

STATE OF WISCONSIN

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IN THE MATTER OF INTEREST  
ARBITRATION

OPINION AND AWARD

between

DODGE COUNTY

Case 233, No. 71541

MIA-3031 [ Dec. No. 33914-A ]

and

DODGE COUNTY SHERIFF'S  
DEPARTMENT SWORN EMPLOYEES  
LOCAL 1323-B (AFSCME/AFL-CIO)

Gil Vernon, Arbitrator

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APPEARANCES:

On Behalf of the Union: Lee Gierke, Staff Representative –  
AFSCME Wisconsin Council 40

On Behalf of the Employer: Nancy L. Pirkey, Attorney –  
Buelow Vetter Buikema Olson & Vliet, LLC

**I. BACKGROUND**

Dodge County is a municipal employer under Wis Stats 111.77 (Municipal Employment Relations Act). The Union is certified to represent the sworn officers employed in the Sheriff's office for the purposes of collective bargaining. The County and Union were parties to a collective bargaining agreement that expired at the end of 2011. The Parties set upon the task of bargaining a replacement and

eventually came to an impasse. On February 23, 2012, a petition was filed with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act. On May 9, 2012, a member of the Commission's staff, conducted an informal investigation which reflected that the Parties were at impasse and so advised the Commission. Final offers were submitted and the Parties selected the undersigned to conduct a hearing for the purposes of—consistent with applicable law—selecting one of the final offers which in turn would constitute their next labor agreement along with their already agreed to contract terms.

The hearing was held October 4, 2012. Post hearing briefs were filed November 9, 2012 and reply briefs were received November 29, 2012.

## II. ISSUES

### A. Differences in the final offers

The following reflects the differences in the final offers:

#### 1. Employer health insurance contribution

- A. County: Effective 1/1/13, County will pay 94% of lowest cost qualified plan in Dodge County.
- B. Union: Effective 1/1/13, County will pay 97% of lowest cost qualified plan in Dodge County.

2. Wage rates and progression

- A. County: 2012 – 0.00%, no step movement prior to March 8, 2012 (per 2011 labor agreement, steps were frozen from March 8, 2011 through March 7, 2012). 2013 – 1.00% plus step movement for eligible employees who did not receive a step increase in 2012 (no step movement in 2013 for employees who did receive a step movement in 2012). During period of time that step movement is frozen, employees who transfer to a new position and subsequently return to their former position will be returned to their former position at the rate of pay associated with the step last attained by the employee in that classification (paragraph 6.7 shall not apply).
- B. Union: 1/1/12 – 0.5% applied to all steps (plus step movement).  
1/1/13 – 2.25% applied to all steps (plus step movement)

B. Identical provisions in the Final Offers

1. Wisconsin Retirement contribution

Employees hired after 1/1/12 will be required to pay the same percentage contribution for WRS as general employees are required to pay.

2. Holiday bank hours

Effective 1/1/12, repudiate unwritten past practice on “rolling over” of Holiday Bank Hours into following year. Hours earned in 2011 may be carried over to 2012, but must be used in 2012. Payout for unused balance in December 2012. Effective with last paycheck in December 2012, increase amount of comp time carryover from 24 to 40 hours. Effective 1/1/13, compensatory time earned for working on holiday is credited to employee’s compensatory time bank.

3. Holiday Pay

Holiday pay shall be based upon 8 hours pay for each day; however employees will be permitted to take holiday time in 4 hour increments.

4. PEHP

Amend language to renew the trial period for another 2 years with a sunset date of December 31, 2013.

5. Duration

Revise all dates to reflect a 2 year contract (1/1/12-12/31/13)

6. Tentative Agreements

Incorporate tentative agreements on Article VII – add language requiring mandatory direct deposit; Section 8.6 – eliminate supplemental worker’s compensation pay; Section 9.3 – change holiday pay for holidays worked to 12 hours pay and 8 hours compensatory time off.

C. Notes of explanation

The Parties had voluntarily, as part of its last contract (2011), agreed to a one-year wage freeze starting with the ratification of that agreement. The ratification of the 2011 agreement occurred on March 7, 2011, resulting in a step freeze through March 7, 2012, notably a period that extended into the timeframe of the contract in dispute before this Arbitrator. In addition to this complication, there is the matter of the “dynamic status quo”. Successor labor agreements in the public sector don’t often get negotiated prior to the end of the contract term. Because bargaining and arbitration often languish into the next contract term, a question arises as to what controls the wages, hours and conditions of employment of employees after the expiration of a contract and before the negotiated or arbitrated new contract (usually retroactive to the expiration date of the prior contract).

The law is settled on this point and there is no dispute in that regard in this record. The County has a legal duty to maintain the dynamic status quo after the expiration of the labor agreement, the County was required to provide a step movement to eligible employees after March 8, 2012. See Elmbrook School District, WERC Dec. No. 30322-A (Shaw, 11/22/02).

Accordingly, because of the intersection of the status quo, and the County’s current proposal to freeze step increases in 2012, some explanation of their offer is helpful. The County’s explanation of its final offer is summarized as follows:

“Employees who were eligible for a step movement on March 8, 2012 and thereafter, were provided a step movement under the dynamic status quo doctrine.

“There are a total of twelve (12 employees who would be eligible for a step movement in 2012. Six of these employees have already received a step increase because of their anniversary date, and six others will be eligible for a step movement in 2013. Six of the employees became eligible for a step increment in January, 2012, February 2012, and March 1 through March 7, 2012 and are frozen at their 2010 step. Under the

County's final offer, this group of six (6) employees would not receive a step movement in 2012, but would receive a step movement in 2013. For another group of employees, the County is proposing a step freeze for the year 2013. This is a group of six (6) employees who received a step increase in 2012 because of the dynamic status quo doctrine and, as an offset, would not be eligible for a step movement in 2013. In the interest of maintaining equity, all eligible employees would receive a freeze in their step movement under the County's final offer, with the freeze in step movement occurring in either 2012 or 2013. The end result of the County's final offer is that each eligible employee would receive one step movement either in 2012 or 2013, depending on the date they received their last step increase. By the end of the 2012-13 collective bargaining agreement, the County's final offer would result in employees receiving a step freeze in one year and a step movement in the other year."

### **III. ARGUMENTS OF THE PARTIES (SUMMARY)**

#### **A. The Union**

The Union contends its offer is financially sound—and very modest in overall cost. In fact, they assert, it generates a savings over the two-year duration and is well within what the County can afford. County has not argued or demonstrated a need to change status quo regarding the health insurance premiums paid by employees. Nonetheless, recognizing the “sensitivity” of the issue and the political climate the Union offers to reduce the Employer’s contribution from 105% of the lowest cost plan to 97% of the lowest cost plan. As a result, members of this bargaining unit will either stay flat in regards to take home pay or, for some who are unable to switch insurance carriers, take a severe hit in take home pay. The County proposal would have employees losing even more (between 69 cents

and \$2.03 per hour. Neither offer keeps up with the cost of living. To make matters worse for officers, the County proposes the “radical step” of freezing pay steps (progression). Not even the Sheriff is in favor of it and it has no support in the comparables. In contrast, the Union believes its offer strives to strike a reasonable balance in difficult times.

The Union presents costing calculations that shows its modest wage increases proposed in 2012 and 2013 are more than offset by the savings generated through changes in rates in the State Plan and the Union’s concession in 2013 to move from the status quo of 105% of the lowest cost plan to 97% of the lowest cost plan. Nor is there any inability to pay or even a difficulty to pay. The Union proposals result in a net savings over the two years of \$11,430.60. Given its financial stability, the Union argues the County can easily afford the Union’s final offer without any hardship on taxpayers.

In makings its comparisons to other employers, the Union proposes that the seven contiguous counties—Columbia, Green Lake, Fond du Lac, Jefferson, Washington, Waukesha and Dane—be the comparables used. These comparables are the same as used in a prior interest arbitration between the Parties. For reasons detailed in their brief, the union contends there is no reason to disregard Dane or Waukesha County.

These comparables show that the Union wage offer is reasonable and supported by external settlements. For 2012, Patrol Officers were ranked 5 of 8 for 2011 and 5 of 6 for 2012. The detective classification came in similarly ranking 4 of 8 for 2011 and 4 of 6 for 2012 using either the County or the Union proposal. This places Dodge sworn officers squarely in the middle of the comparables regarding rank and slightly below average with regard to wages received. The average Patrolman's hourly rate for 2012 in the comparable counties is \$27.83. Even under the Union offer, the Dodge County rate will be below this at \$27.40 and further below under the County offer of \$27.26. A similar result occurs for detectives. They note too that only one other county unit (Jefferson) saw back-to-back wage freezes as proposed by Dodge County for 2011 and 2012. All other units saw wages increasing in 2012 ranging from 2-3%. The Union offer of a 0.5% increase in 2012 is extremely modest in comparison to the contiguous county settlement pattern.

Not only do employees start paying part of the health insurance premiums under the Union offer, the County benefits from relatively cheap insurance costs. In 2012, Dodge County's employer contribution toward health insurance was \$181.68 less per month than the average of the seven comparable counties. It is worth noting, if one looks only at the five counties the county is proposing as comparable, Dodge County would then be paying \$288.76 below the average cost.

The Union anticipates the County will rely on the so-called “internal comparables” of other County workers. However, it is the Union’s position that internal comparables have to be discounted because of the now vastly different bargaining laws that exist for law enforcement personnel and general employees. Even before bargaining rights were severely limited for non-law enforcement employees, there was no requirement within the statute that arbitrators use internal comparables in reaching a decision in interest arbitration. They note too several recent arbitration decisions that recognize the fact that other County employees “lack a meaningful mechanism” for traditional bargaining and thus limit the usefulness of such comparisons. Moreover, undercutting any valid reason for using internal comparables in this case is the fact that the County is not proposing following any pattern whatsoever consistent with that granted the other Dodge County employees. In short, there is no pattern and “settlements” are all over the map. Thus, any reliance on internal comparables in this case should be rejected.

The Union also views the Employer as trying to alter the status quo in two important respects: less than full insurance (105% to 94%) and freezing the step progression. Such an alteration of the status quo carries a substantial burden that the County has not met either by demonstrating a need or offering a quid pro quo.

In terms of need, the County pays far less towards insurance premiums per employee than many of the other surrounding counties and far below the average



for the comparable group. In terms of step increases, even the Sheriff has been vocal in opposition to having the employees in his department frozen at the step they are currently at. Sheriff Nehls stated to the Count Board that the freeze creates a double tier system where employees performing the exact same job are paid at different wage. He asked County Board members when they discussed the impact of an across the board wage increase for 2012 that they remember that the employees whose steps are frozen were actually not getting an increase they were previously told they would get, due to the loss of their step increase. The Union notes too that the freezing of Step progressions for law enforcement employees is at odds with how the County is handling other employees with a new six-step progression. Additionally, no other county in the external comparables has an agreement with the Union that has employees frozen at their current step. That only reinforces in the Union's view how radical the County's proposal to freeze step protection is.

The Union also notes that its offer which saves the County money is in addition to other agreements it has made which are financially favorable to the Employer.

**B. The Employer**

It is the Employer's first argument—and one they stress—that its offer is more reasonable because it is strongly supported by the “internal comparables”

(meaning the wage increases and health insurance premium contribution applicable to other employees). The \$.22 per hour increase for 2012 afforded other employees (which equated to on-average a 1% wage rate increase) is closer to the County's offer of 0% increase in 2012 and 1% in 2013 than the Union's .05% increase in 2012 and 2.25% in 2013. The Union also wants full step progression in 2012 and 2013 yet no other Dodge County employee received a step increase in 2012.

There is also an internal pattern concerning health insurance contributions. The monthly health insurance premium amount paid by the County for all employee groups, except for the sworn deputy sheriff unit, is 60% of the average of the Tier I health insurance plans in the State Health Plan. This equates to County contribution of \$1157 for family coverage and \$463 single in 2012. In 2013, the contribution is \$1040 and \$417 for other employees. For the Sheriff's unit, the County's contribution would be higher for 2012 at \$1306 for family and \$524 for single. The County contribution in 2013 would be \$467 and \$1165 under the County offer. Under the Union offer the County contribution would be \$482 and \$1202. It is argued further that the Union is proposing an even wider gap in the difference in health insurance contributions between other AFSCME employees and deputy sheriffs. Under the Union's final offer that gap would

widen and such favorable treatment would place the Union's final offer even further out of line with the internal comparables.

The Employer also acknowledges that Wisconsin Acts 10 and 32 indisputably changed many of the rules of bargaining for public sector employees. However, they argue that does not mean that arbitral common law (especially that which favors internal consistency) is discarded as invalid. There is, in their view, no justification for the Union's final offer which far exceeds what the other AFSCME units received in wage increases for a much lower premium contribution on health insurance.

The County also rejects the Union's inclusion of Dane and Waukesha Counties for comparison purposes. Their brief details the reasons why submitting further that when the appropriate employers are considered and compared, the County's offer is clearly more reasonable.

The County offer maintains wage rates that are higher than the average in the comparable counties at the minimum and maximum rates for Patrolmen. They also urge the Arbitrator to discount settlements that occurred prior to Act 10 and 32. Not only did the duty to bargain change under Acts 10 and 32, but the State's funding of shared revenue and other state aid was reduced to municipalities under the Budget Repair Bill and Budget Bill. They urge greatest weight be put on the one county (Jefferson) settled for both 2012 and 2013 after Act 10. Cumulative

increase data also favors the County's offer. The Union's final offer, on the other hand, seeks to even more drastically increase Dodge County's lead over the comparable counties.

Turning to health insurance, the County contends its offer is also more reasonable and more consistent with external comparables. The Employer contribution rates in comparable counties range between 85% and 95%. This clearly supports the County of 105% and 94% of the lowest cost plan in 2012 and 2013 respectively. Four of the five comparable counties require employees to contribute more toward health insurance premiums than Dodge County requires of its employees. Thus, the Union's offer provides more favorable treatment to deputy sheriffs in Dodge County than deputy sheriffs in other counties.

Similar to its argument on wages, the County submits that the strongest evidence in favor of the County's final offer is the recent settlement with the deputy sheriffs in Jefferson County. It is noted that Jefferson County was able to negotiate a premium contribution of 5% in 2011 and 6% in 2012. Unlike Dodge County, Jefferson County did not offer a wage increase as a quid pro quo for these health insurance changes.

Not to be lost sight of, the County says, is that Deputies receive a very generous benefit package. For example, Dodge County offers a sick leave/sick leave payout benefit that is superior to the majority of the comparable counties.

The Dodge County vacation benefit, longevity, dental insurance, life insurance, holidays, shift differentials all compare favorably as well when stacked up against other counties. Dodge County also stands out in its tuition reimbursement program. Only one other county offers a superior benefit.

In terms of the cost of living criteria, the County looks back to 2007 and calculates the cumulative CPI increases compared to wage rate increases. The wage rate increases outpace the cost of living.

In summary, the County submits that its final offer is the most reasonable offer when considering all of the above comparisons and data, regardless of whether internal or external comparables are considered.

#### **IV. OPINION AND AWARD**

There is lots of discussion in the record about the weight to be given to “internal” comparisons between general employees and law enforcement employees in the post-Act 10 era. While not unimportant, all this discussion is subordinate to Wis. Stats. 111.77(6)(am) which 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.”

This must be the starting point for any focused evaluation of the offers. Although it must be recognized the Arbitrator, in applying the statutory criteria, should not

venture outside the evidence and arguments submitted by the Parties on this point.

In this regard, the County argues that the Union's final offer fails to take into account local economic conditions. While this may or may not be true, it is most relevant to note the County doesn't particularly rely in any affirmative way on local economic conditions. It is acknowledged by them they have not claimed inability to pay with respect to this dispute and has not submitted overall County budgetary information or exhibits. Noted too is that the Union, on the other hand, has submitted a series of exhibits on the financial condition of the County. The Employer argues that the Union exhibits may have had some significance if the County were claiming inability or even unwillingness to pay; however, the County has not claimed inability or unwillingness to pay and thus they argue the Union exhibits on the County's financials are not relevant to this dispute.

Beyond this, the County submits that the difficult economic climate is best evidenced by the settlements reached in comparable counties. Based on this record of evidence and arguments, the Arbitrator agrees. The local economic conditions are best accounted for by the settlements in comparable counties recognizing there may be economic distinctions to be made between them and Dodge County, although the County says all the comparable counties are being "squeezed".

As far as which counties should be used as comparables there is good reason to be at least cautious about comparisons to Dane and Waukesha. They will,

however, be considered but secondarily because (1) the prior arbitration considered them so, (2) because there is little information about 2012 and 2013 settlements and (3) because internal comparables are less instructive as they have been in the past. Consideration of Dane and Waukesha will, even secondarily, give some guidance on how other public safety employees have dealt with the difficult process of reconciling the legislatively imposed 'two-tier' system of determining the wages, benefits, hours and other conditions of employment for municipal employees.

In comparing the offers to other employers, the Arbitrator believes primary weight should be given to wage level changes (in other words the percentage increase) rather than relative wage levels. Relative wage levels are the result of years of bargaining between the Parties. Each time they bargain they know where they stand and know where they end up relative to others. Arbitrators should generally respect these relative wage level relationships unless one offer or the other ends up in some kind of significant distortion. In this case, the Arbitrator concludes that neither offer distorts the position of Dodge County relative to the comparables.

Concerning the salary offer of the Employer, it is not an exaggeration to say it is worse than a zero percentage wage increase in other comparables. The

Employer's proposal effectively freezes the step progression for a second year in a row. Some detail is needed to understand the impact of this.

Step progressions are usually designed and agreed to in recognition of the fact that (to a point) an experienced employee is more valuable than a new employee. These Parties have agreed to a six-step progression (including the starting rate). There are built in wage jumps at 6, 18, 30, 42 and 54 months (the top rate). There was (for Patrol Officers) a \$2.59 per hour differential between the top and bottom rate. After 54 months on the job the Parties, as a matter of implicit principle, treat officers as if they are of relatively equal value and utility to the Sheriff. Freezing the step progression for a second year in a row can result in a situation where officers with at least 54 months on the job are paid different wage rates. This concerned the sheriff so much that he vocally shared his concerns with the County. It is a matter of internal equity and morale of the same general nature as the concerns for consistency between employee groups.

The step freeze is a negative weighting against the County offer. Externally compared, the Employer's freeze should be approached with great caution because it is not apparent that comparable employers have frozen step progressions. For example, while Jefferson County did not increase wage rates for three years it did allow step progressions for new hires and employees with less than 3.5 years (42 months). See Union Exhibit 21. Therefore, some employees' earnings may have



increased during the contract term in Jefferson County even though the Union agreed to a zero increase on wage rates.

The wage rate increases in other counties are as follows:

| <u>Primary Comps</u>   | <u>2012</u> | <u>2013</u>      |
|------------------------|-------------|------------------|
| Fond du Lac            | 2%          | Not settled (NS) |
| Green Lake             | 2.5%        |                  |
| Columbia               | NS          | NS               |
| Washington             | NS          | NS               |
| Jefferson              | 0%          | 0%               |
| <u>Secondary Comps</u> |             |                  |
| Dane                   | 3%          | NS               |
| Waukesha               | 2%          | NS               |

The County argues that the Fond du Lac and Green County settlements should be viewed in a completely different light because they were bargained before Act 10 took effect in July of 2011. The Arbitrator adds as a note, something the County did not because they did not view Dane or Waukesha as comparable. It appears both these settlements were also signed before Act 10 took effect as well.

On this isolated point, it cannot be lost that under Act 10 law enforcement employees were insulated from its ‘pocketbook’ impact and its collective bargaining impact. Its impact was financial on the County (in terms of shared revenue and state aids). While these sources of revenue were reduced, the County does not offer any detail as to Act 10’s or 32’s impact on its ability to meet labor costs for the Sheriff’s Department in Dodge or any other county. So nothing in the

record allows the Arbitrator to do any more than get a 'sense' that some belt tightening was necessary.

Taking 2012 and 2013 together, the Union is asking for the restoration of the step increase and a pretty modest wage rate increase (1/2% in 2012 and 2-1/4% in 2013). Not to be forgotten either is that the Union agreed to a zero percent increase in 2011 and agreed to freeze the step progression. So the Union has been recognizably responsive to the general crunch facing the Employer. Noteworthy too are the other changes the Union agreed to in bargaining that generally represent concessions favorable to the Employer.

While there isn't much guidance to be gained by looking at the external comparables, the Union's two-year proposal on its face doesn't seem out of line. It has a degree of moderation and does not appear to be irresponsible.

Perhaps more significantly, even the Union's wage (and benefit) proposal results in a net savings to the County albeit very small. The Union calculates its two-year proposal generates a net savings of \$11,430 compared to 2011. Although it is not as much as the net savings of \$80,144 under the County offer, it deserves to be credited.

Some of the savings is generated too by the Union agreeing to a significant change in the status quo on premium sharing. Moving from an Employer contribution of 105% of the lowest cost plan to 97% of the lowest cost plan

generates savings that mitigate their wage proposal. The Arbitrator also notes that Act 32 made plan selection and design issues prohibited subjects of bargaining for public safety employees. Thus, the Employer can mitigate, significantly if it chooses, the direct cost of coverage. The percentage amount of its contribution is only half the story. Indeed, its entire wage and benefit bill can be mitigated by plan selection and design changes.

As for the “internal comparables” the Arbitrator agrees much has changed as to the value of comparisons between public safety units and general employee groups. Arbitrators have long been asked to compare represented groups and non-represented groups. It is safe to say Arbitrators always viewed such comparisons with some skepticism even though general employee groups can still be represented. While the current general groups aren’t technically unrepresented, their bargaining rights are so neutered compared to public safety units that comparisons are at least as tenuous as they were pre-Act 10.


Arbitrators are not to blame for that. Objectively speaking and without any value judgment for or against in whole or in part about Act 10 the tension between public safety units and general units is a result of legislative and political decisions not Arbitrators’ decisions. It is not for the arbitration process to mitigate the practical impact of legislatively created “haves” and “have nots”.

This isn't to say internal comparisons are irrelevant or without value. In this case, however there is no 'pattern' to apply since the Employer's offer for 2012 to the law enforcement unit in terms of wage rates is less than what was granted other groups. It is hard to say a zero percent proposal compares more favorably to a ½ percent proposal when other groups were given a 1% increase.

In summary, the Arbitrator believes the Union offer when viewed in context of the statutory criteria, including cost of living, more reasonable. The Union's offer fixes an intra-unit inequity, and it modestly improves wage rates while reducing the Employer's overall wage and benefit costs.

**AWARD**

The final offer of the Union  
is selected.

  
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Gil Vernon, Arbitrator

Dated this 28th day of January, 2013.