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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

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In the Matter of an Arbitration
between

WINNEBAGO COUNTY (SHERIFF'S
DEPARTMENT)

and

WINNEBAGO COUNTY SHERIFF'S
PROFESSIONAL POLICE ASSOCIATION

* * * * *

MIA-613

Decision No. 19378-A

Appearances:

- Mr. Gerald Engeldinger, Corporation Counsel; Mr. William Wagner, Director of Personnel; for the County.
- Mr. F. David Krizenesky, Attorney at Law; Sheriff Terry Footit; for the Association.
- Mr. Neil M. Gundermann, Arbitrator.

ARBITRATION AWARD

The undersigned arbitrator was selected by the parties to hear and determine a dispute pursuant to the provisions of Section 111.77(4)(b) of the Municipal Employment Relations Act. A hearing was scheduled to be held on March 19, 1982, at the Winnebago County Courthouse, Oshkosh, Wisconsin. Prior to the commencement of the hearing, the parties engaged in further negotiations. Subsequently the parties advised the undersigned that a deadlock persisted, and a hearing was held on April 29, 1982. The parties filed post-hearing briefs.

ISSUES:

1. Wages
Employer's Final Offer: 8.1% effective 1/1/82
Union's Final Offer: 8% effective 1/1/82
3% effective 10/1/82
(cumulative)
2. Health Insurance
Employer's Final Offer: Pay dollar equivalent of full premium cost for single and family coverage
Union's Final Offer: Employer to pay 100% of cost of health insurance premium.
3. Wisconsin Retirement Fund
Employer's Final Offer: Increase Employer contribution by \$10 per month to a total of \$105 per month

Union's Final Offer: Employer to pay 100% of employees' mandatory share

4. Uniform Allowance

Employer's Final Offer: Employer to pay an additional \$50 per year per officer for an annual total of \$250.

Union's Final Offer: Employer to pay an additional \$100 per year per officer for an annual total of \$300.

5. Cleaning

Employer--No offer

Union's Final Offer: Increase monthly contribution from \$6 to \$12.

6. Physical Examination

Employer's Final Offer: Delete current Article 26. Replace it with the following language:

"All employees represented by the bargaining unit shall be classified as members of a Hazardous Occupation as defined under Chapter 41 of Wisconsin Statutes. As such, each employee shall be required to maintain an acceptable level of personal physical fitness.

As a condition of continued employment, each employee shall be required to undergo an annual or periodic physical examination provided through the Department's examiner, at the County's expense, or at his/her option, to undergo physical examinations at the same required frequency with a physician of his/her choice at the employee's expense.

All physical examination reports, whether prepared by the County's examiner or a physician of the employee's choice, shall become the property of the County, and the provision of evidence of compliance by the employee with any or all directions, medications and/or therapies resulting therefrom shall constitute a condition of continued employment for the employee.

A physical fitness committee composed of three (3) Association members and three (3) County members will meet and make recommendations to the Department regarding employee physical fitness standards and physical fitness programs."

Union--No proposal

UNION'S POSITION:

Section 111.77(6) of the Wisconsin Statutes establishes the criteria that the arbitrator must weigh in arriving at his decision. There has been no issue raised as to the lawful authority of the employer, the stipulations of the parties, or the financial ability of the employer to meet the costs associated with either party's final offer. The exhibits presented by both

parties deal with 111.77(6)(d), and the comparison of wages, hours and conditions of employment; but the statute speaks primarily in terms of comparing wages with "other employees performing similar services." The statute speaks only in general terms of comparing public employment in comparable communities, private employment in comparable communities, and the average consumer price of goods and services. Lastly, the arbitrator must look at the "overall compensation presently received by the employees."

According to the Union, there is really no "comparable community" with which to compare the parties' proposals. The statute is unclear as to exactly what the word "community" means in terms of comparisons. It is the Union's position that this case involves the overall compensation received by employees of the County Sheriff's Department. The Union asserts these employees are police officers, and accordingly the comparisons the arbitrator must give the greatest weight are the overall compensation plans for policemen in the Fox River Valley. The Union submits that to compare the County with Fond du Lac County, Outagamie County, or the highly paid Brown County, would be comparing apples and oranges. While the Union has cited several communities in several counties and indicated the overall compensation paid to those employees, those citations are not necessarily proposed as "comparables," but merely a statement of fact as to what those individual police units receive for their services. The question thus becomes: What are the Winnebago Sheriff's Department personnel entitled to as a fair return for a fair day's work? The Union exhibits establish that for 1981 the top patrolman for Winnebago County Sheriff's Department makes \$1,505 per month. This amount equals Outagamie County, is more than Fond du Lac and Manitowoc Counties, and is less than Green Bay, Brown County, Neenah, Menasha, Oshkosh, Town of Menasha, or the City of Appleton.

The Union's offer of an 8% and 3% increase, bifurcated at October 1, 1982, results in \$132 per man per month actual average increase. The actual average increases for the counties, cities and towns already settled for 1982 are as follows:

<u>Unit</u>	<u>Actual Average Increase</u>	<u>Percent</u>
Green Bay	\$170	10.15
Brown County	170	10.15
Neenah	130	8.09
Menasha	135	8.52
Oshkosh	160	10.22
Town of Menasha	125	8.01
Appleton	135	8.66

The County's proposal averages \$122 per man per month, or 8.1%. The Union's proposal (averaging \$132 per man per month) is 8.77%. The cumulative or year-end base rate for these same units breaks down as follows:

<u>Unit</u>	<u>Cumulative Increase</u>	<u>Percent</u>
Green Bay	\$185	11.05
Brown County	185	11.05
Neenah	161	10.02
City of Menasha	178	11.23
City of Oshkosh	194	12.39
Town of Menasha (no split)	N/A	N/A
Appleton	145	9.3

The Union's cumulative split amounts to an increase of \$169, or 11.23% cumulative at the end of the year.

To take these very same units and add in other monetary benefits in the form of extra days off, increase in nighttime differential, increase in clothing allowance, increase in cleaning allowance, and add them together with the actual base rate increase on the average per man per month, results in the following:

<u>Unit</u>	<u>Benefit</u>	<u>Increase Per Month</u>	<u>Actual Percent</u>
Green Bay	Nighttime Diff.	\$ 5.00	10.31
Brown County	Nighttime Diff.	5.00	10.31
City of Neenah	Cleaning allowance	3.66	8.38
City of Menasha	5 extra days off	37.35	10.88
Oshkosh	None Granted		
Town of Menasha	Cleaning allowance	6.00	8.4
City of Appleton	Cleaning allowance	.84	8.7

The Union's proposal on a cumulative basis, with fringe benefits, amounts to exactly 12%.

The Union notes that all the health insurances went up for 1982. Increases for the various units ranged from \$18.17 to \$50.32. In looking at both the 1981 comparable wages exhibit and the 1982 comparable wages exhibit of the Union, life insurance paid by the bulk of the employers cited there amounts to 100% of the premium. In the instant dispute the County pays only its mandatory employer's share.

While the Union concedes that its proposal for cleaning and clothing allowance exceeds that of any other employer cited in the Union exhibits, the Union submits the change was made so that the impact on the employe and the employer would be lessened. When these fringe benefits are included, there are no concomitant roll-ups as is the case of increases in wages. Additionally, the dramatic increase in the cleaning and clothing allowance was a contrived demand to lessen the total impact on the County of a general economic benefit to the employe. If the Union's position is adopted by the arbitrator, the Union emphasizes this will be the singular area in which the County exceeds that of any other employer.

The Union also argues that the County is second only to Brown County in population and value. Outagamie County is third, with the remaining seven counties substantially behind. Testimony at the hearing showed that the population clusters begin on the south side of Oshkosh and continue almost uninterrupted in a northeasterly direction through Appleton and ending at Kaukauna. The area described consists of the City of Oshkosh, the Town of Neenah, City of Neenah, City of Menasha, Town of Menasha, City of Appleton, City of Kaukauna, and the City of Green Bay. With the exception of Green Bay, these counties make up one large metro complex.

The Union emphasizes that at the time of the hearing Sheriff Footit testified that the Winnebago Sheriff's Department is the keystone in law enforcement in the Fox Valley area. Starting with the City of Oshkosh, the Winnebago Sheriff's Department personnel actually share the same police station, same lockers, complaint desk and radio room. The Sheriff's Department personnel work closely with the City of Oshkosh personnel, and act as a

back-up for the Oshkosh Police Department and other towns and cities to the north. Only the Winnebago Sheriff's Department has a boat patrol, a scuba team, and a canine corps, and the Sheriff's Department is also the drug enforcement agency for the area.

Sheriff Footit testified that the personnel of the Winnebago County Sheriff's Department are given more responsibility, and accordingly, have collected more skills than the surrounding communities' police personnel. The Sheriff's Department personnel do not have immediate back-up for their assignments, as they are not always close to each other when duty calls.

The Oshkosh Police Department fights the constant increase in the cost of living with 100% turn-in procedure for clothes and cleaning. In 1982, it received an 8%⁴% pay increase, and the top patrol officer will receive a base rate of \$1,712 starting in January, increasing to \$1,763 in July of 1982. Additionally, the Oshkosh police employes receive eleven paid holidays, while the County officers get only eight paid holidays. It is finally noted that the health insurance and the Wisconsin Retirement Fund are funded 100% by the City of Oshkosh.

While the Sheriff testified that the Sheriff's Department should have parity with the City of Oshkosh, the Union's offer will not gain parity but will keep the gap from growing. The wage settlements in comparable communities in actual dollar amounts or actual percentages, far outstrip the offer made by the County or the Union in this dispute.

While the County argued that it has settled with other units at less than its offer to the Sheriff's Department, the Union submits that the other offers are not particularly significant due to the hazardous nature of the work of the Sheriff's Department. Additionally, the Union asserts that Sheriff's Department employes are required to perform with skill not required of other employes. The Union emphasizes that the County brought forth no witness at the hearing saying that the offer made by the County was adequate. On the other hand, Sheriff Footit testified that the police in the Winnebago County Sheriff's Department were generally underpaid. The evidence introduced by the Union establishes his contention.

The Union assumes that the County will make the argument that counties always make less than cities and towns, however Green Bay and Brown County have 100% total parity with each other. Continuing with the non-parity tradition is a worn-out tradition which makes no sense. The officers of the Sheriff's Department are skilled law enforcement personnel with the same, if not better, training than the police officers in the surrounding towns and cities.

With respect to the medical provision set forth by the County, if it is adopted the County will be the only employer of all the counties and cities cited by either party with such a provision. The County's proposal is so vague that upon its implementation, one can be assured that grievances will be filed. The grievances will center around its interpretation and purpose. The confusion arising out of the County's proposed language was typified by the testimony of William Wagner, who was not sure of the total meaning and impact of the proposed language. The Union argues that if the draftsman was not sure of its total meaning impact, how can the two parties abide by its wording? The Union contends the medical provision is objectionable only because it is vague to the degree that it would be unenforceable. If the matter was a voluntary one, the Union would have no objection.

In concluding its arguments, the Union requests the arbitrator to adopt its final offer. If the Union's final offer is adopted, the ever-increasing gap between the City of Oshkosh and the Winnebago Sheriff's Department will continue to grow, but not at such a rapid pace as it has in the past. If the arbitrator adopts the Union's position, the Winnebago Sheriff's Department will maintain its level behind the surrounding community police departments, but the difference in pay will not be increased. The Union urges the arbitrator to examine closely the total compensation employers within thirty miles of the City of Oshkosh pay police officers. The bulk of the surrounding communities pay 100% of the retirement and health insurance for the police officers, and this is what the Winnebago Sheriff's Department is asking. The only catch-up provision in the Union's proposal is that on cleaning and clothing allowance, and that was put in basically because in increasing the cleaning and clothing allowance one avoids the roll-up effects.

The Union could have requested an increase in the number of holidays per year, however it chose not to do so. Clearly the evidence establishes the number of holidays received by employees of the Sheriff's Department are less than those received by comparable departments.

The Union submits that its final offer is fair and reasonable and should be accepted by the arbitrator.

COUNTY'S POSITION:

It is the County's position that its offer meets the standards of fairness and reasonableness. Fairness can be determined by comparing the County's wage and fringe benefit offer to the Sheriff's unit with the internal pattern of settlements obtained by the County through voluntary negotiations. The cumulative compounded impact of wage increases to the Sheriff's Department employees for 1980 and 1981, plus the County's offer for 1982, indicate the Sheriff's Department employees have received a higher percentage figure over the three-year period than other Winnebago County employe units.

Reasonableness can be determined by assessing the effect of the County's offer on the County's relative position to other county sheriff's units regarding the wage and fringe benefit issues. The evidence establishes that among the comparable counties, the County is second only to Brown County. This is in keeping with the fact that the County also ranks number two among the comparable counties as far as population statistics. The County further emphasizes that several of the counties among the comparable lists of counties have limitations on the dollar amount of employe contribution made by the employer to the retirement fund. Among the counties that have such limitation, the County ranks number two. Similarly, the County ranks number two among comparable communities in the amount paid for uniform allowance. The County contends that its wage and fringe benefit offer for 1982 will result in the County retaining its relative position among the comparable counties.

The Union urges parity with the City of Oshkosh, and the County opposes parity for traditional reasons. The County argues there is no justification for breaking the pattern of wage rate comparisons as evidenced in its Exhibit #10. The fact that City police officers and Sheriff's Department employees share facilities

might be considered by an arbitrator, but it has been held not to be a determining factor. "Rather the factor of like pay for like work for like positions among comparable municipalities is determining." Kenosha Professional Policemen's Association and County of Kenosha (Police Department) Decision No. 18697-A (November 5, 1981, Ziedler).

The Union's proposal of a 3% increase to be effective October 1, 1982, is totally unreasonable. Such an increase could only be considered reasonable if there was clear and convincing evidence that the Sheriff's Department employes are entitled to catch up when compared to other employes in comparable units. The testimony of Wagner, Personnel Director, established that he has had no problem due to wage and fringe benefits in filling any vacancies in the Department. This suggests that the County is paying a competitive wage.

In concluding its arguments regarding salary, the County submits there is no compelling reason to enhance the wage and fringe benefits payable to the Sheriff's Department employes beyond the fair and reasonable offer of the County. Enhancement without compelling reason would impact on the County's ability to obtain future voluntary settlements with other County units.

The County urges that the East Central Wisconsin counties, including Waupaca, Outagamie, Brown, Manitowoc, Calumet, Winnebago, Fond du Lac, and Sheboygan, are the most comparable communities by reason of geographic proximity, population, and performance of similar services. The comparable communities offered by the Union are too diverse in terms of municipal structure. Arbitrators appear to support the proposition that the most comparable communities are cities with cities, and counties with counties.

The County submits the interest and welfare of the public will be served if the employes obtain an annual or periodic physical examination. The County must pay higher Wisconsin Retirement Fund contributions and special death and disability benefits on behalf of Sheriff's Department employes because of the hazardous nature of their occupation, and in return the employe has the duty to maintain a high degree of physical conditioning. The agreement between the parties has recognized a joint responsibility for the maintenance of physical fitness standards and physical fitness programs. A physical fitness program requiring Sheriff's Department employes to maintain an acceptable level of personal physical fitness that includes an annual or periodic physical examination at the County's expense will have a positive effect on the interest and welfare of the public because it will result in less sick time and improvement in employe productivity.

In concluding its arguments, the County submits that all the evidence in this case points to a pattern of internal settlements which support the County's final offer. Additionally, the Association has failed to establish a case for catch-up. Therefore, it follows that the County's offer should be adopted.

The County respectfully requests the arbitrator to issue an award which includes the final offer of the County along with the stipulations of the parties.

DISCUSSION:

The first issue to be resolved in the instant dispute is the determination of comparable employers. The Union argues that employes of the Sheriff's Department are engaged in police work; thus the comparables are other police departments, especially those in geographic proximity to the Sheriff's Department, i.e., within a thirty-mile radius of Oshkosh. In contrast to the Union's position, the County argues that the appropriate comparables are other sheriff's departments as they perform work identical to that performed by the County Sheriff's Department. Historically, counties have been compared to counties, and in at least one case¹ an arbitrator held that county law enforcement positions should be compared with other county law enforcement positions.

It is noted by the Union that the statutory language does not specifically define "comparable communities," thus the arbitrator has considerable latitude. The language of Section 111.77(6)(d) states the following:

"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."

The statutory language refers to employes performing similar services in public employment in comparable communities. Thus there are two statutory guidelines: performance of similar duties, and comparable communities. In many respects the duties performed by employes of a sheriff's department are similar to those performed by employes of a police department. There are, however, certain statutory duties the sheriff must perform, including maintaining a jail and serving papers, which are unique to a sheriff's department. Employes performing duties most similar to those performed by employes of a sheriff's department are employes of another sheriff's department. While the statutory language does not refer to the "most" similar duties, certainly where there is a direct comparable it must be utilized.

It cannot be persuasively argued that a county and city are "comparable communities." There is no reason to dwell on the differences other than to note the most obvious distinctions: the difference in geographic area served by each (with the possible exception of the City of Milwaukee and Milwaukee County), and the differing nature of services provided by the respective governmental units.

In the opinion of the undersigned, the statutory guidelines, which compel the arbitrator to consider comparables, limit the arbitrator to considering as comparables other counties. This is due to the similarity of duties performed by sheriff's departments as well as the similarities of county governments.

While the undersigned is persuaded that the comparables must be drawn from other counties, the undersigned is not persuaded

1. Kenosha Professional Policemen's Association and County of Kenosha, Decision No. 18697-A.

all of the counties considered comparable by the County are in reality comparable. It appears that Calumet and Waupaca, based on their population, are not really comparable. Additionally, neither county has a large community within its boundaries. This leaves Brown, Fond du Lac, Manitowoc, Outagamie and Sheboygan Counties as comparables. The evidence establishes the following increases in salary for patrolmen/deputies for 1982:

<u>County</u>	<u>1981</u>		<u>1982</u>	<u>\$</u>	<u>% of Increase</u>
Brown County	1,674	1/1	1,829	155	9.26
		6/27	1,859	30	1.6
Manitowoc County	1,450		1,566	116	8.0
Fond du Lac County	1,458	1/1	1,530	72	4.9
		7/2	1,569	39	2.5
Winnebago (County)	1,505		1,627	122	8.1
(Union)	1,505	1/1	1,625.40	120.40	8.0
		10/1	1,674.16	48.76	3.0

The evidence establishes that two of the comparable counties had settlements in the area of wages below the County's final offer, with one county (Brown) settling above the County's final offer. The Union's final offer closely parallels the Brown County settlement.

County Exhibit #7 establishes that in 1981, Brown County was the leader among the comparable counties followed by the County. Based on the evidence, the County would retain its relative position if either final offer was awarded. If the County's final offer was awarded, the County would still improve its relative position in relationship to Manitowoc County and Fond du Lac County.

One of the statutory criteria the arbitrator must consider is the cost of living. The most recent CPI, dated June 22, 1982, reflecting the CPI at the end of May, shows that the CPI for the country increased 6.5% from a year ago. The offer of the County exceeds the CPI by 1.6%.

While the Union argues, albeit correctly, that the cost of its proposed increase is only 8.77% because of its bifurcated increase, the fact is that as of October 1, 1982, the wage rates would be 11.23% above the present rates. The undersigned can find no basis which would justify an increase of this magnitude based on the settlements in comparable communities and the increase in the CPI.

Although the parties have a dispute regarding health insurance, the dispute appears to be more philosophical than economic. The County has agreed to pay the cost of health insurance but wants the costs defined in dollars in the agreement. The Union is seeking contract language providing the County will pay 100% of the health insurance premiums. Union Exhibit #4 indicates that Brown County pays 95% of the premium; Manitowoc County pays 100% of the premium; and Fond du Lac County pays a fixed dollar amount. There is no clearly discernible pattern regarding employers' payment of health insurance premiums.

It would appear that the major consideration is that the County pay the cost of health insurance premiums which the County has offered to do. Traditionally the argument over expressing the employer's payment of health insurance premiums in dollars or percentages was based on the reasoning that if the payment was

expressed in dollars the employer could cost any increase in the premium in its total package. There was a concern that if the payment was expressed in terms of a percentage, because there was already a commitment to pay the percentage, additional costs could not be treated as part of the package.

With the introduction of arbitration, the concern over whether payment of insurance premiums is stated in dollars or percentages should have lessened, as most arbitrators and negotiators recognize that an increase in insurance premiums, whether expressed in dollars or percentages, is an additional cost to the employer and a benefit to the employee. Thus, such increased cost may appropriately be costed in the final package.

In the instant dispute the evidence indicates that comparable counties generally pay less than 100%, or at least the agreements do not reflect a payment of 100%, with the exception of Manitowoc County. Under such circumstances there is no compelling reason to award in favor of the Union's position.

There are certain similarities between the issue of health insurance and retirement contribution. The Union is seeking 100% payment of the employes' contribution, while the County is proposing the continuation of a flat dollar amount. In the case of retirement, the County's offer of \$105 per month does not insure an employe of 100% contribution, especially in the event of overtime.

According to Union Exhibit #4, Brown County pays 100% of the employe's contribution, while both Manitowoc County and Fond du Lac County pay a dollar amount of \$92.45 per month. County Exhibit #8 indicates that in 1981, only Sheboygan County paid 100% of the employe's retirement contribution.

The County's offer of \$105 per month payment toward the employe's retirement contribution represents full payment of the retirement costs for the employe working full time. There may be instances where an employe would work overtime, and after a certain number of hours the employe would have to contribute to the retirement system. The evidence indicates that among the comparable counties a specified dollar contribution to the retirement system is the rule rather than the exception. The County's offer conforms to the norm.

The parties are \$50 per year apart in the area of uniform allowance. The County has offered to increase the amount it pays for uniform allowance from \$200 to \$250, while the Union is seeking an increase from \$200 to \$300. According to Union Exhibit #4, Brown County pays a \$270 uniform allowance, Manitowoc County pays \$285, and Fond du Lac County pays \$347.76. The County also pays \$72 per year for cleaning which the Union is seeking to increase to \$144 per year. According to County Exhibit #9, the only other county which pays a cleaning allowance is Sheboygan County.

By the Union's own admission its final offer regarding clothing allowance and cleaning allowance is not supported by the evidence, but was intended as a means of increasing the benefits for the employes without the concomitant costs associated with additional salary increases. The County's final offer of \$250 for uniform allowance makes it competitive with the comparable counties. Its payment of \$72 annually for cleaning costs makes it a leader among the comparable counties.

The remaining area of dispute is a proposal of the County to modify Article 26 of the agreement to require annual or periodic physical examinations, and to require employes to comply with the directions issued by either the County's examiner or the employe's personal physician regarding medication and/or therapy as a condition of continued employment. None of the comparable counties have such a provision in their collective bargaining agreements.

The County's proposal to modify Article 26 is by far the most difficult issue to address. As previously noted, no other comparable employer has such a provision and on that basis the tendency is to summarily reject the proposal relying on the principle that major contract changes are best left to the parties, not the arbitrator. Additionally, counsel for the Union ably defined potential problems which may arise from the provision as it is written.


Many of the problems alluded to by the Union appear to involve interpretation of the language rather than any inherent ambiguities in the language itself. The application of the language to specific factual cases will undoubtedly require further discussion, and indeed, maybe modification of the existing language.

It is difficult to dispute the concept that employes of the Sheriff's Department should undergo periodic physical examinations considering the nature of their work. It is in the interest of both the County and the employes that health problems be detected early and treated.

Under the form of this arbitration, the undersigned must select the final offer of one party, without modification. Having given due consideration to the statutory guidelines, the undersigned renders the following

AWARD

That the County's final offer be awarded and incorporated into the 1982 collective bargaining agreement.



Neil M. Gundermann, Arbitrator

Dated this 9th day
of July, 1982 at
Madison, Wisconsin.