

BEFORE THE ARBITRATOR

In the Matter of the Petition of

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

Case 204 No. 69609
MIA-2916

Dec. No. 33036-A

To Initiate Arbitration Between Said
Petitioner and

Heard: 6/30/10
Record Closed: 8/6/10
Award Issued: 10/5/10

MONROE COUNTY

Sherwood Malamud, Arbitrator

APPEARANCES:

Richard W. Terry WPPA/LEER Division, 6111 River Crest Drive,
McFarland, Wisconsin 53558, appearing on behalf of the
Association.

Ken Kittleson, Personnel Director, Monroe County, 14345 County
Highway B, Room 3, Sparta, Wisconsin 54656-4509, appearing on
behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

The Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (WPPA/LEER Division), hereinafter referred to as the Association, and Monroe County (Sheriff's Department), hereinafter referred to as the County or the Employer, selected Sherwood Malamud from a panel of names submitted to them by the Wisconsin Employment Relations Commission to hear the within interest arbitration dispute. On May 26, 2010, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to determine this dispute involving this unit of law enforcement personnel and to issue an Award pursuant to Sec. 111.77(4)(b), of the Municipal Employment Relations Act. Hearing in the matter was held on June 30, 2010, in the Monroe County Courthouse in Sparta, Wisconsin. The parties submitted original briefs by July 30, 2010. On August 6, 2010, the Arbitrator received notification from the parties that neither would be submitting reply briefs. Accordingly, at that time, the record in the matter was closed. This Award is issued pursuant to Sec. 111.77(4)(b) Form 2 in that:

The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

THE ISSUES IN DISPUTE AND BACKGROUND

This Award resolves a dispute over the terms of the successor to the one year agreement in effect for 2009. The parties agree that the successor agreement will be in effect for calendar years 2010 and 2011. They agree on the across-the-board wage increase in the first year of the agreement, 2010. Wages will increase by 1.5% effective January 1, 2010 and increase effective October 1, 2010 by an additional half of one percent. In addition, the parties agree that the health insurance plan in effect commencing January 1, 2010 shall contain a deductible that will increase from \$250 to \$450 for single coverage and from \$500 to \$900 for family coverage.

They disagree over the wage increase for 2011 and the amount of the insurance deductible in effect for that calendar year. The Association proposes that wages increase by 2% across the board for 2011. The Employer proposes that there be no wage increase for calendar year 2011.

For the calendar year 2011, the Association proposes that the deductible in effect for 2010 continue, insofar as the employee contribution towards the deductible remains at \$450 for single coverage and \$900 for family coverage. The County proposes that the single deductible increase from \$450 to \$700 and the family deductible increase from \$900 to \$1400 for calendar year 2011.

**STATUTORY CRITERIA TO BE UTILIZED BY THE ARBITRATOR FOR
LAW ENFORCEMENT AND FIREFIGHTER EMPLOYEES**

The criteria to be utilized by the Arbitrator in rendering the Award are set forth in Sec. 111.77(6), Wis. Stats., as follows:

(6) In reaching a decision the arbitrator shall give weight to the following factors:

- a. The lawful authority of the employer.
- b. Stipulation of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- d. Comparison of wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:
 - (1) In public employment in comparable communities.
 - (2) In private employment 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 employes, 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 pending of the arbitration proceedings.
- h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary

collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

DISCUSSION

Introduction

These parties have resorted to interest arbitration to resolve wage and benefit disputes on five prior occasions between 1984 and 2008. The interest arbitrators identified a group of five comparables to which Monroe County Sheriff's Department employees are to be compared. The comparables are Jackson, Juneau and Vernon counties, as well as, the cities of Sparta and Tomah, both of which are located in Monroe County.¹ For the purpose of this dispute, both the Employer and the Association agree that the three counties and two cities should serve as the comparable law enforcement units to the law enforcement personnel employed in the Monroe County Sheriff's Department.

Fourteen of the thirty-one employees in this bargaining unit were hired after calendar year 2003, specifically between January 2005 and August 2009. Pursuant to Article 4 Section 2, longevity applies to no employee hired after May 11, 2003. Accordingly there is no longevity payment paid to the 14 employees hired between January 2005 and August 2009 (County Exhibit 3). Under that provision of the Agreement, employees with ten or more years of service on January 1, 2003, receive 45 cents per hour; the Employer pays 25 cents per hour to employees who had accumulated between two and ten years of seniority, as of January 1, 2003.

To provide further context for the wage and health insurance issues in dispute here for the second year of the two-year agreement, it is noteworthy that

¹Monroe County & WPPA/LEER Division: Arbitrators Fogleberg, Decision No. 21522-A; Engmann, Decision No. 29105-B; Bellman, Decision No. 29595-A; Malamud, Decision No. 31363-A; and Krinsky in Decision No. 32254

the employee share of the deductible in calendar year 2008 amounted to \$100 for single and \$200 for family coverage. In 2009, under the one-year agreement, the deductible increased from \$100 to \$250 for single coverage and from \$200 to \$500 for family coverage. As noted above, the parties agreed to increase the deductible for calendar year 2010 from \$250 to \$450 for single coverage and from \$500 to \$900 for family coverage.

County Exhibit 5 contains the following note: “For 9/1/08-8/31/09, the County’s claims experience was 123% (23% more was paid out in claims than was paid in premiums, hence the large renewal increase). Based upon the County’s claims experience, Gunderson Lutheran, WPS, Health Partners and Blue Cross declined to quote the group.”

In 2009, the monthly rates for health insurance under the Health Tradition Health Plan amounted to \$584.90 for single and \$1374.10 for family coverage under a 500/1000 deductible policy, \$30 per office visit co-pay and prescription drug co-pay of \$10/20/30. Dental amounted to \$23.28 for single and \$72.40 for family. The renewal rates for 2011 are projected to increase by 20.6% to \$705.20 for single and \$1656.75 for family. Dental insurance rates are projected to increase by 10% after no increase in dental rates in 2010.

The Employer opts for a higher deductible plan and reimburses employees the difference between the employee share and the amount of the deductible to save on premium costs. The County opted for the \$1000/\$2000 deductible plan for 2010 with the employee paying \$450 of the deductible and the County reimbursing employees \$550 toward the deductible for single coverage. For family coverage, the employee pays \$900 of the deductible and the County reimburses the employee \$1100 of the deductible for family coverage. Under this plan for **2010**, the total premium for single coverage increased by 3.5% to \$605.60 per month for single coverage and \$1422.75 for family coverage. Of these totals, the employee premium costs amount to \$184.96 for single coverage and the County cost of premium \$1237.79 of the \$1422.75 total cost of family coverage.

Lastly, to provide context for this dispute, the wage rates of Monroe County Deputy Sheriffs stand last among the comparables, both at the minimum and at the maximum. The latter is the benchmark employed by this Arbitrator as a basis of comparison for wages paid by comparable employers to their law enforcement personnel. In 2009, the base year, the Monroe County officer paid at the maximum at \$20.41 per hour stood \$1.35 below the average paid by comparable employers and \$.14 per hour lower than the rate paid the next lowest comparable, Jackson County to its law enforcement personnel. In 2010, the Monroe County rate agreed to by the parties at \$20.82 was \$1.43 below the average rate paid by the comparables and 14 cents below the rate paid by Jackson to its law enforcement personnel.

The interest arbitrator applies the statutory criteria applicable to law enforcement personnel in determining this dispute.

APPLICATION OF THE STATUTORY CRITERIA

The Lawful Authority of the Employer

The Employer argues that were it to continue to increase its operational costs at the present rate, assuming no increase in equalized value, it would reach its statutory taxing limit by 2016. The Association counters this argument. It points to the assumption made by the Employer that between 2010 and 2016 there would be no increase in the equalized value of property in the County. The Arbitrator concludes that the data underlying this argument is far too speculative to serve as a basis for determining whether the Employer would hit its taxing limit within the next five or six years. In any event, at present, the County operational rate is well below its taxing limit. It has the lawful authority to implement either its offer or that of the Association. The Arbitrator concludes, therefore, that this statutory criterion does not serve to distinguish between the final offers of the parties.

Stipulation of the Parties

As noted at the outset of this Award, the parties have agreed both to the wage increases and to the structure of the health insurance plan in effect for calendar year 2010. Both the County and the Association recognize the problem extant in Monroe County with regard to the provision of the health insurance benefit for law enforcement personnel. The County subsidizes over 50% of the deductible in an attempt to restrain the rate of increase of monthly health insurance premiums. Unfortunately, the health insurance plan put in effect for 2010 does not resolve the problem. The Employer projects, and the Association does not dispute this fact, that premiums are likely to increase approximately 20% for calendar year 2011. The health insurance problem persists.

The Association emphasizes that the wage rates paid by Monroe County to its law enforcement personnel are the lowest paid by any of the comparables. Although 17 of the 31 employees receive longevity, with respect to the entirety of the unit, the longevity payment does not serve to alter the relative standing among the comparables of the wage rates paid by Monroe County to its law enforcement personnel. Nonetheless, the problem that the parties addressed in the first year of this two-year agreement with regard to health insurance and the relative standing of wage rates of law enforcement personnel to rates paid by comparable employers persists into the second year of the agreement. The stipulation of the parties highlights the problem. This factor does not favor either offer.

The Interests and Welfare of the Public and . . . the Financial Ability of the Governmental Unit

The Association argues that it is in the financial interest of the public for the County to provide reasonable and moderate pay increases from year to year rather than attempt to make up larger deficiencies from the average paid by comparable employers. The alternative, the Association maintains produces large increases in one year and small, below average increases in others. The Association argues:

Disciplined, equitable, predictable wage adjustments without large peaks and valleys are clearly in the public interest. And, this employer has the resources to meet this offer without undue hardship. (Association Brief at p. 5)

The County argues at page 9 of its brief, as follows:

At first glance, the union's final offer for 2011 appears to be more reasonable, since none of the comparables who have settled for 2011 have a negotiated wage freeze. However, there is a perfect storm brewing for Wisconsin Counties and municipalities: falling property values, falling tax revenues due to foreclosures and unpaid taxes, rising health insurance and pension costs, and reductions in state reimbursements due to the state's budget crisis.

The County maintains that it has the second highest foreclosure rate in the state. It is one of the five poorest counties in the state. It points to County Exhibit 11 that establishes the total unpaid delinquent tax as of June 23, 2010 amounts to \$3,782,890. All of the above justifies its offer of no wage increase for calendar 2011.

Although the Employer does not press an inability to pay argument, it makes the argument that in these times it is fiscally prudent to pay employees in accordance with the County's limited resources. County Exhibit 12 documents the flat rate of return of its investments over the last several years. Those investments do not make up for the shortfalls in tax revenues and delinquencies.

At the arbitration hearing, County Board members testified to their personal experience under the present economy and its impact on real estate and generally on the business community in Monroe County. The Arbitrator does not doubt the description and impact that the economy has had on the individual businesses of the County Board members and their impression of the state of the economy in Monroe County.

County Exhibit 14, excerpts from the Bureau of Labor Statistics report for the La Crosse statistical reporting area for August 2008 to August 2009; it establishes that the economic recession came late to Monroe County. The data suggests that the County did not feel the full effect of the recession as compared to the rest of the state of Wisconsin. Population growth in the County is greater than the growth in population in the state of Wisconsin generally through August 2009. The unemployment rate for Wisconsin increased during that August 2008 to August 2009 period by 4.6%. It increased in Monroe County during the same period by 2.7%. The data suggests that unemployment peaked for Monroe County towards the end of 2008, and that the rate of increase in the unemployment rate has declined for Monroe County in 2009 to August 2009 while during the same period, the unemployment rate increased for the United States generally and only began to decrease slightly for the rest of the state by August 2009.

The Association points to the \$17 million fund balance that it argues demonstrates the County's ability to meet and pay the Association's offer. The record does not establish much beyond the amount of the fund balance as of the date of the hearing. The Arbitrator has no context to ascertain the significance of this fund balance figure. Has it increased or decreased; what payments are made out of this fund balance?

The equalized value of property in Monroe County increased slightly in 2009 over 2008 by 0.47%; it declined in Juneau County by 3.25%, but increased in comparable Jackson County by 3.63%. This data indicates that Monroe County is faring equal to or better than comparable communities and the State of Wisconsin, generally. This economic data does not support an offer that in the second year of the agreement, 2011, attempts to make a significant change to health insurance deductibles **and** provide no increase in wages. The Arbitrator concludes that this criterion provides some support to the selection of the Association offer.

Comparability

The Association argues that the wage rates of law enforcement personnel should only be contrasted and compared to the wage rates and benefits provided to other law enforcement personnel by comparable municipalities. The Association argues that the percentage rates of increase paid to other public and private sector employees should not enter into consideration under the statutory framework in place for the determination of the wage rates for law enforcement personnel. The statute provides that the comparison should be made to employees involved in the arbitration proceeding as compared to employees performing similar services. In this regard, the Association argument is supported by the language of the statute. However, 111.77(6)(d) goes on to note that the comparison should be made with other employees generally in public and private employment in comparable communities. This supports broader comparability analysis than that urged by the Association.

The data presented in arbitration on the comparability criterion strongly supports the Association offer. The wage rates paid to Monroe County law enforcement personnel are lower than the wages paid by comparable municipalities to their law enforcement personnel as of calendar year 2010. There are an insufficient number of settlements in 2011 for the Arbitrator to indicate definitively that either offer is supported by those settlements. There are only two settlements reflected in Association Exhibit 4. However, the wage differential from the average in 2010 amounts to \$1.43 an hour. The differential between the hourly rate at the maximum paid by Monroe County and the next lowest comparable employer, Jackson County, amounts to \$0.14 per hour. Were the Arbitrator to accept the County offer of 0%, the wage rate for law enforcement personnel in Monroe County would fall further below the average and the wage differential between what is paid to law enforcement personnel in Monroe County as contrasted to law enforcement personnel in the two largest cities of the county, Sparta and Tomah, would increase.

County Exhibit 6, wage data for the central Wisconsin labor supply area, indicates that for police and sheriff patrol officers occupation code 33-3051, the

mean average annual wage is \$42,091. This annual salary closely approximates the wage Monroe County pays its law enforcement personnel. However, the data reflects the salary level in 2008. The wage rate at issue is for 2011. Since the County offer approximates law enforcement salaries for 2008, it is well below average for 2011.

Simply put, even without settlements in all five comparable communities for calendar year 2011, the adoption of the County offer at zero would only increase the negative differential between Monroe County wage rates as contrasted to the average rates paid by comparable employers and as contrasted to the rates paid the Cities of Sparta and Tomah to its law enforcement personnel. Accordingly, the Arbitrator concludes that the comparability criterion supports the adoption of the Association offer for inclusion in the 2010-2011 successor agreement.

With regard to the cost of health insurance premiums, as noted above the 2010 premium rate for single coverage under the plan in effect in Monroe County with a high subsidized deductible (\$1000/2000) is \$605.60 for single coverage and \$1422.75 for family coverage. (County Exhibit 6) The average total premium cost for single coverage for health insurance paid in comparable communities is \$609.05 for single coverage and \$1502.92 for family coverage.

Association Exhibit 6 demonstrates that comparable employers are adopting health plans with higher deductibles. Furthermore, employees in this unit pick up a higher percentage of premium costs, 13%; only Vernon County law enforcement personnel pay a larger percentage of premium costs at 15%. When the Employer's contribution to deductibles and premium are taken into account, the health insurance data suggests that Monroe County and its law enforcement personnel struggle with the costs of this benefit in a manner that is not unique. The health insurance data does not alter the conclusion that this criterion supports the adoption of the Association offer.

Cost of Living

County Exhibit 4 details the total package increases generated by both final offers for both 2010 and 2011. The County's final offer for 2011 contains increased costs, even though the wage rate it proposes is a zero wage increase. The increase in Employer costs with no wage increase amounts to \$138,922 or 3.5% for calendar year 2011 over 2010.

The Association's final offer costs \$175,920. The differential between the parties amounts to \$36,998. The Association's final offer generates an increase of 5.5%. This Arbitrator contrasts the increase in the total package cost to the increase in the CPI to indicate which final offer best tracks the increase in the cost of living. The cost of living in 2009 decreased by 0.6% under the All Urban Consumers Index or by 0.9% under the Urban Wage Earners and Clerical Workers Index. It increased between January and May 2010 on average by approximately 3.3%. In any event, the County's wage and benefit proposal which generates a total package increase of 3.5% more closely tracks the change in the cost of living in 2009 and 2010 to the date of the arbitration hearing in this matter. This criterion supports the adoption of the County offer.

Overall Compensation

Association Exhibits 8,9,10 and 11 track the level of sick leave, vacation, uniform allowance and holiday benefits provided by Monroe County as contrasted to the level of these benefits provided by the comparable employers to their law enforcement employees. Overall, the level of benefits provided by Monroe County is similar to the level such benefits are provided by comparable employers. This criterion does not serve as the basis for distinguishing between the offers of the parties.

Such Other Factors

The Association argues that the County's final offer is unusual. It represents a second attempt to substantially impact the structure of the health

insurance benefit through a substantial increase in deductibles that individual officers would absorb. The Association maintains that the Employer has not met the requirements of the *quid pro quo* analysis to justify its final offer.

The Arbitrator finds that the County has established that there is a serious problem with the rocketing increase in the cost of premiums for health insurance for this unit. The parties attempted to restrain the rate of increase of premiums through the adoption of high deductible plan with the County subsidizing a little over half the cost of the deductible. It appears that approach in 2010 did not fix the problem. The 20+% increase in health insurance premiums that the County anticipates in 2011 suggests that the problem persists. The Association argues that the County offers no wage increase as its *quid pro quo* to the further change the structure of the health insurance benefit. Therefore, the County's approach should be rejected.

The problem in restraining the rate of increase of health insurance premiums is severe. The County attempts to shift additional costs to employees and provide no increase in wage rates. It does so in the context in which it is the lowest paying employer among the comparable law enforcement units.

The County attempts to accomplish too much in the second year of a two-year agreement. The rate of increase of health insurance premiums for this unit poses a severe problem. To a great extent, the Association recognized and accepted the problem, when it agreed to a substantial increase in the amount of deductibles that officers would assume, with an agreement to increase the deductibles from \$250 to \$400 for single coverage and from \$400 to \$900 for family coverage. To substantially increase the deductible contribution a second time in a two year agreement, and not provide some offset through a salary adjustment, particularly when the wage rates paid by Monroe County are not keeping up with the level of wages paid by comparable employers who are subject to the same economic conditions, does not support the County offer. Two of the comparables, the Cities of Sparta and Tomah are the two largest cities in Monroe County. Certainly, these communities are weathering the same economic storm as Monroe County.

The County emphasizes the TIF liabilities and that may result from the devaluation of property in Warrens. It notes that tax delinquencies are increasing. The County observes the gathering storm. It has not hit, as yet. It is not clear from the record evidence how large a problem these tax and TIF shortfalls pose in the context of the County budget and relative to its total tax collections. Similarly, the County presented oral testimony attesting to a 70% increase in the foreclosure rate. However, it did not submit hard data concerning the number of foreclosures in the County and the number in which the taxes were left unpaid by mortgage servicers.

The County presented testimony that there was a successful effort to recall those County Board members who voted to expand the County Justice Center. The Arbitrator is not insensitive to political reality. However, the Arbitrator's decision must conform to the statutory criteria.

SELECTION OF THE FINAL OFFER

In the above analysis, the Arbitrator concludes that the statutory factors that serve to distinguish between the offers of the parties are the Interest and Welfare of the Public, Comparability, Cost of Living and Such other factors. The cost of living criterion supports the selection of the County offer. The Interest and Welfare of the Public and Comparability criteria support the selection of the Association offer. The Such other factor criterion highlights that the County attempts too much during the term of a two year agreement.

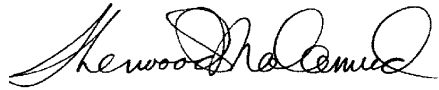
To increase deductibles a second time without allowing at least a year to go by to determine whether this structural change will decrease usage and premiums is too aggressive. This is particularly so, when the County proposes no wage increase, when its wage rates for law enforcement personnel are well below the average paid by the comparables.

On th basis of the above analysis, the Arbitrator issues the following:

AWARD

Upon the application of the statutory criteria, found at sec 111.77(6), and upon consideration of the evidence and arguments presented by the parties, and for the reasons discussed above, the Arbitrator selects the final offer of the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division together with the stipulations of agreed upon items for inclusion into 2010-2011 collective bargaining agreement between the Monroe County and the Association.

Dated at Madison, Wisconsin, this 5th day of October, 2010.

A handwritten signature in cursive script, appearing to read "Sherwood Malamud".

Sherwood Malamud
Arbitrator