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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between WAUKESHA COUNTY (Sheriff's Department) and WISCONSIN PROFESSIONAL POLICE ASSOCIATION, WAUKESHA COUNTY DEPUTY SHERIFF'S ASSOCIATION	:	AWARD AND OPINION Decision No. 22324-A

Case No.	78 No. 32566 MIA 831
Hearing Date	June 11, 1985 August 5, 1985
Appearances:	
For the Employer	Michael, Best & Friedrich, Attorneys at Law, by MR. MARSHAL R. BERKOFF and MR. THOMAS P. GODAR
For the Union	MR. JOHN H. BURPO, WPPA/LEER Administrator
Arbitrator	MR. ROBERT J. MUELLER
Date of Award	December 13, 1985

BACKGROUND

The Waukesha County Sheriff's Department, hereinafter referred to as the "County" and the Wisconsin Professional Police Association, Waukesha County Deputy Sheriff's Association, hereinafter referred to as the "Union" reached an impasse in bargaining for a successor Collective Bargaining Agreement for the calendar years 1984-85. The Union filed a Petition with the Wisconsin Employment Relations Commission to initiate compulsory final and binding arbitration pursuant to Section 111.77(3) of the Wisconsin Statutes. The matter was thereafter processed in accordance with the statutory procedures culminating in the selection of the undersigned to serve as arbitrator to issue a final and binding award in the matter pursuant to Section 111.77(4)(b) of the Municipal Employment Relations Act.

The parties were present at the arbitration hearing, presented evidence and testimony, and were given full opportunity to present such arguments as they deemed relevant. Post-hearing briefs were filed and exchanged through the arbitrator.

THE ISSUES

The final offers of the parties have raised nine disputed issues and one issue that is not in dispute but which constitutes simply a housekeeping matter. The issues that are presented herein are as follows:

ISSUE NO. 1

Union Proposal:

The Union proposed to rewrite Section 6.01 of Article VI-Seniority, as follows:

"ARTICLE VI - SENIORITY

"Departmental seniority shall mean the status attained by length of continuous service following the successful completion of a probationary period of twelve (12) calendar months of work retroactive to the last date of hire within the bargaining unit. Provided, however, if the employee has prior continuous service outside of the bargaining unit but with the County it shall be applicable towards the number of vacation days the employee is eligible to take and longevity where applicable. This seniority regarding the employee's continuous service within the County shall be retroactive to the last date the employee entered County service."

County Proposal:

The County proposes to retain the language in the present contract.

ISSUE NO. 2

Union Proposal:

The Union proposes to rewrite Section 6.03(B)(1) Shift Selection, Article VI-Seniority as follows:

"The current practice of officers having the annual opportunity for basic shift selection based on seniority shall be continued."

County Proposal:

The County proposes no changes in the current Collective Bargaining Agreement provisions.

ISSUE NO. 3

Union Proposal:

"ARTICLE VII - WAGES

"7.01 Change all wages to reflect four percent (4%) increase effective January 1, 1984, and all wages will be increased by four percent (4%) on January 1, 1985."

County Proposal:

The County proposes that wages be increased as follows:

December 31, 1983 -- 4%
December 29, 1984 -- 3%

ISSUE NO. 4

Union Proposal:

"ARTICLE VII - WAGES

"Section 7.02, retitle 'Work Schedule' and rewrite to read:

"A. There shall be two normal work schedules for members of the bargaining unit, five (5) days on duty followed by two (2) days off duty, followed by four (4) days on duty, followed by two (2) days off duty and then repeat the cycle, or a straight five (5) days on duty followed by two (2) days off duty and then repeat the cycle.

Persons working a 5-2, 4-2 schedule shall have a normal work day of eight-and-one-quarter (8¼) hours on a regularly established shift.

Persons working a straight 5-2 schedule shall have a normal work day of eight (8) hours on a regularly established shift."

County Proposal:

The County proposes to retain without change the current Collective Bargaining Agreement provisions.

ISSUE NO. 5

Union Proposal:

"ARTICLE VII - WAGES

"Create new Section 7.02(B)(1) to read:

"Those employees normally scheduled to work forty (40) hours per week shall be paid the rate of time-and-one-half (1½) the regular rate of pay after eight (8) hours in any normally scheduled work day or forty (40) hours in any normally scheduled work week."

County Proposal:

The County objects to inclusion of such provision as a new section in the contract.

ISSUE NO. 6

Union Proposal:

"ARTICLE XII - HOSPITAL AND SURGICAL INSURANCE

"12.01 The employer agrees to pay the full cost of the traditional plan group hospital surgical and major medical insurance plan up to $64.74 per month for the single plan and $180.86 per month for the family plan. In 1985, the employer agrees to pay one-half of any increases in premiums over these amounts for the traditional

hospital and surgical insurance plan. Provided, however, the employee's share of the insurance premium shall not exceed $5.00 per month. In the event the County determines to change coverage or carriers, then the coverage will not be less than existing coverage.

If the County offers a health maintenance organization plan (HMO) and the employee elects to participate in one of the HMO plans, the employee willbe responsible for paying any increases in premium over the traditional plan rates.

An employee who retires may continue to participate in the medical insurance plan at the employee's cost, by paying the premium to the County one (1) month in advance."

County Proposal:

"ARTICLE XII - HOSPITAL AND SURGICAL INSURANCE

"12.01 The employer agrees to pay the cost of group hospital, surgical and major medical insurance up to $64.74 per month single, and $180.86 per family. In 1985, the County will pay one-half of any increase over such amounts. The employee's share of the insurance cost shall not exceed $5.00 per month, but regardless of the 1985 costs, the employees on the single or family plan will pay $5.00 per month toward such costs. In the event the County determines to change coverage or carriers, then the coverage will not be less than existing coverage.

The County will also offer Health Maintenance Organization (HMO) plans as an alternative. Each plan specifies eligibility requirements and enrollment procedures. An employee selecting an HMO alternative plan will pay any increase over the cost of the insurance provided in this article.

An employee who retires may continue to participate in the medical insurance plan at the employee's cost, by paying the premium to the County one (1) month in advance."

ISSUE NO. 7

Union Proposal:

"ARTICLE XIX - TIME FOR NEGOTIATIONS

"Delete current language and replace with the following:

"Term: This agreement shall be come effective as of January 1, 1984 and shall remain in full force and effect through December 31, 1985, and

shall renew itself for additional one-year periods thereafter. Provided, however, if either party wishes to alter or amend this agreement they shall notify the other party in writing of their intent to reopen the contract not later than September 1st of any year in which the contract expires. Thereafter, the parties shall establish a mutual date to exchange proposals and commence bargaining."

County Proposal:

The County proposes that there be no change in the current termination clause of the Collective Bargaining Agreement.

ISSUE NO. 8

County Proposal:

"ARTICLE 17 - Worker's Compensation

"Delete current Section 17.01 and add:

"Section 17.01 - 'An employee absnet from work due to an injury or illness incurred in the line of duty compensable under the Worker's Compensation Act shall, without charge to sick leave, receive eighty (80%) of the employee's regular gross salary for a period not to exceed twelve (12) months per injury or illness commencing after the first three (3) days of such illness or injury.

An employee otherwise eligible may use accumulated sick leave for the three (3) days. If the illness or injury necessitates an absence of greater than three (3) days, three (3) days will be restored to the employee's accumulated sick leave.'

"Delete current Section 17.02 and add as follows:

"Section 17.02 - 'Salary for an employee under the provisions of this Section shall be paid as long as an employee is eligible to receive temporary total disability payments under the Worker's Compensation Act.'

"Section 17.03 revise as follows:

"'Upon expiration of the County disability pay benefit, an employee who is still unable to return to work but is receiving worker's compensation benefits for temporary total disability shall be ineligible to use accumulated sick leave, holidays or vacation. Such employees otherwise eligible for holidays and vacation pay and unable to return to work at the end of the calendar year will receive pay for such benefits at that time. The employee's accumulated sick leave credit will remain available for future permitted use when such employee returns to work.'"

Union Proposal:

The Union proposes no change to the current provisions in the Collective Bargaining Agreement.

ISSUE NO. 9

County Proposal:

"Non-Discrimination -- Add non-discrimination clause to read:

"1.03 The parties agree ther shall be no discrimination against any employee covered by this Agreement because of membership or activities in the Union nor will the parties interfere with the right of employees to become members of the Union or refrain from any such activities. The parties and employees covered herein agree none will discriminate against any employee because of race, color, creed, religion, sex, national origin, handicap, age, sexual preference, or marital status. Sexual harrassment of any employee by the parties and employees covered herein is prohibited."

Union Proposal:

The Union proposes no change in the current Section 1.03 provision of the Collective Bargaining Agreement.

ISSUE NO. 10

County Proposal:

"Section 7.06 -- Delete 6th through 10th years percentage of gross earnings from the listed schedule (since no longer applicable)."

Union Proposal:

The Union offered no evidence or argument on such matter and stated they considered it simply to be a housekeeping matter.

POSITIONS OF THE PARTIES AND DISCUSSION

The parties are in disagreement concerning the most appropriate comparables and the relative weight to be afforded the various comparables in this case. Discussion of the parties' positions is therefore desirable before proceeding to the disputed contractual issues.

The Comparables

The Union argued that the most comparable jurisdictions are those determined in a prior arbitration decision by Arbitrator Kerkman in Ozaukee County. In such case he determined that the counties immediately surrounding Milwaukee County would be the most comparable, but excluding Milwaukee County. He also determined that substantial weight would be afforded those municipalities within the county where the dispute arose. The Union therefore argues that those counties most comparable to Waukesha are the counties of Ozaukee, Racine,

and Washington. The Union also presented wage data of Police Department employees of municipalities located within said counties consisting of Brookfield, Menomonee Falls, New Berlin, Muskego, and Waukesha.

The County argues that those counties contiguous to Waukesha County are the most comparable. The set of most comparables also should not include municipalities. County Sheriff Departments perform duties and have responsibilities that are substantially different from that of municipal Police Departments. There is a much greater similarity of duties between County Sheriff Departments than there is between Sheriff Departments and municipal Police Departments. The contiguous counties to which the most relevant comparison should be made are those of Dodge, Jefferson and Ozaukee Counties. (County Exhibit No. 5) The County argues that Milwaukee County is not comparable because the type of work performed by such department is substantially different than that performed in the Waukesha County Department. Racine County and Walworth County are not comparable because both of said counties have historically had COLA provisions which have resulted in wage rate increases not dictated by realistic cost-of-living increases or market factors. The County argues that the municipalities used as comparables by the Union should be discounted because they are from 5 to 18 times smaller than the County and that such size in per square miles and density of population being entirely different from the County, leads to the inference that the duties of the officers are quite different from those of County officers also.

The matter of comparability is many faceted. For example, one form of comparison is to compare an employee working for County A to an employee performing substantially the same work for County B with the premise that where two employees are doing similar work, they should get similar pay. That premise assumes that all other things between County A and B are relatively similar or comparable, i.e., similar population, similar area, similar tax base, similar location to the same product and labor market, comparable location influence, if any, to a metropolitan or large population center, etc. It would appear that the argument of the parties as above set forth is directed primarily at the method of comparability above referred to.

Another method of comparison is to determine the historical difference between two counties that have different tax bases, population, area, etc., and establish the differential that has developed over a period of time and consider which final offer better tends to maintain such historical difference, in the absence of persuasive evidence that such historical difference should change.

Another method is to compare the level of settlements reached by others and apply such data to a case at hand, discounting any particular data that may be distorted abnormally high or low, with the aim being that average level of voluntary settlements among others establishes a pattern that reflects the economy, the CPI and the prevailing attitude of employers, employees and the public as to the acceptable level of settlement at a particular point in time.

There are numerous other comparison methods and variations thereof. The vast majority of evidence and comparability data presented by the parties is relevant in one way or another. In the final analysis, the arbitrator is charged with determining the weight and value to be afforded the evidence that bears on each issue within the purview and application of the statutory factors and to resolve the dispute. The undersigned will attempt

to analyze each issue in this case in that context.

ISSUE NO. 1

The relevant part of Section 6.01 of the previous labor agreement, which the County proposed to retain without change, provided as follows:

> "6.01 Definition Seniority shall mean the status attained by length of continuous service following the successful completion of a probationary period of twelve (12) calendar months of work. The employee's continuous service date shall be retroactive to the last day the employee entered County service...."

The Union proposed to change such provision so as to read as follows:

> "Departmental seniority shall mean the status attained by length of continuous service following the successful completion of a probationary period of twelve (12) calendar months of work retroactive to the last date of hire within the bargaining unit. Provided, however, if the employee has prior continuous service outside of the bargaining unit but with the County it shall be applicable towards the number of vacation days the employee is eligible to take and longevity where applicable. This seniority regarding the employee's continuous service within the County shall be retroactive to the last date the employee entered County service."

The Union explained the intent of its proposal in its brief as follows:

> "The Union primarily aims this proposal at changing the definition of seniority for selection of vacations and shifts (June 11 proceeding, Page 4). Under the current seniority system under Article VI of the collective bargaining agreement, an employee working for Waukesha County in some department other than the Sheriff's Department could be hired by the Sheriff's Department and, with more County-wide seniority than another employee with the Sheriff's Department, but less department seniority than that employee, receive preference for vacation and shift selection (June 11, Pages 4-5). The Union feels, that although this situation has not arisen frequently, it does and will create a morale problem among bargaining unit members who will lose department seniority to other employees in the County service, merely by virtue of the latter employee's

The Union also contended that their exhibits support their proposal and show that the majority of comparable communities provide department-wide seniority for employees as opposed to an employer-wide seniority system.

The County argues that the Union is requesting a change in the status quo and as such they must show that a need exists for such change or that a problem exists that should be corrected. They argue that the current seniority practice has been in place for approximately 12 years without problem.

The County further argues that the Union proposal is ambiguous and confusing. Such fact is proven by the fact that the vice president of the Union testified to his interpretation that it was not intended to effect layoffs, recalls, promotions and the like. Testimony and statements of other Union representatives was contradictory to the effect that the change would apply to all such matters.

The County also argues that it would serve to discourage promotion from within. It would also substantially change the manner in which vacations are now selected by employees not only within the department but based upon comparative seniority of people within a particular shift and within a particular classification.

The arbitrator has reviewed and considered the respective arguments of both parties and finds the County's arguments to be the more persuasive on this issue. The County's position on this issue is therefore favored.

ISSUE NO. 2

Article VI, Section 6.03(B)(1) is as follows in the current labor agreement:

> "Shift Selection The current practice of officers having the annual opportunity for basic shift selection based on seniority shall be continued in 1982 and 1983."

The Union is proposing that the reference to the years be dropped. They state there is simply no need to have reference to the years in the contract as it is simply updated each year and there has been no dispute between the parties.

The County argues that the Union is again attempting to change the status quo without good reason therefor. They argue that it is a value to the County to have the matter come up every two years in negotiations because the County can then reassess the matter of shift selection in conjunction with any new programs or procedures which may have developed during the preceding contract or which are contemplated during the term of the next contract.

The arbitrator finds that this issue is of minimal significance between the parties and certainly is not determinative of the ultimate resolution of the dispute in this case. The arguments of both parties have merit and no opinion for preference of either is expressed.

ISSUE NO. 3

The only difference between the final offers of the two parties on wages is that the Union is requesting 1% more in

1985 than is offered by the County.

The Union presented comparison data into evidence consisting of the annual base rate of the top deputy or top patrol position for the counties of Racine, Ozaukee, Washington and Waukesha and for the municipal police departments of Brookfield, Menomonee Falls, Muskego, New Berlin, and Waukesha. Such exhibits show that the top deputy in Waukesha County was in the last place in such comparative ranking from 1980 through 1983. Under both the Union and County final offers, the Waukesha County deputy would remain in such last place comparative ranking. The Union's 4% 1985 wage offer would result in the sheriff deputies being $2,050.15 below the average of the comparables while the County's offer of 3% would place the deputies $2,282.33 below such average. The Union computes the average percentage increase of other jurisdictions for 1985 to be 5% compared to the 4% Unin proposal and 3% County proposal.

With respect to the County's argument that longevity, educational incentive, and internal comparison should prevail over comparison to outside comparables, the Union states at page 8 of its brief as follows:

> "The employer places strong emphasis on education incentive and longevity pay being a part of Waukesha County Sheriff Deputies' wage base. It must be recognized in these proceedings that the longevity pay incentive plan has not been available to any new employee hired after January 1, 1973. This is verified by County Proposal No. 5, which deletes the sixth through tenth years of longevity pay incentives (Page 11 of Joint Exhibit No. 1). The employees should not be continuously penalized by inadequate wage increases for a benefit that has not been available for 12 years. Also, the question arises as to what will happen at the point in time when the longevity pay incentive ceases to exist. It is conceivable that the Union will then be placed in a position which will require continuous proposals of large wage increases in order to obtain an equitable pay scale.
>
> "The County also argues that education incentive should be costed against the Union's final offer. It appears the County has lost sight of the fact that an educational incentive plan serves for the betterment of the department. The County would lead us to believe that this benefit should be viewed as a disincentive for a fair wage adjustment. The employer also points to internal settlements of 4% and 3% in 1984-85 contracts with other Waukesha County bargaining units. This internal settlement trend does not address those County employee groups' relative ranking with comparable communities (i.e.; either County or Union comparables offered in this proceeding). Without such evidence, the 4%/3% internal settlement pattern is offered in a factual vacuum. The 4% for 1985 proposed by the Union in this case is clearly justified based upon its comparabilities."

The County argues that the voluntary settlements that have been reached with all other represented employees of the County is consistent with the County's final offer in this case and should be given great deference by the arbitrator. The County identified those represented groups of employees and the terms

of their settlements in its brief as including,

> "...the 23 public health nurses represented by AFSCME and the 803 employees represented by AFSCME Locals 1365, 2490 and 2494, the 78 Highway Department employees represented by Teamsters Local 200, 54 Sheriff's department employees represented by the ACCORD unit, and the 15 attorneys represented by the Waukesha County Attorneys Association. Each of these units, except the Attorneys and the ACCORD unit, voluntarily agreed to a 4% wage hike in 1984, as the parties agreed to here, and a 3% wage hike in 1985 (Co. Ex. 2).
>
> "While the ACCORD and Attorneys Association employees received an additional 1% in 1985, this was based on their agreement to increase their participation in sharing health insurance premium costs (Co. Ex. 2; B-Tr. 19)[1]. In 1981, the Association employees agreed to share in their premium costs and received an additional 1% in wages as recognition for premium cost sharing (B-Tr. 13). Of course, that 1% increase has been reflected in their base pay (B-Tr. 13)."

The County also contends that its wage offer compares favorably to the rate paid similar employees in comparable counties. They argue that geographic proximity is important in determining comparable communities. The Counties of Dodge and Jefferson should therefore be recognized and considered. The County also contends that one should look at more than simply the base rate. They address such concept and relate that argument to the contiguous counties to which it referred in its brief as follows:

> "The effective pay comparison offered by the County is likewise a more reasonable approach than that put forth by the Association. The County compares take-home pay, including longevity and educational incentive pay (Co. Ex. 5; B-Tr. 32). These factors represent a sizable portion of the total take-home pay received by the sheriff's deputies. In 1984 this was more than $1,150 on the average, and in 1985 that portion of take-home pay attributable to longevity and educational incentive is almost $1,200 per employee on the average (Co. Ex. 7). Therefore, it is important to include these factors in any pay comparisons.
>
> "Using these figures, the County's offer nearly equalled or surpassed the wages offered in contiguous counties for deputy sheriff IIs[2]: Ozaukee was $26 per month more, Dodge was $314 less and Jefferson was $350 less per month than the County in 1984. The County's wages were $213 greater than the County in 1984. The County's wages were $213 greater than the average of these counties, or $257 greater than the weighted average of those counties."

The County also directs the arbitrator's attention to the total compensation factor in the amounts represented by the County's final offer at page 15 of their brief as follows:

> "The Arbitrator is also directed to look at the overall compensation received by the employee, §111.77(6)(f), and such a review is instructive here. The dollar value of the County offer to the average deputy sheriff II in 1984 is $31,920. The value of the benefits provided while not performing services for the County is $3,315. This increases in 1985 to $32,793 as the direct annual benefit to the employee, with the indirect benefit increasing to $3,441 (Co. Ex. 7). The average additional per employee direct cost value of the County's 1984-1985 proposal is more than $4,600 (Co. Ex. 8). An additional $276 per employee reflects increases in indirect costs, which, of course, are very real as a cost item for the County. The County has offered the Association $623,316 in increases for the two year contract."

The County also argues that the moderate rise in the cost of living for the period relevant to these proceedings supports selection of the County's offer. The increase in the CPI over the two year period was approximately 6.4% while the effective wage increase offered by the County is 7.12%. The Union's wage proposal would constitute an effective increase of approximately 8.16% over the two years of the contract.

Finally, the County argues that between the period of 1980 to 1985, the County had approximately 26 openings in the department and had over 1,000 applicants for such openings. Such facts establish without question the value and desirability of jobs in the department and the level of pay that is associated with such jobs.

By their exhibits and arguments, both parties accept the Counties of Ozaukee and Washington as being undisputed appropriate comparables to Waukesha County. Comparables are never identical in all respects and there are differences in this case. If one examines the annual base rate comparison data placed in evidence by the Union covering the years 1980 through 1985, one finds that the top deputy base rate for deputies of Waukesha County maintained a fairly consistent relationship to the deputy rate of deputies working for Ozaukee County over the years. For example, in 1980 Waukesha County deputies annual rate was $1,065 below that of Ozaukee County. In 1981 it was $1,069 lower. In 1982 it was $1,349 below the Waukesha County rate. In 1983 it was $933 lower. In 1984 under both the County and Union offer, the Waukesha County rate is $1,025 below the corresponding rate at Ozaukee County. For 1985, the Union proposal of 4% increase would result in the Waukesha County rate being $1,065 below that at Ozaukee County. The County offer of 3% would result in the rate being $1,297 below that of Ozaukee County.

The same type of relationship appears between Washington County and Waukesha County. In 1980 Waukesha was $134 below Washington. In 1981 they were $132 below and in 1982 they were $416 below. In 1983 the rate at Waukesha County was $8.00 more than was the corresponding rate at Washington County. In 1984 under both the County and Union offer of 4%, the rate at Waukesha County would be $99 below that of Washington County. The Union's 1985 4% offer would result in the Waukesha County rate being $220 below the corresponding rate at Washington County while the County's final offer

of 3% would result in the Waukesha County rate being $452 below the corresponding rate at Washington County.

Even under such limited comparative analysis, it is clear that the Union's final offer would at least serve to maintain the relative relationship that the Waukesha County deputy rates have maintained with those of Ozaukee and Washington Counties whereas the County's offer would depart from and widen that historical difference.

The percentage level of settlements as shown by the exhibit entered by the Union as page 18 of Union Exhibit 1, shows an average percentage increase for 1985 of 5%. Such level of settlements likewise favors the Union's final offer on this issue.

The County's final offer, however, is to be favored on the basis of considering the pattern of internal voluntary settlements between the County and other represented employee groups. The arbitrator is mindful of the persuasive argument that if a pattern of voluntarily negotiated settlements have been reached between an employer and several of its bargaining units, allowing the last to obtain a greater increase through arbitration would serve to create incentives on bargaining groups in the future not to reach agreements until other units have concluded bargaining and would result in whipsaw type bargaining.

In addition to the internal settlement pattern favoring the County's offer, the application of the Consumer Price Index factor favors the County's final offer.

The difference between the parties' final wage offers is not large. That, in part, explains why each final offer is supportable by application of one or more statutory factors. In the view of the arbitrator, either final wage offer is reasonable and is supported by the statutory factors. The record evidence does not establish any basis for a clear preference of one final offer over the other with respect to the wage issue.

ISSUE NO. 4 and ISSUE NO. 5

Both parties combined their presentation and argument on the above two issues as one.

Under the present work schedule uniform deputies work a 5-2, 4-2 repeating work schedule of 8¼ hours per day. The Union contends their proposal would not change that schedule but would be a departure from the current system for plainclothes personnel of approximately 40 employees who work a 5-2 regular schedule. Their proposal would also change their work day from 8¼ hours to 8 hours per day and provide under Issue No. 5, payment of overtime for all hours worked over 8 hours in the day or 40 hours in a week. The Union argued that its proposed changes for such work schedule are supported for the following reasons:

> "1. Under the current system, whereby plainclothes deputies work the same 8¼-hour shift as uniform deputies, plainclothes deputies work, on an annualized basis, 8 more days per year than uniform deputies working a 5-2, 4-2 schedule (See June 11, Page 12). The Union is attempting to place some

equity in annualized work hours among bargaining unit members by equalizing the number of hours worked per year. It is patently unfair when approximately one-third of the collective bargaining unit must work 8 more days per year than the other two-thirds without some form of equalization, either through cash compensation or reduced work hours. The Union has proposed a reduction in work hours.

"2. In the Union comparable jurisdictions setting forth work schedule comparisons (See Union Exhibit No. 1, Page 22), in all cases there is some form of equalization between employees working a 5-2 schedule and some other schedule which results in less annualized hours worked (e.g.; 5-2, 4-2 or 4-2, 4-2). This equalization is accomplished either by additional days off or a reduced number of work hours for the 5-2 employees. The County argues that the percentage of employees on a 5-2 schedule in Waukesha County is greater than in other comparable Union jurisdictions (See County Exhibit No. 19). The fact that there is a greater percentage of employees on a 5-2 work schedule in Waukesha County does not negate the inequity that must be corrected through some form of equalized compensation."

The County contends the Union's proposal would severely threaten the efficiency and effectiveness of the department. Although the Union proposed for the first time at the arbitration hearing that they did not request retroactive effect to that proposal, the County must still assess the potential cost because if it is included in the contract, the County is faced with its cost effect from that point forward. They point out that the proposal would affect approximately 40 employees. As a result the County would be required to make the choice of either paying over $44,000 per year in increased overtime costs, approximately $50,000 in new employee costs, or eliminating 1¼ hours of productive time from each of the 40 employees weekly work schedules. They point out that initially the Union had stated their proposal was only intended to apply to detectives and deputy I's. At the hearing, it became evident that the intent was that it would affect all employees whoworked the 5-2, 5-2 schedules.

The County also contends that the comparative data presented in theUnion's exhibit fails to reveal what may otherwise be individual schedules in other jurisdictions that are at variance with what appears in the labor agreement from which data the Union prepared their exhibit. They state in their brief that,

"...This was the case in Washington County (A-Tr. 80). The Association's exhibit also shows that in Muskego individuals on a 5-2, 5-2 schedule work approximately 80 hours more per year and receive no adjustment. In Racine those working a 5-2, 5-2 schedule work approximately 140 hours more per year than those working a 5-2, 5-3 schedule even with the supposed 'Adjustment.'

"Further, Association arguments that this information (even if accurate) should be viewed as a pattern, would be unpersuasive here, since in the County this pay/scheduling requirement would affect 40 unit members, or 31% of the unit, while in other communities cited by the Association, only four employees on the average work a 5-2, 5-2 schedule (Co. Ex. 19). This means the impact on cost and efficiency in the County is much

more substantial, and hence, not comparable (B-Tr. 53). Further, Mr. Richter testified that the opportunity to work on a 5-2, 5-2 schedule is by voluntary choice and there is never a lack of volunteers to work this schedule (B-Tr. 67). Obviously, the five day, week-end off schedule has its own attractions.

"The Association has failed to offer a substantial reason for this change. When boiled down to the bottom line, this is merely a method to increase the compensation of some but not all employees.[6] If the real reason for this change was to balance scheduels, the deputies working a 4-2, 5-2 schedule could work more. The Association rejects this idea, but without suggesting that the majority of deputies are overpaid (A-Tr. 29). It offers no quid pro Quo for this proposal and ignores the fact that this has been the schedule for at least 10 years (A-Tr. 24), and when employees are hired, they are aware of it (A-Tr. 26)."

The Union's argument that their proposals are directed simply at accomplishing some equity in annualized work hours among bargaining members is, in the judgment of the undersigned, an oversimplification of their proposal and the considerations that bear upon it. While from a strict mathematical computation unequal annual hours for similar pay would constitute an inequity, there are numerous other variables that may offset any such difference. The evidence reveals that the 5-2 schedules are worked so that weekends are off days. That fact alone has value to most employees. It is possible that the quid pro quo for such type schedule is that it does involve more hours than do employees working less desirable schedules that involve fewer hours. Those are value judgments best left to free and open negotiations by the parties where each may place their assessed value and negotiate, if possible, to a negotiated mutually acceptable trade-off value. The record evidence in this case seems to indicate that the parties have not engaged in detailed negotiations on the subject matter of the proposal so as to address all considerations that bear upon the subject matter.

While the Union indicated it did not request any retroactive effect to such proposal if granted, the arbitrator is of the judgment that the cost effect of such proposal must be considered. It does not appear from the record evidence that the parties addressed what the County now computes as potential cost of such proposal during negotiations as the County contends the Union initially indicated that their proposal was only intended to effect detective and deputy I's. If the initial thrust was limited to those employees during negotiations, it would then seem to follow that the parties likewise did not consider and negotiate any impact the proposal would have upon scheduling and the matter of accomplishing the work that would be required to be performed with fewer hours.

In the considered judgment of the arbitrator, the Union has simply failed to establish a persuasive need or reason for changing the status quo on the subject matter of their proposal.

ISSUE NO. 6

There is no difference between the final offers of the parties on health insurance as it applies to 1984. Under the above proposals the County will pay the total cost of insurance premiums in 1984. Such sums are $64.74 for single

participants and $180.86 for family participants. The parties' proposals differ with respect to 1985. The Union proposes that the County pay 100% of insurance for employees for 1985 with the proviso that the Employer pay one-half of any increase in premiums over those amounts for 1985 with the employee to share in such increase to a maximum of $5.00 per month.

The County's proposal for the second year would require the employees to contribute $5.00 per month toward the cost of insurance irrespective of any change in premium.

The Union argues that:

> "The Union's proposal is basically one of equity in terms of its relationship with the County. It agreed in the 1982-83 contract for premium sharing. It is apparent, however, as negotiations for 1984-85 proceeded, that the Union reconsidered its position on health insurance in light of the fact that there was no increase in the 1985 premium. This position is not unreasonable if viewed in light of the premium sharing taking place in the second year of the contract; and the fact that over the past ten years, there have been premium increases in County health insurance policies in all years with the exception of two (August 5, Page 82).
>
> "It should also be noted that the County's contention that the $5.00 per year is a historic charge is not correct. This benefit was negotiated in 1982-83 and was obviously reconsidered by the Union in light of 1984-85 premium increases.
>
> "Attention is also called to the Union comparable jurisdictions set forth on Page 23 of Union Exhibit No. 1. In <u>all</u> of these jurisdictions, employees do not contribute any amount to health insurance premiums. It is interesting that Waukesha County did not offer any exhibit of comparable jurisdictions on this point. Even under the Union's proposal, employees would, unlike comparable jurisdictions, have to contribute $5.00 per month in the second year of the agreement if there were an increase in that year."

The County pointed out that there has been a historic pattern for the County to pay the full cost of insurance for the first year of the two-year contract and for employees to contribute at least $5.00 toward thecost in the second year. The County states in its brief that,

> "This agreement was first reached in the 1980-81 collective bargaining contract. At that time, the employees received a full 1% increase in their wages as a <u>quid pro quo</u> for limited participation in insurance premium cost (B-Tr. 13). Of course, this 1% increase has remained as part of the deputies wage base for the past five years, returning manyfold the $60.00 cost incurred every two years.
>
> "Sharing of premium costs is a very important concept to the County as it makes the employees aware of their role as consumers of health insurance and promotes better and more sensible medical service decision-making (B-Tr. 13). The cost of insurance

is also very significant, representing approximately 9% of the deputies' monthly base salary in 1984 and 1985 and some premium sharing heightens awareness of this as a significant factor in the total compensation of the deputy sheriffs (Co. Ex. 7). In fact, based on this minimal cost sharing, some employees have dropped health insurance because it was duplicative (B-Tr. 14).

"Even in this round of bargaining, the concept was significant enought for the County to pursue increased employee premium sharing, and the ACCORD unit and the Attorney Association did increase its share of premium cost in return for increased compensation (Br-Tr. 19).

. . .

"The Association premises its position on the fact that from 1984-1985 there was no premium cost increase. To focus on one year of a two year contract is short sighted indeed. It ignores the 17% increase in premium cost from 1983 to 1984. It ignores a $608.00 increased insurance cost for each employee. What cannot be ignored, however, is that the total insurance premium increases for the two years equal $77,216. The County, by its proposal, would meet more than $70,000 of this increase, but because the increase was first undertaken in 1984, the Association would say, 'you pay for it County; it doesn't represent an increase for 1985.'

"This ignores logic, bargaining history and defeats the purpose of premium cost sharing...."

There is no doubt but that based on the comparables shown at page 23 of Union Exhibit No. 21, Waukesha County is the only County where employees share in the cost of insurance. From a comparability standpoint, it therefore is no contest. Based on comparability, the Union's proposal would be favored.

There is no doubt but that there is validity to the County's position that because of the tremendous increase in insurance costs over the past few years, cost containment measures have come to be of extreme importance to employers and employees alike. Premium sharing is recognized as being one of the cost containment measures available to parties. In this case, the proposal is for a premium sharing in the amount of $5.00 per month during the second year of a two-year contract. The total amount is therefore $60.00 per employee. It is clear that the cost containment principal is of greater importance than is the amount of money that is involved. The evidence reveals that such cost sharing provision has been in the prior contracts. According to the County's version, the County paid a very high premium of 1% increase on wage base as a quid pro quo in exchange for obtaining such nominal employee premium participation.

The evidence further shows that the County has negotiated similar premium cost sharing provisions with all other represented groups with which the County has contracts for 1985.

On this issue one has similar conflict between considerations and the application of statutory factors to determination of the issue as was present in consideration of the wage

issue. This issue is not a major cost issue. Either proposal is reasonalbe and can be solidly justified by valid considerations. The arbitrator can find no persuasive evidence in the record that would cause one position to be preferred over the other.

ISSUE NO. 7

The Union indicated that the primary purpose of the proposal in this issue was to provide for mutual exchange of proposals for changes and amendments to the contract with the intent that it would speed up the bargaining process.

The County contends the Union is attempting to change the status quo. The prior provision was proposed by the Union and accepted by the Company and provided that the Union would submit its proposals for negotiation by August 1 and that the parties would meet before August 15. The County contends the Union's proposal, by not specifying target dates for certain actions, would cause negotiations to be delayed and would accomplish exactly the opposite of what the Union intends by its proposal. The County further objects to the Union proposal in that it provides for automatic renewal of the contract in the event the parties do not serve notice of termination. As such, permissive subjects of bargaining that are in the contract remain in such contract unless the contract in fact does expire. The County contends such provision could serve to prevent the County from having the opportunity to raise an issue concerning a permissive subject.

The Union disputed the County's contention that their proposal would serve to eliminate the County's right to raise questions concerning permissive subjects of bargaining but contends that the County would be able to raise questions on any subject by virtue of requesting a declaratory ruling from the Wisconsin Employment Relations Commission. The Union further contends that termination clauses contained in the comparable jurisdictions possess automatic renewal provisions similar to that proposed by the Union in this case.

On review of the record evidence and arguments of the parties on this issue, the arbitrator is of the judgment that the Union has simply not established a persuasive case for changing the status quo. It is not that their proposal is unreasonable, because it is not. There simply has been no case established showing a need to change the status quo.

ISSUE NO. 8

The current contract provides as follows at Section 17.01 of the current agreement regarding worker's compensation.

"17.01 The County shall, without charge to sick leave, compensate an employee with full salary for such time up to a period of one year per injury that an employee is medically unable to work by reason of injury or illness incurred in the line of duty.

"17.02 The employee will assign his worker's compensation payments to the County. The application of benefits in this article is contingent on the decision of the compensation carrier as to the duration of compensation."

The County described the changes that would result from its proposal in its brief as follows:

> "The County has proposed a modification in the benefits paid to employees disabled in a work related injury or illness which takes into effect the after tax equivalency of the benefit received, and restricts the duplication or pyramiding of disability and other types of pay. The objective of the County proposal is to avoid economic disincentives for employees to return to work. The County would pay 80% of an employee's regular pay for a year instead of the employee receiving 100% pay, which is now subject to full tax withholding by the County. Under the County proposal, after a year, if the employee is still disabled, the employee would continue to receive normal worker's compensation benefits, as is the case under current practice. Further, an employee would not lose any sick leave, vacation pay or holiday benefits, and an employee would, in fact, continue to earn such benefits during the time the County benefit was paid.
>
> "As noted, the employee could not pyramid or receive duplicate pay at the same time, but such accrued benefits would be retained for the employee until he or she returns to work or, if still disabled at calendar year end, holidays and vacation benefits would be paid out (Jt. Ex. 1; B-Tr. 109). If an employee could not return to work sick leave would be paid out when total temporary disability converted to permanent disability (B-Tr. 110).
>
> "As is the case in other County labor contracts and policies, the County would add a three day waiting period before an employee could receive the worker's compensation benefits. Sick leave pay could be used initially during this three day waiting period and, if the employee was off more than three days, the worker's compensation benefit would be retroactive to day one and the employee's sick leave account would be credited with the three day charge (B-Tr. 105).
>
> "This three day limit has proven to reduce the number of claims filed (B-Tr. 132). All other County units have accepted this provision voluntarily (Co. Ex. 20; B-Tr. 106), thereby offering support for the reasonableness of the proposal."

The County argues that its proposal is a realistic attempt to meet the problems of over-insurance created by the current workers compensation supplemental pay program, while continuing to provide injured employees with a very high proportion of their take home pay during the period of contractual benefit. Under the current disability pay provisions, an employee could receive nearly twice his or her normal take home pay by using sick days, holidays or vacation days in addition to temporary total disability payments which are two-thirds of gross wages. The County describes the minimal impact that their proposal would have on employees at page 35 of their brief as follows:

> "The impact on the bargaining unit by these changes is relatively limited. The check the employee would receive under the County's proposal would be only slightly different from that received under the current practice in terms of the actual amount (Co. Exs. 21-23). The current disability pay calculations include a deduction for state and federal

taxes, as well as social security contributions, etc. (because it is equivalent to the employee's full wages (B-Tr. 112), while under the proposal of the County, the first two-thirds of the payment to the employee which, pursuant to law, is tax free, would not have withholding made. Thus, the new County system would calculate withholding only on 13% of compensation (the difference between 66 2/3% and 80%) (B-Tr. 113). County Exhibits 21, 22 and 23 demonstrate that the County's proposals do not dramatically change the amount of take-home pay from the current plan but act to moderate the obvious distortions because of pyramiding."

The County presented testimony by an expert in the insurance and workers compensation field who testified that it is a common recognized goal in the insurance industry to replace 80% of an individual's take home pay under workmens compensation programs. He also testified that it was generally acknowledged in the industry that when an employee's take home pay was replaced in excess of 100%, the status of disablement was generally prolonged.

The County argues that its proposal is clearly more consistent with the best recommendations offered by experts in the insurance industry than is the current plan. Also, the County's proposal does not penalize employees in the process.

The County also pointed out that most other County employees that are represented have voluntarily agreed to the same type disability pay provision. The only group that has not involved the County's AFSCME unit. That unit went to arbitration on such single issue and the arbitrator found in favor of the Union. The County argues that its worker compensation proposal in this case contains features that corrected and met the deficiencies noted by the arbitrator in the AFSCME case. The County also argued that based on their survey of what other counties have done, they point out that Dane County, Fond du Lac County, Sheboygan County, Ozaukee County, the City of Milwaukee, and Dodge County have shifted from 100% of gross pay to 80% of gross pay as a level of benefits payable to disabled employees.

The Union set forth in concise fashion what it viewed as four major reasons why the County's proposal should not be accepted. They were,

"1. Law enforcement is a unique governmental function in which on-the-job injury is a more likely prospect than other forms of public employment. Sheriff Deputies constantly perform enforcement actions involving the power of arrest and use of force, which raise the potential of injury. Statistics offered by Waukesha County bear out this claim - County Exhibit No. 25 shows that since 1980 Sheriff Deputies have been high in claims per 100 employees among County bargaining units. The arbitrator should give serious consideratin to the unique job functions of law enforcement officers, including the high risk of injury. This year-in and year-out high risk of injury should give Sheriff Deputies a better entitlement for on-the-job injury

than other lower-risk job functions.

"2. The Union's comparable jurisdictions establish unequivocally that the one-year full salary benefit is an across-the-board entitlement for Milwaukee area law enforcement officers (See Union Exhibit No. 1, Page 24). With the exception of the City of Waukesha, where no contract provision exists, all jurisdictions provide a full salary benefit for one year; with the exception of Ozaukee County which provides a 70% monthly salary, but for five years in the case of illness or until 65 years of age in the case of injury. It is clear that in all of the comparable jurisdictions the uniqueness of law enforcement officers, discussed in No. 1 above, is recognized when on-the-job injury occurs.

"3. The County argues that it accomplished the 80% gross earning Worker's Compensation benefit in its other collective bargainingunits, and that a 1% additional wage increase was added on to the 1984 County wage packages as an inducement to settle on the County's Worker's Compensation proposal (See August 5, Pages 86-89). This argument defies any credibility, however, in light of the fact that the County settled its wage package with its AFSCME unit at 4% in 1984 and 3% in 1985; and yet, arbitrated over its Worker's Compensation proposal. This bargaining approach does not in any way reflect a 1% quid pro quo for the County's Worker's Compensation proposal. Attention is called to Union Exhibit No. 2, which is the AFSCME arbitration award denying the County's Worker's Compensation proposal. It is significant that negotiators for the Union were not advised during contract talks that a tradeoff of 1% was a part of the quid pro quo for acceptance of the County's Worker's Compensatio proposal (See August 5, Pages 184-186).

"4. The County contends that its three-day waiting period proposal, plus its 80% gross earnings has constituted a disincentive for County employees injured on the job to report such injuries, or, when injured, to not return to work. This contention is not borne out by the statistics. In the Union's cross-examination of Edward Klein, he admitted that the County statistics do not reflect any decline in reported on-the-job injury among those groups operating under the County Worker's Compensation proposal since 1983 (See August 5, Pages 133-135). Therefore, the County's own statistics do not justify a change, since the objectives sought by the County (i.e.; reduction in on-the-job claims and disincentive to not return to work) have not been accomplished even according to its own statistics provided in this hearing."

In the Union's Exhibit No. 1 at page 24, the Union has set forth the comparable counties and municipalities that were earlier referred to in the wage issue and argued as being the group most comparable. Such exhibit reveals that the majority provides for payment of full salary for one year.

County Exhibit No. 24 lists a number of counties and various represented employee groups in such counties where supplemental payment for injury or illness is tax integrated. A number listed provide benefits in the amount of 80% of gross or base salary.

On this type issue, the arbitrator is of the judgment that it is difficult to assess what value or weight should be attributed to what other jurisdictions do in this area. It seems to the arbitrator that comparison to other jurisdictions is meaningful to determine the general level of compensation and duration of benefit that others provide for purposes of maintaining a reasonable relationship to what others do, both from a fair treatment concept to employees and from a cost standpoint to employers. It would seem, however, that the specific merits that bear upon this type issue should be afforded greater weight in determining the most appropriate level of the benefit and refer to comparables only for purposes of maintaining a reasonable relationship therewith.

The merits of the supplemental pay benefit for incurred injury or illness is also subject to conflicting considerations. In the first instance, there would appear to be no dispute about the fact that law enforcement work involves a somewhat greater potential for on-the-job injury than do other forms of public employment. Such benefit is therefore of a greater concern and of a greater benefit to law enforcement personnel than it may be to other public employees. Under such state of priorities, it is probable that employees in a law enforcement unit may not consider a 1% additional wage increase as constituting a quid pro quo for the type of change that is involved in the County's proposal. The Union argued that the County did not at any time during negotiations indicate that their offer of 4% for 1984 included a 1% earmark as a tradeoff for the Union's acceptance of their worker's compensation proposal.

Turning to the merits of the County proposal, the arbitrator is of the judgment that the premise behind their proposal contains merit. Clearly, it is a matter of common sense that an employee who becomes ill or is injured should not receive more income while not working due to the illness or injury than he otherwise would earn at continued employment. Clearly, such type situation poses a matter of clear over-insurance and one that creates a clear disincentive for the few who may be inclined to take advantage of it and to malinger and stretch the necessary time away from work.

In the considered judgment of the undersigned, the higher priority that law enforcement personnel would place upon adequate supplemental compensation in event of illness or injury would justify a level of benefit that would be better or more extensive than might be otherwise appropriate or desired for groups of employees in low risk occupations. As such, law enforcement personnel would undoubtedly put a higher value upon such type benefits. If a one year period is deemed to be adequate for low risk personnel such as the County has in place for a number of other represented groups, it may be more appropriate and more reasonable and in line with the greater priority for law enforcement personnel to have a longer period of time during which compensation is paid to an injured or ill employee in a high risk group such as in this case. It would appear more realistic and more consistent with the intent and purpose of such type supplemental benefit, that such benefit should be designed so as to compensate

the employee as closely as possible to what the employee would otherwise have earned had he not been injured or required to be off due to illness but without creating a disincentive to return to work. Integration of such benefit with the tax laws so as to achieve such level of benefit would be consistent with common sense, consistent with the true intent of such type benefit and would be consistent with annuity and insurance principles.

That brings one to the final analysis of whether the final proposal of the Union is to be preferred over that of the County or visa versa Again, there is conflict between valid considerations for each proposal. The arbitrator is of the judgment that the benefit formula proposed by the County is validly supported by numerous reasons. Such formula is consistent and in accordance with industry principles which principles are designed to achieve maximum protection to the employee at a minimum cost to the Employer within the full intended purpose of such type provision. The fact that such benefit is of a higher priority and that a quid pro quo may not be present in the current County final offer to the satisfaction of the Union, does not prevent improvements from being negotiated in the future with respect to such benefit and particularly with respect to the extension of time beyond the one year period during which the benefit may be payable. In the final analysis, the arbitrator is of the considered judgment that the final offer of the County is to be preferred on the basis of the total record evidence and all considerations thereon by a very slight preference.

ISSUE No. 9

The County points out that the parties have had a non-discrimination provision in their Collective Bargaining Agreement for a number of years which parallels state and federal laws. They point out that it is part of the County's philosophy to allow employees to use internal procedures to express and pursue complaints of discrimination before proceeding before an agency of the state or federal government. It is for such reason that the County in its proposal has added reference to sexual preference or marital status. Additionally, it specifically added the sentence, "Sexual harassment of any employee by the parties and employees covered herein is prohibited."

The Union position is simply that such matters can be disposed of through state and federal remedies without reliance on the grievance procedure. They contend the grievance procedure is not the proper remedy for claims by protective classes where federal and state remedies should supersede.

The arbitrator finds no persuasive argument by either party for their respective positions. There is no doubt but that both positions have validity. The County contends it prefers that such type matters be handled internally through the grievance procedure. Where that proves to be successful, such position certainly would be proven to be valid.

On the other hand, the law provides that if a matter is handled through the grievance procedure and an employee is dissatisfied with the resolution, the arbitral resolution is not binding on the employee. The employee therefore does effectively obtain two bites of the apple by having procedure available within the contract and also having it available at either the state or federal level.

The arbitrator finds that such issue is not a swing issue and either proposal is reasonable and supportable by valid argument and reasoning.

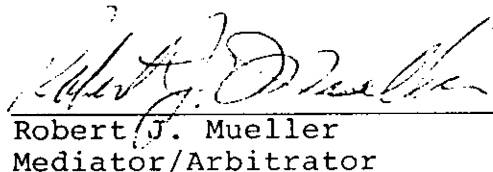
SUMMATION

Because of the multiple issues presented in this case, and the not unreasonable proposals submitted by both parties, the matter of applying the statutory factors and considerations to selection of the final offer that is most reasonable in its total perspective, is not easy. Both offers have their meritorious and strong points and both have their drawbacks. It requires to some degree a balancing act. No single issue dominates the total final offer. Based on a total and overall review of the issues and above discussion thereon, the undersigned comes to the conclusion that the County's final offer is entitled to slight favorability and is therefore selected. It is therefore awarded as follows:

AWARD

That the final offer of the County be incorporated into the final two-year agreement for 1984-85 between the parties.

Dated at Madison, Wisconsin this 13th day of December, 1985.



Robert J. Mueller
Mediator/Arbitrator