

**IN THE MATTER OF THE INTEREST ARBITRATION
PROCEEDINGS BETWEEN**

VILLAGE OF OSCEOLA,

Employer,

and

ARBITRATOR'S AWARD
Case 8 No. 69569 MIA-2913
Decision No. 33217-A
(Police Department)

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION
(OSCEOLA PROFESSIONAL POLICE
ASSOCIATION),

Union.

Arbitrator: Jay E. Grenig

Appearances:

For the Employer: Mindy K. Dale, Esq.
Weld, Riley, Prenn & Ricci, S.C.

For the Association: Robert West
Consultant for WPPA

I. BACKGROUND

This is a matter of final and binding interest arbitration for the purpose of resolving a bargaining impasse between the Village of Osceola (Village or Employer) and Wisconsin Professional Police Association/LEER (Osceola Professional Police Association) (Union or Association). The Employer is a municipal employer. The Association is the exclusive collective

bargaining representative for certain employees in the Village's Police Department.

On February 12, 2010, the Association filed a petition requesting the Wisconsin Employment Relations Commission to initiate arbitration pursuant to Wis. Stat. § 111.77(3). A member of the Commission's staff conducted an investigation reflecting that the parties were deadlocked on their negotiations. On January 18, 2011, the WERC ordered that compulsory final and binding interest arbitration pursuant to Wis. Stat § 111.77(4)(b) be initiated for the purpose of issuing a final and binding award resolving the impasse existing between the Union and the Village.

By letter dated February 15, 2011, the WERC notified the arbitrator he had been selected as the arbitrator in this matter. The arbitration hearing was conducted on May 18, 2011, in Osceola, Wisconsin. Upon receipt of the parties' reply briefs, the hearing was declared closed on July 9, 2011.

II. FINAL OFFERS

The Village's final offer is as follows:

The terms and conditions of the 2009 Agreement shall become the terms and conditions of the 2010-11 Agreement, except as proposed for modification herein:

1. All tentative agreements (attached).
2. ARTICLE II - RECOGNITION. Amend second sentence in Section 2.01 as follows, effective January 1, 2011:

A regular full-time employee is defined as an employee who is on pay status a minimum of ~~2080~~ 2068 hours for a twelve (12) month period.

3. ARTICLE VII - HOURS OF WORK WEEK. HOURS AND OVERTIME. Amend Section 7.01 as follows, effective January 1, 2011:

Section 7.01 - Work (Week) Schedule: The standard work schedule shall consist of six (6) eight and one-half (8 ½) ten hour on-duty days to be followed by three (3) rest days, followed by six (6) ten-hour on duty days, ~~followed by six (6) rest days, 6-3-6-6~~ as a repeating cycle. The on-duty workday shall be as outlined below including include a one-half (½) hour paid lunch

period during which time the employee shall be on call. The employee shall be allowed two (2) twenty-minute paid breaks per shift. Under no circumstances may an employee's shift be changed for disciplinary purposes.

4. ARTICLE VIII - WAGES. Section 8.01. Appendix "A."

January 1, 2010 1.0% Increase July 1, 2010 1.0% Increase
January 1, 2011 2.0% Increase

5. ARTICLE VIII - WAGES. Amend Section 8.02 as follows, effective January 1, 2011:

Section 8.02 - In order to allow the police officers to receive payment of their wages on a regular two (2) week pay cycle, as do all other Village employees, it is agreed that police officers will have their annual wages divided by the 26 pay periods and paid routinely that amount, plus pay for any overtime worked during that pay period.

Pay to be calculated using the following formula:

Hourly rate of pay (from Schedule A) x ~~2080~~ **annual number** of hours = \$ total annual regular wages, divided by 26 pay periods = regular two (2) weeks pay. All overtime and other pay earned during the pay period shall be added with the regular pay for the period.

6. ARTICLE XVI - HOLIDAYS

Create new Section 16.03 effective January 1, 2011, which shall state:

Section 16.03 - Employees shall receive two [2] floating holidays.

The Association's final offer is as follows:

This final offer includes all stipulations previously submitted and the Association agrees to all items contained in the Employer Final Offer dated October 29, 2010, with the exception of the schedule change. The only issue outstanding between the parties then is the schedule change proposal.

In an email to the WERC dated December 7, 2010, the Association stated, in pertinent part, as follows:

The Association Final Offer which agrees to all items in the Employer Final Offer with the exception of the schedule change remains our Final Offer. The Association believes the items pertaining to the schedule change are numbers 2, 3 and 5 of the Village Final Offer.

III. STATUTORY CRITERIA

Wis. Stat. § 111.77(6)

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

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these 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, arbitration or otherwise between the parties, in the public service or in private employment.

IV. FACTS

The Village has two collective bargaining units: the police unit (three full-time police officers) and public works (four members). The public works bargaining unit is represented by the Teamsters Union. The Police Department is staffed by the Police Chief, a Lieutenant, three full-time officers, and several part-time officers.

The present work schedule provides for ten-hour days where officers work a cycle of six on/three off, six on/six off. The existing schedule includes six hours of overlap in every 24-hour day. In September 2009, the Village and the Association began negotiations for a successor agreement covering the term January 1, 2010, through December 31, 2011. Among other issues, the Employer sought to change the existing work schedule. The Association rejected the attempt to change the schedule.

The existing work schedule was agreed upon by the parties in 1999 on a trial basis under a side letter of agreement. Before that, the work schedule was six days on, three days off, but officers only worked an 8-hour day, which resulted in a 1,946-hour work year. The 1999 agreement included a "Section 7.05 - Extra Shifts" allowing bargaining unit members to work up to 134 total hours per year, at their straight time rate of pay, before the extra shifts could be offered to part-time reserve officers. The ability to work an additional 134 hours at straight time pay in addition to the scheduled 1,946 hour work year resulted in 2,080 hours of pay status. Later, the parties agreed to incorporate the new work schedule into the 2000-2001 agreement and eliminated Section 7.05.

The Police Chief testified the Village's proposed schedule is the best case scenario in terms of cost. However, the Chief explained he had issues with officer safety where duplicate coverage is lost during some evening hours. He acknowledged that the Village has mutual aid with Polk County so that if an officer needs back-up, a county deputy will respond although there could be some delay in the response time.

The Chief indicated he could have problems with officer retention with the Village's proposed schedule and difficulty hiring since the existing schedule is perceived as a benefit due to the time off. He explained that one officer wants to leave now to go to a warmer climate, and he would likely lose the lieutenant if he is placed in a nonsupervisory spot. The Chief testified that replacing those two officers would be difficult.

Two bargaining unit members testified how the change in work schedule would affect them personally. One officer testified the reduction in

days off would "greatly increase day care costs." He also testified that under the proposed schedule he would have less time to devote to his "secondary business" of rebuilding engines and outboards. Another officer testified that he would incur day care costs because currently his ex-wife has his children for six days and then he has them for six days. He also testified the schedule change could affect his ability to work security for weddings and serve summons for Polk County.

V. POSITIONS OF THE PARTIES

A. The Association

The Association contends the Village is the moving party as it proposes to change the status quo regarding work schedules for the 2010-2011 collective bargaining agreement. The Association asserts the change is a major one as it would undo eleven years of bargaining history, cost the police officers wages and reduce their rest time off by 34.8 days.

The Association suggests that, when one side or other wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. In the absence of such showing, the Association says the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able to achieve this provision without the quid pro quo.

According to the Association, there can be no doubt that the change proposed by the Village represents a major change in the status quo, and the Village must therefore meet the necessary tests for defending such a change. First the Association says the Village must demonstrate the need for the change. The Association asserts that the Village fails on this initial criteria to make a reasonable case. It claims the Village's entire argument is based on a projected savings of about \$17,000, and the figure is, at best, a projection as there is no experience to give it real weight.

The Association says that each officer would receive a cut in pay resulting from working twelve less hours per year under the Village's changed schedule. In addition to taking a cut in pay, the Association states these officers would feel an enormous impact on their personal lives built around the current schedule as they would have to adjust for 34.8 less rest days off.

The Association contends that officer safety would be jeopardized as there are critical times when it is important to have on-duty backup coverage. It notes that the Police Chief testified the distance for shared staffing

from other departments was too great to provide the assistance on a timely basis when it was critical. For this reason the Chief said he was not supportive of the change.

The Association points out the Police Chief testified he believed the claimed financial savings were over blown. He testified that his department was under budget by seven percent, and he was looking for additional ways to produce savings within the existing structure. The Association notes the bargaining unit has been reduced by twenty-five percent with the elimination of one position, and savings will continue to repeat in years to come.

The Association asserts the Village failed to show a clear need for the change in status quo it proposes. The Association argues the impact on the employees is enormous and the cost savings questionable. It claims the law enforcement services to the community will change for the worse if the Village proposal is selected.

With respect to comparables, the Association points out that the Village Administrator testified the comparables used by the parties at the bargaining table are St. Croix Falls, Amery, Somerset and North Hudson. The Association says arbitrators generally do not change the comparables used by the parties in voluntary collective bargaining. The Association asserts these agreed upon comparables are geographically proximate and also of similar size. The Association suggests they are the most appropriate comparables to be used here.

According to the Association, a review of the contracts of the comparable employers reveals no compelling pattern supporting the Village status quo change. It notes the Amery contract is silent on work schedule. In Somerset, patrol officers have twelve-hour days with a two on and two off, three on and two off, and two on and three off rotation. In St. Croix Falls, the officers have ten hour days with a rotation of four/two, four/two, four/four. The Association says that, in North Hudson, the schedule more closely approximates the proposal of the Village. It concludes that one of four comparables supports the Village, one is unknown and two support the Association. Clearly even if a need had been established there is not support in the comparables.

Addressing quid pro quo, the Association suggests the Arbitrator should first measure the need and then measure the impact on the employees. The Association disagrees with the Village's position that it has given a wage increase that is a quid pro quo. It says the Village has acknowledged that this wage increase is the same as that given to other represented employees. As to the Village's suggestion that the change in insurance carrier

(not benefits) justified the wage increase for public works, the Association asserts that the Village Administrator testified no such carrier change was offered to the police bargaining unit, and the police bargaining unit has made changes in insurance over the years. When compared internally, Association argues the wage increase offered the police unit is appropriate and does not represent a quid pro quo for the schedule change.

According to the Association, the two agreed upon personal days does not represent a quid pro quo. It says the salary and personal days are separate stand alone items and have been agreed as part of bargaining and not accepted as a quid pro quo in any respect.

The Association claims the comparables do not support the Village. It says the agreed upon wages in Osceola are less than the pattern of the four agreed upon comparables. The Association notes that in 2010 Amery and St. Croix Falls provided two percent increases, North Hudson provided three percent, and Somerset froze wages.

Recognizing the Village has been hit by the economic down turn and has experienced some business closures, the Association suggests the job loss has more of a regional impact than just the Village. Pointing out the parties have agreed on all items with the exception of the work schedule, the Association asserts it is not clear the change proposed by the Village will provide significant savings. The Association observes that, often at times of the worst economy the jobs of police officers become more difficult and take on additional risk.

The Association contends the interests and welfare of the public are always served when public safety has the best, well-trained officers possible. In this case, the Association argues a consistent fair schedule that can be counted on to continue over time without significant change makes for a better work force.

According to the Association, the cost of living is best reflected by the comparables. Given the comparables here, the Association says it must prevail because the impact of the Village's proposal will mean the overall earning power of the officers will be reduced both on the job and in terms of secondary employment.

In its reply brief, the Association responds to the suggestion of the Village that the change in the contract from 2,080 to 2,068 minimum hours to be considered full time should be an item contained in both final offers. Should the Association's Final Offer be selected, the Association says the

2,068 would replace the 2,080 in the contract. The Association says it has no problem with this suggestion if that is what the Village wants.

The Association contends its final offer indicates agreement on all items with the exception of the schedule change proposal of the Village. The Village explained at great length in its Brief how the 2,068 is linked to that proposed change. The Association says it therefore agreed to the linkage instead of maintaining the 2,068 as a stand alone item.

The Association concludes the Village has failed based on generally accepted arbitral criteria and based on an analysis of statutory criteria to support its proposed change in the status quo. Under the Village's proposal, the Association asserts Village police officers would take a cut in pay and work 34.8 more days.

B. The Village

Noting it has the burden to justify a change in the status quo with respect to its work schedule, the Village says its proposed change in the work schedule is reasonable and justified. The Village suggests that, when an arbitrator is deciding whether a change in the status quo is justified, the arbitrator is really weighing and balancing evidence on four considerations: (1) if, and the degree to which, there is a demonstrated need for the change; (2) if, and the degree to which, the proposal reasonably addresses the need; (3) if, and the degree to which, there is support in the comparables; and (4) the nature of a quid pro quo, if offered.

The Village asserts it has legitimate reasons for changing the existing work schedule. According to the Village, in the intervening years it became apparent to it that the existing schedule relied heavily on the use of part-time officers to fill full shifts unable to be filled under the 6/3,6/6 rotation, increasing the cost of part-time officers. It found that having a schedule of six days off in a row increased the need for part-time officers to fill shifts.

The Village also contends that having six days off in a row creates operational issues when officers are not at work on a more regular basis. The existing schedule also results in six hours per day of overlap because of the ten-hour work days and the filling of three shifts per day. The Village claims it has determined that six hours of overlap is unnecessary and inefficient.

The Village says it ultimately settled on returning to the 6/3 schedule worked prior to the 1999 side letter but with 8½-hour workdays, providing officers the opportunity to communicate with the next officer on duty so there can be an exchange of information from one shift to the next. The Village points out that its proposed schedule results in a 2,068 hour scheduled

work year. The Villages notes it has a working Police Chief and Lieutenant who participate in the work schedule rotation to provide 24-hour coverage in the Village. However, the Village states that their participation in the schedule rotation does not reduce the need for part-time officers.

The Village argues the need for a reduction in law enforcement expenditures is prompted by the Village's revenue limitations. It says that Village revenues are being reduced and are anticipated to continue to decline in upcoming years.

The Village asserts circumstances have changed since the language was negotiated into the 2000-2001 contract. It says the existing schedule requires a greater reliance on part-time officers to meet its scheduling needs than existed under the prior 6/3 rotation—increasing the cost of part-time officers. In addition, the Village contends the decrease in revenue forces it to seek a reduction in unnecessary expenditures.

According to the Village, its proposed work schedule is reasonable as demonstrated by the external comparables. The Village stresses that none of its external comparables provides six days off in a row. It argues that the external comparables clearly support the Village's proposed work schedule.

It is the Village's position that the Police Chief's concerns must be met with some skepticism. First, it says the officer who wants to go to a warmer climate is likely to leave regardless of the schedule. With respect to the lieutenant, the Village argues it cannot be expected to make managerial decisions based on the lieutenant's work schedule preference. If retention is the problem due to elimination of six days off in a row, the external comparables show that officers are not likely to find work anywhere in the area offering their existing schedule or as many as six days off in a row. The Village asserts the Police Chief has a self-interest in the work schedule change.

The Village says its final offer includes a quid pro quo—the addition of two floating holidays and the proposed wage increase. It claims the addition of two floating holidays is in recognition of the reduction in off days under the Employer's proposed work schedule. Not only are the Village wage increases appropriate, and based on some comparisons generous in light of the external comparables, the Village points out the parties' final offers do not include changes with respect to health insurance—either in coverage or level of contribution—that have an impact on employee wages. In light of the addition of two floating holidays, and in consideration of the internal settlement with Public Works and the external settlements in light of accompanying health insurance changes, the Village claims its final offer provides a meaningful quid pro quo for its proposed work schedule change.

The Village argues it is not in a financial position to buy its proposed change. The Villages stresses it has attempted to bargain a change in the work schedule during negotiations for three consecutive contract terms. Because the Association has rejected all the Village's proposed changes, the Village submits that, in the absence of any counter proposal, the Employer's quid pro quo should be sufficient.

The Village points out its final offer provides two floating holidays. It claims the Association is demanding a new benefit of two floating holidays—a change in the status quo—without demonstrating any need for two additional days off. The Village contends it offered the two floating holidays as a quid pro quo for the schedule change in an effort to alleviate in some small measure the impact of having fewer off days under the Employer's proposed schedule. It argues the Association has taken advantage of that offer by incorporating it into its final offer.

The Village asserts that the Association has not demonstrated a need for a change in the status quo by adding two floating holidays in conjunction with the existing schedule. It declares that the Association final offer should be rejected on that basis alone.

According to the Village, the interest and welfare of the public is better served by adoption of the Village's final offer. The Village submits that a savings of potentially \$17,551 by reducing the number of part-time officer hours is a meaningful reduction in its police operating costs.

In a small community the size of the Village, the job losses have been and will be significant. Unemployment is high and expected to increase with the Polaris closing. Senior citizens have seen no social security benefit increase in two years. Many of the community's citizens are struggling. Raising taxes is simply not an option, despite Village revenue being lost as a result of plant closings and reductions in state shared revenue. In view of the economic conditions prevailing in the community, the Village asserts the interests and welfare of the public would be better served by adoption of the Village's final offer.

In its reply brief, the Village argues that the reduction in annual salary due to a twelve-hour reduction in hours is less than calculated by the Association and not so significant as to be unreasonable. The Village says that, under its proposed schedule, officers would lose twelve hours per year due to a decrease to a 2,068 hour work schedule. Based on the agreed-upon 2011 wage rates multiplied by twelve hours, the Village states that the annual wages in 2011 would be reduced by \$281.04 for Officers Lalim and Byram and \$312.48 for Lehman.

The Village does not dispute a slight reduction in annual wages under a 2,068 hour work year, but says it is less than \$415.14 per year for existing officers, even if officers were at the maximum rate. The Village submits that the slight reduction in annual wages would be no different than if employees' take-home pay had been reduced as a result of higher health insurance contributions due to increased premiums.

According to the Village, the Association is seeking to modify item #2 of the Employer's final offer. The Village declares this is an improper attempt to modify the Association's final offer. It points out that Wis. Stat. § 111.70(4)(cm) requires each party to submit in writing its final offer containing its final proposal on all issues in dispute to the WERC. The arbitrator is required to adopt without modification the final offer of one of the parties submitted under subd. 6. am. except those items that the commission determines not to be mandatory subjects of bargaining and those items which have not been treated as mandatory subjects by the parties, and including any prior modifications of such offer mutually agreed upon by the parties under subd. 6.b.

Should the Association's final offer be awarded, the Village submits that item #2 of the Employer final offer will be incorporated into the successor agreement. It points out that Item #2 changes the definition of a full-time employee to one working a minimum of 2,068 hours, instead of the 2,080 hours existing under the present work schedule. Based on the parties' bargaining history, the Village says it would be inappropriate to change the definition of a full-time employee to 2,068 hours if the schedule remains a 2,080-hour work year, which will clearly be the case under the Association's final offer.

Under the Association's final offer, the Village says #3 is the only language change at issue. However, it states that, at the hearing, the Association asserted that #2 is also at issue, apparently because the Association perceives it as being tied to the schedule change. Stressing that Item #2 changes the definition of a full-time employee and makes no mention of the schedule change, the Village says the Association "agrees" to the change in the Village's final offer. It is the Village's position that, if the Arbitrator awards in favor of the Association's final offer, the change proposed in #2 of the Employer final offer must, under the Association's final offer, be included in the successor agreement.

Based on the foregoing facts, relevant case law and arbitral authority, the Village requests that its final offer be selected by the Arbitrator.

VI. DISCUSSION

A. The Lawful Authority of the Employer

There is no contention that the Village lacks the lawful authority to implement either offer.

B. Stipulations of the Parties

While the parties were in agreement on many of the facts, there were no stipulations with respect to the issues in dispute. They have reached agreement on a number of issues not in dispute here.

C. The Interests and Welfare of the Public and the Financial Ability of the Unit of Government to Meet these Costs

This criterion requires an arbitrator to consider both the employer's ability to pay either of the offers and the interests and welfare of the public. The interests and welfare of the public include both the financial burden on the taxpayers and the provision of appropriate municipal services.

The public has an interest in keeping the Village in a competitive position to recruit new employees, to attract competent experienced employees, and to retain valuable employees now serving the Village. Presumably the public is interested in having employees who by objective standards and by their own evaluation are treated fairly.

Village general fund revenues reached a high in 2009 of \$2,051,030, but show a projected decline in 2010 to \$2,027,958 and another decline in 2011 to \$1,956,629. Over that five-year period, general fund revenues in 2011 of \$1,956,629 were projected to be only slightly higher than in 2007, when revenue totaled \$1,954,875.

Property taxes comprise the largest share of Village general fund revenues. Property tax revenues increased by 16% between 2007 and 2011. State shared revenues comprise the second largest share of general fund revenues. State shared revenue of \$356,705 remained the same in 2008 and 2009 as received in 2007, but declined to \$341,782 in 2010, remained approximately the same in 2011, and is projected to decrease again under the 2012 State budget proposal to only \$322,464. In summary, there has been no revenue increase between 2007 and 2011.

Law enforcement costs make up the largest share of the Village's \$920,100 public safety costs budgeted for 2011. Law enforcement costs in-

creased 15% from 2007 to 2011. The Village Administrator testified that the Village took steps in 2010 and 2011 to reduce expenditures. Although the Village needed to reduce its operating budget by 6% from 2010 to 2011 (from \$2,023,312 to \$1,960,400), its expenditures actually exceeded revenues by \$3,771.

The Village is also facing additional loss of revenue due to several business closings in the community resulting in reduced property tax revenue. Polaris Industries, the largest employer in Polk County, announced in May 2010 it would be closing its Osceola plant. The Village Administrator testified Polaris announced that 541 fulltime employees would be phased out as well as more than 100 contract employees. Some of those operations have left and some have been sold. In addition, two other businesses in the Village industrial park have left. Xccent closed in 2010 and MBI closed, too.

The Village Administrator testified the Village looked at the total revenues generated from property taxes from those properties. He said the real estate values may change depending on their use in the future. In addition, the loss of personal property valuations for property that can be moved out of the Village results in lost revenue. Based on the 2009 assessed value of those properties, the Village stands to lose \$62,126 in property taxes, or 7.16% of its property tax revenue. The lost revenue may be somewhat mitigated by the announcement that another company, Kapco, has bought the press and stamping equipment and will lease a portion of the Polaris plant, keeping about 50 employees. The Village Administrator testified Polaris sold off two other operations in Osceola—with a loss of 400 jobs.

The Village anticipates another reduction in state aid for 2012 as a result of the Governor's Budget Repair Bill and budget proposal for 2012. The Village expects a \$54,454 reduction in state aid, based on the Legislative Fiscal Bureau's projection resulting in a 3.8% reduction in state aid as a percent of total property taxes plus aid.

The Village will not experience the savings projected under the State Budget Repair Bill in 2012 requiring employees to pay 12% of health insurance premiums under the State health insurance plan and one-half of the actuarially-required contribution toward Wisconsin Retirement System. The only savings for the Village is the employee WRS contributions required of its few nonrepresented employees. The Public Works unit is settled through 2012 and the Police are not subject to the law. In addition, the Village does not participate in the State health insurance plan. Even if the 12% contribution requirement applied to the Village, Village employees already pay 10% of the cost, so there would only be an additional 2% savings.

D. Comparison of Wages, Hours and Conditions of Employment

1. Introduction

The purpose in comparing wages, hours, and other conditions of employment in comparable employers is to obtain guidance in determining the pattern of settlements among the comparables as well as the wage rates paid by these comparable employers for similar work by persons with similar education and experience.

2. External Comparables

One of the most important aids in determining which offer is more reasonable is an analysis of the compensation paid similar employees by other, comparable employers.

The Village suggests that the comparables should be law enforcement units for all cities and villages in Barron, Pierce, Polk and St. Croix counties with populations approximating 4,000 or less, as well as the work schedule for Polk County deputies. The Village does not dispute that the parties have considered Amery, North Hudson, St. Croix Falls, and Somerset for external comparison purposes in the past. However, the Village believes an analysis of work schedules lends itself to broader comparisons and should not be limited to only four comparables. The Village states it has added the Village of Baldwin, City of Barron, City of Cumberland, Village of Ellsworth, and City of Prescott. The Village says all the external comparables provided by it (with the exception of Polk County) have police nonsupervisory units ranging from three to six fulltime members and fulltime officers of seven or less when including the Chief and any other supervisory officer- similar to the three fulltime bargaining unit members and five fulltime officers (including the Chief and Lieutenant) in the Village.

A review of schedules of the Village's comparables shows considerable variation in days worked and hours worked per day. None of the comparables has a schedule similar to the Village's. Of the Village's comparables, the most consecutive days scheduled as off days is four—Amery (a 6/4 schedule), Baldwin (a 5/4, 4/3 rotation), and St. Croix Falls (a 4/2, 4/2, 4/4 rotation). The Village's proposed schedule is identical to the 6 on/3 off, 8½-hour day work schedules in Polk County and the Village of North Hudson (located in Polk County).

Of the ten external comparables proposed by the Village, half settled in 2010 for wage increases less than the 1%/1% split in the parties' final of-

fers. They include Barron (0.5%), Cumberland (freeze), Ellsworth (1.5%), Prescott (0.5%) and Somerset (freeze). In the remaining comparables, police in Amery and St. Croix Falls received 2% increases. Only Baldwin (38¢ plus 3%), North Hudson (3%) and Polk County (1.5%/1.5%) negotiated wage increases for 2010 in excess of the parties' final offers. However, Baldwin and North Hudson negotiated increased employee health insurance contributions of 2% over the prior year. In 2011, Baldwin, Cumberland, Ellsworth, and Polk County negotiated wage increases in excess of the 2% offered by the Village.

3. *Internal Comparables*

Generally, internal comparables have been given great weight with respect to basic fringe benefits. *Rio Community School Dist. (Educational Support Team)*, Dec. No. 30092-A (Torosian 2001); *Winnebago Village*, Dec. No. 26494-A (Vernon 1991); *Rock Village (Deputy Sheriffs' Ass'n)*, Dec. No. 20600-A (Grenig 1984).

The Village's public works bargaining unit received a 1% wage increase on both January 1 and July 1 of 2010 and 2% on January 1, 2011. The public works unit agreed to a major concession by switching to the Teamsters health insurance plan, with fixed composite rate premiums for 2010, 2011, and 2012, resulting in a total package cost of only 1.3% in 2010, 0.1% in 2011, and a 2% increase in 2012. The Village Administrator testified the savings generated by changing to Teamsters health insurance was not provided back to the Public Works bargaining unit, which explains the total package costs, and the Village feels it gave the Public Works employees a higher wage increase than if they had remained on the Village plan.

In contrast, the Police have health insurance through Health Partners and have experienced approximately 20% premium increases three years in a row for 2009, 2010 and 2011. The same wage increase as provided to Public Works results in a total package increase of 4.2% in 2010 and 3.8% in 2011 for the Police—higher than for the public works unit. The Employer had no intention of providing the same wage increase to the Police, with the higher total package cost, without securing the work schedule change in return. While both parties have included the same wage increase in their final offers, the Employer's wage offer was contingent on the schedule change. The Association's final offer simply "agrees" with the Employer final offer with respect to wages.

E. Average Consumer Prices for Good and Services

The governing statute requires an arbitrator to consider “the average consumer prices for goods and services, commonly known as the cost of living.” While a number of arbitration awards suggest that changes in the cost of living are best measured by comparisons of settlement patterns, such settlements, do not reflect “the average consumer prices for goods and services.” Despite its shortcomings, the Consumer Price Index is the customary standard for measuring changes in the “cost of living.” No evidence has been presented with respect to the Consumer Price Index.

F. Overall Compensation Presently Received by the Employees

In addition to their salaries, employees represented by the Association receive a number of other benefits. While there are some differences in benefits received by employees in comparable employers, it appears that persons employed by the Employer generally receive benefits equivalent to those received by employees in the comparable employers.

G. Changes During the Pendency of the Arbitration Proceedings

The parties have not brought any changes during the pendency of the arbitration hearings to the Arbitrator’s attention.

H. Other Factors

This criterion recognizes that collective bargaining is not isolated from those factors comprising the economic environment in which bargaining takes place. See, e.g., *Madison Schools*, Dec. No. 19133 (Fleischli 1982). Good economic conditions mean that the financial situation is such that a more costly offer may be accepted and that it will not be automatically excluded because the economy cannot afford it. *Northcentral Technical College (Clerical Support Staff)*, Dec. No. 29303-B (Engmann 1998). See also *Iowa Village (Courthouse and Social Services)*, Dec. No. 29393-A (Torosian 1999) (conclusion that employer’s economic condition is strong does not automatically mean that higher of two offers must be selected or, conversely, a weak economy automatically dictates a selection of the lower final offer).

The 2009 Polk County Workforce Profile indicates approximately 19% of the total personal income in Polk County in 2007 was derived from transfer receipts. Transfer receipts come from government—primarily in the form of Social Security, Medicare payments, unemployment insurance, veterans

benefits, and welfare. In addition to a large segment of the population dependent on Social Security, Polk County had a poverty rate of 8.1% during the 2005-09.

A comparison of unemployment statistics for Barron, Pierce, Polk and St. Croix Counties shows Polk County had the highest unemployment rate in 2008, 2009, 2010, and through February, 2011, of those four counties. Those statistics reflect unemployment rates before the closing of the Polaris plant in the Village was to take effect.

VII. CONCLUSION

While it is frequently stated that interest arbitration attempts to determine what the parties would have settled on had they reached a voluntary settlement (*See, e.g., D.C. Everest Area School Dist. (Paraprofessionals)*, Dec. No. 21941-B (Grenig 1985) and cases cited therein), it is manifest that the parties' are at an impasse because neither party found the other's final offer acceptable. Realistically, if the parties reached a negotiated settlement, the final resolution would probably be the result of compromise and the outcome would be contract provisions somewhere between the two final offers here.

The arbitrator must determine which of the parties' final offers is more reasonable, regardless of whether the parties would have agreed to that offer, by applying the statutory criteria. The arbitrator must select the complete final offer. The arbitrator has no authority to pick and choose from the various items in the final offers.

Despite the poor economic situation in the Village, the Village has not claimed inability of the Employer to pay either offer. The legal authority of the Employer to implement either offer is not in issue.

The work schedule has been in effect since 1999. The Village's proposed change in the work schedule represents a significant change in the present working conditions of the Village Police. In deciding whether a change in the status quo is justified, an arbitrator should consider: (1) if, and the degree to which, there is a demonstrated need for the change; (2) if, and the degree to which, the proposal reasonably addresses the need; (3) if, and the degree to which, there is support in the comparables; and (4) the nature of a quid pro quo, if offered.

The Village estimates its proposal will save approximately \$17,551 by reducing part-time hours. On the other hand, the Police Chief indicated the Department was under budget by seven percent, and he was looking for ad-

ditional ways to produce savings within the existing schedule. The proposed schedule change would reduce the annual scheduled work hours of the Police and consequentially the wages of the officers. The Village's proposal reduces the minimum hours from 2,080 to 2,068 hours. (According to the Village, the annual wages in 2011 would be reduced by \$281.04 for Officers Lalim and Byram and \$312.48 for Lehman.) The Village's proposal would also reduce the officer's days off by approximately 35 days. The Village has not established that its proposal to change the Police Officers' schedules is necessary to accomplish its goal of reducing costs. Furthermore, the Chief's testimony indicates the Village's money saving goals could be achieved without the proposed schedule change.

Although the parties disagree with respect to the appropriate comparable employers, an examination of the comparables suggested by both fails to reveal a pattern supporting the change in the scheduling of Village Police. The record shows the suggested comparables have a wide variety of schedules. The suggested comparables do not support the position of either party.

The testimony at the arbitration hearing establishes that the Village's proposed change in the work schedule may have a significant impact on the personal lives of the Police. The Village's Police Chief testified the Village's proposed schedule change could create problems with retention and recruitment.

The existence of a quid pro quo for the Village's schedule change proposal is questionable. The schedule change proposal was not tied to acceptance of any other proposal by the Village. Additionally, the record shows that members of the Police bargaining unit received the same wage increase as members of the Public Works bargaining unit. While the Village proposal includes two new floating holidays, its proposal also results in nearly 35 fewer days off.

While reducing costs is important, the safety of police officers is a primary concern. Significantly, the Police Chief testified the distance for shared staffing from other departments was too great to provide assistance on a timely basis when it was critical. While the Village has a mutual aid agreement with Polk County, the Chief testified there could be some delay in response time. For this reason the Police Chief said he was not supportive of the change as it reduced the staffing overlap between evening shifts, raising serious safety concerns.

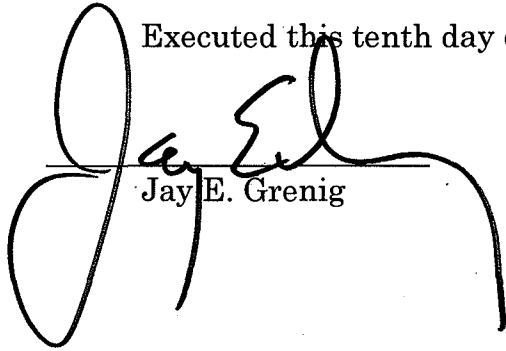
The arbitrator must adopt without modification the final offer of one of the parties submitted. Wis. Stat. § 111.77(4)(b). The Association's offer indicates acceptance of all the Village's proposals except that contained in Item

3 relating to work schedules. Item 2 of the Village's proposals does not relate to work schedules but simply defines the minimum hours an employee must be in pay status during a twelve-month period in order to be considered as a full-time employee. Item 2 does not affect either party's proposal under Item 3.

VIII. AWARD

Having considered the applicable statutory criteria, all the relevant evidence and the arguments of the parties, it is concluded that the Association's final offer is more reasonable than the Village's. The parties are directed to incorporate the Association's final offer into their collective bargaining agreement.

Executed this tenth day of August, 2011.



Jay E. Grenig