
In the Matter of the Interest Arbitration Proceeding Between

COLUMBIA COUNTY (SHERIFF'S DEPARTMENT)

And

**WISCONSIN PROFESSIONAL POLICE ASSOCIATION
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION
COLUMBIA COUNTY SHERIFF'S ASSOCIATION**

Case 290

No. 68614

~~MIA-3865~~ [MIA-2865]

Decision No. ~~3865-A~~ [32830-A]

Appearances:

Mr. Joseph Ruf III, Columbia County Corporation Counsel/Human Resources Director, 120 West Conant Street, P.O. Box 63, Portage, Wisconsin, appearing on behalf of the County.

Mr. Robert E. West, Consultant, Wisconsin Professional Police Association, 660 John Nolen Drive, Suite 300, Madison, Wisconsin, appearing on behalf of the Association.

ARBITRATION AWARD

This is a matter of final and binding interest arbitration pursuant to Section 111.77(6) of the Wisconsin Municipal Employment Relations Act for the purpose of resolving a collective bargaining impasse between Columbia County (Sheriff's Department), hereinafter referred to as the County, and the Columbia County Sheriff's Association, WPPA, LEER, hereinafter referred to as the Union. On January 30, 2009, the County filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, wherein it alleged an impasse existed between it and the Union. On August 7, 2009, the Commission certified the parties' final offers. On August 20, 2009 the Commission issued an Order appointing the undersigned, Edmond J. Bielarczyk, Jr., as the Arbitrator in the matter. Hearing on the matter was held in Portage, Wisconsin on October 22, 2009. Post hearing written

arguments were received by the Arbitrator by December 2, 2009.

FINAL OFFERS

In their respective final offers, hereby incorporated by reference into this decision, the parties disagreed on only the wage issue:

The County's Final Offer: 2009 - 1.0%
2010 - 1.0%

The Unions Final Offer: January 1, 2009: 2.0%; July 1, 2009: 1.0%
January 1, 2010: 2.0%; July 1, 2010: 1.0%

The Parties submitted several tentative agreements, attached hereto, but raised no arguments that the tentative agreements should be given any weight in rendering this Award.

STATUORY CRITERIA

(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 interest and welfare of the public and the financial ability of the unit of government to meet the costs.
- (d) Comparison of the wages, hours and conditions of employment of the municipal 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 following circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the following, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties, in the public

service or in the private service.

PARTY'S POSITIONS

The following is intended to be a brief general overview of the comprehensive briefs filed by the parties. The Arbitrator has reviewed their briefs and the cases cited therein in detail and the Arbitrator has given full consideration to the statute, evidence, testimony and arguments presented in rendering this Award.

EMPLOYER'S POSITION

The County contends the sole issue herein is the wages for 2009 and 2010. The County argues the positions of the County and the Union is clear. The Union continues to pursue a cumulative six percent (6%) wage increase for 2009-2010 collective bargaining agreement that was rejected by the County Board on April 21, 2009. The County argues it now faces unprecedented economic challenges and presents a one percent (1%) increase for 2009 and 2010, based in no small degree on the hope that the County will be able to afford the wage increase and maintain current staffing levels. The County also acknowledges that the parties have reached tentative agreements on other items and for the most part the parties are already following them.

The County avers there is no dispute concerning Factors A, B and F of Section 111.77(6). The County stresses Factor C is disputed and the central component of the County's argument in the instant matter. The County contends the Union's Final Offer costs more than the County can pay if the County hopes to sustain current service and staffing levels. The County contends the total estimated cost difference between the two Final Offers is \$72,527.00 with the County's offer costing \$47,841.00 and the Union's costing \$120,527.00. The County also argues the costs of overtime, a significant reality in any law enforcement agency, widens the cost gap between the County and the Union. The County argues the Mill Rate Freeze and Levy Limit are State limitations on the County tax levy. The County, while acknowledging that all Counties are subject to these limitations, argues that the County's history of fiscal restraint placed Columbia County at a greater disadvantage than Counties that started with a higher mill rate in 1992. The County points out personnel costs

constitute fifty-two percent (52%) of the County's budget and that Public Safety has the largest percentage of County positions (26.9%). The County asserts that while the 2009 and prior County budgets were austere, the 2010 budget can be characterized as grim. The County argues that the County's one percent (1%) wage increase and health insurance costs, when added together (County Ex. 31), amounts to a total increase in wages for all county employees and health insurance of \$967,000.00. The County avers this increase exceeds the maximum allowed levy increase of \$855,472.00. The County points out the 2010 budget has built in four (4) unpaid furlough days and the County capital outlay cuts, including replacing fewer of the Sheriff's squad cars. The County concludes it does not have the funds available in the 2010 budget to pay the Union's final offer.

Under Factor D, the County acknowledges the parties agree on the external comparables. The County points out County Ex. 15 list the comparables and settlements for 2009-2010. The County notes that while all eight (8) external comparables have settlements for 2009, only half have settlements for 2010. The County argues the changing economy has resulted in furloughs in Marquette County and that employees in Dane County have taken a five percent (5%) wage cut in 2009 with another three percent (3%) wage cut in 2010 in order for Dane County to remain financially solvent. The County concludes that given the financial environment of furloughs and wage cuts, the County's Final Offer of one percent (1%) in 2009 and one percent (1%) in 2010 is not out of place.

Under Factor E, the County argues the average consumer price index (CPI) for 2008 was 3.8% and was -0.6% for the first half of 2009. The County concludes the CPI favors the County's Final Offer. Under Factor G, the County argues the continuing downward spiral of municipal finances at all levels of government has not corrected itself.

Under Factor H, the County argues selection of the Final Offer will have an impact on other County employee groups. Pointing to County Ex. 14, the County argues it has made the same wage offer to all seven (7) County collective bargaining units. The County also stresses non-represented employees received a one percent (1%) wage increase in 2009, in 2010 will receive a one percent (1%) wage increase, have step increases frozen and have four (4) furlough days. The County also argues the City of Portage, the City of Madison and the State of Wisconsin have used wage freezes

and furloughs to balance budgets, maintain work forces and continue necessary services. The County also contends it took other economic factors in determining its Final Offer; the national unemployment rate of 9.8%, Wisconsin's 8.8% unemployment rate, and the 2009 Social Security Cost of Living adjustment freeze. The County also argues it was neither mean spirited or miserly when it rejected the 2009-2010 Tentative Agreement. The County argues County Board members voted against the Tentative Agreement because they believed their constituents would want them to vote against that type of increase at the current time, that the Union would probably arbitrate the matter and that they could lose in arbitration.

The County would have the Arbitrator select the County's Final Offer.

UNION'S POSITION

The Union contends the instant matter is simple and straightforward. The parties have stipulated to a narrow issue of wages and will not argue total package or total compensation. The parties have also agreed to the external comparables of Adams, Dane, Dodge, Green Lake, Jefferson, Marquette, Rock and Sauk counties. The Union points out that there are no internal comparables, and, that the Union's final offer mirrors the Tentative Agreement reached between the parties and approved by the Union's membership.

The Union argues that arbitrators have long considered the rejection of a tentative agreement as one of the best indicators of the bargain that would have been struck if face-to-face negotiations had been successful and points to numerous decisions in support of its position. In particular to *Village of Deforest*, Dec. No. 28784-A (3/17/97) wherein the arbitrator held:

“The reaching of a tentative agreement is evidence that the negotiators mutually viewed the tentative agreement as a reasonable compromise to their differences.”

And to *Mellen School District (Support Staff)*, Dec. No. 30408-A, (3/21/03) wherein the arbitrator held:

“Wisconsin's final offer interest arbitration process normally results in arbitral selection of the final offer closest to what the parties would have or should have agreed upon at the bargaining table, and since the final offer of the District is clearly closer to the parties' earlier tentative agreement than that of the Union, *the*

negotiations history criteria clearly and persuasively favors the position of the District in these proceedings.”

In support of its position the Union also points to Elkouri & Elkouri, *How Arbitration Works*, 6th ed, p. 1441:

“An examination of the wealth of evidence submitted in this matter in conjunction with the provisions of settlement worked out by the parties indicates the most satisfactory award the Board could render would be one in general agreement with those terms on which the parties were able at one time to substantially agree. Obviously, these terms are not what either party wanted. They represent compromise by both parties. However, since the general terms indicate a meeting of the minds, the Board considers that they hold the basis of a just award.” (Emphasis added)

The Union also contends the rationale for the County in voting against the Tentative Agreement was twofold. The Union argues this rationale is found in County Ex. 13 and the several newspaper articles presented by the parties. The Union avers there is no evidence the County Board was presented with comparable data or specific County budget data. The result was a decision to stand up to the Union and to demonstrate to the community that they appreciated the difficult economic times. The Union also argues that the County was aware it would be difficult to win in arbitration so the County decided to defer the responsibility of making a decision to the arbitrator to do the “dirty work”.

The Union asserts the County will attempt to defend its Final Offer with an argument involving the economy. The Union points out the County has not asserted an ability to pay problem. The Union points to several decisions, in particular *Juneau County* (no cite), *City of Oshkosh*, Dec. No. 32148-A, (2008) and *City of Menomonie*, Dec. No. 32631-A, arguing the County has not distinguished its economy from the comparables. The Union acknowledges that times are tough with extraordinary measures being taking by municipal employers to balance the books, with temporary measures such as layoffs and furloughs. However, the Union argues, they are not attempting to provide the same level of service at a reduced rate of pay that will impact the employees for the rest of their careers. The Union concludes such a result is unfair.

The Union contends the cost of living argument is generally an economic argument and argues the way to treat it is to determine how the comparables have handled it. The Union concludes that because there is no evidence to suggest that there is a unique characteristic in Columbia County that sets it apart from the comparables.

The Union acknowledges there are no internal settlements and therefore avers that the external comparables will take the dominant role. The Union notes all comparable external bargaining units are settled for 2009 and five (5) of the eight (8) are settled for 2010. The Union points out the average of the settlements is 2.98% and clearly supports selection of the Union's Final Offer. The Union also points out that over the last five years the Deputies have generally fallen slightly behind the average (Union Ex. 4). The Union argues that if the County's Final Offer is selected the Deputies would lose more ground than in any of the years noted while under the Association's Final Offer they would receive the average settlement. The Union also argues that a review of Union Exhibits 1 and 2 demonstrate the actual wage rates of employees would fall further behind under the County's Final Offer.

Turning to the statutory criteria the Union acknowledges there is dispute concerning Factor a, and b. Under Factor c, the welfare and interests of the public, the Union argues the interests and welfare of the public is always served when public safety has the best well trained officers. The Union asserts that a competitive wage rate is important and that equity is best served by the Union's Final Offer.

Under Factor d, the Union pointed out there are no internal settlements. The Union asserts Factor d, external comparables, the wage increase sought by the Union is well supported by the stipulated comparables. The Union also points out the County is "dead last" by a substantial amount.

The Union also asserts Factor e, the cost of living, is best determined by how the comparables have dealt with the cost of living. The Union avers that the comparables clearly support selection of the Union's Final Offer.

The Union asserts neither party has presented evidence concerning overall compensation, Factor f. and that the Union contends Factor g, does not apply.

Under Factor h, the Union argues the Tentative Agreement ratified by the Union and rejected by the County Board must be given considerable weight. The Tentative Agreement represented a compromise reached by the parties, is well within the comparables, and represents what the parties would negotiate on their own. The Union concludes Factor h clearly supports selection of the Union's Final Offer.

The Union would have the Arbitrator select the Union's Final Offer.

DISCUSSION

The record herein demonstrates that neither party raised arguments concerning the lawful authority of the County to implement either Final Offer. Thus, Factor a does not favor selection of either Final Offer. Nor did the parties argue that any weight should be given to the tentative agreements. Thus, Factor b does not favor selection of either Final Offer.

The County asserted in its brief that Factor c is the central component of the County's argument in the instant matter. The County does not claim it has an inability to pay the Union's Final Offer, but claimed the Union's Final Offer would have an impact on the County's hopes to maintain current staffing levels and sustain current services, which is in the best interest and welfare of the public. The record demonstrates all of the County's bargaining units have filed for interest arbitration and the County, in effect, argues the decision herein would have an impact on the decisions in the other cases. The County therefore raised costs impact arguments if it lost all of the cases. However, one settlement or one arbitral decision does not establish a pattern. The County's success or failure in the other cases will succeed or fail based upon the application of the statutory criteria pertinent to those cases, which is different than the statutory criteria herein. Further, while the Arbitrator acknowledges these are tough economic times, as the Union pointed out, these same problems are impacting the comparables agreed to by the parties. Herein, the County has presented no evidence that would distinguish Columbia County from the other comparables. All eight comparables are settled for 2009 and five of the eight are settled

for 2010. While the County presented evidence and arguments concerning the Mill Rate freeze and the Levy Limit, these problems are also faced by the County's comparables. The Arbitrator notes here that these limitations only impact forty percent (40%) of the County's budget. (County Ex. 30) and the County acknowledged at the hearing it has a surplus in its General Fund. Thus, the Union's claim that the County has an ability to pay but an unwillingness to pay has some merit. Nor did the County address the problem that under its Final Offer employees would fall behind the comparables in wage rates. As noted by the Union, the interest and welfare of public is also served by the ability of the County to recruit and retain qualified employees. Under the County's Final Offer, the employees would fall over four percent (4%) behind comparable employees and require the Union to raise catch-up arguments in future negotiations. The Arbitrator is aware of the tough economic times, but these same tough economic times are impacting the comparables. These counties had to weigh the same problems as Columbia County.

The Arbitrator notes here that the Union also raised arguments concerning the impact selection of the County's Final Offer would have on the morale of employees. There is no methodology to measure the impact on County employees morale if they received a lesser increase than the comparables received. The employees are aware of the tough economic times and that people have lost jobs and have been laid off. However, the Arbitrator concludes, based upon the above and foregoing, that it is not in the interests and welfare of the public for the County to fall behind the average of the comparables. Such a result would impact on the ability of the County to recruit and retain qualified employees. Therefore, the Arbitrator finds that factor c favors selection of the Union's Final Offer.

The parties have agreed upon the following County Sheriff's Departments as comparables (Factor d);

<u>County</u>	<u>2009</u>	<u>2010</u>
Adams	3%/\$.20	2%/1%+\$.10
Dane	1.5%	NA
Dodge	3%	2.5%/0.5%

Green Lake	2.5%	NA
Jefferson	2%/1%	2%/1.5%
Marquette	2%/1%	2%/1%
Rock	2.75%	NA
Sauk	2%+\$.25/1%	NA
County	1%	1%
Union	2%/1%	2%/1%

A careful review of the above demonstrates that the County's Final Offer is the lowest for 2009 and also is the lowest for 2010. If the County was the wage leader amongst its comparables there may be merit to offering the employees a lesser increase. However, the County raises no arguments other than the current economic environment for proposing the lowest wage proposal. As noted above, the comparables are in the same economic environment as Columbia County. Further, Factor d is a comparable "criteria" requiring an analysis of the pattern of settlements, not the economic environment. Under the County's Final Offer the employees would fall below the average settlement. Thus, given the above settlements the Arbitrator finds Factor d favors selection of the Union's Final Offer.

There are no internal settlements and neither party presented evidence concerning private sector employment. Therefore, these criteria do not favor selection of either final offer.

Factor e, the consumer price and cost of living, the Consumer Price Index (CPI), was 3.8% in 2008 and a -0.6% for the first half of 2009. The Union did not dispute this. The parties had a 2.85% settlement in 2008 (Union Ex. 13). Generally, parties negotiate future increases based upon the economic conditions of the previous year. If the settlement was higher than the CPI, employees gained purchasing power. If the settlement is lower than the CPI employees lose purchasing power and attempt to recapture their purchasing power in the successor bargain. Based upon the information provided by the County and the Union, the employees lost purchasing power in 2008. Under the County's Final Offer employees will recapture most of the purchasing power the employees lost in 2008 if the CPI remains at -0.6% and under the Union's Final Offer the employees will gain purchasing power in 2009. However, if the CPI increases

during the remainder of the term of the collective bargaining agreement employees, will lose purchasing power under the County's Final Offer. Therefore, the Arbitrator concludes this factor favors selection of neither Final Offer.

The parties presented no evidence concerning overall compensation. Therefore, Factor f does not favor selection of either Final Offer. Nor did they present any evidence concerning changed circumstances and, thus, Factor g does not favor the selection of either Final Offer.

Both parties argued at length concerning Factor h, traditional considerations. The County arguing the impact selection of the Union's Final Offer would have on the other bargaining units in interest arbitration and the total impact it would have on the County budget if the Unions were all successful. The Union arguing arbitrators have given great weight to tentative agreements. In effect, the County is asking the Arbitrator to make a countywide decision, something the Arbitrator does not have the authority to do. The Arbitrator is aware the decision herein will impact the other cases. No doubt both sides will argue the relative weight this decision should be given in the contested cases. However, as noted above, those disputes have different criteria and an arbitrator may give this award some weight, but the arbitrator in those disputes still has to apply all the appropriate criteria. Further, as noted above, one settlement or one decision does not establish a pattern such as the external pattern herein, where all eight external comparables are settled for 2009. Therefore the Arbitrator finds no merit in the County's arguments concerning the impact of this decision on the other cases in dispute.

The Arbitrator does find merit in the Union's argument concerning the impact of the tentative agreement rejected by the County Board. A careful review of County Ex. 13 reveals that County Board members stated various rationales were for rejecting the tentative agreement. However, as pointed out by the Union, there is no mention in this exhibit of what the County's comparables had done. Only a few County Board members were on the negotiations committee and only these few were aware of all the give and take that occurred during the negotiations. During negotiations they are aware of the statutory criteria, what settlements are occurring amongst the comparables and what the impact costs items will have on the budget. Negotiations' decisions are not made in a vacuum but in the light of all the facts that can be

ascertained. Since negotiators have more knowledge and reached a compromise on the differences between the parties, arbitrators have given weight to the tentative agreement. The cases cited by the Union demonstrate this conclusion and the County did not cite any cases that would contradict this conclusion. Therefore the Arbitrator finds Factor h favors selection of the Union's Final Offer.

Having found that Factors c, d, and h favor selection of the Union's final offer, and, based upon the above and foregoing, the statutory criteria, and the evidence, testimony and arguments presented the Arbitrator concludes the Union's Final Offer is more reasonable and directs the parties to incorporate the Union's Final Offer into their collective bargaining agreement.

AWARD

Having considered all the statutory criteria, and all the evidence, testimony and arguments presented by the parties, the Union's Final Offer is more reasonable than the County's Final Offer. The Parties are directed to incorporate the Union's final offer into their collective bargaining agreement.

Dated at Sun Prairie, Wisconsin, this 3rd day of April, 2010.

Edmond J. Bielarczyk, Jr., Arbitrator
EJB/mmb