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STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of the Petition of

OZAUKEE COUNTY LAW ENFORCEMENT  
EMPLOYEES, LOCAL 540, WCCME,  
AFSCME, AFL-CIO

For Final and Binding Arbitration  
Involving Police Personnel in  
the employ of

OZAUKEE COUNTY  
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Case VI  
No. 23769  
MIA-394  
Decision No. 16797-A

Appearances:

Mr. Michael J. Wilson, District Representative, AFSCME, appearing on behalf of the Union.

Lindner, Honzik, Marsack, Hayman & Walsh, S. C., Attorneys at Law, by Mr. Roger E. Walsh, appearing on behalf of the Employer.

ARBITRATION AWARD:

On February 12, 1979, the Wisconsin Employment Relations Commission appointed the undersigned as arbitrator to determine a dispute existing between Ozaukee County Law Enforcement Employees, Local 540, WCCME, AFSCME, AFL-CIO, referred to herein as the Union, and Ozaukee County, referred to herein as the Employer. The appointment was made pursuant to Wisconsin Statutes 111.77 (4)(b), which limits the jurisdiction of the arbitrator to the selection of either the final offer of the Union or that of the Employer. Hearing was conducted on April 3, 1979, at Port Washington, Wisconsin, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. No transcript of the proceedings was made, however, briefs were filed in the matter, which were exchanged by the arbitrator on April 23, 1979. Additionally, the Union filed an amended brief, which was received by the arbitrator on April 26, 1979.

THE ISSUES:

There are two issues in dispute between the parties, which involve wages and premium pay for work on holidays. The final positions of the parties are set forth below with respect to said issues:

1. WAGES

UNION FINAL OFFER

Effective January 1, 1978, the monthly rates of pay shall be as follows:

<u>Classification</u>	6 to					
	<u>Hire</u>	<u>12 Mo.</u>	<u>18 Mo.</u>	<u>30 Mo.</u>	<u>42 Mo.</u>	<u>54 Mo.</u>
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
Radio Operator/ Jailor	\$ 970	\$1,108	\$1,069	\$1,120	\$1,177	\$1,234
Deputy	1,018	1,069	1,120	1,177	1,234	1,296
Process Server, Youth Officer	1,069	1,120	1,177	1,234	1,296	1,360

Classification	Hire	6 to 12 Mo.	18 Mo.	30 Mo.	42 Mo.	54 Mo.
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
Jail Service Coordinator, Investigators, Sergeants	\$1,120	\$1,177	\$1,234	\$1,296	\$1,360	\$1,426

Effective July 1, 1978, the monthly rates of pay shall be as follows:

Radio Operator/ Jailor	999	1,049	1,101	1,154	1,212	1,271
Deputy	1,049	1,101	1,154	1,212	1,271	1,335
Process Server, Youth Officer	1,101	1,154	1,212	1,271	1,335	1,401
Jail Service Coordinator, Investigators, Sergeants	1,154	1,212	1,271	1,335	1,410	1,469

Effective January 1, 1979, the monthly rates of pay shall be as follows:

Classification	Step A Start	Step B 6 Mo.	Step C 18 Mo.	Step D 30 Mo.	Step E 42 Mo.	Step F 54 Mo.
(20) Radio Operator/ Jailor	\$1,069	\$1,122	\$1,178	\$1,235	\$1,297	\$1,360
(21) Deputy	1,122	1,178	1,235	1,297	1,360	1,428
(22) Process Server	1,178	1,235	1,297	1,360	1,428	1,499
(23) Jail Service Coordinators, Investigators, Sergeants	1,235	1,297	1,360	1,428	1,499	1,572

#### EMPLOYER FINAL OFFER

"Section 1. Effective January 1, 1978, the monthly rates of pay shall be as follows:

Classification	Step A Start	Step B 6 Mos	Step C 18 Mos	Step D 30 Mos	Step E 42 Mos	Step F 54 Mos
(20) Radio Operator/ Jailor (II)	\$ 966	\$1,014	\$1,062	\$1,115	\$1,168	\$1,226
(21) Deputy (II)	1,014	1,062	1,115	1,168	1,226	1,286
(22) Process Server, Youth Officer	1,062	1,115	1,168	1,226	1,286	1,348
(23) Jail Service Coordinator, Investigators, Sergeants	1,115	1,168	1,226	1,286	1,348	1,415

Section 2. Effective January 1, 1979, the monthly rates of pay shall be as follows:

Classification	Step A Start	Step B 6 Mos	Step C 18 Mos	Step D 30 Mos	Step E 42 Mos	Step F 54 Mos
(20) Radio Operator/ Jailor	\$1,034	\$1,085	\$1,136	\$1,193	\$1,250	\$1,312
(21) Deputy	1,085	1,136	1,193	1,250	1,312	1,376
(22) Process Server	1,136	1,193	1,250	1,312	1,376	1,442
(23) Jail Service Coordinator, Investigators, Sergeants	1,193	1,250	1,312	1,376	1,442	1,514

## 2. PREMIUM PAY FOR WORK ON HOLIDAYS

### UNION FINAL OFFER

#### Section 1.

Each employee shall receive the following paid holiday each year:

<u>1978</u>	<u>1979</u>
New Years Day	New Years Day
1/2 Day Good Friday	Memorial Day
Memorial Day	July Fourth
July Fourth	Labor Day
Labor Day	Thanksgiving Day
Thanksgiving Day	Day before Christmas Day
1/2 Day Christmas Eve	Christmas Day
Christmas Day	Day before New Years Day
1/2 Day New Years Eve	

#### Section 2. Off Day

If an employee is not scheduled to work on a holiday, he or she shall receive in addition to their wages pay for the holiday.

#### Section 3. Regular Work Day

If an employee is regularly scheduled to work on a holiday he or she shall be paid at the rate of time and one-half (1½) for all such hours worked and shall also receive holiday pay as provided in Section 2.

#### Section 4. Overtime

If an employee works overtime on a holiday he or she shall be paid at the rate of double time (2) for all such hours worked and shall also receive holiday pay as provided in Section 2.

#### Section 5. Holiday Time Off

At the discretion of the Sheriff, employees working a (5-2) schedule, may, in lieu of the additional pay provided in Section 2 above, be allowed time off with pay on any of the above holidays which fall on one of their regular work days.

### EMPLOYER FINAL OFFER

#### ARTICLE XIV - HOLIDAYS

Section 1. Each employee shall receive in addition to their regularly established salary, one day's pay for each of the following holidays - January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day and December 25 and one-half day's pay for each of the following holidays - December 24 (Christmas Eve), December 31 (New Year's Eve), and Good Friday. Such payment will be made in the pay period during which the holiday occurs. Effective January 1, 1979, the one-half day holiday on December 24 (Christmas Eve) shall be changed to a full-day holiday.

Section 2. At the discretion of the Sheriff, employees working a 5-2 schedule may, in lieu of the additional pay provided in Section 1 above, be allowed time off with pay on any of the above holidays which fall on one of their regular workdays.

#### DISCUSSION:

Each of the issues in dispute between the parties will be discussed separately and evaluated against the statutory criteria found at Wisconsin Statutes 111.77 (6), which directs the arbitrator to 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 employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes 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 employes, 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.

#### HOLIDAY PAY ISSUE

At issue here is whether employees on a 5-2 work schedule should receive premium pay when working on a holiday or straight time pay when working on a holiday. The Employer offer would pay an additional day's pay for each of the enumerated holidays, in addition to the regular salary. The Union offer would provide additional day's pay offered by the Employer for all employees not scheduled to work on a holiday, however, for employees scheduled to work on a holiday he or she would be paid time and one-half for all hours worked, plus holiday pay, and if the hours worked were overtime the premium pay for holiday work would become double time, in addition to holiday pay.

In support of their position the Union argues that equity would require premium pay for holidays, because under the Employer's offer those employees working a holiday and those employees not working a holiday are paid identically. In addition, the Union relies on comparisons with the private sector and certain public sector employees who receive premium pay for working holidays. Lastly, the Union cites three arbitration awards, City of DePere, Milwaukee County and Crawford County in support of its position.

The undersigned has reviewed the evidence which the Union submitted at hearing with respect to this issue, and while the exhibits do support the Union's contention that the private sector pays premium pay for holidays; and that certain non-police public employees enjoy premium pay for work on holidays; the undersigned is not persuaded that this evidence should lead to the conclusion that premium pay for holidays worked by police officers should be granted. From the inception of interest arbitration in this state involving police officers, arbitrators have almost unanimously held that the proper comparison of wages and benefits for police officers are comparisons with police officers in other comparable communities, because of the uniqueness of the responsibilities of police officers. The undersigned, therefore, concludes that in considering which offer should be adopted with respect to the premium pay issue for holidays worked, the statutory criteria of comparison with other employees performing similar services in public employment in comparable communities must govern. Since arbitral authority supports the conclusion that in police matters the only true comparables are with other police officers in other comparable communities; this issue will be determined by the practices which are shown by the evidence to exist in those communities.

A review of the evidence submitted by the Union at Union Exhibit #65 reveals that of the 40 counties and municipalities listed in said exhibit, only 10 provide any sort of premium pay for holidays worked. Additionally, the Employer challenges Union Exhibit #65 with respect to 4 of the 10 municipalities which the Union contends received premium pay for holidays worked. Even if one were to accept the Union exhibit on its face, the Union has failed to show a prevailing practice with respect to premium pay for holidays worked, which would support a conclusion that the Union offer should be adopted in this matter. It is the opinion of the undersigned that to establish a persuasive case that the prevailing practice among law enforcement officers is for premium pay for holidays worked, a showing that said practice exists in excess of 50% of the comparable communities would be required. The undersigned, therefore, concludes that the Employer offer on the issue of premium pay for holidays worked should be adopted, if this were the sole issue.

#### WAGE ISSUE

Both parties to this dispute put great reliance on criteria of the statute which directs the arbitrator to give weight to the comparison of wages, hours and conditions of employment in the instant matter with the wages, hours and conditions of employment of other employees performing similar services in public employment in comparable communities. The parties, however, are not in agreement as to what constitutes comparable communities in this matter. The Employer urges that the only true comparable communities are county employers which are immediately adjacent to Milwaukee County to the west and to the north. There are only two counties which would fit the Employer's conception of comparables, i.e. Waukesha County and Washington County. The Union, on the other hand, proposes comparables that embrace the Standard Metropolitan Statistical Area, hereafter referred to as SMSA, which for the Milwaukee SMSA would include Milwaukee County, Ozaukee County, Washington County and Waukesha County, and the municipalities contained therein. The Employer opposes the inclusion of Milwaukee County, as well as the municipalities contained within the boundaries of Milwaukee County, contending they are not comparable. While Milwaukee County and the municipalities contained within its boundaries fit within the definition of SMSA, it is, nevertheless, true that consistent arbitral opinion in interest arbitration matters have distinguished Milwaukee County from its surrounding counties, based upon the holding that Milwaukee County and its municipalities are unique unto themselves. This Arbitrator shares the view that Milwaukee County and its municipalities are distinguishable, and not comparable to surrounding counties. While Milwaukee County and the municipalities contained therein are part of the SMSA as the Union contends, Milwaukee is simply not comparable. It is far more convincing to the undersigned to say that the influence of Milwaukee County and its municipalities as the hub of the SMSA radiates its influence outwardly to the surrounding counties uniformly. The effect of the uniform radiation of Milwaukee County then would have equal influence on all of the counties immediately abutting the County of Milwaukee, and it is these counties that the undersigned deems to be comparable. Milwaukee County, therefore, is excluded. While Racine County by definition does not fit into the Milwaukee SMSA, because of its position geographically immediately south of Milwaukee County, the undersigned concludes that the radiation effect from Milwaukee County (supra) makes Racine County an equally valid comparison for the purposes of these proceedings. The county comparables, then, will include Racine County, Washington County and Waukesha County.

With respect to whether municipalities other than those of Milwaukee County, should be considered as comparable, the undersigned concludes that the evidence adduced with respect to rates of pay for police officers in municipalities which are contained within the boundaries of the comparable counties have validity. While the undersigned is persuaded that the other counties represent the most identical comparisons, the relationship that exists between the rates of pay for police officers of the counties compared to the rates of pay for police officers of municipalities within that county should be given weight. It is particularly convincing to the undersigned that rates of pay for municipal police officers who are employed by municipalities within a county,

establish a valid comparison for wage considerations, with the rates of pay for police employees of that same county. The comparison of county police wages and municipal police wages is even more cogent where, as in the instant case, the county involved has a very urban character. It follows that comparisons with the wages of municipal police officers will be considered in arriving at this decision, especially the wages which are established for municipal police officers within the confines of this county.

Having determined the comparables which are to be considered, it remains to be decided which rates are typical for purposes of the comparison. In this dispute the rates of pay for all of the classifications of the employees covered by the bargaining unit are disputed. From Union Exhibit #10, the undersigned notes that of the 31 positions in the unit, 9 are radio operators, 11 are deputies, 2 are process servers, 1 is a jail service coordinator, 4 are investigators and 4 are sergeants. Since there are more deputy positions than any other position; and since the undersigned believes the deputy position to be the most representative of all positions in the unit; and since a review of the interrelationship of rates between all of the positions appear to be left intact from prior agreements; the undersigned considers it proper to determine the outcome of this dispute based on a comparison of deputy rates of this Employer with deputy rates being paid in Washington, Waukesha and Racine Counties. Additionally, as determined earlier the relationship of rates of pay for municipal police officers will be considered. For the purposes of comparing rates the undersigned will compare the top deputy rate being paid in Ozaukee County with the top deputy rates being paid in the counties determined to be comparable herein. The top deputy rate is the proper rate to be compared because it is at this point that the employees have emerged to their full training capabilities. Additionally, the outcome of this dispute will be based upon an analysis of the 1978 wage rates of deputies compared with comparable communities, because it is the 1978 wage schedule that is disputed in this matter. Both parties in their final offers have applied a 7% general increase for the year 1979 to the wage rates that they propose for 1978. Since both parties have applied a 7% factor to determine the wage rates for 1979, once the proper rate is established for 1978, the 1979 rates fall into place.

The following table shows the comparison of deputy rates between the two offers in Ozaukee County and Racine, Washington and Waukesha counties for the year 1978.

<u>County</u>	<u>Rate</u>
Union Offer	\$ 1,335 <sup>1</sup>
Employer Offer	1,286
Racine County	1,323
Washington County	1,298.27
Waukesha County	1,276

From the foregoing table it is evident that the Employer offer exceeds the rates paid in Waukesha County by \$10.00 per month; is less than the rates paid in Washington County by approximately \$12.00 per month, and is less than the rates paid in Racine County by \$37.00. The Union offer, on the other hand, exceeds Racine County by \$12.00 per month; exceeds Washington County by approximately \$35.00 per month; and exceeds Waukesha County by \$59.00 per month. Since the Employer offer approximates the rates paid in two of the three counties being compared, whereas the Union offer exceeds the rates of pay being paid in all three comparable counties, the undersigned can only conclude that the Employer offer, when compared to comparable counties, is the more reasonable.

- 1) The Union proposal calls for a split increase in the year 1978, with a rate of \$1296 effective January 1, 1978, and a rate of \$1335 effective July 1, 1978. The Union, however, in presenting its evidence on comparability at Union Exhibit #57 elected to make its comparisons for the year 1978 based on the July 1, 1978 rate, and the Arbitrator will also make the same comparison.
- 2) Racine County rate of \$1,323 became effective July 1, 1978.

While the comparison among comparable counties leads to the conclusion that the Employer offer is the more reasonable, the comparisons with rates paid to municipal police officers must be made. From Union Exhibit #57, the following comparison for rates paid patrolmen in municipalities of this county with the rates proposed by the parties to this dispute is shown for the year 1978:

Union Offer	\$1,335.00
Employer Offer	1,286.00
City of Mequon	1,398.25
Port Washington	1,340.00
Cedarburg	1,250.00
Grafton	1,358.33
Thiensville*	1,311.12

From the foregoing comparison of top deputy rates with the top patrolman rate paid municipal police officers within this county, it is clear that the Employer offer is low for the year 1978. It is equally clear that the Union offer fits within the established rates which were paid to municipal police officers within this county for the year 1978. It follows that the wage comparisons with municipal police officers within this county favor the Union offer.

Wage comparisons then lead to the acceptance of the Employer offer when considering comparable counties, and they lead to the acceptance of the Union offer when considering comparable municipalities internal to Ozaukee County. Pursuant to the statutory criteria f, the undersigned will consider comparisons of total compensation of Ozaukee County and the three comparable counties considered above in the wage comparisons. The exhibits show that retirement and health insurance premium payments are 100% funded by the Employer in all of the four comparable counties. Therefore, health insurance premiums and retirement payments are a constant which need not be added to the wage rates when considering total compensation. Likewise, holidays, vacations, overtime pay, sick leave are sufficiently similar so as not to create a substantial difference between the four comparable counties, and also will not be added to the wage rates when considering total compensation. There are significant variations in the longevity and education incentive benefits among the comparable counties, and the monthly dollar value of these benefits will be added to the wage rates to make a comparison of total compensation. The following table sets forth total compensation as follows for 1978:<sup>3</sup>

	<u>Ozaukee Cty.</u>	<u>Racine Cty.</u>	<u>Washington Cty.</u>	<u>Waukesha Cty.</u>
Wages (Union)	\$1,335.00	\$	\$	\$
(Employer)	1,286.00	1,323.00	1,298.27	1,276.00
Max. Monthly Longevity	30.00	45.00	30.00	82.94
Mo. Education Incentive for 60 Credits	--	30.00	--	92.00
Total Compensation (Union)	1,365.00			
(Employer)	1,316.00	1,371.00	1,328.27	1,450.94

It is clear from the foregoing table that when longevity and education incentive payments are added to wages, the comparisons among the counties which are comparable do not favor the Employer offer, and it follows that the Union offer should be adopted when considering total compensation.

3) The evidence shows that the longevity program in Waukesha County does not apply to employees hired after 1/1/73. Since the longevity continues to be paid to employees it is properly part of the total compensation data to be considered.

Having concluded that the wage comparison among the comparable counties favors the Employer's position; and having concluded that the wage comparison of municipal police pay in Ozaukee County to officers employed by the county favors the Union position; and having concluded that the total compensation comparison among the comparable counties favors the Union position; it remains to be determined which offer should be selected based on all of the comparables. Since the total compensation comparison favors the Union offer; and since the wage comparisons with municipal police officers also favor the Union offer; the undersigned is persuaded that the Union offer for wages should be adopted.

The Employer has argued that its offer is in line with the wage increases granted to the other employees in Ozaukee County. While the settlements with other units internal to Ozaukee County are to be given consideration, having already found that the comparables favor the Union, the fact that the patterns of settlement with other units are consistent with the Employer offer is unpersuasive to the undersigned.

Additionally, the Employer has argued that their offer keeps pace with the rise in Consumer Price Index. The undersigned disagrees that the Employer's offer keeps pace with the Consumer Price Index. The wage increase of the Union is calculated by the Employer for the year 1978 to be 8.6%, and the wage increase of the Employer is calculated by the Employer for 1978 to be 7.4%. The Milwaukee Index for the year 1978 increased 8.2%, and from the foregoing the undersigned concludes that the Union offer is closer to the 1978 Consumer Price Index increase.

SUMMARY:

The undersigned has concluded that the wage offer of the Union should be adopted, and that the holiday pay offer of the Employer should be adopted. It remains, then, to determine which offer in its entirety should be selected. While the premium pay position of the Union cannot be supported by the comparables, it is not so unique that it is unprecedented. Furthermore, premium pay for holidays worked in police matters represent additional money payable to all members of the unit. The Union argues, and the record supports the Union argument, that the amount involved for its premium pay proposal equates to \$7.36 per month when spread across the entire unit. Since the premium pay issue can be directly equated to wages per month, the undersigned concludes that the outcome of this dispute will be determined by the favorable finding for the Union on its wage offer and, therefore, the Arbitrator makes the following:

AWARD

Based upon the statutory criteria, the record in its entirety, the arguments of counsel, and the discussion set forth above, the Arbitrator determines that the final offer of the Union be incorporated into the Collective Bargaining Agreement for the years 1978-79.

Dated at Fond du Lac, Wisconsin, this 14th day of June, 1979.

  
Jos. B. Kerkman,  
Arbitrator

JBK:rr