In the Matter of the Arbitration	)	
	)	
Between	)	Case 300
	)	
DOUGLAS COUNTY (SHERIFF'S DEPARTMENT)	)	No. 70765
	)	
	)	MIA-2980
and	)	
	)	
DOUGLAS COUNTY SHERIFF'S DEPUTIES ASSOCIATION/WISCONSIN PROFESSIONAL POLICE ASSOCIATION	)	[Dec. No. 33350-A]

APPEARANCES

For the Association

Mr. Richard Terry, Executive Director, RWT Strategies, LLC
Mr. Gary Gravesen, Business Agent, Wisconsin Professional Police Association/LEER Division

For the Employer

Ms. Mindy K. Dale of Weld, Riley, Prenn & Ricci, S.C., Attorney

O P I N I O N A N D A W A R D

Background

The Douglas County Sheriff's Deputies Association/Wisconsin Professional Police Association ("the Association" or "the Union") is the exclusive bargaining representative of employees of Douglas County in a unit consisting of all regular full-time and regular part-time law enforcement personnel having the powers of arrest. These employees comprise three classifications in the collective bargaining agreement, Deputy, Detective, and Sergeant. In September, 2010, the parties exchanged their initial proposals for a successor agreement to their January 1, 2008, to December 31, 2010, Agreement. Thereafter the parties met on four occasions in an effort to reach agreement on a new contract. An impasse having been reached, on May 11, 2011, pursuant to Section 111.77 (3) of the Municipal Employment Relations Act, Section 111.77 (3) Wis. Stats., the Association petitioned the Wisconsin Employment Relations Commission ("Commission" or "WERC") to initiate final and binding arbitration of the dispute. Steve

Morrison, a member of the Commission's staff, conducted an informal investigation, including mediation sessions on June 21, July 11, and August 22, 2011, and advised the Commission that the parties were at impasse on the existing issues as outlined in their final offers. Mr. Morrison closed the investigation on September 30, 2011.

On October 4, 2011, the Commission issued a decision concluding that an impasse, within the meaning of § 111.77(3) of the Municipal Employment Relations Act, exists between the parties; certified that the conditions precedent to the initiation of compulsory final and binding arbitration of the afore-described dispute have been met; and ordered "That compulsory final and binding interest arbitration pursuant to § 111.77(4)(b), Stats., be, and the same hereby is, initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the Union and the Employer."

The parties thereafter selected Sinclair Kossoff as arbitrator from a panel provided by the Commission. A hearing was held on December 15, 2011. The parties submitted post-hearing briefs electronically on December 29, 2011; and reply briefs, on January 13, 2012.

STATUTORY CRITERIA

The criteria to be applied by the arbitrator in choosing between the parties' final offers are set fort in Wis. Stat. Section 111.77 as follows:

> * * *
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> (6) (am) In reaching a decision, the arbitrator shall give greater weight to the economic conditions in the jurisdiction of the municipal employer than the arbitrator gives to the factors under par. (bm). The arbitrator shall give an accounting of the consideration of this factor in the arbitrator's decision.
>
> (bm) In reaching a decision, in addition to the factors under par. (am), the arbitrator shall give weight to the following factors:
>
> 1. The lawful authority of the employer.
>
> 2. Stipulations of the parties.
>
> 3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

4. 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:

a. In public employment in comparable communities.

b. In private employment in comparable communities.

5. The average consumer prices for goods and services, commonly known as the cost of living.

6. 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.

7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

8. 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.

Final Offer and Issues

The parties reached tentative agreements regarding health insurance contributions, elimination of provisions pertaining to the design and selection of the health care coverage plan, Wisconsin Retirement System contributions, certain Side Letters of Agreement, bereavement leave, and compensatory time payments.

The sole issue in dispute between the parties in this arbitration is wages. The parties' offers on wages are as follows:

	County Offer	Association Offer	
2011	0%	Effective July 1	1%
		Effective December 31	1%
2012	1%	Effective July 1	1%
		Effective December 31	1%

Choice of External Comparable Jurisdictions

The Association

The Association argues that the appropriate external jurisdictions for comparison with Douglas County are the City of Superior (the county seat of Douglas County), Barron County, and Polk County. Six previous cases, the Employer asserts, address the question of comparable employers. Five of the cases cited deal with the comparability of the City of Superior. The Association quotes from the sixth of the cases cited, Dec. No. 28342-A (8/21/95), by Arbitrator John C. Oestreicher, where, according to the Association, the arbitrator stated "that in two previous decisions involving these parties, only Polk and Barron counties and the City of Superior were considered primary comparables."

In arguing for its group of comparable jurisdictions, the Association declares "that its set of comparables is to be preferred over the Employer's list in large part because arbitrators generally do not change previously established comparables." It cites several prior interest arbitration decisions in support of that rule and asserts, "Constantly changing the comparables inevitably leads the parties to impasse." The Association concludes, "The primary comparable of the City of Superior with the addition of Barron County and Polk County has served the parties well and should not be disturbed."

The County

The County contends that the appropriate comparable pool consists of Ashland County, Bayfield County, Burnett County, Sawyer County, Washburn County, and City of Superior. Since the parties agree on the City of Superior, the County asserts, it will focus its argument on the remaining disputed jurisdictions.

The five counties selected by it, the County argues, provide a more thorough and reliable basis for comparing the parties' final offers than the Association's limited pool of only two counties that are not geographically proximate to Douglas County. The members of its group, the County contends, are similar with regard to the commonly accepted standards of comparability such as geographical proximity, population growth, income, equalized value, tax rates, tax levies, levy limits, poverty rates, and inclusiveness. The Association, by contrast, the County contends, fails to provide data regarding many of these criteria and has skipped adjacent counties to Douglas County in order to select more distant, higher paying jurisdictions.

In support of its argument that Polk County is not a comparable jurisdiction the County notes that in 2010 Polk County's wage rates ranged from $1.80/hour (deputy) to $2.53/hour (sergeant) higher than Douglas County. Given these dramatic wage disparities, the County argues, it is not hard to see why the Association proposes Polk County as a comparable employer. Polk County's high wage rates, the County asserts, are in large part reflective of the influence of the Minneapolis-St. Paul metropolitan area that borders Polk County. Polk County, the County contends, is not affected by the same declining economic conditions currently facing Douglas County and the other counties north of Polk County. Further, the County argues, Polk County has not been included as a comparable jurisdiction in any arbitration involving Douglas County since 1983.

The Association's Position

External Comparables

The Association argues that the external comparables consisting of Barron and Polk Counties and the City of Superior support its final offer. The pattern of increase among the comparables, the Association asserts, is greater than the Association's final offer. The comparable average increase, according to the Association, is slightly over 3% as compared to the County's 0% final offer and the Association's proposed lift of 2% achieved by a split of 1% and 1% (July and December) for a cost of less than 1.5%. The addition of the data from Barron County at the hearing, the Association asserts, shows an average wage of $24.42 at the end of 2010 for Barron ($23.33), Douglas ($23.99), Polk ($25.79), and the City of Superior, placing Douglas County at $0.43 below the average. The increases (averaging 3.4%) to $24.04 for Barron, $26.57 for Polk, and $25.18 for City of Superior would raise the average to $25.26,

the Association states, which would leave Douglas County, with its wage freeze, at $23.99, $1.27 below the average for the four jurisdictions. The Association's 2% increase, it calculates, would place employees $0.80 below the 2011 average, $.37 more than at the end of 2010.

Even if one considers the County's comparables, the Association argues, the deputies fare badly with 0% in 2011. Ashland had a 1%/1% split increase (January/July; Bayfield, a 1% increase; Burnett, a .5%/.5% split increase (January/July); Sawyer, a 5% increase; Washburn a 2.5% + $0.25/1% split increase (January/September); and City of Superior, a 2.5% increase.

The interests and welfare of the public, the Association contends, are best served when public safety has well-trained and fairly treated officers. Disciplined, equitable, predictable wage adjustments without large peaks and valleys, the Association asserts, are clearly in the public interest. Acknowledging the weakness of the economy and the fact of above-average unemployment, the Association nevertheless maintains that it is unfair to expect the County's deputies to shoulder the burden where their counterparts in comparable communities are provided with modest increases such as sought by the Association in this proceeding. In fact, in recognition of the economic (but improving) downturn, the Association argues, it has mitigated the cost of its offer by using split increases to create a lift that will be of benefit to both parties in the future while minimizing the impact on the taxpayers.

Acts 10 and 32 are not a basis for discounting the increases bargained in the comparable communities, the Association contends, and the external settlements support the Association's final offer. Any inequity between WRS contributions by internal bargaining unit employees as compared with the deputies is the result of state law, the Association asserts, and not something created by the Association. In May, 2011, the Association notes, the legislature reviewed the WRS contribution by protective employees and refused to force protective employees to pay the employees' share of the WRS except for new hires. There is nothing in the law that requires a wage freeze for the bargaining unit, the Association maintains. Arbitrators, the Association argues, like to place the parties in the position they would have been in had they been able to achieve a voluntary settlement. There is no evidence, the Association insists, that the parties would have voluntarily settled for a wage freeze.

Internal Comparables

The wage freeze in the internal settlements and the compensation of unorganized and management employees, the Association argues, are not a valid basis for imposing a freeze on the wages of law enforcement personnel. Many arbitrators, the Association asserts, have held that, owing to the nature of their jobs, there is a significant difference between law enforcement and other general municipal employees. The Association quotes from arbitration awards that have allowed different wage treatment of protective employees based on the considerations that they perform different tasks, require different training, and frequently encounter dangers to their personal safety not normally encountered by employees in other occupations. The differences between protective and other types of employees, the Association argues, are recognized in the Wisconsin Statutes (111.70 and 111.77) in that §111.70 requires arbitrators to consider internal comparables while §111.77 has no such requirement.

The Association lays great stress on the fact that Wis. Stats. § 111.70 7r. e. requires the arbitrator to consider wages, hours, and conditions of employment of employees "in the same community" in addition to those "in comparable communities," while Wis. Stats. § 111.77 (bm) 4. makes no mention of a comparison of wages, etc. with employees "in the same community" but only "in comparable communities." The different statutory language, the Association contends, reflects the legislative intent to provide different arbitral criteria for law enforcement personnel and firefighters as compared with employees in general bargaining units. Similarly, the Association argues, the different treatment of law enforcement employees and general employees in Act 10 and Act 32 reflects a legislative intent to permit different wage treatment of law enforcement employees. The failure of Assembly Bill 127 to pass, the Association asserts, also shows legislative intent to allow more favorable wage treatment of law enforcement employees. The Joint Committee on Finance's Motion #472 providing for collective bargaining of employee contribution requirements for health insurance coverage of law enforcement and fire personnel, the Association contends, is a further indication of the different criteria that apply to the negotiation of contracts for those employees as compared with general municipal employees.

The Association argues that any inequity that may result from the different statutory treatment of law enforcement employees as compared with general municipal employees is a legislative creation and not a basis for justifying a wage freeze that would penalize law enforcement employees. A wage freeze,

the Association declares, is not something the County has to do, but something they just want to do. Just as "unwillingness to pay" is not synonymous with "inability to pay," the Association urges, wanting something is not the same as being required to do something. The internal settlements, the Association concludes, should be given little, if any, weight.

The Flawed Wage Freeze

The Association cites arbitral authority supporting the principle that interest arbitrators are expected to act as extensions of the collective bargaining process and award the final offer that most closely resembles what the parties would or should have voluntarily agreed to across the bargaining table. Its final offer, the Association contends, most closely resembles what the parties should have agreed to as a voluntary settlement based on a comparison with settlements in comparable communities. "Even using the County's list of comparables," the Association argues, "it is the Association's final offer that is closest to the standard set among the comparables."

Addressing the County's Exhibit No. 4, headed Comparison of Total Costs, which shows an additional cost under the Association's offer of $7,863 the first year, $23,789 the second year, and a total additional cost of $31.652, the Association argues that the County's "total package" analysis should carry little, if any, weight under the statutory criteria. A total additional cost of $31,652, the Association asserts, poses no difficulty to the County in light of its unencumbered reserves of approximately $7.5 million and should not be burdensome to its taxpayers. In addition to its substantial reserves, the Association contends, the County has additional unanticipated revenue as a direct result of the savings it obtained under the law from the changes applicable to general municipal employees.

The Association argues that there is no evidence that the parties would have voluntarily settled for a wage freeze. Moreover, the Association asserts, it made a significant concession when it agreed to increase its share of premium costs for health insurance from 0% for single and 10% for family to 12% for both. While a change in the premium payment was required of other employees, the Association notes, it was not required of the deputies. In the spirit of compromise and in part as a *quid pro quo* for its wage request, the Association states, it agreed to increase its share of the health insurance premium cost.

Local Economy

The state of the economy and figures on unemployment, the Association argues, are not a valid basis for erosion of deputies' wages. The fact that the Sheriff's Department is over budget reflects an unrealsitic budget, the Association contends, and does not provide a reasonable basis for a wage freeze. Association Exhibits 4(b) through 4(l), the Association asserts, show that this is not a poor county. Even when times were good, the Association argues, the County maintained below average wage rates rather than share with its employees, and now, with a change in the law, the Employer seeks to impose a wage freeze. It makes no sense, the Association contends, for a county with over seven million dollars in unencumbered reserves, with unanticipated revenue, with the second highest median household income, with a near average unemployment rate compared with the average of the comparables, with no claim of inability to pay to want to reduce its deputies' economic standing.

The fact is, the Association contends, that the Employer can easily afford the Association's final offer without any hardship to the taxpayers. The local economic conditions and the financial ability of the County to meet the costs of the Association's offer, the Association asserts, are not in question. Comparable counties, the Association argues, with both smaller and larger unemployment rates, and larger and smaller property values, have voluntarily settled with their deputies for wage rates equal to or, in most cases, greater than what the Association seeks in this dispute.

Douglas County deputies, the Association urges, have worked long, dangerous hours for less pay than they rightfully deserve. They do it out of dedication to their community and its citizens, the Association asserts, but part of the bargain is the promise of fair and comparable treatment. Decent wages and benefits, the Association declares, are critical to the security of dedicated law enforcement professionals. The Employer, the Association insists, should not be allowed to break the public promise by permanently and progressively reducing the wages of its officers. There is no convincing proof and no *quid pro quo*, the Association contends, to support the wage freeze demanded by the Employer.

The Association stresses its analysis that Douglas County deputies' wages are eroding. Its own final offer for 2011, the Association asserts, goes from $0.43 below the average in 2010 to $0.80 below the average in 2011, and the Employer's final offer is $1.27 below the 2011 average. Equity, the

Association argues, requires that the ever widening wage disparity be stopped or at least slowed. The Association characterizes its final offer as a "modest approach" that will avoid putting the Association in a position where it "will be faced with the extremely difficult proposition of arguing for a significant 'catch-up' increase in the very near future."

The Association argues that the testimony of the County's witness showed that the County is "doing well,"; that the County has "great reserves;" that Moody's recently gave the County a AA3 bond rating. Evidence of the well-being of the County, the Association contends, is shown in its median household income of $42,656 as compared with Barron County's $41,522; in the fact that it ranks 43rd out of 72 counties in Adjusted Gross Income while the County's comparables rank 48th, 56th, 65th, 66th, and 67th. Of the six counties suggested by the County, the Association asserts, Douglas ranks second for full equalized value by classification. There is no "super benefit" offered by Douglas County, the Association argues, to offset the further erosion of deputy wages demanded by the Employer in this case.

Cost of Living

The increase of 2.3% under the Consumer Price Index for the first half of 2011 and the 3.4% pattern of settlements for 2011, the Association argues, both support the Association's final offer as measurement of the increase in the cost of living.

Economic Condition in the Jurisdiction

The previous discussion, the Association contends, "has clearly demonstrated that the economic conditions within the jurisdiction of this employer are well within the bounds of what could and should be considered normal." All of the comparable jurisdictions, the Association asserts, whether put forward by the Association or the Employer "have similar attributes relative to unemployment, tax base, etc. and . . . have provided their law enforcement personnel with wage increases significantly more than the wage freeze sought by the Employer."

The County's Position

External Comparables

Wage Increases

Although contending that the internal wage settlement pattern deserves primary weight in this proceeding, the County asserts, its more modest wage offer than the Union's will still provide an increase that maintains the County's existing wage ranking of second-highest among the external comparables. The following table shows the wage settlements in the comparable jurisdictions for 2011, 2012, and 2013 as shown in Employer Exhibit 41:

COUNTY	DATE OF SETTLEMENT	2011	2012	2013
ASHLAND (2011-12)	May, 2011	1/1 1% 7/1 1%	1/1 1% 12/31 1%	
BAYFIELD (2010-12)	Sept. 2009	1%	2%	
BURNETT (2011-12)	Sept. 2011	1/1 0.5% 7/1 0.5%	3/1 0.5% 9/1 0.5%	
SAWYER (2011-2013)	March 2011	3/27 5% Eff. 3/27/11 employees pay 5.8 % toward WRS	Freeze	Freeze
WASHBURN (2012-13)	Oct. 2011	1/1 25¢ + 2% 9/1 1%	4% Eff. 1/1/12 employees pay 2.9% toward WRS	1/1 2% 7/1 2% Eff. 1/1/13 employees pay 5.9% toward WRS
CITY OF SUPERIOR	July, 2009	2.5%	Not Settled	
DOUGLAS (2011-12)_ COUNTY OFFER UNION OFFER		Freeze 7/1 1% 12/31 1%	1% 7/1 1% 12/31 1%	

The County asserts that Bayfield, Washburn, and City of Superior all reached their 2011 settlements long before the Budget Repair Bill was introduced and that therefore their 2011 wage increases are of less persuasive value since they were negotiated under a different bargaining context than the other external comparable communities, all of whom settled after the Budget Repair Bill was signed. The Budget Repair Bill was signed in March, 2011, and went into effect in July, 2011.

The County remarks that although the March, 2011, settlement in Sawyer County provided Sawyer deputies "with a whopping 5% wage increase for 2011, it was accompanied by the deputies' agreement to begin paying one-half of their WRS contribution, even though they were not required to do so." Under the Budget Repair Bill newly hired public safety employees are required to pay the employee's share of the WRS contribution, but for existing employees the amount, if any, that an employer pays toward the employee's portion remains a negotiable item. As a result of the negotiated employees' WRS contribution of 5.8% for 2011, the County asserts, Sawyer County's deputies actually received an effective wage decrease for 2011 of .8%.

Further, the County points out, Sawyer's deputies agreed to a wage freeze for both 2012 and 2013. Their share of the WRS contribution, according to the County, will increase to 5.9% in 2012. The County acknowledges that for 2011 the Union's offer aligns more closely with the external settlement pattern but attributes this to the fact that three of the six settlements were reached before the changes brought about by the Budget Repair Bill.

For 2012, however, the County contends, the majority of the external settlements are more closely aligned with the County's 1% wage offer than the Union's proposed 2% wage lift. Three of the five settled comparables (Burnett, Sawyer, and Washburn), the County asserts, support the County's final offer for 2012. One (Ashland) supports the Union's offer. The remaining one (Bayfield), the County argues, although supporting the Union's offer, should be substantially reduced by the fact that it was settled before the Budget Repair Act was introduced. Nevertheless, the County maintains, the majority of the external comparable jurisdictions' wage increases support the County's final offer for 2012. The two settlements in 2013, a wage freeze in Sawyer and an effective 1% wage lift in Washburn, the County contends, show that the new law has had a tremendous impact on subsequent law enforcement settlements.

Wage Rates and Benefits

The County argues that its final offer also maintains its above-average wage ranking and its second-highest wage ranking among the external comparables for both 2011 and 2012.

With regard to other forms of compensation, the County contends that with regard to health insurance premiums it is in line with the majority of the comparables for both single and family contributions for both 2011 and 2012. Its final offer does not call for an employee contribution toward WRS for either 2011 or 2012, the County notes, although two of the six comparables instituted employee contributions toward WRS.

Internal Settlement Pattern

The County argues that its internal settlement pattern is so compelling that its final offer should be selected on that basis alone. There is ample arbitral precedent, the County asserts, for giving great weight to an internal settlement pattern that is strong, uniform, and longstanding like the pattern that exists among Douglas County's internal units. The County argues that while public safety employees were exempted from many of the new law's provisions, the Budget Repair Bill added a new criterion for public employee safety units only, namely, the requirement that arbitrators give "greater weight" to a municipal employer's economic conditions than to any of the other statutory criteria. Another change for public safety units only, the County states, was elimination of the ability to bargain over the design and selection of healthcare plans.

Nothing in the new law, the County insists, precludes the arbitrator from considering internal settlement patters in a law enforcement proceeding, and it would be inappropriate for the arbitrator not to consider it. The County argues that the fact Sawyer and Washburn agreed to make WRS contributions when the law does not require such a concession for public safety employees (but does require it for general municipal employees) is evidence that internal settlement patterns remain a valid and appropriate factor for arbitral consideration in law enforcement arbitrations.

There is no merit, the County contends, to the Union argument that Wis. Stats. Section 111.77 does not contain a specific criterion requiring arbitrators to give weight to internal comparables while the statute for non-law enforcement

arbitrations (Section 111.70) does. The difference in the statutory criteria, the County argues, has always existed, but arbitrators have a long history of giving great weight to strong internal settlement patterns in law enforcement arbitrations. The basis for this, the County asserts, is the presence of the provision in the law enforcement statute of the criterion "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. . . ." The County cites a number of arbitration decisions that have given great weight to internal settlements in law enforcement arbitrations including Arbitrator Milo Flaten and John Oestreicher's interest arbitration decisions involving these same parties.

Cost of Living

The best indicator of the cost of living is the pattern of settlements reached by the County's other internal units, the County argues. The County quotes from arbitration decisions that agree with its approach to measuring the cost of living in a given area. On that approach, the County contends, its offer should be selected by the arbitrator.

The Greater Weight Factor - Economic Conditions

Douglas County, the County asserts, is not an affluent or growing county, as evidenced by its minimal population growth and lower than average income ranking. It is not adding significant numbers of taxpayers to its rolls, the County states. Nor, according to the County, does its ranking of 43rd out of 72 signify a particularly highly compensated population. The Douglas County Workforce Profile, the County states, indicates that a substantial segment of Douglas County's population consists of older residents with fixed incomes. A sharp decline in various economic conditions, the County argues, left if with budget deficits which it filled, in part, by increasing tax rates. It points to its Exhibit 35, which shows that from 2009 to 2010 it increased its property tax rate by 5.2% compared with a range of 2.2% to 4.1% for the other comparable counties. This was not a welcome move, the County asserts, for a county with lower than average income rankings and a high percentage of the population on fixed incomes.

The County notes that the testimony of its Finance Director referred to three major economic challenges that confronted the County in balancing its budget for 2011: (1) the

County lost funding of between $400,000 and $500,000 because state prisoners were pulled out of its jail; (2) the County's interest income was $185,000 short of its projections; and (3) the Sheriff's Department was approximately $125,000 over budget for personnel-related costs. According to the Finance Director's testimony, some of the shortfall has been made up by the WRS contributions the other bargaining units began making in 2011 and the fact of the wage increase, but the 2011 deficit remained at around $500,000. This deficit will have to be made up, the Finance Director testified, from the general reserve fund that is used for infrastructure expenditures. It will mean, the Finance Director testified, less infrastructure work in 2012: for example upgrading buildings, major equipment purchases, and highway improvements for 2012.

The County notes that the 2011 Biennial Budget Bill reduced State shared revenue payments to Wisconsin counties by a total of $29 million for 2012. Employer Exhibit 14 shows that, as a result, the County will receive $387,519 less in state aid than it received in 2011. The Finance Director testified that the bill also reduced grant funding by 10 to 15%, amounting to another approximately $500,000. She stated that sales tax revenue, interest income, jail revenue, and grant revenue are all stagnant or declining. Interest income and jail revenue projections, according to the Finance Director, had to be reduced by $180,000 and $200,000 respectively. A major windstorm, the Finance Director testified, blew down a large number of red pine trees that were not to be cut for ten years. This, she stated, will impact for ten years on the $758,000 the County normally budgets annually for timber sales. According to the Finance Director's testimony shortfalls totaling $1.2 to $1.3 million dollars have had to be made up.

The only way that the County could balance its budget for 2012, the Finance Director testified, was to budget a wage freeze for all employees for 2012, the same as was done for 2011. In addition, non-law enforcement employees will continue to pay one-half of WRS contributions, 5.9% in 2012. Also, the employees' share of the health insurance premium has been increased to 12%, and changes were made to the coverage of the health insurance plan to avoid any increase in the insurance premiums. Further, the Finance Director stated, the County cut one position and did not fill another position.

These measures, the Finance Director testified, did not cover the deficit for 2012. As a result, according to her testimony and the County brief, upon retirement of a number of County employees, the County restructured some departments and brought in replacement employees at lower job classifications and

pay levels. This was still not sufficient, the Finance Director testified, and the County took advantage of two minor increases permitted in the levy and levied to the maximum amount allowable for 2012, thereby raising an additional $160,000. According to the County, this was the first time in three years that it has levied to the maximum amount allowable.

The Finance Director testified that if the Union offer is accepted, the County will have no choice but to cut services or programs in other areas or would have to cut personnel. Asked on cross-examination if the County has the ability to pay the Union's final offer, the Finance Director answered that the County would have to cut to make the payment and had the ability to cut in other areas.

On cross-examination the Finance Director testified that the County had a $7.5 million reserve. It needs four to six months of working capital, she stated, because of fluctuations in when taxes come in. It also must have an appropriate reserve, she testified, to maintain a good bond rating. Its rating is good, she stated, for a smaller county.

Arbitrators have recognized, the County argues, that economic factors such as those present in Douglas County (low income ranking, a declining and aging population, significant revenue cutbacks, continuing budget deficits) are all important to the examination of the "greater weight" factor. It notes that decisions on this criterion are available because prior to 2009 the "greater weight" factor was among the statutory criteria to be used in non-law enforcement arbitrations but was removed by the 2009-11 Biennial Budget Bill. The County cites a number of arbitration awards dealing with the greater weight criterion and contends that they strongly support a finding that the greater weight factor supports the County in this case.

The County directs attention to its Exhibit 15 which shows that in four of the past six years, the Sheriff's Department has had larger budget overruns than any other County department. Although a $32,000 cost difference between the parties' offers may not seem like much at first glance, the County argues, in the face of escalating budget overruns it is significant. It is therefore not unreasonable, the County asserts, to ask the law enforcement employees to share the same wage freeze that all other employees accepted for 2011. This is especially so, the County asserts, since it is not asking the law enforcement employees to pay the same WRS contributions that everyone else is paying. For 2012, the County argues, its proposed 1% increase is generous compared to the continued wage

freeze that is currently budgeted for everyone else. The County stresses that the criteria of inability to pay and the greater weight criterions are not the same and cites arbitration decisions in support of its position.

Anticipating a Union argument that the general reserve fund of $7.5 million shows that the County can easily afford the Union's higher wage proposal, the County asserts that there are many reasons why it is important to maintain an adequate general reserve balance. First, it states, the Finance Director noted that the County needs to keep at least four to six months of working capital on hand in order to meet cash flow demands, make major bond payments, and pay for other unanticipated expenses. Second, it asserts, maintaining a healthy reserve fund keeps the County's bond rating up. Third, and most important, the County argues, it is not sound fiscal practice to use general reserve monies to finance general operations or recurring liabilities.

Discussion and Analysis

Arbitrator's Selection of Comparable Jurisdictions

In a 1993 interest arbitration between these same parties for the law enforcement unit, Arbitrator Milo Flaten commented that the Union's proposed comparable jurisdictions consisting of Ashland County, Bayfield County, Burnett County, Sawyer County, Washburn County, and City of Superior "at first blush, seem to be the most appropriate." These are the same jurisdictions proposed by the County in this case. He went on to state, however, that because the City of Superior has no jailers he could not accept the Union's proposed group. Subsequently, as the record shows, the jailers were removed from the Douglas County deputies' unit and formed their own bargaining unit. It would appear, therefore, with jailers now neither in the Douglas County or the City of Superior unit, that Arbitrator Milan's decision may fairly be viewed as an award supporting the County's proposed law enforcement unit in this case.

That conclusion is supported by the fact that, in its main brief, in reference to Arbitrator Milo's award, the County stated, "The County restricted its analysis solely to internal comparables, while the Union proposed the City of Superior and the same five surrounding counties which the County proposes here." The parties filed reply briefs, and in its reply brief the Association did not question the accuracy of the County's remarks about Arbitrator Milo's decision.

Arbitrator Flaten's decision was followed by two interest arbitration decisions involving Douglas County in 1995 by Arbitrators Sharon K. Imes and Raymond E. McAlpin for units respectively of Social Services Professionals (Imes) and employees of the Building and Grounds and Forestry Departments (McAlpin). Decision No. 28122-A (3/15/95) and Decision No. 38123-A (3/15/95). In both cases the County and the Union agreed that the comparable communities consisted of Ashland, Bayfield, Burnett, Sawyer, and Washburn counties. The only difference between the parties in each of the cases regarding comparable communities was whether Iron County should also be considered a comparable jurisdiction.

Those two decisions were followed by Arbitrator Sherwood Malamud's decision for a unit of county highway employees. Decision No. 28215-A (3/19/95). In that case both parties agreed that the group of comparable communities should consist of Ashland, Bayfield, Burnett, Sawyer, and Washburn counties. The only dispute on that issue was whether the City of Superior should also be included. The arbitrator agreed with the Union's position that it should be included. In an earlier interest arbitration for the highway department unit, Decision No. 26686-A (5/24/91), Arbitrator Malamud declined to make a definitive ruling regarding comparable jurisdictions where the parties were not in agreement. Neither party in that case, however, had proposed Polk County or Douglas County as a comparable community.

The final interest arbitration to date for Douglas County also involved the highway department employees. In that case the parties agreed to the same group of comparable jurisdictions as was found appropriate in Arbitrator Malamud's 1995 award for the highway unit. Decision No. 31776-A (Arbitrator Dennis P. McGilligan,2/3/07).

With regard to Polk County and Barron County, the Association's principal argument in support of its position is not supported by the evidence in the record. The Association contends that the 1995 decision of Arbitrator Oestreicher noted that in two previous decisions only Polk and Barron Counties, together with the City of Superior, were considered primary comparables. If one reads Arbitrator Oestreicher's decision, however, he will find that what Arbitrator Oestreicher stated at page 18 was, "The Union noted that in two previous decisions involving these parties, only Polk County, Barron County and the City of Superior were considered primary comparables." He was stating the Union's position as summarized at pages 5-6 of his award in the section called "The Union's Position."

Arbitrator Oestreicher did not find that either Polk County or Barron County was a comparable community to Douglas County. On the contrary, he stated, "It appears both parties have attempted to finesse their choice of proposed comparables." Award, p. 18. Moreover, in the case before Arbitrator Oestreicher, the Union did not contend that Polk County, Barron County, and the City of Superior were the only comparable jurisdictions. As Arbitrator Oestreicher noted, "[T]he Association suggested that the nine other counties in the northwest corner of the state and the city of Superior should be considered primary comparables in this proceeding." The arbitrator further stated that the Association "introduced some evidence which tends to support its position, however, it neglected to present data relating to equalized valuations, mill rate levies and per capita income. This latter data," Arbitrator Oestreicher continued, "has been considered necessary information for arbitrators to consider in determining comparability." The arbitrator concluded: ". . . The record in this proceeding is not adequate to support a finding of comparability for the parties to rely upon in future negotiations. . . ." (emphasis added). Arbitrator Oestreicher's decision does not support the inclusion of either Barron County or Polk County as a comparable jurisdiction in this case.

The Association does not cite any decision other than Arbitrator Oestreicher's in support of its position that Polk County and Barron County are comparable employers. According to the County brief, "In 1983, Arbitrator Richard J. Miller issued a Douglas County arbitration award in which he did, in fact, select Barron, Polk and Superior as the appropriate comparable pool for the law enforcement unit." Thereafter, the County asserts, in two law enforcement arbitrations and in 11 arbitrations involving other bargaining units in Douglas County, none of the arbitrators restricted the comparable pool to Barron and Polk Counties.

This arbitrator has read every interest arbitration award involving Douglas County on the WERC website going back to 1974. Of the 15 decisions found, the only decision that specifically mentioned Polk County or Barron County (other than the Oestreicher award) was the 1983 decision by Arbitrator Richard J. Miller, Decision No. 20765-A (12/22/83), for the Sheriff's Department unit. In that case the County proposed Polk, Rush, Ashland, Sawyer, Bayfield, Barron, Burnett, and Washburn Counties plus the City of Superior as the comparable jurisdictions. The arbitrator found that ". . . Douglas County compares favorably . . . to the comparable cities and counties . . . ." The arbitrator then went on to state:

> It must be noted, however, that the County's

> comparables are not true comparisons because all of the comparables are smaller in population to Douglas County (44,421). In fact, the counties of Rusk, Ashland, Sawyer, Bayfield, Burnett and Washburn are less than half of the population of Douglas County. Accordingly, the only valid comparables are Polk and Barron Counties and the City of Superior. . . .

Arbitrator Miller's decision contains no discussion of any demographic data regarding any of the proposed comparable communities except for the reference to population in the quoted excerpt. No arbitrator before or after him involving a bargaining unit in Douglas County rejected a proposed comparable jurisdiction on the basis of population. The two interest arbitrations preceding Arbitrator Miller's award both involved the Sheriff's Department employees. In Decision No. 12702-A (Arbitrator Arlen Christenson, 8/8/74), the Union's proposed comparable group consisted of the City of Superior and several police and sheriff departments in the Duluth, Minnesota, area. The County's proposed group consisted of "the Sheriff Departments in eleven neighboring Wisconsin counties." The eleven counties are not named in the decision. The arbitrator did not choose between the two proposals and found "the evidence of comparable wages" to be "inconclusive." Decision, p. 4. The arbitrator remarked, "Needless to say the Union's sample supports the proposition that Douglas County Deputies are lower paid than their counterparts elsewhere and the County's sample supports the opposite conclusion." Arbitrator Christenson did not exclude or include any jurisdiction on the basis of population.

The next interest arbitration award was Decision No. 13572-B (Arbitrator David B. Johnson, 3/31/77). As in the prior arbitration, the Union contended that the Douglas County Sheriff Department employees should be compared with employees doing similar work nearby in the City of Superior, Wisconsin, and the Duluth, Minnesota, area. The County proposed to "compare itself with law enforcement personnel in other counties in the northwest region of the State of Wisconsin." The decision does not identify these counties, but stated, "In all cases their rates for personnel doing similar work are substantially lower than the rates paid in Douglas County." With regard to external comparability, the arbitrator declared, "I believe that the significant comparison for the employees in this unit is with the police force of the City of Superior." There is no indication in the decision that the size of any jurisdiction's population played any part in the arbitrator's finding regarding comparable communities.

The next interest arbitration between the parties was

the one by Arbitrator Richard J. Miller, Decision No. 20765-A, discussed above. In none of the 12 interest arbitrations involving Douglas County following Arbitrator Miller's decision did any arbitrator rely on the size of a jurisdiction's population as a basis for including or excluding that community as a comparable employer. Nor was Polk County or Barron County ever proposed by either party as a comparable community in any of those cases. Neither Polk County or Barron County is even mentioned in any of those 12 decisions. The only exception is the decision by Arbitrator Oestreicher, discussed above, where, with regard to both parties' proposed comparable communities, including Polk County and Barron County proposed by the Association, the arbitrator concluded, "The record in this case is not adequate to support a finding of comparability for the parties to rely upon in future negotiations." Decision, p. 19.

For example in Decision No. 26687-A (7/20/91) between Douglas County and Local 2375-A, AFSCME for a unit of registered nurses, Arbitrator Gil Vernon approved what he referred to as the "traditional comparable group" of Ashland, Bayfield, Burnett, Sawyer, Taylor, and Washburn counties. In opposing the traditional group, the union relied on the fact that the population of each of the other counties was less than half of that of Douglas County. Arbitrator Vernon rejected the union's attempt to broaden the group, stating as follows:

> There simply is no reason, however, to go beyond the traditional comparable group of other Northwestern counties for the purpose of finding public sector comparables. The traditional group is adequate in size, there are also adequate similarities, and in some cases, they operate in the same labor market. The new group of public employers argued by the Union to be utilized includes, for instance, Dane County, which has very little in common with Douglas County. A departure from the traditional group is not justified on the basis that they generally are not nurses-only units. It is quite apparent that in spite of their wall-to-wall nature, nurses' wages are not lost in the shuffle. . . . (Decision, p.9).

Similarly in an interest arbitration between Douglas County and Wisconsin Federation of Teachers, AFT, for a unit of paramedics, Decision No. 25594-A, (2/16/89), Arbitrator Richard B. Bilder had to choose between a comparable group proposed by the County consisting of Ashland, Bayfield, Burnett, Iron, Sawyer, Taylor, and Washburn Counties and a statewide selection proposed by the union. In choosing the County's proposed pool, the arbitrator stated as follows:

> In the Arbitrator's opinion, the County's list of nearby counties is more appropriate for use in this arbitration as External Comparables than is the Union's list of statewide cities. The County's evidence that other arbitrators have customarily used these other geographically-proximate counties as comparables is persuasive; in contrast, the list of cities statewide presented by the Union does not seem to the Arbitrator to be as closely comparable, since, as the County points out, they are in many cases distant, and are subject to different labor markets, economic factors and metropolitan influences. . . . (Decision, p. 12).

In Decision No. 25966-A (11/9/89) between Douglas County and AFSCME Local No. 2375-A for a county health department unit, Arbitrator Jos. B. Kerkman found that an appropriate group of comparable communities should include Bayfield, Sawyer, Taylor, Ashland, and Washburn Counties, among other employers. Earlier in the same year in an interest arbitration involving registered nurses and LPNs employed at a county health care facility, Arbitrator Byron Yaffe used a combination of County-proposed and Union-proposed employers as his pool of comparable employers in deciding the dispute. Decision No. 25954-A (8/11/89). Neither party proposed Polk County or Barron County as a comparable jurisdiction, and neither party argued population size as a basis for acceptance or rejection of any public employer.

Decision No. 27379-A (6/22/93) involved an interest arbitration between Douglas County and Local 244-B, AFSCME for a forestry department unit. For its group of external comparable jurisdictions the County proposed Bayfield, Burnett, Iron, Sawyer, and Washburn counties. The union proposed for its comparable group eight counties whose forestry department employees were represented and who had at least 100,000 acres of forest land. The union opposed the County's suggested group on the ground that the "proposed comparables are less than half the size of the County in population; they all have a total property value significantly less than the County; and they all have significantly lower per capita income." Arbitrator Byron Yaffe adopted the comparison group proposed by the County, stating that he believed "that employees performing similar types of jobs in Bayfield, Burnett, Iron, Sawyer, and Washburn counties are the most appropriate external comparables to utilize in this proceeding based upon geographic proximity and similarity of duties and responsibilities." (Decision, p. 5). The great disparity between the size of the populations of the other counties and the size of Douglas County's population was not deemed a basis for finding that the jurisdictions were not comparable communities.

The foregoing discussion shows that in the 15 interest arbitrations involving Douglas County the only decision to find Polk and Barron counties to be comparable communities was the 1983 decision of Arbitrator Richard J. Miller. Neither of the two arbitration decisions preceding that award or any of the 12 decisions following it found either Polk or Barron County to be a comparable community. Arbitrator Miller, moreover, provided no analysis to support his finding. He merely stated that of the eight counties and City of Superior proposed by the County as comparables, six of them (Rusk, Ashland, Sawyer, Bayfield, Burnett, and Washburn) had less than half the population of Douglas County and excluded them on that basis. He accepted the remaining three jurisdictions (Polk and Barron counties and the City of Superior) as comparable without any discussion of their demographic features. The implicit sole basis of his decision was the size of their respective populations. Subsequent interest arbitrations involving Douglas County found the counties excluded by Arbitrator Miller to be comparable jurisdictions including decisions by Arbitrators Vernon and Yaffe, both of whom found Bayfield, Burnett, Sawyer, and Washburn counties to be comparable despite union arguments that they should be excluded because they had less than half the population of Douglas County. As noted, none of the other 14 arbitration decisions besides Arbitrator Miller's has found Polk or Barron County to be a comparable jurisdiction.

In a 1995 arbitration decision, as discussed above, Arbitrator Oestreicher noted that the Association, which had included Polk and Barron counties among their proposed external comparables, had "neglected to present data relating to equalized valuations, mill rate levies and per capital income." Such data, he stated, "had been considered necessary information for arbitrators to consider in determining comparability." Arbitrator Oestreicher ruled that the record before him was "not adequate to support a finding of comparability for the parties to rely upon in future negotiations."

In the present case, also, the Association has failed to provide any data relating to equalized value or tax levies for Polk or Barron County. Nor has it provided information regarding levy limits or tax rates for these jurisdictions. These omissions would be a sufficient basis for not including them as comparable jurisdictions under the Oestreicher decision. In Decision No. 26687-A, supra, Arbitrator Vernon found that the traditional comparable group of six employers was adequate in size. Similarly in the present case, without Polk and Barron counties, there will also be six other jurisdictions to compare with Douglas County.

Finally, it should be noted that in arbitration proceedings involving Polk and Barron counties neither the union or the county has claimed that Douglas County was a comparable community. See Decision Nos, 25632-A, 25633-A, and 25634-A (Sherwood Malamud, 4/3/89) for the Polk County Highway Department, Courthouse, and Social Services units, where the union suggested Barron, Burnett, Dunn, Pierce, and St. Croix counties as comparable; and the county proposed Barron, Burnett, Chippewa, Dunn, Rusk, St. Croix, Sawyer, and Washburn; and Decision No. 32364-A (Herman Torosian, 9/3/08) for the Polk County law enforcement unit in which both parties adopted the external communities found comparable by Arbitrator Malamud in the 1989 arbitration, namely, a primary group consisting of Barron, Burnett, Dunn, Pierce, and St. Croix counties; and a secondary group consisting of Chippewa, Rusk, Sawyer, and Washburn counties.

Interest arbitration awards involving bargaining units in Barron County have consistently found the eight contiguous counties, Burnett, Chippewa, Dunn, Polk, Rusk, St. Croix, Sawyer, and Washburn to be the external comparable communities for negotiations involving Barron County. Decision No. 17479-A, (Jos. B. Kerkman, 3/31/80) (nurses unit); Decision No. 19615-A (George Fleischli, 9/16/83) (Social Services unit); Decision No. 27060-A (William W. Petrie, 7/17/92) (Social Services & Professional unit). Douglas County is not contiguous with Barron County or Polk County. In none of the decisions did either party argue that Douglas County was a comparable community.

Based on the lack of data regarding equalized value, tax levies, levy limits, and tax rates regarding Polk and Barron counties; the fact that in 14 of 15 interest arbitration awards involving bargaining units in Douglas County, neither Barron or Polk County was found to be an appropriate external comparable jurisdiction; the fact that the sole arbitration decision, issued in 1983, that found Polk and Barron counties comparable contained no discussion of the demographic characteristics that allegedly made them comparable communities to Douglas County; the fact that in none of the 12 arbitration proceedings after 1983 did the County ever propose Barron or Polk County as comparable or did any arbitrator ever find either to be comparable to Douglas County; the fact that all of the remaining six jurisdictions have been found to be comparable to Douglas County in multiple interest arbitration decisions involving Douglas County bargaining units; the fact that a group of six jurisdictions is sufficient for comparison purposes; and the fact that neither the county or the union in arbitration proceedings involving Polk County or Barron County has claimed Douglas County to be a comparable community to either of those counties cause this arbitrator to conclude, for purposes of this proceeding, that the

record is not sufficient to establish that Polk or Barron County should be included as a comparable community to Douglas County. There is no intention to preclude the Association from attempting to make a case for the inclusion of Barron and/or Polk County in a future arbitration.

The arbitrator finds that Ashland, Bayfield, Burnett, Sawyer, and Washburn counties, and the City of Superior are comparable communities to Douglas County for the purpose of comparison of wages, hours, and conditions of employment pursuant to Section 111.77(6)(bm)4 of the Municipal Employment Relations Act. They have been found to be comparable communities in several other interest arbitrations involving Douglas County. See, for example, Decisions 28215-A (Sherwood Malamud, 3/19/95) and 31776-A (Dennis P. McGilligan, 2/13/07), where the identical six jurisdictions were found to be comparable communities to Douglas County. All five counties plus Iron County were found to be comparable to Douglas County in Decisions 28122-A (Sharon K. Imes, 3/15/95) and 28123-A (Raymond A. McAlpin, 3/15/95). All five counties plus Taylor were found to be comparable in Decision No. 26687-A (Gil Vernon, 7/20/91); and the five counties plus Iron and Taylor counties, in Decision No. 25594-A (Richard B. Bilder, 1989).

There are numerous Wisconsin interest arbitration decisions which have relied on a finding of comparability of particular communities in one bargaining unit within a county as a basis for finding the same communities comparable in a later interest arbitration for a different bargaining unit within the county. See, for example, Polk County (Decision No. 32364-A, Herman Torosian, 9/3/08), where a 1989 award by Arbitrator Malamud involving highway department, courthouse, and social services units was relied on as the basis for finding the same jurisdictions to be appropriate comparable communities for a law enforcement unit. See also the arbitration decisions cited above involving Barron County where earlier awards involving different bargaining units were relied on as the basis for finding comparable jurisdiction in the case before the arbitrator.

There is also some indication in the record, as discussed above, that Arbitrator Flaten deemed the five counties proffered by the County as comparable jurisdictions in the law enforcement arbitration before him involving these same parties. Decision No. 27594-A (8/22/93).

In addition to the multiple prior arbitration awards recognizing the six jurisdictions as comparable, four of the counties (Burnett, Washburn, Sawyer, and Bayfield) are contiguous

with Douglas, and the fifth (Ashland), geographically close. For example, according to Google and Map Quest, the distance from Ashland, the county seat of Ashland County, to Superior, the county seat of Douglas County, is 65 miles. By contrast the distance between Balsam Lake, the county seat of Polk County, to Superior is 108 miles according to Google, and 98 miles according to Map Quest. The distance between Barron, the county seat of Barron County, and Superior is 106 miles according to both Google and Map Quest.

Further, the five counties share certain similar demographic characteristics with Douglas County. For example all five of the counties are within ± 50% of Douglas County with respect to 2010-11 tax rates, 2010 tax levy operating rate, and 2011 levy limits. No information was provided regarding tax rates, tax levies, or levy limits for Barron or Polk County. The other five counties were also within ± 50% of Douglas County with regard to the latest figures available for per capita adjusted gross income and poverty rates. For all of the foregoing reasons the arbitrator finds that the five named counties are comparable communities to Douglas County. The parties are in agreement that the City of Superior is a comparable community.

External Comparisons

The Association argues that the external comparables support its final wage offer. The arbitrator has found that insufficient evidence was presented to establish Barron County and Polk County as comparable jurisdictions. That was also the finding of Arbitrator John C. Oestreicher involving these parties in Decision NO. 28342-A (8/21/95). Arbitrator Oestreicher found that the record before him was not adequate to support a finding of comparability for either party. He, therefore, used the jurisdictions proposed by both parties for his analysis. Ultimately he found that the case turned on the internal wage settlements and selected the County's final offer, which was consistent with its internal wage settlements.

This arbitrator, for the reasons discussed above, has found the record adequate to support a finding that the County's five proposed counties plus the City of Superior, which has been tendered by both parties, are comparable communities to Douglas County for purposes of the arbitration statute. He will therefore limit his analysis to these external communities.

The Association argues that even if one considers the Employer's comparables, they support its rather than the County's

final offer. The arbitrator believes that the Association is correct. The County analyzes each year of the contract separately and concludes that the 2011 settlements favor the Association, and those for 2012, the County. That analysis ignores the fact that the parties are negotiating a single, two-year agreement. Therefore, in the arbitrator's opinion, the more reasonable approach is to see how Douglas County's employees fare over a two-year period against the employees of the comparable jurisdictions. The following table attempts to do that:

JURISDICTION	TOTAL LIFT OVER TWO YEARS
Ashland	4%
Bayfield	3%
Burnett	2%
Sawyer	-.8%
Washburn	4.1%
Superior	2.5%
	Total: 14.8% ÷ 6 = 2.47%

The average total lift for the six comparable jurisdictions over the life of the contract is 2.47% as compared with 1% under the County's final offer. The 2.47% figure actually substantially understates the average because it does not take into account the 25 cents paid to public safety employees in Washburn in 2011 in addition to the 3% lift negotiated for that year. It also assumes no wage increase in the City of Superior for 2012. The foregoing table also fails to take into account that under the County's offer employees would not begin to enjoy any wage increase until the beginning of the second year of the contract. The employees in the comparable jurisdictions, by contrast, would benefit from their wage increase in the first year of the contract.

The external comparable communities criterion clearly favors the Association.

Internal Comparisons

The County attaches the greatest weight in this case to the internal pattern of settlement for 2011. In the present case seven of the eight other bargaining units in the County, representing the vast majority of the County's non-public safety employees, have each negotiated a contract providing for a wage freeze for 2011. In addition, as required by law, they agreed to contribute one-half of the WRS payment (5.8% of salary) beginning in July, 2011.

The record in this case shows a pattern going back a number of years whereby all nine bargaining units, with minor variations, have received the same percentage wage increases. Such a pattern is normally afforded great weight in interest arbitration. In an arbitration for a nurses unit in Douglas County, Decision No. 26687-A (Gil Vernon, 7/20/91), Arbitrator Vernon stated, "It is well established that where an internal pattern exists it deserves great deference, particularly where such a pattern has been historically observed." Such a pattern exists in this case as Arbitrator Vernon found existed in the case before him.

Arbitrator Vernon's case was similar to the present one in that the pattern existed for the first of two years, but no pattern had yet been established for the second year under consideration in the arbitration. Arbitrator Vernon noted that the same situation had applied in an earlier case involving the same parties before Arbitrator Kerkman where there was an internal pattern for the first of the two years. Arbitrator Vernon followed Arbitrator Kerkman's lead and gave deference to the internal settlements rather than to the settlements that had been negotiated in the comparable communities.

The Association argues here, however, that the internal pattern should not be determinative because of the different duties performed by protective service employees as compared with the other bargaining units, the dangers faced, and the different statute which governs arbitrations for public safety employees. In arbitrations between these same parties, however, none of these arguments has been found to be persuasive. For example, in Decision No. 28342-A (John C. Oestreicher, 8/21/95), in an arbitration involving the Douglas County Sheriff's Department, Arbitrator Oestreicher selected the County's offer and rejected the argument about the difference in the duties of the employees in the other bargaining units:

> . . . The Association has not presented convincing evidence to distinguish the employees in this bargaining unit from other Douglas County employees who either negotiated or otherwise received wage increases identical to the Employer's offer in this case. The Employer's wage offer is preferred on the basis of internal comparisons. Decision, p. 24.

In an earlier case between these same parties for a law enforcement unit, Arbitrator Milo G. Flaten also attached great weight to the internal settlements at Douglas County for the other bargaining units:

> Nor can this observer ignore the settlements of all the other working "Internal" comparables. Where there is a pattern of wage increases throughout the entire workforce, that pattern deserves great weight. Municipal Employers understandably strive for consistency and equity in the treatment of employees. Hard feelings are avoided when all County employees are treated alike. Deviations from an established pattern can be disruptive and have a negative impact upon employee morale.
>
> Sometimes there are too few internal settlements to constitute a pattern. Here, however, 8 bargaining units have accepted the Employer's consistent offer. The pattern has been established except for this single bargaining unit. A deviation from the settlement pattern can be destructive to the collective bargaining process. Decision No. 27594-A (8/22/93).

And in a recent decision involving a unit of public safety employees, Arbitrator Edward B. Krinsky noted that where wages are the only issue, he would normally be inclined to maintain uniformity in the wage settlements. Monroe County and Monroe County Professional Police Association (Decision No. 32254-A, 5/8/08). In that case the county's final offer was identical to the wage and health insurance settlement it had voluntarily entered into with five of its seven bargaining units. The association's offer provided for additional lift of 1.5% over a two-year contract as compared with the lift contained in the county's offer. Arbitrator Krinsky found that "the Association's offer is more in line with the settlements of the external comparables than is the County's offer." In its final offer, however, the county, for the first time, without ever having raised the issue during bargaining, also proposed to discontinue a Letter of Understanding that had been in effect continuously,

without change, since 1994. The arbitrator ruled as follows:

> Under the statute, the arbitrator is required to select one of the parties final offers in its entirety. As is not unusual in such disputes, this is a close case. The internal comparables clearly favor the County's final offer, while under the Association's final offer the wages of the bargaining unit, compared with the external units are kept at a level which avoids further deterioration in wages. Were wages the only issue, the arbitrator would be inclined to favor the County's position of maintaining uniformity in its wage settlements, particularly where five other bargaining units have come to terms voluntarily, and would be so inclined notwithstanding that the Association's final offer maintains wage relationships with comparable law enforcement units significantly better than does the County's final offer. There is a second issue, however, the Letter of Understanding which tips the scales in the Association's favor. Given the long history of this bargained Letter, and the lack of any discussion or bargaining about it in the current round of bargaining prior to its proposed deletion by the County in its final offer, the arbitrator views the Association's final offer, which maintains the Letter in effect, as preferable.

In the present case, wages is the only issue. The County has not thrown in some surprise demand at the last minute that was not bargained by the parties. In the normal course deference should be given to the internal settlements to maintain uniformity in the County's wage settlements.

The Association is correct that Wis. Stats. Section 111.70 expressly requires arbitrators to compare wages and other terms of employment of the jurisdiction in question with wages, etc. of employees in the same community. Section 111.77 does not expressly require a comparison with wages, etc. of employees in the same community. The foregoing cases, show, however, that internal comparisons are made under Wis. Stats. Section 111.77 also. Nothing in the new law has changed that. The basis for using internal comparisons in public safety interest arbitrations is the language in Section 111.77 which requires arbitrators to give weight to the following factor, among the others previously discussed:

> 8. 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.

In its brief the Association relies on two additional facts for treating public safety cases different from those involving general municipal employees. First, in the Budget Repair Bill, the Wisconsin legislature gutted collective bargaining rights for general municipal employees but did not do so for public safety employees. Second, Assembly Bill 127, which would have prohibited municipal employers, including Douglas County, from paying their employees' share of contributions under the Wisconsin Retirement System, failed to pass. In addition, the Association points out, when public safety employee new hires were included in Assembly Bill 127 prohibiting payment by the employer of the employees' WRS contribution, existing employees were exempted. Based on these facts, the Association argues, "There is absolutely no question that the Wisconsin Legislature intended to provide, and to maintain, a different set of rules for current protective service employees from those rules imposed on other public employees." (emphasis the Association's)

On its part, the County argues in its brief that there has been no change in the statutory criterion under which consideration of internal settlements is permitted in law enforcement arbitrations. Wisconsin's new public sector bargaining laws, the County asserts, do not preclude the consideration of internal comparables in law enforcement arbitrations. The County, moreover, notes in its brief that the collective bargaining agreements of the non-public safety Douglas County employees all expired on December 31, 2010, before the passage of the Budget Repair Bill. Regarding the substantive terms negotiated by the seven bargaining units, the County states the following in its brief:

> Rather than risk being without a contract on the BRB's [Budget Repair Bill's] effective date, all 7 units elected to negotiate successor agreements in order to preserve their union protections through the end of 2011. As part of those negotiations, all 7 units agreed to accept a wage freeze, as well as begin paying one-half of WRS contributions. There was nothing requiring them to strike this bargain. It was simply the bargain they felt was necessary to maintain continuation of their rights and benefits as set forth under the collective bargaining agreement.

What the County writes in its brief is technically correct. At the hearing the Association asserted that the unions had no option on WRS. On that specific point, the County states in its brief, "The County's other units were not required to agree to employee WRS contributions. Such contributions were only required for those non-public safety employees not covered by a contract at the time of the BRB's effective date (July, 2011)." The Association would no doubt retort, "Yes, but as a practical matter the County needed only to have waited out the Union until July, and the WRS contribution would take effect automatically." And the Association would have been accurate in its retort.

But that brings us to the questions of unexpressed motives and bargaining power and the like. This arbitrator does not believe that it is his role to get involved in such questions. The fact is that the seven collective bargaining agreements were voluntarily negotiated without duress as "duress" is defined by law. The legislative climate often plays a part in shaping the ultimate terms of a bargain. For example, if a legislature sees fit to give broad levying power to municipalities, that could be a basis for an arbitrator to select a more expansive wage settlement than he or she would if municipalities were severely restricted in the amount of the levy. It would not be appropriate for the arbitrator to second-guess the legislature. He would have to deal with the law as it existed.

The arbitrator is inclined to accept the collective bargaining actions of the other Douglas County units at face value. For example, who can say how much the desire to avoid layoffs of bargaining unit personnel, or to be consulted with regard to any restructuring, played a part in the other seven unions' decision to settle for a wage freeze? It is not disputed in the record that, even with the wage freeze, the County cut one position and restructured a number of jobs. The negotiation of a wage increase for the seven units could well have forced many other layoffs or job restructuring. This arbitrator will not engage in speculation regarding all of the considerations that may have gone on in the minds of the seven unions in deciding to accept a 2011 wage freeze. He will take the seven negotiated agreements at face value as voluntarily negotiated wage settlements for those bargaining units.

In his decision referred to above, where he selected the County offer on the basis of the internal settlements, Arbitrator Vernon stated, "[T]he wage <u>levels</u> of external employers is the most important comparison when determining whether an internal pattern should be departed from." (emphasis

in original). Regarding the case before him, Arbitrator Vernon stated:

> A close examination clearly shows that acceptance of the Employer offer will not disadvantage Douglas County public nurses relative to the wage levels in the traditional comparables. They will remain one of the leaders. The Union's offer would push them further out in front for no apparent justifiable reason.

Arbitrator Oestreicher, who selected the County's wage offer on the basis of internal settlements, stated that "it appears that either party's wage offer is reasonable." He found, however, that the "Association's offer appears to be most comparable to average wage settlements for 1994 and 1995 in those other counties which have been recommended as comparable by both parties herein."

In the present case the evidence shows that acceptance of the County's offer will maintain the County's second highest wage ranking for the three positions of Deputy, Detective, and Sergeant for both 2011 and 2012. In addition, the County will remain significantly above the average (and also the median) wage for all three classifications in both 2011 and 2012, although the gap between the County's wage rate and the average (and also the median) of the other comparable jurisdictions will diminish. Under the Association's final offer, by the end of 2012 Douglas County would have increased the difference between its wage rates for Deputy and Detective and the average (and also the median) rate among the comparable communities for each of these positions by a significant amount without any evidence in the record supporting such an increase in the spread. The effect on the wage levels is not a basis for deviating from the internal pattern in this case.

Cost of Living

The collective bargaining agreement in dispute here is for the period January, 2011, through December, 2012. According to Arbitrator Krinsky's reasoning, "What is most relevant, in terms of the cost of living, is what changes occurred in that measure during the prior contract period which the parties would then have taken into account in formulating their bargaining proposals for [the years in dispute]." Monroe County (Decision No. 32254-A, Edward B. Krinsky, 5/8/08) at page 6. For the contract in dispute before him for the years 2007-2008, he considered the cost of living index for the years 2005 and 2006.

A parallel approach in the present case, where the contract years 2011 and 2012 are in dispute, would be to consider the Consumer Price Index (CPI) for the years 2009 and 2010 as the base years.

That approach makes sense because interest arbitration is supposed to be a substitute for the collective bargaining process, and collective bargaining, rationally approached, should begin in enough time before the existing contract expires so that the new contract is in place when the old one ends. In figuring any increase or decrease in the cost of living, a common choice by the parties for figuring such fluctuations is to use as the base year the CPI that applied during the period that the old contract was in force. It is important to have a uniform standard to lend certainty and definiteness to the arbitration process so that each party will be able to evaluate the other party's final offer without having to speculate regarding what base period the arbitrator will use for calculating cost of living fluctuations. This arbitrator believes Arbitrator Krinsky's choice of a base period to be a reasonable one that is consistent with the method followed by many employers and unions in collective bargaining.

In 2009, for the 12 months ending December, 2009, the CPI for All Urban Consumers (CPI-U) increased by 2.7%. For the 12 months ending December, 2010, it increased by 1.5%. The combined increase for the two year period would have been 4.2 %. The cost of living criterion therefore favors the Association's offer, which provides a total lift of 4% over the two-year term of the contract as compared with the 1% total lift under the County's final offer. The same result would pertain if actual costs instead of lift were used in considering the Cost of Living factor.

The arbitrator does not agree with the County's position that the best indicator of the cost of living is the pattern of settlements reached among the other internal units. The effect of adopting that approach would be to give double weight to the criterion of internal settlements.

Interests and Welfare of the
Public and Financial Ability

Although the County argues that the economic conditions in the county support its final offer, it does not claim inability to pay. Regarding interests and welfare of the public, the Association argues that the interest and welfare of the public are best served by having trained law enforcement officers

who are well compensated and fairly treated. It asserts that there are flaws in the County's "the cheaper the better" attitude because while a few tax dollars may be saved now, with time, failure to keep up catches up.

The County counters that the Union provides absolutely no evidence that Douglas County's law enforcement employees are, or ever have been, treated unfairly. It argues that Douglas County law enforcement wage rates rank second highest among the internal comparables. In addition, it asserts, the small turnover and long-term employment that prevails in the bargaining unit belie any contention that the employees believe their compensation to be unfair. Also relevant to the question of the interests and welfare of the public is the Finance Director's testimony that if the Association's final offer were selected, the County would have no choice but to cut services or programs in other areas to balance the budget; or would have to cut personnel.

The arbitrator believes that the facts pull both ways with regard to the interests and welfare of the public. A wage freeze and an increase below that given employees in similar jobs in adjacent communities can reasonably negatively affect morale. That is not in the public's interest or conducive to citizens' welfare. On the other hand, cutting services, programs, or personnel also is not in the public interest or helpful to its welfare. The cutting of one position and the restructuring of a number of other jobs that have already occurred for budgetary reasons show that similar actions may not be ruled out for the future as a consequence of selection of the Association's final offer. The arbitrator is not persuaded that the interests and welfare of the public factor favors either party's position more than the other's.

Overall Compensation

One of the criteria that the arbitrator is required to take into consideration in a proceeding under § 111.77 Wis. Stats. is "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." Neither party has argued that the items listed in the preceding sentence favor that party's offer over the other's.

Although the Association agreed to increase the

employees' contribution for health insurance premiums in 2012 to 12% for both single and family coverage, in two of the five jurisdictions that have settled for 2012, the employees also contribute 12% towards such coverage. In a third jurisdiction, Washburn, the employees contribute 11.25% towards both the single and family health insurance premium, but the lower contribution is more than offset by the 2.9% contribution that Washburn employees pay towards the WRS benefit. In the two remaining jurisdictions, Ashland and Bayfield, employees pay 90% of the premium for both single and family coverage.

As noted, neither party claims that the "overall compensation" factor favors its final offer more than the other party's, and the arbitrator does not find that this factor supports either party more than the other.

Economic Conditions

Section 111.77 (6) (am) states:

> In reaching a decision, the arbitrator shall give greater weight to the economic conditions in the jurisdiction of the municipal employer than the arbitrator gives to the factors under par. (bm). The arbitrator shall give an accounting of the consideration of this factor in the arbitrator's decision.

In its brief the County notes, "Prior to 2009, the 'greater weight' factor was among the statutory criteria to be used in non-law enforcement arbitrations. It was removed from those statutory criteria by the 2009-11 Biennial Budget Bill." There was, however, a difference in the wording of the "greater weight" provision in the prior law. The prior law stated, ". . . the arbitrator . . . shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r." (emphasis added).

The language in the prior law requiring that greater weight be given to economic conditions than "any of the factors," would indicate the intention to give economic conditions greater weight than any other single factor. The new law which provides that greater weight be given to economic conditions than the arbitrator gives to the "factors under par. (bm)" is ambiguous in that it is not clear whether the legislature intended that greater weight be given to economic conditions than to the

factors under paragraph (bm) considered as a whole or, as in the prior statute, than any of the other criteria considered singly. Absent a judicial determination that the former interpretation was intended, the arbitrator shall interpret the provision to mean that the (am) factor is to be given greater weight than any of the (bm) factors. The arbitrator understands that this is the interpretation that the parties have given to the language.

The arbitrator believes that the County has made out a case that economic conditions are not good in Douglas County. But its own figures show that they also are not good in the comparable counties. For example, Employer Exhibit 39 shows that Douglas has a high poverty rate of 13.3%, but that the comparable communities of Sawyer, Ashland, and Burnett have even higher poverty rates ranging from 19.6% to 17.1%. Ashland and Burnett granted their law enforcement officers raises in both 2011 and 2012.

Douglas County ranked 32 statewide for 2010 levy limits for the 2011 budget. Washburn, Sawyer, Bayfield and Burnett ranked respectively between 55 and 70. Employer Exhibit 37. Thus, although the four comparable counties had less levying ability available to them than Douglas County for the 2011 budget, three of them managed to provide wage increases that year. Douglas County did not. Douglas County's residents also had substantially more household income at their disposal than those in the comparable counties: $39,609 as compared to a range of $32,470 to $37,119. With regard to declining income interest, no doubt all counties experienced declining interest income. With regard to declining sales tax revenue, the County has not shown that its receipts declined more precipitously than those of the other comparable counties. Nor was the $29 million reduction in State shared revenue payments unique to Douglas County. It will affect all counties for 2012. The same is true of the reduced grant money.

In light of the economic facts in the record regarding the comparable jurisdictions and their wage settlements, it is the arbitrator's opinion that the evidence in this case is not sufficiently cogent to support a determination by the arbitrator that the factor of economic conditions favors the Employer to the extent of justifying a wage freeze for the first year of the contract and a 1% increase for the second year.

On the other hand, the greater weight factor clearly does not favor the Association's position. The primary source according to the Association to pay for its final offer would be the $7.5 million general fund reserve. Employer Exhibit 15 shows

that the County's total expenses in 2010 were $54,385,518. Seven and a half million dollars represents approximately seven weeks of expenses for the County. In Rusk County and Local 2003, AFSCME, Decision No. 31522-A (Edward B. Krinsky (6/9/06), the County argued that "Historically, [it] has followed the recommendation of its external auditors to maintain a fund balance equal to 90 days of general fund expenses."

In the present case, the Finance Director testified that she needs to have four to six months of working capital on hand in the general fund for cash flow purposes and to maintain a good bond rating. No testimony was presented by the Association that $7.5 million was an excessive balance for a county the size of Douglas. In the arbitrator's opinion a fund balance equal to seven weeks of general fund expenses is not excessive. Nor is the County required to dip into its general fund reserve to meet regular operating expenses such as wages. The arbitrator finds that the greater weight criterion does not favor the Association position. Nor has the Association argued that this factor favors its final offer. Its position rather is that the County's economic conditions did not justify a wage freeze in 2011 and a 1% wage increase in 2012.

Additional Factors

Additional factors listed in the statute are the following:

> "The lawful authority of the employer."
>
> "Stipulations of the parties."
>
> A comparison with wages, hours, etc. of employees "In private employment in comparable communities."
>
> Changes in any statutory factor during the pendency of the arbitration proceeding.

Neither party cited any of the foregoing criteria in support of its position. The arbitrator has considered the foregoing factors and finds that they do not support either party's final offer more than the other party's.

The arbitrator has also read the Oconto County and

Wisconsin Professional Police Association case, Decision No. 33283-A (Karen J. Mawhinney, 11/14/11). That case is readily distinguishable on the basis that the employer, in addition to proposing a wage freeze, also proposed that incumbent public safety employees pay 5.8% towards WRS. In addition no *quid pro quo* was offered for the demanded concession even though the statute did not require any contribution from public safety employees employed prior to the effective date of the Budget Repair Bill. Further, the wage rates for the internal bargaining units in Oconto were imposed by the employer and not negotiated. In the present case the County has not proposed that existing employees make any contribution towards WRS for the life of the agreement, and the internal wage rates of the other bargaining units were negotiated. The cases are not at all similar.

Conclusion and Award

As indicated in the preceding discussion, prior awards involving these same parties have given determinative weight to the internal pattern of wage settlements over the wage settlements among the external comparable communities. This is true both of general municipal employees and law enforcement employees. As a general rule, however, selection of the internal pattern must not do away with existing wage levels. In the present case conforming to the internal pattern will not change Douglas County's second place status among the comparable communities, and its wages for all three classifications of employees will remain significantly above the average of the comparable communities. Selection of the Association's final offer, on the other hand, would substantially increase Douglas County's lead in wages over the average of the other comparable communities in both the deputy and detective positions without any warrant in the record for increasing its lead. For these reasons the arbitrator selects the County's final offer. The fact that the Cost of Living factor favors the Association's position is not a sufficient basis for deviating from the pattern of internal settlements.

AWARD: The final offer of the County is selected.

Respectfully submitted,

Sinclair Kossoff
Arbitrator

Chicago, Illinois
January 30, 2012