BEFORE THE ARBITRATOR

In the Matter of an Interest Arbitration Between

OCONTO COUNTY SHERIFF'S DEPUTIES ASSOCIATION,
WISCONSIN PROFESSIONAL POLICE ASSOCIATION

and

OCONTO COUNTY

Case 178
No. 70348
MIA-2942
Decision No. 33283-A

Appearances:

Mr. Richard Terry, Executive Director, RWT Strategies, LLC, 6111 Rivercrest Drive, McFarland, WI 53558, appearing on behalf of the Association.

Mr. John J. Prentice, Attorney at Law, Simandl & Prentice S.C., 20975 Swenson Drive, Suite 250, Waukesha, WI 53186, appearing on behalf of the County.

ARBITRATION AWARD

The Union and Employer named above are parties to a collective bargaining agreement which expired December 31, 2010. The parties filed an interest arbitration petition with the Wisconsin Employment Relations Commission, and a member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. The parties submitted their finals offers to the Investigator by April 1, 2011. On April 18, 2011, the Commission issued an Order appointing the undersigned to serve as the Arbitrator. A hearing was held on August 4, 2011 in Oconto, Wisconsin, at which time the parties were given the opportunity to present their evidence and arguments. The parties completed filing briefs on October 18, 2011.

FINAL OFFERS OF THE PARTIES

County's Final Offer

1. Article XXXI (Term of Agreement) is amended to read:
   THIS AGREEMENT shall be binding upon both parties and effective from the second day of January 2011 to and including the 31st day of December 2011.

2. Article VI (Retirement) is deleted:
   The County will pay the same portion of the employee's contribution to the Wisconsin Retirement Fund that it does for all other non-law enforcement employee participants of the Wisconsin Retirement Fund.

3. *Status quo* on the balance of the contract.

Association's Final Offer

The Association proposes that all provisions of the 2009-2010 Agreement except as modified by the Tentative Agreements and by this final offer be included in the successor Agreement for the term of January 1, 2011 through December 31, 2012.

Wages APPENDIX "A"

1.0% ATB effective January 1, 2011
1.0% ATB effective July 1, 2011

1.0% ATB effective January 1, 2012
1.0% ATB effective July 1, 2012

STATUTORY CRITERIA

The criteria (prior to July 1, 2011) to be given weight by the Arbitrator in rendering the award are set forth in Section 111.77(6), Wis.Stats., as follows:

(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 account in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between parties, in the public service or in private employment.

THE PARTIES' POSITIONS

The Association

The agreed-upon county comparables are Door, Florence, Forest, Langlade, Lincoln, Marinette, Menominee, Oneida, Shawano and Vilas. The Association notes that it includes City of Oconto as a comparable while the County excludes it. Arbitrators has previously included the City of Oconto as a comparable (See *Oconto County*, Dec. No. 20984-A and *Oconto County*, Dec. No. 20979-A). Also, the County previously proposed using the City as a comparable in 1992 (See *Oconto County*, Dec. No. 27070-B).

The Association asserts that the external comparables unassailably support its final offer and demonstrate a wage pattern for 2011 and 2012 similar to, but greater than, its final offer. The 2011 comparable average increase is 2.5%, compared to the Association's proposed lift of 2% and the County's offer of 0%. Moreover, the Association's lift of 2% is a split of 1%/1% for a cost of approximately 1.5%. The pattern for 2012 is 2.33%, compared to the Association's lift of 2%. Thus, the Association is not asking for an increase in either year that exceeds the existing settlement pattern. If the County's zero wage increase were imposed, the deputies' wages would likely fall to last for 2011, and the County's reduction in the WRS contribution would alter the deputies' compensation in such a way that a future catch up would be necessary.

The Association argues that the interests and welfare of the public are best served when the County has well trained officers who are treated fairly. While the economy is weak, these employees should not be required to unfairly shoulder the burden. Other employers in the comparable set have faced similar and greater economic challenges and have provided their law enforcement employees with modest increases such as sought by the Association. The Association mitigated the cost of its offer by using a split. The Association also provides two years, while the County offer's of one year less one day will be over shortly.

Regarding the internal comparables, the Association notes that there is a significant difference between law enforcement personnel and other employees. The record is silent as to how the County's non protective service employees' wage settlements or imposed wage rates compare to those performing similar non protective services in the comparable counties. Deputies frequently meet with dangers to their personal safety and perform substantially different tasks. The statutory criteria are different and there is no requirement in Sec. 111.77 that arbitrators use internal comparables in reaching a decision in interest arbitration. While the Association does not relish using the plight of other employees difficulties under the Budget Repair Bill/Act 10, it is necessary to point out that the in addition to the 4.62 million available to meet the Association's final offer, the County has an additional $250,000 in unanticipated revenue as a result of the savings it got in implementing the changes in the law applicable to non law enforcement employees.

The Association contends that the County's final offer is flawed in several ways. The County's offer falls short of a one year contract by one day. The public interest is best served by one, two, or three year agreements, not by 364 day agreements or eleven month agreements or six month agreements. That slippery slope should be avoided. Most of the comparable counties have two year agreements.

Furthermore, the County did not bargain over its proposed change to the employees' contribution to the WRS. The County did not demand this modification during negotiations or mediation. Only at the submission of its second final offer on March 15, 2011 and then its third and certified final offer on April 1, 2011, did the County broach the issue of WRS contribution. Even if the County's reason was to make all employees' WRS contributions equal, the County was still obligated to bargain over the matter. The County's equity logic is faulty. The County already pays more dollars for law enforcement personnel than general personnel in the WRS. Arbitrators have often stated that most matters are best left to bargaining and major changes should be bargained rather than accomplished through arbitration. Arbitrators try to put the parties in the same position they would have been in if they were able to reach a voluntary settlement.

The dramatic change in the WRS contribution is without any *quid pro quo*. The party proposing a change must show that a legitimate problem exists, that the proposal reasonably addresses the problem, and that the proposed change is accompanied by an appropriate *quid pro quo*. Arbitrator Kessler in *Baraboo Education Association*, Dec. No. 40897, advised that the party proposing the change must show a compelling need for the change, support in the comparables for the change, and that a *quid pro quo* is offered for the change. Why should the County be allowed to erode the wages of deputies without a persuasive need for this change or a substantial *quid pro quo*?

Deputies in Oconto County ranked seventh (in wages) out of twelve in 2005, 2006, 2008, 2009, and 2010. With three settlements in for 2011, they already rank eighth out of nine settlements. If they were to receive the same lift as the comparables, 2.5% and 2.33%, they would still lose real salary ground. The Association's final offer for 2011 is .5% less than the

average and the County's final offer is 2.5% less than the average. Long before equity can be addressed, the ever widening wage disparity must be stopped or at least slowed. The intent of the Association's final offer is to slow the erosion of wages. It is a modest approach and not excessive. If the County's offer is selected, the Association will have to argue for a significant catch-up increase in the very near future. Peaks and valleys are generally to be rejected in favor of moderate but steady adjustments.

The Association notes that the County has made no claim of inability to pay or a difficulty to pay. The County is doing well. The median household income in the County ranks second behind only Door County among all the comparable counties. The County has more than four million dollars on its balance sheet and two hundred and fifty thousand dollars in unanticipated revenue. Yet it pays its deputies below the average in comparable counties and proposes to dramatically increase that deficit. The County can easily afford the Association's final offer without any hardship on the taxpayers, and the financial ability of the County to meet the costs is not in question. While the County claims it will use up its reserves to build a new jail facility, that actual building of a new facility will be several years away.

The County's offer inappropriately ties the future payment of the employees' share of the WRS to that which is paid on behalf of all other County employees covered by the WRS. If another arbitrator, the State Legislature, or the County modified the employer contribution for one group other than the deputies, then what would be the status of the deputies? The County's final offer locks into place a factor subject to change that is beyond their control. The interlocking of the deputies' contribution to other employees covered by a different statute is contrary to public policy.

The State Legislature drew a very clear distinction between the factors for arbitrators to use when deciding cases involving law enforcement personnel and firefighters under Section 111.77 and the factors to be used when deciding cases involving other bargaining units under Section 111.70. Section 111.70 requires the arbitrator to compare wages, hours and conditions of employment of the municipal employees involved in the proceeding with other employees generally in public employment in the same community and in comparable communities. Section 111.77 does not require the arbitrator to compare the deputies with those in the same community but requires a comparison with those performing similar services in comparable communities. The Legislature did not mandate that law enforcement personnel have the same reduction in WRS contributions as it mandated for those employees covered by Section 111.70.

The County here seeks to put itself in the place of the Legislature and to demand of these employees that which the Legislature did not seek. Furthermore, Representative Ziegelbauer introduced Assembly Bill #127 which would have prohibited bargaining over any requirement that the employer pay on behalf of a public safety employee the first 5.8 percent of earnings that the employee is required to pay as contributions under the WRS. That bill did not pass. However, the Legislature passed legislation that made the 5.8% WRS payment by employers not available to new hires in law enforcement. Thus, they red circled or carved out current law enforcement employees.

The Association asserts that its final offer is favored when measured against the cost of living. One way to measure the cost of living is by reviewing the Consumer Price Index along with wage settlements. The CPI increase for January 2011 was 2%; February – 2.4%; March – 3%; and April – 3.7%. These data combined with the pattern of settlements of 2.5% for 2011 and 2.33% for 2012 show that the Association's offer parallels the cost of living while the County's offer is far below any measure of the criteria.

The County

The County is asking bargaining unit employees to make the same contribution to their retirement that all other employees in the County and virtually all other public employees in the State are required to make. For internal consistency, the County is also asking for a wage freeze in a one-year contract. The situation that the County finds itself in is mostly owing to Act 10, the Budget Repair Bill and the 2011 Wisconsin Biannual Budget. Those pieces of legislation dramatically changed the landscape of public sector labor relations, and the County is grappling with its obligations under the new law.

The County asserts that its request for employees' contribution to the WRS does not require a *quid pro quo* in this case. Arbitrator Vernon in *Elkhart Lake-Glenbeulah School District*, Dec. No. 43193 (1990) noted that there are four considerations in changing the *status quo*. They are whether there is a need for the change, the degree to which the proposal addresses the need, and degree to which there is support in the comparables, and the nature of a *quid pro quo*. Arbitrator Vernon noted that while all four elements should be present to some degree in most cases, the degree to which any one of them must be evidenced depends on the facts and circumstances of each case. He noted that if eleven of twelve comparables have the sought-after language or benefits in a similar form in their contracts, then the burden to demonstrate intrinsic need and *quid pro quo* are diminished.

Arbitrator Vernon has also held that while comparability drives most interest arbitration cases (see *Oneida County*, Dec. No. 29472-A (1999), comparability is a two-edged sword. If the Association can use comparables to drive wages up, the County can use comparables to correct disparities. In that case, the Arbitrator selected the County's offer even though some employees would have a wage cut without a *quid pro quo* because it was supported by the comparables. If other County employees enjoyed a benefit that the deputies did not have, the Association would argue that they were entitled to the benefit simply by virtue of internal comparability.

The concept of internal comparability drove the County's determination to treat all its employees the same. The internal comparables support the deputies contributing to their retirement. The deputy sheriffs are among the highest paid County employees, and they can retire earlier than other County employees with a more lucrative retirement benefit. The County asks – is it unreasonable that they should at least pay the same amount toward their retirement as virtually all other public employees in Wisconsin? The County will still be paying

more toward the deputies' retirement than it does toward any other non-protective employee group.

When the WRS was established, virtually all public employees paid the employee's share of the required contribution to the system. As time went on, the combination of collective bargaining and the application of arbitral comparability resulted in virtually every public employer paying both the employer's and employee's share of the required contribution to the fund. Act 10 changed everything. While the Association argued that Act 10 may show that the legislature intended that law enforcement personnel be treated differently, it is inherently difficult to gauge the collective intent of 133 individuals. Act 10 did not mandate that public employer pay the protective occupational participants' share of their WRS contribution. The County's Administrative Coordinator and Human Resources Director, Kevin Hamann, testified that shifting the costs of all the employees' WRS contribution back to employees nearly offsets the cuts in shared revenue and the anticipated reductions in State reimbursements.

The County states that of the eleven external comparables, four have yet to ratify wage rates for 2011 and seven of the eleven have not yet ratified wage rates for 2012. The four counties without ratified wages for 2011 have the lowest wages of all of the comparable counties. This puts Oconto County in a disadvantage by having to justify its wage proposals in light of an inflated estimate of average comparable wage increase. If Langlade County were disregarded, Oconto's wage proposal keeps it in the proper ranking for wage comparisons. Act 10's impact on the public sector cannot be ignored. The wage rates of counties that have already ratified their rates were ratified prior to the enactment of Act 10. Therefore, the Arbitrator should be hesitant to consider the ratified rates as being valid comparable rates during this bargaining season.

The County argues that even if it is reasonable to assume that wages must be increased to maintain a comparable wage position, the rates would only need to be increased 1.21% in 2011 and 1.98% in 2012. This assumes that the rate increases unknown for 2011 and 2012 would be at 2.5%. Although the Association's wage proposals keep the deputies at the same rank in the comparables, the proposed wages are 0.78% higher than required in 2011 and 0.81% higher than required in 2012. Given the bleak outlook of the economy and increased financial pressure put on counties by the State, increasing wages above that which is needed to maintain a consistent ranking is dangerous and unreasonable.

The County asserts that its desire to maintain internal consistency with respect to the deputies' WRS contributions reflects an enduring practice to maintain parity with regard to employee wages. The County did not give its employees a wage increase in 2011 because of the uncertainty surrounding the implications of Act 10 and the lack of information on shared revenue cuts and reductions in other State reimbursements. Also, pursuant to Act 10, the County's authority to set wages is based on the cost of living, a number not established until recently. Thus, the County offered its deputies the same wage increase all other County employees received in 2011.

The County explains that a one-year contract was necessary to maintain internal consistency with respect to wages. It was impractical – if not impossible – to offer wage increases to the non-protective employees because Act 10 tied wages to the cost of living, and the schedule and details of that were only recently established. The County did not know that its financial condition would be until introduction and final passage of the 2011 biennial budget.

The modification in the WRS is rooted in sound public policy and prudent financial management. Hamann testified on the implications of the State's 2011 biennial budget on Oconto County – the loss of $656,724. The County anticipates that the Association will argue that the County has a healthy general fund balance. But the County operates under statutory levy limits and revenue caps. So while the County has prudently built a surplus to partially address the effects of revenue losses and meet other unanticipated expenses and contingencies, once this money is gone, it's gone. There will be little opportunity to replenish it. The County must make cutbacks to live within its means. Its reserve funds are to be used for one-time expenses and to deal with the cash flow issues it faces. The money is not intended to fund County operations or finance recurring liability.

In Reply, the Association

The Association objects to the County's reliance on internal comparables, noting that the majority of cases have been decided based on external comparables and the County's attempt to substitute its internal sameness argument for the statutory criteria should be rejected. While the County speculated that if other employees had a benefit that the deputies did not have, the Association would argue they were entitled to it by internal comparability, there is no support for this statement. The Association maintains it members have great disparity in job duties and responsibilities as well as differing arbitral criteria and internal comparables have little relevance. While some arbitrators may give marginal weight to internal comparables, the vast majority treat external comparables as more important. The Wisconsin Legislature divided law enforcement employees from general employees in the original construction of Wis.Stats. 111.70 and 111.77. It divided them in retirement eligibility and divided them in the recent Act 10 changes to the law. The County now tried to gain that which they did not achieve at the bargaining table or even propose at the bargaining table.

The Association also takes issue with the County's assertion that a *quid pro quo* is not required in this case. The County quotes Arbitrator Vernon in *Elkhart Lake*, Dec. No. 24692-A (Vernon, 1990), but omits part of relevant citation. The omitted part is: "However, if the proposal goes somewhat beyond the comparables' language or benefit, a greater degree of other factors may be required." (Emphasis added) The elimination of the County's payment of the employees' share of the WRS would be more than just somewhat beyond the comparables – it is far beyond the comparables since none have it, and thus the greater degree or *quid pro quo* is required.

The County stated in its brief that it is inherently difficult to gauge the collective intent

of 133 individuals and Act 10 did not mandate that public employers pay the protective occupational participants' share of their WRS contribution. The Association points out that it would in difficult to gauge their intent had they not voted, but there were at least three occasions where the Legislature voted not to include protective occupational service employees in the WRS and Cost of Living changes in imposed on other employees. The intent could not be more clear. Also, the law never mandated that employers pay the employees' share of the WRS. It was and is a mandatory subject of bargaining for the red circled protective employees.

The Association takes issue with the County's argument that it could not determine what to give the deputies because it could not determine what to give the other employees. A zero increased could have been avoided. The County acknowledges that if wages must be increased to maintain its comparable wage position, those rates would only need to be increased 1.21% in 2011 and 1.98% in 2012. The County could have offered 1.21% for 2011 instead of the 0% in its final offer. The Association's final offer does not propel the deputies to a higher ranking, it simply maintains it.

The Association concludes that the statutory criteria favor the selection of its final offer as does the pattern of settlements among the external comparables. The internals should be given little, if any, weight. The change sought by the county was never negotiated, was without a *quid pro quo*, and is contrary to Legislative intent.

In Reply, the County

The County concedes that the nature of law enforcement work is different than other types of County employment, but asks whether this work is more valuable? Other employees provide services with some peril to their lives. Highway department employees are often injured by inattentive or reckless drivers, and that's why there are enhanced penalties for traffic violations in work zones. Social workers are frequently sent alone and unarmed to dangerous situations that police would not engage in without a partner and a gun. It is the County's recognition that every employee contributes to the mission of County government that has motivated it to try to treat all employees equally, especially in the vacuum left by Act 10. Even under the County's offer, the deputies will still be paid more than other employees and still receive better benefits and will still not have to contribute their full share to their retirement.

The County objects to the Association's claim that the external comparables support the Association's final offer. The Association fails to recognize that the four lowest ranking comparables (Florence, Forest, Menominee and Vilas Counties) have yet to ratify wage agreements. There is no reason to assume that those four counties will maintain the 2.5% rate set by the highest ranking comparables. Even if 2% were given in the comparables without determined wages for 2011, only Langlade's wages would pass Oconto County in rankings. The fact that Langlade ratified wages prior to the passage of Act 10 makes it impossible to truly compare its wages to Oconto County's as they were determined in a different era of public sector employment. While the Association claims its 2012 proposal is .33% lower than the 2012

pattern, a pattern cannot be discerned with only four counties with 2012 wages ratified. This is why the County is uncomfortable with anything more than a one-year agreement, as the future is too unpredictable.

Further, the Association's claim that a 1%/1% split is better for the County than a flat 2% increased is only half-reasoned, and this is only true for the time between the first 1% and second 1% increase. After that, all future increases will be based on a wage that was higher than if the 2011 wage was a flat 2% (1.01 x 1.01 = 1.0201, which is greater than 1.02). The County's one-year contract keeps important decisions based on current factors rather than unknown future factors. The wage freeze for 2011 is more appropriate when considering the internal comparables.

The County's primary argument is that the internal comparables favor selection of the County's offer. Equity, fairness and employee morale require, to the greatest extent possible, that all employees perceive that they are being treated the same as their colleagues. Arbitrators have acknowledged that they should place great value on an internal settlement pattern when deciding interest arbitration cases. Internal consistency carries greater weight than external settlements because they are the most valid comparison. Arbitrators should not let arbitration be used as a tool by which to break the consistency of wage settlements of other employees. While the Association argued that internal consistency is less significant when public safety employees are involved, that view is not universally held. See *City of Waukesha*, Dec. No. 21299 (Fleischli, 1984).

The County argues that the overwhelming bulk of interest arbitrators usually find that internal comparables determine the outcome of disputes. In *Polk County (Law Enforcement)*, Dec. No. 32364-2 (2008), Arbitrator Torosian found that the internal settlement pattern of wages and benefits trumped the modest drop in external comparable ratings from second to third. In *Portage County (Law Enforcement)*, Dec. No. 28816-A (1997), Arbitrator Yaffe selected the County's offer despite the fact that it would unreasonably exasperate an already disparate relationship between deputies' salaries and the average salary for deputies in comparable departments.

The County disputes the Association's claim that its final offer is flawed due to the term of it. There is no statutory requirement for a one-year minimum contract term. The proposed 364 day contract term correlates with the County's pay periods and this alignment has been the practice in the County. The County asserts that it did bargain over the items at issue here in mediation. Prior to mediation, the County did not know whether Act 10 would be upheld by the courts or the financial impact of the Governor's biennial budget. Prior to the enactment of Act 10, the County would be walking into the proverbial jaws of death it if pursued any employee contribution to the WRS. But times have changed and it seems ungainly that the deputies do not contribute toward their retirement, considering their level of benefits and compensation.

In the normal course of events, the County might be required to offer a *quid pro quo* for

the deputies' contribution to their retirement. These are not normal times. If the County offered a *quid pro quo* for the WRS contributions, how would that be fair to all the other employees? And how would the County pay for it? Perhaps, as the Association suggests, the County could use the saving from the other employees' retirement contributions to pay for the Association's offer. It is a slippery slope to dig into its undesignated reserve funds to finance the deputies' offer, since the reserve funds are for unexpected costs and to finance the costs of future capital projects like the new jail.

The County concludes by stating that its offer is fair, prudent and courageous. The County is courageously attempting to treat all its employees fairly. It has the courage to be prudent and not spend money it doesn't have or mortgage its future and pass the problems on.

DISCUSSION

The petition in this matter was filed on November 19, 2010 and the parties' final offers were certified on April 18, 2011. This is worth noting because this case arises and is considered before any changes were made to Wis. Stats. 111.70 and 111.77. The statutory framework is that which existed before July 1, 2011.

The comparables are well established through three prior arbitration awards from 1984 to 1998. There are 10 counties – Door, Florence, Forest, Langlade, Lincoln, Marinette, Menominee, Oneida, Shawano, and Vilas. The prior awards included the City of Oconto, although the County disagrees with this as a comparable in this proceeding. There is no reason to disturb the external comparables established by prior awards at this point in time. Whether one includes or excludes the City of Oconto, with a settlement at 2% for both 2011 and 2012, it does not change the picture.

The parties submitted their final offers during a very turbulent time in the history of Wisconsin's public sector bargaining scene. The County's final offer was received by the WERC on April 1, 2011 and the Association's final offer was received on March 11, 2011. The County's offer of one day less than one year is not fatally flawed. In fact, a short term contract might be preferable due to the uncertainty in the law at the time the parties submitted their final offers.

The external comparables support the Association's final offer on wage increases. While the County has some concern about the Langlade County settlement because it was settled before Act 10 was passed, the numbers are right in line with other settlements. The 2011 increase in Langlade County is 2%. It is 2% (a 1/1 split) in Florence, Lincoln and Oneida Counties. Door, Marinette and Shawano Counties are higher, while Forest, Menominee and Vilas Counties were not settled. The average of those settled is 2.5%. In 2012, the average is 2.33% but 7 counties remain unsettled. The only settlements for 2012 are Door at 3%, Langlade at 2% (1/1 split), and Marinette at 2%. Door County settled its contract several years ago in a settlement of three three-year deals. Langlade settled in January of 2011. Even if one discounts the Door and Langlade settlements which occurred before Act 10, the other settlements still support the Association's final offer and do not support the wage freeze offered by Oconto

County.

All of the external comparables are paying the employees' share of the WRS contributions. Some of them cap it but have not reached the cap. The externals clearly favor the Association on the issues of the WRS contribution and wage increases.

A major issue in this case is -- what is the impact of the internal comparables? There are five internal bargaining units. The Teamsters represent a unit of non-sworn correctional officers and telecommunicators, and the collective bargaining agreement for this unit expired December 31, 2010. There is a unit of Sheriff's Department supervisors, and their contract expired January 1, 2011. AFSCME represents three units – highway, professionals, courthouse employees, and these contracts expired on December 31, 2010. There is no evidence on the record that any of the internals bargained for anything in 2011 or voluntarily settled anything.

While internal bargaining unit settlements can be very important in arbitration, especially in the area of benefits, there are no internal settlements. Due to the changes in state law, the internal units have been stripped of almost all of their bargaining rights except for limited bargaining on wages. They are prohibited from bargaining over contributions to the WRS. The 5.8% employee contribution was imposed on these units during 2011 by state law. However, the Legislature did not impose the same contribution on public safety employees, except for new employees hired after July 1, 2011.

The County says it is inequitable to have the internal bargaining unit employees pay more to the WRS than the deputies. Of course it is inequitable. It is also inequitable that the non protective bargaining units lost almost all of their bargaining rights and protective bargaining units retained all their bargaining rights. Neither the County nor the Union created this inequity. The newly enacted state law created it. The Legislature even had a chance to review the WRS contribution by protective employees in May of 2011 and refused to force protective employees pay the employees' share of the WRS except for new hires.

It is appropriate to consider this case involving protective employees with traditional arbitration considerations in analyzing the final offers and how they best fit the statutory criteria (as the criteria existed before July 1, 2011). The external comparables clearly favor the Association on both wage increases and the WRS contribution. The internal comparables have little, if any, weight in this case because the 5.8% WRS contribution was imposed upon them by law and because there are no voluntary settlements in the internal units.

Furthermore, the County's offer has no wage increase and no *quid pro quo* for the 5.8% WRS contribution. Such a significant concession without any support in the externals demands a *quid pro quo.* At a minimum, it demands a *quid pro quo* of some value. Nothing is offered by the County.

The County justifies its wage freeze on the basis that it did not give the internals any increase, and it did not know what increases to offer the non protective employees because Act

10 tied wages to the cost of living for non protective employees, and the schedule and details of that were only recently established. The Association is not limited to the cost of living and the County could have offered anything.

It is true that arbitrators like to place parties in the position they would have been in had they been able to achieve a voluntary settlement. There is no evidence that the parties would have voluntarily settled for the WRS concession and a wage freeze. Neither the external comparables nor the internal comparables did so. If the County wants to achieve internal consistency among its employees, it may do so over time, as new hires come on board or bargaining starts to equalize benefits. However, at this point in time, none of the statutory criteria favors the County's final offer, and the Association's final offer is preferred and to be incorporated into the parties' successor collective bargaining agreement.

AWARD

The Association's final offer is selected and shall be incorporated into the parties 2011-2012 collective bargaining agreement.

Dated at Elkhorn, Wisconsin, this 14th day of November, 2011.

Karen J. Mawhinney, Arbitrator