STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of:

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LEER DIVISION

For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of

MARATHON COUNTY (SHERIFF'S DEPARTMENT)

Case 97
No. 34133 MIA-932
Decision No. 22462-A

Sherwood Malamud
Arbitrator

APPEARANCES

John H. Burpo, WPPA/LEER Administrator, 7 North Pinckney Street, Suite 325, Madison, Wisconsin 53703 along with Richard T. Little and S. James Kluss appearing on behalf of the Association.

Mulcahy & Wherry, S.C. Attorneys at Law, by Ronald J. Rutlin, 408 Third Street, Wausau, Wisconsin 54401-1004, appearing on behalf of the County.

JURISDICTION OF ARBITRATOR

On April 26, 1985, the Wisconsin Employment Relations Commission appointed Sherwood Malamud as Arbitrator pursuant to Sec. 111.77(4)(b) Wis. Stats., to determine a dispute between the Marathon County Deputy Sheriff's Association, Wisconsin Professional Policeman's Association/LEER Division, hereinafter the Union, and Marathon County, hereinafter the County or the Employer. Hearing in the matter was conducted on July 26, 1985 at the Marathon County Courthouse in Wausau, Wisconsin. Post hearing briefs were filed and exchanged through the Arbitrator on October 1, 1985. This dispute is to be resolved pursuant to form 2 Sec. 111.77(4)(b) in that:

> The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

SUMMARY OF ISSUES

Three issues remain before the Arbitrator for determination.

1. Wages:

UNION OFFER:

Five percent (5%) across the board - Effective 1/1/85.

Four and one-half percent (4 1/2%) across the board - Effective 1/1/86.

COUNTY OFFER:

Increase the monthly salary schedule by four percent (4%) on 1/1/85.

Increase the monthly salary schedule by four percent (4%) on 1/1/86.

2. Retirement:

UNION OFFER:

"County to pay one percent (1%) - Effective 1/1/86.

COUNTY OFFER:

"If at any time any City of Wausau or Marathon County employee is voluntarily granted an employer pickup of the additional one percent (1%) of the employee's share, the employees of this bargaining unit shall also be granted the one percent (1%) pickup."

3. Overtime and Compensatory Time Off:

UNION OFFER: Add the following new section:

"G. Any excess bargaining unit work shall be offered to the full-time employees on a rotating, seniority basis prior to using part-time or casual employees. Any excess time worked shall be compensated at the employee's overtime rate of pay or compensatory time off, at the employee's option, at the rate of time and one-half. Provided, however, in those instances where the sheriff reasonably determines that an emergency exists, in which case he can call upon that deputy he believes can respond in the shortest period of time.

COUNTY OFFER: Retain status quo, no language on this issue.

4. In addition, the parties do not agree on the communities to which Marathon County and its Sheriff's Department are comparable for purposes of determining this dispute.

STATUTORY CRITERIA

The criteria to be used for resolution of this dispute are contained in Sec. 111.77(6)(a-h), Wis. Stats., as follows:

(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 price 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.

BACKGROUND

Marathon County and the City of Wausau established a joint Personnel Department in 1974. Between 1979 and 1982, the City and the County worked to establish a uniform wage settlement pattern among all employee groups in the two municipalities. By 1982, the City of Wausau and Marathon County were able to establish a settlement pattern among the 17 bargaining units of the City and County, with but a few minor variations. It is noteworthy that in 1984, 760 of the 1,228 City and County employees, i.e., 62% of the work force received a wage increase of 5%. The 325 employees in the Nursing Service of the Health Care Center received a 4% increase in 1984.

The County and City policy of providing a uniform wage settlement and maintaining consistent and uniform fringe benefits among the various units is a pervasive element in the dispute between the County and the Union. That element of this case together with the comparability question, the salary, retirement and overtime issues will be discussed more fully in this award concerning the terms and conditions to be included in the 1985 and 1986 Collective Bargaining Agreement covering approximately 43 Deputy Sheriffs and Detectives in the employ of Marathon County.

POSITIONS OF THE PARTIES

The Union Argument

The Union anticipates many of the arguments made by the Employer in its brief, to which it responds, as well as, presenting arguments in support of its position. The Union argues quite strenuously that the City and County philosophy of imposing a uniform wage settlement on all the bargaining units undermines good faith negotiations and prevents individual bargaining units from making their own deals.

The Union asserts that the County never presented evidence with regard to the additional steps added within classification or increases in longevity paid in one unit and not in another in its presentation of settlements in the various units. Furthermore, for 1985 calendar year, the Union notes that only 7 of the bargaining units had settled, whereas, 10 of the units had not settled. The Union concludes from this that the Arbitrator should not follow this philosophy of uniformity, because of the adverse effects it has on negotiations and good faith bargaining. Furthermore, the Union asserts that in 1985 most of the bargaining units have not settled their agreements on the terms dictated by the County.

On the comparability issue, the Union adopts the comparables suggested by the County in a mediation/arbitration proceeding before Arbitrator Kerkman concerning the Marathon County Department of Social Services and Courthouse Employees for calendar year 1981 (Kerkman, 18615-A) 10/81. In that case, with

the exception of the City of Wausau, the County suggested that the appropriate comparable for Marathon County are the counties of Chippewa, Clark, Eau Claire, Langlade, Lincoln, Portage, Price, Shawano, Taylor, Waupaca and Wood. The Union suggests those are the appropriate comparables in this case, as well. The Union suggests that the County is attempting to shop comparables to bolster its position.

The Union suggests that the position of top deputy serve as the benchmark position. The salary paid by the comparable communities at this position should be used as a basis for comparison in determining which wage proposal is preferable under the statute.

With regard to the internal comparability argument presented by the County, the Union maintains that the analysis followed by Arbitrator Richard J. Miller in the City of Wausau police case is flawed in that it prevents each bargaining unit from making its own deal. Furthermore, the Union notes that the police offer in that case was seriously defective. The City's offer was more reasonable than the Union's even when viewed in light of the Union's comparables.

With regard to the impact of the Union's offer, in this case, its impact is no greater than that of the County's. Under both offers, the top deputy would rank third. The Union notes that comparables have settled at 5%. That is the Union's offer.

There were no settlements in 1986. Hence, it is difficult to make comparisons for the second year of the agreement, but if the Arbitrator were to look at settlements which have occurred statewide, to date for 1986, it is apparent that the range of settlements is from 3 to 5%. An increase of 4.5% is either on or not far off the mark. In addition, the 1% increase in retirement was granted. That 1% change was not charged against the package. The Union notes further that Arbitrator Miller in his recent decision concerning the City of Wausau Police Department compared that department to the police departments of the small surrounding communities who employed only several officers. Arbitrator Miller found those to be a relevant comparables, because of their geographic proximity to the City of Wausau. Accordingly, Arbitrator Miller reasoned that both the City and the smaller communities recruited labor in the same geographic area. The Union's offer is more reasonable, because if the Union's offer for 1985 is implemented at the top deputy monthly wage, that wage of $1,778 per month is well below the monthly wage paid in the smaller communities. The Union closes this segment of its argument by noting that the cost of living index provides little insight or basis for choosing the County or the Union offer.

With regard to the pension issue, the absence of settlements in 1986 is a problem. The Union introduced evidence demonstrating that statewide, where there are settlements, the 1% increase in the employee contribution has been picked by employers. Furthermore, 3 of the comparables in this case have language in their contract which states that the Employer will pay 100% of the employee's share of the retirement contribution.

The Union presents a three pronged argument on the overtime issue. First, the Union's offer provides that excess bargaining unit work should first be offered to full time employees on a rotating basis prior to using part-time or casual employees. Secondly, the Union's proposal provides that this excess work be performed at overtime rates. Third, the Union's proposal would provide for emergencies. It permits the Sheriff to use any one available deputy when the Sheriff reasonably believes that an emergency exists.

The Union asserts that it makes its proposal on overtime to meet a serious need for change. First, the Employer assigns less senior employees to overtime assignments when more senior deputies are available. These overtime

assignments arise in situations such as tornados, traffic control at festivals, or in a specific instance this past year when deputies assisted in the removal of the headquarters of the Posse Commitatus.

The second problem concerns the manner in which the Sheriff handles the transport of prisoners. It is departmental policy to have two deputies transport a prisoner. Often, the Sheriff assigns a friend of his who has no training to accompany a Deputy Sheriff in the transport of a prisoner. This practice poses a serious hazard to deputies.

The emergency provision provides the sheriff with sufficient flexibility to meet emergency situations. The Union's proposal does not preclude the use of reserve deputies. It only provides that full time deputies be offered bargaining unit work before that work is offered to anyone else.

The Union concludes that its offer is the more reasonable on all the issues outstanding, and therefore, the Arbitrator should select its offer for inclusion in a successor agreement.

The County Argument

The County argues that its final offer is more reasonable in light of the historical settlement pattern which exists in Marathon County and the City of Wausau. Arbitral authority supports giving weight to internal comparables, where a pattern of settlement has developed among the bargaining units of an employer. Arbitrators have noted that it is unfair to the unions that settle to accept a final offer which is at variance with the pattern of settlement. Jackson County Sheriff's Department, (Haferbecker, 21878) 2/85. In this regard, the County also quotes extensively from the well reasoned opinion of Arbitrator Vernon in City of Sheboygan (Water Utilities), (Vernon, 21723) 3/85 who observed that:

> With respect to the question of whether the employer/employee groups performing similar duties (other water utilities) should be given more weight than public employees in the same community (city employees), it is the Arbitrator's opinion that this cannot be answered in abstract. The Arbitrator does agree that these two comparable groups probably should deserve more weight than others. However, how much weight each of these groups receives is dependent on the individual facts and circumstances of each case. This is because a wage proposal is in reality two things at once. It causes a wage level change and it creates a wage level. This is a precise but important distinction. A wage proposal may result on one hand in wage level changes (increases) consistent with internal comparables (other public employees in the same community), while at the same time creating an inconsistent wage level relative to external employers (and their employees who are) performing similar duties. In this respect, both parameters are important. External comparables are important to measure appropriate wage levels as well as appropriate wage level changes, while internal comparables, whether they are with the same employer or within the same community, are important even though they may involve similar positions because they help in determining appropriate wage level change. On the one hand the wage levels should be consistent with employees doing similar work. On the other hand, where an employer has several groups of employees or where there is a close community of interest among employee groups in the same community (which appears to be the case here even though the utility is technically distinct from the City), a wage increase must also be measured in equity terms relative to its value as it relates to wage level changes. Employees in a close community of interest should experience reasonably similar wage level changes even if there wage

> levels are dissimiliar due to variances in duties and responsiblities.
>
> Accordingly, under the facts from this case, the preferred wage proposal viewed from criteria (D) is the one that strikes a better balance between these two considerations. (emphasis provided in brief)

The County asserts that it has established a pattern of settlement of 4% in 1985 and an additional 4% in 1986. The County maintains that the Arbitrator must view the City of Wausau and Marathon County as one employer. In addition to having a joint personnel department since 1974, the County has been most careful in providing fringe benefits to employees in a manner which is uniformly applied across both City and County units. In fact, the parties reached a stipulation in this case on group health insurance language identical to the language included in all bargaining units. Similarily, the perfect attendance leave and language concerning workman's compensation have been inserted in the agreement or modified to bring them into conformity with the language in other agreements. The County notes that it cannot achieve such uniformity in fringe benefits and wages without the cooperation and the agreeement of the various unions which represent County and City employees. The County notes that in 1984 with but minor exceptions, each bargaining unit received a 5% wage increase. 71.6% of all employees of the City and County settled for no more than this amount. In 1985, 62% of the City's and County's employees settled at 4% for 1985. In two units, split increases were provided to employees to bring their salaries into line with the salaries of other employees in units of the City and the County who perform similar work. Furthermore, in the Wausau firefighter unit, an additional increase was given to lieutenants and inspectors in order to maintain the differential among classifications.

The County argues that settlements should reflect the resources available to pay for those salaries. Accordingly, the County notes that Marathon County is located in an area with high unemployment. The unemployment rate for 1984 and 1985 is approximately 9.1%. It has remained so high, because of the plant closings which have occurred in the community. Conner Forest Industries, Lemke Cheese, Marathon Rubber have all closed plants in the area. Wausau Insurance, the area's largest employer, recently laid off 300 employees. The farming sector of the County is down, as well. The County introduced evidence demonstrating the declining price of corn, milk cows, steers and heifers. The County notes that for the Union to be permitted to bust the pattern, it must demonstrate a serious need and reason for granting its salary demand. In fact, Richard J. Miller, in the City of Wausau Police Department interest arbitration case cited above, refused to sustain an award above the pattern. In doing so, Arbitrator Miller stated that:

> No convincing rational has been produced by the Association which would substantiate making the salary schedule and pay rates more competitive within the other bargaining units in the City or Marathon County. Further, the Union has not met its burden of convincing the Arbitrator that its salary offer must be granted to correct serious inequities with police officers in the comparable community particularly in view of the average increase cited above for comparable patrol officers in surrounding communities.
>
> Both the internal and external comparisons have shown that not only for the 1985 contract year but also on a historical basis, that the City's salary offer is the most reasonable.

The County cites the decision of Arbitrator Kerkman, supra, in which he refused to award a wage increase that was higher than the pattern. Accordingly, this historical wage relationship between police officers, protective service employees in the City and the County has been in existence

for approximately nine years. The City of Wausau firefighters settled voluntarily. The salaries of the police officers in the City of Wausau Police Department were established by an arbitrator who selected the County's offer which conforms to the pattern. The County charts that a determination in favor of the Union would provide deputies with $204 a year more in salary than police officers and firefighters in the City of Wausau. The County notes the close relationship in the level of salary between the Wausau police officer and the Marathon County deputy sheriff. In 1977, '78 and '79, the salaries were identical. In 1980, the deputy sheriff's monthly salary exceeded that of the police officer by $8. In 1981 through 1984, the deputy sheriff's salary exceeded that of the police officer by $3. In 1985, under the County offer, the deputy sheriff's salary will be $4 higher. Under the Union offer, the deputy sheriff's salary would be $21 higher.

On the comparability issue, the County suggests that Lincoln, Langlade, Shawano, Waupaca, Portage, Wood, Clark and Taylor counties are contiguous to Marathon County and are the appropriate comparables, in this case. Furthermore, by reason of population, unemployment, equalized value per capita and equalized tax rate, as well as the distribution of the work force by occupation, all support the County's suggested comparables.

The County asserts that its offer on the wage issue is more reasonable for several other reasons. Its offer maintains the Deputy Sheriff's ranking among the comparables at no. 3. Its offer exceeds the average of the comparables by 5.6%. Furthermore, with regard to career earnings, the Deputy Sheriff in Marathon County achieves the top step in but 1 1/2 years. It takes 3.1 years, on the average, to achieve the top rate among the comparables. Accordingly, the County concludes that both, with regard, to external and internal comparables, its wage proposal should be selected.

The total compensation criterion favors the County offer, as well. The County provides full payment of health insurance premiums. It pays 50% toward dental insurance premium cost. The County's offer exceeds the cost of living which is running at 3.5 to 3.7%. Despite this low inflation rate, the Union offer for 1986 is in excess of 5.5% inclusive of the 1% pickup in retirement.

With regard to the retirement issue, the County notes that its offer is consistent with settlements and stipulations reached in other units. The City Hall, Parks, Highway, Courthouse, Professional Social Service, Non-Professional Social Service, Health Department and CETA employee bargaining units have all agreed to this stipulation. The County has entered into this stipulation to maintain a consistent fringe benefit pattern among its employees. (citations omitted).

The County argues that it is axiomatic that an arbitrator should not change working conditions through an impasse proceeding, unless there is a demonstrated need for the change. A heavy burden must be borne and met by the party proposing the change. See Green County, Dec. No. 18140-A (4/81); City of Brookfield, Dec. No. 19573-A (4/82); School District of Valders, Dec. No. 19804-A (3/83); School District of Weyauwega-Fremont, Dec. No. 19609-B (1/83); School District of Colfax, Dec. No. 19886-A (3/83); School District of Maple, Dec. No. 18305-A (4/81); Arrowhead Union High School District, Dec. No. 17636-A (2/81); City of Hudson, Dec. No. 18526-A (7/81); School District of Beloit, Dec. No. 19168-A (4/82); Darlington Community School District, Dec. No. 19730-A (3/83); Sheboygan County, Dec. No. 19799-A (2/83); Oak Creek-Franklin Joint City School District No. 1, Dec. No. 18222-A (7/81); City of Wisconsin Dells, Dec. No. 16140-A (6/78); City of Milwaukee, Dec. No. 16825-A (10/79); Walworth County, Dec. No. 19811-A (2/83); Clintonville Public School District, Dec. No. 19940-A (4/83); LaCrosse County, Dec. No. 20212-A (6/83); City of Ashland, Dec. No. 19742-A (11/82); City of Oconomowoc, Dec. No. 17730-A (10/80); Cambria-Freisland School District, Dec. No. 17549-A (8/80); School District of Barron, Dec. No. 16276-A (11/78). Arbitrator Krinsky in Village of West Milwaukee, (Krinsky, 12444-A) 6/74 observed that:

> The arbitrator does not view the arbitration process as a device for pattern setting or for initiating changes in basic working conditions absent a showing that conditions at issue are unfair or unreasonable or contrary to accepted standards in the industry ...

The County asserts that the Union has not met its burden. The overtime provision has remained in its present form virtually unchanged since 1975. The County maintains there is no problem. Through its proposal, the Union objects to the use of reserve deputies. However, most Counties maintain a cadre of reserve deputies, the County notes. All the specific incidents and objections with regard to the assignment of personnel were answered and explained by Chief Deputy Kohl, at the hearing. Contrary to the assertion made by the Union, reserve deputies are trained for approximately 320 hours. In one instance, a senior employee was bypassed and he was not selected to participate in the action of moving the Posse Commitatus headquarters. He was involved in an expensive lawsuit concerning his judgment in a particular incident, and that was the reason for the Sheriff's action.

The County argues that the overtime proposal of the Union is seriously flawed. It does not define bargaining unit work. The County points to the testimony of the Union's own witness who made distinctions between different kinds of patrolling. He stated that park control was not bargaining unit work. This lack of definition can only lead to many grievances. If a deputy refuses a call-in, the procedure outlined by the Union's proposal would increase administrative time in achieving appropriate staffing levels. Furthermore, there is no proof that there is an inequity in the distribution of overtime to bargaining unit employees. The proviso covering emergencies and its reference to "reasonably believe that an emergency exists," can only lead to disputes which would have to be resolved through arbitration. Finally, the Union's proposal requires the County to pay overtime rates to full time deputies who are assigned this excess bargaining unit work. Communities in which festivals occur are charged for the service provided by the Department. These communities would no longer use the Sheriff's Department to maintain order at their festivals and other community events if it became too expensive. Simply put, the Sheriff's Department employees would be pricing themselves out of this work. The County concludes, therefore, that its proposal on all the issues is the most reasonable, and it should be selected for inclusion in a successor agreement.

DISCUSSION

In the discussion below, the Arbitrator first addresses the comparability issue. The wage item is then discussed. Then, the positions of the parties on the pension and overtime issues are analyzed. The Arbitrator concludes by selecting the final offer which best meets the statutory criteria.

COMPARABLES

Although the County goes to great lengths to demonstrate that its list of comparables is the one which should govern the determination of this case, the Arbitrator finds that the Union's list is most appropriate for that task. The Union's list includes all the comparables suggested by the County. However, the Union's list is the one employed by Arbitrator Kerkman, at the suggestion of the County, in his award concerning the social services and courthouse units. In that case, the County urged reliance on these comparables based on geographic proximity. It does not appear that these counties were identified by Marathon County or were chosen by Kerkman as comparables in his decision, because of the nature of the unit involved, in that case. Rather, those counties were identified as comparables based on their geographic proximity to Marathon County, population size, equalized value of real estate located in the County, etc.

This Arbitrator believes that it is harmful in the long run and upsetting to the bargaining relationship to permit the parties to engage in comparability shopping when the data is available from the primary comparables. Accordingly, this Arbitrator concludes that the appropriate comparables are, in addition to the City of Wausau, the counties of Chippewa, Clark, Eau Claire, Langlade, Lincoln, Portage, Price, Shawano, Taylor, Waupaca and Wood.

THE WAGE ISSUE

There is a threshold matter to be resolved with regard to criterion (d). It concerns the weight to be given to internal comparables, in this matter. The County argues that it has established a pattern of settlement for 1985 and 1986. Its offer is equal to the pattern. On the other hand, the Union would have this arbitrator reject the County's approach toward negotiations, or in the alternative, find that there is no pattern of settlement for the reasons already summarized above.

The County's assertion that 4% is the pattern of settlement in the City of Wausau and Marathon County is premised on its inclusion of non-represented employees and nursing service employees at the Health Care Center in this computation. By including these two groups, the County maintains that 62% or 759 + employees have accepted a 4% wage increase in 1985. Yet, with regard to the Health Care Center, County exhibit 11B indicates that the Health Care Center settled at 4% in 1984 when all other units were settled at 5%. The County did not explain why the Health Care Center unit was settled at a figure below the pattern. Furthermore, although the parties in this case are before this Arbitrator on a complete two-year agreement, the settlement in the Health Care Center for 1985 calls for a 4% wage increase, with a reopener on wages in 1986. This evidence indicates that the Health Care Center is for some reason, out of sync with the pattern. Its inclusion in establishing the pattern for 1985 is inappropriate. When their numbers are excluded, it is clear that the County has a 4% wage settlement which applies to no more than 30% or 434 of its employees. If the non-represented are deleted from these "collective bargaining unit" statistics, it is apparent that only 282 of the County's 1,220+ employees are covered by this 4% settlement. Furthermore, almost 2/3 of the bargaining units have not accepted the 4% wage offer. This evidence clearly demonstrates that there is no pattern of settlement in the City of Wausau/Marathon County bargaining units for 1985 and 1986. Accordingly, the Arbitrator gives weight to the settlements and the arbitration awards already issued involving Marathon County and City of Wausau units. However, that data is not accorded the great weight normally accorded pattern settlements by arbitrators where those patterns have been achieved.

In the absence of a pattern settlement, it is appropriate to turn to an analysis of the external comparables to ascertain which offer is preferable; 1) when compared to the size of the salary increase from 1984 to 1985; 2) when compared to the level of salary paid to the top deputy, the benchmark position, here. In this manner, not only is the level of change, the dollar increase received by employees performing similar work in comparable communities compared, but the actual level of compensation they receive on an annual basis is compared, as well.

Table 1, below, lists the comparable communities and the salaries paid to the top deputy (in the case of the City of Wausau, top patrolman) for the years 1983, 1984 and 1985. In addition, the relationship of the Marathon County Deputy relative to the average salary paid to the deputy employed in these counties, is noted.

TABLE 1
Comparables for Top Deputy

Comparable Community	1983	1984	1985
1. Chippewa County	18,907.20	20, 176	21,153.60
2. Clark County	16,980	17,715	18,468
3. Eau Claire	20, 048	20,838	21,670
4. Langlade	17,076	17,718	Not settled
5. Lincoln	18,180	18,912	20,520
6. Portage	19,353.81	20,493	21,454.36
7. Price	17,336.40	18,288.40	19,076
8. Shawano	17,315.04	18,094.20	18,814.64
9. Taylor	17,616	18,366.40	19,281.60
10. Waupaca	18,749.16	19,676.76	20,654
11. Wood	20,509.50	21,429.48	22,827
12. City of Wausau	19,308	20,268	21,084
Marathon Employer	19,344	20,316	21,132
Marathon Association	N/A	N/A	21,336
Average	18,448.26	19,331.27	20,454.84
Marathon County/ Union Change Relative to the Average	+895.74	+984.73	Employer 677.16 Association 881.16

Source: Union Exhibits, p. 9, 10 and 11.

TABLE 2

Size of Annual Wage Increase
1983-1985

	1983 to 1984		$1984 to 1985
Average of Deputies Employed by Comparables	883.01		1,123.57
Marathon County Deputy	972	County	816
		Union	1,020

Source: Table 1

The data in Table 2 demonstrates that the Union's offer more closely approximates the level of increase over the 1984 wage rates provided to deputies employed by the comparables. No change in rank relative to the salary would result under either offer. This indicates that the salary level is a reasonable one under either offer. However, since the level of increase provided under the Union's offer more closely approximates the average increase received by deputies employed in the comparables, it is the Union's offer which is supported by this view of the comparability factor.

The Union's offer is buttressed by the comparison of the level of salaries paid to deputies of Marathon County as compared to the annual salaries received by patrolmen in the smaller communities surrounding the City of Wausau and located in Marathon County. This data is accepted as a comparable in light of the use of this data by Arbitrator Miller in his award concerning the wage rates to be paid to police officers in the City of Wausau in 1985. City of Wausau, (Case 27, Decided July 22, 1985.)

On the other hand, the County has demonstrated the close historical relationship among the wage levels paid to the City of Wausau patrolmen, firefighters and the Marathon County Deputy Sheriff. Acceptance of the Union offer would distort that relationship by increasing the disparity between the deputy and the patrolman from $3 a month in 1984 to $21 per month in 1985 under the Union offer. Under the County's offer, the disparity would only increase from $3 in 1984 to $4 in 1985. Furthermore, selection of the Union offer would exaggerate the differential in monthly wage rates between the County Deputy and Wausau firefighters. From 1981-1984 that differential fluctuated between 9 and 11. Under the 1985 Union offer, it would increase to $28 per month. Under the County offer, it would remain at $11 per month.

The net effect of this analysis is that the Union's offer is preferred when the size of the increase received by deputies is compared to the average increase received by the comparables. On the other hand, the County's offer maintains the historical relationship in salary levels among the Deputy Sheriff, Wausau Patrolman and Firefighers. These two views of the comparability criterion balance each other out.

The Union complains bitterly at being tied by any historical relationship to any other unit or to be forced to accept a pattern settlement. It decries arbitral acceptance of such notions. Arbitrators accord substantial weight to pattern settlements and historical relationships, because they are difficult to achieve. For example, in this case, in order to sustain an argument on historical relationship, the County had to jump two hurdles. First, it had to show that in the past, there exists some historical relationship. Then it had to show that in the present that relationship is maintained. To effectively demonstrate that the historical relationship is maintained it settled voluntarily with the firefighters and won an interest arbitration proceeding with the patrolmen. A loss in the patrolmen case may have undermined the historical relationship argument with regard to the present in this proceeding. Or, in the alternative, the Union would have argued that the historical relationship between the City patrolman and the County Deputy Sheriff supports its offer.

The total compensation criterion is developed in the County's presentation. However, the County did not reduce the fringe benefits offered, such as, health, life and dental insurances, retirement contributions, etc., to an arithmetic figure, or include it in an hourly rate for Marathon County employees and for deputies employed by the comparables. Instead, the County listed the various benefits provided to County employees and to employees of the comparable counties. It is apparent from that listing, that the Deputy Sheriffs enjoy a dental benefit which is not enjoyed by most of the comparables. However, it is impossible to ascertain whether the total compensation received by any Marathon County Deputy Sheriff significantly exceeds that of a deputy sheriff in any of the comparable counties. Accordingly, the Arbitrator concludes that the differences in total compensation paid among the comparables as compared to Marathon County will have a direct relationship to the level of salary increases provided. On that basis, the Arbitrator concludes that the total compensation criterion provides no added basis for distinguishing between the final offers of the Union and the County.

Similarily, the cost of living criterion does not provide sufficient basis for distinguishing between the two offers, nor do any of the remaining

criteria, such as, the lawful authority of the Employer, the stipulations of the parties, or "other factors" assist in identifying the offer to be selected. In addition, the County did not present an ability to pay argument. That criterion need not be addressed.

Both the County and the Union acknowledge the absence of settlements relative to 1986. Since but 1/2 of 1 % separate the two offers on the salary or wage issue, by itself, the Arbitrator finds that the wages for the second year should follow the determination made with regard to the preferable offer on wages for 1985.

On the basis of the above discussion, the Arbitrator finds that the evidence equally supports the selection of either monetary offer for inclusion in a successor agreement.

RETIREMENT

The Union proposes that the County pay the additional 1% increase in the employee's share of the retirement contribution. The County proposes a "me too" clause. If the County voluntarily offers to pick up the 1% contribution, it will pay that contribution in this unit, as well.

The "me too" clause offered by the County is an appropriate way of handling a problem in the case of a settlement or stipulation. The "me too" clause offered by the County does not provide for employer pickup of the contribution should it be directed in an interest arbitration proceeding. This is fairly significant in light of the fact that Marathon County and the City of Wausau are in the process of resolving interest disputes with many of its employee bargaining units through the statutory impasse procedures of the Wisconsin Statutes.

Furthermore, there is no indication in this record that the County intends to voluntarily pick up the 1% contribution. It appears to this Arbitrator that the County attempts to gain the benefit of a maybe yes response to the demand to pick up the 1% contribution in an interest arbitration dispute. Where in reality, its response is one where there is no evidence of its intention to pick up that contribution in the future. Accordingly, the Arbitrator treats the employer's "me too" offer as a refusal to pick up this contribution.

Although there are no settlements for 1986 among the comparables, three of the comparables, namely Clark, Taylor and Waupaca Counties have language in their agreements which provide for payment of 100% of the retirement benefit. When the retirement issue is viewed in isolation from all other monetary issues, this evidence is sufficient to indicate a slight preference on the retirement issue in favor of the offer of the Union.

OVERTIME

The Union attempts to insert in a successor agreement the following overtime language:

> Any excess bargaining unit work shall be offered to the full-time employees on a rotating, seniority basis, prior to using part-time or casual employees. Any excess time worked shall be compensated at the employee's overtime rate of pay or compensatory time off, at the employee's option at the rate of time and one-half. Provided, however, in those instances where the sheriff reasonably determines that an emergency exists, in which case he can call upon that deputy he believes can respond in the shortest period of time.

Through this language, the Union attempts to a. increase the income of its membership through the assignment of additional overtime; b. limit the

work opportunities which the County may make available to reserve deputies; c. provide that all bargaining unit work be first offered to bargaining unit personnel; d. perform all this excess work at overtime rates.

The Union cites several reasons for its demand. None of the reasons cited by the Union referred to the opportunity of its membership to increase its income. Rather, the Union asserts that the Sheriff does not distribute overtime fairly and shows favoritism in making some overtime assignments. The Union failed to present any hard data which would indicate that any employee receives far more overtime or is asked to work far more overtime than any other employee.

However, the Union was able to prove that a reserve deputy, with little formal training, is assigned as the second individual in the squad car when prisoners are transported. The Union has demonstrated a need for change. However, the Union does not limit its demand to the assignment of the transport of prisoners and specify that such an assignment first be offered to bargaining unit members. Instead, the Union requests that bargaining unit members be given first opportunity to perform bargaining unit work. The Union does not define what is bargaining unit work. At the hearing, the President of the Union local testified that its proposal did not cover park patrol. It did cover traffic and crowd control at festivals. There is nothing in its proposed language to indicate this distinction. It is clear, that the insertion of such a broad clause will lead to the filing of grievances over what is and what is not bargaining unit work.

In reviewing a demand to change a working condition through an impasse procedure, this Arbitrator looks at several factors. All the factors need not be met. However, it is apparent from this list on the requirements that must be met, that it is difficult for a party seeking to change the agreement to achieve that change through an impasse proceeding. This arbitrator asks first: Is the proposal clear and unambiguous? Is it clear as to the scope of its coverage? Disputes may arise even under the clearest language, however, in many cases, interpretation problems may be anticipated. In this case, for instance, what is excess bargaining unit work? A definition of such work or reference to specific types of assignments which are the object of the proposal would eliminate this problem.

On the other hand, the reference to emergencies and the reasonable belief by the sheriff that an emergency exists, is language which may be the source of a grievance. However, its purpose is to provide a safety valve. Its purpose is to permit flexibility. Understandably, where flexibility exists, disputes may arise. But such purposeful ambiguity which is inserted for flexibility purposes is not viewed as a negative element of the proposal. Whereas a proposal whose scope is ambiguous because it is unknown to what assignments the language applies, can only cause confusion and require that a definition of the language be developed through grievance arbitration.

A second factor in this Arbitrator's analysis is a review of the total offer of the party proposing the change to ascertain if there is a quid pro quo to achieve the change. For instance, in this case, the Union seeks a change in the assignment of overtime which may well increase the income of its membership. Has the Union made a demand for a smaller wage increase to induce acceptance of this change? Is there any evidence that the proposing party tends to buy the change. Certainly, under Sec. 111.77(6)(h)--a normal and traditional consideration in the Collective Bargaining Process--is the give and take which normally accompanies a demand for a change. The parties may disagree over whether the price offered for the change is sufficient to justify granting the change. However, the statutory criteria contemplate the offer of some quid pro quo where a substantive change in working conditions is demanded. In this case, there is no evidence in the Union offer of any quid pro quo, despite the likely increase in income which may be generated by the language demand made here.

The third element which this arbitrator looks for is whether the proposing party has demonstrated a need for the change. In this case, the Union has demonstrated a need to change the overtime language with regard to the transport of prisoners to provide a Deputy Sheriff with the first opportunity at such assignment.

The fourth element which this Arbitrator looks for is whether or not the proposal made is reasonably designed to effectively address the problem. In this instance, the Arbitrator finds that the proposal addresses the problem, however, it creates a problem, as well. Bargaining unit work is not defined.

To a limited extent, the Union has shown a need for the change. It has made a proposal which would effectively deals with the problem. However, this proposal is ambiguous and will lead to grievances. Furthermore, there is no evidene of any quid pro quo for its demand. Accordingly, this Arbitrator finds that the Employer's offer to retain the status quo on the overtime language is preferred.

SELECTION OF THE FINAL OFFER

The Arbitrator concludes that both the Union's and the County's offer on the salary issue for 1985 and 1986 are reasonable and their inclusion in a successor agreement is equally supported by the evidence. The County was unable to demonstrate to the satisfaction of the Arbitrator that a pattern of settlement exists for 1985. In fact, Arbitrator Miller, in his decision regarding the City of Wausau Police Department did not find that a pattern of settlement existed for 1985. He did find a historical relationship among the police officers and other units. But, he did not find that a pattern of settlement for 1985 had been achieved by the Employer. In the absence of a pattern, the external comparables are accorded greater weight by this Arbitrator. The evidence demonstrates that the size of the increase in salary offered by the County is below the average salary increase offered by the comparables. On the other hand, the Union's offer is slightly below the average increase achieved by deputies employed by comparable counties. On the other hand, the County's offer maintains the historical relationship on the salary of the Deputy Sheriff relative to that of the Wausau Patrolman and Firefighter.

On the retirement issue, the Arbitrator expressed a slight preference for the proposal of the Union. The combined effect of the 1% increase generated by the retirement demand together with the 4.5% wage increase demanded by the Union in 1986 is slightly above the total package increase for 1985. There is nothing in the cost of living data for 1985, in the economic news for the Marathon County area, or in the amount of state aids to be returned to the County which would indicate that a higher total package increase in 1986 over 1985 is justified or likely. As a result, the Arbitrator finds that upon full consideration, the scale is in perfect balance on the economic issues of wages and retirement. There is one more issue.

The Union proposes the inclusion of the new overtime language quoted above. The overtime proposal has a policy implication, in that, it will restrict and limit the opportunities available to reserve deputies to perform work for the Department. In this regard, this proposal may or may not hamper the County's ability to maintan a cadre of reserve deputies. However, there is no quid pro quo offered by the Union for this change in the overtime language.

Furthermore, in the absence of a definition of bargaining unit work, in this case, where non-bargaining unit individuals performed what the Union believes to be bargaining unit work, this Arbitrator knows that the elements

are present in this proposal for the filing of a considerable number of grievances.[1]

On balance, the County's position on overtime is preferred because of the defects noted above in the Union's offer. Those defects outweigh the need for a change in the assignment of the transport of prisoners. Therefore, the Arbitrator finds that the total final offer of the County is preferred. The Arbitrator concludes that the total final offer of the County is to be included in a successor agreement.

On the basis of the above discussion, the Arbitrator issues the following:

AWARD

Based on the statutory criteria found at Sec. 111.77(6)(a-h), Wis. Stats., the evidence and arguments of the parties and for the reasons discussed above, the Arbitrator selects the Final Offer of Marathon County, which is attached hereto, to be included together with the stipulations of the parties into a successor agreement for calendar years 1985 and 1986 between Marathon County and the Marathon County Deputy Sheriff's Association, WPPA/LEER Division.

Dated, at Madison, Wisconsin this 13th day of January, 1986.

Sherwood Malamud
Arbitrator

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1 See School District of West Allis-West Milwaukee, (Malamud, 21700-A) 1/85.

ER. EH. 3

FINAL OFFER OF MARATHON COUNTY TO THE MARATHON COUNTY DEPUTY SHERIFFS' ASSOCIATION, FEBRUARY 19, 1985.

1. ARTICLE 13 - WISCONSIN RETIREMENT FUND, add the following paragraph to the existing provision:

"If at any time any City of Wausau or Marathon County employee is voluntarily granted an employer pickup of the additional one percent (1%) of the employee's share, the employees of this bargaining unit shall also be granted the one percent (1%) pickup."

2. ARTICLE 32 - DURATION OF AGREEMENT, revise by changing all dates to reflect a two-year contract commencing January 1, 1985 and expiring on December 31, 1986.

3. APPENDIX "A", revise to provide as follows:

"APPENDIX A"

	1/1/85	
Detective	$1,843/month;	$22,116/year
Deputy Sheriff	$1,761/month;	$21,132/year
	1/1/86	
Detective	$1,917/month;	$23,004/year
Deputy Sheriff	$1,831/month;	$21,972/year

All employees are hired at 85% of the above listed salary. Increases shall be granted to 90% after six (6) months of service, 95% after one (1) year of service and 100% at the end of one and one-half (1 1/2) years of service.