

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS  
COMMISSION

In the Matter of the Petition of	)	
	)	
WASHINGTON COUNTY	)	DECISION OF ARBITRATOR
	)	
For Final and Binding	)	Case XXIII
	)	
Arbitration Between said Petitioner	)	No. 18657 MIA-140
	)	
and	)	Decision No. 13443-A
	)	
WASHINGTON COUNTY DEPUTY SHERIFF'S	)	
	)	
ASSOCIATION	)	
	)	

BACKGROUND

This arbitration arises from a dispute between the Washington County Deputy Sheriff's Association (hereafter, Union) and Washington County (hereafter, County).

A two-year labor agreement (hereafter, Contract) between the parties was put into effect January 1, 1973, and expired on December 31, 1974. Negotiations between the parties toward a new Contract for 1975 began in June of 1974 and continued until December 30, 1974, when the County filed a petition with the Wisconsin Employment Relations Commission requesting final and binding arbitration pursuant to Wisconsin Statutes, Section 111.77(3). The latter, in the person of Sherwood Malamud of the Commission staff, successfully mediated some of the issues but declared that an impasse existed between the parties with respect to wages, holidays and vacations. Thus, the parties are yet without a 1975 Contract. Thereupon, through statutory procedure, Attorney Milo G. Flaten of Madison was appointed a binding Arbitrator to determine which final offer is the more reasonable.

At the request of the parties, a Pre-hearing Conference was held with the Arbitrator on Friday, May 30, 1975 at the Washington County Courthouse. At that time the parties entered into a stipulation identifying the issues which remained at impasse. It was also stipulated at the pre-hearing conference that amended final offers could be exchanged between the parties and filed with the Arbitrator not later than June 5, 1975. The actual arbitration hearings began June 10, 1975 at the Addison Town Hall in Allenton, Wisconsin. (At the pre-hearing conference the Union made a motion, which was granted, to remove the proceedings from the Employer's Courthouse onto neutral ground. The aforementioned Town Hall, some nine (9) miles from the county seat of West Bend, was selected.)

The petitioning County was represented by Attorney Aldwin H. Seefeldt of Schloemar, Schlaefer, Alderson, Hickmann, Seefeldt, and Spella, S.C. West Bend, Wisconsin. The Union was represented by Attorney John J. Carter of Boyle, Carter and Schaefer, Attorneys at Law, Milwaukee, Wisconsin.

Despite the settling and narrowing of issues to but three, the Arbitration Hearing lasted three full days and resulted in 491 pages of transcript of testimony taken by two (2) shorthand reporters. The Union presented testimony by 14 witnesses and submitted 18 exhibits. The County arranged for the testimony of three (3) witnesses and introduced 15 exhibits into the record.

Pursuant to arrangements made at the pre-hearing conference, the arbitration proceedings were conducted via Sec. 111.77(4), form 2, in which the Arbitrator is to select the better single final offer of one of the parties and issue an award incorporating that selection without modification, (as opposed to deciding the case, issue by issue).

#### ISSUES INVOLVED

As was stated above, the last final offers of the parties disclosed that the only remaining items in controversy were wages, holidays and vacations. That isn't to say that the parties were not at odds over other issues. Nonetheless, the diminution of the number of issues in all probability reflects the earnest desire of the parties to assume a stance of utmost reasonableness. One must keep in mind that the Arbitrator is to choose but one single victor in the dispute. Thus, it appears that the operation of Sec. 111.77 of the Wisconsin Statutes has forced the parties to bend over backwards in an effort to assume the utmost degree of reasonableness before the Arbitrator. It could be speculated that if the Arbitrator would have been empowered to determine all issues in dispute in the manner of Form One (1) of the Statute, a lot of "garbage issues" would have been submitted in order to stimulate trade-offs. Thus, the parties to this dispute have narrowed the original multitude of issues to only those in which there is no more "give". They are as follows:

1. Wages. In its final offer, the County was willing to increase every step of the wage schedule by 8% retroactive to January 1, 1975. The Union's final last offer (demand) was a 9 1/2% increase across the board retroactive to January 1, 1975.
2. Holidays. The County offered to increase the number of holidays for its Deputy Sheriffs from 8 1/2 to 9 each year. To this, the Union countered that it was willing to remain at 8 1/2 paid holidays per year. Thus, as part of its final offer package, the County is offering the Union 1/2 day more of paid holiday than the Union is demanding. (This is an example, as was mentioned above, of a party at final and binding arbitration attempting to assume a stance of utmost reasonableness.)
3. Vacations. With respect to the issue of vacations, the County's final last offer proposed no change from the previous contract which allowed members of the bargaining unit to obtain the maximum annual vacation (4 weeks) after they had worked for the County for 16 years. The Union in its last and final offer proposed that the members of the bargaining unit should achieve eligibility for the maximum four-weeks vacation status after 15 years employment, or one year earlier than the County's proposal.

#### POSITIONS OF THE PARTIES

At the outset, it must be pointed out that the ability of Washington County to meet the cost of the Union's demand is not an issue in this dispute. (1st Tr., p. 147). Therefore, as the County points out, the issue to be decided is not whether the County could, but whether it should be required to spend those funds in light of the criteria set forth in the Statute. Those criteria have therefore been boiled down to a comparison of the wages, hours and conditions of employment with other employees generally performing similar services (deputy sheriffs) and with other employees generally, the cost of living, the fringe benefits afforded, and other factors which are normally and traditionally taken into consideration.

The Union takes the position that its Final Offer (demand) of a 9 1/2% across-the-board increase in wages is more reasonable for several reasons.

The first reason is that Washington County's population has increased considerably and will continue to increase. Thus, the Union claims, inferentially, there are increased demands on the services of Deputy Sheriffs requiring increased compensation.

To this, the County argues that there has been a similar increase in the workload for all police agencies in Washington County. For example, the County points to the testimony of District Attorney Schwalbach, who stated that an increase in the workload was not unique to law enforcement agencies in Washington County, but was being experienced by other Milwaukee suburban counties as well (1st Tr., pp. 24-25). Yet, claims the County, those counties have not granted wage increases of the magnitude envisioned by the Association. Further, the County argues, while the population of the County has increased 33% since 1966, the size of the Sheriff's Department staff has increased 117%. (Washington County Personnel Director Gary Moschea testified there were 23 Sheriff's Department staff members in 1966 and this total has grown to 50 in 1975.) (2nd Tr., p. 26, Co. Ex. 11).

The County alleges, further, that at no time during the six months of negotiation for a contract were there any discussions between the parties regarding increased duties and responsibilities. The County, therefore, contends that if the Union believed the workload was such an overwhelming issue of concern this issue should have been raised at the bargaining table and not for the first time in the arbitration process.

Next, the Union argues that the cost of living and inflation has increased so markedly in the past five years that it warrants a salary increase more in line with the demand of the Union than the offer of the County. To this, the County counters with testimony and proof that inflation has leveled off. Further, alleges the County, with all of the gains experienced by the Union since 1969, a deputy hired in 1967 would have experienced compensation increases of 82.8%. Compared to this, the consumer price index only rose 52.7%. (Co. Ex. 10).

Another argument put forth by the Union is that comparable, or even less comparable, law enforcement agencies are receiving more pay than the Washington County Sheriff's Deputies. Yet, the officers in these agencies have the same or less duties and responsibilities than do the Washington County Deputies.

In answer to this contention, the County provided its own set of facts and comparables, which allege that Washington County rates very favorably in overall compensation with other police and sheriff departments in the area, and are, in fact, third from the highest of the thirteen surrounding counties and communities. (Co. Ex. 6)

On the issues of holidays versus vacations, the County bases its case on the fact that an increase in holidays would be more beneficial to the entire bargaining unit. The County points out that only one man in the unit has become eligible for the maximum vacation of four weeks in 1975. On the other hand, the County demonstrates, their offer to increase the holiday benefit by one-half day would be beneficial to all members of the bargaining unit, across the board.

Finally, the Union contends that a tentative compromise settlement of this dispute was actually reached between the Union and the County's bargaining representatives, but that the Personnel Committee of the Washington County Board refused to take the recommendation of their bargaining representatives. Therefore, contends the Union, it was not the County Personnel Director nor their attorneys who upset the provisional settlement, it was the Personnel Committee who second-guessed their own bargaining representatives when they refused to ratify the settlement. Impliedly, the Union avers that because the County Personnel Director and his attorney were actually on the bargaining firing line during negotiations, they were in the best position to judge the value of the settlement. Therefore, the Union claims, a refusal to take the recommendation of their own bargaining team is unreasonable.

#### DISCUSSION

With regard to the last point above, the revelation that a tentative settlement had been reached, testimony was taken from several witnesses regarding the "agreed-to settlement". Yet, when this point was set forth in the Union's brief, it was furiously objected to by Attorney Seefeldt, in the form of a letter dated September 23, 1975. In that letter, Attorney Seefeldt stated that he was "surprised and dismayed" that opposing counsel referred to prior offers and tentative settlements. He argued that such conduct was highly prejudicial, and under case law, must be disregarded.

While I agree that tentative settlements have very little, if any probative value to an arbitrator, I can't help but wonder where Attorney Seefeldt was when the Union raised the issue at length during the hearing, both on direct and cross-examination. To now object in a post-brief letter, appears, at best, tardy, and at worst, outside of the groundrules established at the end of these proceedings.

With regard to the Union's contention that there are now increased demands on the services of the Deputy Sheriffs, certain facts brought out at the Hearing are uncontradictable. That is, no one could dispute that Washington County's population has increased considerably and will continue to increase. This is particularly true in the southern section of the county, where the urban sprawl from Milwaukee is creeping northward. This population increase has brought with it criminal problems which were unheard of in Washington County in years past. Professional criminals have required the Deputies to sharpen their skills in order to keep up and improve their effectiveness. Increased population has also brought volumes more of motor vehicles to the roads and highways of Washington County. The additional traffic has had a decided impact on the Washington County Sheriff's Department, which has no separate traffic department, and which handles both traffic and criminal enforcement.

The County argues that, because the Sheriff's Department has more than doubled in numbers in the past five years, it, the County, has more than kept abreast of the recent population surge.

I do not feel that numbers alone can compensate for the increase in duties and responsibilities caused by population growth. This is especially true where the growth is rapid. The testimony at the Hearing was that Washington County was the third fastest growing county in the State. It has been my experience that not only in law enforcement, but in all areas of county government, enlargement in size has many times created increases in county problems that mount in almost logarithmic progression. Witness the zoning and health problems that are created by the influx and concentration of but a few immigrants to a concentrated area of the county. Likewise, in the area of law enforcement, a given percentage increase in the population does not necessarily mean there will be a corresponding increase in the percentage of crime. Instead, as the population increases in the county, there could be a tripling or quadrupling of responsibilities and duties of the Deputy Sheriffs. This was brought out at the Hearing by several witnesses who stated that the urban professional criminal has begun to infiltrate Washington County. Further, all of the witnesses testified, without opposition, that lately their jobs are more difficult, their duties more complicated, and their workloads greater. Additionally, the other responsibility of the Washington County Deputy, traffic enforcement, has become more difficult due to a change in the attitude of people in general as they become more urbanized. No longer does the Washington County officer face docile and dazed defendants. More often, they have faced a militant subject, armed with all kinds of Constitutional axioms. When asked to what he attributed the increase in duties and responsibilities of law enforcement officers in Washington County, District Attorney Schwalbach stated the population increase has caused two things to happen. First, he said, the population increases have caused the laws to become very complex. Second, he stated that the general attitude of the public has changed with the increase in population. At page 29 of the first Transcript, the District Attorney testified,

"I think it is much different now than it was ten or fifteen years ago, and the type of jobs on the road are a lot different now than they were fifteen or twenty years ago, and I think the changes in the laws, which are so complex now in the criminal area, much more complex than they were twenty years ago, the law enforcement officer is required to have a much greater knowledge of law than he did twenty years ago."

Thus, it appears, the County's argument that the hiring of additional Deputies will offset the additional duties and responsibilities of law enforcement, appears to be at least inconclusive.

Likewise, the uncontroverted proof which the County submitted that all of the surrounding law enforcement agencies have increased responsibilities is equally inconclusive. Through cross-examination, counsel for the County skillfully demonstrated through the Association's own witnesses that not only Washington County, but all of the surrounding communities have experienced the same growth phenomena. That is, witnesses testified that Washington County was not unique in the area of increased responsibilities

and duties. Nevertheless, this proof, though interesting, did nothing to refute the inference drawn from these same witnesses, that, with increased population, there are increased demands for services, especially in the area of law enforcement.

On the other hand, all the other employees of the County received a flat 8% pay raise in 1975. Why should the Sheriff's Deputies be treated any differently? It certainly is true, as was argued by the County, that governmental employers must be concerned that equitable relationships are maintained between all the employees and the employer. (City of Kenosha v. Law Enforcement Personnel, Case XXIV, #17674 MIA-91, Decision No. 12500-A, June 4, 1974.) The other cases and quoted statements found in the County's Argument are equally persuasive, yet, the "equal-treatment-for-all-employees" argument loses much of its steam when I consider that the County's bargainers at one time tentatively settled and recommended to the County Personnel Committee that the Deputies be paid a 9% increase in salary, a full 1% more than all other County employees. Wouldn't the same disruption in the "equitable relationships" between all of the employees and the employer occur had the County Personnel Committee accepted the tentative settlement? I think it would. Further, the record indicates that Deputy Sheriffs in Washington County already receive certain benefits which other County employees do not receive. (3d Tr., P. 50). Thus, the "equitable relationship" has already been disturbed.

As is usually the case in these matters, I am faced with a veritable blizzard of facts and statistics concerning the cost of living, rate of inflation, rate of salary increase, etc., propelled from both sides. All of these statistics were persuasive, but none were compelling.

There was a great divergence in the conclusions to be drawn from the cost of living arguments presented by both sides. One thing is apparent to me, however, and that is that inflation and the rise in the Consumer Price Index goes on unabated. That fact is apparent to anyone doing business in a grocery store or gas station. Whether one uses national C.P.I. figures, County C.P.I. figures, or Milwaukee area C.P.I. figures, the only question is to the intensity of the increase. I find it interesting that from the graphs found on County Exhibit # 10, it can be seen that the Washington County Deputies have experienced an 82.81% increase in their pay during the period from 1966 (when they first negotiated a written contract) to 1975. Yet, County Exhibit #10 also shows that the cost of living has risen 27% in the last three years, while the Deputies wages have only gone up 18%.

I will not comment at length concerning the issues of vacations and holidays. With regard to the latter, it is obvious that the Union's decrease in its original demand from nine paid holidays to eight and one-half was inserted into their package as a "pot-sweetener". As such, it cannot be ignored, but it should have very little effect on the more prominent issue, that of wages.

Similarly, it is uncontroverted that only one man would benefit in the vacation eligibility entitlement proposed by the Union. Such a change, therefore, should not carry much persuasion.

I find the final point set forth by the Union as more compelling. This point is that, without fault on anyone's part, the Union has been without a Contract since December 31, 1974, and Association members have been living for almost ten complete months on the 1974 salary. Thus, three-fourths of the calendar year will have elapsed before a decision is reached, and the Deputies have lost the purchasing power of any pay raise for that period, be it 8% or 9 1/2%. While it is true that the County receives its income in spread out installments, and the money which would have been paid out to Sheriff's Deputies has therefore not sat in a fund drawing interest, it is equally true that members of the bargaining unit did not have the increases, whatever they may be, to augment their purchasing power for nearly a year.

#### CONCLUSION

Based upon the proceedings had herein, the testimony, the exhibits and other evidence, and the respective arguments contained in the briefs of both counsel, and, giving weight to the required factors found in Sec. 111.77(6) of the Wisconsin Statutes, I conclude that the final offer of the Union is the more reasonable.

AWARD

In keeping with the Union's final offer, I therefore award the Washington County Deputy Sheriff's Association a 9 1/2% increase at every step of the wage schedule, retroactive to January 1, 1975.

Further, in keeping with the final offer of the Union, I award the following change in the eligibility for maximum vacation entitlement, namely, that the members of the bargaining unit shall be eligible for the maximum vacation entitlement after fifteen (15) years of employment.

Finally, in keeping with the aforesaid final offer of the Union, I incorporate its provisions without modification, namely, that the number of holidays awarded to each employee in the bargaining unit remain at 8 1/2 days annually.

Dated October 9, 1975.

Milo G. Flaten /s/  
Arbitrator

3. On the matter of compensation, the Association offer more nearly meets the guideline of meeting the increase in the cost of living. Its formula for applying the cost of living is relatively rare.

4. On the matter of compensation, the Employer's offer more nearly meets the standard of comparability with what has been agreed to by other units within the County. Further though the Employer's offer seems inadequate under developing price increases, yet the Association offer of the full increase in the cost of living departs too far from the federal wage guidelines.

5. On overall compensation, the County offer for 1980 holds the County's comparable position. However, it cannot be said what will happen to this position when 1980 settlements become prevalent.

6. On call-in, the arbitrator believes that the Association position is more reasonable.

7. On total compensatory time, the arbitrator believes that the Association position is the more reasonable.

8. On the vacation proposal, the arbitrator believes that the Employer's position meets the guideline of comparability better than the Association offer.

9. On the matter of uniform allowance, the arbitrator believes that the Association offer is more reasonable than the Employer offer.

10. Of all of these matters, the arbitrator is of the opinion that the single most weighty matter is that of comparability of wage offers. The second matter of importance is the vacation offer, and on both of these the County more nearly meets the guidelines of comparability. Therefore the 1979-1980 Agreement between the parties should include the offer of the County.

XV. AWARD. The 1979-1980 Agreement between the Washington County Deputy Sheriff's Association and Washington County should include the offer of Washington County.

*Frank A. Zedler*  
*Mediator - Arbitrator*  
*December 18, 1979*