

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

APR 7 1983

----- X	:	WISCONSIN EMPLOYMENT
	:	RELATIONS COMMISSION
In the Matter of the Petition of	:	
	:	
RACINE COUNTY (SHERIFF'S DEPARTMENT)	:	
	:	
For final and Binding Arbitration	:	Case LX
Involving Law Enforcement	:	No. 29378
Personnel Represented by the	:	MIA-658
	:	Decision No. 19709-A
RACINE COUNTY DEPUTY	:	
SHERIFF'S ASSOCIATION	:	
	:	
----- X	:	

APPEARANCES

Robert K. Weber, Schwartz, Weber & Tofte, on behalf of the Association

William R. Halsey, Deputy Corporation Counsel, on behalf of the County

On August 4, 1982 the Wisconsin Employment Relations Commission appointed the undersigned arbitrator pursuant to Section 111.77 (4) (b) Wisconsin Statutes in the dispute existing between the Racine County Sheriff's Department, hereafter the County, and the Racine County Deputy Sheriff's Association, hereafter the Association. Pursuant to statutory responsibilities the undersigned conducted an arbitration hearing in the matter on October 11 and November 11, 1982 at Racine, Wisconsin. During the course of said hearing the parties resolved three issues contained in their final offers involving the recognition clause, clothing allowance, and the purchase of additional insurance by the Association. Accordingly, the parties mutually agreed to remove said issues from their final offers. Post hearing exhibits and briefs were filed by both parties by February 12, 1983. Based upon a review of the evidence and arguments and utilizing the criteria set forth in Section 111.77(6) Wis. Stats., the undersigned renders the following arbitration award.

SUMMARY OF ISSUES

The dispute covers the agreement between the parties for 1982 and 1983. In dispute are salaries, promotional examinations, use of compensatory time, promotions, compensation for training, and holidays.

In addition, an issue has arisen over what the appropriate comparables should be. Said dispute will be initially addressed. Thereafter, the merits of the other issues in dispute will be discussed individually. Lastly, the relative merit of the total final offer of both parties will be addressed.

COMPARABILITY

Association Position

The appropriate comparables are Kenosha, Milwaukee, Walworth, and Waukesha Counties. These are the comparables selected by Arbitrator Michelstetter in Kenosha County Deputy Sheriffs Association, Dec. No. 18873-A, 5/82.

Inclusion of Rock, Dane, and Washington Counties, as proposed by the County, would be inappropriate. Not one of these counties is contiguous, or even near Racine County. Nor was evidence presented to demonstrate that they have a similar economic base.

Use of Walworth and Kenosha Counties present immediate problems however, since neither has a 1982 or 1983 contract.

Thus, in terms of percentage increases, only Milwaukee and Waukesha Counties and the police officers in the City of Racine can be compared for 1982. There are no available comparisons in this group for 1983.

#### County Position

In addition to the comparables selected by Arbitrator Michelstetter in Kenosha County Deputy Sheriffs Association, the County proposes the following additional comparables: Rock, Dane, and Sheboygan Counties, on the basis that they have populations similar to Racine County; Washington County based on its geographical proximity; the State of Wisconsin Corrections System based on the fact that the job descriptions indicate that the work performed is identical to that of the Deputy I in Racine County; and the City of Racine Police Department, as an example of persons performing similar duties to Deputy II's located in the same community. However, the County takes issue with the direct comparability of police officers and county sheriffs.

#### Discussion

Both parties agree that Kenosha, Milwaukee, Walworth, and Waukesha Counties constitute appropriate comparables, and they would be so considered but for the fact that neither Walworth nor Kenosha Counties have 1982 or 1983 agreements. Thus, only two of these four agreed upon counties have pertinent collective bargaining agreements in effect.

The additional comparable counties proposed by the County do not appear to be as comparable as the foregoing counties based upon their geographic distance and difference in size. Nor does the State of Wisconsin Corrections Department provide a truly comparable employer-employee relationship even though some of its employees perform similar duties, since the institutions involved and the sources of funding are significantly different from those present in the instant relationship.

With respect to the City of Racine Police Department, the undersigned is persuaded that though it may properly be utilized as a comparable, it is less useful in that regard than comparable county sheriff's departments.

Based upon all of the foregoing, the undersigned must candidly admit that relevant data pertaining to comparable employer-employee relationships is scanty at best in the instant proceeding, and therefore, comparability cannot be given as significant weight as it has been given in many other proceedings of this type in determining the reasonableness of the parties' final offers.

This problem is exacerbated in the instant proceeding, since the record does not contain reliable data concerning the size of increases granted in comparable relationships. Because of the existence of different types of COLA provisions in some of the relationships, comparisons become all the more complicated. In addition, since there is a dispute between the parties concerning the comparability of certain positions in the bargaining units in question which was litigated solely on the basis of job descriptions, fair and accurate determination on comparability becomes practically impossible.

For all of the foregoing reasons comparability determinations in the instant proceeding have dubious reliability and cannot be given the weight they normally deserve in proceedings such as this.

Because of these problems, the undersigned believes it is appropriate to look not only at comparable county sheriff's departments, but generally at Wisconsin public sector settlements among employees with similar responsibilities in an attempt to ascertain what if any patterns have developed in collective bargaining agreements covering 1982 and 1983. The undersigned must admit that he is reluctant to give too much weight to the reported value of such settlements, since the computational methods are often neither reliable nor consistent, however, in the instant proceeding, the reliability of the data provided in that regard has not been contested, and accordingly, the undersigned believes it would not be inappropriate to at least give some weight to such data in determining the relative reasonableness of the parties' proposals, particularly since so little reliable data is available for the most comparable employer-employee relationships.

#### WAGES

##### County Proposal

###### Schedule "A".

Effective January 1, 1982, each step of the Deputy I classification monthly salary range will be increased by the amount of fifty dollars (\$50.00)

###### Schedule "B".

The existing cost-of-living allowance formula would continue in effect throughout the two year Agreement (1982 and 1983). Quarterly cost-of-living allowance adjustments would occur in the first pay period following February 1, May 1, August 1, and November 1 in both years 1982 and 1983. Cost-of-living allowance adjustments in any quarter would not exceed a maximum of twenty-five cents (25¢) per hour.

Effective December 31, 1982, all cost-of-living additive then in effect, with the exception of twenty-five cents (25¢) will be folded into hourly base rates. The twenty-five cents (25¢) will continue as a cost-of-living allowance additive to hourly base rates in the year 1983.

##### Association Proposal

###### Schedule "A" Wages

Effective January 1, 1982, the following monthly salaries within the different classification will be in effect:

<u>Classification</u>	<u>Start</u>	<u>After 1 Year</u>	<u>After 2 Years</u>	<u>After 3 Years</u>
Deputy I	\$1,335.90	1,598.07	1,624.59	1,818.03
Deputy II	\$1,818.03	1,842.51	1,869.03	1,899.64
Detectives & Other Officers	\$1,921.06	1,941.46	1,960.84	1,982.26
Sergeants	\$1,954.72	1,952.06	1,991.45	2,015.93

The Association also proposes, in addition to the salary steps listed immediately above, a 2.5 percent increase in each bargaining unit member's salary, said increase also to take effect on January 1, 1982.

In 1983, the Association also proposed a two (2) percent increase in the salary of each bargaining unit member, said increase to take effect January 1, 1983.

###### Schedule "B" Cost of Living Allowance

The Association proposes the maintenance of an uncapped cost of

living, retroactive to January 1, 1982. All other language in the 1980-81 Labor Agreement under Schedule B would be incorporated, except that the dates enumerated in B.03 would be changed to apply to the proposed two year agreement.

#### Association Position

The County's final offer amounts to 6.9% increase in 1982 and a 1.12% increase in 1983 as compared with 1982.

The Association's final offer results in an 8.5% increase in 1982 followed by a 7.7% increase in 1983.

The County's total offer thus falls drastically short of the one-year statewide settlements of 8.4%, not to mention the settlement among the primary comparables, which appear to be even higher.

Most significant is the problem related to Deputy I salaries. The Deputy I position was established when the new jail facility was built. Deputies employed at that time were classified as Deputy II's and had the option to choose jail or road duties. New deputies were classified as Deputy I personnel and were hired for jail duties initially. They could go onto the road voluntarily when openings became available on a seniority basis. Thus, there are many Deputy II officers in the jail performing the same duties as Deputy I officers.

Because the new jail was not completed until almost a year after the labor agreement was signed, and new folds on the cost of living allowance took place before applicants were hired, the disparity in Deputy I and Deputy II salaries was greater than anticipated. Due to the wage structure, this disparity has since increased. The Association's offer addresses this problem, while the County's does not.

Furthermore, there is no comparability between Deputy I personnel in Racine County and correctional officers in Waukesha County. The same is true of the civilian jail guards in Kenosha County.

It is difficult to perceive how the County can continue to assert comparability between the salaries of its deputies who are assigned jail duties until road openings occur and those civilian jail guards in other communities, when it is paying Deputy II wages to a substantial number of its law enforcement officers in the jail.

While great disparity in pay may be justifiable between civilians and law enforcement officers, it is not true in a situation like that which exists herein, where no such distinction exists.

Furthermore, other Racine County represented bargaining units had cost of living provisions in 1982 with three percent per quarter caps and yearly fold in provisions, in contrast to the one fold offered by the County herein.

The non represented County employees received a seven percent wage and benefit increase, retroactive to April 1, 1982, plus eligibility for up to three percent merit increases, the retroactivity of which is uncertain.

Even using the County's figure of an Association proposal amounting to 9.57% total package cost, the Association's proposal compares favorably with the County employee settlements, while the County's offer of 5.02% does not.

Lastly, in response to the County's inability to pay argument, it is important to note that the County chose in 1982 to tax \$413,286 below the levy limit, and in 1983, to tax \$808,131 below the permissible levy limit.

In addition, as of November 1982 there was \$80,000 in the County's contingent fund.

The County put forth no evidence that it has ever borrowed-- indeed, it has not. In fact, no evidence was adduced to prove that the County is unable to borrow funds on either a short-term or long-term basis.

It has never put forth any evidence that it has been forced to make harmful cuts in Public Law Enforcement programs--indeed, it recently constructed an \$8,000,000 law enforcement and jail center with general fund money, without bonding or borrowing.

The County's Executive also made clear his intention to lay off six positions in the Sheriff Department even if the County's offer was awarded in the instant proceeding.

Furthermore, no evidence was adduced to demonstrate that Racine County's citizens are experiencing economic conditions which are distinguishable from those experienced by the citizenry in comparable communities.

Based upon such failures of proof, the County's inability to pay argument must fail. In short, the County has clearly indicated its unwillingness, not its inability, to pay.

In any event the County should be prohibited from raising the inability to pay defense for the first time at the arbitration hearing. It precludes the Association from discovery of information which it would be entitled to upon assertion of the claim until a point when it is too late for the parties to engage in good faith bargaining or for the Association to change its final offer accordingly.

#### County Position

The increase in costs under the County proposal (year-end 1981 to year-end 1982) would be 7.82%. The increase under the Association proposal would be 9.57%.

For 1983, assuming a 6% increase in inflation, the increased cost under the County proposal would be \$195,840 over a 1983 cost of approximately \$3,350,000, plus a 2% increase of the base of all personnel, increased retirement benefit costs, and the increased costs of having Deputy I's move into the final step of the Association's proposed salary range.

When COLA is included in wage comparisons, Racine County wage rates are at or very near the top throughout the State.

The County proposal maintains the relative financial position of Deputy II's as against similar personnel in comparable communities. On the other hand, the Association proposal would widen the gap between the County and comparable communities.

With respect to the Deputy I's, the County proposal would establish a starting salary above all of the comparables. In this regard, jail security duties in Milwaukee County are performed entirely by persons in the position of correction officer. The Deputy I position in the instant case is comparable to that position, the Officer 1-3 in the State of Wisconsin Correction system, Correction officer in Sheboygan County, Correctional Officer I in Waukesha County, Jailer in Kenosha County, and Jailer Dispatcher in Washington County. The County three-year step would be above every comparable with the exception of the State of Wisconsin. The one area where the County would be slightly behind is for supervisory type workers--who are not the equivalent of Deputy I's in Racine.

The Association proposal would put the Deputy I salary in a world of its own. The proposal calls for a base salary increase of approximately 16%. This is only for 1982 and does not include the 2% increase for 1983. The Association's proposed starting salary would be above the top step for Waukesha, Sheboygan, and the State of Wisconsin Correctional Officer I.

The Association's proposed base rate increase at the top step of Deputy I is in excess of 23% for 1982 and higher when considering the 2% proposed increase in 1983.

Given present economic conditions it is difficult to see any degree of reasonableness in the Association's proposal. In this regard the September unemployment rate in Racine County was 15.2% compared with a statewide figure of 11.3%. The November rate in Racine was 15.6% compared to a State rate of 11.5%. Thus, the unemployment situation in the Racine area is worsening at a quicker pace than the statewide average.

Lastly, the County is not able to absorb the costs of the Association's proposal.

In this regard, for the budget years 1981 and 1982 the County levied at approximately 98% of the allowable tax levy limit. There was only a total of \$575,000 of additional taxing authority that was not utilized during this period.

Furthermore, nearly all of the County's surplus funds have been utilized.

The 1983 County budget necessitated some layoffs of County employees. Additional layoffs are forthcoming. Thus, it cannot be said that adoption of the Association's proposal will not have a harmful impact on the County and the law enforcement services it provides.

Tentative agreements between the County and the Human Services Department employees and the Courthouse employees both call for wage freezes in 1983.

The County's final offer gives the Association employees a 1983 wage increase which no other County union is being offered.

#### Discussion

Because much of the evidence pertaining to comparability and costing was not fully litigated at the hearing in the instant proceeding, it is important to note that both parties have relied upon many facts which remain in dispute and which essentially have not been proven. Accordingly, the undersigned has had to analyze a record which contains many critical factual disputes which are essentially unresolvable based upon the evidence submitted herein. However since it is apparent that the parties made a genuine and diligent effort to complete this record as best they could under the circumstances, it is incumbent on the undersigned to resolve the dispute based upon the submitted evidence, inadequate though that may be.

A critical and apparent discrepancy that initially arises is over the parties' assessment of the value of their respective proposals. While no definitive conclusion can be reached on this issue, the undersigned believes it is relatively safe to conclude that the Association's 1982 salary proposal can be valued at approximately 8.5%, while the County's 1982 salary proposal probably amounts to about 5%. In 1983, since the impact of the COLA cannot be determined, it is impossible to project what the value of the salary proposal will be. However, assuming an increase in the CPI of approximately 6%, the Association's proposal will likely amount to more than an 8% increase, while the County's would approximate 6%.

The foregoing conclusions would indicate that for 1982 at least, based upon increases in the cost of living and comparable settlements, broadly defined, the Association's salary proposal is the more reasonable of the two in general terms, provided that the salaries contained therein are not out of line, and provided, furthermore, that the County has the ability to fund such a settlement.

Evidence in the record supporting the reasonableness of the Association's 1982 salary proposal in general terms includes data on the increase in the CPI during 1981 which reflected increases in the cost of living in excess of 8%. In addition, the 1982 statewide settlement pattern for law enforcement personnel also exceeded 8%, at least based upon the unrefuted evidence submitted herein.

Regarding whether the Association's proposed 1982 salaries are in line with comparables, it would appear that its proposed starting rate is approximately \$400 per month higher than the starting rate in Milwaukee and Waukesha Counties, while its proposed top rate, though relatively high, is much more in line, particularly with the Milwaukee County rate.

Regarding the proposed Deputy I rates, the record presents serious problems for the undersigned in that comparable positions, in terms of responsibilities, benefits, and status as law enforcement officers, do not appear to exist. Clearly other law enforcement agencies have officers who perform similar duties, however, they do not appear to treat them as law enforcement officers, as does the County. It is also clear that these officers, who perform similar duties as Deputy I's, are compensated elsewhere at a significantly lower rate than that proposed by the Association. In fact, their salaries elsewhere are much more in line with the County's proposal than the Association's. Assuming arguendo that a salary differential is justified based upon their status as law enforcement officers, the size of the increase proposed by the Association cannot be justified in the undersigned's opinion, since the Association's proposal would result in Deputy I salaries which are totally out of line with salaries paid their civilian counterparts who have similar duties and responsibilities in comparable law enforcement departments.

Concerning the County's inability to pay argument, although the County has not demonstrated actual inability to pay, as evidenced by a need to engage in long-term borrowing, a need to levy taxes at a non comparable and/or politically unacceptable level, or a need to implement harmful cuts in law enforcement services, it has been demonstrated that the economic environment in the County is one in which restraint in wage and benefit improvements is justified. In this regard, it is unrefuted in the record that tax delinquencies have significantly increased, that unemployment in the area exceeds the very high rate that exists across the State, and that layoffs in the County and the Department are contemplated. Under such circumstances, though the County has not demonstrated that it cannot afford to provide its law enforcement officers with comparable benefits, it has persuasively demonstrated that it cannot afford to be a wage and benefit leader at this time.

In this regard, since 1983 comparables are not in, and since the undersigned cannot determine what the value of the parties' salary proposal for 1983 will be until relevant CPI data is available, the undersigned does not believe that he can give significant weight to the 1983 salary offers of the parties in determining the relative reasonableness of the parties' positions on salaries. In effect, the risks inherent in multi-year agreement become contingent, at least in part, on the reasonableness of the parties' proposal in 1983.

Based upon the foregoing considerations, although there is merit to some of the arguments raised by both parties pertaining to their 1982 salary proposals, it is the undersigned's opinion that the County's salary proposal is slightly more reasonable than the Association's in that even though it appears to be below the pattern of law enforcement settlements for that year, in terms of the actual salaries it would generate, it is more in line with comparable salaries, particularly at the Deputy I level, than is the Association's proposal, and the County has persuasively argued that it should not be required to be a wage leader in these difficult economic times..

## HOLIDAYS

### Association Proposal

Add one additional floating holiday to those holidays listed in 10.01 of the 1980-81 Agreement.

### County Proposal

No change in current agreement, which provides as follows:

For those holidays listed below on which an employee does not work, eight (8) hours at his straight time rate will be paid for:

- New Year's Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- The Day following Thanksgiving Day
- The Day before Christmas Day
- Christmas Day
- The Day before New Year's Day
- A Floating Holiday

### Association Position

With respect to the holiday issues, while either offer would maintain the County's relative rank in Southwestern Wisconsin, the Association's offer is well within the ballpark.

In addition, time off in law enforcement professions is becoming increasingly important because of the acknowledged effects of job related stress upon the physical and mental well being and the job performance of officers.

### County Position

Deputies working a 5-2, 5-3 work week schedule presently have the equivalent of eleven holidays. When the change was made from a forty-hour week to the present schedule, ten holidays were consolidated in the 5-2, 5-3 work schedule. The Association's proposal cannot be viewed as an attempt to catch up with comparable employees since the present schedule includes a very liberal method for obtaining time off.

### Discussion

Although comparisons on this issue with comparable law enforcement agencies are extremely difficult, if not impossible because of the different types of work schedules such agencies utilize, the undersigned believes the record is relatively clear that the County's holiday benefits are comparable with those afforded comparable law enforcement personnel, and that accordingly, particularly in this economic climate, it is more reasonable to maintain the status quo in that regard than to improve the benefit. Therefore, the County's position on this issue is deemed to be the more reasonable of the two.

## COMPENSATION FOR TRAINING

### Association Proposal

Delete 9.02. Add 22.02, to read as follows:

All Deputies will be compensated at their regular rate of pay while assigned to required training programs, including weapons practice, if such training occurs during their regular working hours. Any Deputy who is required to attend training programs



on his/her day off or outside his/her regular working hours shall be paid for such time according to provisions of Paragraph 9.01. Any such training time pay shall not be for less than a minimum of two (2) hours.

#### County Proposal

No change in current agreement, which provides:

#### ARTICLE IX OVERTIME

- 9.01 Any Deputy working overtime in excess of an 8-hour working shift shall be compensated at the rate of time and one-half of the Deputy's current rate of pay, or in lieu thereof and one-half hours for each hour of overtime worked, but the granting of such time off shall be subject to the efficient administration of the Department. The above shall apply for work performed on the Deputy's scheduled day off.
- 9.02 This article does not apply for duty performed under Article XXI - Training Program.

#### ARTICLE XXII TRAINING PROGRAM

- 22.01 The Sheriff is authorized to schedule such training programs as are deemed necessary to continually upgrade the efficiency and operational quality of the Department. The program may be offered at hours that coincide with a Deputy's regular tour of duty, or may be offered at other hours not during a regular tour of duty. The scheduling of classes is an administrative function to be determined by the Sheriff, taking into consideration such factors as the hours at which an instructor is available as well as the principle that as many men as possible are to be kept out on the highways in performance of their duties.
- 22.02 If training or schooling is required of a Deputy at hours other than during his regular tour of duty, the Deputy shall receive compensation represented by the amount of class hours attended at his current straight time hourly pay, but it shall not be less than a minimum of two hours.

#### Association Position

The great majority of comparable and statewide law enforcement agencies pay overtime rates for training similar to that proposed by the Association herein.

Furthermore, both the amount and timing of such training is a discretionary matter for the Command staff to decide. Thus, although there is a fixed training cost for 1982 under the Association's proposal, it can be greatly reduced in 1983.

#### County Position

Association witnesses testified that they have requested that additional training be provided by the Department and that such training cannot take place during regular work hours due to manpower problems.

Implementation of the Association's training compensation proposal would have a significant harmful financial impact on the County. The County is already having difficulties in absorbing increases in labor costs. If deputies must be paid overtime for attending

training that they have requested, the Sheriff may well have to severely curtail the training that is provided. This will undoubtedly have a harmful impact on the efficiency and professionalism of the Department.

### Discussion

There is unrefuted evidence in the record that the Association's proposal is much more in line with the practice in comparable law enforcement agencies than is the County's position. Furthermore, since the County has failed to demonstrate that it does not have the ability to fund comparable benefits for its law enforcement personnel, the Association's proposal is deemed to be the more reasonable of the two positions on this issue.

## PROMOTIONAL EXAMINATIONS

### County Proposal

Article VI - Promotions.

Add the following new paragraph to this Article:

- 6.07 Deputies who apply for a posted promotional position and then fail to show for the written test examinaion will be required to reimburse the County for the amount of cost charged by the testing agency for an individual test examination. Deputies who fail to show for such examination but whose absence is excusable under the guidelines as set forth by the Civil Service Commission will not be required to reimburse the County for the cost of the examination.

### Association Proposal

No change in the current agreement, which provides:

## ARTICLE VI PROMOTIONS

- 6.01 The County agrees that, wherever practical, keeping the good of the Department in mind, promotions to higher positions in the bargaining unit shall be made from within the unit. Promotions shall be made on the basis of promotional examinations.
- 6.02 Promotional examinations shall consist of a written test and an oral interview examination.
- 6.03 The written test score in a promotional job examination will be given a sixty percent (60%) weighting and the oral interview examination will be given a forty percent (40%) weighting. An exception to this will be an examination for the Sergeant position where the written score will be given a fifty-five percent (55%) weighting and the oral interview examination will be given a forty-five percent (45%) weighting.
- 6.04 Oral interview examinations will be conducted after the written test scores are received. The median score of all candidates taking the written examination for a specific position will determine the passing grade for eligibility to take the oral examiantion. If this passing median grade fails to provide enough candidates for the Civil Service Commission to certify three names to the Sheriff for each promotional position, then the Commission may allow the next highest scoring candidate(s) on the written test to take the oral examination until enough candidates have passed both examinations which will enable the Civil Service Commission to certify three eligible candidates for a position.
- 6.05 The results of the written test scores for each examination will be held in strict confidence. Written test scores will

be sent directly from the testing agency, McCann and Associates, to the Judge of Circuit Court Branch Eight (8), or in his absence, another Judge who is mutually acceptable to the parties. The Judge will notify the Civil Service Commission as to the candidates who have passed the written test.

- 6.06 A list of outside experts who will act as oral interview examination panelists will be developed by the Civil Service Commission, or the Commission's designee. Association representatives will review the listing of potential oral interview panelists. If the Association representatives raise an objection to a particular panelist(s) being included on the listing, such potential panelist(s) will be stricken from the listing. In the event new potential panelists must be added to the listing, such names will be submitted to Association representatives for their consideration. Once selected, the same oral examination panel will interview all eligible candidates for a specific promotional position.

#### County Position

The County's proposal merely seeks reimbursement for the actual costs to the County of giving one individual a promotional exam. This will not take anything away from Association members. In fact, the vast majority of members will never be affected by it since it only applies to Association members who post to take an exam; fail to show up; and have no reasonable excuse for the failure to take the exam.

#### Association Position

The County refused to permit applicants who felt unjustifiably denied an excuse by the Civil Service Commission to avail themselves of the normal grievance procedure. This is the primary basis for the Association's refusal to agree to the County's proposal. No member can be refused access to the grievance procedure for an alleged violation of guidelines set by an agency over which there is no control or even bargaining input, as long as the guidelines are incorporated in the labor agreement.

#### Discussion

Section 20.01 of the parties' Agreement provides:

A grievance is a difference of opinion between a Deputy or Deputies and the Management, or between the Association and the Management, concerning the meaning and application of the terms of this Agreement. It is agreed that grievances should be filed promptly and therefore any grievance must be presented within twenty-one (21) days after the known occurrence of the event giving rise to the grievance.

In the undersigned's opinion, said proviso clearly covers any dispute which might arise under the County's proposal over whether or not an absence is excusable under Civil Service Commission guidelines. On that basis, since there appears to be no other basic dispute as to the equity of the County's proposal, said proposal is deemed to be more reasonable than the Association's position on this issue.

#### USE OF COMPENSATORY TIME

#### County Proposal

Delete paragraph 1 a), b), c) and d) and replace as follows:

a) Compensatory time earned, a vacation day, a floating holiday or a kelly day could be used for such a purpose.

b) If none of the above days are available to a Deputy, then such Deputy would be allowed to trade days off with another Deputy.

c) If none of the above can be accomplished in order to give a Deputy a necessary day off, then such Deputy could work one of his/her normal days off and substitute that day off when needed.

d) All days off are subject to the efficient administration of the department.

#### Association Proposal

No change in agreement, which provides:

1) The Association representatives were concerned that because the existing paid holidays were incorporated into the new 5-2 and 5-3 work week schedule, Deputy Sheriffs would not have those holidays to use when a day off for a special occasion or a special reason was needed. The Command Staff assured the representatives that supervisory personnel would continue to cooperate with Deputies when such special reason days off were needed. Five ways of accomplishing this were set forth. Those five points were as follows:

- a) Compensatory time earned as a result of overtime worked could be used.
- b) A Deputy would be allowed to trade days off with another Deputy.
- c) A deputy could work one of his normal days off and substitute that day off for a day off when needed.
- d) A vacation day could be used for such a day off.
- e) A Deputy will be allowed to bank up to 8 hours of Court time for use as a day off. Once this 8 hour Court time bank is used for a day off, a Deputy will be allowed to bank another 8 hours of Court time for a day off purpose. However, a Deputy will not be allowed to bank more than two such 8 hours of Court time for day off purposes in a calendar year.

#### County Position

The County's proposal would merely prioritize the options that a Deputy has when seeking a day off for a special occasion or a special reason.

The change would not alter the ability of a Deputy to get a particular day off. It would merely improve personnel record-keeping and allow the Department to monitor and control the amount of accumulated compensatory time.

The proposal will not result in a financial loss to the deputies.

It is reasonable for management to request that a Deputy use his accumulated compensatory time before working his day off to get a particular day off.

#### Association Position

With respect to the County's proposal regarding the use of compensatory time off, the County failed to meet its burden of proof since no tangible evidence was offered demonstrating the severity of the alleged problem. In addition, not one comparable in support of its position was asserted by the County.

#### Discussion

The County has presented persuasive argument that its proposal

provides a fair way to enable it to reduce accumulated compensatory time and vacation days which must be scheduled or lost before the end of the year without harming the affected officers in any significant manner. Since the problem appears to be legitimate and the manner in which the County proposes to address it seems to be fair, the County's position is deemed to be the more reasonable of the two on this issue.

#### PROMOTIONS

##### County Proposal

Amend paragraph A.03 by adding the words "with a higher salary maximum" immediately following the word "classification" in the first sentence. The sentence would thus read:

When a Deputy is promoted to a position in a new classification with a higher salary maximum, his/her rate of pay shall be increased to the minimum pay of the new classification.

##### Association Proposal

No change in agreement, which provides:

A.03 When a Deputy is promoted to a position in a new classification his/her rate of pay shall be increased to the minimum pay of the new classification. If the Deputy's present rate of pay is equal to or exceeds this new minimum, his/her pay shall be increased to the rate of pay in the new classification range that is next higher than the Deputy was receiving at the time of reclassification.

##### County Position

The proposed change in paragraph A.03 would bring the paragraph into compliance with the intent of the parties when the language was negotiated. The Association has taken the position that any new job taken by a Deputy would result in a pay increase. The County's intent in negotiating the present language was to grant a pay increase if a new job was truly a promotion. Under the present language Deputies have demanded higher rates when they laterally transferred to new positions in the same pay classification. The County's proposal would assure that pay increases would occur only when a promotion to a position with a higher pay range maximum takes place.

##### Discussion

No evidence or argument has been submitted refuting the validity or reasonableness of the County's position on this issue. Accordingly, the County's position on the issue is deemed to be the more reasonable of the two.

#### TOTAL FINAL OFFER

Based upon the foregoing considerations, the County's final offer has been found to be more reasonable than the Association's as it pertains to salaries, promotional examinations, use of compensatory time, promotions, and holidays, while the Association's offer as it pertains to compensation for training has been found to be more reasonable than the County's. This conclusion alone supports the reasonableness of the County's total final offer. It is reinforced by the fact that the value of the Association's total 1982 proposal would appear to be in excess of 9.5%, when the value of all benefits are included. A settlement of that magnitude cannot be reasonably justified under current economic conditions, or on the basis of comparable data. In this regard, perhaps it should be noted that the undersigned has not been able

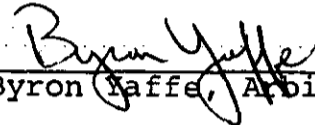
to ascertain the precise value of other Racine County settlements for that year based upon the evidence submitted, however, it seems clear that such settlements do not amount to 9.5%+ settlements.

Based upon all of the foregoing, the undersigned hereby renders the following

ARBITRATION AWARD

The final offer submitted by the County herein shall be incorporated into the parties' 1982-1983 collective bargaining agreement.

Dated this 5<sup>th</sup> day of April, 1983 at Madison, Wisconsin.

  
Byron Gaffe, Arbitrator