to a high of 13, with Sheboygan County giving 11 ½. Only one county offers 13 paid holidays, one offers 12, and two offer 11.

Sheboygan County continues to follow a similar midstream course with respect to clothing allowances and sick leave benefits. The County justifiably claims leadership generosity among the comparables for allowing a 100% payout for accrued, unused sick upon termination of employment. The Association acknowledges the County is at or near the top of the comparable counties to with respect to longevity, but only as to deputies hired before 1/1/98.

Sheboygan County also claims to be a leader among the comparables as to vacation benefits, pointing to the 15 vacation days it allows 2-year employees and the 21 vacation days it grants to 8-year employees. Yet even in this area there exists an overall similarity, particularly as to maximum vacation days allowed.

Overall, the contract benefits provided by the County are neither outlandish nor penurious. In general they seem well within a median of the range shown by all the comparables. Certainly they do not signal any unusual or unusually high benefits that might otherwise justify a lower wage increase for the Sheboygan County deputies. On balance, Factor (f) provides the Association’s offer with a slight preference.

Factor (g) inquires whether there have been any changes in any of the foregoing circumstances during the pendency of the arbitration proceeding.

The Association offers none.

In its Initial Brief, the County asserts two changes in circumstances while this matter had been pending: 1) local economic conditions in the County have not improved, but in some respects have worsened; 2) a number of other bargaining units have reached voluntary

settlements with the County since the petition for arbitration in this matter was filed.³⁶

However, the County acknowledged sufficiently describing these circumstances, elsewhere in its brief.

I thus conclude there have been no significant changes of circumstances during the pendency of these proceedings, and Factor (g) does not affect either of the competing Final Offers.

Factor (h) directs the arbitrator to review and give weight to other factors 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

Neither party responds to this factor.

SUMMARY

Wis. Stats. 111.77(4)(b) requires me to select one Final Offer or the other, each in its respective entirety.

The Employer's misidentification of the correct arbitration criteria is a circumstance not usually encountered by arbitrators at this stage of interest arbitration proceedings. However, other than perhaps placing the Employer at a disadvantage by causing it to focus unduly on two inapplicable and arguably irrelevant arbitration factors contained in Wis. Stats. 111.70(4)(cm), the error played no role in the outcome herein. These factors, subd.7 and 7g, are at best statutorily peripheral to this matter, but neither are specifically statutorily mandated nor authorized for the arbitrator's consideration in labor disputes, where as here, the subject employee group consists of law enforcement personnel.

Thus, given my earlier determination that Sec. 111.77(6) contains the appropriate criteria for arbitral consideration, I do not attempt to assess the "greatest weight" and "greater weight" factors on which the County misplaces the greatest or greater weight of its argument. In the face of the clear, unambiguous words of Wis. Stats. 111.77, my consideration and application of the Sec. 111.70(4)(cm) "greatest" and "greater" weight factors urged by the County, could arguably – probably – constitute an action that would exceed my arbitral authority.

However, apart from the two "greatest" and "greater" weight factors that appear in 111.70(4)(cm) but not in Sec. 111.77(6), the two versions of criteria for the arbitrator are quite similar and I have credited the County arguments with respect to the Factors 7r.a. – j, as if they referenced their proper counterpart factors in Sec. 111.77(6)(a) – (h). Finally, I did consider County arguments that referenced evidence relating to the "greatest" and "greater" weight factors to the extent such arguments appeared directly or even indirectly material to any of the mandated factors Wis. Stats. 111.77 directs the arbitrator to weigh in cases involving subject

³⁶ County's Initial Brief at p. 20.

units of law enforcement personnel or firefighters.

County arguments included both a strong continued focus on local economic conditions and an effort to deflect the impact of the external comparables, to the extent possible. In the end, the external wage comparables and the relatively restrained Association response trumped even the currently distressed local economic conditions. Those conditions, while important, cannot be assumed to be permanent, at least at this point. In addition, perhaps due at least in part to past County fiscal prudence, a relationship between those conditions and the County's current "ability to pay" the additional two-year costs of the Association's offer was not apparent.

* * * *

ARBITRATION AWARD

Based on the evidence and testimony adduced at hearing, my consideration and assessment of the issues, the briefs and arguments of counsel, my weighing and application of criteria factors contained in Wis. Stats. 111.77(6) (a) – (h) and the entire record herein, I direct that the Association's Offer, together with all items to which previous tentative agreements have been reached by the parties as set forth in their respective offers, be included in the parties' successor 2009-2010 contract.

Dated this 19th day of November 2009.

A. Henry Hempe, Arbitrator