

BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT

JUL 25 2013

RELATIONS COMMISSION

In the Matter of the Interest  
Arbitration of a Dispute Between

**WASHINGTON COUNTY  
DEPUTY SHERIFF'S ASSOCIATION**

and

Case 186  
No. 71711 MIA-3043  
Decision No. 34039-A

**WASHINGTON COUNTY**

Appearances:

**Attorney Noah Reinstein**, Cross Law Firm, S.C., Lawyers' Building, 845 North 11<sup>th</sup> Street, Milwaukee, Wisconsin 53233, appearing on behalf of the Association.

**Attorney Nancy L. Pirkey**, Buelow Vetter Buikema Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin 53186, appearing on behalf of the County.

**ARBITRATION AWARD**

Washington County is a municipal employer under Wis. Stats. 111.77 (Municipal Employment Relations Act). The Washington County Deputy Sheriff's Association represents for collective bargaining purposes a unit of law enforcement employees in the Sheriff's Department including deputy sheriffs and investigators. The Association and the County were parties to a collective bargaining agreement which expired on December 31, 2011.

The County filed an interest arbitration petition with the Wisconsin Employment Relations Commission and a member of the Commission's staff conducted an investigation which reflected that the parties were deadlocked in their negotiations. The parties submitted their final offers to the investigator by January 23, 2013. On February 21, 2013, the Commission issued an Order appointing the undersigned to serve as Arbitrator. A hearing was held on May 15, 2013 in West Bend, Wisconsin, at which time the parties were given an opportunity to present their evidence and arguments. The parties completed their briefing schedule on July 2, 2013.

**FINAL OFFERS**

In their final offers, hereby incorporated by reference into this decision, the parties agreed and disagreed as follows:

Item	County Final Offer	Association Final Offer
Wages	1/1/12      0.00% 1/1/13      2.00%	1/1/12      2.00%
WRS	2012: Status Quo 2013: Employee pays 2.0% of employee share of WRS	2012: Employer to pay the full cost of employee's share WRS (Status Quo)
Duration	Two years: 1/1/12 – 12/31/13	One year: 1/1/12/ - 12/31/12
Health Insurance	Insert dollar amounts that reflect the County paying 85% of the premium and the employee paying the remaining 15% of the premium cost for either single or family.	No offer.

### STATUTORY CRITERIA

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.77(6), Wis. Stats., as follows:

- (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 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.

### POSITIONS OF THE PARTIES

The parties filed thoughtful and well-reasoned briefs and reply briefs. The parties' basic positions, arguments and cases cited are not reproduced in detail; instead they are summarized below. The parties' main arguments are discussed below in the DISCUSSION section of the Award.

#### Association's Position

In its brief, the Association first argues that because economic conditions in the County are more favorable than economic conditions throughout the state, square favorably with the comparables and do not impose a barrier to the implementation of the Association's final offer, the "greater weight" factor weighs heavily in favor of its offer.

The Association next asserts the "lawful authority" of the employer is not at issue unless the Arbitrator determines the County's proposed *quid pro quo* for the WRS contribution is not acceptable, then the "lawful authority" factor would weigh heavily in favor of the Association. The Association stipulates to the external county comparables and agrees with the County's proposal regarding health insurance.

The Association argues its offer serves the interests and welfare of the public because it will help the County recruit and retain qualified officers. The Association adds the County stated at hearing it is not making an inability to pay argument; therefore, any arguments against the Association's "modest" proposal are essentially the County expressing its unwillingness to pay.

The Association further argues its offer is consistent with the wages, hours and conditions of employment of similar employees in comparable communities. In this regard the Association argues the external comparable counties support the Association's offer rather than the County's. The Association opines the internal County bargaining units should carry little or no weight because the implementation of Acts 10 and 32 rendered the arbitration criteria for law enforcement different from those for other municipal employees. Further, the legislature has made a clear distinction between law enforcement and other municipal employees in its treatment of required WRS contributions and permissible subjects of bargaining. The Association also proposes as "internal" comparables local police departments within Washington County and opines they support its position.

In addition, the Association argues that the increase in the Consumer Price Index since the expiration of the parties' prior labor agreement supports its offer.

Finally, the Association argues its offer best satisfies the "overall compensation presently received" criterion.

In its reply brief, the Association makes the following principal new arguments.

One, the County's two year offer is not the only "logical" proposal because there is no evidence that "negative results" would occur by implementing the Association's offer and because while longer contracts may be preferred, that does not mean shorter ones are inappropriate or unreasonable.

Two, the Association's offer of wages is the most reasonable because it is better aligned with the historical wage rankings of the County versus comparable counties.

Three, the Association's position on WRS is more reasonable than the County's.

Four, the Association agrees the County should be prudent with taxpayer money. However, recent budget surpluses show a modest wage increase for employees will have little effect on taxpayers.

Five, comparing fringe benefits among the comparable counties adds little to the discussion of which offer is more reasonable.

For all the above reasons, the Association asks that its final offer be selected by the Arbitrator for incorporation into the 2012 collective bargaining agreement.

### **County's Position**

The County initially argues in its brief that its duration proposal is the most reasonable because it is the most logical; is supported by Wisconsin arbitration decisions and is reinforced by the external comparables.

The County next argues internal settlements remain relevant even after the adoption of Acts 10 and 32 and fairness and equity continue to be major considerations in arbitration awards. The County asserts case law on these topics strongly supports its position on wages, WRS contributions and health insurance premium contributions rendering its final offer the most reasonable. The County concludes internal comparables support its offer.

The County also argues that its group of comparable counties has been established in numerous interest arbitrations and should not be altered.

The County further argues its offer on wages is the most reasonable because it maintains the County's ranking among comparables; because under the County's offer the deputy sheriffs and investigators will earn above the average at the maximum wage rate and because its wage proposal is in line with external comparables. The County opines the Association's wage comparisons are faulty and should not carry any weight.

In addition, the County argues its offer is consistent with the current trend to bargain WRS contributions for public safety employees and to impose WRS contributions in interest arbitration.

Furthermore, the County asserts its offer on health insurance is more reasonable.

The County opines it offers a competitive employee benefit package.

The County asserts its external comparable financial comparisons negate the Association's implication that the County has no financial worries.

The County submits Wisconsin case law supports prudent stewardship of public taxpayer monies and opines its offer should be adopted based on same.

In addition, the County argues the Consumer Price Index supports its offer because the cost of living factor alone has not dictated the increases offered and accepted among the comparable counties.

In its reply brief, the County asserts the Association ignores the duration issue in the parties' final offers.

The County complains the Association's data on economic factors is outdated and does not present a complete financial picture.

The County argues a quid pro quo is not required to effect a change in the WRS contribution; nevertheless, the County's offer does contain a quid pro quo for that change. The County adds its offer results in deputy sheriffs being treated better than other County employees.

Finally, the County argues the Consumer Price Index measures inflation only and should not be determinative in assessing the parties' final offers.

For all the forgoing reasons, the County believes its offer is more reasonable and should be awarded by the Arbitrator.

### DISCUSSION

At the outset, the Arbitrator notes that the only issues in dispute are wages, Wisconsin Retirement System (WRS) and Group Health Insurance contributions, and duration of agreement. The most significant issues are wages and WRS. Whichever party prevails on these issues will be determined to have the most reasonable offer.

Wis. Stats. 111.77(6) sets forth the criteria to be utilized by the arbitrator.

Wis. Stats. 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.

The following is written in compliance with the above Sec. 111.77(6)(am). The Arbitrator also incorporates into this narrative by reference the section below discussing the County's ability to meet the costs of the Association's offer to the extent it is relevant and responsive to the above directive.

While Sec. 111.77(6)(am) is the starting point for an evaluation of the offers, the Arbitrator recognizes that, in applying the statutory criteria, he should not go outside the evidence and arguments submitted by the parties on this point. *Dodge County, Decision No. 33914-A, pp. 13-14 (Vernon, 1/28/13)*.

Neither party offered any testimony regarding the economic conditions in Washington County.

The Association offered documentary evidence to support its claim that economic conditions in Washington County are generally more favorable than economic conditions throughout the state and compare favorably to the comparable counties. For example, while the unemployment rate statewide from 2007-2011 was 7.1%, the County's unemployment rate was substantially lower at 5.8%. (Association Exhibit No. 4). While the statewide median household income was \$52,374, the County enjoyed a median household income of \$66,476. *Id.* While the statewide mean household income was \$66,693, the County enjoyed a mean household income of \$79,251. *Id.* While the statewide per capita income was \$27,192, the County's per capita income was \$31,521. *Id.* While 12% of Wisconsinites lived below the poverty level, just 5.3% of individuals in the County lived below the poverty level. *Id.* The Association concludes: "No matter what economic measure one chooses, Washington County outperforms the statewide numbers."

The Association also argues Washington County compares favorably to the comparable counties by those same economic measures. For example, the Association notes Washington County's unemployment rate of 5.8% fits closely with the rates in Ozaukee County (5.5%) and Waukesha County (5.3%) and is lower than the rates in Dodge, Fond du Lac, and Sheboygan Counties (0.7% to 1.3% higher than Washington County). *Id.* Likewise, while Ozaukee and Waukesha Counties have more favorable household and per capita incomes, Dodge, Fond du Lac and Sheboygan Counties' median and mean household income is less than Washington County's. *Id.* Per capita income in those counties also is less than Washington County's. *Id.* In two counties (Ozaukee and Waukesha) the percent of individuals living below the poverty level is less than in Washington County while in three counties (Dodge, Fond du Lac and Sheboygan) it is higher than in Washington County. *Id.* The Association opines these figures show that Washington County's economic conditions are in the middle of its five county comparables but trending toward the higher end (Waukesha and Ozaukee) rather than the lower end (Dodge, Fond du Lac and Sheboygan).

The County criticizes the above figures for being outdated and not painting an accurate picture of economic conditions in Washington County.

The County offered exhibits to counter the Association's implication that Washington County has no financial worries and is doing better than the comparable counties

Washington County tied Ozaukee and Waukesha Counties with a 4% drop in total equalized value from 2011 to 2012, the largest among the comparable counties. (County Exhibit No. 7-C). Washington County's total equalized value dropped from \$13,261,333,600 in 2011 to \$12,786,399,300 in 2012. *Id.* Nevertheless, Washington County still ranked second among the comparable counties in 2012 total equalized value. *Id.*

Wisconsin Department of Workforce Development Labor Market Information, January, 2013, indicates an unemployment rate of 7.4% in Washington County. (County Exhibit No. 7-D). Dodge County (8.8%) and Fond du Lac County (7.7%) have higher unemployment rates while Sheboygan County (7.3%), Waukesha County (6.99%) and Ozaukee County (6.2%) have lower unemployment rates. *Id.*

Washington County ranks first (14.33%) in 2011 in percentage of law enforcement expenditures compared to total expenditures although Sheboygan (11.69%), Fond du Lac (10.89%) and Ozaukee (10.82%) counties are not far behind. (County Exhibit No. 7-E).

The County received \$735,948 in total state aid in 2012, a reduction in aid from the prior year of \$120,451. (County Exhibit No. 7-F). The County received less in total state aid in 2012 than any of the comparable counties. Id.

The County argues it faces a *prospective* decrease in state aid and revenue. (Emphasis in the Original). While possibly true, such a conclusion does not negate the fact that the Sheriff's Department had a budget surplus in 2011 and 2012 regardless of State decisions regarding aid to local governments.

Finally, in 2010, the County's adjusted gross income of \$3,588,985,083 ranked ahead of Dodge County's (\$1, 862,864,724) and Fond du Lac County's (\$2,291,179,596) but behind Waukesha County's (\$14,459,867,420) and Ozaukee County's (\$3,878,750,470). (County Exhibit No. 7-G).

Notwithstanding the above, the County does not make an inability to pay argument.

Moreover, the Association submitted copies of the County Sheriff's Department 2011 and 2012 Annual Report to the County Board, (Association Exhibit No. 5 and Association Exhibit No. 6, respectively), showing the Sheriff's Department ended the 2011 budget year with a \$483,394.42 surplus and the 2012 budget year with a \$935,926 surplus.

Consequently, based on same, all of the foregoing, and the record as a whole; and absent any persuasive evidence to the contrary, the Arbitrator finds this factor favors both the Association and the County equally. Thus, the Arbitrator has given greater weight to the economic conditions in the jurisdiction and has found that the other factors under Sec. 111.77(6)(bm) will determine which party will prevail.

Further, the parties do not rely on all of the remaining statutory criteria in support of their offers. The criteria not relied upon include comparison with private sector wages, "changes during the pendency" and "such other factors" provisions of (bm) 4b, 7 and 8. Since said criteria are not addressed by the parties, the Arbitrator, like the parties, finds them to be non-determinative of the issues presented. *Sawyer County, Decision No. 31519, p. 6 (Torosian, 9/20/06).*

With respect to the remaining criteria, the "lawful authority," the "stipulations of the parties," the "interests and welfare" of the public, the "cost of living," and the "overall compensation presently received" by employees provisions of (bm) 1, 2, 3, 5 and 6 were addressed by the parties but clearly they are not as significant as the primary criteria of 4, external and internal comparables and the financial ability of the unit of government to meet these costs. Consequently, the Arbitrator does not find them, individually or collectively, to be very important to the outcome of this case. Their relative significance, however, will be discussed below.

The Arbitrator turns his attention to the issues in dispute.

## **Group Health Insurance**

The County proposes to insert dollar amounts into the 2012 contract that reflect the County paying eighty-five percent (85%) of the premium and the employee paying the remaining fifteen percent (15%) of the premium cost for either single or family coverage.

The Association states it agrees with the County's proposal regarding health insurance and previously agreed to it during bargaining. However, the Association makes no offer on this issue and there is no stipulation by the parties to the County's language. The County insists no agreement on this issue was reached at the bargaining table.

The Arbitrator's jurisdiction is limited to selecting either the final offer of the Association or that of the County. Based on same, the Association's failure to submit an offer on this issue, and based on all of the foregoing, the Arbitrator finds that the County's offer on this issue is more reasonable. However, as noted above, this issue is not determinative of the outcome of this case.

## **Duration of Agreement**

The Association proposes a one-year agreement for 2012 while the County's proposal is for two years, 2012 and 2013.

The County argues its duration proposal is the only "logical" proposal, qualifying it as the most reasonable offer. In support thereof, the County asserts negative outcomes would result if the Association's one year duration were implemented because the parties would be six months into any successor agreement upon the awarding of a final offer for a one-year agreement, requiring the parties to immediately begin bargaining for a 2013 agreement. The County submits this would result in additional costs for bargaining; reduced productivity when the parties take time away from other tasks in order to bargain; labor uncertainty resulting from operating under an expired collective bargaining agreement and budgeting issues. However, the County offered no persuasive evidence to support these assertions.

The County also points out agreements with longer duration clauses are supported by Wisconsin case law and the external comparable counties have agreements which are in excess of the one year duration proposed by the Association. (County Exhibit No. 14).

The Arbitrator agrees with the County's contention that there is support among Wisconsin arbitrators for the establishment of a contract term in excess of one year in interest arbitration, particularly when the final offer results in a contract for a term that has already expired. As Arbitrator Greco noted:

*A longer contract may be preferable to a shorter contract in some circumstances if all other factors are equal because a longer contract provides for greater stability in collective bargaining. (Emphasis Added). City of Superior, Decision No. 30489-A, p. 13 (Greco, 4/26/03).*

However, as discussed below, all other factors are not equal in the instant case.

Arbitrator Bilder explained his preference for a contract term in excess of one year where the final offer of one party results in a contract for a term already expired:



The parties to collective bargaining agreements have, of course, managed to handle relations despite lags in negotiating and settling their contracts. However, in the arbitrator's view, it is desirable, and in the interest of both the parties and the public, that contract negotiations and settlements relate, so far as practicable, to future or at least present, rather than past and already expired, contract periods. Even if the Union is correct that any lag could only cause financial loss to members of the Union, who urge the shorter period, rather than to the City, lags may cause other problems. Thus, a situation in which the parties are continually operating under contracts which relate to years already past, and are constantly engaged in 'catch-up' negotiations, is likely to have at least some other costs in terms of efficiency and morale and to be confusing to the public. Consequently, unless there are strong considerations otherwise, a proposal regarding contract duration which is likely to help the parties catch up on a substantial time lag in their contract settlements is usually preferable to one which does not. (Emphasis in the Original). *City of Green Bay (Police Department), Decision No. 25114-A, p.5 (Bilder, 6/10/88).*

However, there is no evidence the parties here "are continually operating under contracts which relate to years already past, and are constantly engaged in 'catch-up' negotiations so *City of Green Bay (Police Department), supra*, is distinguishable from this dispute.

The Association concedes the County has accurately cited cases where various arbitrators have determined longer agreements are preferable to shorter ones. However, the Association notes the following from Arbitrator Engmann:

Second, the Union asserts there is an arbitral preference for longer collective bargaining agreements. I agree. Longer contract terms allow the parties time to live with and under a contract before they have to go back to the table.

But as noted in the City's brief, there is arbitral precedent for choosing a one-year contract as opposed to a longer one among protective service employees. Arbitrator Torosian has written:

The County's one-year offer would establish a common expiration date for all five unionized employee groups in Langlade County. This would promote internal consistency especially in the area of benefits and would minimize the whiplash effect in bargaining. *Langlade County (Sheriffs), Dec. No. 29916-A (Torosian, 01/19/01).*

Arbitrator Greco has decided for a one-year contract versus a two-year contract as follows:

[T]he City's one-year wage proposal of 3% should be adopted over the Union's two-year offer. This result is consistent with the 3% across-the-board wage increases granted to all other unionized City employees in 2002 and it does not prevent the Union from seeking catch-up pay for 2003. *City of Superior (Firefighters) Dec. No. 30489-A (Greco, 4/26/03).*

So, while there is a preference for longer contract terms, there is precedent for awarding a one-year contract under the right circumstances. *City of Two Rivers (Police Department), Decision No. 32745-B, p. 11 (Engmann, 03/26/10)*.

Finally, while conceding external county comparables all have agreements of more than one year, the Association points out all but one of the County's represented employee groups have one-year contracts for 2012. (County Exhibit No. 6). The Association opines that selection of its offer would be consistent with this fact.

Both parties make strong arguments regarding the duration issue. Based on same, and the facts of this case, the Arbitrator believes the term of this agreement is dependent on which party's proposal on wages and WRS is more reasonable. Therefore, the Arbitrator turns his attention to those issues.

### Wages and WRS

The parties' wage proposals and WRS proposals are intertwined. The Association proposes a one-year agreement with a 2% wage increase in 2012 and no change in WRS (the Employer to pay the full cost of employee's share of WRS). The County proposes a two-year agreement with a 0% wage increase and status quo on WRS in 2012. In 2013, the County proposes a 2% wage increase and a 2% employee WRS contribution.

### Lawful Authority of the Employer

The parties essentially do not argue about the impact of this factor on their offers. The Association raises an issue regarding the lawful authority of the Employer as it relates to the County's proposed quid pro quo in 2013 of a 2% wage increase in return for employees paying 2% of the employee's share of WRS. That issue will be addressed below.

Consequently, the Arbitrator finds that this factor does not favor either party's final offer.

### Stipulations of the Parties

The parties stipulated to the external county comparables. The Association's agreement to the County's proposal regarding health insurance premiums has been addressed above. The stipulations do not weigh one way or the other in terms of which offer is more reasonable to implement.

### Interests and Welfare of the Public

The parties argue their respective offers meet the "interests and welfare of the public" criterion.

The Association asserts the interests and welfare of the public are best served when public safety has well trained and fairly treated officers. The Association opines it is in the public's interest to recruit competent employees and retain valuable employees. The Association states: "By trying to shift the cost of retirement benefits to the employees without a substantial *quid pro quo* the County is not treating its deputies fairly and will risk losing qualified deputies to other departments." The Association concludes:

There is no benefit to the public to have the Association take a step back in terms of its take-home pay in real dollar terms (when factoring in the CPI and the County's proposal

of a 2% increase coupled with a 2% deduction for WRS contribution) when the County is financially secure and the public interest will not be affected by such a modest increase as proposed by the Association.

The Association correctly recognizes the importance to public safety of well trained and fairly treated officers. There are morale benefits and economies not only in recruiting competent employees but in retaining them. However, the Arbitrator finds it is unnecessary to reach the issue involving the sufficiency of the County's *quid pro quo* in order to decide this case.

The County, on the other hand, submits the fiscal health of the County is in the interests and welfare of the public. The Arbitrator agrees. The County has a responsibility to its taxpayers to cost effectively provide services in the most efficient manner. As noted by the County, recent interest arbitration decisions have specifically adhered to the statutory directive that arbitrators must give specific consideration and weight to current economic conditions. The Arbitrator has done this when discussing the greater weight factor of Sec. 111.77(6)(am) above and throughout this decision.

In support of its position that Wisconsin case law supports prudent stewardship of public taxpayer monies, the County cites approvingly a recent arbitration case wherein Arbitrator Strycker stated:

The specific financial condition of the Village is not actually in dispute. Greendale has been impacted by the recession and general economic conditions as have other municipalities. Economic uncertainty continues and the Arbitrator recognizes the desire of the Village to maintain flexibility in order to effectively manage finances. Adopting the Union's final offer will limit the flexibility to address 2013 economic challenges and will impact the other internal employee expenditures. The Arbitrator concludes that under the circumstances the Village's final offer better serves the interests and welfare of the public. *Village of Greendale, Decision No. 33924-A, pp. 30-31 (Strycker, 3/27/13)*.

Here the parties have differing points of view regarding the financial condition of the County. However, while the County, like other municipalities, has been impacted by the recession and general economic conditions including reduced state aid, (County Exhibit No. 7-F), the record evidence suggests County government is doing well financially. The County has had very large budget surpluses in the Sheriff's Department the past two years.

Moreover, selection of the Association's offer for a one-year contract in 2012 gives the parties, not an outside, third-party neutral arbitrator, the authority and "flexibility to address 2013 economic challenges" and the impact of any agreement on other internal employee expenses. *Village of Greendale, supra, p. 31*.

Based on the above, the Arbitrator finds that this criterion does not favor either party's offer.

#### Ability to Pay

The Association argues that the County has the "financial ability" to pay the cost of the 2% wage increase in 2012 citing the huge surpluses in the Sheriff's Department budget in 2011 and 2012. The County argues this information is irrelevant because it is not making an "inability to pay" argument and

because if the County had a deficit in any given year the Association would not be proposing a wage decrease.

It is noteworthy both that the County is not making an inability to pay argument and that the record supports a finding the County has the financial resources to easily pay for the Association's offer of a 2% wage increase for bargaining unit members in 2012. The County complains that just because the County can afford a wage increase, the deputy sheriffs are not entitled to receive it. The County opines that Association members would not propose a wage decrease to help relieve County's financial woes if the County was running a deficit. To the contrary, however, the Association accepted a 0% wage increase in 2010 when the County requested it do so because of bad economic conditions. The County had opined that if the Association agreed to a wage freeze first the rest of the County's bargaining units would "fall in line." (Testimony of Chris Parkinson). The Association agreed to a 0% wage increase in 2010 with the intended result. Id.

The County concludes that just because it has the ability to pay the wage increase demanded by the Association does not result in an automatic justification for awarding the Association's offer. The Arbitrator agrees. Nevertheless, notwithstanding the County's fiscal unease with a 2% wage increase without a corresponding increase in the employee contribution to WRS, the County clearly has the ability to meet the costs of the Association's offer. Based on same, and all of the above, the Arbitrator finds this criterion strongly favors the Association's offer.

#### External Comparables

The Association argues that its wage proposal is supported by the external comparables. The Arbitrator agrees. Every county in the comparable pool except one provided a wage increase to deputy sheriffs in 2012. (County Exhibit No. 10). Two counties, Fond du Lac and Waukesha, provided a 2% increase to their sworn employees, the same as the Association's offer. Id. Not far behind was Sheboygan County at a 1.5% wage increase. Id. Dodge County provided a small 0.5% wage increase in 2012 but that was as a result of an arbitrator selecting the union's final offer in arbitration over the county's proposal which was a 0% wage increase in 2012 like the County's herein. *Dodge County, supra, pp. 3 and 20.* Of note is the arbitrator's conclusion that the union's wage proposal "on its face" didn't seem out of line; it had a degree of moderation and did not appear to be irresponsible. *Dodge County, supra, p. 18.* The same can be said of the Association's 2012 wage proposal herein.

One county, Ozaukee, provided no wage increase to its deputy sheriffs in 2012. (County Exhibit No. 10). However, wage rate comparisons between the aforementioned counties indicate Ozaukee County comfortably ranked number 1 in 2012 in wage rates for deputy sheriffs and investigators/detectives at the maximum pay rate (Ozaukee County's top step for both deputies and investigators was over \$1.20/hour higher than the next closest county) even without a wage increase in 2012. (County Exhibit Nos. 9, 9-A).

The County argues, however, its offer on wages is the most reasonable because it maintains its ranking among comparables; because under its proposal the deputy sheriffs will earn an hourly wage rate in excess of the average in 2013 and because wage settlements over time demonstrate that the County's wage proposal is the only reasonable offer.

In *Dodge County, supra, p. 15*, Arbitrator Vernon noted:

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.

Likewise, in the instant case neither offer significantly distorts the position of the County regarding relative wage levels. Therefore, the Arbitrator has focused on the percentage increases in evaluating the party's wage proposals.

The County argues, however, that the Association's position, that the external wage settlements for 2012 make their offer reasonable, is flawed because the deputy sheriffs received an increase to the top step of the salary schedule on January 1, 2011 and again on July 1, 2011, while the majority of comparable counties received a 0% increase in 2011. (County Exhibit No. 10). The County points out that only one comparable county, Sheboygan, received *any* wage increase and that the average wage increase for the comparable counties in 2011 was 0.4%. (Emphasis in the Original). Id.

The County then notes that those counties who negotiated wage freezes in 2011 settled for an average 2012 wage increase of 1.2%. Id. Adding the comparable counties' average wage increases in 2011 and 2012 results in a total wage increase of 1.6% over the two year period which is *less than* the 2.35% two year total wage increase the deputy sheriffs would receive over the same two year period (2011 and 2012) under the County's offer. The County adds, in contrast, the Association's offer results in a 4.35% wage increase over the same period (2011 and 2012) which is 2.75% higher than the comparable counties received over this two year period. The County concludes that the Association's offer for 2012 is not, in any way, supported by the wage settlements in the comparable counties.

The County's argument neglects the fact that in 2010 the Association voluntarily accepted a wage freeze when all the other comparable counties provided rather hefty wage increases to their deputy sheriffs. The average wage increase in 2010 was 2.96%; combining the wage increases for 2010, 2011 and 2012 results in a three year average wage increase of 4.56% for the comparable counties, which is slightly higher than the 4.35% resulting from the Association's offer over the same three year period. Id. In contrast, the County's offer over the same three year period (2010-2012) is 2.35%, a full 2.21% lower than the three-year average. The Association's offer of a 2% wage increase in 2012 puts their offer closer to the comparable county's three year average wage increase than the County's offer. This approach provides support for the Association's position that the external comparables support the Association's offer of a 2.0% wage increase in 2012.

The external WRS comparables, however, slightly favor the County. In this regard the record indicates that, as of 2013, two counties (Dodge and Ozaukee) pay 100% of employee contribution for sworn employees hired before a certain date while requiring newer law enforcement employees to pay the same percentage contribution to WRS as general employees are required to pay. (County Exhibit No. 11). Two other counties (Waukesha and Fond du Lac) require sheriff deputies to pay some share of the employee WRS contribution. Id. Effective March 10, 2013, Sheboygan County requires such employees to pay the full employee share of WRS. Id.

While the external WRS comparables slightly favor the County's offer, the external wage comparables strongly support the Association's offer in 2012. Consequently, the Arbitrator finds that the external comparables support the Association's offer.

#### Internal Comparables

The internal comparables support the County's offer. In this regard, the record indicates that seven of nine bargaining units in the County received a 0% wage settlement in 2012; the Samaritan Health Center employees received a 1.0% wage settlement in 2012 (bargained before Act 10 took effect) and the Corrections and Communications Officers bargaining unit is not settled. (County Exhibit No. 6). At the same time the seven units in question had employees paying the employee share of WRS. *Id.* In 2012 this results in a net pay loss for those employees of 5.9% while the deputy sheriffs would get a 2% wage increase if their offer was selected. *Id.* This would result in the deputy sheriffs being treated better than most other employees in the County.

The record also indicates that in 2013, except for the Sheriff's Department Command Staff, which by statute is tied to WRS contributions for deputy sheriffs, and the Corrections and Communication Officers which have not settled the WRS contribution rate yet, all other bargaining units and non-represented employees in the County pay the employee share of WRS. *Id.* However, as evidenced by the County's brief (at pp. 11-13) and County Exhibit No. 6, none of the units have settled on a wage increase for 2013.

The County argues that internal comparables should take precedence citing several arbitration awards in support thereof. Likewise, the Arbitrator has previously recognized there is considerable arbitral authority providing that where a pattern exists among internal comparables, significant weight should be given to the internal pattern. *Rock County, Decision No. 32137-A, pp. 8-9 (McGilligan, 12/7/07); Monroe County, Decision No. 32738-A, pp. 8-9 (McGilligan, 10/7/09)*. However, as the County noted in its opening statement at hearing, the world has changed since passage of Acts 10 and 32. For some arbitrators internal comparables do not carry as much weight as they did before Acts 10 and 32 were passed. For example, in *La Crosse County, Decision No. 33888-A, p. 15 (Mawhinney, 12/26/12)*, the arbitrator noted:

The County has a very strong argument about its internal pattern. The Arbitrator acknowledges that the County has a long history of pay and benefits that have been consistent among 8 union groups. Prior to Act 10 and 32, this would have been very significant and probably the most relevant factor with regard to benefits.

Arbitrator Mawhinney added:

The Arbitrator feels compelled to give some deference to the statutory scheme that changed everything, taking away bargaining rights and benefits for general employees while leaving them in place for public safety employees . . . . This means the internal comparables – general employees without bargaining rights who were forced to pay the employee share of the WRS – have less weight than they did in the past when arbitrators recognized internal consistency in benefits as being desirable . . . . This is not to say that in a certain case[s], internals do not count or are not to be given weight. It only means that internal comparables do not carry as much weight as they have in the past before Act 10 and 32 when looking at such things as the WRS and insurance where the law made

changes for general employees and exempted public safety employees. *La Crosse County, supra, p. 16.*

Likewise, Arbitrator McAlpin acknowledged the decreased value of internal comparables when compared to law enforcement noting the use of internal comparables is “questionable at best” because other units have no choice on contribution levels. *Town of Rome, Decision No. 33866-A, p.24 (12/14/12).*

Other arbitrators, however, argue that nothing has changed regarding the relative importance of internal comparables. Arbitrator Kossoff, for example, stated:

Internal comparisons are made under Wis. Stats. Section 111.77 also. Nothing in the new law has changed that. I will take the seven negotiated agreements at face value as voluntarily negotiated wage settlements for those bargaining units. *Douglas County (Sheriff's Department), Decision No. 33350-A, p.30 (Kossoff, 1/30/12).*

Likewise, Arbitrator Strycker noted:

The role and importance of internal comparables has been impacted through the enactment of Acts 10 and 32. . . . With the advent of Acts 10 and 32, only protective services employees can negotiate complete contracts and proceed to interest arbitration. Employers are now prohibited from negotiating with general employees over many terms that were once found in labor contracts. Further, the law defines numerous employee obligations including health insurance premium sharing and responsibility for WRS employee contributions. Comparing general employees who no longer have full collective bargaining rights and access to interest arbitration with protective services employees can be challenging yet still appropriate. Both general and protective services employees continue to work for the same employer and fairness and equity are relevant concerns for both the employer and employees. *Village of Greendale, supra, pp. 33-34.*

Another arbitrator reached similar conclusions:

While the law governing final offer arbitration is not the same as for the other Sauk County employees, these other county employees share the same locality, the same financial burdens and taxes. Widely divergent wage rate increases in a single county stimulates begrudgement on the part of the rest of the Employer's workers unless extreme grounds can be justified for such divergence. This observer could find none. *Sauk County, Decision No. 33811, pp.5-6 (Flaten, 12/20/12).*

Some arbitrators seek a middle ground. Arbitrator Vernon in *Dodge County, supra, p. 19,* concluded internal comparables are less instructive than they have been in the past. Arbitrator Vernon added: “It is not for the arbitration process to mitigate the practical impact of legislatively created ‘haves’ and ‘have nots.’” *Id.* However, he pointed out: “This isn't to say internal comparisons are irrelevant or without value.” *Dodge County, supra, p. 20.*

Arbitrator Hempe in *City of Mequon, Decision No. 33818, pp. 48-49 (11/15/12)* put it well:

Notwithstanding the enactment of Acts 10 and 32, it seems clear that the long-established provisions of Wis. Stats. 111.77 still require the arbitrator to give weight to the Factors listed in subs. 111.77(6)(bm) 4.-8. Factor 4. includes not only a comparison with external comparable public sector employees, but also “other employees generally,” listed at the end of Factor 4. In labor relations parlance, this group is often referred to as “internal comparables.”

Most arbitrators are in general agreement with this view. . . .

I thus conclude that comparison with the internal comparables is statutorily required. But I also perceive the arbitral *weight* to be given is discretionary, depending on the facts and circumstances of the case. In the end, the assessment of weight relies on the judgment of the arbitrator. (Emphasis in the Original).

Consequently, the Arbitrator will determine the weight to be afforded the internal comparables favoring the County in the context of weighing all the criteria of Sec. 111.77(6)(bm).

The Association argues, however, that with the passage of Act 10 local municipalities in the County should be considered as internal comparables. The Association asserts that these comparables support its position. However, the Association concedes that these comparisons have not been applied historically. Moreover, the comparable pool for the County and its deputy sheriffs’ unit has been established in many prior interest arbitration awards over a long period of time (1986 to 2009). (County Exhibit No. 7).

In addition, arbitrators have recognized that the party proposing to expand the comparable pool must demonstrate a compelling need to support this change. *Village of Greendale, supra, p. 37*. No such need has been shown by the Association in the instant case.

#### Consumer Price Index (Cost of Living)

The Association claims the Consumer Price Index (“CPI”) favors its offer. The statute requires an arbitrator to consider “the average consumer prices for goods and services, commonly known as the cost of living.”

As noted by the Association, “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, p. 6 (Krinsky, 2008)*. As stated in a recent decision, “since the starting point with either alternative is 2012, utilization of the CPI for 2011 is not only appropriate, but also necessary to gain an accurate comparison.” *City of Mequon, supra, p. 52*. The starting point with either the Association’s one-year offer or the County’s two-year offer is 2012. The CPI in 2011, the year when the 2012 contract normally would have been negotiated, was 3.16%. (Association Exhibit No. 3; County Exhibit No. 13). This makes the Association’s offer of a 2% wage increase in 2012 easily more reasonable than the County’s offer of a 0% wage because it is closer to the CPI in 2011.

The County argues the CPI supports its offer because the settlement pattern for the comparable counties is lower than the CPI. (Emphasis in the Original). For example, in 2011, while the CPI was 3.16% the average wage increase was only 0.40%. (County Exhibit No. 10). In 2012 the CPI increase



was 2.07%, while the average wage increase was 1.2%. (County Exhibit Nos. 10 and 13). In 2013 the average wage increase was 1.56% while the average CPI increase is 1.7%. Id. The County argues that if the WRS contribution requirements are factored into the cost of living analysis, it becomes clear that, in these difficult financial times, the cost of living factor does not dictate the increases offered and accepted among comparable deputy sheriff units. The County concludes its final offer would place the deputy sheriffs in a better position than either the internal or external comparables. That would be true for the internal comparables in both 2012 and 2013 because, unlike the deputy sheriffs, most other County employees pay the employee share of WRS. (County Exhibit No. 6). However, as noted above, the external comparables support the Association's offer.

The Arbitrator agrees with the County's position that some arbitrators assign very little weight to the CPI in interest arbitration proceedings. It certainly doesn't dictate the outcome herein. However, it is still a statutory factor the Arbitrator is required to give weight to.

Based on the foregoing, the Arbitrator finds that the cost of living criterion favors the Association's offer.

#### Overall Compensation

The statute requires an arbitrator to give weight to 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.

The Association argues its offer best prevents a decrease in overall compensation for the employees it represents; prevents another two years of stagnant wages and leads to more stable employment. Focusing on wages alone, the Association makes the following principal argument:

Acknowledging the difficult economic and political realities facing the County during the previous few years, the Association agreed to a wage freeze in 2010 even though all of its comparables were receiving 2-3% raises. (See County Ex. 10). Similarly, in 2011, the Association agreed to only a top step wage increase. This means that all association members who are not at the top step would have a 0% increase in wages in 2010, 2011 and 2012 if the County's offer were to be accepted. On top of that, if the County's offer were to be accepted in 2013 the Association would actually be taking a step backward in terms of real take-home pay. With a 2% wage increase followed by a 2% contribution to WRS, a deputy making \$25.00/hour in 2012<sup>6</sup> would see her pay increase to \$25.50/hour in 2013 to then see it reduced to only \$24.99/hour after the WRS contribution. The result would be a four year period with no wage increase for all deputies except those at the top step. By way of comparison, the average deputy in the comparable counties would have seen his pay increase 4.21% from 2010 through 2012 and 5.77% from 2010 through 2013. (See County Exhibit 10). Leaving wages stagnant threatens the continuity and stability of employment of the deputies as such stagnation will reduce morale and lead the deputies to seek other employment options.

<sup>6</sup> Which would be the same as she earned in 2011 and 2010.

The Association concedes that the County and its comparable counties have no meaningful difference in terms of vacation, holidays, uniform allowance or funeral leave. However, the Association

argues that it falls behind its comparables in terms of sick leave accumulation and payout as well as health/dental/vision benefits. In this regard, the Association correctly notes that bargaining unit employees pay more (at 15% of the premium) than any other comparable in terms of health insurance. (County Exhibit No. 12-B). The Association also asserts that it is not afforded any dental or vision benefits while some of the other comparables have such a benefit. However, only Dodge and Sheboygan counties pay something toward a dental benefit. (Association Exhibit No. 9). None of the comparable counties pay anything toward a vision benefit. *Id.* In terms of sick leave, the Association points out it has a lesser maximum accrual of sick days and a less favorable sick leave payout than any of the comparables. (County Exhibit No. 12-D). Notwithstanding the above, the Association concludes that the benefits should not weigh heavily one way or the other when the primary issues of wages and WRS contributions are the driving force in this matter.

The County, on the other hand, argues that it offers a competitive employee benefits package in line with the comparable counties. In this regard, the County, as noted above, states it is consistent with the external comparables on the amount of vacation provided to its employees, the number of holidays offered, uniform allowance and funeral leave. (County Exhibit No. 12, 12-C, 12-A and 12-E). The County also argues its sick leave benefit is competitive because deputies in addition to receiving one (1) day per month as sick leave, which can accumulate to a maximum of 60 days, are eligible to receive 30% paid out in a lump sum upon retirement, or at or after age 55 with 20 years of service. (County Exhibit No. 12-D). The County adds the payout benefit is supplemented by the Retiree Health Insurance Trust. The County notes it contributes monies to this Trust on behalf of the employees, beginning with an employee's completion of five years of services. (County Exhibit No. 4, pages 8-10). Significantly, the County omits any comparison with the comparable counties in terms of employee share of the health insurance premium. However, the County points out that two of the comparable counties (Sheboygan and Waukesha) have contracts in place which require a phase-in of WRS contributions in exchange for wage increases, (County Exhibit Nos. 10 and 11), and three comparable counties (Fond du Lac, Sheboygan and Waukesha) have employees paying a share of the employee portion of the WRS contribution in 2013. (County Exhibit No. 11). Under the Association's offer, the County pays the employee share of the WRS in 2012.

Based on all of the above, the Arbitrator finds that this factor favors neither the Association's nor the County's offer.

### Conclusions

This is a close call. The primary issues in this proceeding are wages and WRS; they determine the outcome of this dispute. The Association makes a strong case for a wage increase in 2012; the County offers none. The Association also points out the negative impact of the County's offer on deputies' wages and actual net take home pay between 2010 and 2013 if the County's offer is selected. The County, on the other hand, makes a strong case for internal consistency, prudent stewardship of public taxpayer monies and notes a trend toward bargaining WRS contributions for public safety employees, and to impose WRS contributions in interest arbitrations. However, selection of a party's final offer herein is based solely on the record evidence, the statute and the parties' arguments. Based on same, and application of the criteria of Sec. 111.77(6)(bm) as discussed above, the Association's offer is favored. Selection of the Association's offer of a one-year collective bargaining agreement for 2012 also puts the power to determine an outcome of increased employee WRS contributions and corresponding wage increases in 2013 back in the hands of the parties where it belongs. Although the County correctly notes the challenges in bargaining contracts post Acts 10 and 32, many parties are successfully

bargaining collective bargaining agreements. Under this Award, the Association and County will again have this same opportunity/responsibility for their mutual contractual success.

**Selection of the Final Offer**

Having considered the statutory criteria, the evidence, and arguments presented by the parties, the Arbitrator, based on the above and the record as a whole, and in particular on the “ability to pay,” external comparables, and “cost of living,” criteria, concludes that the offer of the Association is more reasonable than the offer of the County, and to that effect the Arbitrator makes and issues the following

**AWARD**

The Association’s offer is to be incorporated in the 2012 collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement that they agreed were to remain unchanged.

Dated at Madison, Wisconsin, this 19<sup>th</sup> day of July, 2013.

By   
Dennis P. McGilligan, Arbitrator