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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

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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  
  
MARINETTE COUNTY (SHERIFF'S DEPARTMENT)

Case 70  
No. 35248 MIA-1008  
Decision No. 22910-A  
  
Sherwood Malamud  
Arbitrator

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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.

James E. Murphy, Marinette County Corporation Counsel, Dunlap Square Building, Marinette, Wisconsin 54143 appearing on behalf of the Municipal Employer.

JURISDICTION OF ARBITRATOR

On November 18, 1985, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator in a dispute governed by Sec. 111.77(4)(b) Wis. Stats., to determine said dispute between the Wisconsin Professional Police Association/LEER Division, hereinafter the Association, and Marinette County, hereinafter the County or the Employer. Hearing in the matter was conducted on January 20, 1986 at the Marinette County Courthouse in Marinette, Wisconsin. Post hearing briefs were filed and exchanged through the Arbitrator on February 26, 1986. 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

The parties present four issues for the determination of the Arbitrator. Those issues are:

1. Wages:

UNION OFFER:

Five percent (5%) across the board in all classifications covered by the Agreement.

COUNTY OFFER:

Four percent (4%) across the board in all classifications covered by the Agreement.

2. Holidays:

UNION OFFER:

Increase the number of holidays from 8-1/2 to 10 by providing for a half holiday on Christmas Eve, New Year's Eve, and Good Friday.

COUNTY OFFER:

Retain the status quo, i.e., 8.5 holidays.

3. Longevity:

UNION OFFER:

Change agreement at Section - 2 to provide for a payment of \$80 after four years of service; and, at Section - 3 increase from \$15 to \$20 for each year thereafter.

COUNTY OFFER:

Retain Status Quo, i.e., after four years of service \$60 paid annually and \$15 per year for each year thereafter.

4. Sick Leave:

UNION OFFER:

Change the language at Section - 1 to permit the accumulation of sick days to a maximum of 100 days.

COUNTY OFFER:

Retain status quo, i.e., maximum accumulation of sick days remain at 80.

STATUTORY CRITERIA

The criteria to be used for resolution of this dispute are contained in Sec. 111.77(6) (a-h), Wis. Stat., 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 employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

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 employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits,

the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

#### BACKGROUND

The Marinette County Sheriff's Department contains the following employee classifications who are excluded from the unit: the Sheriff, one Chief Deputy, one Captain, and one Lieutenant. The following classifications are in the collective bargaining unit: seven security deputies (jailers), one security sergeant, five deputy sergeants, twelve patrol deputies. At the hearing, the Employer raised an issue concerning whether the determination of the Arbitrator in this matter governs the wages and conditions of employment of the following classifications: four deputy dispatchers, one clerk dispatcher, one dispatcher clerk, one sheriff's secretary, one records manager. The Association maintains that the Wisconsin Employment Relations Commission determined the scope of the unit when it directed an election which was won by the WPPA/LEER Division. The Arbitrator ruled at the hearing, that the question of the scope of the unit is a matter to be determined by the Wisconsin Employment Relations Commission, and that the Arbitrator does not have jurisdiction to determine in this interest arbitration proceeding any scope of the unit question. The Arbitrator limited the January 20, 1986 hearing to the issue of the final offer to be included together with the stipulations of the parties in a successor agreement for calendar year 1985.

The contract at issue between the parties has expired. Although the employees of Marinette County are organized into several bargaining units, this unit of law enforcement personnel is the last unit whose wages and conditions of employment for 1985 remain open and unresolved. The unit of professional social workers employed in the Marinette County Department of Social Services had their wages and conditions of employment determined through the processes of the mediation/arbitration statute of the Municipal Employment Relations Act for calendar year 1985.

#### POSITIONS OF THE PARTIES

##### The Association Argument

The Association addresses each of the statutory criteria listed above in its written argument. The Association notes that with regard to the criteria, "the lawful authority of the Employer", "stipulations of the parties", and "changes in circumstances during the pendency of this proceeding", have no bearing on the outcome of this case.

The Association maintains that its offer best meets the criterion, "the interests and welfare of the public". The Association argues that under its offer, the morale of the officers of the department is maintained. In this regard, the Association cites a decision of Peter Seitz in City of Providence, 47 LA 1036, 1039 (1966) wherein Seitz notes the importance of having a wage level which is high enough to encourage and to attract young people to engage in this dangerous work and to maintain the highest possible esprit de corps.

Secondly, the Association maintains that under its offer, the wage levels of employees in Marinette will be maintained at a level comparable to that of employees employed in other law enforcement agencies in the area. The Union notes further that the County has never raised an ability to pay argument.

And there is no question of the County's ability to meet the Association's demand.

The Association selected the communities which it believes are comparable to Marinette County on the basis of several factors: population, geographic proximity to Marinette County and day to day interaction in law enforcement matters. These criteria led to the selection of Oconto and Door counties as well as the City of Marinette, the county seat of Marinette County, as the Association comparability base. The Association rejected the geographically proximate counties of Forrest and Florence counties on the basis of the small size of the populations and the law enforcement departments in those two counties.

The Association disputes the reasonableness and comparability of the municipalities selected by the Employer. The Association notes that the communities selected by the Employer represent a state-wide sample. In this regard, the Association cites the decision of Arbitrator Zeidler in City of Onalaska, (18612-A) 8/81 in which he observed that:

. . . geographic location of the list spread over the state does not provide the basis for considering municipalities under the same economic influences.

The Association notes that it pegged its data to the top deputy position as the position to be compared among its list of comparables.

The Association anticipates the Employer's argument concerning the settlements achieved by the Employer with its other bargaining units by noting what it understood this Arbitrator to have stated in Marathon County, (22462-A) 1/86 that a historic pattern of settlements must be established before giving great weight to an argument based on a settlement pattern. The Association notes that the Employer in this case presented no data demonstrating a history of pattern settlements in Marinette County.

Furthermore, with regard to the Employer's internal settlement argument, the Association maintains that:

The most important and relevant factor regarding those settlements is that all but one case were voluntary in nature and the law enforcement bargaining unit had absolutely no input on same. The mere fact that some units may have voluntarily agreed to a settlement that is less than that sought by a uniquely different bargaining unit should not restrict the latter from pursuing a settlement which is more appropriate and fair for its members. To conclude otherwise is to frustrate the very purpose of the collective bargaining process as it was intended.

The Association asserts that a comparison of the wage levels of the top deputy from 1981 through 1985 as compared to the wage levels paid by comparable municipalities to their law enforcement personnel over the same period of time demonstrates, conclusively, the decline in the level of wages suffered by the law enforcement employees of Marinette County. In 1981, the County top deputy was the leader among the comparables. By 1985, if the Association offer is selected, the wage level would be raised to a point just \$1 per month above the salary received by Oconto County deputies. This slippage is demonstrated in Association exhibit number 12 wherein the salaries of the top deputy in Marinette County and the top patrolman in the City of Marinette are contrasted. In 1981, the County top deputy was \$66 a month above that of the City patrolman. By 1985, the top deputy salary will be \$156 per month below that of the City patrolman should the County's offer be selected for inclusion in a successor agreement.

On the cost of living criterion, the Union quotes from the decision of Arbitrator Gundermann in City of Superior, (20422) in which he notes that it is important to look to the level of settlements achieved by comparable

communities under the same economic conditions. These municipalities take into account in reaching their settlements the cost of living factor. The weight to be given to that factor is reflected in those settlements. Gundermann observed that often cost of living is a factor considered by municipalities in reaching these settlements, but it is apparent that it is not the controlling factor for the parties.

With regard to the criterion of overall compensation, the Association maintains that in the fringe benefit areas of holidays, sick leave accumulation and longevity the deputies of Marinette County have sustained slippage in their position over the last several years. In this regard, the Association notes that both Door County and the City of Marinette have ten holidays per year. With regard to sick leave accumulation, Door County provides for unlimited accumulation; the City of Marinette permits accumulation of sick leave to 100 days.

The Association argues that the longevity schedule in Marinette County is the worst among the comparables. Under the Association proposal this ranking would remain in place through the eleventh year of employment. Then, under the Association's offer, the Marinette County deputy would fair slightly better than the deputy in Door County. The Association proposal would still leave the top deputy in Marinette County behind the City of Marinette patrolman and Oconto County deputy.

The Union argues that catch-up is mandated here in this case. The element of catch-up is compelling not only with regard to the wage dispute but with regard to the other fringe benefit issues included in the Association proposal. The Association argues that based on its presentation which is built on a factual record and the lack of facts in the County argument, the Arbitrator should conclude that the Association offer is the more reasonable, and that offer should be selected by the Arbitrator for inclusion in a successor agreement.

#### The County Argument

The County argues that it has achieved wage settlements at 4% or less for 1985 with its represented collective bargaining units and non-represented employees, as well. Thus, the Courthouse Employees represented by Local 1752-A of AFSCME, Highway Department Employees represented by Local 300 IUOE, Marinette General Hospital represented by AFSCME, Social Services Professional Employees represented by an independent association, County Nurses represented by an independent association, all settled at 4%. Pine View Nursing Home is non-represented and received 3% for 1985; Marinette General Hospital, Social Services and Courthouse department heads and other non-union personnel all received 4%. The County notes that the fringe benefit package for all employees both represented and non-represented remain the same in 1985.

The County argues that there is no need for catch-up here. Among the comparables identified by Marinette County in its exhibits, Marinette ranks sixth among 22 municipalities which it suggests as comparables. The wages of the deputies is 3.8% above the average received by law enforcement personnel in these 22 communities. The County also notes that of the 9 comparable communities surveyed concerning the rates of security deputies (jailers) who comprise 24% of the unit represented by the WPPA in Marinette County, the salary of the Marinette security deputy (jailer) is 19.2% above the average. The County concludes that its offer is the more reasonable and should be included in a successor agreement.

#### DISCUSSION

In the discussion below, the Arbitrator first addresses the comparability issue. The wage issue is then analyzed. The fringe benefit issues of holidays, longevity and sick leave accumulation are discussed as a group. The Arbitrator concludes this section of the award with a discussion of the

reasons underlying the selection of the final offer which bests meets the statutory criteria for inclusion in a 1985 Agreement.

#### THE WAGE ISSUE

##### COMPARABLES

The Association suggests that Door and Oconto Counties, as well as, the City of Marinette serve as the municipalities comparable to Marinette County and its Sheriff's Department in determining which offer is to be selected for inclusion in a successor agreement. The Employer includes Oconto County and the City of Marinette in its list of comparables. It omits Door County from its list. The Employer lists 17 other Wisconsin counties as well as the City and County of Menomonee, Michigan in its list of comparables. All the Wisconsin counties suggested by the Employer are located in the northern half of the state of Wisconsin. The Wisconsin counties suggested by the Employer as comparables include Douglas, Burnett, Bayfield, Sawyer, Taylor, Iron, Rusk, Price, Jackson, Juneau, Monroe, St. Croix, Shawano, Oneida, Oconto and Florence Counties.

Neither the Association nor the County suggest that any arbitrator has determined the communities which are comparable to Marinette County with regard to any of its units. The Arbitrator does not employ the comparables suggested either by the Association or by the County in making this award. The Arbitrator finds that three comparable communities, Door and Oconto and the City of Marinette provide an insufficient data base for purposes of comparing the wages, hours, and conditions of employment of law enforcement personnel employed by these municipalities to the wages, hours and working conditions suggested by the offers of the parties for the law enforcement personnel in Marinette County. The Arbitrator normally requires five or six communities at a minimum to establish a sufficient data base for comparative purposes. When so few communities are used as three comparables, the possibility for distortion based on a particularly low or high settlement is extremely high. There are occasions where the parties themselves or arbitrators have identified a linkage between one county and another county, one city and another city, one school district and another school district. On those occasions, reference to a settlement in this "sister" municipality may be accorded great weight by an arbitrator. However, there is no evidence in this case to indicate any such relationship between Marinette County and the City of Marinette and the law enforcement agencies of Marinette County and either Door or Oconto Counties.

On the other hand, the County certainly suggests an ample number of municipalities for comparative purposes. However, the County failed to introduce sufficient data with regard to the populations of the suggested counties, the size of that law enforcement department, the representative status of these departments, the economic base of these communities, so that it is impossible for the arbitrator to determine whether all the communities suggested by the County enjoy some similarity with Marinette County other than being located in the northern half of the state of Wisconsin.

Therefore, the Arbitrator does not apply the "comparison" criterion in the determination of any of the issues in this case. Furthermore, neither party presented any evidence with regard to the level or patterns of settlement reached between employees generally in private employment in comparable

communities. Therefore, the Arbitrator has given no weight to the comparability factor in reaching his decision.<sup>1</sup>

#### COST OF LIVING

As noted above, the Association simply notes that the level of settlements normally reflect or take into account the cost of living factor. Since the Arbitrator has not used the comparables suggested by either the Association or the County, the cost of living for the year December, 1984 through December, 1985 at the index for all urban consumers in non-metropolitan urban areas is 3% and 2.5% for urban wage earners and clerical workers. The County's offer is closer to the cost of living for this period of time than that of the Association's offer.

#### SUCH OTHER FACTORS . . . TAKEN INTO CONSIDERATION IN THE DETERMINATION OF WAGES . . .

The internal comparability factor, the settlements achieved by one employer with the remainder of its employees is a factor frequently considered under this catch-all criterion. Whether this factor is considered under this criterion or under the comparability criterion, it is always given great weight. The Association complains that it had no input into the settlements reached between this Employer and its other bargaining units. The imposition of such settlements upon this bargaining unit, the Association argues, will only serve to frustrate the collective bargaining process.

The Association ignores the reason for arbitral recognition of other internal settlements where those settlements establish a pattern of agreement. Where an employer and the representatives of its various collective bargaining units reach agreement at the same percentage increase and fringe benefit package, such a pattern of settlement reflects the collective decision of many individuals. In order to achieve a pattern, it is necessary for representatives of different locals, where the same union represents several units, or different unions to arrive at the same conclusion and reach agreement with the Employer as to the appropriateness of a settlement at a common percentage and fringe benefit package. This consensus is most difficult to achieve. In fact, it is the view of this arbitrator that a pattern of settlement should not be lightly inferred for the very reason raised by the Association. However, in this case, the Association represents the sole unit without an agreement for calendar year 1985. The other units have reached agreement, mostly voluntary, with the Employer on a 4% increase in wages, and the retention of the fringe benefit package intact for calendar year 1985. In the one other interest arbitration, Arbitrator Grenig properly recognized the existence of the pattern of settlement and issued an award in conformance with that pattern.

An award which runs contrary to that pattern, can and most often is most destructive to the collective bargaining process. An interest award which is contrary to a pattern of settlement, would only prevent the achievement of any consensus on what is an appropriate pattern of settlement. No employee group will want to settle first, at the risk of finding that it has settled too low. The Employer may be reluctant to put forward its best offer, out of fear that an interest award will only increase its best offer, and thereby force the Employer to accept a more expensive pattern of settlement.

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1. The Arbitrator has refrained from making any suggestion as to the communities comparable to Marinette County and specifically its law enforcement unit. The parties may wish to consider identifying the communities which they believe are comparable at the outset of their bargaining for a 1986 and/or 1987 agreement.

There are circumstances, even in the face of a pattern of agreement, whereby a collective bargaining unit may persuade a neutral to "break the pattern". However, it is necessary for the unit advocating a break in the pattern, to demonstrate by convincing evidence that there is some factor, need or consideration which is unique to that unit which is so compelling that it justifies the breaking "of the pattern".

The Association begins to address the burden of breaking the pattern through its demonstration of the slippage in rates between the City of Marinette patrolmen as compared to the top deputy in Marinette County over the period of 1981 through 1985. However, in the absence of any direct linkage between the City patrolmen and the County top deputy, and further, in the absence of a data base of comparables to demonstrate that the slippage relative to the City of Marinette is carried forward to a wide group of comparable communities, the Association has failed to meet its burden. Accordingly, on the wage issue, the Arbitrator concludes that the County's offer which is in conformance with the pattern of settlement with its other units, is the more reasonable offer in this case.

#### THE FRINGE BENEFIT PACKAGE

The Association, in its final offer, seeks to improve the benefit package in the area of holiday, longevity and sick leave accumulation. However, the argument it makes supporting such an increase is based entirely upon the comparability factor. The Arbitrator finds that an insufficient data base prevents any use of this criterion. Again, the data pool is inadequate because it does not contain a sufficient number of communities in which the employers and the employee representatives have identified a level or pattern of settlement on the matter of benefit levels appropriate to law enforcement personnel, public employees or private employees.

#### SELECTION OF THE FINAL OFFER

In the discussion above, the Arbitrator finds that the offer of the County more closely approximates the cost of living increase experienced in calendar year 1984 and on which it is most reasonable to base an increase for calendar year 1985.

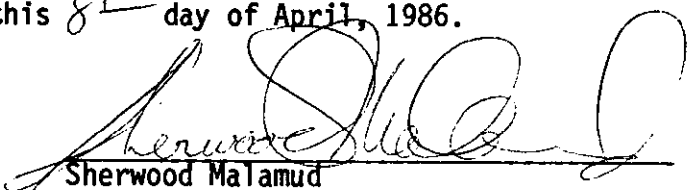
However, the Arbitrator finds that the most persuasive and in fact the determinative argument supporting the selection of the final offer of the County is that its offer is in conformance with and follows the well established pattern of settlement achieved in Marinette County between the Employer and the various representatives of its employees listed above. The Arbitrator concludes that the total final offer of the County is preferred, and that preference fully supports the inclusion of the final offer of the County in a successor agreement for calendar year 1985.

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

#### AWARD

Based upon the statutory criteria found in 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 Marinette County, which is attached hereto, which together with the stipulation of agreed upon items, are to be included in a successor agreement for calendar year 1985 between Marinette County and Wisconsin Professional Police Association/LEER Division.

Dated, at Madison, Wisconsin, this 8<sup>th</sup> day of April, 1986.

  
Sherwood Malamud  
Arbitrator



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RELATIONS COMMISSION

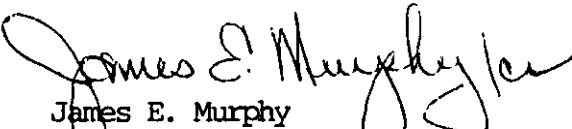
Mr. Douglas Knudson  
Investigator  
Wisconsin Employment Relations  
Commission  
P.O. Box 7870  
Madison, WI 53707

Re: Marinette County (Sheriff's Department)  
Case 70 No. 35248 MIA-1008  
Marinette County's Final Offer

Dear Mr. Knudson:

Marinette County's final offer is four (4%) percent across the board in addition to the attached which has been agreed to by the parties.

Yours very truly,

  
James E. Murphy  
Corporation Counsel

JEM:cs

Enc.

cc: S. James Kluss, WPPA/LEER Division, Business Agent