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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of:

GENERAL TEAMSTERS UNION
LOCAL 662

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

PIERCE COUNTY (SHERIFF'S DEPARTMENT)

Case 60
No. 38797 MIA-1234
Decision No. 25009-A

Sherwood Malamud
Arbitrator

APPEARANCES

Jerome Hansen, Business Representative, General Teamsters Union, Local 662, 119 W. Madison Street, P.O. Box 86, Eau Claire, WI 54702-0086, appearing on behalf of the Union.

Mulcahy & Wherry, S.C., Attorneys at Law, by Richard J. Ricci, 21 S. Barstow Street, P.O. Box 1030, Eau Claire, WI 54702-1030, appearing on behalf of the Municipal Employer.

JURISDICTION OF ARBITRATOR

On December 18, 1987, 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 General Teamsters Union Local 662, hereinafter the Union, and Pierce County (Sheriff's Department), hereinafter the County or the Employer. Hearing in the matter was conducted on March 8, 1988 at the Pierce County Courthouse in Ellsworth, Wisconsin. Post-hearing briefs were filed and exchanged through the Arbitrator on April 11, 1988. This dispute is to be resolved pursuant to form 2 as provided for in 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 three issues to be determined by the Arbitrator. Those issues are:

1. WAGES:

Union Offer:

Increase all rates by 3.5% effective January 1, 1987.
Increase all rates by 4% effective January 1, 1988.

County Offer:

For calender year 1987, add \$42.00 on the rates of all classifications and then increase all rates by 2 1/2% effective January 1, 1987.

Increase all rates by 3%, effective January 1, 1988.

2. OVERTIME:

Union Offer:

Modify Article 15 in the expired agreement to provide that if a shift is extended beyond one hour, all hours worked from the beginning of the extension shall be at overtime rates of time and a half.

The Union proposes to include the work schedule in the agreement. The work week for officers is to be six consecutive days on duty followed by three consecutive days off duty. The work day for the officers on this work schedule would be 8 1/2 hours per day. The 8 1/2 hour per day schedule would be extended to Jailers/Dispatchers, as well. Juvenile Officers, Investigators, Day Sergeant and Secretaries shall continue to work a Monday through Friday schedule, 8 hours per day.

County Offer:

The Employer would change the formula for the calculation of when overtime is to be paid. Article 15 in the expired agreement provides that overtime is paid in excess of 40 hours per week calculated on a monthly basis of 173.3 hours. The Employer proposes that overtime be paid for hours worked in excess of 171 hours in a 28 day monthly period in

accordance with the 7K exception under the Fair Labor Standards Act.

The Employer maintains that the purpose of its proposal is to provide a cushion of approximately 11 hours per month over and above the 160 hours which Officers are scheduled on a 6-3 schedule, which if worked, would be paid at straight time rather than overtime rates.

The Employer proposes to eliminate "paid leave time" toward the calculation of 171 hours, the threshold above which overtime rates are to be paid.

3. SICK LEAVE:

Union Offer:

Increase the number of sick days which may be accumulated by an employee to ninety days. Upon termination of employment after at least five years, up to sixty days be paid out. No such pay out would occur should an employee be discharged for cause.

The Union proposes to retain the language that permits employees receiving workers compensation who exhaust their personal accumulated sick to draw from the sick leave bank to maintain full salary.

County Offer:

The Employer proposes to increase the amount of sick leave which an employee may accumulate from 36 to 72 days. Upon termination of employment, the employee may have up to 36 sick leave days paid out. The pay out would not apply to an employee who is discharged for cause.

The Employer proposes to delete from Article 24, Section 2, the provision which allows access to the sick leave bank to employees on workers compensation who wish to maintain their full salary, even though their personal sick leave accumulation has been exhausted.

STATUTORY CRITERIA

The criteria to be applied by the Arbitrator and to serve as the basis for the selection of the final offer to be included in the successor agreement 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 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 prices 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

Pierce County is located in northwestern Wisconsin on the Wisconsin Minnesota border. Approximately two-thirds of the population of the County lives in rural communities. Approximately 12% of the population is engaged in farming.

The Sheriff's Department is staffed with 24 deputized officers in the following classifications: 9 Patrol Officers; 8 Dispatchers; 3 Investigators; 2 Secretaries; 1 Day Sergeant; and 1 Recreation Officer who also performs patrol work. However, the costing figures presented at the hearing are based upon 21 Full Time Equivalents, because several officers were hired in and subsequent to the base year of 1986.

On July 20, 1987, in a mediation session with WERC Staff Mediator Douglas V. Knudson, the parties reached a tentative agreement which was ratified by the Employer and rejected by the Union membership. The

Employer's final offer is identical to the tentative agreement reached on July 20 and is the very same offer rejected by the Union membership.

The central issue in this case concerns overtime. Both the Employer and the Union propose to make major changes to the overtime language found in the expired agreement. Overtime has a potentially significant fiscal impact in this case. The dimension of the issue is highlighted in the following data. Pierce County budgeted \$15,000 for overtime in 1987. Yet, the total number of overtime hours worked in 1987 was 3,560. The actual overtime costs incurred by the County in 1987 amounted to \$53,523.00. Yet, the Employer's proposal to increase salaries in the first year of the two year agreement inclusive of longevity and the \$42.00 bump would increase the salary costs for bargaining unit employees by \$37,130.00. The Union offer which costs approximately \$6,361.00 less than the Employer's in the first year of the two year agreement would cost \$30,769.00 in 1987, the first year of the agreement. Although the Employer asserts that this overtime cost is due in part to a long term absence of one employee, there is no evidence in this record to demonstrate that sick leave usage of employees in this Department is excessive.

Both the Union and the Employer make reference to "facts" in their briefs which are not supported by any evidence presented at the hearing. The Arbitrator makes no mention of these "facts" in the summary of the parties' positions below nor are these facts relied upon by the Arbitrator in the course of his analysis and decision.

POSITIONS OF THE PARTIES

The Union Argument

The Union views the central issue in this case as whether the Arbitrator will incorporate into the overtime language the substantial changes proposed by the Employer or the simple and minor modifications proposed by the Union.

The Union notes that under its proposal the work schedules put into effect by the Sheriff and the Officers of the Department, namely, the 6-3 6-3 schedule with an 8 1/2 hour day for Patrol Officers is working well. Accordingly, the Union proposes to include that schedule into the agreement.

The Union notes, that at the hearing, the Sheriff testified that the language of the current agreement is administered in a manner and with the intent of paying overtime for hours worked over 40 in the week or 80 in a two week period. The Union concedes that it does not know precisely how the overtime provision in Article 15 of the expired agreement is administered, at the present time.

The Union emphasizes that in considering the overtime issue, it is important for the Arbitrator to remember that the officers and employees of the Sheriff's Department in Pierce County are salaried. The Union notes that the Employer makes no provision in its proposal for the payment of call out time or for the compensation of officers whose shifts are extended. The Union cautions the Arbitrator that the shifts of Patrol Officers are often extended by as much as 8 or 12 hours. Yet, under the Employer proposal, a Patrol Officer whose shift is so extended may not receive any overtime compensation. The Union's concerns are summarized in the following excerpt from pages 11 and 12 of its brief:

Current practice, by mutual agreement between Patrol Officers and the Sheriff, has been to work a straight 6-3 rotation of eight and one-half (8 1/2) hour shifts. On a twenty-eight (28) day schedule, two-thirds (2/3) of the officers work nineteen (19) shifts, or $19 \times 8.5 = 161.5$ hours, and one-third (1/3) work eighteen (18) shifts, or $18 \times 8.5 = 153$ hours. No makeup time is required by those scheduled short and no overtime taken on hours scheduled over. Overtime is paid on hours worked in excess of the schedule. It can be earned by shift extension, callout, court time, or by filling part or all of a shift on a day normally scheduled off. Under this computation method, the shortest neutral variation gives: $(7 \times 161.5) + 6 \times 153 = 1130.5 + 918 = 2048.5$ hours and the longest: $(10 \times 161.5) + (3 \times 153) = 1615 + 459 = 2109$ hours.

Distribution has a slight bias toward the higher figure:

1/3 would work 10 long months, 3 short, or 2109 hours.

2/9 would work 9 long months, 4 short, or 2065.5 hours.

2/9 would work 8 long months, 5 short, or 2057 hours.

2/9 would work 7 long months, 6 short, or 2048.5 hours, which averages out to be $(8.67 \times 161.5) + 4.33 \times 153 = 2062.7$ hours.

At this time the sheriff indicated no desire to change this schedule or rotation. Here again we have between $171 - 161.5 = 9.5$ hours and $171 - 153 = 18$ hours of undesignated time in each twenty-eight (28) day "month" under the Employer's Proposal.

Thus, the Union charges in the above excerpt that the Employer proposal provides for no compensation for hours worked between those scheduled, 153 or 161, and the 171 hours, the level at which overtime would kick in. The Union argues that the Employer would treat such undesignated hours-undesignated by the regular work schedule, as hours which are paid for via an employee's annual salary.

The Union notes that the Sheriff regularly schedules Jailer/Dispatchers for twenty-one 8 hour shifts per month. Jailer/Dispatchers would receive full salary for working as few as 2016 hours per year.

The Union argues that if its proposal on overtime is incorporated into a successor agreement then no bargaining unit employee would be scheduled to work less than 2048.5 hours as compared to the 2016 hour minimum possible under the Employer proposal. Furthermore, the Union notes that under its proposal better communication among employees would be established, which provides for overlap of shifts through the 8 1/2 hour work day for Jailers/Dispatchers. Jailer/Dispatchers would not commence his/her shift cold without any input or feedback from an employee on the prior shift.

The Union argues that this department is understaffed. As a result, the 11 hour cushion provided for by the Employer's proposal would evolve into the permanent schedule for employees. The new schedule which would provide for a 2080 hour work year and which, in the Union's view, the Employer would put in effect as an efficient use of its manpower would be a 7-2, 7-3, 7-2 work schedule rotation. Such a rotation would provide for a 2184 hour work year with no overtime compensation to be paid until an employee works 2223 hours. It is on this basis, that the Union argues that the Employer proposal results in a decrease in hourly rates of between six to seven percent.

With regard to the sick leave matter, the Union points out that the Employer's proposal to eliminate access to the sick leave bank is unfair to employees who suffer an on the job injury and who collect workers compensation, but who have little accumulated sick leave.

The Employer Argument

In its brief, the Employer argues that wages are the central issue to this dispute. The Employer argues that the Union is attempting to break the internal settlement pattern. The Employer emphasizes that the voluntary settlement pattern among the five other bargaining units in Pierce County is a 2.5 percent wage increase in 1987 and a 3 percent wage increase in 1988. The Employer emphasizes that is precisely its offer to the Union, here. The \$42.00 per month bump is offered by the Employer as an inducement for the change in the overtime language which it proposes.

The Employer maintains that it has established that the settlement among law enforcement units in comparable counties range between 2 and 2 1/2 percent in 1987 and 2 to 3 percent in 1988. The Employer at pages 19 - 21 of its brief sets out the following charts for the Jailer/Dispatcher, Patrol Deputy and Sergeant and Investigator.

Radio-Jail Operator Year-End Rates

	1986		1987		1988	
	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>
Barron	\$1,550	\$1,550	\$1,581	\$1,581	\$1,628	\$1,628
Burnett	1,259	1,347	1,311	1,402	1,363	1,457
Chippewa	1,501	1,669	1,544	1,713	1,607	1,775
Dunn	1,288	1,557	1,320	1,596	Not Settled	
Polk	1,345	1,727	1,388	1,770	Not Settled	
Rusk	1,465	1,543	1,562	1,726	Not Settled	
St. Croix	1,616	1,760	Not Settled		Not Settled	
Washburn	1,337	1,370	1,377	1,411	1,418	1,454
Average	1,420	1,565	1,440	1,600	1,504	1,579
Pierce	1,429	1,819	Bd 1,507	1,907	Bd 1,553	1,964
Rank	5/9	1/9	3/8	1/8	2/5	1/5
			Un 1,479	1,974	Un 1,538	2,053
Rank			4/8	1/8	2/5	1/5

Patrol/Deputy Year-End Rates

	1986		1987		1988	
	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>
Barron	\$1,766	\$1,766	\$1,801	\$1,801	\$1,855	\$1,855
Burnett	1,572	1,746	1,612	1,789	1,660	1,843
Chippewa	1,624	1,810	1,667	1,853	1,730	1,915
Dunn	1,519	1,850	1,557	1,896	Not Settled	
Polk	1,634	2,051	1,678	2,094	Not Settled	
Rusk	1,562	1,640	1,562	1,726	Not Settled	
St. Croix	1,729	1,990	Not Settled		Not Settled	
Washburn	1,576	1,642	1,623	1,692	1,672	1,743
Average	1,623	1,812	1,643	1,836	1,729	1,839
Pierce	1,429	1,819	Bd 1,507	1,907	Bd 1,553	1,964
Rank	9/9	3/9	8/9	2/9	5/5	1/5
			Un 1,479	1,974	Un 1,538	2,053
Rank			8/9	2/9	5/5	1/5

Sergeant Year-End Rates

	1986		1987		1988	
	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>
Barron	No position					
Burnett	No position					
Chippewa	1,697	1,891	1,740	1,934	1,803	1,997
Dunn	1,359	1,624	1,393	1,665	Not Settled	
Polk	No position					
Rusk	1,664	1,742	1,751	1,829	Not Settled	
St. Croix	No position					
Washburn	No position					
Average	1,573	1,752	1,628	1,809	1,803	1,997
Pierce	1,486	1,876	Bd 1,522	1,910	Bd 1,567	1,967
Rank	3/4	2/4	3/4	2/4	2/2	2/2
			Un 1,538	1,941	Un 1,599	2,019
Rank			3/4	1/4	2/2	1/2

Investigator Year-End Rates

	1986		1987		1988	
	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>	<u>Min</u>	<u>Max</u>
Barron	\$1,766	\$1,766	\$1,801	\$1,801	\$1,855	\$1,855
Burnett	1,794	1,794	1,839	1,839	1,893	1,893
Chippewa	1,697	1,891	1,740	1,934	1,803	1,997
Dunn	No position					
Polk	No position					
Rusk	1,629	1,707	1,716	1,794	Not Settled	
St. Croix	1,836	2,096	Not Settled		Not Settled	
Washburn	No position					
Average	1,744	1,851	1,774	1,842	1,850	1,915
Pierce	1,486	1,876	Bd 1,522	1,910	Bd 1,567	1,967
Rank	6/6	3/6	5/5	2/5	4/4	2/4
			Un 1,538	1,941	Un 1,599	2,019
Rank			5/5	1/5	4/4	1/4

The above charts demonstrate that the wage rates in 1987 and 1988 at the maximum in each of the classifications under the Employer offer places Pierce County either first or second in ranking among comparable counties.

On this basis, the Employer argues that its offer is fair and reasonable and is most supported by the criterion the Interest and Welfare of the Public. Farmers in this community are receiving low prices for their corn and milk. The Employer notes that the assessment for all property in Pierce County went down from 1986 to 1987.

The Employer notes that at the beginning of the hearing, the Union attempted to accept the Employer proposal on sick leave. The County did not choose to permit the Union to change its final offer, in that regard, because such a change would improve the Union offer.

The Employer emphasizes that the Union bargaining committee accepted the overtime proposal at issue, in this case. In fact, the \$42.00 bump is included in the Employer proposal as an inducement for the change in the overtime language proposed by the Employer.

The Employer notes that the Union proposes to saddle the Sheriff with a fixed schedule. The Employer argues that the Union should not have the right to fix the work schedule. The Employer observes that its proposal to modify the overtime language is based upon the following analysis:

The County's language is based on the 7K exemption in the Fair Labor Standards Act which allows the County to schedule an employee up to 171 hours on a 28 day period at the employee's regular rate of pay. As a quid pro quo for this language, the County is offering to pay each individual \$42.00 a month regardless of whether that individual would have put in overtime or not. The maximum amount of overtime saved per work period would be 11 hours. (Employer brief at page 29)

The Employer concludes that its offer is the more reasonable of the two. The Employer urges the Arbitrator to select its final offer for inclusion in the successor Agreement.

DISCUSSION

In this section of the Award the Arbitrator applies the statutory criteria to each of the three issues in dispute. This case does not readily lend itself to conventional analysis, since the Employer attempts to buy its overtime proposal through the \$42.00 per month bump on the wage

rates in the first year of the Agreement. Nonetheless, the Arbitrator considers the Employer's wage proposal both with and without the \$42.00 per month bump. The wage matter is considered independent of the overtime issue and as a total package inclusive of the overtime dispute.

The overtime and sick leave issues are discussed. The Arbitrator concludes this section of the Award by setting forth the reasons underlying his selection of the final offer to be included in the two year successor Agreement.

WAGES

The \$42.00 per month bump proposed by the Employer is to be added to the rates prior to computing the 2 1/2 percent and 3 percent wage increases proposed by the Employer. Consequently, the \$42.00 bump is slightly more than \$42.00 per month. Nonetheless, if this bump is excluded from the Employer's proposal, the Employer offers a 2 1/2 percent wage increase across the board in 1987 and a 3 percent wage increase across the board in 1988. The Union proposes an increase of 3 1/2 percent in 1987 and 4 percent in 1988. The criteria, the lawful authority of the Employer and the stipulations of the parties do not provide any basis for distinguishing between these offers.

Interest and Welfare of the Public

The Union attacks the data submitted by the County on this issue. The Union notes that at no time during the bargaining process did the Employer represent to the Union that it was unable to pay the wage demand of the Union.

The Arbitrator is required by statute to consider the interest and welfare of the public in determining which offer is to be included into a successor agreement. The Union is correct when it notes that no argument has been made, here, that Pierce County is unable to meet the Union's demand. However, the Employer did present data which supports the selection of the offer of the party which is lower in cost. In this regard, the Employer presented evidence that the assessed valuation of all real estate in Pierce County decreased from 762,028,930.00 in 1986 to 727,985,600.00 in 1987. Furthermore, Employer exhibits 23 and 24 chart the decline in corn prices and milk prices which together with the decreased assessed valuation demonstrates a diminished ability of the public to absorb tax increases.

However, in this case, the Employer offer for 1987 inclusive of the \$42.00 plus bump is more costly than the Union offer in the first year. In fact, over the two years of the Agreement the total Employer offer is slightly more expensive than that of the Union. If the \$42.00 bump is viewed as a quid pro quo for overtime language which may produce some

economic savings, then the Employer offer may be viewed as the lower one. However, if the savings, if any, under the Employer's overtime proposal is viewed as speculative, then the lower offer is the one proposed by the Union. This criterion would then support the selection of the Union's rather than the Employer's offer. Therefore, the Arbitrator finds that this criterion lends support to both the Employer and Union offers.

Comparability

The Union suggests that Pepin and Buffalo Counties are comparable to Pierce County. Both the Union and the Employer identify Dunn, St. Croix, and Polk Counties as comparable to Pierce County. The Employer suggests that Chippewa, Burnett, Washburn and Barron Counties are comparable to Pierce County.

This Arbitrator believes that the comparability decision is best left to the parties. In the course of bargaining, they are best able to identify those communities to which they are comparable. In this case, no matter what comparables are selected, both with regard to the wage level proposed by the Union and the size of the annual wage increase, the external comparables of law enforcement units in other Counties in the northwest corner of Wisconsin all support the Employer proposal. Under the Employer offer the wage rate paid by Pierce County to its law enforcement employees does not deviate from its prior position relative to the average paid by comparable counties (no matter which counties are selected as comparable). Furthermore, the size of the annual wage increase is equal to or better than those counties which have settled contracts for 1987 and/or 1988.

The other bargaining units in Pierce County have all voluntarily settled agreements for the 1987 and 1988 calendar years at the 2 1/2 and 3 percent wage increases as proposed by the County in its final offer. Internal comparables support the Employer's proposal.

Pierce County is one of the few counties, in the northwest corner of the state, which pays 100% of the premium for health insurance for both single and family coverage. Furthermore, the longevity program provided in Pierce County is equal to or higher than that made available by the counties identified as comparable by either the Employer or the Union.

The Arbitrator concludes that the comparability criteria and the overall compensation criterion found at Section 111.77(6)(d) and (f) and support the Employer's wage proposal, either with or without the \$42.00 bump.

Cost of Living

Since the first year of the proposed two year agreement has already

past, the Arbitrator has the luxury of hindsight. Although the Union suggests that the Arbitrator look at the increase in the cost of living at the U.S. national indices, the Arbitrator views the non-metro urban index to be applicable here. The increase in the cost of living at this index for calendar year 1987 is between 3.6 and 3.9 percent. This criterion is closer to the wage increase proposed by the Union. Accordingly, the Arbitrator finds that this criterion supports the Union's wage proposal.

Changes in the Foregoing and Such Other Factors

The criteria of changes in the foregoing circumstances and such other factors do not serve to distinguish between the final offers of the parties.

On the wage issue, the criteria, the Interest and Welfare of the Public, the Comparability Criteria, the Overall Compensation criterion all support the Employer proposal. The cost of living criterion supports the Union's proposal. Since the Union's proposal in the first year is lower than the Employer's if the \$42.00 bump is included in the Employer's proposal, the Interest and Welfare of the Public criterion, in part, supports the Union's proposal, as well.

On balance, the Arbitrator finds that the application of the criteria to the wage offers of the parties tends to demonstrate that the Employer wage proposal is to be preferred.

OVERTIME

The criteria, the lawful authority of the Employer, stipulation of the parties and interests and welfare of the public do not serve to distinguish between the final offer of the Union and the Employer on this issue.

Comparability

Dunn County pays overtime for hours worked outside of their 6-3, 6-3 work schedule. St. Croix County, which has not settled its labor agreement for 1987 and 1988 as of the hearing date in this matter, pays overtime for hours worked outside of the 6-3, 6-3 work schedule. The work schedule in Polk County where deputies work ten hour shifts is so unlike Pierce County, that it cannot be considered to be comparable with regard to this issue.

On the whole, there is too little data in this record from which the Arbitrator may conclude that either offer is supported by how comparable counties identify the threshold for the payment of overtime.

Overall Compensation

The question to be considered here is whether the quid pro quo offered by the County of \$42.00 per month is sufficient inducement to justify the inclusion of the overtime proposal in a successor agreement. It is difficult for the Arbitrator to evaluate whether \$42.00 per month is sufficient. Certainly, there is no data available in the record so as to show that the \$42.00 sum is adequate or inadequate. However, what is clear from the record is that both the Union and the Employer recognize that the \$42.00 sum is in its entirety an inducement to obtain the change in the overtime language.

Changes in the Foregoing

This criterion does not serve to distinguish between the final offers of the parties.

Such Other Factors

It is this criterion which is most important in distinguishing between the final offers of the parties on the overtime question. The Union, in its brief, raises several questions concerning the intent and meaning of the Employer's proposal. The Union questions how the 11 hour cushion between the 160 hours scheduled under the 6-3 schedule presently in existence for deputies and the 171 hour threshold for the payment of overtime is to be paid. Furthermore, the Union charges that under the Employer proposal there is a wide variance between what jailers and deputies must work to earn the annual salaries paid in Pierce County. Finally, the Union charges that if the County changes the 6-3 schedule to a 7-2, 7-3, 7-2 schedule the total number of hours worked by employees would be increased and the hourly wage rate would be substantially reduced under the guise of the Employer's overtime proposal.

The Union mounts a legitimate challenge to the Employer offer. However, it is clear that in Pierce County, certainly with regard to overtime, the written agreement provides a framework for the administration of this particular benefit. The day to day operation and payment of the benefit is based upon practice and bargaining history. These parties could not have reached a tentative agreement on the Employer proposal for overtime if that proposal, in fact, would result in a 6 percent decrease in the wage rate. The Union is correct in its identification of ambiguity inherent in the Employer's proposal. However, that ambiguity is clarified by the parties' bargaining history and the assurances provided in bargaining concerning the intent and purpose of the language.

The thrust of the Union argument is that employees are salaried; they will not be paid any additional amount of money until and when they reach the threshold for payment of overtime. Certainly, there is basis in the Employer's language for such an interpretation. However, in the stipulations of the parties, they have agreed to transform the accounting for vacation and holidays from "days off" to an hourly accounting and accrual of this benefit. Thus, it is apparent that in this agreement, the parties, in the course of their bargaining, have begun to break down the strict "annual salary" concept.

An Arbitrator in an interest arbitration proceeding, should not introduce into an Agreement any term or condition of employment which is ambiguous. In fact, this Arbitrator has turned his decision against the party proposing to include an ambiguous contract term into a collective bargaining agreement through an interest proceeding.¹ But for the tentative agreement and understanding reached by the parties as to the meaning and intent of the Employer's proposal, this Arbitrator would have selected the final offer of the Union with its proposal on wages and sick leave had the Union proposed the retention of the status quo and made no modifications to Article 15 of the expired agreement. However, the Union, for its part, has proposed substantial changes to Article 15. In its proposal, the Union proposes to limit the authority of the Sheriff to change the work schedule. It fixes the work schedule as a 6-3 schedule. This, despite the fact that the 6-3 schedule was arrived at through the cooperative efforts of the Sheriff and the officers of the department. In addition, the Union attempts to have the Arbitrator alter the level of service provided in Pierce County by including in its proposal that the work day for Jailer/Dispatcher be increased from 8 to 8 1/2 hours per day to provide for an overlap of shifts.

The proposals of both the Employer and the Union on the overtime issue contain material and substantial defects.

The Arbitrator finds that on balance the Employer proposal is to be preferred. However, he reaches this conclusion based upon the following conditions and limitations. The language of the Employer's proposal is ambiguous. The bargaining history and assurances provided by the Employer as to the meaning of this language is part and parcel of the Employer's proposal. Furthermore, the Arbitrator takes the Employer at its word. The overtime proposal is not made as a subterfuge to retain an annual salary, but increase the necessary hours to be worked to earn that annual salary. In other words, the overtime proposal is not a subterfuge to change the 6-3, 6-3 work schedule to a 7-2, 7-3, 7-2 work schedule or any other work schedule which would substantially increase the number of hours

¹ School District of West Allis - West Milwaukee, (21700-A) 1/30/85; Cashton School District, (29957-A) 6/6/86.

to be worked by deputies, jailers, etc. in the course of the work year without being paid for that increase in hours worked. The stated purpose of the Employer's proposal is to provide that the payment of an overtime rate, time and one-half, shall not kick in until an employee has worked 171 hours in a 28 day period. It is on that basis that the Arbitrator concludes that the Employer proposal is to be preferred.

Sick Leave

Both the Employer and the Union propose substantial changes in this area. There is some support among the external comparables to increase the accumulation to 90 days. However, there has been no evidence presented to demonstrate the need to increase the sick days an employee may accumulate from 36 to 90, all in this contract.

On the other hand, the Employer seeks to remove the availability of the sick leave bank to employees on workers compensation who have exhausted their accumulated sick leave. The Employer has failed to demonstrate a need for this proposal.

Accordingly, the Arbitrator concludes that the Union proposal on this issue is to be preferred.

SELECTION OF THE FINAL OFFER

In the above discussion, the Arbitrator concludes that the Employer proposal on wages and overtime is to be preferred. The Union proposal on sick leave is to be preferred. In this case, the wage issue is a secondary one. The sick leave issue is a tertiary one. The central issue in this dispute is the matter of overtime. Had the Union proposed to retain the language of Article 15 in the expired Agreement as found in that Agreement, this Arbitrator would have selected that offer for inclusion in a successor Agreement. However, the Union has proposed substantial changes of its own. Despite its proposal to retain the manner in which hours worked are calculated in the computation of overtime under the prior Agreement, the Union proposes to fix the 6-3, 6-3 schedule as the permanent schedule of the Department. However, the record evidence indicates that the Sheriff and the officers of the department have through their mutual discussions been able to resolve most questions which arise out of establishing the work schedule for the various classifications of the department.

On the other hand, despite the ambiguity inherent in the written proposal of the Employer, it is apparent to this Arbitrator that the parties have clarified through their bargaining history the details of the administration of this language. The Arbitrator is confronted here with two proposals, wherein the language and the administration of Article 15 is to be changed in a successor agreement. For the reasons stated above,


the Employer proposal is preferred. Accordingly, the Arbitrator concludes that the total final offer of the County is to be included in a successor Agreement for calendar years 1987 and 1988.

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

AWARD

Based upon the statutory criteria found in Section 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 Pierce County, which is attached hereto which together with the stipulation of agreed upon items, are to be included in a successor agreement for calendar years 1987 and 1988 between the Pierce County (Sheriff's Department) and General Teamsters Union, Local 662.

Dated at Madison, Wisconsin, this 9th day of May, 1988.


Sherwood Malamud
Arbitrator

FINAL OFFER OF THE PIERCE COUNTY SHERIFF'S DEPARTMENT COMMISSION
FOR A 1987-88 CONTRACT

1. Except as set forth in the attached Stipulations, or in this Final Offer, the terms of the 1986 Contract shall become the terms of the 1987-88 Contract.

2. Revise Article 15, paragraphs 1 and 2 to read as follows:

"The work period for patrol officers and jailor/dispatchers (if allowed under the Fair Labor Standards Act) shall be based on 28 days and worked in accordance with the work schedule prepared by the Sheriff. Overtime shall be paid at the rate of time and one-half the employee's rate of pay for all qualifying hours worked in excess of 171 hours per work period.

"For the purpose of determining whether overtime applies above, paid leave of any nature shall be subtracted from the total hours.

"All overtime shall be paid in monies at the rate of time and one-half unless mutually agreed between employer and employee to be paid in compensatory time at time and one-half.

3. Revise Article 21, Section 1 and Section 3 to read as follows:

Section 1. All employees shall earn sick leave at the rate of one (1) day per month. Employees shall accumulate said sick leave to a total of seventy-two (72) days. Employees shall be paid while on such sick leave and at the regular rate of pay.

Section 3. Upon termination of employment the County agrees to pay one hundred (100%) percent of the unused accumulated sick leave up to thirty-six (36) days maximum, except for employees discharged for cause who shall be entitled to no pay for accumulated sick leave.

4. Delete from Article 24, Section 2 the following:

Section 2. (and, if necessary, the sick leave bank)

5. Exhibit "A"

Wages and Classifications

Add \$42.00 per month to all wages plus 2.5% wage adjustment effective January 1, 1987.

Adjust all wages 3.0% effective January 1, 1988.