

In the Matter of Final and Binding
Arbitration Between

FEB 21 1983

WALWORTH COUNTY DEPUTY SHERIFF'S
ASSOCIATION

and

WALWORTH COUNTY (SHERIFF'S DEPARTMENT)

AWARD
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

Case LVII
No. 29407

MIA-659

Decision No. 19811-A

I. HEARING. A hearing on the above entitled matter was held on November 17, 1982, at 10 a.m. at the Courthouse at Elkhorn, Wisconsin.

II. APPEARANCES.

RICHARD E. REILLY, Attorney, GIMBEL, GIMBEL & REILLY,
appeared for the Union.

EUGENE J. HAYMAN, Attorney, LINDNER, HONZIK, MARSACK, HAYMAN
& WALSH, S.C., appeared for the Employer.

III. NATURE OF THE PROCEEDINGS. This is a proceeding in final and binding offer arbitration under Section 111.77 of the Wisconsin Municipal Employment Relations Act. The Walworth County Deputy Sheriff's Association, having petitioned the Wisconsin Employment Relations Commission to initiate final and binding arbitration pursuant to Section 111.77 (3) of the Wisconsin Municipal Employment Relations Act, the Commission investigated through its staff member, Lionel L. Crowley. This investigator reported on August 4, 1982, that the parties remained at impasse. Thereupon the Commission concluded that this impasse was within the meaning of the statute and that the condition precedent to compulsory final and binding arbitration as required by Section 111.77 existed. The Commission ordered compulsory and final binding interest arbitration pursuant to Section 111.77 (4) (b) to resolve the impasse. This action took place on August 10, 1982. The parties having chosen Frank P. Zeidler, Milwaukee, as arbitrator, the Commission appointed him on August 25, 1982. The hearing was held as shown on November 17, 1982, at which time the parties were given full opportunity to give testimony and present evidence and make argument. Briefs were exchanged on January 8, 1983.

The earlier contract expired December 31, 1981.

IV. THE OFFERS.

The Association offer is as follows:

"Retention of the present cost of living provisions with a 1-1/2% minimum and a 3% maximum and a fold-in of 100% cost of living in 1981 which is 9.69%."

The County offer is as follows:

"1. Full fold-in into base rate of the money generated by the cost of living clause for the year 1981 (approximately \$1,300):

"2. 3.5% wage increase across the board effective January 1, 1982:

"3. Delete all cost of living provisions in the 1982 contract:

"4. All prior contract language agreements stand as negotiated.
(See next page)."

V. FACTORS FROM SECTION 111.77 (6) TO BE CONSIDERED BY THE ARBITRATOR.

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

"(a) The lawful authority of the employer.

"(b) Stipulations of the parties.

"(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

"(d) Comparison of the wages, hours and conditions of employment of the 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."

VI. LAWFUL AUTHORITY OF THE EMPLOYER. There is no question here of the lawful authority of the Employer to meet either offer. There is a question as to whether the County's offer is ambiguous. Paragraph 1 of the County offer states "full fold-in into base rate of the money generated by the cost of living clause for the year 1981 (approximately \$1,300)." The Association states this phrasing has a "deceptive nature". The Association states that on its surface the language means the same as the Association offer which calls for a "fold-in of 100% cost of living in 1981 which is 9.69%." The ambiguity comes in the phrase "money generated by the cost of living clause for the year 1981..." This could be interpreted as the actual dollars generated during 1981 or the money generated by multiplying the base by the year-end percentage rise in the consumer price index. These are two different amounts as shown later. The arbitrator believes that the phrase in the Employer's offer "(approximately \$1,300)" is sufficiently descriptive about the intent of the County so as to dispel any doubt about how the County intends to apply the provisions of its offer.

VII. STIPULATIONS OF THE PARTIES. The parties have stipulated to all other matters in the successor agreement other than those in dispute. The stipulations are these:

1. Increased major medical maximum to \$250,000.

2. Vacations: added 5 weeks after 23 years of service.

3. 100% payment of insurance for active employees.

4. Call-in of 2 hours at rate of time and one-half regular rate of pay.
5. Discipline and discharge to be for "just cause."
6. Funeral leave.
7. Car mileage rate as approved by County Board.
8. Jury duty pay.
9. Seniority revisions.

VIII. INTERESTS AND WELFARE OF THE PUBLIC. This matter is related to all other aspects of the dispute and will be treated in the discussions following.

IX. FINANCIAL ABILITY OF THE EMPLOYER. There is no question here of the financial ability of the Employer to meet either offer, but a question of the appropriateness of the Employer meeting the Association offer.

X. COMPARISON OF WAGE OFFERS. The following table gives a comparison of the wage offers of the parties. The calculations are those of the arbitrator since no exhibits presented by either party showed the full costs herein. To a certain extent both offers have a nebulous quality, and if the following exercise were not assayed, it would be difficult to make proper comparisons.

Table I

CALCULATED COSTS AND PERCENTAGES IN 1981 WAGES
AND 1982 WAGE OFFERS, TOP DEPUTY SHERIFF

A. 1981 Experience

1. 1981 monthly base rate = \$1,752.51
2. 1981 annual base rate = \$21,030.12
3. 1981 quarterly base rate = \$5,257.53
4. Quarterly rate x quarterly COLA in 1981
 - \$5,257.53 x 2.51% = \$ 131.96
 - \$5,257.53 x 4.85% = 254.99
 - \$5,257.53 x 7.69% = 404.30
 - \$5,257.53 x 9.69% = 509.45
 - \$1,300.70
5. Total COLA money generated, 1981 = \$1,300.70
6. 1981 total income (base + COLA)
 - \$21,030.12 + \$1,300.70 = \$22,330.82
7. 1981 monthly income (average) = \$1,860.90

B. County Board Proposal

1. Proposal for 1982:
 - \$22,330.82 + 781.58 = \$23,112.40
2. County proposal for 1982; monthly average wage rate without COLA
 - \$23,112.40 ÷ 12 = \$1,926.03
3. Percentage increase, 1981 to 1982 = 3.5%

C. Association Proposal

1. Actual COLA percentages increases, 1981, by quarter:
 - 2.51 + 2.34 + 2.84 + 0.7 = 8.39%
2. COLA percentages increases under provisions of agreement, 1981, by quarter:
 - 2.51 + 2.34 + 2.84 + 2.00 = 9.69%

Table I - continued

3. Association proposal for 1982, base rate upon which COLA is to be calculated: 1981 base plus fold-in of 9.69%.
 $\$21,030.12 + 2,037.82 = \$23,067.94$
4. Monthly base rate = \$1,922.33
5. Anticipated total income under proposal to have a 1.5% minimum per quarter, 1982:
 Quarterly base + COLA = \$5,766.98
 $\$5,766.98 \times 1.5\% = \$ 86.50$
 $\$5,766.98 \times 3.0\% = 173.01$
 $\$5,766.98 \times 5.7\% = 328.72$
 $\$5,766.98 \times 7.2\% = \underline{415.22}$
 $\$1,003.45$
6. Total income under Association proposal:
 Base plus COLA payments
 $\$23,067.93 + \$1,003.45 = \$24,071.37$
7. Average monthly rate = \$2,005.95
8. Percentage increase in total income
 Base plus COLA, 1981 to 1982 = 7.79%

The above information produces this summary:

Table II

TOTAL INCOME, BASE PLUS COLA, 1981, AND
 PROJECTED INCOME 1982 UNDER WAGE PROPOSALS
 FOR TOP DEPUTY

1981	Association	% Inc.	County	% Inc.
Base	\$21,030.12		\$21,030.12	
COLA benefits	<u>1,300.70</u>		<u>1,300.70</u>	
Total Actual Income	\$22,330.82		\$22,330.82	
1982				
Base			\$22,330.82	
+ 3.5%			<u>781.58</u>	
Total Actual Income to be received			\$23,117.00	3.5
Base	\$23,067.94			
COLA benefits	<u>1,003.45</u>			
Total Actual Income to be received	\$24,071.39	7.79		

The following information is derived from County Exhibit 18, Association Exhibits 3, 9 B, 9 C, 9 D:

Table III

BASE RATE, ANNUAL INCOME, AND PERCENTAGE INCREASES
FROM 1976 TO 1982, WALWORTH COUNTY TOP DEPUTY

<u>Year</u>	<u>Monthly Base</u>	<u>Annual Base</u>	<u>Income From COLA</u>	<u>Total Income</u>	<u>COL Inc. %</u>	<u>% Actual Wage Inc.</u>
1976	1,214.17 ⁽¹⁾					
1977	1,214.17	14,570.04	513.96	15,084.00	5.49 ⁽²⁾	
1978	1,214.17	14,570.04	1,616.19	16,186.23	14.41 ⁽²⁾	7.31
1979	1,214.17	14,570.04	3,242.93	17,812.97	26.85 ⁽³⁾	10.05
1980	1,262.75 ⁽³⁾	15,153.00	5,315.67	20,468.67	38.78 ⁽²⁾	14.91
1981	1,752.51 ⁽⁴⁾	21,030.12	1,300.70	22,330.82	9.69 ⁽⁵⁾	9.10
1982						
Assn.	1,922.33	23,067.94	1,003.45	24,071.37	7.2	7.79
County	1,926.41 ⁽⁶⁾	23,116.96 ⁽⁶⁾	<u>No COLA</u>	23,116.96		3.5

1. Base for 4th quarter, 1976
2. Cumulative
3. 4% added to base of \$1,214.17
4. 38.78% added to base of \$1,262.75
5. 9.69%, contract increase; 8.39%, actual increase
6. Flat rate, no COLA: \$22,335.23 + 3.5%

No overall costs for this schedule were presented by either party.

XI. COMPARABLE DISTRICTS.

The Association used for a list of comparative governmental agencies the following counties: Milwaukee, Rock, Washington, Waukesha, Dane, Jefferson, Racine, Kenosha, and Walworth. It used the following municipalities also: Janesville, Kenosha, Madison, Waukesha, West Bend, Watertown, Whitewater, Racine. Of these governmental agencies, only Racine and Walworth County have COLA systems.

The County presented a series of exhibits (Exhibits 10-15, incl.) in which it considers four counties as comparable. These are the counties: Walworth, Jefferson, Rock, and Washington. These counties are considered not comparable: Waukesha, Kenosha, and Racine. The principle basis for the County selection is the degree of urbanization; the latter three counties are considered urbanized whereas Walworth County is considered more of a rural county. The following data especially pertinent to this issue is abstracted from the exhibits:

Table IV

COMPARISON OF SELECTED CHARACTERISTICS OF SEVEN COUNTIES

<u>County</u>	<u>Area Sq. Mi.</u>	<u>1981 Pop.</u>	<u>Assessed Val./Sq. Mi.</u>	<u>1979 Farm Acres</u>	<u>1978 Farm Oprs.</u>	<u>% F.O. of Pop.</u>	<u>No. Non- Agric. Employees</u>	<u>% Pop. in Cities 1st-4th Class</u>
Walworth	557	71,507	\$ 3,730,891	272,900	1,202	1.68	27,000	30
Jefferson	564	66,152	2,453,825	288,000	1,783	2.69	24,000	63
Rock	721	139,420	3,773,342	397,300	1,750	1.26	49,000	70
Washington	429	88,848	4,637,034	198,000	1,210	1.43		33
Waukesha	554	280,326	13,320,888	170,100	1,089	.39		51
Kenosha	272	123,137	8,607,173	107,200	599	.49	43,200	73
Racine	337	173,132	9,823,849	139,000	906	.52	61,700	81

Another method of determining comparability of counties used by the County was to list the number of crimes that would come under a Crime Index. The following is summarized from County Exhibit 14:

Table V

CRIMES INCLUDED IN A CRIME INDEX FOR SELECTED COUNTIES
AND RATIO OF POPULATION PER CRIME

<u>County</u>	<u>Violent Crimes</u>	<u>Property Crimes</u>	<u>Total of Crime Index Offenses</u>	<u>Ratio of Pop. Per Crime</u>
Walworth	55	2,981	3,036	23
Jefferson	87	2,157	2,244	29
Rock	232	8,529	8,761	16
Washington	73	3,094	3,167	27
Waukesha	226	9,506	9,732	29
Kenosha	309	8,734	9,043	14
Racine	909	11,277	12,186	14

The Association did not address this issue of comparability, except that in the hearing through cross examination questions were raised about why Kenosha County was excluded for comparability while Rock County with a larger population and a larger non-agricultural population was included. Also questions were raised as to whether in counties alleged to be urban, Sheriff's deputies were not involved in urban assignments, but in rural assignments only.

The County holds that cities, particularly the larger ones outside the County, are appropriate, because the duties and responsibilities of policemen are quite different from deputies, and cities and counties serve different types of geographic areas and governmental interests. The County holds that Milwaukee, Dane, Racine and Kenosha Counties are not comparable based on the reasons set forth in its exhibits. Rock County however is included as a comparable county because of farming, assessed valuation, and criminal activity, although in other areas of urbanization it is not comparable. The County contends that the Association did not introduce any special evidence to justify its selection.

Discussion. While almost any type of comparisons of governmental units has some value, some units are more comparable than others. Thus it is and has been the opinion of this arbitrator that where the pay of Deputy Sheriffs is concerned, a comparison between counties is more valid than a comparison of county deputies with local police officers. Also with respect to comparison with municipalities, the wages of Sheriff's deputies tend to relate more closely with the wages of police officers in cities within the region, and relate less closely with police in small governmental units within the County.

Thus in the opinion of this arbitrator, the primary comparison to be made is among counties; comparison with police in nearby cities constitutes a secondary comparison and comparison of deputies with local county police a tertiary type of comparison. Thus the comparisons which would be most valid under the above standards are comparisons between Walworth, Jefferson, Rock, Washington, Waukesha, Kenosha and Racine.

As to these counties, the County here says that the more comparable group consists of Walworth, Jefferson, Rock and Washington Counties. An inspection of the information displayed in Table IV would tend to group Walworth, Jefferson and Washington Counties as more rural than the others. The County uses for comparison Rock County with 1.26% of its population as farm operators, which nevertheless has a larger population than Kenosha County. Rock County also has more non-agricultural

employees than Kenosha County. Once Rock County is included, the arbitrator sees no reason to exclude Kenosha County or even Racine County. Waukesha County is becoming more urbanized, but with only 51% of its population urban as compared to 70% in Rock, it too ought not be excluded. The arbitrator then believes that the County has not made a case for its four county comparables as compared to the seven comparables, since the data dividing urban from rural does not support the distinction being made, as long as Rock County is included.

Milwaukee and Dane Counties by virtue of their size are not in the highest set of comparables among counties, but are included in later discussions because of what wage rates they show.

XII. COMPARISON BETWEEN GOVERNMENTAL UNITS EMPLOYING DEPUTY SHERIFFS AND POLICE OFFICERS. The Association provided a series of exhibits showing the comparison of Walworth County with other units of government for certain years. It used the base wages only for Walworth without the income generated by COLA. The other counties do not have COLA. The arbitrator believes that using base wage without showing income generated by COLA does not afford a comparison of actual wages income (excluding overtime, shift time, etc.). Thus in the following table the arbitrator has endeavored to show what the comparisons for counties are in actual income received. The information is derived from Association Exhibits 2 A-F.

Table VI

MONTHLY WAGE RATES, (TOTAL INCOME), TOP DEPUTY SHERIFFS,
FOR SELECTED COUNTIES FOR SELECTED YEARS

<u>County</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>% Inc. 1981-1982</u>
Walworth ⁽¹⁾ Assn. County	1257	1348	1484	1706	1861	2006 ⁽⁴⁾ 1926	7.8 3.5
Jefferson	1078	1182	1243	1401	1484	1680	13.2
Rock	1249	1324	1417	1544	1683	1783	6.0
Washington	1213	1298	1389	1486	1635	1772	8.4
Waukesha	1204	1276	(3)	(3)	1624	1738	7.0
Kenosha		1294 ⁽²⁾	1333 ⁽²⁾	1482	N.A.		
Racine	1115	1323	1343	1610	1744		
Dane	1165	1235	1313.87	1509	1661	1681	1.2
Milwaukee	1323	1415	1504	1660	1828	2022	10.6

(1) Walworth figures are average monthly rate

(2) Plus an unknown COLA

(3) County and city not distinguished in Assn. Ex. 2 D, 2 C

(4) Average monthly rate

The following is derived from Association Exhibit 2 A:

Table VII

MONTHLY WAGES FOR TOP PATROLMEN, 1982, SETTLED CONTRACTS
IN SELECTED MUNICIPALITIES

<u>Municipality</u>	<u>Wage</u>	<u>Municipality</u>	<u>Wage</u>
Janesville	1,911	Kenosha	1,820
Madison	1,802	Waukesha	1,790
West Bend	1,785	Watertown	1,667
Whitewater	1,577		

The following is derived from County Exhibit 16:

Table VIII

1982 MONTHLY WAGES FOR TOP PATROLMAN,
WALWORTH COUNTY GOVERNMENTAL UNITS

<u>Govt. Unit</u>	<u>Wage</u>	<u>Govt. Unit</u>	<u>Wage</u>
Delavan, Town	1,475	Darien, Vil.	1,310
Whitewater, City	1,577	Lake Geneva, City	1,554
Delavan, City	1,568	East Troy, Town	1,665
Fontana, Vil.	1,367		

The Association Position on Base Wages. The Association states that its method of computing the deputies' base salary for 1982 is a method used during the contract years 1977 to 1980, whereas the method used by the County is new and arbitrary. This offer was not negotiated, but advanced by the County during the final offer hearing. The Association believes its method is more reasonable, because it is in keeping with the spirit of the 1982 negotiations, the language of the 1981 contract and the previously accepted practice.

The Association notes that folding-in of COLA began with the 1980 contract, when the County agreed to add 4% to the 1976 base and to pay quarterly COLA. In return for this the Association agreed to forfeit a "most favored nations" clause and other fringe benefits. This was a substantial concession, because the Association risked losing benefits enjoyed by deputies in comparable communities. The Association also agreed to a maximum quarterly COLA of 3% with a 2% minimum. This represented "give-and-take" in bargaining. This led to a COLA folded in 1981 to produce the base of \$1,752.51 per month. This action boosted the Walworth deputies' salary into line with salaries of deputies in comparable communities. Before using COLA the salaries of the deputies lagged far behind, and the base pay increase was needed for quality law enforcement and so that deputies were not lost to higher paying counties.

The Association contends that the 38.785% increase in 1981 did not represent a wage earnings increase and did not represent a gain in real income or purchasing power, but was merely reflecting the change in the cost of living experienced during 1977-79 by all workers nationwide. It enabled Walworth County deputies to keep pace with the increased cost of living. This same principle is the one relied on for the Association's 1982 offer. Folding-in reflects the bargaining process and reflects the best interests of both parties, and the Association considers this the most important principle involved in this proceeding.

The Association is contending that the County and the Association orally agreed at the final offer hearing that the same method of folding-in as previously used would obtain. A new base after a preceding year reflected the contractual minimum or maximum percentages agreed upon. The Association states that this is the method used to determine the new base rate for 1982 to be at \$1,922.32. The Association is willing to balance its interest in retaining this fold-in by agreeing to lower the minimum COLA adjustment from 2% to 1.5%. The Association says that this also is give-and-take in bargaining, it was a formula supported by both parties in 1980 and 1981, and it is the only quantifiable formula set forth in this proceedings.

The Association holds that the County is proposing to eliminate COLA without a sufficient reason and without a reasonable alternative. The County is arbitrarily proposing a \$1,300 increase in the annual base, and would then arbitrarily offer a 3.5% increase for the COLA. The Association says that the County is rejecting COLA as based on an index too imprecise, and on the results of a job study it conducted which it now claims shows that the deputies are overpaid.

The Association says that the County's final offer is worded deceptively about fold-in. It appears on the surface to support the principle of fold-in, but then the County applies a parenthetical statement that the figure to be folded-in would be approximately \$1,300. The figure of \$1,300 cannot be justified by a cost of living gain of \$1,300. It notes that 9.69% of the annual base generates the sum of \$2,037.81.

The Association notes that if the County ignored the minimum provision of COLA for the 4th quarter, COLA would be at 7.71%, and this would generate a \$1,752.51 base. The County's offer of \$1,300 can be generated only by using a COLA of 6.18%. This is a "blue sky" pattern, and it was not explained by the County at the final hearing, and it does not represent good faith bargaining.

The County and the Association both address the matter of the internal study, and this will be dealt with in the discussions on comparisons of employees in the same service of the County.

The County Position on Base Wages. The County asserts that the wage rates paid Walworth deputies exceed the wages for deputies in comparable counties. The County notes that the Association Exhibits 2 A-F show monthly salaries without COLA. The COLA supplement is actually a part of the package of costs, and the principal witness of the Association acknowledged it. An examination of Association Exhibit 2 A even without adding the COLA to Walworth County or the proposed 3.5% increase, shows that the monthly rate of Jefferson deputies is below the Walworth rate, and that the rates in Rock and Washington Counties are only slightly above. With COLA the actual salary rate is \$1,861.00 per month, which rate is the true earnings of a deputy. This rate completely overshadows the rate paid deputies in comparable counties. This rate is higher than the rate for any governmental units listed by the Association except Janesville City and Milwaukee County. When the County's offer of 3.5% is added, the rate becomes \$1,972.66 which is only \$49 below the Milwaukee County rate. In the case of 1981 salaries, Walworth County ranked third in the Association list. Thus the 1981 total compensation rate put Walworth County above comparable counties. With the proposed fold-in of \$1,400 (sic) by the County, the Association will rank above all municipalities listed by the Association except Milwaukee. Walworth County deputies have leaped ahead of other deputies in other counties.

The County offers the argument that if the principle of "catch-up" justifies a larger than average increase, then the principle of "catch-down" should equally apply when wage increases have placed employees in a position where they are above comparables. However, the County offer here is also not a "catch-down", but preserves the salary advantage of the Walworth deputies and even in one case increases it over comparables. The County states that its monthly rate in 1982 would be \$1,985, and at this rate the County would improve its position to Rock County.

The County rejects the argument of the Association on giving up the "most favored nation" clause and unlimited salary differential payments in workers' compensation. The benefits are the same for all Walworth County employees, and the Association introduced no evidence to show any loss. The County says that the evidence in the hearing showed that the Association got a 4% COLA in 1980, and the County agreed to pay 50% of the health insurance benefits to retired deputies with 20 years' experience. In 1981 the County folded the COL for four years into the base at 38.785%; and under the minimum provision for the quarterly COLA the employees will be receiving more than the actual change in the cost of living.

The County also notes that the wage rates paid Deputy Sheriffs in Walworth exceed substantially the wage rates paid for local police officers.

Discussion. The matter of what constitutes the wages of the deputies in Walworth under the COLA arrangement needs to be considered first. It was the Association's contention that only the base rate should be used in comparison with other base rates, and that the sums generated by the COLA were something that the employees earned by working. It is true that the sums generated by the employees are something they earned by working so that therefore they constitute a part of the total wage income, and are not something on the order of shift differential or overtime which are not customarily considered in base wages. Thus the basic earnings of an employee are the monthly base pay plus the cost of living adjustment sums. In Walworth County under COLA this means that the employees' wage rates vary every three months, and therefore the real comparison must be made on the annual income. However it is convenient to make an estimate of the average income for purposes of monthly comparisons where the wages of other governmental units are expressed in monthly amounts. The method used by the Association in comparing only its base rates in Association Exhibits 2 A-F is not capable of supplying a correct picture of wage rates on monthly averages. Since neither of the parties in their exhibits spelled out exactly what annual incomes their offers were projecting or what the average monthly income would be, the arbitrator has developed this information in Table I to arrive at annual income, monthly average income, and percentage increases. Table II gives the summary, and Table III gives an historical development of annual income and percentage increases.

The monthly fixed rates for counties in the combined Association and County lists together with the Walworth average monthly income are given in Table VI. An inspection of Table VI shows that the average monthly wage for deputies in Walworth County was second to Milwaukee County when all counties are considered, whether of primary or secondary comparative value, for 1977, 1978 and 1979. Walworth County was highest in 1980 and 1981 and will drop to second behind Milwaukee County under either offer in 1982.

As far as the dollar amount of the County's offer, the offer is a reasonable one in that the deputies drop only one place in rank from the previous year.

The Association has made an argument that the percentage increase offered by the County is not in line with the percentage increases offered elsewhere. It did this through the testimony of its witness, Prof. Richard Perlman. Table VI supports this contention in that the general range of settlements except for Dane County is above 6% with a top of 13.2% for Jefferson where there appears to have been a catch-up situation.

A main argument offered by the Association is that the County's offer is simply arbitrary and based on no comparisons, that it abandons a past practice and custom of applying the rise in the cost of living index, and that it is abandoning COLA itself, something which was achieved in negotiation. Further the County did not do these things until a final offer negotiating session. The arbitrator is well aware that arbitrators in Wisconsin have acted upon a principle that a past practice or benefit should not be changed unless there is a substantial reason shown for it. However in this matter, the County showed a substantial reason for possible change in that the wage rates for top deputies in a relatively rural county are exceeding those in urbanized counties. The County has some justification in feeling that its rates are out of line based on the size and economic character of the County.

The conclusions of the arbitrator are then that the County offer in dollar increase is reasonable, but that the percentage increase of the County is too low in comparison with other percentage increases in comparable counties.

It is necessary to comment here on the effect of abandoning the use of COLA. The proposal to stop the use of COLA where it has been in use for a number of years is not one to treat lightly. However, if the use of a COLA provision and fold-in produces a wage base which is out of line when judged in comparison with other comparable counties, then the COLA provision should not be considered sacrosanct. The test is whether the wages being paid compare to what is being paid for like service in other comparable settings. The County's argument of slowing down the spread between its deputies and those in comparable settings has some merit. However, the arbitrary selection of a figure of 3.5% for a wage increase seems to have been made by the County without a sufficient rationale, particularly in view of the discussion which follows.

XIII. COMPARISON WITH OTHER EMPLOYEES IN WALWORTH COUNTY EMPLOYMENT.

Association Exhibit 5 A is a resolution of 5/18/82 of the Walworth County Board giving elected officials a 6% increase, together with certain other increases in fringe benefits for employees. On the same date the County Board granted key personnel in the Sheriff's department an increase of 5% with an additional amount of 2% to be used for merit increases, and granting some fringe benefits.

The following information was derived from Association Exhibit 8 A which was a photocopy of an article in the Walworth County Week of August 31, 1982. The full article was not submitted, but data on salaries in 1981 and 1982 for elected, appointed and other County officials were given. Where the 1981 and 1982 salaries were presented, they are listed with percentage increases in the following table:

Table IX

SALARIES OF SELECTED WALWORTH COUNTY OFFICIALS,
1981 AND 1982 AND PERCENTAGE INCREASES

<u>Position</u>	<u>1981 Salary</u>	<u>1982 Salary</u>	<u>% Inc.</u>
Elected Officials			
Clerk of Courts	\$24,212	\$27,585	13.9
County Clerk	24,981	32,375	29.6
Register of Deeds	24,212	27,585	13.9
County Treasurer	27,070	30,678	13.3
Sheriff	32,014	35,967	12.3
District Attorney	29,933	33,743	12.7
Appointed Officials			
Corporation Counsel Part-time	19,492	19,609	0.6
County Auditor	16,779	18,933	12.8
Other Officials			
Aging Services Director	21,524	23,579	9.5
Veterans Service Officer	22,194	25,741	16.0
Personnel Director	21,600	27,707	28.3
Zoning Administrator	23,489	26,250	11.8
Data Processing Manager	25,873	30,894	19.4
Register in Probate	19,441	22,784	17.2
Public Health Nursing Director	21,600	25,041	15.9
Social Services Director	31,935	36,054	12.9
Nursing Home Administrator	30,510	30,000	- 1.7
Highway Commissioner	29,494	33,300	12.9

Association Exhibit 8 G was a story in an Elkhorn paper that the Budgets and Accounting Director's salary was raised in 1982 by \$4,500 to \$33,500, a raise of 15%.

Association Exhibit 8 F was a news story from an unidentified source in an unidentified publication to the effect that elected Walworth County officials are among the highest paid in the State of Wisconsin, while salaries for non-elected and non-appointed officials are comparable with similar officials in other counties with similar populations. However, Exhibit 8 A in listing the Walworth County wages, indicates that the officials therein listed are high or among the highest in their population categories and in the state.

The County in this matter is placing a principal emphasis on the results of an internal equity analysis made under the direction of a firm, Hay Associates. The County had a group of its employees give point ratings to jobs based on such things as responsibility and specific activities. Some of the deputies were assigned by their supervising officers to fill out the initial employee position questionnaire and at least some deputies did so after orders. Thereafter under the instruction and guidance of a staff member of Hay Associates, a group of employees from different kinds of employment in Walworth County gave point ratings to all positions. According to the representative of Hay, the point rating for the deputies (4th year) came to 292 as compared to the point rating for the undersheriff at 732.

The survey resulted in a point rating being given to all Walworth County positions, and these points being plotted on a graph with one axis representing the point rating and the other axis being the dollars paid to a given position. According to the Hay representative, the method of linear regression analysis then was used to arrive at a central tendency through the plotted points. From this central straight line was derived a set of outside lines representing 85% and 115% of salary payment of the line of central tendency.

The two outside lines at 85% and 115% define what is called a "cone". The ideal principle according to Hay is the payment of equal dollars per point. This principle, if properly applied, would produce first a straight line central tendency, and then all points falling within the cone. A sharp break in the cone is regarded adversely, as is a position which falls outside of the cone.

A cone graph of this type was produced for the public safety current salary practice in the state with a straight line median running from about \$15,000 for 150 points to \$30,000 for 750 points. Against this Hay plotted a graph which it states represents the current salary practice in Walworth County for public safety employees. This graph had a steep initial rise to about 315 points, exceeding the slope rise of the median and thereafter a straight line was projected to the positions with higher points at a slope less than that of the median. According to Hay this represents overpayment of employees at the lower level and a compression on the pay at the higher level. The four year Walworth deputy rate lay outside the cone of the line representing the top of 90% of all salaries. The Undersheriff's salary lay a little above the median line (Co. Ex. 4).

County Exhibit 7 was a cone graph representation of an internal equity analysis for all occupations in Walworth County as of June 1982, and it showed the compensation for deputies to lie above and outside the 115% line.

County Exhibit 8 was a cone graph of internal equity analysis for nursing and health care occupations in Walworth County. It presented a straight central line with no "dog-leg", and according to the Hay representative, this represented a desired type of compensation arrangement.

County Exhibit 9 was a cone graph of internal equity analysis for the Walworth County public safety occupations of June 1982. It was a cone graph with a steep rise from 150 points to 315 points and a flattening thereafter. In this graph, the deputies were represented at the middle or current salary practice line at around \$23,500 at 292 points and thereafter there was a sharp break in the line after the next highest position on the graph. According to the Hay representative, this public safety occupations graph showed the salary compression on the persons in the higher jobs.

Association Exhibits 8 B and C was a copy of a newspaper article of unknown date or paper, reporting on a discussion in the Walworth County Board raising questions on the Hay study and evoking support for it. At the time of the hearing the proposal had not been officially accepted.

According to the testimony of the Personnel Director, in 1982 Walworth County health care workers, classified non-union employees, and professional non-represented employees received a 7% increase, and key personnel and department heads received a 5% increase. No data in the form of documentary evidence was submitted by either party on this issue of comparable percentage increases for lower level employees in the County service.

In its Exhibit 18, the County projected the gains of an employee at a hypothetical \$12,000 annual income in 1976 with an AFSCME union employee at the same theoretical annual wage. The data presented by the County indicates that the deputy would have had a gain of \$10,404 by 1981, or would have received 14.3% more.

The Association's Position. The Association says that there are unequal wage percentage increases, but its principal contention is that the arguments developed on the basis of the Hay study are not proper in the context of final offer arbitration. It also applies this to cost of living figures. It claims that the goal of final offer arbitration to establish a workable agreement after good faith bargaining has failed and has been frustrated by the County's last minute attempts to undermine the previous rationale worked out between the parties for a wage program. The use of the Hay study should be restricted to negotiating only. It prices law enforcement personnel as it would a commodity, and the study does not serve the best interests of the public by the way it was done. It also lowers the value of Deputy Sheriff's service in relation to other County employees, and it lowers morale. The Association does not dispute the use of the study, but says it only should have been a starting point for negotiations, and not put in the final offer. Further the study itself produces results that are inconclusive and of questionable validity. The County itself does not have complete confidence in the efficacy of the study. The Association says that using this study at the final offering hearing amounts to raising an issue for the first time after negotiations have closed, and this is clearly a prohibited practice under Wisconsin Statute 111.77 (Milwaukee Deputy Sheriff's Association v. Milwaukee County, 64 Wis. 2d 651,655; 221 N.W. 2d 673 (1974)). The County's use of the Hay study places doubt on the good faith bargaining of the County. It knew its position would be supported by the expensive study which it sponsored. The Association says that the County made use of arbitrary wage offers to fit the results of the study.

The County's Position. The County states that the continuation of COLA will accelerate the already existing inequity of pay rates with respect to jobs in other County departments. The Hay study was competently made, and seven Deputy Sheriffs provided data. The exhibits show that the deputies income falls outside the 115% maximum range for all occupations, and so do other jobs in the Sheriff's department. The internal inequity is serious. Where inequities existed, it was the County practice to grant one-half of

the increase given to other employees. The compression on management as a result of high incomes for deputies and sergeants reduces the incentive to compete for supervisory positions. The complaint of the Association that few deputies can rise to higher positions is answered by their opportunity to compete for a supervisory position or getting a better job elsewhere; and this is the same for all employees in the County or in private employment.

The County considers the Hay system a method which is nationally used and which has been approved by the U. S. Supreme Court and is currently being used in other Wisconsin counties. Its use was not one taken on the spur of the moment, and the Association did not prove that the system and methodology were unfair, not objective, or discriminating in any way against the job classification of the Deputy Sheriff. The Association's expert witness, Prof. Perlman, did not give any credible reasons for not using the plan nor did he give any viable alternatives. The argument of the Association merely is that COLA had propelled its members to a high position and they want to stay there.

Discussion. There are two matters to be considered here with respect to internal comparisons on pay. One is the value of the study authorized by the County, and the other is percentage rises granted to other employees internally. The arbitrator does not regard the use of the study under the Hay system as barred because it was brought in at the final hearing. It is apparent from the evidence that the Association knew about it, and from the reluctance of some deputies to participate, they had some idea that it was going to be used to downgrade their pay status. While the matter of how the study was done and how positions are given points must certainly be opened to challenge, and whether a straight line tendency is the desirable tendency, yet the net effect of the study is to point out what can be ascertained from less involved procedures, namely that Walworth deputies have a higher salary than generally is found for deputies in other units of government.

In the opinion of the arbitrator, the most significant matter is that of percentage increases in the public service in Walworth County. It should be noted that percentage increases shown in the document, Association Exhibit 8 A, (Table IX) are very substantial. However, if it is granted that management can treat its management personnel different from other employees not in management, yet the inequity of percentage increases at 3.5% proposed for the deputies as compared to 7% for other employees, is another matter. If this is accepted in this arbitration, it would make for a worsening morale of the public safety employees, in the opinion of the arbitrator. The matter of their morale involves the matter of the welfare and interest of the public. Also, the Association offer, being more comparable to what has been granted than the County's offer, meets the statutory criterion on comparability within the same governmental unit. Thus the arbitrator believes that the weight of the factors of public interest and of comparability also falls to the Association offer here when internal comparisons are made.

A less drastic commencement of the downgrading of the deputy salaries, if deemed required by the County, would seem indicated based on some rationale other than an arbitrary decision to give them merely half of the percentage increase other employees enjoyed. It is this factor that the arbitrator deems as a source of potential loss of morale on the grounds that the action appears discriminatory.

XIV. COMPARISON WITH EMPLOYEES IN THE PRIVATE SECTOR. County Exhibit 17 A presented a list of private employers it had canvassed in Walworth County municipalities as to average straight time hourly rates. Twenty firms were listed. Three firms had a rate above \$9.00 per hour with one at \$9.75 being marked as a rate attributed to high skilled workers in a high technology industry. One firm had an \$8.00 rate, and three firms had a

rate of \$7.00 or higher. The rest were \$6.00 rates or lower. With a 40 hour workweek, or 2,080 hours a year, the Walworth deputies would be averaging \$11.11 per hour under the County's offer and \$11.57 under the Association's offer. The County contends that the deputies' entry rates are higher than any of the wage rates in private industry, and under the County offer the top rate will be \$1.35 more than the highest private rate.

Discussion. It is difficult to compare deputies, policeman and firemen with employees in outside work, but from the evidence here, the County offer will produce a wage rate very favorable in comparison to the rates found in outside employment in the County.

XV. OVERALL COMPENSATION. No exhibits were presented by either party to show the effect of overall compensation, roll-up costs or percentage increases. Certain stipulations were agreed to by the parties in the contract. They have been listed earlier.

The County argues that these stipulations mean an increased cost to it, and this cost must be considered as a part of the 1982 settlement.

Discussion. There is not sufficient evidence in the matter of overall compensation for the arbitrator to do anything but surmise that because of base wages, the overall compensation of Walworth deputies might compare favorably with the overall compensation of deputies elsewhere. As to the stipulations, the arbitrator cannot judge whether the stipulations represent a catch-up situation or an advance. For the foregoing reason, no conclusive judgment on the factor of overall compensation is expressed here.

XVI. COST OF LIVING. County Exhibit 19 presented changes on the consumer price index for all urban wage earners and clerical workers (CPI-W). This contract was to have been renewed in January 1982. The CPI-W index stood at 282.1 representing an 8.2% increase at that time. In August 1982 the index stood at 287.9 representing an increase of 5.8%. During the pendency of the proceedings, the CPI-W showed an annual increase in December 1982 of 3.9%.

The County notes that the economy is in recession, and the consumer price index has dropped dramatically. Thus there is absolutely no justification for the deputies to receive a minimum of 6% based on the CPI, when the CPI in the first eleven months of 1982 rose only 4.5%.

The Association notes that its proposal is based on the changes in the cost of living index, a practice which grew out of bargaining.

Discussion. The question here is what phase of the CPI-W to apply to this matter. The County notes the drop in the increases in the CPI-W during the course of 1982. The arbitrator believes, however, that the CPI-W index at the time of expiry of the last agreement and the time to which the new agreement is retroactive should apply. The time to consider is the January 1982 index. In January 1982 the increase in the CPI-W was, as shown above, 8.2% over the previous year. Thus the Association offer which would fold-in a 9.69% increase is more comparable than the Employer's offer of a 3.5% increase over actual wages. The Association offer would produce a 7.8% increase in actual wages, although the 9.69% exaggerates the actual increase because of the provision in the contract for a 2.0% minimum increase.

XVII. OTHER FACTORS - BURDEN OF DUTIES. It is an Association contention in testimony that the burden of the deputies is getting greater because of the use of the County as a recreation area by outsiders, and because of the number of calls. The Association representative states that he is personally busier, the complaints are more severe, and there are two vacancies in the department. The County provides police service to the villages and townships.

The Association contends that its increased workload is shown by an increase in offenses reported from 13,889 in 1980 to 16,677 in 1981, by more arrests and confinements, and by more traffic citations issued, and by more revenues collected through Sheriff's department activities (Assn. Ex. 6).

County Exhibit 15 showed that in 1982 there were 72 deputies in Walworth or one for every 993 people. This compares to one deputy for every 1,613 people in Jefferson County; one for every 2,788 people in Rock County; one for every 3,143 in Washington County; one for every 3,150 in Waukesha County; one for every 1,734 in Kenosha County; and one for every 1,128 people in Racine County. The number of offenses in the crime index in Walworth County in 1980 at 3,036 was less than in any of the above named counties, except Jefferson (Co. Exs. 14 and 15).

The County states if the Association testimony is to be accepted that the workload increased 50% in the summer months, then it follows logically that the crime rate dips 50% for the other nine months, but there is no reduction in work force. Also there are other police forces in the areas handling some of the work. Also telephone calls to the department are not the same as offenses reported, and in these latter, the evidence in the County exhibits shows clearly that the workload in Walworth County is less in total offenses and in violent crimes, while the ratio of deputies per population is the highest. Thus Walworth deputies have a lower workload and are not faced with as many violent crimes as deputies in other counties.

Discussion. Although there may have been substantial changes in the crime situation in Walworth County since the time of the data collected in County Exhibits 14 and 15, the evidence is strong that the workload on Walworth deputies due to offenses finding their way to a crime index report are not as great as in other counties with the exception of Jefferson. The weight of the matter falls to that of the County.

XVIII. SUMMARY. The following is a summary of the arbitrator's conclusion on the factors to be considered and their relative weights of importance.

1. There is no question of the lawful authority of the Employer to meet either offer. The text of the County's offer is capable of an ambiguous interpretation, but the County has a phrase in its offer "(approximately \$1300)" indicating how it intends to apply its offer. The arbitrator believes that this phrase in the County's offer is sufficiently descriptive about what the County intends to pay so as to dispel any doubt about how the County intends to apply the provisions of its offer.

2. Stipulations made by the parties on the new contract will have a cost for the County, but no specific data were furnished on what this cost is or how the benefits agreed to compare with benefits elsewhere.

3. The exhibits of the parties did not provide specific data on estimates of annual wage or average monthly wage, but only the methods by which the wages would be calculated. From such information as is provided by the parties, the arbitrator calculates that the County is proposing an annual wage of \$23,112.40 or a monthly wage of \$1,926.03. This is a 3.5% increase over the 1981 total income base wage plus the cost of living adjustment. The Association is proposing an annual wage of \$24,071.37 which is a base rate plus a cost of living adjustment. This comes to a monthly average rate of \$2,005.95, and a 7.79% increase.

4. There are three levels of validity for comparisons between Walworth and other counties. In the primary comparison group are deputies in Walworth, Jefferson, Rock, Washington, Racine, Kenosha, and Waukesha. Data on Milwaukee and Dane Counties has been included as being illuminating. The secondary group are police officers in nearby larger cities. In the tertiary group are police in small municipalities in Walworth County.

5. In making comparisons between deputies in various counties, a method using only the base wage of Walworth County without the cost of living adjustment income is not valid for comparison. The comparison must include base wage plus income generated by COLA.

6. Under the method described above, the income of Walworth County deputies will be second highest in 1982 when all comparable counties and Milwaukee and Dane Counties are included. This is a drop from the highest position with respect to these counties held in 1980 and 1981 by Walworth County. The County's dollar offer therefore to the deputies well meets the standard of comparability.

7. The percentage increase being offered by the County to its deputies is low in comparison to 1982 settlements reported.

8. The percentage increases offered to the Walworth deputies by the County are substantially lower than those given management officials and one half of those given to employees in other bargaining units and to unorganized employees. The arbitrator is of the opinion that the statutory criteria on internal comparisons is more nearly met by the Association offer, and further the interest and welfare of the public may be affected by a loss of morale on the part of deputies who are in an adverse relationship to other employees as far as percentage increases.

9. The County's offer to the deputies compares favorably and is in advance of wages paid in private employment in the area.

10. Lack of information on overall costs makes it impossible to make a conclusive judgment on this matter with respect to either parties' offer.

11. Although there has been a decline in the percentage increases of the cost of living for urban wage earners and clerical workers during 1982, the criterion to be applied is the index of the CPI-W at the end of the last contract and start of the new one. This means the index for January 1982 which showed an 8.2% increase at the time. The Association offer conforms more nearly to this index.

12. As to other factors, the Association contention that an increase in the burden of work justifies its offer is not supported by comparative data.

13. Of the foregoing matters, two conditions seem most weighty to the arbitrator. One is the wage offer of the County which will meet the standard of comparability and reasonableness, and the other is the size of percentage increases afforded other employees in the public service in Walworth County. In this latter matter the issue of comparability and of the interests and welfare of the public are involved. Because of the low percentage increase being offered to the Association under the Employer's offer when compared to much larger percentage increases afforded other employees internally, the arbitrator believes that this will have too much of an adverse effect on the morale of law enforcement officers, thus affecting the public interest. The arbitrator considers this to be the determining factor in the award to be made. Thus the following award:

XIX. AWARD. The 1982 agreement between the Walworth County Deputy Sheriff's Association and Walworth County should contain the provisions of the final offer of the Association.

Frank P. Zeidler

FRANK P. ZEIDLER
ARBITRATOR

DATE

February 17, 1983