

In the Matter of Final and  
Binding Arbitration

between

County of Milwaukee, Employer

and

Milwaukee Deputy  
Sheriff's Association, Union.

Case XCII  
No. 21518  
MIA - 314  
Decision No. 15462-A

Appearances:

For the County

Patrick J. Foster, Esq.  
Assistant Corporation Counsel

For the Union

Gimbel, Gimbel & Reilly  
by Franklyn M. Gimbel,  
Attorneys.

Prehearing Proceedings

Following the filing of a petition by the Union with the Wisconsin Employment Relations Commission on March 23, 1977 requesting that the Commission initiate compulsory final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act, Wis. Stats. 1975, the Commission appointed an investigator. Following an investigation, he reported that an impasse in the negotiations between the Milwaukee Deputy Sheriff's Association (Association) and Milwaukee County had arisen concerning wages, hours and working conditions for the non-supervisory law enforcement personnel employed by Milwaukee County (Employer). The Commission accepted the recommendations of its Investigator and ordered that compulsory, final and binding arbitration take place; that an Arbitrator be agreed upon by the parties and that when chosen, he shall issue a final and binding award in the matter pursuant to Sec. 111.77(4)(b) Wisconsin Statutes.

Max Raskin Esq., was agreed upon by the parties to be the Arbitrator. After his appointment by the Commission hearings were held on August 1, 2 and 3. Testimony was taken and thereafter briefs were filed by the respective parties.

Statutory Requirements

Sec. 111.77(4)(b) in part reads:

"Form 2. . . The commission's investigator shall advise the commission. . . of each issue which is known to be in dispute. Such advice shall set forth the final offer of each party. . . Neither party may amend its final offer thereafter, except with the written agreement of the other party. The arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer (into the contract) without modification."

The statute under subsection 6 admonishes the arbitrator in reaching his decision to give weight to the following factors:

- (a) The lawful authority of the employer.
- (b) Stipulation of the parties.
- (c) The interests and welfare of the public;

- (c<sup>2</sup>) The financial ability of the unit of government to meet these costs.
- (d) Comparison of the wages, hours and conditions of employment of the Union employees with the wages, hours and conditions of employment of other employees performing similar services and with other employers generally: (1) in public employment in comparable committees (2) in private employment in comparable committees.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings, and
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining mediation, fact finding, arbitration or otherwise between the parties, in the public service or private employment.

The final offer of the respective parties as submitted to the commission investigator is as follows:

Association

County

Wages

All wage rates in existence on December 26, 1976 will be increased in the amount of 5.25%

4% increase effective Dec. 26, 1976; 4% increase effective Dec. 25, 1977, the Association agrees to make no claim against the County for any cost of living adjustment for the years 1975-76. The Union further agrees that employee compensation shall not be affected by any cost of living adjustment during the term of this agreement.

Retroactivity

All employees who worked since Dec. 25, 1976 will receive retroactivity compensation for the period of time they so worked until this matter has been resolved.

Such wage adjustment shall be made retroactive from the date of the arbitration award to Dec. 26, 1976 for all unit employees on the payroll or to the estates of those employees who have died between the period of Dec. 26, 1976 and the date of the arbitration award.

Health Insurance  
(Blue Cross-Blue Shield Insurance)

Any and all health insurance premium increases will be paid by Milwaukee County and, further, that health insurance coverage will be expanded to that which was offered by Milwaukee County.

(a) The County shall pay the full cost of the employees Blue Cross and Blue Shield and major medical insurance coverage or an equal amount toward the cost of compcare. Compcare premiums in excess of Blue Cross and Blue Shield and major medical shall be paid by the employee.

Association

County

(b) Existing Blue Cross-Blue Shield benefits shall be increased as follows effective January 1, 1977.

1. Improve out-patient diagnostic x-ray and laboratory coverage by eliminating the \$200 limitation per calendar year. Increase Surgical Care Blue Shield SM-100 from \$5,000 to \$10,000 per period of disability.

3. Increase Blue Cross and Surgical Care Blue Shield major medical plan from \$10,000 to \$100,000.

(c) In the event an employee who has exhausted accumulated sick leave is placed on leave of absence without pay status on account of illness, the County shall continue to pay the full cost of Blue Cross-Blue Shield and major medical coverage for such employee during such leave for a period not to exceed 1 year. The one year period of limitation shall begin to run on the first day of the month following that during which the leave of absence begins.

(d) The Blue Cross-Blue Shield benefit schedule shall provide "usual and customary" coverage for maternity care.

(e) Where both husband and wife are employed by Milwaukee County, either the husband or the wife shall be entitled to one family plan. Further, if the husband elects to be named insured, the wife shall be a dependent under the husband's plan, or if the wife elects to be the named insured, the husband shall be a dependent under the wife's plan.

1978 Wages and Cost of Living

Beginning on Dec. 25, 1977 all pay classifications, except starting pay, will be increased 3% and thereafter be subject to a cost of living escalator computed on a quarterly basis at the rate of 50% of the next preceding reported quarterly Consumer Price Index for the City of Milwaukee to be adjusted in the first pay period in April, July, October and January, and thereafter on the same schedule until a subsequent agreement is negotiated and arrived at.

Uniform Allowance

Increase annual uniform allowance from \$180 to \$240, payable in accordance with the existing formula.

Association

County

Duration of Agreement

Contract to terminate on the 31st day of December 1978, unless extended by mutual agreement of the parties.

Tentative Agreement

All tentative agreements previously reached shall be incorporated into the existing agreement and except as otherwise indicated in this proposal, the language of the existing contract shall remain in full force and effect.

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Jurisdiction of Arbitrator

At the very outset of the proceedings the County challenged the right of the arbitrator to proceed in this matter on jurisdictional grounds. Its position is that the last offer submitted to the arbitrator by the Commission which brought these proceedings into being was an illegal offer. It supports its theory by the fact that the Union's last offer contains a provision on wages and cost of living to continue until a new agreement is negotiated or arrived at. This it claims is an open end contract which may exceed three years prohibited by Sec. 111.70(3)(a)(4): "The term of any collective bargaining agreement shall not exceed three years."

It argues further that such a proposal containing the request that all pay classifications be increased 3% and "thereafter be subject to a cost of living escalator computed on a quarterly basis at the rate of 5.0% of the next preceding reported quarterly Consumer Price Index for the city of Milwaukee to be adjusted quarterly until a subsequent agreement "is negotiated and arrived at" is vague and indefinite and might lead the Arbitrator to issue an award which would not be binding upon the parties and thus be contrary to his authority. Sec. 298.10(1)(d) Wis. Stats.

The county cites Milwaukee Deputy Sheriff's Association v Milwaukee County 64 Wis.2d 651, 221 NW2d 673 (1974) as its authority for its motion to dismiss the arbitration proceedings.

The Union's response is that the case cited is inapplicable to the facts here, that it's request for a cost of living factor would neither extend the contract beyond three years nor is it vague and indefinite.

Milwaukee Deputy Sheriff's Association, supra is authority for the rule that "arbitrators cannot consider issues raised for the first time after negotiations have closed and the arbitration proceedings begun."

The threshold question is: Did the negotiations between the parties which ultimately led to an impasse include the subject of "cost of living?"

Mr. Robert G. Polasek, Director of Labor Relations for the County, and its chief negotiator testified that in response to a question put to him by Mr. Robert Nolan, a member of the bargaining team for the Association at one of the bargaining sessions; "What about a cost of living adjustment," he responded - "No, our wage proposal will include only what was mentioned, above", referring to the County's offer of 4% increase in each of the two years of the offered contract.

The written notes of Mr. Nolan taken at time of the ongoing negotiations make specific reference to the subject of cost of living: "Cost of living was questionable at this time. There was general discussion. It was made known at that time (that) there was a desire for possibly entertaining a cost of living formula of some type in our contract."

The County's last offer contains the following language in its wage provision: ". . . The Union further agrees that employee compensation shall not be affected by any cost of living adjustment during the term of this agreement. . ."

From all of this it is clear to the arbitrator that the subject of "cost of living" adjustment while not extensively discussed nor with such vigor as to make an indelible impression was certainly touched upon and was on the table during negotiations. This is sufficient to justify the Union's last offer to contain a request for cost of living adjustment and provides sufficient notice to the County that it is one of the demands on the part of the Association.

The County's motion to dismiss on the ground of no jurisdiction must therefore be denied.

We turn now to the substance of the issue before the arbitrator.

#### Final Offers

Which of the two final offers is less reasonable; or stated another way, which final offer is more reasonable and therefore should be incorporated into the contract?

The arbitrator's discretion is limited to the selection of the final offer found to be more reasonable than the other, and order its incorporation into the contract without modification. Sec. 111.77(4)(b)

In reaching his decision however the arbitrator is constrained to give weight to the factors set out in Sub(6) of Sec. 111.77: (1) lawful authority of employer, (2) stipulation of parties, (3) interest and welfare of public and financial ability of county to meet the costs, (4) comparison of wages and other conditions of employment of employees in arbitration and other employees performing similar services etc., both in public and private employment in comparable communities, (5) cost of living or consumer prices, (6) overall compensation including fringe benefits presently received by employees in unit, (6) overall compensation including fringe benefits presently received by employees in unit; (7) all other factors usually considered in both private or public service in negotiations and other means used to arrive at a contract.

#### Contentions of Parties

The issues between the parties are well circumscribed.

1.(a) The Association requests a wage increase across the board in the amount of 5.25% as of December 26, 1976.

(b) The Employer County offers a 4% increase across the board as of December 26, 1976; a 4% increase as of December 25, 1977 with the proviso that the Union waives any cost of living adjustment for the years 1975-76, nor shall cost of living adjustment be considered during the life of the contract.

2.(a) The Association demands that employees who worked since December 25, 1976 are to receive retroactive compensation until the day of arbitration award.

(b) The Employer's position on that issue is sufficiently covered under 1(b).

3.(a) The Association's offer as to health insurance is: premium increases are to be paid by the Employer; other benefits on this area are to accrue to employees as offered by Employer.

(b) The Employer's offer on this subject is more elaborate: The County is to pay the full cost of the employees Blue Cross, Blue Shield and major medical or an equal amount toward cost of Compcare. But Compcare premiums in excess of Blue Cross, Blue Shield and major medical to be borne by employer.

Blue Shield benefits are to be increased as of January 1, 1977 as follows: eliminate the \$200 limitation per calendar year as to diagnostic x-ray and laboratory coverage. Increase surgical care Blue Cross SM-100 from \$5,000 to \$10,000 per period of disability. Increase major medical from \$10,000 to \$100,000, employees with exhausted accumulated sick leaves placed on leave of absence without pay because of illness shall have the benefit of Blue Cross-Blue Shield and major medical for one year at the expense of County. The Blue Cross-Blue Shield benefits shall include maternity cases.

Finally where both husband and wife are employed by County either one is to have the family plan and if husband elects to be named insured then wife shall be the dependent and if wife elects then husband to be the dependent.

4.(a) The Association's additional demand as to wages is for an increase of 3% as of December 25, 1977 (called 1978 wages), and thereafter for a cost of living escalator at the rate of 50% of next preceding reported quarterly Consumer Price Index to be adjusted quarterly until a new contract is arrived at.

(b) The Employer's position on wages and cost of living adjustments is covered in 1(b).

5.(a) The Association makes no demand as to uniform allowance other than what is presently in effect.

(b) Employer offers annual uniform allowance increase from \$180. to \$240.

6.(a) Association's offer as to duration of contract is covered in 4(a).

(b) Employer would terminate contract as of December 31, 1978 unless extended by mutual agreement.

#### Major Differences Between Parties

The differences between the parties are centered in the area of "wages" and "cost of living". Other subjects are less vigorously discussed or defended. In some instances both parties seem to agree as to selected items. Thus the Association makes no demand to improve uniform allowance while the Employer offers a slight increase. The Employer offers an elaborate change in health care and the Association does not resist it. The duration of agreement proposals is not much at variance with one another and the parties agree in language and terms as to "tentative agreement".

We return therefore to the major differences that have kept the parties from reaching an accord without benefit of arbitration.

#### As to Financial Ability to Meet Costs

The county makes no contention that it is financially unable to meet the costs of either the Association's offer or its own. Therefore that criteria requires no discussion nor finding.

#### As to the Interests and Welfare of the Public

It is generally conceded that a full and competent law enforcement agency with high morale is in the best public interest and welfare. The Association argues that the morale of its members would be adversely affected by a settlement which is lower than those negotiated by other police units in the area. The subject was extensively discussed in In the Matter of the Final and Binding Arbitration between Cudahy Policeman's Professional and Benevolent Association and City of Cudahy, Case XVIII, No. 20070 MIA-219 (1976).

It would appear from this and from the testimony of experts in the field that law enforcement personnel are aware of the benefits received by their counterparts in surrounding communities, and that their morale is affected by any disparities that they feel might exist. The County denies that the amount of compensation will affect an officer's performance, but fails to allege any affirmative reasons why its offer would best serve the interests and welfare of the public. It is the arbitrator's belief however, that either offer if incorporated into the contract would serve well the general public.

#### As to Comparison of Offers to Public Employees in Comparable Communities

It is difficult to define what the terms "comparison" or "comparable communities" mean. As was stated in the footnote on Page 9 in Cudahy, supra, comparisons can be validly made based on "population, geographic proximity, mean income of employed persons, overall municipal budget, total complement of relevant department personnel and wages and fringe benefits paid such personnel."

A reading of Sec. 111.77(6)(d) Wis. Stats. indicates that the comparison here is based on wages, hours and conditions of employment. The comparison also involves performance of similar services. So while generally law enforcement agencies perform similar services, it is important to recognize some of the unique aspects of the services performed by the Milwaukee County Deputy Sheriffs. First of all, the population of Milwaukee County is by far the largest in the state. While it is true that the county's population has declined slightly over the last few years while outlying counties such as Waukesha have grown, still the total population in Milwaukee County far outstrips any other. Second, Milwaukee County has 68 miles of expressway, far more than any other county, and receives no help in patrolling from the State Highway Patrol, as is true in other counties. Third, the Milwaukee County Deputy Sheriffs are responsible for a wide variety of other areas, such as the Milwaukee County jail, an extensive communications system, a Welfare Fraud Division, and other activities mentioned during testimony. While other Wisconsin counties have some of these programs, none have all of them nor handle the volume that Milwaukee County does. Comparatively, then, the conditions of employment in Milwaukee County mean a greater volume, a greater range of services and a greater responsibility.

Wages, as stated, are the largest point of contention. Numerically, they are more easily comparable, although it must also be remembered that these wages are not based on exactly similar services performed, as discussed above.

A comparison of monthly wages paid to law enforcement personnel in the Milwaukee metropolitan area (County Exhibit 35) shows that, currently Milwaukee County Deputy Sheriffs are \$38. above the mean and \$34. above the median, which ranks third. The County's position for 1977 is \$10. above the mean and \$12. above the median, with a rank of seventh; the Association's position for 1977 is \$26. above the mean and \$23. above the median, with a rank of fifth. Both positions will result in a decline for the Association in comparison to other local law enforcement personnel. The Association's position, however, will result in a lesser decline.

County Exhibit 22 is a statistical wage comparison between Milwaukee County, other selected counties, and the State Patrol in terms of law enforcement personnel. According to the County's figures, the 1976 monthly wage paid to Milwaukee County Deputy Sheriffs is \$34. above the mean and \$102. above the median. The County's position for 1977 would involve a slight regression to \$70. above the mean and \$95. above the median, while the Association's position would involve a slight increase to \$36. above the mean and \$111. above the median.

The County contends that, had the Association not sacrificed a wage increase for 1976 in return for other fringe benefits, and instead followed the general pattern of wage increases, then their position would be much better based upon the County's offer. This would seem to have merit as to overall compensation discussed in subsection (f) of the statute, but not to the issue of wage comparison.

The Association's position would give the Deputy Sheriffs a slight rise as compared to the mean and median monthly wages in other counties; the County's position would result in a decline. Coupled with the fact that the Association's position involves only \$16. per month over that of the County, and the similar results of comparison with other metropolitan law enforcement personnel, I am of the opinion that the Association's offer is more reasonable measured against the criterion of subsection (d) of the statute.

As to Cost of Living

It is an inescapable fact that the country's economy, as that of the world has been plagued by inflation largely the result of continuous oil price increases imperiously imposed by oil producing nations. Since the problem to a degree is international in scope, neither national nor regional control has proven effective, and when at all only on a sporadic basis. The result is that those with fixed incomes, as are the employees under consideration engage in a constant battle to remain abreast between their earnings and their purchasing power.

The Consumer Price Index is a measure of that inflation in practical terms, as it affects the average household in their purchase of the daily necessities of life. The cost of living factor put into employment contracts is an attempt to cope with this phenomenon.

The Association offer includes a cost of living factor for 1978, involving a basis of 50% of the quarterly Consumer Price Index for the city of Milwaukee. According to testimony by economist Richard Perlman, if there was a 6% increase in the Consumer Price Index over the course of 1977, the Association would only break even as far as inflation is concerned (3% base plus 50% of the 6% increase), while they would suffer a 2% loss based on the County's position for 1978. The 1977 figures find the Association losing .75% to inflation based on its position, and 2% based on the County's position. The projected rate of increase for 1977 was 6.7 to 6.9 percent. Admittedly, the projection is somewhat speculative, but the indicators point to such a rise. It is not unreasonable to attempt to minimize the effects of inflation on a wage earner's paycheck.

County Exhibit 48 compares increases in Deputy Sheriff I hourly pay and increases in the Consumer Price Index for the period of 1963-1976. As revealed in cross-examination of Frederick W. Schmitt, Milwaukee County had a cost of living adjustment factor in its employment contracts with its employees through 1972 (F-438). This would negate their relevance to the comparison. The arbitrator thus finds the following calculations, as taken from County Exhibit 48, to be relevant:

<u>Year</u>	<u>Percent Increase Over Previous Year- Hourly Rate</u>	<u>Percent Increase Over Previous Year - Consumer Price Index</u>
1973	5.6%	8.7%
1974	7.2%	10.5%
1975	3.0%	7.7%
1976	7.4%	5.6%
TOTAL	28.2%	32.5%

Comparing these totals, the Deputy Sheriffs have already lost 4.3% to inflation over the last four years. It would be more equitable and more reasonable for them to receive a compensation that would seek to limit future losses by incorporating a cost of living adjustment.

It is not altogether correct to say as the County argues that except for the county of Racine, no public employer provides a cost of living adjustment. The state of Wisconsin, the largest of the state public employers in sec. 16.085 Wis. Stats. 1975 legislated a cost of living formula and thereby established an example for other public employees to follow. (1)

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(1) Sec. 16.085 was repealed by Chap. 44 Laws of 1977, published July 15, 1977. The law, however, was in effect at the time of the negotiations between the parties in the instant dispute and the submission of their respective last offers.



### As to Overall Compensation

Both the County and the Association have presented a myriad of statistics in support of their contentions. These statistics are open to interpretation in several different ways: by comparison of means, by comparison of medians, by comparison of ranks in relation to other counties or localities, and by comparison of straight dollar differences.

The Total Labor Cost statistics are perhaps the most meaningful when speaking of comparison of overall compensation. They are divided into comparisons between the Milwaukee County Deputy Sheriffs and other metropolitan law enforcement personnel (County Exhibits 44-46) between Milwaukee County and other selected counties and the State Patrol (County Exhibits 31-33).

In a comparison with neighboring police associations (exhibits 44-46) it is conceded that either offer would reduce the Association's rank and amount above the mean and median. The Association's position would work less of a reduction. This argues for the reasonableness of the Association's position. The County makes the point, however, that the Milwaukee County Deputy Sheriffs compare more closely to Deputy Sheriffs from other counties. Let us now examine that comparison.

For 1976 (exhibit 31), Milwaukee County was \$111. above the mean and \$115. above the median. It was ranked first in total labor costs, and exceeded the State Patrol, ranked second, by \$32..

For 1977 (exhibit 32) the County's position would be \$118. above the mean and \$115. above the median. This would still involve a number one ranking, by \$11. over the State Patrol. The Association's position would be \$131. above the mean and \$128. above the median. The rank would still be first, by \$34.

The 1978 statistics (exhibit 33) are of little help, as they include figures only for the State Patrol and Dane County besides Milwaukee County. They are perhaps important only to show a significant rise in the overall compensation for the State Patrol.

A closer scrutiny of these statistics reveals that the major factor in these differences in the monthly wage figure, which is discussed above. For 1977, only the State Patrol has a higher monthly wage than either Milwaukee County offer. However, Dane and Racine counties both have higher total fringe costs. The County's position actually has a higher total fringe cost than the Association's. It is true that the Milwaukee County Deputy Sheriffs rank at the top or near the top in such fringe benefits as holidays, vacations, longevity pay, and the like, but in none of these categories is there a wide disparity, as reflected in the total fringe costs figure.

The County argues strongly that its pension plan is a major factor in the reasonableness of its overall compensation position. Comparison is difficult, since there are only three pension systems in the state. However, the major advantage of the Milwaukee County pension plan over the City of Milwaukee plan appears to be that a Deputy Sheriff can request the addition of Social Security. The employee must contribute himself to Social Security which reduces his monthly earnings. Additionally, as pointed out by the Association, it is possible for a city of Milwaukee police officer to retire at the age of 52 and still work elsewhere for the ten years necessary to accumulate Social Security benefits.

With respect to the matter of overall compensation I find the offer of the Association to be more reasonable as against that of the County comparing both positions with those of other municipalities.

### As to Retroactivity

In considering this issue, I find that the inequity worked upon those officers, who may have quit or been fired between December 25, 1976 and the date of this award, in receiving less compensation for their work than will be given to other officers who remained on the force, justifies the reasonableness of the Association's position.

As to Health Insurance

The only difference between the two positions is that, under the County position, the employee would be responsible for payment of Compcare premiums which exceed Blue Cross-Blue Shield premiums. The County does not attempt to justify this difference in its brief. The Association's brief points out that both Blue Cross-Blue Shield and Compcare have been offered to Association members presumably as viable alternatives. Distinguishing between them as the County would propose would erode their alternative character should the costs of Compcare rise in proportion to Blue Cross-Blue Shield.

Award

Therefore, from the totality of the testimony offered, the exhibits and other documents made part of the record, giving full consideration to the briefs and arguments of the parties, and with due regard to the criteria listed in Sec. 111.77(b) Wis. Stats., the arbitrator selects final offer as submitted by the Milwaukee Deputy Sheriff's Association as being more reasonable and orders that the same be incorporated into the agreement between the parties.

Dated this   3   day of November, 1977.

Max Raskin /s/

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MAX RASKIN

Arbitrator