

BEFORE THE ARBITRATOR

**DUNN COUNTY LAW
ENFORCEMENT CENTER
(POWERS OF ARREST),
LOCAL 727- B, AFSCME,
WISCONSIN COUNCIL #40
AFSCME, AFL-CIO**

**INTEREST ARBITRATION
AWARD
Case 121
No. 69672 [MIA-2918]
[Dec. No. 33091-A]**

and

DUNN COUNTY

ARBITRATOR: A. Henry Hempe

APPEARANCES:

For the Union: **Mark DeLorme**, Staff Representative, Wisconsin Council #40, AFSCME.

For the County: **Scott L. Cox**, Dunn County Corporation Counsel

ARBITRATION AWARD

Dunn County Law Enforcement Center (Powers of Arrest), Local 727-B AFSCME, Wisconsin Council 40, AFL-CIO, hereinafter referred to as the Union, and the Dunn County, hereinafter referred to as the Employer or the County are parties to a collective bargaining agreement (CBA) for the term covering January 1, 2007 through December 31, 2009.

Negotiations for a successor agreement commenced on January 5, 2009 with a mutual exchange of proposals. Thereafter the parties met on one occasion to continue negotiations.

With the development of an apparent bargaining impasse over the terms and conditions of a successor agreement, on March 10, 2010 the Union filed a petition for the Wisconsin Employment Relations Commission (WERC) to direct the initiation of final and binding interest arbitration.

Following an investigation by WERC Commissioner Paul Gordon, he determined that a bargaining impasse existed. On August 12, 2010 the WERC issued an order initiating final and binding interest arbitration pursuant to Wis. Stats. 111.77 for the purpose of resolving the bargaining impasse. Following selection by the parties of the undersigned as the arbitrator, on August 26, 2010, the WERC issued an order appointing him as the Arbitrator in this matter.

The matter was brought before the Arbitrator for hearing on October 26, 2010. The hearing was not transcribed. The parties provided post-hearing Initial Briefs to the Arbitrator on December 15, 2010 and Reply Briefs to the Arbitrator postmarked January 14, 2011.

BACKGROUND

Dunn County is a quasi-municipal corporation of the State of Wisconsin located in a west-central portion of the State. As of the year 2000, its population was reported as 39,858. The county occupies 864 square miles, and has its county seat in Menomonie.

Employees of Dunn County have been placed in seven bargaining units, each represented by AFSCME. Besides the Law Enforcement Center (Powers of Arrest) bargaining unit involved in this dispute, the other six units represent employees at the Government/Judicial Center, Highway, Human Services (Professionals), Human Services (Nonprofessionals), Health Care Center, and Sheriff's Department (Non-Powers of Arrest). Each of these six units has reached a voluntary successor agreement with the County covering 2010-2011.

Dunn County employs a total of 400 employees in the seven bargaining units. The largest unit consists of 139 units in the Health Care unit. The Law Enforcement (Powers of Arrest) bargaining unit is the smallest and consists of eighteen deputy sheriffs. According to the Union, that unit has existed for 33 years and will be entering its twelfth collective bargaining agreement with the County.

AGREEMENTS OF THE PARTIES

The Parties have agreed and stipulated to the following:

- The term of the successor agreement shall be two years
- The County shall pay 100% of the employee's share of the Wisconsin Retirement Fund, eliminating any cap.
- Comparables: Barron, Chippewa, Eau Claire, Pepin, Pierce, Polk, and St. Croix counties.

FINAL OFFERS

UNION:

COUNTY

Article A-15 – Classification and Pay Plan, Section 5, Wage Schedule

Effective Jan. 1, 2010 – 2% wage increase
Effective July 1, 2010 – 1% wage increase

Effective April 1, 2010 -- 1% Wage increase
Effective July 1, 2010 – 1% wage increase

FINAL OFFERS (con't)

UNION

Effective Jan. 1, 2011 – 2% wage increase
Effective July 1, 2011 – 1% wage increase

COUNTY

Effective Jan. 1, 2011 – 1% wage increase
Effective July 1, 2011 – 1% wage increase

Article A- 15 – Section 8 – Direct Deposit

Status quo

Revise Section 8 as follows: ~~Effective with the payroll that includes January 1, 2008, direct~~ **Direct deposit of wages and employee reimbursements will be mandatory for all current employees. Effective upon ratification of this contract by both parties, direct deposit will be mandatory for all newly hired employees.**

Article G – Miscellaneous Provisions – Section 1 – Equipment Allowance

Revise Section 1 as follows:
Employees shall be allowed, and reimbursed for, up to \$140 \$165 annually for the purchase of department approved uniforms and equipment.

Status quo

RELEVANT STATUTORY AUTHORITY

The parties agree the following statutory authority is applicable to this dispute:

Sec.: 111.77(4), Stats. provides:

(a) * * *

(b) *Form 2* * * * The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

Sec. 111.77(5), Stats: “The proceedings shall be pursuant to form 2 unless the parties shall agree prior to the hearing that form 1 shall control.

Sec.. 111.77(6), Stats: “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.

AGREEMENT ON EXTERNAL COMPARABLES

The parties agreed that the following seven counties constitute the pool of external comparables: Barron, Chippewa, Eau Claire, Pepin, Pierce, Polk, and St. Croix,

POSITIONS OF THE PARTIES

Union:

The Union asserts the following:

The criteria to be followed by the arbitrator are set forth in Sec. 111.77(6)(a) - (h). Stats. Several are not in issue or not relevant to this case. There is no issue with respect to the authority of the Employer [ss. (a)], the parties have made no settlement stipulations [ss. (b)], and the record is inadequate for any comparison to be made between the deputies who are a party to this case and employees performing similar work in the private sector [ss.(d)2]. Neither have there been any changes since the beginning of the arbitration that would impact the outcome of this case [ss. (g)].

Factor (c) speaks to the interests and welfare of the public as well as the employer's ability to pay the costs of the Union's offer. The interests and welfare of the public are best met through the recruitment and retention of qualified employees, particularly employees with the responsibility of protecting the public. The average length of service for bargaining unit employees in this unit is only 8.5 years. Experienced employees take on an added value, from a snowplow operator to a nursing assistant.

Added to the County's inability to recruit and retain more experienced officers, is the County's unwillingness to pay the additional costs associated with the Union offer. It is not that the County is unable to pay these costs, but that the County is unwilling to do so. The County has offered no specific information regarding its finances. Merely an assertion of a fiscal burden without a showing of an inability to pay is not sufficient. If financial hardship is claimed it must be demonstrated for the claim is to be given determinative weight.

The only data concerning local economic conditions was submitted by the County in “Dunn County Workforce Profile 2009.” But exhibits offered in bad economic times should include information on whether the bad times are unique to the Employer involved in the case or similarly affect all of the external comparables.

The difference in cost between the parties’ final offers is minimal. The total difference in annual salary costs for this unit of 18-full-time Deputies in 2010-11 is \$28,319.80, or an average annual cost of \$14,159.90. This additional cost amounts to a scant 0.07% of the Dunn County General Fund expenditures in 2009, a negligible difference.

Unlike Sec. 111.70 [Municipal Employment Relations Act], Sec. 111.77(6) relating to Law Enforcement Personnel and Fire Fighters has no specific criterion related to internal comparables. Sec. 111.77 emphasizes a comparison of similar employment. More weight should be given to external comparables because internal comparability does not adequately address the different nature of public safety units. The County has not been able to show why this bargaining unit of deputy sheriffs must receive the same settlement as the other County units of general employees. Police units are different, and the burden is with the County to demonstrate why the internal comparables should be given more weight.

Furthermore, there is no *historical* pattern of parity of all the County’s bargaining units accepting the same wage settlement. Although the Deputies agreed to the same wage settlement as had the other County bargaining units in the 2004-06 Agreement, in the next contract the deputies received an additional \$0.20/hour adjustment in recognition of the fact that the position of deputy was underpaid and needed an adjustment. The Deputies’ bargaining unit contains only one position, that of deputy sheriff. Thus, a unit adjustment for that one position necessarily becomes unit-wide. This does not happen in other County units: if a single position needs an adjustment, it would not be out of the norm to negotiate an across-the-board increase for the unit with an additional adjustment for the single position.

Examining the external comparables of all the County units is instructive. In 2009, Dunn County deputies were only \$0.08 above the average deputy wage paid by the comparables. But other occupations from legal secretary to social worker, highway patrolman to nurse, ranked significantly further ahead of the average wages paid by the comparable counties for these positions. These benchmark slots are well positioned in terms of external comparables, which is likely why none of them are currently finding themselves in interest arbitration, today.

External comparables with respect to the Dunn County deputies are also instructive to review. The Union’s proposal of a 2.0% increase effective on each January 1 of the two-year contract and additional 1% increases on the intervening July 1 of each contract year aligns with the external settlement pattern. In 2010 the average wage increase among the external comparables is 1.69% with an average lift of 2.14%. In this matter, the Union’s proposal that covers 2010 provides a wage increase cost of 2.5% and lift of 3.0%. The County’s offer provides a 1.25% wage increase with a 2% lift in 2010. Thus the County’s offer is lower than the external comparables in both cost and lift. Moreover, without the Eau Claire County wage freeze caused by an exceptionally bad economic situation in that county, the average actual cost

of the comparables' wage increases for 2010 would be about 2.0% with an average lift of 2.5%.

Only half of the comparables have settlements for 2011, but these support the Union's proposed wages. The average wage increase cost of the comparables for 2011 is 2.17%; the average lift would amount to an increase of 3%. The Union's proposal of a 2.5% wage increase and a 3% lift in 2011 aligns with the three available 2011 settlements.

Moreover, the County's offer would negate the twenty-cent per hour adjustment given the Deputies in 2007. The adjustment was given in 2007 contract negotiations in addition to an a-t-b increase when it was discovered that the maximum hourly wage for the Deputies in 2006 was only three-cents an hour higher than the average wages paid by the comparables to their Deputies. The adjustment was an acknowledgment of a need for additional compensation for the unit and raised the bargaining unit's ranking among the comparables. The adjustment served to raise the Deputies twenty-four cents above the average hourly wage of the comparables. The same margin was sustained in 2008, but dropped to eight-cents above the average in 2009. Under the County's offer it will dip to four-cents above the average in 2010.

In 2006, County thinking was to remain above the average, even if only slightly. The County now seems more concerned about minimal labor costs than maintaining the wage rate for these public servants. However, the Union's proposal would maintain the level set for the 2007 twenty-cent adjustment in 2007, which was to keep the maximum wage 24-cents above the comparables' average. The current proposal of the Union would reset the level at 28-cents above the average. The County's offer causes the adjustment from the previous 20-cent adjustment agreed upon only three years ago to vanish, whereas the Union's offer would maintain it.

The County tries to justify its final offer by pointing out that the Dunn County deputies will move ahead of Eau Claire County in the maximum wage category. But the argument is not compelling because Eau Claire's economic conditions are so uniquely poor that AFSCME agreed to defer wage increases until December 31, 2010, and the LAW Enforcement bargaining unit in Eau Claire County agreed to a wage freeze in 2010. Moving ahead of a unit that took a wage freeze is a dubious honor.

Dunn County should be ahead of Eau Claire County. Median income is higher in Dunn County than in Eau Claire County. In median income rankings, Dunn follows St. Croix, Pierce, and Polk counties, and leads Chippewa, Eau Claire, Pepin and Barron counties. Moving ahead of Eau Claire County also matches the Dunn County ranking as to maximum hourly wage.

Moreover, there is no pattern of parity with the other internal bargaining units. Other Dunn County internal units fare better against the external comparables than do the deputies. While the deputies in 2009 were only 0.08-cents above the average of the maximum salaries paid their counterparts in the comparable counties, the maximum salary levels of other Dunn County positions exceeded the average maximums of the comparables.

These more generous salary patterns demonstrate how unaligned and unpatterned the deputies' wages really are, and explains why the other units are not in interest arbitration.

As to the Union's proposed uniform and equipment allowance increase, there has been no increase since 2003. Currently Dunn County provides an annual allowance of \$140. Many of the comparables have no specific policy so it is difficult to ascertain what their actual policies are. Eau Claire County is at \$45 per month or \$540 per year and Polk County at \$775 the first year and \$675 in every subsequent year are obviously much higher. Both sides agreed the final offers as to wages should be determinative in this matter; but even so, the Union's final offer regarding the Equipment Allowance is consistent with the statutory criteria.

The County's insurance information (C- Ex. 18) entered along with the wage information of the external comparables is misplaced and should be given no consideration. The County's information includes no plan design for the various insurance plans of the externals, thus denying an apple to apples comparison. The same problem exists in the County's Exhibit 22 entitled "External Fringe Benefits." The County lists eight benefit areas, but includes no details. In addition, the County provides no information as to benefits *not* included or listed, such as longevity or sick leave and sick leave level. Exhibits such as C- Ex 18 provide no insight and simply muddy the waters.

In summary:

- 1) There is no evidence of any financial constraints that prevent the County from implementing the Union's offer.
- 2) The interests of the public are best met by recruitment and retention of qualified employees, which is best accomplished by providing an attractive wage. The County's offer would hinder that goal.
- 3) The County has demonstrated only unwillingness, not inability, to pay the Union's proposal.
- 4) The external comparables favor the Union's offer.
- 5) The County's reliance on insurance data is misplaced.

County

The County asserts:

Dunn County's offer of wage increases to the POA Deputies unit is identical to that accepted by the 382 remaining represented employees in six other bargaining units.

Arbitrators have given primary weight to an established pattern of internal settlements, urging they be given "heavy weight" in order to maintain labor peace. One arbitrator has called internal settlement patterns as the most important of the statutory criteria. Another feared he would "do violence to the bargaining process between the Employer and the Unions" if he departed from the pattern agreement reached by other units with whom the Employer bargained. Others believe giving one unit preferential treatment over another creates negotiating problems with the other units the following year and encourages bargainers to be the last to settle.

Even heavier weight has been given internal comparables if the parties have a history of bargaining pattern consistency. One arbitrator opined that allowing a "rogue unit" to break a settlement pattern that had existed for eight years would penalize employees who settled earlier.

Dunn County employees have grown to expect consistency across the employee groups for both wages and fringe benefits. The County's wage settlements for the 2004-06 contract term and the 2007-09 contract term demonstrate a pattern of consistency. While specific wage "adjustments" have been negotiated in a few instances, a wage settlement pattern is evident. The settlement pattern also exists for health insurance changes made for all units in conjunction with identical wage increases.

The parties are agreed on the external comparables. They consist of the seven counties geographically contiguous to Dunn County, namely Barron, Chippewa, Eau Claire, Pepin, Pierce, Polk, and St. Croix.

The external comparables submitted by the County demonstrate the consistency with which Employers have attempted to treat all employees equally as to wage increases and health insurance. The only county in which settlements are not identical is Eau Claire, but the effect is the same. While the settlements in Pierce and Polk lend greater credibility to the Union's wage proposal, they were bargained in the early stages of the economic turndown. Barron, Chippewa and Eau Claire, settled in 2009 but early 2010 agreements reflect more moderate wage increases. Dunn County's proposed increases in April and July 2010 do exceed the increases in Barron, Chippewa, and Eau Claire. External settlements that were bargained before the economic turndown are not good indicators of what constitutes a reasonable settlement.

The County's proposal includes no changes with respect to health insurance – either in coverage or level of contribution. Chippewa and Eau Claire counties were the only external comparables to negotiate no health insurance changes. But Chippewa did negotiate a 1% wage increase effective July 1, and Eau Claire negotiated a wage freeze in 2010. However, Barron, Pepin, Polk, and St. Croix counties all negotiated health insurance changes which increased employee costs. In Pierce County's settlement included a 1% increase in employee premium contributions.

Of the three external comparables for 2011, only Barron's three 1% increases throughout the year are unaccompanied by health insurance changes. But Chippewa's 1%/2% split is accompanied by a 1% increase in employee health insurance premium contributions, and another 1% employee premium contribution increase in 2012 with the same 1%/2% wage increase split. Polk negotiated the right to reopen negotiations on its standard health plan for 2011. While no settlement pattern among the comparables has been established, the Union's demand for a 2%/1% split increase in January and July 2010, without any health insurance concessions is not supported by the comparables.

There is no erosion in Dunn County deputies' wages that justifies a departure from the internal settlement pattern. Dunn County wage rates are reasonable when compared to the external comparables. The comparables do not justify a departure from the internal settlement pattern. Dunn County is not losing ground to the other external comparables, and its wage rates are reasonable when compared to those of the comparables.

Since 2004, Dunn County wage rates have ranked 5th out of the eight counties. But in

2010, Dunn County wages rates would improve to 4th in the comparables, under each party's offer. Moreover, Dunn County deputies are eligible for the maximum pay rate in three years, which is exceeded by only Barron County's two-year progression.

The fact that the maximum wage rate of the Dunn County deputies exceeded the average maximum of the external comparables by 24 cents in 2007, 24 cents in 2008 but only 8-cents in 2009 does not justify the Union's wage proposal. In 2006, the County's wage rate exceeded the average by only 3-cents an hour – a difference closer to the 4-cent difference under the County's offer for 2010. Moreover, the average can be easily skewed by only one wage rate exceedingly higher or lower than the next highest rate as is the case here where the St Croix rate substantially exceeds the next highest of Polk County by more than \$2 an hour. St. Croix County is the fastest growing county in the State and is in the Minneapolis-St. Paul metropolitan area, Polk and Pierce Counties are also in the same MSP metropolitan area. These three are the only county comparables to have higher wage rates than Dunn.

Strict adherence to maintenance of relative wage proximity is neither appropriate nor reasonable in this case where health insurance changes have been negotiated by the external comparables during 2009-10. Dunn County is the only county to contribute toward the cost of health, dental, life, and long-term disability insurance. It further contributes 92.5% of employee health insurance premiums – more than any comparable except Pepin. Overall, the POA deputies receive generous fringe benefits. No wage inequity or significant deviation between Dunn County and the external comparables has been shown. There is no need for wage “catch-up.”

The Union's reliance on comparisons of other Dunn County employees with their external counterparts is irrelevant. A showing that for one year (2009) the Dunn County deputy wage rates are closer to the average than other Dunn County positions (which are higher) does not justify a departure from the internal settlement pattern.

The Union has offered no justification for increasing the uniform and equipment allowance from \$140 to \$165 per year. This allowance is not used for uniforms, because the County provides all uniforms except for boots. Uniforms are replaced as needed. The allowance does cover boots and other types of equipment such as extra flashlights or an additional firearm. None of the other comparables offer the Dunn County equipment/boot allowance.

Neither has the Union offered any reason for its refusal to have reimbursements or wages deposited directly into an employee-designated bank account.

The factor that requires consideration of the interests and welfare of the public and financial ability of the unit of government to meet the cost of any proposed settlement is better supported by the County's offer. The cost difference between the parties' offers is \$14,159/year.

This is a small portion of County annual expenditures. But the County does not make an “ability to pay” argument. The County's offer is a matter of restraint given the current state of the economy. Income levels are not likely to increase in 2010-11. There have been recessionary job losses in the County and transfer payments (e.g., Social Security, Medicare, Unemployment Insurance payments, etc.) have increased. Moreover, there is a potential for unrest among the

other internal units if the Union receives a better settlement than the others.

The “cost-of-living” criterion favors the County’s offer. The County’s split wage offer amounts to an actual 1.25% increase for 2009, compared to the Union’s split wage proposal of an actual 2.5% increase for the same year. The CPI for 2009 was a 1.1% decrease. While the Union’s proposal of an actual wage increase for 2010 is closer to the 2.9% CPI increase as of September 2010, it is too early to tell whether the annual increase will remain at that level.

Union (Reply)

The Union responded to the County’s arguments as follows:

Internal patterns of settlements should be given little weight. The majority of citations offered by the County refer to bargaining units other than law enforcement and fire fighting personnel. Protective service participants are covered by the criteria in Sec. 111.70, which has a different emphasis on internal comparables.

The County referenced a case by Arbitrator Rice who spoke of the heavy weight internal comparables should be given. Arbitrator Rice’s award was made pursuant to Sec. 111.70, not 111.77. *City of Milwaukee (Law Enforcement)*, Dec. No. 25223-B (9/88). Arbitrator Grenig thought a lack of consistency could be destructive to collective bargaining, but he also wrote: “Comparisons between law enforcement employees are generally more persuasive than comparisons with other employees.” *Rock County (Sheriff’s Dept)*, Dec. No. 20600 (2/84) In *City of Madison (Firefighters)*, Dec. No. 21345 (11/84), Arbitrator Vernon gave controlling weight to the internal settlements because they were combined with other factors, including a long history of voluntary settlements that were consistent with an internal bargaining unit pattern, a prior award, and an emphasis of the relationship between police and firefighters. In *Calumet County*, Dec. No. 31487-A (4/06) Arbitrator Dichter found that while the internal pattern is important, it is not, *per se*, controlling.

The County is worried about potential problems that could occur if there were a deviation from the internal settlement pattern. But there were no problems in 2007 when the POA deputies received a 20-cent adjustment to their wages that the County voluntarily offered. The County’s argument is a red herring.

Different bargaining units have different needs. Arbitrator Baron did not place a high value on uniformity of settlements, since such an approach negates different distinctions among the bargaining units that create each one’s community of interest. *Sheboygan County*, Dec. No. 26775-A (7/91). Arbitrator Chatman concluded that when an employee group deems its self-interest to be opposed to the general consensus, its position must be then singularly examined for validity and not aggregated because it happens to be in the same place.

There is a fundamental difference between protective occupation participants and the positions in the other County bargaining units, a difference that was recognized by the Legislature when it passed Sec. 111.77 with different criteria than that found in Sec. 111.70. This fact and the failure of the County to demonstrate a historical pattern of internal consistency

auger little weight be given to internal comparables.

The interests of the deputies' bargaining unit must be considered and are supported by the external comparables. Treating all internal bargaining units the same assumes all employees perform similar tasks and require similar training and share similar risks. This is not always accurate. In this case there are considerable differences in job requirements, duties and risks to personal safety assumed by the deputies. Given this, the deputies' external comparables should be given more weight than the internal ones, and the external ones support the Union's offer.

The early settlements should not be rejected. The County urges excluding the settlements of Pierce and Polk counties, yet they were reached in December 2008 and February 2009 – after the September 2008 date that the County describes as the beginning of the financial crisis. Under the County's rationale, both counties would have been well aware of the problems with the economy. Arbitrator Shaw found it was well known in 2008 that this country and the world were in a deep recession and that governments at all levels were facing serious budget deficits. *Ozaukee County*, Dec. 32592-A (11/09).

Moreover, the arbitrator in this matter declined to engage in a form of guesswork as to what level the comparables would have settled had their crystal balls granted them perfect economic foresight. *Sheboygan County*, Dec. No. 32720-A (Hempe, 11/9).

The County has not demonstrated that the economic conditions hurt Dunn County anymore than other parts of the state.. There will be some impact, but it is unlikely that there will be a change in the tax rate resulting from implementing the Union's offer, given the modest differences between the offers. The interests and welfare of the public support this offer, given the correlation between fair and competitive wages and employee morale.

The health insurance numbers inserted by the County are too superficial to be meaningful and further information is required.

There is a compelling need for the Union's proposed wage increase. The County's offer would virtually eradicate the 20-cent adjustment given the deputies in 2007 when the deputies' maximum wage rate was only 3-cents above the average maximum of the comparables. Under the County's offer, the deputies' rate would be only 4-cents above the average. Under the Union's proposal the deputies' rate would be 28-cents above the average. This would be comparable to the 24-cent differential the 2007 adjustment provided. Wage erosion occurs even when the wage differential is above the average.

The deputies' benefits are in line with the external comparables – but not so unusually generous as to justify a lower wage increase for the deputies.

The Union still believes that positions in other Dunn County bargaining units do much better in terms of wages compared to their external comparables than do the deputies. The County has analyzed the data presented in the Union's Initial Brief and come up with different dollar amounts than those presented by the Union. The Union stands behind the numbers it presented. The County speculates that if the non-union positions in St. Croix County were

included the average would change, but that speculation is without basis. The County manipulates the comparable positions for Lead Economic Support Worker, and cherry-picks its comparisons as to the Deputy Clerk of Courts and Deputy Treasurer.

The additional proposals of the parties should not be determinative. The Union's proposal for a \$25 increase to the Equipment Allowance is justified, on the grounds that there has been no increase there for seven years. But the County has failed to justify its proposal for mandatory direct deposit of wage and reimbursement checks with any specific supporting data or figures.

Finally, the County has applied the wrong CPI measurement. The correct methodology looks at the change in the preceding 12-month period, citing *New Berlin*, Dec. No. 19820-A (Grenig, 12/82), in which the arbitrator focused on the months of March, September and November as being most relevant. In this matter the Union focuses on the month of December. In *New Berlin* the Arbitrator does not use the "annual average" as is used by the County in this case.

Arbitrator Malamud's rationale in *City of Madison (Police)*, Dec. no. 28826-A (5/97) supports the CPI methodology used by the Union, again looking at the change in the 12-month period preceding the effective date of the contract rather than looking at the annual average of the year prior.

County (Reply)

The County does not disagree that the interests and welfare of the public are best met by recruiting and retaining qualified employees to protect and serve the public, but disagrees with the Union's insinuation that an average length of service of only 8.5 years for bargaining unit employees indicates a problem of employee turnover caused by low wages. It is just as likely that Dunn County has a relatively younger workforce because of the need to replace older officers who have retired or been promoted to supervisory positions. The County has had no difficulty in recruitment. Employer's Ex. 6 shows the County had 57-applicants during its 2010 hiring, of whom 40 met the minimum qualifications. There is no evidence that any deputy left Dunn County employment because of wage rates.

The Union's cost-of-living comparison is flawed. The hearing was in October 2010. Those "December 2010" comparisons the Union lists are actually for January 2010, and are meaningless for purposes of this case. The most recent 2010 CPI data is for September 2010 is found in Employer's Ex. 4. The party's disagreement on this point is whether the December to December proposed by the Union is more appropriate than the increase or decrease in the annual average ending in December 2009. The Bureau of Labor Statistics website explains the December-to-December index percentage changes tends to be more volatile than the annual average as of December 2009.

Contrary to the Union's assertions, internal comparability is a statutory criterion and has been given primary weight in disputes with law enforcement agencies. Despite the arbitral dicta relied on by the Union that supports comparing protective service with protective service, these

cases do not necessarily support giving greater weight to external comparables. The issue is rather how much weight is given to internal vs. external comparables.

The Union's argument that the County cannot claim a pattern of internal settlements due to the 20-cent wage adjustment in 2007 lacks arbitral authority. Despite wage adjustments for a few law enforcement positions in 2007, Employer's Ex. 7 demonstrates a pattern of settlements as far back as 2004. The Union argues that if a single position in one of the other units needs an adjustment, it would not be out of the norm to negotiate an across-the-board increase for the unit with an additional increase to the single position. The problem is that in this matter the adjustment the Union seeks becomes unit-wide because the single position that Union claims is entitled to an adjustment is unit-wide and is requested as an across-the-board increase for the unit excess of the internal settlement pattern.

Comparisons with the external comparables do not justify the Union's wage proposal. Arbitral authority (including that cited by the Union) respects the internal pattern when the resulting wage rates are reasonable in comparison to the external comparables. Under the County's offer, Dunn County improves in rank among the external comparables and provides a wage rate that continues to exceed the external average.

The County disagrees with the Union's argument that the exceptionally poor economic circumstances unique to Eau Claire County deflate the comparable average. There is no evidence that that county experienced an exceptionally poor economic situation. The wage freeze there may have resulted from other circumstances, such as an agreement to a wage freeze in exchange for no increase in employee health insurance premium contributions.

The Union failed to submit any evidence that the 20-cent wage adjustment to the deputies in 2007 that increased the Dunn County wage to 24-cents above the average should be the benchmark with which all future settlements should be measured.

Slight deviations in external rank or average are not deserving of significant weight.

The Union's representation of external comparisons to the County's equipment allowance is misleading in that the higher allowances in the two counties cited by the Union are clearly uniform allowances. In Dunn County, the County provides all uniforms. The allowance is used for boots and other external equipment.

The County listed comparable insurance changes in its Exhibit 18 simply to show that employees made concessions by agreeing to increased premium contributions or out-of-pocket costs for co-pays or deductibles, which may have accounted for a higher wage level increase than that provided in Dunn County where employees experienced no increased insurance costs in 2010 or 2011. This is not a dispute over insurance coverage, and Plan design documents are not necessary.

Exhibit 22 was intended to show Dunn County employees are not at a disadvantage in terms of insurance benefits – including health, dental, life, and long-term disability, WRS pension contributions and paid time off. Dunn County also provides the highest level of

employer contributions toward health insurance premiums at 92.5% and is the only County to provide personal days off. Arbitrators are required to and do give weight to overall compensation. Employer's Ex. 22 provides information as to this factor.

DISCUSSION

This case has not suffered from a want of sufficient attention by the respective advocates. Each party has earnestly, thoroughly and intelligently argued its case both at hearing and in its respective initial and reply briefs. Each asserts that its final offer is more reasonable than that of the other and such offer is supported by the applicable statutory factors contained in Sec. 111.70(6) (a) – (h) Stats.

Although each party insists – indeed, stipulates – that their contract dispute should be decided on the basis of which wage offer is most reasonable, neither could resist the temptation of justifying the single additional proposal each included in its respective final offer. Actually, each proposal is quite modest; neither is unreasonable on its face, and neither significantly detracts from nor enhances the reasonableness of the wages proposals each party makes. In effect, by virtue of the parties' agreement (which is not unreasonable and I chose not to disturb) in effect, each receives a “free ride” and will either prevail or fail depending on the outcome of the primary issue of wages, not any arguments made by the parties herein.

*Lawful Authority*¹

The list of factors mandated for arbitral consideration begins with “The lawful authority of the employer.” Neither party questions the authority of the County to implement a labor contract under either offer.

*Stipulations of the Parties*²

The second factor listed refers to any stipulations of the parties. In addition to the “stipulation” described above, the parties also agreed: 1) that the duration of the successor Agreement shall be two years, from January 1, 2010 through December 31, 2011³, 2) that the County shall pay 100% of the employee's share of the Wisconsin Retirement Fund, eliminating any cap,⁴ and 3) the seven counties contiguous to Dunn County (described below) shall be the comparables.

*Interests and Welfare of the Public; Financial Ability of the County to Pay*⁵

The third factor requires the arbitrator give weight to the interests and welfare of the public and the financial ability of the unit of government to meet these costs. Over the two-year term of the prospective contract the cost of the Union's proposal is \$28,119.80 more than the

¹ Sec. 111.77(6)(a), Stats.

² Sec. 111.77(6)(b), Stats.

³ Union Initial Brief, p.2.

⁴ Union Initial Brief, p. 2; Employer Ex. 1.

⁵ Sec. 111.77(6)(c), Stats.

cost of the County's. The parties are in agreement that the County has the financial ability to pay the costs of either offer, thus neither offer suffers by this measurement.

The parties also agree that the interests and welfare of the public are supported by recruitment and retention of qualified employees to protect and serve the public. Predictably, they disagree as to which final offers better support this goal.

Contrary to the Union's argument that an 8 ½ year average length of service for unit members suggests wage dissatisfaction, the County explains that statistic may simply indicate a younger workforce due to retirements of some of the veteran officers as well as promotions of others to supervisory positions. In addition, the County notes the abundance of qualified applicants for deputy positions from which it apparently was able to make reasonable hiring selections in 2010. Given the current state of the economy, the County suggests fiscal restraint is in the best interests of the public.

There can be little disagreement with the Union's argument that over time a public employee gains experience and takes on additional value to both the Employer and the members of the public. This is certainly true for public safety employees.

I do not discount the Union arguments on this factor. Clearly, not only recruitment but also retention of qualified applicants is one measure of how effectively the County is promoting the interests and welfare of the public in 2010. An essential key to this, of course, is providing an attractive wage and benefit package. Yet the apparent success the County recently experienced in attracting qualified applicants for deputy positions makes it difficult to conclude that Dunn County has neglected this essential aspect.

Neither am I persuaded that the 8 ½ years average length of service of current Dunn County deputies, by itself, is indicative of a measurable morale problem in the department when, as the County suggests, it could well be attributed to other causes unrelated to a perception of inadequate wages. Nor has any evidence been submitted indicating that the County is discounting experience in its wage schedule. On the contrary, it appears that Dunn County deputies reach the maximum step of their wage schedule in only three years – a faster progression than in any of the external comparables, except Barron County where it takes only two years to reach a lower maximum.

It is, moreover, impossible to ignore the economic climate in the County. As the Union argues, there is no evidence that the economic situation in Dunn County is any *worse* than in any of the comparables. While there is some evidence that in some ways it may be better than others, it is clear that the dismal realities of the longest recession since the Great Depression of the 1930's have lingered in Dunn County, including an increasing share of "transfer receipts"⁶ to the County's total income.

Understandably, the Union is reluctant to concede any ground with respect to the

⁶ Employer's Ex. 17 defines transfer income as total payments in Social Security and medical benefits (e.g. Medicare) and public assistance. In Dunn County transfer income increased about 17%, higher than state wide.

declining gap between the maximum wage of the Dunn County deputies and the average maximum wage of the comparables. Losing ground in leadership with respect to an element of wage comparability is not apt to be viewed as an employee morale-raiser, even though a modicum of leadership may still remain. At the same time, given the currently still fragile state of the economy in Dunn County and its surrounding comparables, this may not be an ideal time for the Union to do more than sound a tocsin of its concern in this regard, which concern the County may be in a better position to address in the future, as it did in 2007.

Overall, neither party is wholly disadvantaged by this factor. Both parties have made offers that the County has the financial ability to pay. As the Union suggests, given the relatively modest difference between the two offers, it seems unlikely the County would find a tax levy increase necessary to finance the Union's offer. Yet, in times of economic challenge and uncertainty, *absent an urgent need for employee wage catch-up, making up lost ground, or at least not falling further behind external colleagues performing similar tasks*, fiscal prudence also serves well the interests and welfare of the public.

On balance, I find a preference for the County's offer under this factor.

External comparables.⁷

The statutory criteria includes a requirement that the arbitrator give weight to a comparison of the wages, hours, and conditions of employment of the employees involved in this proceeding with the wages, hours and conditions of employment of other employees performing similar services in public employment in comparable communities and in private employment in private communities. We begin with the external comparables in public employment.

The parties have agreed that the following counties serve as the external comparables in this matter: Barron, Chippewa, Eau Claire, Pepin, Pierce, Polk, and St. Croix. Each of the seven is geographically contiguous to Dunn County.

The Union cites the 2010 average (actual) wage increase among the comparables of 1.69% and average lift of 2.14% with both the Union and the County offers. Under the Union's proposal, the actual wage increase (cost) results in a 2.5% increase and a 3% wage lift. The County's offer results in a 1.25% cost increase and a 2.0% wage lift. From this, the Union correctly notes that the County's wage offer is lower than the average of the external comparables in both wage cost and wage lift.

This is accurate. But the same figures also indicate that the Union's offer is 0.81% higher than the average of the comparable percentage wage increase costs (2.5% minus 1.69% = + 0.81%) and provides a wage lift increase 0.86% higher than the average wage lift increase of the comparables (3.00%; minus 2.14% = + 0.86%)

⁷ Sec. 111.77(6)(d)1. Subs. 2 refers to comparisons of the employees involved in the arbitration proceeding with other employees performing similar services in private employment in comparable communities. Neither party provided any material or argument pertaining to this factor.

Again using the same figures, the County's 2010 wage increase offer represents a cost that is 0.44% *lower* than that of the comparable average (1.25% minus 1.69% = -0.44%) and provides a wage lift increase that is 0.14% *lower* than the average wage lift increase of the comparables (2.00% minus 2.14% = -0.14%).

From this perspective, while the County wage increase offer for 2010 remains *under* the percentage averages of the wage increase cost offers and wage lifts of the comparables, it is *closer* to those averages in terms of both (actual) wage cost and lift than the competing Union offer which remains *above* that average.

2011 settlements are reported for only three of the comparable counties, Barron, Chippewa, and Polk. The three show an average wage cost increase of 2.5% and 3.00% wage lift. From this threesome, the Union's offer is closer to the average than that of the County. Whether or not it remains so when settlements from the remaining four county comparables are factored into the average is still an open question, although St. Croix and Pierce counties, in particular, may tip the 2011 figures toward the Union. Even with this result, however, comparing the 2010-11 wage increase cost and wage lift percentages of the parties with the average percentage wage increase costs and lifts of the comparables yields, at best, a mixed result that favors the County as to 2010 one offer over the other, and leaves 2011 undetermined, though possibly leaning toward the Union.

The Union argues external comparability from another perspective, as well. Pointing to the 20-cent/hour wage adjustment provided by the County to the deputies in 2007 that raised the 3-cent/hour cushion between the Dunn County deputies' maximum wage and the lower maximum wage average of the comparables to a 24-cent/hour cushion, the Union's concern is that under the County's current offer the cushion would be reduced from 24-cents in 2007 to 4-cents in 2010. (It had already sagged to an 8-cent/hour cushion in 2009.) Under the Union's current offer, however, the cushion would be pumped up to one of 28-cents/hour in 2010 (4-cents/hour higher than the 2007 post-adjustment level). In contrast the Union charges the County's offer necessarily causes the 20-cent/hour-wage "adjustment" to evaporate in 2010. Since only three of the comparables having reached settlements for 2011, reliable estimates cannot be made as to how thick the 2011 padding will be.

A measurement that compares the maximum wage rate of one county with the average maximum rate of its comparables can be helpful in assessing wage offers, provided it is not viewed in a vacuum. In this case, that statistic does not reflect the fact that Dunn County deputies are eligible for the maximum rate of pay in only three years.⁸ Nor does it reflect that under the County's offer, Dunn County has moved up from fifth place to fourth place in the comparables' wage rate placement. Certainly it is not a hard and fast benchmark to which the parties have agreed.⁹

⁸ This earns Dunn County second place in this category among the comparables. Barron County officers reach the top wage rate in two years. Deputies in Pepin, Polk, and St. Croix counties do not reach eligibility for their top pay step until ten years have elapsed.

⁹ At most, the 2007 "adjustment" may indicate a mutual aversion to allowing Dunn County's maximum wage rate to fall beneath the average maximum wage rate of the comparables (which the current County offer honors at least with respect to 2010), without specifying a precise dollar and cents amount by which the Dunn County maximum

The Union suggests that the Eau Claire figures be ignored on the grounds that an exceptionally poor (though unexplained) economic situation in that county resulted in a wage freeze settlement that unduly reduces the comparables' average wage increase percentage.¹⁰

The other side of the same coin is offered by the County, in which the County suggests that the wage rates of rapidly growing St. Croix County be discounted because the County's location in the Minneapolis-St. Paul metropolitan area has forced St. Croix County to pay significantly higher wage rates to its deputies.¹¹

The problem with either suggestion is that the comparables in this case were established by mutual agreement of the parties. They appear to be reasoned and logical selections. Each county, for instance, is geographically contiguous to Dunn. Undoubtedly they have other points of "similarity" that were taken into consideration by each of the parties when the parties mutually selected the county comparables. The statute merely requires that "comparable communities" be used in making the required economic comparisons, and the communities selected by the parties appear to meet this requirement. The comparables are what they are, warts and all. Certainly each party is entitled to attempt to minimize data from the comparables that is inconvenient or unhelpful to its case. Application of those arguments, of course, is a matter well within arbitral discretion, and so it shall be in this case.

At this point, each party has accepted both St. Croix and Eau Claire counties in the pool of seven comparables. Each party has included statistical data from each of the seven counties, including Eau Claire and St. Croix, in its respective statistical calculations and arguments. Absent mutual agreement by the parties to modify or alter the pool of comparables or submit new calculations and statistical data, I am not inclined to do so.

The County takes a slightly different tack in urging me to discount the earlier settlements among the comparables that took place before the seriousness of the recession was widely recognized. This approach would require me to make a subjective economic judgment not only as to 1) when the recession actually began, but also 2) when contract negotiators should have recognized its seriousness, and finally 3) discount or ignore any settlement (or arbitrated award) whose authors(s) failed to do so – in effect make a finding of negligence or worse.

But the plain words of Sec. 111.77(6)(d)1. require me to compare the parties' respective offers with the actual wages, hours, and conditions of public employees in comparable communities, *not* to speculate on what the wages, hours and conditions of employment that might have existed had economic circumstances been different or economic crystal balls more perfect. Speculation such as that can be a slippery slope from the perspectives of both arbitrator

wage rate needs to exceed the maximum average of the comparables.

¹⁰ According to the Union, if the Eau Claire wage freeze is excluded "the average cost of the comparables average percentage of wage increases for 2010 is about 2% and the average percentage lift is 2.5%.

¹¹ According to Dunn County, St. Croix County is the fastest growing county in the state, with almost half of its workers commuting to jobs in Minnesota. The County is included in the Minneapolis–St. Paul metropolitan area for federal statistical purposes, and its wage rates reflect that inclusion. Of the comparables, St. Croix deputy wages exceed the next highest rate (Polk County) by a large spread: \$2.62 in 2007, \$2.71 in 2008, and \$2.32 in 2009.

and advocates. As I stated in a previous award,¹² it is a form of speculation in which I decline to engage.

Sec. 111.77(6)(d) directs the requisite comparisons be not limited to wages, but also include an assessment of hours and conditions of employment. No information was provided as to employee hours. However, with respect to conditions of employment, the evidence indicates that besides Dunn County, Chippewa and Eau Claire counties were the only external comparables that did not make any changes in health insurance for 2010. The Chippewa settlement included only a 1% wage increase on 7/1/10, which may have been in conjunction with its agreement for no health insurance changes that year. Eau Claire, of course, had a wage freeze for 2010 and remains unsettled for 2011. Barron, Pepin, Polk, and St. Croix counties all negotiated changes in plan coverage, which increased employee costs. Pierce County's 2010 terms of agreement included a 1% increase in employee health care premium contributions. Under the County's offer, Dunn County will continue to contribute 92.5% of its employees' health insurance premiums in both 2010 and 2011.

Of the three external comparables that have settled for 2011, Barron County's triple 1% increases throughout the year had no further changes to its health insurance provisions that it had altered the year before. Chippewa County's 1%/2% January/July split increases in 2011 is accompanied by a 1% in employee health insurance premium contribution to its Preferred Provider Plan, while retaining three other health plan options. The 2010-12 Chippewa settlement included a provision raising employee health insurance premium contribution to 9% in 2011 and 10% in 2012. Polk County simply negotiated the right to reopen negotiations with respect to its current standard plan in 2011. Dunn County's health insurance provisions will not change in 2011.

Based on my review of the external comparables, I am not persuaded that the County's final wage proposal fits the Union characterization of it as a "substandard offer." Certainly it is less than the Union prefers, and less than the County could possibly afford, but it does not appear that Dunn County is losing significant ground to its external comparables with respect to wages and health care.

On this record I cannot find that the external comparables make an urgent or compelling case for adoption of the Union offer. It is true that the County's maximum wage rate had declined in 2009 to only 8-cents/hour above the average maximum wage rate of the external county comparables and would drop slightly further to only a 3-cent lead in 2010 under the County's offer. But that is only one element. It is balanced to some extent by the County's final offer that permits it to move from fifth place into fourth in the wage rate rankings of the octet of western Wisconsin counties (i.e., the seven comparables plus Dunn County). Further balance is provided by the County's closer alignment with the percentage (actual) wage cost increases and wage lifts in 2010 of the comparables than that shown by the Union, although that advantage may be lost when figures for remaining four unsettled comparables become available.

Accordingly, on this mixed record I find no evidence of significant erosion of deputies'

¹² *Sheboygan County*, Dec. No. 32720-A (Hempe, 11/09).

wages and fringe benefits has taken place or is likely to take place under the County's offer. On the contrary, the County's offer keeps closer pace with the average percentage 2010 wage increases of the comparables than does Union's, will move the County from fifth to fourth in the eight-county wage rankings, and will allow the Dunn County deputies to maintain a slight lead over their comparables' average maximum wage rate for at least 2010. At the same time, I share the Union's concern with respect to the thinning margin between the County's maximum wage rate and the average maximum wage rate of the comparables.

Neither offer is unreasonable, *per se*. On balance, however, I find this factor gives a slight preference to the County's offer.

Internal Comparables

The Union asserts there is no pattern of parity between the deputies and the other internal bargaining units. It contends that the POA bargaining unit is composed of a single position that results in unfair and inaccurate comparisons with other Dunn County units. Specifically, the Union alleges that other County internal bargaining units fare better than the deputies against the external comparables, which, says the Union, explains why the other units are well-positioned vis-à-vis the external comparables and do not find themselves in interest arbitration.

In effect, the Union appears to be arguing that the POA unit is both unique and isolated: unique because 1) it is a public safety law enforcement unit and therefore different than general employee units; and 2) it is isolated because unlike the other internal general employee units the POA unit members perceive their former 24-cent cushion between their maximum salary rate and the average maximum rate of the comparables, to be dwindling, while selected other members of general employee bargaining units still have a healthy cushion between their maximum salary rates and the comparable average. Added to this is the thread of a third belief that the POA unit is disadvantaged because it is a one-position unit to which individual position "adjustments" cannot be readily made without becoming unit-wide.

If that is the argument, I find it misplaced. There are a number of alternative reasons that could also explain the situation of which the Union apparently complains: one such reason could be the paucity of bargaining sessions between the deputies and the County during the bargaining season's round of bargaining.¹³

In any event, it does not diminish the obvious fact that the County has established an impressive internal settlement pattern for 2010-11. The pattern affects 382 represented Dunn County employees of a total of 400 (95.5%) who have voluntarily settled for the same wage terms that were and are now offered to the Union. This is more than a pattern; it is a landslide.¹⁴

Virtually all arbitrators agree that internal comparables may be considered in arbitration proceedings conducted under the aegis of Sec. 111.77, perhaps by a broad interpretation of Sec. 111.77(6)(d) or the discretionary leeway more definitively permitted by Section 111.77(6)(h).¹⁵

Thus the issue in this case is not whether the internal pattern exists or whether the internal comparables may be considered, but the weight they should be accorded.¹⁶

The Union asserts that the external comparables should be given greater weight than the internal ones, and offers an impressive list of arbitral authority that lends support to that view. The County counters with its own list, equally impressive, of arbitrators who support the County's view that the internal comparables should be given the greater weight.

Arbitrator James Stern has articulated the rationale behind the general rule for giving internal bargaining comparables determinative weight:

After reviewing the conclusions reached in each issue and considering the arguments of the parties and the criteria in the statute, the arbitrator selected the final offer of the City. The primary argument that persuaded the arbitrator to select the City offer was the fact that its offer extended to the Union the same general package already agreed to by the other units with which the City bargains. If an arbitrator making an award that resolves the last outstanding dispute in a city adopts a position that

¹³ The case record for this matter indicates that following the initial exchange of demands on January 5, 2009, only one bargaining session took place. Presumably that occurred in early 2009, since the Union filed a petition for interest arbitration on March 10, 2009, and nothing further took place until a mediation session was attempted in the late summer of 2009 with a WERC mediator. While some arbitrators have described interest arbitration as a means of trying to place the parties where negotiations would have led them, it is not a perfect substitute for open, civil, direct, and honest communications between the parties at a bargaining table. Negotiations, of course, can be tedious and time consuming. Their advantage is that the negotiators have direct control of the contract under which they will be operating, instead of surrendering part of that control to an outside third party neutral.

¹⁴ The County alleges a "historical" internal pattern, as well, that goes back to the 2004-06 contracts. This view conveniently overlooks the 2007 20-cent/hour "adjustment" that "adjusted" the wages of the entire POA bargaining unit. I have difficulty distinguishing the "adjustment" with a more straightforward "across-the-board" increase.

¹⁵ See *City of Two Rivers*, Dec. No. 32745-B (Engmann, 11/09); *Ozaukee County*, Decision No.32592; (Shaw, 11/09).

¹⁶ *Sheboygan County (Sheriff Dept.)*, Dec. No.32720-A (Hempe, 11/09).

overturns the pattern already set, he creates problems for the following year in other negotiations. Furthermore, when an arbitrator does this, it discourages prompt voluntary settlements by the parties and encourages bargainers to be the last to settle on the chance that they can get a little bit more through arbitration than those that settled previously.¹⁷

A refinement to that general rule was invoked by Arbitrator George Fleischli who declared that law enforcement personnel might be considered independently from other internal bargaining unit comparisons,¹⁸ and Arbitrator McAlpin confessed, “This arbitrator has found a number of arbitrations that internal comparables 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.”¹⁹

These awards and others helped craft a significant exception to the general rule giving determinative weight to internal comparables. The exception extended to public safety employee bargaining units, and has been justified on the several grounds, including the view that 1) the Sec. 111.77(6) arbitration criteria differs in significant respects from the Sec. 111.70 arbitration criteria applied to general public sector employees, and 2) that public safety employee bargaining units are unique in that its members are required to undergo more rigorous training and have duties that routinely expose them to greater risks to their health or physical safety than general employees normally encounter.

That exception, by itself, is not sufficient to overcome the presumptive weight generally accorded to internal comparable. Another condition is needed – compelling circumstances!

That condition was hinted at by Arbitrator Jay Grenig who acknowledged a union’s “understandable frustration” at being locked into an established pattern, with the implication that “*compelling circumstances*” could be a key to opening the pattern.²⁰

Arbitrator Sherwood Malamud augmented that view in a case involving a police bargaining unit. “Arbitrators,” said Arbitrator Malamud, “may refrain from a settlement pattern pegged to a certain percentage increase where it is demonstrated by *compelling evidence* (emphasis supplied) that the wage rate of a particular classification(s) of employees are substantially above or below the rates paid by comparable employers to employees in similar classifications.”²¹

There is no evidence in this matter that the Dunn County deputies are substantially below the wage rates paid by comparable employers to employees in similar classifications. In short, the Union failed to demonstrate any “compelling circumstances” for permitting the POA unit to

¹⁷ *City of Manitowoc Wastewater Treatment Plant*, Dec. No. 17643-A (Stern, 1/81)..

¹⁸ *Portage County (Sheriff’s Dept.)* Dec. No. 41434 (Fleischli, 9/89)

¹⁹ *City of West Bend*, Dec. No. 31003-A (McAlpin, 2/05).

²⁰ *Rock County*, Dec. No. 20600-A (Grenig, 1/84).

²¹ *Village of Greendale*, Dec. No. 29623-A (Malamud, 2/00).

break away from the internal pattern of settlements established by their fellow Dunn County employees, albeit non-public security employees. The external comparables simply fall short of demonstrating any need for wage catch-up, any significant need to make-up lost ground, or any other egregious inequity that requires relief not available under the internal settlement pattern.

Instead, the external comparables provide a viable basis for the County's claim that no significant erosion of the Dunn County deputies wages has taken place or will be caused by the County's wage offer that supports abandonment of the internal pattern wage settlements of the other bargaining units.

For this reason, the precise weight accorded to the internal settlement patterns becomes somewhat academic. They have become, however, a significant – indeed, a determinative tipping point that favors the County, pending consideration of the remaining factors.

Cost of Living²²

The cost of living attempts to measure the average consumer prices for goods and services in a particular area over a specified period of time. The Department of Labor, Bureau of Labor Statistics Data (hereinafter BLS) periodically extracts and publishes this type of information.

The parties' sharply differ as to the CPI results that each reports.

Comparing only December 2008 with December 2009 in a BLS CPI-W (Urban Wage Earners and Clerical Workers) chart, the Union concludes there was a 4.2% cost of living *increase* between in December 2009 over December 2008. However, that number does *not* represent the 12-month December 31, 2008 to December 31, 2009 cost of living increase. The only information that number conveys is that the cost of living in December 2009 was 4.2% higher than the cost of living in December 2008. This can be readily established by dividing the difference between the actual 2008 and 2009 December base figures by the lower December 2009 base figure, which results in a rounded-off quotient of 0.04199 [200.471 minus 192.391 = 8.08; 8.08 divided by 192.391 = (rounded-off) 4.2%.]

Viewing the same CPI-W chart, the County reports a 2009 cost of living *decrease* over the entire 2009 year. That figure can be validated by first determining the difference between the "Annual" base figure listed in the 2008 row (199.598) and the "Annual" base figure listed in the 2009 row (197.396) and dividing the remainder by the 2008 base number. The resulting quotient is 0.0110 or a minus 1.1%.

In summary, the Union's method compares only the '08 and '09 Decembers with each other. The County's method is an annual average that calculates the entire January through December year of 2009. Notwithstanding the Union's apparent preference in this matter, a host of arbitrators, including the undersigned, find the reported experience of the entire year, that is, the 12-months immediately preceding the first month of the putative labor agreement between

²² Sec. 111.77(6)(e), Stats.

the parties, as providing a more accurate overall cost-of-living perspective and indicator than the December–December index used by the Union.²³ As the BLS website (FAQ) instructs:

The December-to-December index percentage change tends, however, to be more volatile than the percent change in the annual average index. Annual average indexes are based on 12 monthly data points which, when averaged reduce volatility by smoothing out the highs and lows.²⁴

Based on this analysis, it is clear that although both wage offers exceed the cost-of-living increase for the January through December 2009 year, the County's offer shows a closer alignment with the relevant CPI statistics reported for that period, and is thus supported by this factor

Overall Compensation²⁵

This factor focuses on the overall compensation presently received by the employee, specifically enumerating direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospital benefits, the continuity and stability of employment and all other benefits received.

This is not an insignificant factor, but is designed to illustrate the true wage rate of the employees.

Dunn County currently provides the following maximum benefits to its deputies:

- 92.5% contribution to health insurance premiums (S & F)
- \$50/mo contribution to dental insurance
- 100% premium payment for life insurance
- 100% Limited Term Disability Insurance (if 60 days remains in sick bank leave)
- 100% of WRS pension contribution
- 25 days vacation (maximum)
- 9 paid holidays
- Personal days, depending on length of service. (1 at hire; 2 after 4 yrs; 3 after 10 yrs; 4 after 20 years).

These benefits are either at the top or close to the top of benefits paid by the other comparables as to health and dental insurance premium contributions, paid life insurance, WRS pension contribution and vacations. The County provides 9 holidays (compared to 10 by a

²³ *Sheboygan County*, Dec. No. 32720-A (Hempe, 11/09); *Buffalo County*, Dec. No. 31484-B (Hempe, 5/06); *City of Madison (Police)*, Dec. No. 28826-A (Malamud, 5/97); *City of Racine (Wastewater)*, Dec. No. 24266 (Mueller, 1/88); *Rock County*, Dec. No. 20600 (Grenig, 1/84); *Walworth County (Sheriff)*, Dec. No. 19811-A (Zeidler, 2/83); *City of Franklin*, Dec. No. 19569-A (Imes, 11/82).

²⁴ Bureau of Labor Statistics website, (FAQ or "Frequently Asked Questions," cited in County's Reply Brief at p. 2.

²⁵ Sec. 111.77(6)(f), Stats.

majority of the comparables), but also grants personal days off depending on length of service. (No other comparable provides personal days.) There are no apparent appreciable gaps or excesses in the overall compensation of the Dunn County deputies when it is compared to the overall compensation provided by the comparables. Even the Union acknowledges that the benefits received by the POA unit are “very generous” and “(i)n general, in line with the external comparable,” though quickly adding, “. . . not so unusually generous” as to justify a lower wage increase for the deputies.

However, the Union finds particular fault with the County’s emphasis on overall compensation in its Employer’s Rev. Ex. 18, arguing the County failed to provide sufficient detail that enabled intelligent analysis. Of interest to the Union would have been benefit areas the County did not include such as longevity, sick leave, and level of sick leave. In short, the Union finds the County’s Ex. Rev. 18 incomplete.

I note the Union received the original Employer’s Ex. 18 on the day of hearing, October 26, 2010. Without objection, by cover letter and email dated November 8, 2010 the County provided a Rev(ised) Employer’s Ex. 18 to both the Union and the Arbitrator. The latter is identical to the former except for additional information about Barron County wages in 2011. Thus it appears the Union had received the Exhibit of which it is now critical when there was ample time for the Union to have requested the additional information it now asserts would have been useful, from either the County or any of the comparables.

As Arbitrator Engmann observed as he led into his conclusion:

. . . Whenever employees choose to take their payment in salary, insurance benefits, paid days off, or whatever, the combination of these is their true wage rate . . . In view of the total compensation received by these employees (Florence County Deputies), the gap between their rate of compensation and the rate of compensation is not such as to justify deviating from the strong internal settlement pattern evidenced in this record. . . .²⁶

Employer’s Ex. 18 and Rev Ex. 18 list all eight counties wage increase offers along with short summaries of employee health insurance information from each of the counties. It does not, as the Union charges, contain plan designs or list benefit gaps. But in conjunction with Employer’s Ex.19 and 22 it provides a general overview of the wage increases, wage rates, significant fringe benefits, and employee health insurance highlights from the comparable counties. In my opinion, it provides a helpful comparative perspective of overall compensation between the subject Dunn County and its comparables. Undoubtedly the information the Union complains was not included may have been helpful as well (sick leave, for instance), but I am satisfied that the overview that was provided was sufficient for the limited purpose it was intended to achieve.

In my opinion, this factor supports the County’s wage offer.

²⁶ *Florence County*, Dec. No. 31929 (Engmann, 7/07).

Changes in any of the Foregoing Circumstances²⁷

Neither party reported any changes in any of the foregoing circumstances during the pendency of this arbitration that affect or impact this bargaining unit.

Such Other Factors Normally or Traditionally Taken into Consideration²⁸

This category is one basis for arbitrators considering “internal comparables” in cases proceeding under Sec. 111.77. Most arbitrators deem internal comparables as a factor “normally or traditionally taken into consideration” in arbitration cases.

Neither party referred to this factor.

SUMMARY

The Union has vigorously represented the interests of the POA bargaining unit it represents. In the end, the Union was unable to provide any compelling evidence or circumstances that enable its final offer to overcome the overwhelming pattern of internal voluntary settlements with the represented workforce. Assessment of the external comparables simply did not produce the strong advantage the Union had hoped to demonstrate. With those results, the internal settlement pattern proved to be the decisive tipping point. In addition, the County’s offer showed a closer alignment with the relevant CPI statistics and was not disadvantaged by consideration of overall compensation of both Dunn County and its comparables.

ARBITRATION AWARD

Based on the evidence and testimony adduced at hearing, my consideration and assessment of the issues, the briefs and arguments of counsel and advocates, my weighing and application of the factors contained in Sec. 111.77(6)(a) – (h) and the entire record herein, I direct that Dunn County’s Final Offer, including the provision relating to mandatory direct deposit of employee wages and reimbursements, together with all items to which previous tentative agreements have been reached, including retention of all current contract language except as modified by this award, be included in the parties successor 2010-2011 contract.

Dated this 15th day of March [2011] in Madison, Wisconsin.

A. Henry Hempe, Arbitrator

²⁷ Sec. 111.77(6)(g), Stats.

²⁸ Sec. 111.77(6)(h), Stats.