

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

DANE COUNTY

and

**WISCONSIN PROFESSIONAL
POLICE ASSOCIATION, LAW
ENFORCEMENT EMPLOYEE
RELATIONS DIVISION, on
behalf of the DANE COUNTY DEPUTY
SHERIFFS' ASSOCIATION**

**INTEREST
ARBITRATION AWARD**

**WERC: Case No 211
No. 72835
MIA- 3113
Decision No. 35058-B**

Arbitrator: A. Henry Hempe

Appearances:

For the Union: Consultant Robert West of the Wisconsin Professional Police Association, LEER, 660 John Nolan Drive, Madison, WI 53713.

For the County: Attorney Jon E. Anderson of Godfrey & Kahn, S.C, One East Main, P.O.Box 2719, Madison, WI 53701-2719.

ARBITRATION AWARD

The County of Dane, (hereinafter County or Employer) and the Dane County Deputy Sheriffs' Association affiliated with the Wisconsin Professional Police Association (hereinafter DCDSA, Deputies, Association, or Union) are parties to a collective bargaining agreement (CBA) for a term running from December 16, 2012 through December 13, 2014. Such agreement includes a limited reopener on wage adjustment for 2014, as follows:

2014

a) There shall be a limited reopener on wage adjustment for 2014. The parties agree to meet on or before October 1, 2013 to bargain 2014 wages. If the parties do not reach a voluntary agreement, they may avail themselves of the process available under Sec. 111.77 to resolve their dispute.

Despite continued contract negotiations and participation in the Wis. Stats. 111.77 impasse resolution initial procedures to which each had agreed, the parties were unable to settle

voluntarily their wage reopener dispute. Following the required informal investigation and subsequent certification by the Wisconsin Employment Relations Commission (WERC) of the bargaining impasse, each party submitted its Final Offer of settlement. Each party responsively addressed the limited wage reopener for 2014, but neither found acceptable the final offer of the other. Pursuant to the provisions of Wis. Stats. 111.77(3) the parties selected A. Henry Hempe as the impartial arbitrator to issue a final and binding award to resolve the dispute.

A hearing was conducted on October 20, 2014 in Madison Wisconsin. Although the evidence introduced and admitted was voluminous no transcript of the hearing was made. Each party provided explanatory testimony for the exhibits each offered. Neither made any objections to any evidence offered by the other. The record was held open for one week following the hearing to provide the parties an opportunity to review and corroborate or challenge the documents and data submitted. Evidentiary modifications were neither sought nor made by either party. The parties agreed that each would submit its initial brief to the Arbitrator on January 15, 2015, with reply briefs due on January 30, 2015. Each party complied with their stipulated briefing schedule.

ISSUE IN DISPUTE:

The short, limited reopener for 2014 wages explicitly defines the narrowly drawn issue in dispute between the parties who now ask: Which Final Offer shall be incorporated into the parties’ 2012 – 2014 Collective Bargaining Agreement?

The **County’s Final Offer** contains a zero salary schedule adjustment for 2014, but tempers this with a proposed “Me-Too Clause” that would be applicable if the County were voluntarily to agree to provide any across-the-board wage increase to any employees in another bargaining unit or to any non-represented employees.

The **Union’s Final Offer** proposes a 2% (two-percent) across-the-board wage increase, effective on the last day of the CBA (December 14, 2013).

**Fig.1
SUMMARY OF FINAL OFFERS**

ISSUE	COUNTY’S FINAL OFFER	ASSN.’S FINAL OFFER
Section 7.01 - Salary	Effective 12/15/2013 - 0%	Effective 12/13/2014 +2.0%, atb
“Me-Too Clause”	Applicable should the County agree to voluntarily provide an across-the-board wage increase to any employees in another bargaining unit or to unrepresented employees.	No Provision

DISPUTE BACKGROUND

GENERAL

Dane County, a political subdivision of the State of Wisconsin, covers an area of approximately 1,238 square miles, of which (3.3%) consists of several sizeable clean-water lakes, rivers and streams. It is the second largest county in Wisconsin. A 2013 census showed a population of more than 500,000 persons spread throughout its urban areas that include the City of Madison (state capital and the state's second largest city) as well as rural farming areas that feature smaller cities, towns and villages.

Geographically, Dane County is centrally located in the southern part of the State, where it abuts six other Wisconsin counties: Columbia to the north, Dodge to the northeast; Green to the south, Iowa to the west, Jefferson to the east, and Rock to the south. The City of Milwaukee is 70-80 miles east of Madison on I-94.

Travel through the County is facilitated by an impressive and broad public road network that contains portions of 21-major highways (including segments of 3-Interstates), and 18-state highways, along with county trunks, other town roads, and a Madison Belt Line that skirts the south side of the City and receives heavy use from automobile and truck traffic. Belt Line traffic volume is particularly high during morning and late afternoon rush hours. County deputies patrol state and county roads.

DANE COUNTY GOVERNMENT

Under State of Wisconsin law, counties are creatures of statute, and have only those powers expressly granted in the state statutes or necessarily implied therein. Thus, unlike cities and villages in the State, Dane County has no broad "home rule" state constitutional authority that covers it. At the same time, Wisconsin counties still have a full plate of permitted governing and administrative responsibilities that generally include public protection and safety, social welfare and health programs, establishment of a county airport, law enforcement, jail supervision, and county road maintenance. Counties are also authorized to provide certain recreational and cultural opportunities for their residents (e.g., county library system, snow-mobile trails, parks, county museum.)

SHERIFF'S DEPARTMENT

Subject to statutorily imposed restraints, a public-elected County Executive and 37-member County Board of Supervisors govern Dane County. Its Sheriff's Department, the largest law enforcement agency in the County, is staffed primarily by an almost 400- member bargaining unit of sworn deputies (including jailors). County deputies' duties perform a full range of police duties necessary to enforce the law, including road patrol, traffic enforcement, criminal investigations, jail supervision and maintenance, and service of warrants and civil papers.¹ The deputies are represented in this matter by the Dane County Deputy Sheriffs' Association in association with the Wisconsin Professional Police Association.

COUNTY UNIONS AND LABOR RELATIONS

¹ CO-Ex. 19.

The Deputies' bargaining unit is only one of nine represented Dane County employee bargaining units that constitute a total number of 2,433 bargaining unit employees. By name, these units include Joint Council (AFSCME), Local 65 (AFSCME), Professionals (AFSCME), Social Workers (AFSCME), Health Care Professionals, e.g. Nurses (UPQHC) in association with (SEIU), Supervisory Law Enforcement, Attorneys Association, and the Building and Construction Trades.²

The largest of the bargaining units is Joint Council (AFSCME) with 1,088 members. With a membership of 391 deputies, the Dane County Deputies' Association is the second largest of the Dane County employees' bargaining units. Third largest is Local 65 (AFSCME) with 294 members, followed closely by the Professionals unit with 247 members, and a bit more distantly by the Social Workers unit at 229. The four remaining bargaining units (Health Care Professionals, Supervisory Law Enforcement, Attorneys' Association, and Building and Construction Trades) respectively represent appropriate County employee units of 77, 45, 42, and 20 members.

Hearing evidence suggests that notwithstanding disagreements that have surfaced from time to time, the County and its unions have had a functional, professional, and at necessary times a seemingly collaborative relationship over the years.

RELEVANT LABOR LEGISLATION

On February 10, 2011 Governor Scott Walker proposed anti-public sector union legislation designated as Wisconsin Act 10 to both houses of the State Legislature. Passed by the Legislature, subsequently signed by Governor Walker on March 11, 2011, initially published on March 25, 2011, and republished on June 28 of the same year,³ the Act provided unprecedented limitations on public sector collective bargaining and labor organizations in Wisconsin. Included in the Governor's proposal were stringent restrictions on permissible subjects of bargaining, elimination of union dues, check off and fair share contributions, and burdensome annual recertification requirements for each municipal employee union.

However, the new collective bargaining limitations contained in Act 10 were applicable only to municipalities' represented *general* employees who were *not* employed as public safety employees. (A public safety employee was defined by Act 10 as a municipal employee who is employed in a position that is classified as a protective occupation under the Wisconsin Retirement System and is a police officer, fire fighter or deputy sheriff.)

Thus, county deputy sheriffs were among the law enforcement personnel (and fire fighters) specifically exempted from the crippling collective bargaining restrictions of Act 10 that were applicable only to represented *general* municipal employees. In fact, this favored group of municipal protective occupation participants were not only exempted by omission from Act 10's proscriptions, but were deemed to have been affirmatively authorized by the Act to

² In addition to these represented employees, the County employs an additional 454 nonrepresented employees.

³ CO-Ex. 29

continue their existing rights of collective bargaining wages, hours and conditions of employment.⁴

**COUNTY REACHES AGREEMENTS WITH INTERNAL BARGAINING UNITS
EXCEPT DCSDA; EACH AGREEMENT INCLUDES ZERO WAGE INCREASE
PROVISION.**

Following passage by the Legislature and the Governor's signature, Act 10 became legally effective on June 29, 2011, the day following its re-publication. But well before the date on which Act 10 became effective, Dane County had reached voluntary collective bargaining agreements with its AFSCME, SEIU and other represented *general* Dane County employee bargaining units, with contract terms ending in 2013 and 2014.

These ratified agreements offered zero wage adjustment to employee wages, but contained what the County describes as its "cost to continue," which included items such as salary schedule movement, longevity and educational incentives as well as contributions to each employee's Wisconsin Retirement System and FICA benefits.

The stultifying collective bargaining restrictions of Act 10 were not a legal impediment to these successor agreements because all of the settlements with the internal units had been negotiated and duly ratified by the parties to them well prior to Act 10 becoming effective. Each agreement provided a zero wage increase for 2014 and a "me-too" clause. The "me-too" provision was applicable only if the County voluntarily provided a wage increase to any other bargaining unit or nonrepresented employees. In that event, the County would owe the same wage increase to each of its remaining employees.

COUNTY AND DCSDA

With none of its statutory collective bargaining rights of DCSDA threatened or impaired by Act 10, collective bargaining sessions between the Dane County Deputy Sheriff's Association and Dane County had stretched out to early October 2014 when the two negotiating teams finally reached a voluntary pact that serves as the as the parties' current collective bargaining agreement. This CBA contains a limited wage reopener the Association had secured placement in a contract in which the Association had agreed to phase in employee payment of the WRS employee-required contribution. The final 2 % phase completing the full WRS payment (7%) was due at the start of the 2014 contract period.

The Association apparently had hoped for an a.t.b. two-percent wage increase in exchange for the Deputies' concession to the increased employee-share payments to WRS the County had suggested. But when the County countered the Deputies' 2% wage increase proposal with a zero wage adjustment, the Association then adjusted its initial 2% proposal to provide for a limited wage adjustment reopener in the new CBA. The County agreed to this proposition. This matter is proceeding under the aegis of that wage reopener provision ultimately contained in the Deputies' Final Offer.

⁴ See Memo of 2011 Wisconsin Act 10, January 2011 Special Session, A.B. 11.

. The County's Final Offer of a *zero percent wage* adjustment to the Deputies in this matter is virtually identical to the *zero wage increase* proposal that had been accepted months earlier by the represented internal *general* employees. The Deputies had rejected that offer when made to them and continued to hope for and seek what has become their final position in this proceeding: a 2% a.t.b. wage adjustment increase. Pursuant to the provisions of Wis. Stat. 111.77(4)(b), the arbitrator is required to accept the final offer of one of the parties and shall issue an award incorporating that offer without modification.

Although unable to directly resolve their impasse on the wage increase issue, on October 4, 2014, the parties had somehow managed to sign off on the subsequently ratified 2012-14 collective bargaining agreement. In effect, under the wage reopener provision the parties had substituted in their successor CBA, the Deputies were given an additional turn at bat on their wage adjustment issue and were also covered by the security of a me-too provision similar to that reached with all the other County employees.

STIPULATED POOL OF EXTERNAL COMPARABLES

Fig. 2

Brown, pop. 252,946	Rock, pop. 160,311
Kenosha, pop. 167,561	Washington, pop. 132,553
Outagamie, pop.178,973	Waukesha, pop. 392,477
Marathon, pop. 134,681	Winnebago, pop. 168,690
Racine, pop. 194,716	City of Madison, pop. 233,209

The parties stipulated that the preceding municipalities serve as the external public employment comparable communities set forth in Wis. Stats. 111.77(6)(bm), below.

RELEVANT STATUTORY AUTHORITY

The following Wisconsin statutory authority is applicable to this dispute.
Sec. 111.77: In fire departments and city and county law enforcement agencies municipal employers and employees have the duty to bargain collectively in good faith including the duty to refrain from strikes or lockouts and to comply with the procedures set forth below:

(1) * * *

(2) * * *

(3) * * *

(4) **There shall be 2 alternate forms of arbitration:**

(a) **Form 1 * * ***

(b) **Form 2 * * *** the arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

Sec. 111.77(5) Stats: The proceeding shall be pursuant to form 2 unless the parties shall agree prior to the hearing that form 1 shall control.

Sec. 111.77(6), Stats:

(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 those 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, arbitrations, or otherwise between the parties and with other employees generally.

* * *

POSITIONS OF THE PARTIES

Dane County Deputy Sheriff's Association:

General

The Association notes that because this matter stems from a limited wage reopener, the issue is limited to wages, with final offers reflected in the Association's two-percent wage increase proposal versus the "no increase" County offer. The Association supports its final offer

by focusing on the external comparables, asserting the clear pattern shown by the externals both supports raises for the deputies and demonstrates a failure of Dane County to provide an adequate *quid pro quo* for the retirement concession made by the Association.

External Comparables and Cost Estimates

The Association relies on UN-Ex.1, 2, and 3 to support its case. UN-Ex. 1 and 2 consist of ten separate sheets, each listing the Dane County deputy sheriff “top hourly wage rate” (hereinafter acronym THWR) printed in the top left corner of each sheet, followed beneath with the THWR of each of the other stipulated external comparables to which the parties had agreed. The information listed on each sheet also contains an assortment of asterisks referring to relevant explanatory notes or special circumstances. UN Ex.3 demonstrates *wage lift* since 2010 as well as Employer WRS contributions since then and ends with a projected ending in 2015 or 2014-15.

Wages, wage increases, and percentage wage increase dates are included throughout UN-Ex. 1 and 2, first as an hourly rate, followed by dates of subsequent wage increases, usually listed simply as a percentage increase of the initial wage figure given and the year on which it was enacted. Thus, each stipulated external comparable THWR is compared to the correlative THWR of the deputies in Dane County. Each sheet begins with the year 2010 and ending with the years 2014 or sometimes 2014-15, the year(s) in which the wage increases to the top level took place are also shown.

In addition to the external comparable figures it cites, the Association points out that by delaying the effective date of its proposed 2% wage increase to the last day of the 2012-14 contract, it had provided the County more time to budget for the Deputies’ proposed increase, thus mitigating the immediate cost to the County. DCDSA acknowledges that the cost of its proposed increase amounts to approximately \$600,000 – slightly more than the cost of six deputy positions. The Association further observes that the County had the discretionary option to fund the proposed increase by simply by reducing the Dane County deputy force by six deputy positions.

DCSDA also noted the County’s cost estimate is based on the County’s use of the “cast forward” method. This approach, says the Association, assumes that everyone employed in the prior year will continue to work the following year, but this is only an assumption that is not always accurate and may lead to an exaggerated cost assumption. However, the Association acknowledges that for the most part the “cast forward” method has been a common form of estimating and comparing competing negotiating proposals, and has served as the model the parties have used in their past negotiations for comparing final offers. The Association does not dispute the County’s costing of the Association’s two percent wage increase proposal as an approximate \$600,000 new cost item to the County.

Ranking of Comparables’ Wage Lifts, 2010-2015

The Association has constructed a Five Year model (2010 – 2015) that purports to predict a prospective or future ranking of Dane County’s 5th year position by the end of the five-year period if the County’s Final Offer is adopted.. The ranking is a simple enough calculation

apparently accomplished by adding up the percentage amounts of *wage lifts* over the five year period selected for each comparable reported in UN Ex, 1 and 2. The cumulative total is said to represent the actual wage lift that took place from 2010 to 2015. Adjustments that attempt to factor in Employer WRS wage offset payments are designated by asterisks.

Using data it extracted from UN-Ex. 1, 2, and 3 the Association then constructed a table to illustrate the ranking impact the percentage wage increases each comparable provided its deputies *would* create among the comparables at the end of the designated five-year period. (See Fig .3 below.) The Association asserts its Fig. 3 model clearly demonstrates the dismal impact that the Dane County’s current Final Offer *would present* when the five-years elapsed. According to the Association, at the end of the five-year period, Dane County would rank last as to the cumulative gross percentage increases, although the Association admits that under this model even the Association’s Final Offer would advance the Association’s offer to only ninth place (out of eleven).

The Association explained that it also adjusted the figures for both payments and/or lack of Employer payments to the WRS over the five-year period. The Association also explains that it selected the year 2010 as the baseline year because that was about the time when some of the major changes of Governor Walker’s administration were about to begin. Changes in collective bargaining rights, fringe benefits, and funding for local governments all changed dramatically, with 2010 as the base year for the changes that began to take place in 2011. The Association also explains “. . . it used the end date of 2015 instead of 2014 because the Association’s proposed wage increase effectively would not take place until 2015 as its 2% proposed increase has an effective starting date on the last day of the contract.

The Association postulates that a longer analysis would move into a different time period and be much less reliable than a five-year assessment. On the other hand, the Association adds, “A longer analysis would probably reflect the same conclusions that can be reached by a five-year analysis during this especially tumultuous time period in Wisconsin.” A longer time period could even be more appropriate where catch-up is being argued, the Association adds, but defines its instant effort as “keep-up,” not “catch-up.” The analysis does not include longevity or educational incentive wage supplements.

Fig. 3

Union’s Projected 5-Year Impact of County & Union Offers
Dane County Last; Union Ninth of Eleven:

Jurisdiction	Wage Lift Percentage
Marathon County	18.2%
Kenosha County	15.4% *
Rock County	15% **
City of Madison	14%
Brown County	13.75%
Washington County	13.35%
Winnebago County	13% ***
Waukesha County	12.25%
DCSDA (Association) Final Offer	12% ****
Outagamie County	11%

Racine County	10.5%
Dane County (Employer) Final Offer	10%

- * Added 7% to reflect no employee payment for WRS
- ** Added 6% to reflect only 1% payment for WRS
- *** Added 4% to reflect only 3% payment for WRS
- **** If implemented on last day of contract 2014.

Asterisks provide footnoted WRS payment information added by the Association. It appears that Dane County is in the majority of jurisdictions that are currently making WRS contributions of “full.” Dane County makes a full contribution. Two others are capped at 6.65% and 7%. Clearly, the Association Offer would create a higher wage floor.

The Association also submits a wage comparison analysis for 2013 and 2014 (Fig. 4, below) it constructed from CO-Ex. 32 data. The analysis it offers reflects the wage impacts of the two separate final offers. The Association is critical of the County’s failure to include adjustments for employee payments to WRS. The Association explains that for many years employers paid the employee WRS share as a result of collective bargaining. However, Act 10 changed this, and municipalities applied instant collective bargaining pressure on public safety employees to pay the employee’s share.

Fig. 4

Comparison of Averages for Deputy I & II for Dane County Averages 2013 & 2014

<u>2013</u>	<u>2014</u>
Minimum to average +2.08	Minimum to Average Assn +1.98 & County +1.50
Maximum to Average +2.35	Maximum to Average Assn +1.50 & County +. 63
	Loss to Average at Minimum Assn -.10 and County - .58
	Loss to Average at Maximum Assn -.85 and County -1.72

The Association explains relief for the law enforcement employees took many forms, but in most cases took the route of salary add-ons to compensate for the additional employee fringe benefit cost. According to the Association, factoring in the WRS figures results in a significant loss to the average of the County’s proposal of zero wage increase. Although the Association admits there is still a loss to the average under the Association’s proposal, it claims the loss is less significant than the loss attributed to the County’s proposal for 2013 and 2014. The Association concludes that when one sees the significant loss in the comparison of the Employer’s proposal of zero and then couples it with the bottom ranking of the Employer over the five- year ranking period, the Association offer is very reasonable and the Employer position in untenable.

The Deputies insist that one cannot look at the wages without also considering the Employer WRS payments. In most cases, they say, it was a phase-in with salary add-ons to compensate for the additional employee fringe benefit cost. As a result of these changes, no analysis is complete without reviewing the wage and WRS payments together, the Union argues.

When the significant loss in the comparison to the average caused by the Employer proposal of zero is viewed (admittedly still a loss, though less significant, to the average of the Association offer) and then coupled with the bottom ranking for the Employer over the five year ranking and a ninth out of eleven ranking for the Association when factoring in the WRS payments, the Association claims its offer becomes very reasonable and the Employer position is untenable.

The Association asserts the evidence it submits demonstrates the Dane County deputies top wage rate has not kept pace with the top wage rates of the external comparables, supposedly creating a gap the Association's five-year model predicts will only get worse under the County's zero wage adjustment Offer. The Association believes that at least a "keep up" (as opposed to "catch-up") wage effort is required to attain a reasonable parity with the external comparables and the Association's proposal for a 2% across the board wage adjustment comes substantially closer to filling this need than the zero wage adjustment Offer of the Employer. Thus, to the Association the external comparables provide strong support for the Association's Final Offer.

County's Internal Comparables Challenged

In addition to the required comparison between the Employer and the *external* comparables, Factor 4 mandates a comparison between the respective Offers with the employment wages of the Employer's internal employee bargaining units.

DCDSA anticipated the County would rely on its negotiated settlements with its internal *general* employees that provided those employees zero wage increases. The Deputies disdain any wage comparisons with the "internal" County employees for two reasons:

First: Characterizing the County's internal employee contracts as "imposed settlements" on the County's unorganized, management, and the other represented County non-law-enforcement personnel who are covered by Wis. Stats. 111.70, the Association charges that even the union-represented internal general County employees lacked any meaningful bargaining leverage in their contract negotiations with the County, primarily due to the pressures created by Act 10.

As to that, DCDSA describes the County as having "rushed" to negotiate its labor contracts with the eight remaining general employee bargaining units directly affected by Act 10 prior to the date the Act became effective (June 29, 2011). The Association speculates a cause for the rushed agreements to the successor agreements with the represented general employees (in the absence of any wage increases) may have been due to a desire to maintain language provisions both parties found useful, but could be accomplished only by reaching a signed, voluntary agreement *before* the effective date of the opprobrious Act 10.

Second: The Association further argues that the dissimilarities between the deputies' job duties and those of the County's *general* internal employees in other County positions further weaken the County's reliance on them as persuasive examples of internal comparability. DCDSA continues to describe its bargaining unit deputies as employees engaged in protective service who frequently meet with dangers to their personal safety – dangers not normally encountered by the *general* municipal employees, and for whom different and specialized

training is required. Linger on this point, the Association cites pre-Act 10 arbitrations in which, over the years, comparisons between police and other internal bargaining units of general employees appear to the Association to have lost some of the earlier arbitral deference first accorded them, as arbitrators began to examine more closely the factual context in which the comparison was offered, on a case-by-case basis.⁵

DCDSA also contends that a review of more recent arbitration cases involving *city* police units reveals the continuing priority arbitrators place on comparisons between *police and fire* employees of the same city employer, as both police and fire fighters are public safety units and have retained most of their bargaining rights stemming from Wis. Stats. 111.77.⁶ In its heart of hearts, the Association believes that the police/fire fighter comparability construct is the only truly valid internal comparison, but due to the absence of any fire fighters employed by Dane County agrees that comparison cannot be utilized in this matter, and concedes that the statutes require at least consideration of the internal comparables.

In addition, DCDSA indicts the County's "me-too" agreements with all nine County bargaining units as a contributing factor to the County's failure to grant what the Association describes as its own "meager" wage increase proposal. Virtually identical to the "me-too" clause included in the Association's 2014 contract with the County, the ones with the general employee bargaining units provided that *if* the County *voluntarily* added a compensation increase to the Deputies the County would provide the same increase to the contracts with the other units.⁷

DCDSA suggests that while the County initially may have seriously intended to bargain with the Association on the wage reopener as it had agreed, perhaps the County's continued motivation to do so was derailed by the "me-too" provisions it had reached with each of the general employee bargaining units that would have ballooned any increase to the deputies the County volunteered to make. In the end, DCSDA speculates, the County may have concluded that it would be easier for the County to let an arbitrator take the blame for a wage increase that deviated from the zero wage increases provided to the County's *general* employees and *general* employee bargaining unit members, instead of conclusively and affirmatively responding with what the Association views as an appropriate *quid pro quo*.

Quid Pro Quo

Finally, the Association contends \the Employer did not ultimately provide an adequate *quid pro quo* (QPQ) that complied with the bargain the Association asserts it made with the County in collective bargaining.

⁵ E.g. *Sheboygan County*, Dec. No. 32270-A (Hempe, 2009).

⁶ *City of Green Bay*, Dec. No. 34067-A (Malamud, 11/2013) *City of New Berlin*, Dec. No. 34204-A (Gordon, 12/2013); *City of Beaver Dam*, Dec. No. 34654-A (Morrison, 09/2014); *City of Rice Lake*, Dec. No. 34680-A (Malamud, 10/2014); *City of Cudahy*, Dec. No. 34946-A (Roberts, 10/2014); *Village of Greendale*, Dec. No. 33924 (Stryker, 11/02).

⁷ The "me-too" clause with the *general* employee benefits does not apply to any increases gained by the deputies through interest arbitration.

According to the Association, the opportunity and obligations for the Employer to provide a *quid pro quo* arose when, in a collective bargaining session the Deputies agreed to pay the employee share of contributions to WRS.

The Association describes this as an “enormous concession” by the Deputies that was made despite evidence that the Legislature intended to provide and maintain an exemption for current protective service employees from the WRS employee contribution provision it had intended for other (general) employees, and the Association agreed to the County’s proposal. Part of that agreement, the Association alleges, “. . . was a commitment to reopen wage negotiations for the 2014 term to enable the Association to seek an adequate *quid pro quo* for this enormous economic concession.”

In both its Initial and Reply Briefs, the Association vehemently argues that the *Doctrine of Quid Pro Quo* (QPQ) obligated the County to provide the Association with an appropriate QPQ in exchange for the Association’s WRS payment agreement. The Association rhetorically inquires whether the County agreement to reopen wages for the last year of the collective bargaining agreement satisfies, by itself, the requirement for a *quid pro quo* for the Association’s WRS concession. In effect, the Association seems to be implying that it made a bargain in which it traded a Cadillac (to the County) for what hindsight proved to be a jalopy that didn’t run as well as the Association had anticipated and is belatedly now seeking what it thought or hoped had been guaranteed. The Association writes:

The County, however, sought in its proposals an agreement from the Deputies to require all [of] them to pay the employee share of the WRS. The Association agreed, and part of that total agreement was a commitment to reopen wages for the 2014 term to enable the Association to seek an adequate *quid pro quo* for this enormous economic concession . . . The Employer here conclusively has not provided a *quid pro quo* in exchange for its demanded modification of WRS contribution.”

The Association asserts that the proponents of change need to establish 1) that a legitimate problem exists that requires attention, and 2) the disputed proposal reasonably addresses the problem, but 3) that that the proposed change must be accompanied by an appropriate *quid pro quo*.

Employer Dane County

General

Initially focusing on the local economic conditions in which the County finds itself, it describes its Final Offer as reasonable and reflecting needed fiscal restraint.

The County states its Final Offer balances its 2014 zero salary adjustment with the inclusion of a me-too clause, and sees the Union’s Offer that seeks a salary schedule adjustment of a two-percent wage increase would not be effective until the last day of the 2014 CBA. The County defends its offer primarily by describing the economic challenges the Dane County government is currently facing and relying on the protection offered by Factor (am). It also

describes what it deems generous, continuing deputy sheriffs' salaries as well as its consistent historic pattern of percentage employee wage settlements that also justify the County's zero adjustment wages for the deputies.

Local Economic Conditions

The County verifies that it is not arguing an inability to pay the Association's proposal. Instead, its initial fiscal focus is on what it perceives as a tightening economic encirclement in which Dane County is trapped by state property tax levy limits from one source, significantly reduced state aids from another, and what it calls the "cost to continue" from a third. It still needs to put its financial house in order.

The County explains that even with a zero adjustment to the salary schedule, the current CBA has provisions that contain continuing, automatic economic impacts on the County that the County calls "the cost to continue." These include items such as salary schedule movement, longevity costs, educational benefits, WRS contributions and FICA payments. In 2014 merely the cost to continue" was \$238,447.56. This was due, in part, to the Deputies' bargaining unit's previously negotiated salary adjustment that was not effective until December 14, 2013. Under the County's current Final Offer the, County continues, the "cost to continue" *this* contract in 2015 is \$109,456.84.

In contrast, the County states the *total* cost impact of the 2% wage increase the Association is currently seeking amounts to \$716,279.80. Even though the salary adjustment is not in effect until the last day of the contract (12/13/14) the increase is still \$606,823 more than the cost to continue under the County's Final Offer. Given the economic uncertainties of 2015, the County finds this is a substantial concern.

The County notes its Final Offer to the Deputies contains the same zero wage adjustment that each of the eight remaining County bargaining units accepted in collective bargaining, as those units recognized the current fiscal need for moderation. The County warns that what it calls the "additional last minute wage adjustment" sought by the Association will have a significant impact of the County's internal environment. The County further asserts that the compensation of the County's deputy sheriffs, enhanced as it is with longevity benefits and educational incentives, goes well beyond what many of the deputy sheriffs in comparable jurisdictions have been able to attain in their contract negotiations.

The County also emphasizes a long history of internal percentage wage settlement consistency among bargaining units in Dane County, a history that has withstood arbitrator examination in past interest arbitration cases. The County explains that is the reason it included a "me-too" clause in its final offer to the Association. To the County, the Association's demand for an additional 2% is "ill-timed and fiscally imprudent."

The County accuses the Association of largely ignoring local economic conditions. It appears to the County that the Association arguments verge on the frivolous, such as the County has the ability to pay any salary demand, the deputies are unique, the County has lots of wealth, and we are in the home of the State Capital and the University of Wisconsin. But, the County

responds, these arguments of the Association ignore the Arbitrator's statutory obligation to prioritize the statutory criteria [Wis. Stats. 111.77(6)(am)] that mandates the arbitrator to assign the greater factor weight to the County's economic conditions. To the County this means the arbitrator must assess the Association's demand for an additional \$606,000 allocation within the parameters of the County's budget.

In its collective bargaining with its general employees for 2014 the County presented to them the fiscal challenges it was facing, including: **1)** flat or decreasing state and federal financial aid that results in a fiscal **gap** that local taxpayers then have to refill to the extent legally and politically possible; and **2) state tax levy law.** Although property taxes account for the bulk of Dane County funding revenues, counties are limited by statutory limits on how much they may increase property taxes, and 2015 levy limits have eliminated the property tax as an ever-gushing funding source. Counties may raise taxes either by 0% or the percentage increase in the local property tax base attributable to new construction. The new construction percentage factor announced by the state Dept. of Revenue (DOR) for Dane County in 2015 is 2.21%.

The County relates that in mid June 2014 its County Executive, Joe Parisi, distributed his annual budget preparation memo to department heads in which he urged caution and concern due to uncertainty around the upcoming state biennial budget. Parisi requested his department heads to prepare their budget requests with the assumption of a *status quo* level of county general-purpose revenue. Parisi's memo explained that the cost of running the county's government in 2015 would require \$3.5 million more from General Purpose Revenue (GPR), a cost that included estimated personnel related costs of step and longevity increase costs of nearly \$600,000, with the cost of maintaining insurance and retirement an additional \$2.9 million.

The County asserts state aid to local government was nearly frozen over the 2013 budget period. Comparison of the 2005-07 state budget with the most recent 2013-15 state budget shows a 17% decrease in county and municipal aid over the eight-year period. The 2013-15 state budget also maintained strict controls on the amount of property taxes that county governments are able to raise. All in all, the 2013-15 state budget validated the extreme prudence County Executive Parisi had recommended to his departments heads in mid-June 2014.

2013-17 Strategic Financial Plan

The County describes the dilemma it faces as one where the demand for services is growing, but the ability to support those services has been constrained. This is not a new challenge. To address this concern, the County's 2012 budget directed its Dept. of Administration to create a County-wide Strategic Financial Plan. The completed Plan projects the County's overall financial position over a five-year period (2013-17). The Plan also estimated the County's revenue capacity to support needed services, and to ensure the services most important to the public are efficiently delivered. Quantitative analyses confirmed the upcoming challenge the County faces, namely, County costs supported by GPR are projected to grow at an average rate of 3% annually, while the County's ability to support those needs was projected to increase at a rate of only 1.3%.

County Sources of Revenue: Two Departments Budget for Loss

The County listed its sources of revenue as consisting of GPR, Sales Tax, Property Tax, Shared Revenue from the State, and Register of Deeds fees (noting that delinquent property taxes are also an important piece of the County's budget). The County anticipates and has budgeted a revenue loss to the County Treasurer's Office of \$1,098,911, attributing this to lower penalty and interest revenues. As to Register of Deeds revenue, the County reports real estate transactions are lagging behind last year's, fewer homes are selling and refinancing activity has declined as interest rates have increased. The County's Planning Dept. advises that permit activity for new construction and remodeling is also running behind last year's numbers. Based on these reports the County has budgeted a \$250,000 loss for the Register of Deeds office in 2015.

The County offered further details as to each of its revenue sources:

GPR: General Purpose Revenue consists primarily of County's sales tax (0.055%) and property tax proceeds, along with other sources that can be lawfully applied to general County activities. Additional GPR includes shared state revenue and utility aid payments.

SALES TAX: Adopted by local option in 1981. Since then it has been a primary source of GPR, and continues to comprise 30% of the total GPR. Its growth fluctuates with macroeconomic factors and is not as stable as the property tax. In 2003 and 2004 its growth has been as high as 5.8% and shrunk as low as -7.9% between 2008-09. The County has budgeted a \$3,243,321 increase in its sales tax revenue for 2015.

PROPERTY TAX: Dane County's largest source of general purpose operating revenue. A new levy unit was established by the State of Wisconsin in 2012 that sets the maximum rate the property tax levy may increase to either 0% or to the percentage increase in the County's equalized value due to new construction. The nature of this limitation makes property tax growth more cyclical in nature because downturns in business can reduce new construction that then can reduce the amount of tax that may be levied.

This is a short glimpse of the local economic conditions that required a reasonable budget discipline to avoid long-term fiscal difficulties that would inure to the long-term disadvantage of the County. As the County notes, its fiscal discipline has already begun to see positive results, as, for instance, evidenced by its improved fiscal rating of the County to the level of "stable". But it was also the background that caused governing County leadership to formulate a salary position of budget restraint as to wage rates with respect to all of its employees.

Wage Rate Comparisons

The County explains its Deputies' bargaining unit members' positions are spread over four job classifications occupying three pay ranges. The salary schedules quantify wage rates on an hourly format. Most bargaining unit members fall in the Deputy Sheriff I-II position. Given the structure of the Association's wage adjustment in 2014, the cost impact of the Association's offer is in 2015.

The County attests that longevity and educational incentives have a significant positive impact on Dane County deputies' earnings and are paid in addition to the top wage rate the deputy may have attained. The City of Madison and Waukesha County are the only two external comparables that include the exceptional Dane County longevity and educational incentives to its deputy sheriffs.

Longevity and Educational Incentive

All bargaining unit employees are compensated for accrued longevity service. At the start of the 5th year of service, bargaining unit employees are paid an additional 3% of his/her base pay. The longevity accrual rises in increments of 3%, 2% and 1% over the years of service. The maximum longevity credit of 12% is paid when a County employee begins his or her 22nd year of employment service. Nearly half of the deputies have been employed by the Sheriff's Department for at least 16-years. The wage rate comparisons in the County's exhibits assume receipt of the maximum 12% longevity credit.

In addition, any bargaining unit member with a Bachelor's degree is provided an 18% incentive payment. The wage rate comparisons in the County's exhibits assume receipt of the maximum 18% Bachelor degree incentive. Any bargaining unit member who has an Associate Degree is granted a 12% incentive payment.

Fig. 5 (CO-Ex. 32) and Fig. 6 (CO-Ex. 33) offer a comparison of the two competing wage offers in this proceeding with the wage levels among the external pool of comparables. The County presents these two exhibits as compelling evidence that Dane County Deputy Sheriffs are handsomely paid as compared with external peers, noting the longevity and educational incentive benefits enhance an already above average pay scale. The County finds the Association's claim that additional pay is needed for these bargaining unit members to be without merit, and argues that the external wage levels supports the County's overall objective for maintaining an internally consistent settlement pattern.

Fig. 5 measures Dane County Deputy Sheriff I-II maximum wage rate comparisons (including longevity and educational incentives) against external comparable counties, including the City of Madison.

Fig. 5

	2012		2013		2014	
	Max.	Max Long. and Educ.	Max.	Max Long. and Educ.	Max.	Max.Long. and Leduc.
Comparables Average	\$28.53	\$30.12	\$29.16	\$30.79	\$29.98	\$31.66
Dane County's Final Offer	\$28.95	\$32.42	\$30.61	\$34.28	\$30.61	\$34.28
Dane County's Final Offer	\$0.42	\$2.30	\$1.45	\$3.49	\$0.63	\$2.62

compared to Comparable Average						
Union's Final Offer	\$28.95	\$32.42	\$30.61	\$34.28	\$31.22	\$34.97
Union's Final Offer compared to Comparable Average	\$0.42	\$2.30	\$1.45	\$3.49	\$0.61	\$3.31

This chart includes the City of Madison

In Fig. 6, the County measures Dane County Deputy Sheriff I-II maximum wage rate comparisons (including longevity and educational incentives) against external comparable counties, but does not include the City of Madison.

Fig. 6

	2012		2013		2014	
	Max.	Max. Long. and Educ.	Max.	Max. Long. and Educ.	Max.	Max. Long. and Educ.
Comparables Average	\$28.63	\$29.37	\$29.24	\$29.99	\$30.06	\$30.82
Dane County's Final Offer	\$28.95	\$32.42	\$30.61	\$34.28	\$30.61	\$34.28
Dane County's Final Offer compared to Comparables Average	\$0.32	\$3.06	\$1.37	\$4.30	\$0.55	\$3.46
Union's Final Offer	\$28.95	\$32.42	\$1.37	\$34.28	\$31.22	\$34.97
Union's Final Offer compared to Comparables Average	\$0.32	\$3.06	\$1.37	\$4.30	\$0.61	\$4.17

This chart does not include the City of Madison

The County believes that granting a 2% wage increase to the Association on the last day of the contract's reopener would deviate from the historically established settlement pattern that the parties have achieved and generate a great deal of dissension among the County's other bargaining units. Giving a wage demand to the Association beyond what the other internal groups received would, in the County's judgment, create a divisive and hostile work environment. In effect, the statutory factor that mandates comparison with other collective bargaining groups mandates selection of the County's final offer, in the County's judgment.

The County staunchly affirms that as long as the external data does not suggest that the bargaining unit members are significantly harmed by implementation of an internally consistent pattern, the internal pattern should stand

The Internal Settlement Pattern in Dane County reflects a topic on which arbitrators have placed significant priority, according to the County.

The County begins by citing a pre-Act 10 decision of Arbitrator Zel Rice:

“This arbitrator has always given special consideration to the pattern of relationships between the various of a single employer and is reluctant to disrupt in the absence of evidence establishing a change in the similarities.”⁸

Since the passage of Acts 10 and 32, the County notes some arbitrators concluded the bargaining limitations placed on general municipal employees, but not found on the protective service employees, have changed the municipal collective bargaining rules by making comparisons between general employees and protective service employees substantially less useful. That, says the County, is the Association’s position in this matter.

But the County claims most arbitrators have determined that nothing has changed, citing several previous arbitration awards.⁹ To the County, these decisions provide clear support for the County’s position in this case. The County cites this Arbitrator as previously determining that internal comparables still remain a criterion the arbitrator is obliged to consider, but that the weight of this factor depends on the circumstances of the case.¹⁰ The County warns settlements disregarding its internal comparables would guarantee future labor-management disruption.

Dane County contends that following enactment of Acts 10 and 32, Dane County was one of the few counties that swiftly negotiated collective bargaining agreements with its general (represented) employees while the impact of the legislation was being challenged in the courts. The County states all of the labor contracts through December 2014 were voluntarily negotiated and settled prior to the effective date of Act 10. Thus, the County urges the weight given these settlements should be accorded no less a weight than what would have been given during a pre-Act 10 time period.

⁸ *Waukesha County*, Dec. No. 29070-A, (Rice, 10/16/97).

⁹ *Douglas County*, Dec. No. 33350-A, (Kossof, 1/30/12); *Village of Greendale*, Dec. No. 33924-A (Strycker, 3/17/13); *Sauk County*, Dec. No.33811-A, (Flaten ,12/05/12).

¹⁰ *City of Mequon*, Dec. No.33818-A (Hempe, 11-15-12)

The County points to its history and pattern of labor-management consistency since 1997, a history that reflects, “strong internally consistent settlements, demonstrating a desire for, and accomplishment of, an internally consistent pattern of settlements,” as reflected in the Historic Table listed below (Fig. 7).

Historic Consistent Settlement Pattern

Fig. 7

	WPPA Deputy and Supervisory Units		Rest of County Bargaining Units
12/21/1997	3%	12/21/1997	3%
12/20/1998	3%	12/20/1998	3%
12/19/1999	2%	12/19/1999	3%
6/18/2000	1%		
12/17/2000	3%	12/17/2000	3%
12/16/2001	3%	12/16/2001	3%
12/15/2001	2%	12/15/2001	2%
9/21/2003	0.75%	6/15/2003	1%
12/26/2004	1%	12/26/2004	1%
6/26/2005	2.5%	6/26/05	1%
12/25/2005	1%	12/25/2005	1%
6/25/2006	3%	6/25/2006	3%
12/24/2006	2.5%	12/24/2006	2.5%
6/24/2007	1%	6/24/2007	1%
12/23/2007	2.5%	12/23/2007	2.5%
6/22/2008	1%	6/22/2008	1%
12/21/2008	2.5%	12/21/2008	2.5%
6/21/2009	1.5%	6/21/2009	1.5%
7/5/09 – 12/19/09	5% pay cut	7/5/09-12/19/09	5% pay cut
12/20/09 – 12/18/10	3% pay cut	12/20/09 – 12/18/10	3% pay cut
12/18/10 – 12/16/11	0%	12/18/10 – 12/16/11	0%
12/17/11	3%	12/17/11	3%
12/16/12	1%	12/16/12	1.5%
6/2/13	2%	6/2/13	2%
12/14/13	3.65%	12/14/13	3.15%
2014	0%	2014	0%

The County describes its current CBAs with the general employees as groundbreaking and noteworthy. Even with the impediments presented by Acts 10 and 32, the County had still wanted to ensure labor peace and employment stability. The County credits the remaining eight internal bargaining units’ understanding of the continuing financial situation they and the County were facing, as well as their demonstrated willingness to work quickly and collaboratively in a mutual effort to find a solution with which all could live. The County sees the results of the negotiating process as producing contracts that are good for the County and continue to provide employment stability for its employees. The County insists these contracts with the eight locals

were *negotiated*, not *imposed*. Indisputably, Act 10 did not apply, because the contracts were negotiated and ratified before Act 10 became effective.

The County believes that granting a 2% wage increase to the Association on the last day of the contract's reopener would not only have deviated from the historically established consistent pattern that the parties had achieved. but generated a great deal of dissension among the County's other bargaining units. Granting a wage demand to the Association beyond what the other internal groups received would, in the County's judgment, create a divisive and hostile work environment. In effect, the statutory factor that mandates comparison with other collective bargaining groups mandates selection of the County's final offer, in the County's judgment.

The "pattern" to which the County and other arbitrators refer simply means that over the years the members of each bargaining unit have developed a pattern of settlements that provide the same wage percentage adjustment in successor contract negotiations with the units, from zero in some years to a higher amount in others. The County asserts its claim of countywide established patterns of negotiated wage adjustments is exemplified by the results posted in the Table above (Fig 7) and demonstrates interior unit comparables that most arbitrators respect.

Again, the County relies on the pre-Act 10 case involving Waukesha County and the Teamsters in which Arbitrator Zel Rice unequivocally summarized that it was the opinion of most arbitrators that internal comparisons are appropriate when there has been a pattern of consistency for a number of years in the relationship between with respect to wages, hours and conditions of employment.¹¹

The County further notes a case two years later in which Arbitrator Rice had not changed his mind and again expressed reluctance to award a wage increase that would disrupt the relationships that had been worked out previously between the Employer and its employees as a result of many long and tedious hours of bargaining.¹²

The County also reports that six years later (2005) Arbitrator Rice was faced with facts in a Dane County case similar to those of the instant case. In that case, the UPQHC (Nurses) bargaining unit was the lone County bargaining unit holdout against a county final offer of a one-year wage freeze that each of the other eight bargaining units had accepted. In favoring the County's offer, Arbitrator Rice 1) found significant the achievement of internally consistent wage settlements for a number of years, and 2) further concluded the economic conditions at the time demanded the Employer strike a balance between costs and continued employment opportunities. "The grim economic forecast in 2004 demanded that the Employer strike a balance between costs and continued employment opportunities. Acceptance of the Union's final offer would undercut the internal settlement pattern, encourage whipsaw bargaining and ultimately challenge the political limitation in collective bargaining decisions that were made during the

¹¹ *Waukesha County*, Dec. No. 29070-A, *supra*.

¹² *Forest County*, Dec. No.29459 (Rice, 7/12/1999). In this award, Arbitrator Rice further observed: "Failure to honor an existing pattern undercuts voluntary collective bargaining and tells other units they should have sought their changes in arbitration rather than settling on terms, while less than ideal, ere consistent with other internal settlements. The internal pattern should be favored since it is more likely to realistically reflect the outcome of successful negotiations."

Employer's budget crisis. Arbitrators place significant priority on internal settlement patterns and the Employer's wage offer is consistent with the current settlements reached with all other employees" *Dane County*, VIP No. 3110v (Rice, 8/28/2005).

The County adds that it takes great pride in the relationships it has cultivated with its unionized employees. The County believes the Union understands the emphasis and value the County places on its internal settlement pattern. The County attests that longevity and educational incentives have a significant, positive impact on Dane County deputies' earnings. The City of Madison and Waukesha are the only two external comparables that include the exceptional Dane County longevity and educational incentives to its deputy sheriffs.

DISCUSSION

Quid Pro Quo

I turn first to the issue of *Quid Pro Quo* (QPQ) that the Association raises.

The three-word Latin phrase the Association employs defines an exchange of mutual considerations between the parties to a contract.¹³ The Association asserts that the proponents of change need to establish 1) that a legitimate problem exists that requires attention; 2) the disputed proposal reasonably addresses the problem; but 3) that that the proposed change must be accompanied by an appropriate *quid pro quo*.¹⁴

As I have previously written: "The doctrine of *quid pro quo* has a continued essential utility as an interest arbitral means of controlling unreasonable demands for take-backs of contractual remedies."¹⁵

But the County denies the Association was entitled to any concession beyond the wage reopener to which the County had agreed and provided. Under the facts presented, that was the bargain.

The County agrees that during contract negotiations the parties made a bargain under which the Association agreed to certain WRS payments to be made by the deputies in exchange for which the County *agreed to the insertion of a wage reopener provision* in the 2014 collective bargaining agreement of the parties. The County emphasizes that its WRS proposal to the Association was identical to that which the general County employees spread throughout eight other bargaining units had been already offered and accepted. The County further emphasizes that the Association *voluntarily accepted* its WRS proposal.

The County points out the Association's QPQ argument might find more solid ground if the basis of its claim were that the County had *imposed* the WRS changes or even if the changes been *imposed* by an arbitrator. But evidence of imposition, coercion, or trickery does not appear in this matter.

¹³ Lit. "What for what." *Black's Law Dictionary*, 4th Ed.

¹⁴ *Village of Fox Point*, Dec. No. 30337-A (Petri, , 2002)

¹⁵ *Buffalo County*, Dec. No. 31484-A (Hempe, 5/18/06.)

Nor does it appear from the alleged facts that the County's WRS payment proposal, in a negotiating context, was unreasonable. My understanding of the issue is that the Association voluntarily agreed to support the same WRS proposal to which voluntary agreement had been reached with the eight other County bargaining units, but now complains that the *quid pro quo* it anticipated was not offered. It is not clear that the agreement was initially assessed as a package or the component of WRS payments instead was a "stand alone" provision advanced by the County. Ultimately it appears the two proposals, that is, the WRS payment proposal to the Association and the wage reopener provision to the County were conjoined in the parties' discussion and a bargain was struck.

What followed next was the parties' failure to reach agreement on the "adequate *quid pro quo*" being sought by the Union in the subsequent agreed-upon wage reopener negotiations. However, again I find no evidence that the County had offered an unpalatable, coercive, or unfair proposition to the Union with respect to its initial proposed WRS employee share retirement payments. Moreover, there is no dispute that the County's WRS proposal was identical to the ones it had earlier made to the other County bargaining units and accepted by them.

I note the Association's claim the County "demanded" the WRS concession (which the County denies) and which is not further explained by the Association. It occurs to me that while the County may have been perceived as "demanding," no reason is presented as to why the Association negotiators could not, just as firmly, have said "no" to any such "demand," until the Association received what it deemed an adequate *quid pro quo* for its "enormous concession." Under the terms of the bargain as I understand it, the County's sole obligation was to the insertion of a wage reopener in the successor contract the parties were negotiating. Period. Nothing more. While that offered the Association the opportunity to seek what it apparently regarded and now appears to identify as an "appropriate" *quid pro quo*, the opportunity afforded to the Association did not tie the County's negotiating hands to the Association's judgment of what an *adequate quid pro quo* might entail.

The Union appears to have carefully refrained from making any allegation against the Employer of failing to bargain in good faith, but in scathing prose wonders why the Employer agreed to the reopener if it intended only to maintain its wage adjustment position at zero. The Association has no answer to its question, but continues to insist it was entitled to an appropriate *quid pro quo* in exchange for its "enormous concession" regarding the WRS payment obligation.

In any event, the bargain described above by the Association was, in my view, a bargain kept. The Deputies agreed to the WRS payment obligation proposed by the County, and the County agreed to the insertion of a wage reopener provision in the 2014 collective bargaining agreement. Each happened. But in the negotiations following implementation of the wage reopener, the Association was unsuccessful in its search for a mutually acceptable adequate wage adjustment.

It is axiomatic that good faith collective bargaining does not necessarily require agreement by one of the parties to a proposal made by the other, only a willingness to listen, discuss and negotiate. There is no allegation that the County refused to negotiate.

In this case, the Association's version relates the wage reopener was for the purpose of *seeking agreement to a mutually acceptable QPQ*. I note, however, the words of the wage reopener to which the parties agreed do not include "a seeking" or "search" for an "appropriate *quid pro quo*" as the basis for the reopener provision, but only the bare provision that "there shall be a wage reopener on wage adjustment for 2014." Perhaps that is a minor quibble. But in a larger view, what strongly suggests that eminently clear to both parties at the time is that there was no guarantee that restarted wage negotiations would *successfully* result in a voluntary resolution of the issue. As careful negotiators, the parties had prudently provided a Plan B in case of negotiating failure.

In effect, Plan B was simple enough: in the event the parties failed to agree to an appropriate *quid pro quo*, the parties could "avail themselves of the process available under Section 111.77 (i.e. arbitration) to resolve their dispute."

The Union speculates that possibly motivating the County's subsequent intransigence in its post-wage reopener negotiations were the "me-too" agreements it had previously negotiated with each of the general employee bargaining units (as well as the DCSDA) under which any increase the County voluntarily gave the deputies would have to be provided to the other employees.

Perhaps so. Perhaps not. Perhaps irrelevant. But at least equally possible and perhaps more plausible is that the County me-too agreements were extended to reassure skeptics in those units and the DCSDA of the County's promise that every unit was being offered the same zero percentage wage increase and that the offer would not improve should a bargaining unit decided to "hold out" in hopes of a more generous offer. Under that theory, the me-too agreements were an important means of verifying that pledge and persuading the employees of the County's sincerity.

Under these facts, it is *not* apparent to this Arbitrator that this issue easily slides into the *quid pro quo* slot the Association suggests. Instead, the situation takes on an emergent, realistic resemblance to creative, traditional collective bargaining by both parties, in response to the unanticipated statutory changes each had observed being enacted by Act 10.¹⁶

In the beginning, a hopeful bargain was recognized and developed by both parties. And kept. Each side appears to have carried out what it believed its side of the bargain required. In

¹⁶ I note Arbitrator Petri's included caution in his *Village of Fox Point* case: (supra): "In this connection it is noted that certain long term and unanticipated changes in the underlying character of previously negotiated practices or benefits may constitute mutual benefit problems of the parties which do not require traditional levels of *quid pro quo* to justify change."

the absence of any witness testimony, negotiating notes or other credible evidence describing more – that’s all there is! Not even “a wink or a nod” is alleged to have taken place. What the Association may *now* perceive as worthless bargain benefits does not change its initial apparent perception of potentially valuable financial benefits it had hoped to gain through a resurrection of the wage enhancement issue to which the County had agreed. Obviously, the value plummeted with the failure of the parties to find the QPQ the Association was actually seeking. But that neither affects the initial value of the deal accepted by the Association, nor necessarily invokes an arbitral QPQ remedy.

I find no evidence that the Employer coerced, tricked or trapped the Deputies into agreeing to the WRS bargaining concession, or reneged on the actual bargain that was made and consummated. Neither does the Association offer any evidence of any kind of misconduct by the County. Thus, I find little basis for arbitral insertion of a *quid pro quo* remedy. With the consummated insertion of the wage reopener as the County had agreed, the deal that had been made was carried out. While some may argue in hindsight that it was inadequate, it still appears to be the deal to which the Association voluntarily had agreed in exchange for the Association’s WRS payment agreement and by so doing established its perceived, potential value to the Deputies at the time.¹⁷

Certainly the Deputies’ unhappy remorse that the actually completed bargain resulted in being less productive in obtaining the additional wage adjustment than what they had envisaged or hoped, is understandable. Sometimes negotiations are like that, and occur with even the best of communications between bargaining teams and bargaining teammates. In this instance I find no evidence to support the Association’s assertion that it is entitled to a *quid pro quo*.

Review of the Statutory Factors

I proceed to measure the competing Final Offers against the statutory factors.

Factor A: The lawful authority of the employer.

Not in issue.

¹⁷The County additionally notes the record reflects that employee contributions to the cost of retirement were offset by corresponding adjustments to wages. The Union’s own wage exhibits (UN-1,2) show this point. The initial 2.0% phase-in of the employee’s share for the WRS contribution began on December 16, 2012. Another 2.0% was phased in on June 2, 2013 (total of 4.0%). The final contribution to equal the full amount of the employee’s share was phased in on December 14, 2013. The Deputies’ wages were increased on each of these three phase-in dates. The final contribution was to equal the full amount of the employee’s share. The unit was provided salary add-ons to compensate for the additional employee fringe benefit cost.

Factor B: Stipulations of the Parties

Not in issue

Factor C: Interests and Welfare of the Public; financial ability of the unit of government to meet those costs.

A competent, reliable and experienced deputy sheriffs' corps is of obvious great value and necessity to county residents. Certainly, the deputies deserve reasonable compensation, commensurate with the training they endure, the duties they perform, the courage they demonstrate and the risks those duties entail. It serves as not only a morale enhancer for them, but as an essential element in attracting and maintaining motivated deputies with a well-developed ethos of public service, such as those the county presumably now employs.

Although the County insists it is not claiming inability to pay the cost of the Association's offer, it makes a persuasive case (amply aided by its relatively recent past experiences with financial rating agencies such as Moody's or Fitch) that its financial house cleaning must continue. Although the Association defers by one year its proposed wage increase for the deputies and even acknowledges the tight Dane County budget, situation, even the *deferred* wage increase will be an impediment to the continued course of disciplined, prudent fiscal housecleaning on which the County has embarked under its 2013-17 Strategic Financing Plan. As Arbitrator Dennis P. McGilligan observed in a recent case, just because the County has some ability to pay a wage increase demanded by the Association does not result in an automatic justification for awarding the Association's Final Offer.¹⁸

Given the unrefuted forecast that the costs to Dane County of providing essential services are now projected to grow at an annual rate of 3% while the County's ability to provide those needed services is projected to grow at an annual rate of only 1.3%, the Association's proposal for a 2% increase appears to the County's financial experts as both untimely and fiscally risky. Added to this is the divisive effect on the eight remaining general employee locals that voluntarily agreed to a zero wage adjustment for 2014 and the consequent undercutting of collective bargaining in the County that adoption of the Association's Offer would inevitably entail. Thus, in my view consideration of Factor C leads to the conclusion that the County's Final Offer is a document of greater moderation and better suited to the current needs of the County under this factor.

Factor D: Consideration and Comparison of Dane County Deputies with comparable external peers in public and private service and internal employees.

The parties agree that there are no deputy sheriff positions in the private sector.

¹⁸ *Washington County*, Dec. Bo. 34039-A (McGilligan, 2013).

The Association, still insisting that the internal bargaining units were simply powerless units with no leverage to reject or object, urges that consideration of the internal employees be minimal and of little weight.

On their face, UN-Ex. 1, 2 and 3 made a *prima facie* case that the “top hourly wage rate” or THWR for the Dane County Deputies had been exceeded by external comparables individually identified and assessed. As the County has conceded, some of the comparables have provided their deputies with wage increases in 2014. But analysis of the Dane County top wage rates would be incomplete without including in the comparison the longevity and educational incentive wage supplements paid to qualifying Dane County deputies.

It is undisputed that the County provides both longevity and educational incentive wage supplements. As demonstrated by fig. 8, below, these wage supplements are more than nominal. The Association neither acknowledged nor commented on them. But post-high school education for the deputies and continued law enforcement experience with the County is also valued, encouraged and substantially rewarded by the County.

A bachelor’s degree is worth an additional 18%; an associate degree, 12%. As for longevity pay, after 5-years of service an employee is paid an additional 3% of his/her base pay. The longevity accrual rises in increments of 3%, 2% and 1% over the years of service. The maximum longevity credit of 12% is paid when a County employee begins his or her 22nd year of employment service. According to Dane County, *nearly half of its deputies have been employed by the Sheriff’s Department more than 16-years*. Simple math indicates 85% of the bargaining unit is currently receiving longevity benefits of a 3% or more salary increase. This, along with the educational incentive payments appears to substantially erase any “top wage rate” gap that previously existed.

Dane County Deputy Sheriff Longevity Pay Supplement

Fig. 8

Years of Service	Longevity Credit for Hourly Rate	Number of Bargaining Unit Employees	% of Total
Years 0-4	0%	57	15%
Start of Year 5	3%	73	19%
Start of Year 10	6%	51	13%
Start of Year 14	8%	35	9%
Start of Year 16	9%	41	11%
Start of Year 18	10%	26	7%
Start of Year 20	11%	31	8%
Start of Year 22	12%	75	19%
	TOTAL	389	100%

In 2012 the maximum longevity (calculated on the Deputy Sheriff I-II wage rate) was \$3.47 an hour (CO Ex. 32). The educational incentive was even greater and adds a maximum

value of \$5.21 an hour. *Of the comparables, the City of Madison and Waukesha County are the only external comparables that include the longevity and educational incentives to the deputy sheriff employees.*

I note the wage lift ranking results obtained from the Association's 5-year Wage Lift Analysis in which the Employer's Offer fares poorly. But the Association's analysis neither reflects the longevity and educational incentive wage supplements paid to the Dane County deputies, nor measures the fact *that only two of the external comparables (City of Madison and Waukesha County) even offer these financial supplements.* Moreover, the Association's own analysis ranks its own Offer as only ninth out of eleven.

Given the circumstances of this case that include a 17-year Historic Consistent Percentage Settlement Pattern among WPPA Deputy Units and the rest of the County bargaining units (Fig. 5), I find consideration of the County's CBAs with the represented internal general employee units to be helpful in assessing the County's Offer. The apparent gap between the top wage rate of Dane County and the average of the externals seems largely closed entitling Dane County to claim its top wage rates are at least competitive with the externals. When coupled to the 17-year history of consistent pattern percentage wage settlements in Dane County, I find the County's Final Offer is supported by Factor D.¹⁹

Factor E (Cost of Living)

This Factor asks for the prices for goods and services commonly known as the cost of living. The Association reports the January 2013 reported cost of living increase as 2.96%, and 1.66% listed for January 2014. The County offers no numbers, but comments the pay for an average bargaining unit employee increases with the "baked in" cost of step movement and incentives, despite no wage scale adjustment. Neither party chooses to argue the points it makes. As the parties minimal engagement with this factor suggests they find its weight negligible and relevance marginal *in this matter*, so I do likewise and find this factor to benefit each Final Offer equally or not at all.

Factor F (Overall Compensation)

This Factor inquires as to the "overall compensation received by the employees," e.g., direct wage compensation and other benefits. The Association responds this Factor is not an issue, adding the parties have agreed on all other economic issues as this (case) is a limited reopener by its terms. The County asserts the law enforcement employees of the County receive exceptional benefits not received by employees in other units, including a 37.5-hour workweek, vacation and holiday cash out, and stability of employment.

¹⁹ This conclusion necessarily considers and compares the consistent wage pattern settlements of the internal employees as directed by this Factor, but does not attempt to consider position similarities. As the Association urges, deputy sheriffs' duties are unique. In my view, however, the long-term consistent pattern wage settlements of all of the County's bargaining units employees (including the deputies) trumps the obvious position dissimilarities between the deputies and other County employees. Absent compelling evidence that a change is needed I am reluctant to disrupt the pattern in this case.

As the Association relates, this dispute does not directly involve any benefit related areas and the parties raise none. Given these circumstances, a fair generalization may be that neither Final Offer is diminished or benefited by this factor.

Factor G (Changes)

This Factor looks for any changes in any of the foregoing circumstances during the pendency of the arbitration. Neither party suggests or argues any.

Factor H (Other)

This Factor includes any other factors not confined to the foregoing that are normally or traditionally taken into consideration in the determination of employment issues. The Doctrine of *Quid Pro Quo* appears to be one such additional Factor on which extensive consideration and discussion have already taken place.

Factor (am)

This Factor actually heads the statutory list and mandates 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.

This accounting is written in compliance with the above listed Sec. 111.77(6)(am).

It is eminently clear the County's Final Offer has been principally affected by the economic conditions within its boundaries. In existence since 1833, Dane County currently reflects a diversified private sector economy that includes industry, crop and livestock farming (along with other agribusiness), and a host of small businesses. It also provides the setting for a world-class university (University of Wisconsin), and several colleges including Madison College, and Edgewood College.

The University is the major employer in the County, and a major consumer of local products as well. Unfortunately, it is currently struggling with a major economic development, namely the Governor's proposed budget to the Wisconsin Legislature that seeks to reduce state funding of the University by some \$300 million. While the funding cuts to the University may not reach quite that drastic a level, serious reductions are anticipated and the University leaders are currently contemplating substantial employee layoffs, which of course will impact both County government services and County revenues.

The County asserts that it is not arguing an inability to pay the Association's proposal. Instead, its focus is on what it perceives as a tightening economic loop in which

Dane County is trapped by state property tax levy limits, significantly reduced state aids, and the “costs to continue.”

In its collective bargaining with all its represented employees for 2014, protective service and general, the County presented the fiscal challenges it was facing. Eight of the local bargaining units responded with agreement to successor labor agreements providing a zero wage adjustment. The only holdout local unit is the Dane County Deputy Sheriff’s Association, which continues to insist on a 2% salary increase.

The fiscal challenges included:

1) Flat or decreasing state and federal financial aids for which local taxpayers have to make-up any fiscal gap created by the diminishing state and federal aids; and 2) tax levy limitations that restrict the size of any property tax increase. Currently, counties may increase taxes by either “0” (zero) percent or the percentage increase in the local property tax base.

2) Counties are limited by state law as to how much they may increase property taxes; 2015 levy limits have restricted the property tax as a funding source, and counties may raise taxes either by 0% or the percentage increase in the local property tax base attributable to new construction. The new construction percentage factor announced by the state Dept. of Revenue (DOR) for Dane County in 2015 is 2.21%.

The County also views with alarm the cost impact of the Dane County Deputy Sheriff’s Association’s Final Offer demanding a 2% across the board wage increase. If implemented, the cost impact of that demand amounts to \$716,279.80. Although the Union’s proposed increase would have been on the last day of the contract year on December 13, 2014, the increase is still \$606,823 more than the cost to continue under the County’s Final Offer. Given the unresolved budget uncertainties and insecurities on the state level, substantial county alarms remain understandably active as to the county’s budget level, and portend another tight budget year for the County.

The County describes the dilemma it faces as one where the demand for services is growing, but the ability to support those services has been constricted.

The County’s 2013 – 2017 Strategic Financial Plan was developed to meet this challenge. Quantitative analyses confirmed this challenge, namely that County costs supported by GPR are projected to grow at an annual rate of 3% annually, while the County’s ability to support these needs was projected to increase at a rate of only 1.3%.

While the County reaffirms, “(t)his is not an inability to pay case,” nonetheless its leaders are strongly advising the need to continue to put its financial house in order. *The County credits the fiscal rating agencies as having recognized that fact and downgraded Dane County’s financial position as “having a negative outlook.”* The County’s improvement – as seen through eyes of Moody and Fitch Ratings – included the County’s decision to develop the Strategic Financial Plan, improve its reserves, and stick to a realistic budget. That decision has already resulted in an upgrade of the County’s financial position.

But, the County adds, the reality is that there still is not sufficient money to amply and responsibly fund the implementation of the Association’s offer. As County Administrator, Travis Myren, pointed out at hearing, “Paying for the ‘cost to continue’ in 2015 absorbs, on a county-wide basis, \$4,044,980.” To which County adds, “Including the additional jail-related costs puts the County \$89,524 over the net available GPR.”²⁰

The County acknowledges that since 2012 it has been levying the maximum amount legally permitted, and points to the County Executive’s proposed budget recommendation to maintain that policy. To the County, *the levy limit is significant and provides very little flexibility in terms of additional compensation beyond the County’s \$4.004 million needed to pay “the cost to continue.”* (See Fig. 8 below.)

With the development of the Strategic Financial Plan, the County said it took action to replenish and bolster its General Reserve Fund. This has not passed unnoticed by Moody’s Investments and Fitch Ratings, and in mid-2014 their negative outlooks were replaced with “stable” ratings. But, the County argues, the fiscal stabilization the County has begun to achieve do not support the Association’s offer or “flip the switch of financial responsibility to ‘off’ in order to fund a shorter, gain sought by one union.”

Levy Limit Log : 2006-15 Fig. 8

	New Construction Factor [1]	Min. Valuation Factor [2]	Permitted Increase for Operations	Maximum Levy [3]	Actual County Levy [4]	\$ Available Under Levy Limit [5]
2006	4.21%	2.00%	\$4,239,902	\$105,045,960	\$105,045,957	\$3
2007	4.02%	2.00%	\$4,221,797	\$113,355,516	\$110,172,695	\$3,182,821
2008	0.49%	3.86%	\$4,263,543	\$119,093,994	\$109,483,443	\$9,610,661
2009	2.89%	2.57%	\$2,939,108	\$121,279,865	\$114,615,496	\$6,664,369
2010	2.75%	3.00%	\$3,148,618	\$136,158,521	\$124,152,958	\$12,005,563
2011	1.2%	3.00%	\$3,526,454	\$149,587,857	\$128,517,984	\$21,069,873
2012	1.01%	0.00%	\$919,047	\$134,906,993	\$134,898,252	\$8,741
2013	0.95%	0.00%	\$962,665	\$143,141,719	\$133,141,718	s-
2014	1.51%	0.00%	\$1,543,058	\$148,344,784	\$148,344,784	s-
2015 Exec	2.21%	0.00%	\$2,290,076	\$154,379,176	\$154,379,176	s-

By way of contrast, the Association finds no evidence that Dane County is in any worse economic condition than any of the comparables. Its evidence consists of news clippings that reported earlier this year Dane County’s unemployment rate was lower than in other Wisconsin areas, and that when compared to property values Dane County residents pay an average of 1.85% of value (slightly better than a state average of 1.84%). The Association is not alarmed about the new construction factor of 2.21 for Dane County (see Fig. 8, above), noting that percentage is measurably higher than the statewide average of 1.12%. Although it recognizes the

²⁰ CO-Ex. 18.

County is facing a “tight budget,” the Association concludes its figures reflect a positive note leading to a full economic recovery.

The Association’s cheerful economic exuberance that the hard times are ending is heartening, though the evidence it cites seems somewhat superficial and sparse to fully support its optimistic view. The Association acknowledges that this Factor (am) mandates the greater weight be accorded it.

Following consideration of Factor (am), I conclude its greater weight supports the County’s Final Offer. I reach the same conclusion with respect to Factor C, Factor D, and the QPQ Factor arising under Factor H. I have considered the other Factors as well, and have evaluated them as set forth above.

Each of the parties also submitted a Reply Brief, each of which I have reviewed and found generally helpful, but asserting no new, relevant matter.

I believe all Factors and relevant issues have been addressed herein.

AWARD

Based on the testimony, exhibits, briefs and arguments of the parties and the foregoing Discussion, I conclude the Final Offer of the County is the most reasonable and direct that it be incorporated into the successor Agreement of the parties.

Signed in Madison, Wisconsin this 12th day of May 2015.

A. Henry Hempe, Arbitrator