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IN THE MATTER OF INTEREST ARBITRATION PROCEEDINGS MAY 21 1984

BETWEEN

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

WALWORTH COUNTY DEPUTY  
SHERIFFS' ASSOCIATION,

Case LXI No. 31602

and

MIA-783

WALWORTH COUNTY, WISCONSIN

Decision No. 20794-B

Arbitrator: Jay E. Grenig

Appearances:

For the Association: Richard E. Reilly  
Attorney at Law  
Gimbel, Gimbel & Reilly

For the County: Eugene J. Hayman  
Attorney at Law  
Lindner, Honzik, Marsack, Hayman &  
Walsh

#### I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to Section 111.77(3) of the Wisconsin Municipal Employment Relations Act. The Walworth County Deputy Sheriffs' Association (Association) is the exclusive bargaining representative of law enforcement personnel employed by Walworth County (County or Employer).

On May 18, 1983, the Association filed a petition with the Wisconsin Employment Relations Commission (WERC), requesting the Commission to initiate compulsory final and binding arbitration pursuant to Section 111.77(3). An investigation was conducted by the WERC staff which disclosed that the parties were deadlocked in their negotiations for the 1983 collective bargaining agreement. On August 26, 1983, the parties submitted to the WERC their final offers as well as a stipulation on matters agreed upon.

On September 2, 1983, the WERC certified that the conditions precedent to the initiation of interest arbitration had been met. The parties thereafter selected Jay E. Grenig as the arbitrator in this matter.

Arbitration proceedings were conducted on February 16, 1984. The County was represented by Eugene J. Hayman, Attorney at Law, Lindner, Honzik, Marsack, Hayman & Walsh. The Association was represented by Richard E. Reilly, Attorney at Law, Gimbel, Gimbel & Reilly. The parties were given full opportunity to present relevant evidence and arguments at the hearing. Upon receipt of the parties' briefs, the record was declared closed on March 29, 1984.

#### II. FINAL OFFERS

The only unresolved issue is wages. The County proposes a 6.5% increase on the 1982 wage base into which the 1982 COLA of 7.19% has been folded and deletion of the COLA provision (Article XIX of the prior contract).

The Association proposes that Section 19.03(A) of the collective bargaining agreement be amended to read as follows:

(A) The cost of living allowance will be adjusted for the first pay period following April 1, 1983, for the percentage of difference, if any, between the Index figure beginning January 1, 1983, and ending March 31, 1983; for the first pay period following July 1, 1983, for the percentage of difference, if any, between the Index figure beginning April 1, 1983, and ending June 30, 1983; for the first pay period following October 1, 1983, for the percentage of difference, if any, between the Index figure beginning July 1, 1983, and ending September 30, 1983.

In effect, the Association's proposal seeks to continue the COLA provision from the previous collective bargaining agreement.

### III. STATUTORY CRITERIA

In determining which offer to accept, the Arbitrator must give weight to the following statutory (Wis.Stats. § 111.77(6)) criteria:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and financial ability of the unit of government to meet these costs.
- d. Comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally.
- e. The average consumer prices for goods and services, commonly known as the cost of living.
- f. The overall compensation presently received by the employees, 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, factfinding, arbitration, or otherwise between the parties in the public service or in private employment.

### IV. BACKGROUND

The COLA provisions of Article XIX first appeared in the 1980 contract. From 1976 through 1979 the parties operated under a three-year contract. During negotiations for a 1980 contract the County agreed to include in the contract the current process of paying quarterly cost of living allowance and then folding in the sum of the quarterly adjustments to the base pay to arrive at the next year's base.

During negotiations for the 1982 contract, the County proposed eliminating COLA. The matter went to final offer interest arbitration. The arbitrator ordered the parties to

include in the 1982 contract the COLA provisions in the Association's final offer.

The COLA provision provides for a minimum quarterly increase of 1.5%. It also provides for a maximum quarterly payment of three percent.

The County would eliminate the quarterly COLA in exchange for a 6.5% wage increase. A four-year deputy would receive \$2,193.90 as a base wage each month during 1983. Under the County's proposal. At the end of the year, the deputy would have received \$1,606.80 more than he received in 1982 and \$679.80 more than he will receive under the Association's offer.

If the cost of living does not exceed the minimum in any quarter, the COLA increase would be as follows (using a total base wage of \$625,000 per quarter for purposes of this example):

First Quarter	\$625,000	X	1.5%	\$ 9,375
Second Quarter	\$625,000	X	3.0%	\$ 18,750
Third Quarter	\$625,000	X	4.5%	\$ 28,125
Fourth Quarter	\$625,000	X	6.0%	\$ 37,500
Total				\$ 93,750

\$93,750 is a 3.75% increase over the base. Thus, the minimum annual increase would be 3.75%. Because the Consumer Price Index did not exceed the minimum during any quarter in 1983, the Association's offer would result in a 3.75% average salary increase for 1983. However, the base wage rate would be increased by six percent at the end of 1983.

If the maximum quarterly adjustment (3.0% were applied each quarter, the maximum annual increase would be 7.5% of the budget base. The base wage rate would be increased by 12 percent at the end of 1983.

## V. POSITIONS OF THE PARTIES

### A. THE ASSOCIATION

The Association says it is willing to accept a lower percentage wage increase in order to retain the COLA payments and fold-in. According to the Association, COLA is important to the deputies because it adds certainty to the amount of the base wage.

By including a minimum cost of living level, the deputies are assured of some gain in income during periods of low inflation. The maximum percentage protects the County in times of high inflation and demonstrates the deputies' willingness to share the burden of high inflation by accepting a wage level that would not keep pace with the rise in prices.

According to the Association, the percentage wage increase possible under the COLA payment is not unknown, but is capable of being reduced to concrete, controllable figures.

Acknowledging that no other bargaining unit in the County has a COLA provision in its contract, the Union argues that the County presented no evidence that the absence of COLA from other collective bargaining agreements in the County represented a meaningful comparison. It contends that the County presented no evidence that such disparity has created discord among County employees.

The Association concludes that that COLA establishes a stable wage pattern that benefits the County by placing a

ceiling on wage increases and allowing for certainty in budgeting. In addition, it benefits the Association by allowing for certainty in the base even though the quarterly COLA payments may keep an annual pay increase below that enjoyed by other County workers.

#### B. THE COUNTY

While stating that the financial ability of the County to meet the costs of the Association's offer is not in issue, the County states that the interest and welfare of the public--the County taxpayers--is. The County declares that it seeks to eliminate the cost of living provisions of Article XIX of the collective bargaining agreement and it is deliberately offering more money to buy out the COLA provisions. According to the County, the long range interests and the welfare of the public of Walworth County would be best served by "buying out" the COLA provisions without negatively affecting the wages of deputy sheriffs.

The County argues that a COLA provision is not an appropriate method to determine wages in the public sector and is not in the long term interest of the public and the county. It asserts that budgeting is a "hit or miss affair" because of a possible swing of \$183,000 in any one year which is due to the minimum and maximum COLA adjustment provided for in Article XIX.

The County contends that it is difficult to negotiate equitable wage increases with other organized and non-organized employees in the County because of the COLA provision.

It also says that the COLA clause has destroyed collective bargaining on wages and has made the rise of the CPI the only determinant of compensation. The County says it wants to return to collective bargaining on wages so that other factors, such as the general economic status of the County taxpayers, employee turnover, and the performance of the department can be considered when setting the level of deputies' wages.

It points out that only three of 72 counties in Wisconsin have a COLA clause similar to the one involved here.

The County asserts that, while the CPI advanced only 3.98% in 1982, the minimum guarantee in the COLA provision resulted in a wage at the end of 1982 that was 7.19% higher than at the beginning of 1982. In 1983, the CPI rose 3.23% and the wage at the end of 1983 would be 6% higher than at the beginning under the COLA provision. As a result, the COLA provision has thrust the County deputies' wage base beyond that of the surrounding counties and continues to do so at an accelerating rate.

The County also contends that the COLA provision results in a significant earnings disparity with County employees who are not members of the bargaining unit. It stresses the need for internal equity in the compensation system.

According to the County, it has made a fair and reasonable offer to buy back the COLA clause. It notes that the total compensation of County deputies compares very well with that received by deputies in the surrounding counties. The 1982 salaries of deputies with four years' experience is third of the eight comparison counties. Only Milwaukee and Racine pay a higher wage. The County's offer will propel the deputies to first place in Southeastern Wisconsin.

Pointing out that the COLA clause was negotiated during a time of accelerating inflation and may have been justifiable for inclusion in the contract, the County says the trend

of the CPI has been stable over the past two years and is expected to rise only slightly over the next two years.

## VI. Analysis

The real issue here is not which offer provides the more reasonable salary increase, but whether previously negotiated contract language should be deleted from the collective bargaining agreement. Generally, the party seeking to change previously negotiated contract language has the burden of justifying the change. See Sch. Dist. of Howards Grove, Dec. 18941-A (Yaffe, 1982).

Interest arbitrators should be extremely cautious with respect to rendering decisions which delete previously agreed upon language from collective bargaining agreements. However, they should not refrain from doing so if the circumstances warrant. To do otherwise would permit one party to prevent changes in the contract and would seriously impair the effectiveness of interest arbitration.

A cost of living adjustment (COLA) provision in a collective bargaining agreement protects employees from increases in the cost of living (usually measured by changes in the Consumer Price Index) during the term of the contract. These increases reduce employee purchasing power. In the absence of compelling reasons, there is little merit in asking employees to absorb reductions in their real compensation caused by cost increases over which they have little control. COLA provisions also protect employees from unpredictable increases in the cost of living during multi-year contracts while providing stability in the labor-management relationship.

The COLA provision in question guarantees employees a minimum salary increase without the need for bargaining over the increase. The minimum guaranteed quarterly salary increase results in an increase in wages of 3.75% over the year; however, by the end of the contract year, the base wage would be increased by six percent. The COLA provision thus guarantees County deputies that their wage base will be increased by at least six percent each year.

While the COLA provision may have been appropriate at the time it was negotiated, circumstances have changed. Double-digit inflation is not the threat to employee purchasing power that it was. In 1982, the CPI increased by 3.98%. The COLA provision resulted in the deputies' final 1982 wage rate being 7.19% higher than at the beginning of 1982. In 1983 the CPI increased by 3.23%. The Association's proposal to continue the COLA provision would result in an increase in the wage rate at the end of 1983 of six percent. The COLA provision thus results in increases to the wage rate that are considerably in excess of recent changes in the CPI.

Rather than protecting employees from the ravages of inflation, the COLA provision now provides employees with guaranteed salary increases without the necessity of engaging in collective bargaining. The provision discourages, rather than encourages, meaningful bargaining between the parties. The COLA provision is destructive of collective bargaining in that it eliminates the need for the Union to negotiate over wage increases. Salary increases should be the result of bargaining between the Association and the County and not the result of a guarantee in perpetuity.

In the past two other collective bargaining agreements between Wisconsin counties (Racine and Kenosha) and unions representing deputy sheriffs have contained similar COLA pro-

visions. Arbitral notice can be taken that, during negotiations this spring, these COLA provisions were voluntarily deleted by the Racine and Kenosha counties. Acceptance of the Association's proposal would result in Walworth County being the only Wisconsin county with such a provision in a collective bargaining agreement with its deputies. The parties have twice bargained to impasse with respect to elimination of the clause. Since there is little likelihood that the parties will be able to resolve this matter voluntarily, it is not inappropriate for the matter to be resolved in arbitration at this time.

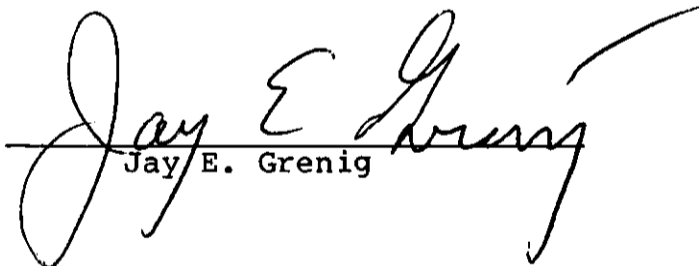
Comparing the parties' offers with deputies' wages in Washington, Waukesha, Racine, Rock, Jefferson, Milwaukee and Dane counties (Kenosha had not settled at the time of the comparison), both offers would result in a top deputy salary that ranks first among the comparables. The Association's offer would result in a salary of \$25,635.76--\$652.84 higher than the next county (Milwaukee). The County's offer would result in an annual salary of \$26,337.76--\$1,354.84 higher than the salary in Milwaukee County.

While there are some differences in working conditions and benefits received by deputies in the comparables, the record shows that the County and the comparables have generally equivalent benefits and working conditions.

#### VII. AWARD

Having considered all the relevant evidence and the parties' arguments, it is concluded that, for the reasons stated above, the County's final offer is more reasonable than the Union's. The Employer's final offer, as well as the agreements reached prior to the arbitration hearing and those provisions of the predecessor collective bargaining agreement which remained unchanged during the course of bargaining, are to be included in the parties 1983 collective bargaining agreement.

Executed this 18th day of May, 1984, at Waukesha, Wisconsin.

  
Jay E. Grenig