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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of an Arbitration  
between  
WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION/LEER DIVISION  
and  
WAUKESHA COUNTY  
(SHERIFF'S DEPARTMENT)  
\*\*\*\*\*

Case 88  
No. 36197  
MIA-1056  
Decision No. 24603-A

Appearances:

- Mr. Marshall R. Berkoff, Attorney, Michael, Best & Friedrich; representing the County.
- Mr. Lee Cullen, Attorney, Cullen, Weston, Pines & Bach; representing the the Union.

Before:

Mr. Neil M. Gundermann, Arbitrator.

ARBITRATION AWARD

The Wisconsin Professional Police Association/LEER Division, hereinafter referred to as the Association or Union, and Waukesha County (Sheriff's Department), hereinafter referred to as the County, were unable to reach an agreement on the terms of a collective bargaining agreement. Pursuant to Section 111.77(3) of the Municipal Employment Relations Act, the parties petitioned the Wisconsin Employment Relations Commission to initiate compulsory final and binding arbitration. The undersigned was selected to serve as the arbitrator and subsequently was appointed by the WERC. An arbitration hearing was held on November 24, 1987, December 4, 1987, and January 27, 1988 in Waukesha. A transcript of the proceedings was taken and the parties filed briefs and reply briefs, with the last brief being received by the arbitrator on April 24, 1988.

BACKGROUND:

Since 1976 the County has had two classifications of deputy sheriff: Deputy Sheriff I and Deputy Sheriff II. The establishment of the two classifications was the result of negotiations between the County and the then-bargaining agent for the deputies. The Deputy Sheriff I classification is used as an entry-level classification, and the Deputy Sheriff II classification is used as the journeyman classification.

DS-II's are assigned to the patrol division, and they patrol the County in squad cars. Patrol deputies are assigned to one of three shifts: 7:45 a.m. to 4 p.m., 3:45 p.m. to 12 midnight, and 11:45 p.m. to 8 a.m. There are 25 patrol deputies assigned to the first and second shifts, and 22 assigned to the third shift. The work schedules rotate for patrol deputies through weekdays and weekends with five days on, two days off and then four days on, two days off. Command personnel rotate with the deputies thereby providing the same supervision. Occasionally DS-II's perform duties performed by the DS-I's, especially in the area of process serving.

DS-I's function as bailiffs and process servers, and transport prisoners. Those DS-I's assigned to work as bailiffs have a shift which coincides with the hours of the courts, 7 a.m. to 4 p.m., Monday through Friday. Those DS-I's assigned to work as process servers work either the first shift commencing at 7 a.m. and ending at 3:15 p.m., or the second shift commencing at 1:45 p.m. and ending at 10 p.m.

There are 22 DS-I positions. On the first shift, eight DS-I's serve as bailiffs, five DS-I's serve as process servers, and two DS-I's transport prisoners. On the second shift there are four DS-I's who function as process servers. There are also three DS-I positions for training--one on the second shift, and two on the third shift as part of the Department's field training program.

Typically, DS-I's serve as bailiffs for approximately four months, rotate to process service for eight months, and are then assigned to a six-month patrol training rotation known as a "road training." Following road training, the DS-I's are returned to the day shift as bailiffs or process servers. They remain in that classification until a DS-II patrol vacancy occurs on the second or third shift. The amount of time that an employe serves as a DS-I ranges between one and a half to three years, depending upon the frequency of the DS vacancies. When

a DS-I becomes a DS-II, the employe is required to serve a new six-month probationary period. During this probationary period an attempt is made to match the new DS-II with two senior DS-II's in order to provide the employe with a more experienced partner for a period of time. This program is called "trio training," and ideally lasts for another one and a half to three years, after which the DS-II is considered fully proficient and experienced.

The DS-I and DS-II have been considered to be two separate and distinct classifications with two separate salary schedules. DS-II's are eligible for educational incentive pay, while DS-I's are not eligible for such pay. The Association proposes in the instant case to merge the DS-I and DS-II classifications into a single salary schedule and to permit the DS-II's to bid on positions currently occupied by DS-I's. The County opposes the merger of the two separate and distinct classifications, and opposes DS-II's bidding on DS-I positions.

#### COUNTY'S FINAL OFFER:

1. All items tentatively agreed on are included in terms of new contract.
2. Wages: 12/28/85 - 4% across-the-board  
1/03/87 - 4% across-the-board

#### ASSOCIATION'S FINAL OFFER:

1. All items tentatively agreed upon remain agreed upon.
2. Wages
  - Effective 12-28-85 3% across-the-board, applied to the 1985 wage schedule.
  - Effective 1-3-87 and through 12/11/87 3% across-the-board, applied to the 1986 wage schedule.
3. Amend section 7.01 as follows:

#### DEPUTY SHERIFF 1987 WAGE SCHEDULE Effective December 12, 1987

Classifications: Deputy Sheriff (I & II).

	<u>Biweekly</u>	<u>Approx. monthly</u>
Step 1.	723.04	1566.59
Step 2.	771.39	1671.35
Step 3.	803.30	1740.48

Step 4.	840.73	1821.58
Step 5.	872.10	1889.55
Step 6.	910.20	1972.10
Step 7.	942.75	2042.63 (Start of 6th year)
Step 8.	975.21	2112.96 (Start of 7th year)

4. Amend 7.07 as follows effective 12/12/87:

A. Incentive Pay Plan Regular full-time employees shall be eligible for educational incentive pay according to the following schedules:

Deputy Sheriff (I & II) \*\*

\*\* Deputy Sheriff I's & II's shall be eligible for educational incentive pay after three full years of service, except that any Deputy Sheriff II receiving educational incentive pay as of 1/3/87 shall continue to receive educational incentive pay.

5. Add to section 6.03 as follows:

Effective 12/12/87, all DS I's and II's in the bargaining unit are entitled to a transfer to the shift of their choice, in order of seniority, provided that such employees assume the classification associated with the work they perform and that the employees are each qualified to perform the work of that classification.

For purposes of applying the above paragraph, seniority shall be defined as the length of continuous service within the bargaining unit. An approved leave of absence or layoff of two years or less shall not constitute a break in seniority.

6. All economic benefits, working conditions and other rights and duties set forth in the 1984-85 collective bargaining agreement shall remain in force and effect.

#### ASSOCIATION'S POSITION:

It is the Association's position that in light of all of the evidence before the arbitrator its final offer is the more reasonable of the offers. One general principle is that while changes in status quo are appropriate in interest arbitration, the party seeking the change must persuade the arbitrator of the reasonableness of the change. See Village of Hartland, Dec. No. 23829-A; City of Greenfield, Dec. No. 22413-A.

Wisconsin interest arbitrators have developed specific standards for changes in contract language. The most frequently mentioned standards appear to be: (1) a demonstrated need for the change; or (2) a quid pro quo in order to obtain the change; or (3) support in the external comparables.

The County itself recently secured a language change regarding health insurance contribution and coverage in interest arbitration. (This is the same proposal to which the Association has stipulated in this proceeding.) In that case the arbitrator applied a test like that described above. See Waukesha County (Highway Department), Dec. No. 23530-A. The Association asserts that it has demonstrated a substantial and legitimate need for its proposal. In 1976, bailiff/process server work was removed from the pool of shift assignments which senior deputies could select without incurring a substantial financial loss. At that time it took a DS-II approximately five years to get to the day shift. By 1983, it was taking DS-II's 7 to 12 years to get to the first shift. The County is now advising applicants that they can expect to spend 10 to 15 years as DS-II's on the second and third shifts. The Association submits 15 years is too long a time to wait for a desirable shift assignment in the high-risk, high-stress job of police work.

The evidence establishes there are 11 DS-II's on the second or third shifts with between 12 and 14 years' seniority as deputies. These deputies have been on second-and third-shift patrol since 1976. The least-senior DS-II on the day shift has 14 years' seniority. In contrast, 11 of the 14 day-shift bailiffs and process servers (all except the three who have voluntarily demoted or chosen to remain as DS-I's) have less than three years' seniority. An anomaly has developed over the years where the most desirable shift assignments are held by the most recent employes, and the least desirable assignments are held by the more senior employes.

There are 23 DS-II patrol positions on the day shift as well as one drug enforcement officer and one senior law enforcement analyst, for a total of 25 positions currently available to DS-II's. The bailiff/process server/conveyance officer jobs now monopolized by DS-I's total 15 jobs.<sup>1</sup> Thus, 38% of the day-shift positions are held by persons with little or no seniority.

It is emphasized by the Association that these bailiff/process server positions are not only desirable because they are on the day shift, but also because they have a favorable work schedule. Bailiffs and process servers work Monday through Friday and do not work on weekends or holidays. This is in contrast

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1. The County states there are 19 DS-I positions plus 3 additional DS-I positions assigned to the 2nd and 3rd shifts for training for a total of 22 DS-I positions.

to patrol deputies who work a 5-2, 4-2 work schedule, which means regularly working on weekends and holidays.

The problem has been compounded by the fact that the jail was civilianized in 1976. In other counties the jailers are deputies in the same classification and paid the same as patrol deputies, and thus day-shift jail positions are available to senior deputies. The County, however, uses civilian correctional officers who are in another bargaining unit, so this option is not available. Consequently, another 15 traditional deputy sheriff positions are not available for shift selection by senior deputies. Thus, there are a total of 55 traditional day-shift deputy sheriff positions in the patrol, court services and jail divisions. However, 30 of these positions, or 55%, are not subject to shift selection by senior DS-II's.

The Association further contends that the current restrictions on using seniority for shift selection have caused serious personal problems for the deputies. Those deputies assigned to the second and third shifts for long periods of time have their family life disrupted and have almost no social life.

A modest extension of the value of seniority is the most reasonable way to solve the ever growing problem of shift selection. Under Section 111.77 (6)(h), Stats., the arbitrator gives weight to factors "which are normally and traditionally taken into consideration in the determination of wages, hours and conditions of employment." The Association contends one such factor is seniority. The United States Supreme Court has recognized that "seniority provisions are of 'overriding importance' in collective bargaining." American Tobacco Company v. Patterson, 456 U.S. 63, 76, 102 S. Ct. 1534, 71 L.Ed.2d 748 (1982). Interest arbitrators in Wisconsin have also accepted reasonable seniority provisions as a way of allocating desirable positions. Desoto Area School District, Dec. No. 16814-A. The Association submits that in the exceptional case, where inadequate seniority preference has created a substantial and growing problem, and where the Association's proposal is carefully limited to solving that problem, it is appropriate for the arbitrator to rule in favor of the Association.

The Association also argues that the DS-I's are aggrieved by the current situation. In 1976, it took an admittedly qualified deputy one year to get to a regular patrol slot. New deputies are now being told it will take two to three years to get to a patrol job. Because of the way the system works, they are trained three times for the same job. According to the testimony, the DS-I's are clearly frustrated by the fact that they cannot perform the work for which they are trained.

The current shift selection procedure and wage schedule has thus created two related sets of problems. It has deprived senior deputies of hours and jobs which they want and deserve because of their long service, and it has assigned those positions to deputies who would prefer the second and third shift patrol jobs. This situation was confirmed by a survey conducted in 1981 by supervisors who were concerned about the lapse in time between training and assignment to patrol work.

In the instant case the Association must demonstrate that management decisions have impacted negatively on the working conditions of its members and created a need for a change in those working conditions. The Union respectfully submits that this evidentiary record shows that the prevailing shift-selection procedures need to be changed.

In its Declaratory Ruling in this case, the WERC gave the parties specific direction regarding a mandatorily bargainable proposal:

"[W]e . . . wish to emphasize that the Union has the right to mandatorily bargain about the compensation payable to employees in the bargaining unit and to mandatorily propose, if it choose, that the pay and benefits for all bargaining unit classifications be identical or that compensation be based on bargaining unit longevity and unrelated to duties performed or classification held.

Similarly, it is our view that the Union has the right to mandatorily bargain for shift selection and bumping procedures that result in transfers between classification, so long as the procedure protects the County against being left with an employee complement on any shift that is not minimally qualified to perform the work available on that shift. For example, a proposal that all employees in the bargaining unit, in order of seniority, are entitled to a transfer to the shift of their choice and to bump a less senior employee in the process would, in our view, be a mandatory subject of bargaining so long as the employees assume the classification associated with the work they perform and the transfer does not deprive the employer of an employee complement on each shift that is minimally qualified to perform the available work on that shift."

The Union then framed a final offer in those exact terms, to which the County objected. The County's main objection was the WERC language which only required that the employee complement on each shift be "minimally qualified." The County agreed to withdraw its objection if the Association changed this language as follows:

"All DSIs and IIs in the bargaining unit are entitled to a transfer to the shift of their choice, in order of seniority, provided that such employees assume the classification associated with the work they perform and that the employees are each qualified to perform the work of that classification."

The Association agreed to this change and this is the wording of the final offer before the arbitrator.

The Association contends that its change in the wage schedule is reasonable and not unduly costly. The first change is to blend the wage schedules of DS-I and DS-II, so that both types of deputies have the same wages. It is appropriate to make this change in order to remove the substantial financial disincentive that exists if a patrol deputy wishes to become a bailiff or process server. This is not a radical change, as prior to 1976, patrol deputies and court service deputies were paid the same.

The cost of this change is not unduly burdensome to the County. DS-I's now progress to DS-II status after about three years, at which time they move to the higher DS-II wage schedule and are eligible for educational and incentive pay. The Association's final offer is designed to accomplish this same result and is thus cost neutral as to those deputies. The County is already paying senior DS-II's a certain wage, which will be the same under the Union's proposal when some of these deputies chose the day shift and are assigned to bailiff or process server positions. The only exception would be those DS-I's with more than three years of service. These deputies would now be subject to the new maximum and receive educational incentive, if eligible. This is a modest additional cost which is justified since all of these deputies are likely to move to patrol positions.

The Union contends it submitted a substantial quid pro quo to defray these additional costs. The Union is willing to accept a 3%-3% wage package--considerably less than the 4%-4% offered by the County. The Union is willing to accept a wage package which is 2.1% less than the County's in order to pay for the proposal.

The County rejects the need to equalize the two deputy classifications and relies on the fact that DS-II's can take a demotion to DS-I, with a pay cut and loss of educational incentive, if he or she really wants days. The Association submits the substantial loss in pay is too high a price to exact from a very senior deputy for a day-shift position.



The second feature of the Association's proposal is the inclusion of the 15 bailiff and process server positions in the pool of day-shift jobs subject to shift selection by seniority. The Association notes there are three important limitations in this procedure. (1) The senior deputy will only be entitled to his shift, and not to any particular assignment. There are no seniority rights to work within a particular division on the shift. (2) The deputy is required to "assume the classification associated with the work they perform." (3) As proposed by the County, the deputies must be "each qualified to perform the work of that classification." The County retains the right to determine qualifications and no one has ever suggested otherwise. The Union has repeatedly said that under its proposal DS-I's would not be "qualified" to become DS-II's until and unless they have completed the Department's six-month road training program.

The Association contends the effects of this proposal on the County are not unduly burdensome. The Union's proposal will not cause severe immediate disruption. Probably five or six of the DS-I's will be qualified to move immediately to patrol jobs on the second and third shift. Correspondingly, this means that five or six DS-II's will be able to immediately bump DS-I's off the first shift. Thereafter bumps will occur as DS-I's successfully complete road training. There are three such slots, and the training is for six months, so that means a maximum of six changes per year.

Even if it is assumed, arguendo, that the County's worst case scenario will happen, the adjustment will be no more difficult than prior adjustments the Department has had to make when there was a large influx of new deputies.

The Association further contends that its proposal will not result in unusual or excessive bumping. Typically, every January at least three or four senior deputies switch shifts, bumping three or four other deputies. The movement caused by the Union's proposal is of the same order of magnitude.

The Union contends the County's training program will continue effectively after implementation of the Union's proposal. The County asserts the Association's proposal will destroy its existing program and/or require it to assume substantial and costly additional training obligations. The Union argues this is a change in position for the County, as is evidenced by the exchange of correspondence on the issue of qualifications in which the County clearly stated it was proposing its qualification language in order to eliminate any inference that it would have to train personnel as a result of the Union's proposal.

There are really two programs pertinent to this case. The first is the road patrol training program usually but not always conducted by field training officers (FTO's). The road patrol training is a somewhat formal program, since its purpose is to prepare DS-I's to become patrol deputies. The second training program, sometimes called "trio training" is less formal, since by this time the DS-I has become a DS-II and is on patrol. The Union submits the proposal will have no effect on the pace or extent of the formal road training program. There are currently three training opportunities in this program, and there is nothing in the Union's proposal which would change that in any way. Nor does the Union's proposal mandate any change in the "trio training" program.

The County claims both programs will be devastated by the loss of numerous FTO's or senior deputies on second and third shift. According to the Union, the evidence establishes that even if the number of moves anticipated by the County occur, the County still will be able to secure a sufficient number of employees to serve as trainers within the remaining employees assigned to the second and third shift.

The Association also argues that the ten counties which surround the County and form a rectangular block of counties in the southeastern part of the State are the proper comparables. The contiguous counties include Milwaukee, Racine, Walworth, Jefferson, Dodge, Washington and Ozaukee. Three other counties, Dane, Rock and Kenosha, meet the geographical proximity standard in that they border upon two counties which are contiguous to the County. The ten counties make up what is usually considered as the urban/suburban block of counties in the southeastern part of the State. These counties, along with this County, contain the three most populous counties in the State: Milwaukee, Dane and Waukesha. The Union contends the population of a county is a very important factor in determining the size and scope of a county law enforcement agency's operations.

A review of the data establishes that in all of the ten counties deputy sheriffs perform the work of process servers. By law the sheriff is required to "personally, or by his undersheriff or deputies, serve or execute according to law all processes, writs, precepts or orders issued or made by lawful authority and to him delivered." Sec. 59.23(4) Stats.

As to the bailiff work, in six of the ten counties deputy sheriffs act as bailiffs in the courts. Three of those counties are closest in population to

the County: Milwaukee, Dane and Racine. In Milwaukee County, bailiff work is done exclusively by deputy sheriffs in the bargaining unit. In the five other counties where deputies clearly act as bailiffs, they do not do so exclusively in that civilians are used to some extent. In Dane County there are 12 deputy sheriff bailiffs and five FTE court aides who cover civil courts.

According to the Union, whether or not civilian bailiffs are used to some extent in other counties is not germane to the comparability issue. The fact is the County does not use civilian bailiffs, and all bailiffs are deputies in the bargaining unit. The same situation exists in a majority of the comparable counties.

While the Union concedes that some counties use civilians as bailiffs, the Union contends there is insufficient information to conclude that deputy sheriffs do not also perform this function. Additionally, by law the sheriff is required to attend upon the court and to appoint some of his deputies for this purpose.

In nearly all of the comparable counties deputy sheriffs are paid the same or more for process server and bailiff work as they are for patrol work. In nine of the ten counties deputy sheriff process servers make at least as much as patrol deputies. In three of these nine counties process servers make more than patrol deputies, and in Walworth County they make up to \$262 per month more. This clearly establishes that in these three counties a higher value is placed on process server work than on patrol work. Only in Dodge County do process servers make less, and there the disparity is considerably less than that in Waukesha County. In all of the six counties which clearly use deputies as bailiffs, they are paid the same or more than patrol deputies.

A related issue is whether or not process servers and bailiffs receive educational incentive pay. According to the Union, this is really a function of whether or not the County has educational incentive pay rather than whether or not it is given to some deputies and not to others. The evidence establishes that in seven of the ten counties process servers receive educational incentive pay, although in Dodge County this is in the form of tuition reimbursement, and in Kenosha County it is on a grandfathered basis. In five of the six counties where deputies act as bailiffs, they receive educational incentive pay.

The Union argues that in nearly all of the comparable counties shift selection of assignment is done on the basis of seniority. In nine of the ten

counties shift selection by deputies is done strictly on the basis of seniority. The Union did not look at whether or not it was bargaining unit seniority or classification seniority which determined work shift, since most process server and bailiff work is subsumed under the same classification as patrol work for purposes of shift selection. In four counties where process server or bailiff work is separately classified from patrol work, the question is not germane because in three of those counties the process servers and/or bailiffs are paid higher than patrol deputies rather than lower as in the County.

The County quarrels with the fact that in some counties shift changes take place only as vacancies occur, rather than on a periodic basis with possible bumping of less senior deputies. However, the current shift selection procedure in the County already involves an annual shift selection in January which does cause bumping of less senior employees. The Union's proposal simply extends the scope of this procedure to include bailiff and process server positions.

The Union submits its final offer is much more comparable to working conditions in the other counties than the Employer's final offer. The County's proposal is not even internally comparable, and further, it offers no accommodation to solve the growing problem of very senior deputies stranded on nights. Four of the five other bargaining units have been granted an additional holiday, the value of which is approximately .4%. Thus, the County is proposing that the arbitrator award a settlement of less economic value than most of the internal comparables.

For all of these reasons the Union respectfully requests the arbitrator to find that the Union's final offer is the more reasonable of the two at issue and to order that it be incorporated into the 1986-87 collective bargaining agreement.

#### COUNTY'S POSITION:

It is the County's position that its final offer is the more reasonable of the final offers currently before the arbitrator for his consideration. The County notes that its final offer to the Union is consistent with the negotiated settlements reached with all other represented employees for 1986 and 1987. Each of those units voluntarily agreed to a 4% wage increase in 1986 and a 4% increase in 1987, and the same increases were extended to nonrepresented personnel as well.

In contrast, the Association's offer of 3% in 1986 and 1987 is contrary to the internal settlements. The County further contends that if the Union should prevail and its proposal of 3% and 3% is awarded, it will only create future demands to "catch up" with other law enforcement units in succeeding years.

The County argues that arbitrators recognize that internal patterns of settlement are significant elements in weighing the reasonableness of the parties' final offers. See Waukesha County (Department of Public Health), Dec. No. 19515-A; City of Madison, Dec. No. 21345-A; City of Milwaukee (Electricians), Dec. No. 17143-A.

The County also argues that the Union's one percent "savings" was not detailed or explained and did not consider such factors as training cost, inefficiencies in breaking up supervisory relationships, cost of resolving disputes over whether an individual is "qualified" or not and related subjects. The Union also did not compute the cost increases which would be caused by the automatic wage progression from entry-level DS-I to the top DS-II step or the granting of educational incentive pay to all employes. The County emphasized, however, that its objection to the Union's proposal is not based on the one percent differential, but rather on a number of critical, non-cost factors.

The Association's proposal would destroy the Department's job classification system, inappropriately meld two separate jobs into one pay progression, require educational incentive pay for work not requiring advanced education, and allow bumping into lower-paid jobs without accepting a reclassification to that job. The County submits the Association's proposal destroys the classification and salary system in the Department.

Throughout the County, the County has utilized job classifications in which each classification is separate and distinct. The result of the job classification system is that more difficult jobs which require greater knowledge, ability and skill have a higher compensation level than jobs entailing lesser duties, responsibilities and skill. There is no automatic progression from the lower pay of the DS-I classification to the top pay of the DS-II. As is the case in all promotional sequences throughout the County, an entry-level DS-I cannot earn the higher pay associated with the more demanding DS-II job until the DS-I has sufficiently matured and developed skills to be competent in the DS-II job and has then been promoted to the classification. Disruption of this system is unwarranted

interference with the County's ability to manage, establish and maintain a reasonable classification system throughout the County.

The County submits that if the Association proposal is adopted, the more difficult DS-II jobs will be occupied by ex-DS-I's at the lower DS-I rate of pay, while the less demanding DS-I jobs will be held by a more senior ex-DS-II at the higher DS-II rate of pay. Any remaining distinction between the DS-I and DS-II classifications would be destroyed by the retention of educational incentive pay by those DS-II's who bump into DS-I jobs and the automatic granting of educational incentive pay to all deputies regardless of their work, after a short waiting period. The net result of the Association's proposal would be to return to the situation which led to the implementation of the DS-I/DS-II classification system in 1976 in the first place. Moreover, a number of former DS-II's on the second and third shifts who have taken a reclassification of DS-I in order to be able to work on the first shift will be forced back to the second and third shift.

The Union argues that the County has the right to assign duties to employees pursuant to the language of its proposal. The County submits, however, that the first-shift patrol jobs are filled with senior DS-II's. If the County is faced with an influx of 14 DS-II's onto the first and second shifts and incumbent less senior DS-I's are bumped out of the DS-I bailiff/process server jobs, management has no recourse but to assign DS-II's to the bailiff and process work.

The County submits that the melding of salary schedules is not favored by arbitrators. As stated by Arbitrator Rice in School District of Colfax, Dec. No. 19886-A:

"Salary Schedules are not something with which an arbitrator should tamper and ordinarily any changes are left to the parties to make through bargaining."

In City of Superior, Dec. No. 20422-A, the arbitrator in the instant case stated with respect to the reallocation of a higher wage rate to a job classification:

"As a general rule, reallocations . . . are better negotiated than arbitrated. The parties, through negotiations, establish relationships between classifications. These bargaining relationships become distorted when they are disturbed through arbitration."

One of the direct results of the Union's proposal is the reallocation of the DS-II salary schedule to DS-I work.

It is argued by the County that the Association has offered no credible proof that the separate and distinct salary schedules for the DS-I and DS-II

classifications or the shift placement of deputies has caused a loss of deputies from the Department.

The County submits the Association's proposal to meld separate deputy classifications and pay schedules into one is not supported by comparables. The County submits its DS-I/DS-II job classification system is consistent with the multiple deputy sheriff's classification systems which exist in Dodge, Milwaukee, Ozaukee, Racine and Walworth Counties. These counties are the comparables in that they are contiguous, and in each of these counties, deputies in separate and distinct classifications with separate and distinct pay scales perform separate and distinct jobs. As is the case in the County, there is no automatic salary progression in those counties from a lower entry-level job to a higher paying job. In addition, none of the comparable counties permit an employe in a higher paying classification to take a job at a lower level classification without taking a commensurate reduction in pay and benefits.

The Association cites as its comparables the five counties presented by the County and also Dane, Jefferson, Kenosha, Rock and Washington counties. Kenosha, Rock and Dane are not contiguous to the County. The Union's comparables are also different from the counties it claimed were comparable in the last interest arbitration where the Union claimed Washington, Ozaukee and Racine Counties were comparables. Even in the counties claimed comparable by the Union, no deputy can change jobs or change shifts without accepting lower pay and benefits associated with the lower classified job. Additionally, in none of them can a deputy change shifts by bumping an incumbent.

The County claims that the Association's proposal would impose training difficulties upon the County, disrupt supervisory relationships, threaten public safety and result in unstable labor relations. The sole limitation imposed by the proposal is that both a bumping DS-II and a bumped DS-I must be "qualified" to perform the work in the classification to which they are transferred on a particular shift. The parties have never agreed to a definition of "qualified," and the Union has taken the position that if a difference of opinion as to who is qualified arises, the Union can arbitrate the County's decision. Arbitrators have recognized that a proposal that is sufficiently vague and ill-defined so that the parties may find themselves in grievance arbitration to clarify the language should not be adopted. See West Allis-West Milwaukee School Aides Association,

Dec. No. 20562-A. Further, the uncertainty under the Association's proposal as to when a deputy will be "qualified" to perform the job to which he/she is transferred is amplified by the fact that the Union has never established whether or not there will be a gradual or automatic move of DS-I's to DS-II jobs, and DS-II's to DS-I jobs. Thus, the proposal upon its implementation allows for the automatic influx of 14 DS-II's to the first-shift DS-I jobs and the corresponding movement of 14 DS-I's to second- and third-shift patrol.

The implementation of the Union's proposal will not resolve the dispute; it will create the possibility of more. At the present time, before a DS-I is eligible to be considered for a promotion to the DS-II classification, the DS-I must have completed 320 hours of recruit school plus an additional one week of radar training and risk management baton training plus six months of patrol training in the FTO program. A DS-I must also have demonstrated that he/she has sufficiently matured and learned the County system to be competent to perform the DS-II job. Even after a DS-II is promoted, he does not "qualify" to perform the DS-II job until one and a half to three years later. During that period of time the rookie DS-II receives additional training in the County's trio training program where he is paired with senior DS-II's who are capable of being good trainers. In addition to the FTO's, other senior officers serve as trainers in the trio training program. Not all senior DS-II's make effective trainers. Under the Union's proposal the County would stand to lose four or five FTO's and two or three other senior officers involved in trio training. Due to the influx of DS-I's onto the second- and third-shift DS-II patrol jobs and its loss of qualified trainers, it would be impossible for the County to adequately train the new DS-II's.

The County submits there is no quick remedy to the situation which would result from the Union's proposal. The County's need for experienced FTO's and senior trainers will not be remedied simply by sending people to FTO school. The County would also have the responsibility of training a number of bumping DS-II's in how to perform the bailiff and process server jobs as quickly as possible.

The net effect of the Union's proposal will be the bumping of 14 of the most senior DS-II's into the first-shift DS-I jobs and the displacement of 14 DS-I's into the second- and third-shift DS-II jobs which would be the loss of 49% of the deputy sheriffs and 60% of the patrol experience on second and third shift, or 123 years of deputy sheriff and 146 years of patrol experience. The County



further argues that the effect of the Union's proposal is to impinge on those areas normally left to management's judgment and related primarily to the formulation of Department policy. See Milwaukee Board of School Directors, Dec. No. 17504; Oak Creek-Franklin Joint City School District, Dec. No. 11827-D.

The County contends that multiple bumping would be involved in the Association's proposal. Arbitrators have recognized that the disruptive effect of multiple bumping caused by a change in contract language should be avoided. See Madison City Employees, Dec. No. 20807-A.

Another negative effect of the multiple bumping caused by the Union's proposal is the significant change in supervisory relations for both the DS-I and DS-II classifications. The County maintains distinct and individual supervisory officer relationships to build functional service teams. If the Union's proposal were adopted, the continuity of supervisory relationships which presently exist would be modified en masse.

More significantly, if the Union's proposal were implemented, the only jobs available for new applicants would be DS-II patrol jobs. Thus, every time a new deputy is hired the County will be putting another inexperienced deputy directly onto the streets without having had an opportunity to allow the deputy to learn the County and mature in the work before being thrust onto patrol.

The County argues that prior bargaining history which resulted in the enactment of the separate and distinct classifications of DS-I and DS-II and the current work system should not be departed from in light of the absence of persuasive or compelling reasons. The implementation of the DS-I/DS-II classification system was extensively bargained over in 1976. The County made concessions in order to achieve a system which has been effective for the County's law enforcement program. The potential loss of day positions and the elimination of educational incentive pay for the DS-I job were discussed at length and accommodated. Incumbent deputies, including deputies assigned to the jail, remained classified as DS-II's and received the pay and benefits associated with that job wherever they were working. Successive negotiations since 1976 have built on that system.

The Union has not made a case for changes in the system. Its desire to create added first-shift opportunities for senior deputies is simply not a good enough reason to turn the Department upside down.

For all the above reasons the County respectfully requests that the arbitrator award the County's final offer.

DISCUSSION:

This case is unusual in that the County is offering a wage increase in excess of that being sought by the Union. In return for a lesser wage increase, the Union is seeking greater accessibility to first-shift positions for more senior deputies through the merger of two existing classifications, DS-I and DS-II. The Union proposes to retain the designations DS-I and DS-II, but merge the two salary schedules into one, provide for automatic progression through the salary schedule from DS-I to DS-II, retain educational incentive pay for all DS-II's regardless of their assignment, and permit shift selection for all deputies based on seniority. The County is seeking to maintain the status quo, i.e., two separate classifications of deputies, with DS-I's continuing to serve as bailiffs and process servers and DS-II's continuing to serve as patrol officers.

There can be no doubt as to the legitimacy of the parties' respective positions. It is not unreasonable for deputies with substantial seniority to wish to exercise their seniority and move from the second or third shifts to the first shift, especially if such positions do not require working weekends and holidays. It is not unreasonable for the County to wish to retain the existing classification structure which allows for differing levels of compensation for differing assignments, permits a period of orientation for newly hired deputies, and permits training before newly hired deputies are assigned to patrol duties.

It is readily apparent that the parties' respective positions are not only in conflict but are mutually exclusive. There is no readily discernible solution which will satisfactorily address the competing objectives.

Since 1976, the County has had two separate and distinct classifications of Deputy Sheriff. The creation of the DS-I and DS-II classifications came about as a result of negotiations between the County and the then-bargaining representative. It is generally recognized by arbitrators that when a contract provision is negotiated and one party seeks to abrogate that negotiated provision, that party has the burden of proving the necessity for the change. In the instant dispute, the Union has the burden of proving the necessity of merging the DS-I and DS-II classifications.

In an effort to meet its burden, the Union points to the fact that in 1976, when the current structure was negotiated, it took approximately five years for a DS-II to move to the first shift. By 1983, it was taking seven to twelve years, and at the present time applicants are being told it may take ten

to fifteen years before a DS-II can move to the first shift. It is argued by the Union that this is an unreasonable amount of time for a senior deputy to spend on the second or third shift while the most junior deputies are assigned to the first shift.

The evidence supports the Union's contention that DS-II's are spending more time on the second and third shifts than they did in 1976. However, there is no evidence that this is the result of any changes in the County's practices. Rather, it appears to be the result of a number of factors independent of the County's method of assigning DS-I's. The more senior DS-II's have opted for the first shift, consequently the movement of less senior DS-II's from the second or third shift to the first is dependent upon the existence of vacancies on the first shift. Apparently there have been fewer first-shift vacancies since 1976, which suggests fewer deputies are quitting or retiring.

Undoubtedly the movement of additional DS-II's to the first shift would afford more senior deputies the opportunity of working the preferred shift. Additionally, it could be anticipated that DS-II's assigned to the second and third shift would have more frequent opportunities to move to the first shift as a result of having 19 additional positions from which DS-II's would quit or retire.<sup>1</sup>

If the only issue in this case was the use of seniority for purposes of shift selection, the Union's position would be indeed persuasive. However, there are other factors involved in this case than shift selection.

Since 1976, DS-I's have been assigned as bailiffs and process servers and to transport prisoners. DS-II's have been assigned to patrol duties. The Union is seeking to merge the classifications, the salary schedules, the job descriptions and the duties into one classification. Although the Union's proposal technically retains the DS-I and DS-II designations, such retention would no longer have any impact on salary progression or job assignments.

Generally, when there is a proposal to merge job classifications such proposal is predicated on a change in job duties, i.e., employees in one classification are performing the duties of another classification. In the instant dispute

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1. There are 22 DS-I positions, however one is assigned to the second shift and two are assigned to the third shift for road training.

the Union has not asserted a change in job duties--it has only asserted it is now taking DS-II's longer to move to the first shift than it took in 1976. There is no claim by the Union that the DS-I's are now performing work which has traditionally been performed by DS-II's.

In the absence of a change in job duties there must be some other basis in order to support a merger of negotiated job classifications. In the instant dispute the Union argues that a merger of the DS-I and DS-II classifications is supported by the comparables. The Union argues that the salaries paid to process servers and bailiffs in the comparable counties are comparable to the DS-II rate of pay, not the DS-I rate, and therefore DS-II's should be given the opportunity to select the process server and bailiff positions presently held by DS-I's. The County argues that the comparables support its position of retaining two separate classifications.

The parties are in dispute as to what constitutes the appropriate comparables. The Union claims that the comparable counties include Dane, Jefferson, Kenosha, Rock, Washington, Dodge, Milwaukee, Ozaukee, Racine and Walworth. The County claims the comparable counties should be restricted to Dodge, Milwaukee, Ozaukee, Racine and Walworth. The Union's inclusion of Dane, Rock and Kenosha Counties goes beyond what the parties previously considered comparable. The undersigned believes the appropriate comparables would include Dodge, Jefferson, Milwaukee, Ozaukee, Racine and Walworth Counties.

Based on the evidence contained in Union Exhibit #25, the monthly pay for process servers in the comparable counties is as follows:

Dodge	\$1,884
Milwaukee	2,408
Ozaukee	2,288 (1986 rate)
Racine	2,632
Walworth	2,649
Jefferson	2,037
Waukesha	1,926 (DS-I 11 yrs.)

(The above salaries are for a deputy with 11 years of service and an Associate Degree.)

A review of the data establishes that all but one of the comparable counties compensate process servers at a higher rate of pay than does the County. In three comparables the amount is in excess of \$400 per month. According to County Exhibit #9, Dodge, Ozaukee, Racine and Walworth Counties have a specific classification Process Server, or Process Server/Bailiff. Whether or not

there is a separate classification, the evidence as to the salaries paid for the service performed clearly supports the Union's argument for a higher salary for process servers than is currently paid by the County.

Thus, while there has been no change in job duties, at least as it relates to process servers, the current salary paid by the County is substantially below that which is paid by the comparable counties for the identical work. There are at least two plausible explanations as to how this divergence developed. It is possible that when the DS-I and DS-II classifications were created an error was made in assigning process servers to the DS-I classification. It is also possible that over the 12-year period the two classifications have existed, the process server job has evolved into a higher compensated classification. Whatever the cause of the divergence, it clearly exists, and based on the comparables, process servers in the County receive considerably less than process servers in all but one of the comparable counties. There is, however, no need to merge the DS-I and DS-II classifications to address the issue of the proper compensation for deputies acting as process servers.

The evidence relating to bailiffs is less clear, as some counties utilize civilian bailiffs in some courts. Union Exhibit #26 indicates the following monthly compensation for deputy sheriffs functioning as bailiffs:

Dodge	\$1,947
Jefferson	1,923
Milwaukee	2,408
Racine	2,535
Walworth	2,649
Waukesha	1,926

(The above salaries are for a deputy with 11 years of service and an Associate Degree.)

The evidence establishes that the County pays its DS-I's acting as bailiffs less than deputies acting as bailiffs are paid in comparable counties. Although Dodge and Jefferson Counties pay approximately the same salary as Waukesha, both of those counties have a 37½-hour work week compared to the County's 40-hour work week.

Although the comparables appear to favor the Union's position to the extent the DS-I's are paid less than deputies performing as bailiffs in other jurisdictions, the evidence is not as compelling as it is in the case of process servers. Civilians are being used as bailiffs in civil proceedings and presumably paid a lower rate of pay. According to the testimony, the work of a bailiff is considerably less demanding than patrol work. This difference in job requirements justifies a lower classification for bailiff than that of the patrol officer. Additionally,

newly hired deputies with limited training have demonstrated their ability to perform as bailiffs, indicating the bailiff's job is not as demanding as that of a patrol officer. In contrast to bailiffs, before a deputy is assigned to patrol he/she receives six months of road training. After road training, the deputy is assigned to patrol when a vacancy occurs and is promoted to DS-II. The DS-II then undergoes trio training for an additional 1½ to 3 years under the general direction of experienced DS-II's. After completing trio training, the DS-II is considered a fully qualified patrol officer. It is apparent that the patrol job requires significantly more training than does the bailiff job, and this training reflects the substantially greater requirements of the job. When one considers the differences between the bailiff's job and the patrol job, it would appear that the bailiff's job is properly classified as a DS-I.

County Exhibit #9 indicates that the comparable counties have more than one classification: DS-I and DS-II; Deputy Sheriff and Process Server; Deputy Sheriff and Process Service/Bailiff (Walworth); or DS-I, DS-II and Process Server (Racine). However, there is nothing in the record which would indicate that the merged classifications as proposed by the Union exist anywhere in the County, or indeed in any of the comparable counties. There is no evidence that in the comparable counties employees can automatically progress from the Deputy Sheriff I classification to the Deputy Sheriff II classification or from the Deputy Sheriff classification to any other classification without the necessity of a vacancy existing. While the Union's proposal retains the designations DS-I and DS-II, such retention is not significant in view of the fact that progression from DS-I to DS-II is automatic and based on length of service, not on job duties. Thus, the comparables do not support the Union's position regarding the merger of classifications.

While the Union's objective of providing more first-shift opportunities for senior deputies is understandable, this is not a sufficiently compelling reason to award a classification system which is alien to the County and to the comparables.

At the time of the hearing and in its brief the County expressed grave concerns as to the impact the Union's proposal would have on the County's current method of training. The County also expressed concern regarding the definition of the term "qualified" contained in the Union's proposal. The undersigned does not share the concerns expressed by the County. Under the Union's proposal no DS-I would be "qualified" to be assigned to patrol until he/she had completed six months of road training. There are three DS-I slots available for road

training, thus over a period of a year six DS-I's could receive road training and move to patrol. There would be no massive shift of personnel under the Union's proposal. The trio training that presently exists would only be temporarily disrupted. Further, no DS-II would be assigned to jobs other than patrol until the DS-II had been properly trained on the non-patrol job.

The method of implementing the Union's proposal is not the paramount issue in this case. The more fundamental issue is: Does the Union's final offer (a) reasonably address the perceived issue; and (b) is there support for the final offer either within the County or among the comparables. The Union's final offer of merging the classifications effectively results in all positions ultimately being filled by DS-II's, or at least employees receiving DS-II pay. The evidence establishes that the duties of a bailiff are substantially less demanding than the duties of a patrol officer, require substantially less training, and can be satisfactorily performed by a newly hired deputy. Under such circumstances there is no justification for merging classifications which would result in a DS-II performing the duties of a bailiff. While the evidence shows that process servers are paid less when compared to the comparables, it is not necessary to merge all DS-I's and DS-II's to rectify this situation.

Since 1976, there has been a clear delineation of classifications based on job duties. The Union's objective of making more first-shift positions available for more senior deputies is not sufficient justification for eliminating the delineation between the DS-I and DS-II, based on job duties.

Although it is argued by the Union that the less senior deputies, DS-I's, have the preferred shift, the DS-I's are assigned to first shift only until a patrol vacancy occurs on the second or third shift, at which time the DS-I is promoted to DS-II. Only those deputies willing to remain a DS-I and forego educational incentive can remain on the first shift.

While the County's wage proposal is the same proposal it made to the other bargaining units, and which was accepted by the other units, the Union emphasizes the fact that the other bargaining units also received an additional holiday which was not included in the County's final offer. The issue of an additional holiday is not before the undersigned and is thus not subject to an award. The fact that the holiday was not included in the County's final offer does diminish to some extent the County's argument regarding uniformity of settlements. Clearly the inclusion of an additional holiday would not have resulted in a voluntary settlement in this case.

While the Union asserts it is offering a quid pro quo for the merging of the classifications in the form of a lesser wage settlement for the two years, the quid pro quo offered is for a short duration, i.e., until the parties next engage in negotiations. The Union most certainly will attempt to recoup the 2.1% lost as a result of its wage proposal, especially if the wages have not remained comparable to the comparable counties.

It therefore follows from the above facts and discussion thereon, and after having duly considered the statutory criteria, the undersigned renders the following

AWARD

That the County's final offer be incorporated into the 1986-87 collective bargaining agreement.



Neil M. Gundermann, Arbitrator

Dated this 23rd day of  
May, 1988 at Madison,  
Wisconsin.