

BEFORE THE ARBITRATOR

In the Matter of the Arbitration :
of a Dispute Between :
PORTAGE COUNTY :
and : AWARD AND OPINION
PORTAGE COUNTY DEPUTY :
SHERIFF'S ASSOCIATION : Decision No. 15497-A

Case XXVI No. 21567 MIA 317
Hearing Date July 19, 1977
Appearances:
For the Employer Mulcahy & Wherry by
ROBERT M HESSLINK, JR.
For the Association Glinski & Haferman by
HERMAN J. GLINSKI
Arbitrator ROBERT J. MUELLER
Date of Award October 10, 1977

BACKGROUND

The above entitled matter came on for hearing before the undersigned who was selected as the sole arbitrator to hear the dispute from a panel furnished by the Wisconsin Employment Relations Commission. The parties were present at the hearing and were afforded full opportunity to present such evidence, testimony and arguments as they deemed relevant. Post-hearing briefs were exchanged through the arbitrator.

INTRODUCTION

The Sheriff's Department of the County of Portage, hereinafter called the County, and the Portage County Deputy Sheriff's Association, hereinafter called the Association, are currently parties to a two-year Collective Bargaining Agreement with an effective term of 1-1-76 through 12-31-77. All terms are effective for its two-year term except wages, which are subject to a reopener for negotiations and to be effective 1-1-77. Pursuant to the reopener provisions, the parties negotiated but were unable to reach agreement.

The association thereupon filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act. The Commission conducted an investigation and concluded that the condition precedent to the initiation of compulsory final and binding arbitration had been met. Thereafter, the undersigned was selected as arbitrator. The arbitrator in this case must select the final offer of one or the other party in its entirety under the Form 2 option under Section 111.77(5), Wisconsin Statutes.

THE FINAL OFFERS

County final offer - 6.3% increase of monthly base salary
Association final offer - 8.0% increase of monthly base salary

QUESTION

The arbitrator must determine the question of which parties' final offer is the more reasonable, based on application of the criteria set forth in Section 111.77(6), Wisconsin Statutes.

Such Statutory criteria is as follows:

"(6) In reaching a decision the arbitrator shall give weight to the following factors:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
- (d) 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:

1. In public employment in comparable communities.
2. In private employment in comparable communities.

(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, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(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 in private employment."

POSITIONS OF PARTIES AND DISCUSSION

No issues were raised nor evidence or argument submitted by either party concerning "(a) the lawful authority of the employer" and "(b) Stipulations of the parties."

The arbitrator will first discuss the evidence and argument of the parties concerning paragraph "(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs."

Statutory Criterion 6(c)

The County presented a comparison of the equalized tax rate payable per \$1,000 of equalized value of real estate between the contiguous Counties of Waushara - 5.58(1); Portage - 4.99(2); Adams - 4.78(3); Marathon - 3.96(4); Shawano - 3.79(5); Waupaca - 3.62(6) and Wood - 2.65(7). It is the County's argument that the tax paying public of Portage County is second highest of those listed and is over \$1.00 per thousand higher than the median rate of \$3.96.

The Association presented evidence to the effect that the County's financial condition was referred to as one of the best in the State when referring to an approximate one-half million dollar increase in the County's cash balance during the latter part of August, 1976. The Union also pointed out that a number of the supervisory and higher paid County employees were granted salary increases in the area of 9 to 10 1/2 percent for 1977.

In the judgment of the arbitrator, the above facts are not subject to any substantial weight that would clearly favor the position of either party.

Statutory Criterion 6(d)

"(d) 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:

1. In public employment in comparable communities."

The County stated the basis for its use of selected communities at pages 5 and 6 of its brief as follows:

". . .the Employer included all of the contiguous counties of Marathon, Wood, Adams, Waushara, Waupaca and Shawano. It also included the City of Stevens Point in its comparison. (Employer Exhibit Nos. 3, 17.) In determining which other law enforcement units were comparable, the County employed two criteria. First, the County ascertained whether or not the work done by the employees was substantially identical. Secondly, the County considered whether the employees to be compared would have been selected from the same labor market areas.

. . .

"Using the common labor market criteria, only the City of Stevens Point qualifies as comparable. This is due to the fact that many law enforcement agencies have residency requirements, as well as the fact that the Statutes provide for residency within the county for deputy sheriffs. 5)

5) Sec. 59.21(1)(c), Wis. Stats.; 450.A.G. 267 (1956)"

Employer's Exhibit No. 14 sets forth the contiguous County data as follows:

"DEPUTY SHERIFF

"MAXIMUM MONTHLY SALARIES

For 1977

	1977 (County Offer)	Paid After	1977 (Union Offer)
Portage	\$ 988 (2)	(6 mo.)	\$1003 (2)
Adams	910 (6)	(24 mo.)	910 (6)
Marathon	1025 (1)	(At County's discretion)	1025 (1)
Shawano	958* (4)	(12 mo.)	958 (4)
Waupaca	967 (3)	(36 mo.)	967 (3)
Waushara	913 (5)	(24 mo.)	913 (5)
Wood	Not Settled		Not Settled

"*Traffic Officers will not be paid at this rate until November 1, 1977.

"Note: Numbers in parentheses indicate ranking position."

In analyzing such data the County points out that the County offer of \$988 per month exceeds the average base of \$952.80 for the surrounding counties in the sum of \$35.20 per month.

In addition they contend that Employer Exhibits 3 - 9 reveal that Portage County ranks third in population, it has the second largest number of full time law enforcement employees, it has the least number of index crimes per officer, and it ranks the lowest in manufacturing employment.

With respect to a comparison with the City of Stevens Point, the County submitted Employer Exhibit No. 17 containing a computation of the amounts attributable to all wage, overtime and fringe benefit costs. Their exhibit indicates that the 1977 base salary comparison would be as follows:

	<u>Union Offer</u>	<u>County Offer</u>	<u>City of Stevens Point</u>
Base Salary	\$1,032.21	\$1,015.96	\$1,029.97

The County contends that the Portage County employees receive benefits in the areas of shift differential, education incentive pay, a larger share of the health insurance and WRF paid by the Employer on their behalf, and disability insurance paid by the County, which are in excess of those received by employees of the City of Stevens Point. The County computes the comparable total monthly compensation as follows:

	<u>Union Offer</u>	<u>County Offer</u>	<u>City of Stevens Point</u>
Total Compensation	\$1,506.38	\$ 1,484.82	\$1,460.54

They contend that under the County offer employees would receive \$24.28 more in total compensation under the County's offer and \$45.84 per month more under the Union's offer.

The Union stated the bases for its selection of a different group of alleged comparables at pages 4 and 5 of its brief as follows:

"Association Exhibit 34 was prepared by Portage County. It reflects what was always mutually agreed and accepted, i.e., that the appropriate units for comparison with Portage County are Marathon and Wood counties and the Stevens Point, Wausau, Wisconsin Rapids, and Marshfield police departments. After the exhibit was prepared, it was agreed by the County that Waupaca County was not comparable and should be excluded. This is in keeping with the generally accepted prediction that eventually the cities of Wisconsin Rapids, Marshfield, Wausau and Stevens Point will blend together and form the four corners of an urban megapolis. This is already evidenced by present and proposed highway construction and the joint construction and operation of the Central Wisconsin Airport at Mosinee by Portage and Marathon counties. There is also a recognized working relationship among these law enforcement units in central Wisconsin so that their respective compensation schedules should be comparable. Also, their structure, mode of operation and function are similar to Portage County. At the last arbitration hearing in 1972, Arbitrator David B. Johnson felt that these 7 law enforcement units were the proper units for comparison. See p. 3 of his decision dated October 25, 1972. Therefore, the Association objects to the last minute inclusion of Shawano, Waushara, Waupaca and Adams counties by the County as they are not appropriate comparables. None of these counties has a large city or a large university. Geographically, they consist primarily of agricultural operations except for some spot industrial activities. None of them possess three railroads (Green Bay & Western, Milwaukee Road and the Soo Line with a roundhouse and terminal in Stevens Point), two heavily traveled federal highways (51 and 10) and two important state highways (54 and 66), like Portage County.

"Because of the Holiday Inns in Stevens Point, Wausau and Marshfield with large auditoriums, these cities constitute convenient sites for large state, political, fraternal, labor, business, educational, musical and civic conventions, seminars and meetings in the past. Practically all large gatherings in central Wisconsin are held either at the Holiday Inn in Stevens Point or in Wausau. Furthermore, the various athletic, academic and cultural events of the University of Wisconsin in Stevens Point attract large crowds to Stevens Point. Sentry Insurance, with its world headquarters in Stevens Point, and Employers Mutual Insurance Company of Wausau, with its national headquarters

in Wausau, also generate large crowds at their various functions and activities. . . Where is there anything remotely similar to this in Adams, Waushara, Waupaca and Shawano counties?"

Association Exhibit No. 13 presented in evidence is as follows:

"NORTH CENTRAL LAW ENFORCEMENT COMPARISONS

<u>Employer</u>	<u>1976</u>		<u>1977</u>		<u>% Increase</u>
	<u>Deputy</u>	<u>Sergeant</u>	<u>Deputy</u>	<u>Sergeant</u>	
Marathon County	\$953	\$1,055	\$1,025	\$1,167	7.6/10.6
Wood County	960	970	In mediation		
Wausau PD	955	1,078	1,025	1,157	7.3
Marshfield PD	930	1,000	995	1,075	7.0/7.5
Wisconsin Rapids PD	1024	1,093	1,101	1,168	7.5/6.9
Stevens Point PD	929	1,010	1,004	1,085	8.1/7.4
Portage County	929	985	Proposed Association:		
			1,003	1,063	8.0
			Proposed County		
			988	1,047	6.3"

The County also presented evidence and exhibits showing the relative position of the Sheriff Department employees to other employee groups in the County. The Highway Department, Social Service, Courthouse and County Home, licensed and practical nurse and Parks Department employees are each represented by a union. Of the five represented groups, all have settled or tentatively settled their 1977 contract on a 6.3% increase to base rate, except the Parks Department which settled on 10%. The non-union employees settled on 6.9%.

The County contends that the wage and fringe benefit level of Deputy Sheriffs is substantially higher than any other employee group in total compensation.

The Union contends that a differential in pay to law enforcement has always been recognized as being justifiably higher and that each group must be judged on its own merits. They point out that the County increased certain highly paid directors and heads of departments in amounts ranging from 8.98% to 10.56%.

Statutory Criterion 6, (d)

"2. In private employment in comparable communities."

The Union presented a number of exhibits setting forth rates of pay and the settlement amounts involving various private employers in the area. Both parties presented various items setting forth rates of pay and the settlement amounts involving various private employers in the area. Both parties presented various items setting forth employment data from sources such as the U.S. Department of Labor, the Wisconsin Department of Industry, Labor and Human Relations.

The arguments presented by the parties at the hearing and as reflected by the observations and arguments set forth in their brief, reflects the fact that meaningful comparisons between a unit of law enforcement personnel to employees in the private sector, is extremely difficult and that its value is at most marginal. In the first instance, neither party submitted any data involving wage data of employees performing security type work in the private sector. To then make comparisons to truck drivers, laborers, utility workers, or paper industry workers is extremely subjective and difficult from which to draw a meaningful comparison or analysis.

From an examination and evaluation of all evidence and arguments presented by both parties involving this particular criteria, the arbitrator is of the judgment that no meaningful conclusions can be drawn from such data that is meaningful in any way so as to indicate a preference for one final offer over that of the other.

Statutory Criterion 6, (e)

"(e) The average consumer prices for goods and services, commonly known as the cost of living."

The presentation of data and exhibits and argument formulated thereon by both parties was directed at two basic areas. The first area was whether or not one or the other's wage proposal was most appropriately in line with the rise in the consumer price index so as to more appropriately maintain the standard of living of the employees. The second area at which the parties concentrated their attention, was whether or not the Association's higher wage offer was reasonably necessary so as to enable the employees to maintain or achieve a reasonable standard of living as measured against the estimated hypothetical family budgets published by the U.S. Department of Labor, Bureau of Labor Statistics.

The County and the Union used basically the same statistical data as obtained from the National Series of the Consumer Price Index. The Union, however, based its computation and conclusions upon an examination of the rise in the CPI from 1972, the year in which the County and the Association last arrived at a labor contract through the use of final and binding arbitration, to January, 1977. The County, on the other hand, argues that the calendar years 1975-76 constitutes the period which should be evaluated and reviewed in this matter.

The Union contends that the CPI increased 42.3% from January, 1972 to January, 1977. By applying such percentage to the 1972 salary, the Union contends that the Portage County Deputy should receive \$1,036 per month as of January, 1977 so as to avoid any real wage loss as of that point in time by virtue of the inflationary trend. They contend that such figure is higher than even the Association's offer of 8%, and that it fails to take into consideration the rate of inflation that has occurred from January, 1977 through May, 1977 which has been at an approximate 9% inflation rate. They contend that the employees real wage loss will continue to increase as the CPI continues to rise during the total of 1977.

The County contends that the CPI should be examined for the calendar years 1975-76 for the reason that negotiations are expected to take place prior to January, 1977 and that settlement is normally reached prior to such date and that because of such fact, parties have always negotiated what should be settled upon based upon what the Index had done up to and prior to such point in time.

The County computes out the cost of living increase occurring during such two-year period as constituting a 13.3% increase. They point out that the salary increase that was granted for 1976 plus the County's proposed increase of 6.3% for 1977, constitutes an exact and identical total of 13.3% increase for the Portage County Deputy Sheriffs. The County contends that there are too many variables which bear upon what should be the proper application of the CPI. The County contends that when applying long term trends to real per capita income, productivity improvements must necessarily be considered. In the Union's evaluation, no consideration has been given to any improvement in productivity, if, in fact, there has been any. In addition, the County contends that there are a number of other illusory considerations such as the manner in which per capita income is arrived at, family size, buying habits, etc.

In addressing themselves to the reasonable standard of living area, both parties utilized and referred to the hypothetical annual family budget statistics and publications issued by the U.S. Department of Labor, Bureau of Labor Statistics.

The Union pointed to the four person intermediate family budget shown to exist in the Green Bay area and updated such indicated amount by the increase in the Consumer Price Index from the reported date of October, 1976 to May, 1977 which purports to require an intermediate budget of \$16,680. Against such intermediate budget, the Association points to the annual income of Portage County Deputies of \$11,856 as being substantially below what is anticipated as necessary for an intermediate family budget in the Portage County area.

The County, in utilizing such statistics, utilized the North Central Non-metropolitan Intermediate Budget reported as \$14,926. According to the County's computations and analysis of the data which is used to make up the intermediate

family budget, they contend that in addition to the gross wages that would be payable to the deputies under the County's last offer which total is \$13,731, the deputies receive medical insurance which is fully paid by the County which is worth \$412.22 more per year than that allotted a family under the intermediate budget computation, \$250 in clothing allowances, \$77 in disability insurance, and full contribution to the retirement fund in the sum of \$824, which when added to the gross earnings of \$13,731, results in a total in-pocket average compensation to the deputies of \$15,294, which is in excess of the intermediate budget as set forth in the sum of \$14,926.

As one can readily see from an evaluation of the approaches and arguments taken by both parties with respect to the cost of living factor, different conclusions can be arrived at, using the same statistics, but merely varying the starting and ending points and simple manipulation of the data.

In the judgment of the arbitrator, both parties tend to justify their respective positions under such criteria. Likewise, neither party has presented a position establishing any weighted preference, based on the application of such criteria, favoring one offer over the other.

CONCLUSIONS

This case involves a very delicate balancing of the applicable statutory factors to two final offers that are relatively close together. Both are reasonable offers. What must be determined, is which one is the more reasonable.

The arbitrator specifically thanks both parties for presenting concise evidence, documentation and arguments that direct themselves to the statutory factors. Both parties' briefs were concise and excellent, both in organization and context.

In order for the undersigned to apply the statutory factors to the respective offers, a determination and choice must be made as to the most appropriate areas of comparison and the respective weight to be credited as to each factor.

The arbitrator would find that the most meaningful comparison in this case involves an analysis and comparison of Portage County law enforcement to other appropriate law enforcement units of government.

The first priority of comparison, in the judgment of the undersigned, is the City of Stevens Point. The second priority point of reference would appear to be Marathon and Wood Counties. The third priority point of reference would appear to be the Cities of Wausau, Marshfield and Wisconsin Rapids, primarily based on their respective comparative standing to the counties in which they are located.

It is the considered judgment of the arbitrator that the most relevant areas of comparison are to such units of government based on the fact that they involve cities that are more comparable in size, the cities serve as hubs of activity in each of the counties in which they are located, the three counties have more comparable characteristics than the other contiguous counties, and such three county area and municipalities appear to have more closely similar activities and problems and have an alleged recognized working relationship relating to their common concerns.

The exhibits and records reveal that the City of Wausau base wage scale in 1976 was within \$2.00 of Marathon County in 1976. For 1977 they are both identical at \$1,025. The fringe benefits of each unit are relatively close with an edge, if any, favoring the City of Wausau as being slightly better in a few areas. The difference is nominal, however, and not subject to an easily determinable dollar difference.

In comparing the Cities of Marshfield and Wisconsin Rapids to Wood County, one has only 1976 to work with as Wood County had not settled for 1977 as of this time. From such evaluation one sees that Marshfield is \$30.00 per month lower than the County on the basic wage scale whereas Wisconsin Rapids is \$64.00 higher. An average of the two places the two cities \$17.50 higher than the County. In comparing fringe benefits, again it appears that the cities afford slightly better fringe benefits in a few areas. There are, however, one or two areas where the County benefits are better than one or the other of the two cities. The total difference appears to be nominal by any standard and is difficult to determine on a dollar value.

With respect to the City of Stevens Point and Portage County, the evidence and record reveals that the base wage rate was the same for both in 1976. A comparison of the fringe benefits enjoyed by each indicates that Portage County affords better fringe benefits in several areas, namely shift differential, educational incentive pay, disability insurance, contribution to WRF and arguably health insurance. The County computes such difference as being slightly in excess of \$40.00 per month in value.

It would appear that various nominal deviations concerning fringe benefits developed between the above counties and cities over a period of years as a result of mutual collective bargaining negotiations and that for the most part, such differences were existent in 1976 as well.

On the basis of such observations, no factors emerge which would persuasively indicate a need to substantially change the relative relationship of one to the other. The relationships as they existed in 1976 were arrived at through the process of voluntary collective bargaining. Such negotiated relationship is not shown to be unbalanced or unreasonable so as to call for adjustment one way or the other.

In the judgment of the arbitrator, the most meaningful factor which then serves to determine the outcome in this case concerns the levels of settlement that were arrived at with those other comparable units of government. Those settlements were as follows:

	Deputy Base Rate		<u>\$Increase</u>	<u>% Increase</u>
	<u>1976</u>	<u>1977</u>		
Marathon County	953	1,025	\$72.00	7.6%
Wood County	960	not settled		
Stevens Point	929	1,004	75.00	8.1%
Wausau	955	1,025	70.00	7.3%
Wisconsin Rapids	1,024	1,101	77.00	7.5%
Marshfield	<u>930</u>	<u>995</u>	<u>65.00</u>	<u>7.0%</u>
Average	\$ 958.2	\$1030	\$71.80	7.5%
Portage County	929			
County Offer		988	59.00	6.3%
Association Offer		1,003	74.00	8.0%

On the basis of such data and assuming that no persuasive case has been otherwise made to change the relative position of Portage County to that of the other above units of government, one finds that the Association offer serves to more closely preserve that relationship.

Average Dollar Increase = \$71.80
 County last offer @ \$59.00 = -\$12.80
 Association last offer @ \$74.00 = +\$ 2.20

Average % increase = 7.5%
 County last offer @ 6.3% = -1.2%
 Association last offer @ 8.0% = +0.5%

From the above it would appear that the Association's final offer would be more reasonably designed to achieve the area of ultimate settlement, had the parties been successful in negotiating their differences to settlement.

With respect to the application of the other enumerated statutory factors applicable to this case, I find that the positions of both parties are sustainable, equally plausible and reasonable, and therefore not persuasive so as to be susceptible of a weighted preference one way or the other.

The arbitrator would find that while the Association's final offer may be somewhat higher than that which this arbitrator would have independently arrived at on the basis of statistical comparisons, cost of living increase and particularly the adjustments given other Portage County employees, I must conclude, nevertheless, that the Association's final offer is the more reasonable.

Specifically, the arbitrator is troubled to some extent by the fact that the Association's final offer is in excess of what other county employees received. I find, however, that factor is not as meaningful as the other comparables considered above and my troubles are somewhat modified by the fact that these employees have not had the use of any part of the 1977 increases while the County purportedly has had the use of such funds and presumably has earned interest thereon, thereby reducing the net cost for the contract year of 1977.

On the basis of the above facts and considerations thereon it therefore follows that the following shall issue as the decision and

AWARD

That the final offer of the Association be granted as the most reasonable, effective January 1, 1977.

Dated at Madison, Wisconsin, this 10th day of October, 1977.

Robert J. Mueller /s/

Robert J. Mueller
Arbitrator