

MAY 19 1982

BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

In the Matter of the Petition of

KENOSHA COUNTY DEPUTY SHERIFF'S  
ASSOCIATION

For Final and Binding Arbitration  
Involving Law Enforcement Personnel  
in the Employ of

KENOSHA COUNTY

Case XXXVI  
No. 27544 MIA-574  
Decision No. 18873-A

Stanley H. Michelstetter II  
Arbitrator

Appearances:

Joling, Rizzo & Willems, Attorneys at Law, by Mr. John L. Caviale,  
appearing for the Union.  
Mulcahy & Wherry, Attorneys at Law, by Mr. Mark L. Olson, appear-  
ing for the Employer.

INTEREST ARBITRATION AWARD

On September 3, 1981, the Wisconsin Employment Relations Commission appointed me as impartial arbitrator pursuant to Section 111.77(a)(b), Wis. Stats. with respect to a dispute between Kenosha County, herein the Employer, and the Kenosha County Deputy Sheriff's Association, herein the Association. Pursuant to an agreement of the parties to permit me to attempt to mediate the instant dispute, I conducted mediation sessions in Kenosha, Wisconsin, on November 2, 1981, which proved unsuccessful. On November 17, 1981, I held a hearing in Kenosha, Wisconsin. Each party filed a brief and reply brief, the last of which was received February 8, 1982.

ISSUES

1. Wages: Base increase on January 1, 1981.

County offer - 4%

Association offer - 3% plus adjustments for jail guard,  
matron and matron/bookkeeper

2. Cost of living clause: Both parties propose to fold-in fifty percent (50%) of the 1980 COLA on January 1, 1981. The County proposes to limit the quarterly payments to \$26.00 per month while the Association would continue the current cost of living provision with no cap.

3. Casual days: The County would retain the status quo at five casual days per employee. The Association proposes an additional casual day for a total of six.

Attached and marked Appendix A are the final offers of each party.

POSITIONS OF THE PARTIES 1/

The Association argues that its proposal to give the small portion of the unit devoted to jail guards and matrons a proportionately larger

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1/. The positions with respect to casual days are set forth below.

increase than that of deputies is justified by the fact that: 1) the Employer is proposing to do the same, except not to the same proportion; 2) deputies used to perform jail guard work; and 3) matrons frequently do deputy work when the task requires a female or the department is short of deputies. The Association principally argues that its proposal best keeps up with the cost of living. In support of this position, it relies heavily on the interest arbitration award of Arbitrator Zeidler in Kenosha Professional Policemen's Association and City of Kenosha (Dec. No. 27450) 11/81. It argued that arbitrator established a standard for the Kenosha area for total cost increase for the 1981 year of 13.5% and that the year-end wage rate increase of 11.3% proposed by the city was found more reasonable than the police offer of 14.3%. It argues that its proposals are closer to the accepted figures than the Employer's. With respect to the issue of comparability, the Association notes that on the basis of federal per capita income statistics, Kenosha was fifth among Wisconsin counties in 1979 and had the highest percentage increase in per capita income of all counties from 1978 to 1979. It notes that based upon federal employment statistics from July, 1980 to July, 1981, Kenosha had risen to the highest average hourly earnings <sup>2/</sup> of production workers of labor markets surveyed in Wisconsin, including Racine and Milwaukee. On the basis of this information, it argues that Kenosha deputies should be the highest paid of all other Wisconsin county deputy sheriffs. Based upon data compiled by the Employer on March 30, 1981, the Association argues that its total cost increase as it proposes is less than that the Employer has voluntarily given any other county unit except the Assistant Attorney's unit for the 1981 year.

The Employer takes the position that its offer maintains the high ranking Kenosha enjoys among law enforcement units in comparable counties. Based upon population, geographic proximity, mean income of employed persons, total complement of similar unit, similarity of wages and fringes, the Employer offers Milwaukee, Dane, Waukesha, Brown, Racine, Rock, Winnebago, Outagamie, Marathon, Sheboygan, LaCrosse, Fond du Lac, Washington, Walworth, and Jefferson Counties as comparable counties. Using maximum deputy, it notes that for 1980, Kenosha was second only to Racine County. It notes that the Employer's offer would maintain this position while the Association's would move Kenosha to number one. It notes that its offer would maintain the maximum detective rate at the highest in Wisconsin. By comparison to the average of the selected comparables, the Employer's offer tends to maintain the same relative dollar difference, while the Association's offer tends to increase the difference. It denies that the Association has demonstrated a need for larger increases for matrons and jail guards.

## DISCUSSION

### Wages

The central issues in this case are the Employer's attempt to cap the existing COLA provision and the year-end wage rate. One reason these are the central issue is that there is very little difference between the total increase of either proposal. The parties' proposals provide for a total package increase of 11.46% for the Employer's and

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<sup>2/</sup> This figure is not average hourly wage rate, but is merely achieved by taking weekly earnings (including overtime) and dividing by average number of hours worked. These figures are substantially affected by number of hours worked and overtime status pay.

12.32% for the Association's. <sup>3/</sup> Neither party has emphasized this aspect of their proposals. The best data available for evaluating this increase is the annual increase in the applicable consumer price index. The annual increase from January, 1980 to January, 1981 is 11.7%. The annual increase from December, 1979 to December, 1980 is 12.5%. By the available data either party's position is fair.

Although the Association has not directly relied on the external comparisons, it has made its principal argument based upon an arbitration award involving the City of Kenosha police. It has also further justified its position in relation to Milwaukee and Racine sheriff's departments arguing that Kenosha ought to be better paid based upon comparisons to per capita income and production worker earnings. These statistics, however, do not give rise to a meaningful private sector comparison. The Employer has selected as comparables many counties which are too distant from this area's labor markets to be reliable. I have selected the following counties and the City of Kenosha for comparison based on the positions of the parties, proximity to Kenosha, population density, 1979 per capita income, and similarity of labor market. While ordinarily comparison is best made to other county sheriff's departments, the City of Kenosha is used because of the Association's reliance on that comparison.

I have prepared the following compilation of year end rates, including COLA payments where appropriate, from the undisputed data provided by the Employer primarily in its exhibit 16. I have used top deputy for comparison, as this position comprises the largest number of positions in the unit:

YEAR END WAGE RATE COMPARISON

	<u>COLA Provision</u>	<u>MAXIMUM Deputy</u>		<u>1980</u>	<u>1981 Employer</u>	<u>1981 Association</u>
		<u>1980</u>	<u>1981</u>			
Kenosha County	uncapped	1749	1918 Employer 1948 Assoc'n	2	2	2
City of Kenosha	capped at 20.76/mon.	1560	1737- <sup>4/</sup>	5	5	5
Milwaukee	none	1709	1881	3	3	3
Racine	uncapped	1771	1942	1	1	2
Walworth	uncapped	---	<sup>5/</sup> 1765	4	4	4
Waukesha	none	<u>1490</u>	<u>1624</u>	6	6	6
Average w/o Walworth & Kenosha Co. <sup>6/</sup>		1632	1796		10.049	

<sup>3/</sup> See exhibits 14 and 15. No evidence has been presented impeaching the total cost figures as presented by the Employer. Included in the cost of the Association offer .32%, which represents the cost of the additional casual day. The casual day must be paid if awarded, because the contract year is over.

<sup>4/</sup> Not available, rank extrapolated.

<sup>5/</sup> City of Kenosha, supra, at p. 8, Table III

<sup>6/</sup> Comparable percentage increase for Kenosha would result in \$1,925 year-end monthly wage rate.

The external comparisons show that as of 1980, this unit ranked second among the comparables, that uncapped COLA provisions are common in the area. Further, the evidence indicates that adoption of the Employer's final offer would result in the unit maintaining its relative rank, but that some compression would take place. Adoption of the Association's position would result in it moving to the highest paid position, moving ahead of Racine County even though that County also has an uncapped cost of living provision. Adoption of the Association position would also exaggerate its lead over counties other than Racine.

Turning to the internal comparisons, the Association relied essentially on its exhibit 14 for the proposition that its position ought to be adopted, because the Employer gave substantially disproportionately greater increases to other units for 1981. However, the underlying data of exhibit 14 was based on incorrect assumptions about the Consumer Price Index.

Among the other exhibits submitted by the Association were exhibits 13 and 16. The Association did not discuss these exhibits, but exhibit 16 uses a recognized sampling method of comparing various positions. Based upon Association exhibit 16, it appears that the AFSCME units received a base increase in the third year of their agreements (1981) comparable to, or slightly larger than, that received by the Sheriff's units, while these units continued to maintain their uncapped COLA provision. Below is my summary of internal comparability information.

Unit	Current Contract Term	COLA Provision Description		1981 Increase Over 1980 w/o COLA	Number of Employees in Unit
		1980	1981		
Non-represented	None	uncapped	.15/hr max	4%	82
Assistant Attorney	1981	uncapped	.15/hr max	no fold in 4% 1/1/81	7
Informal unit--Nurses	1981-	uncapped	.15/hr max	4%	?
AFSCME Highway	1979-81	uncapped	uncapped	---	64
AFSCME Courthouse	1979-81	uncapped	uncapped	---	92
AFSCME Social Services	1979-81	uncapped	uncapped	---	70
AFSCME Parks	1979-81	uncapped	uncapped	---	14
Service Employees-- Custodial & Maintenance	not open	uncapped	uncapped	---	8
AFSCME Institutions	1979-81	uncapped	uncapped	---	131

Thus, almost all of the other units received comparable base increases in the 1981 year of their multi-year agreements. In addition, these units continued to receive uncapped cost of living adjustments. Because of the nature of the cost of living clauses used, the cost of living formula substantially benefits (on a percentage basis) lower paid employees, employees in these units were likely to have had a larger percentage wage-rate increase than that offered this unit. However, no precise data was presented on that point.

## Casual Day

### i. Background

The Association seeks to add a sixth casual day to the existing five casual days. These are days which may be taken off for any reason. Historically, they were added when the parties substituted a long term disability plan for the previous sick leave system in the 1976 agreement. There is no sick leave under this agreement. Under the existing long term disability plan, employees receive full pay from the first day of an accident, first day of hospitalization, and from the eighth day of an illness. Because the contract year is over, the extra day, if granted, would have to be paid.

### ii. Positions of the Parties

The Association takes the position that, although the existing casual day system is uniform throughout the County, their application has a disadvantageous disparate impact in this unit. It alleges that only this unit works a 6-2 work week, while other units work a 5-2. Thus, should an employee in this unit become ill on the first day of a work week for eight or more days, he or she would lose one day's pay while employees in other units would not. It argues there would be no real cost to the Employer, because it does not ordinarily replace deputies taking casual days. The Association submitted no evidence as to how often this problem occurs.

The Employer takes the position that the Association's position is not supported by the internal comparables. It argues that the instant benefit is one which is essentially uniform throughout the County. It denies that the Association has failed to show any difference in circumstances affecting its unit. It asserts that the benefit sought is greater than that enjoyed by all other comparable County law enforcement units and that it would leave the Employer short handed.

### iii. Discussion

The instant benefit is uniformly established and maintained throughout County employment. The Association has not argued that the benefit is less favorable than other County law enforcement units. The Association has correctly argued that there is a disparate impact on this unit. If an employee is sick on the first day of his or her work cycle and remains sick for eight or more days, the employee loses one day's pay. This is not true of any 5-2 work cycle units. Moreover, if the employee's illness begins at any other time in his or her cycle, or if the employee is hospitalized or off work as the result of any accident, no loss takes place. Clearly, disparate impact is a substantial risk. The Association has offered no evidence as to how often this disparate result occurs. It would appear that this occurrence is possible but generally would occur rarely in a unit of this size. The Employer has submitted evidence tending to demonstrate that this unit uses casual days in a manner which would suggest that employees are not generally concerned with minimizing the risk of unpaid time in long illnesses. On the basis of the above, I conclude that on the standard of internal comparability, the Employer's position is the preferable position with respect to the casual day.

### Selection of Offer

Section 111.77(4)(b) and (5), Wis. Stats., require the selection of one total final offer or the other. Thus, the selection must be of the better of the two offers. In some cases involving the limitation of existing benefits, a factor in the balancing of final offers has been the Employer's ability to show that the provision has had an adverse impact which outweighs continuing the benefit and, as relevant, that it has successfully voluntarily negotiated its termination in a unit or units where the alleged problem has been primarily manifest. 7/

The Employer has alleged that the existing provision has had two adverse impacts. First, the provision makes it impossible for the Employer to budget a certain sum for wages or County employees, and second, wages increase at a rate much more rapid than wages of other employees performing similar work in similar communities where there is no uncapped COLA.

With respect to the first adverse impact, the Employer relied on the testimony of County Supervisor Johnson, who is chairman of the Kenosha County Finance Committee. He testified to facts which would lead to the conclusion that the County has had difficulty estimating the total revenue it needed in recent years. This could be a result of the impact or the combination of all COLA clauses in all bargaining units. Because the vast majority of employees worked under uncapped bargaining agreements with uncapped COLA clauses, which agreements were not renegotiated in 1982, discontinuance of this uncapped COLA provision in 1981 would have had little effect on the budgeting process. It is hardly a result of this clause alone.

As of the end of 1980, this unit ranked second, after Racine County, among the selected comparables. The Association's proposal would make this unit's year-end wage rate the highest in the state as of the end of the 1981 agreement. This is the only direct evidence of this unit's history among its comparables. This single incidence of change in position is evidence of the Employer's allegation but cannot be conclusive when Racine County also has an uncapped COLA provision. Further, uncapped COLA provisions are common in the area. Walworth County Sheriff's Unit also has one. There are substantial arguments on both sides as to whether in this area uncapped COLA has and is producing this effect, but I conclude the evidence does not compel this conclusion.

Because the total wage increase of either package is fair, and both positions have substantial weaknesses, this case presents a very close balance. I conclude that the above factors outweigh negative aspects of the year-end wage rate and casual day in the Association's offer. While the Association's offer would leave the year-end wage rate higher than an increase comparable to other communities' increases, the Employer's offer would leave it slightly lower. The Association's proposal for a casual day is unwarranted, but this issue is far less important than the wage issue. Further, the casual day must be paid. Thus, it can be viewed as a one-time-only wage payment, and it has been costed in this way. If the circumstances of this case required that time off be granted, the result herein might well be different. On the basis of the standards set forth in Section 111.77, Wis. Stats., and the evidence and arguments of the parties, I conclude the final offer of the Association is more appropriate.

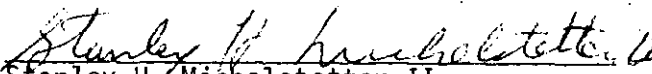
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7/ City of Greenfield (Police Dept.) (Doc. No. 15033-B) Sterns, 3/77.  
City of Greenfield (Fire Dept.) (Doc. No. 16283-A) Kerkman, 8/78.

AWARD

That the parties' 1981 collective bargaining agreement include the final offer of the Association.

Dated at Milwaukee, Wisconsin, this 18<sup>th</sup> day of May, 1982.

  
Stanley H. Michelstetter II  
Arbitrator