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WISCONSIN DEPARTMENT OF
RELATIONS COMMISSION

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 In the Matter of an Arbitration
 between

 THE DOOR COUNTY BOARD OF SUPERVISORS

 and

 DOOR COUNTY SHERIFF'S DEPARTMENT
 LOCAL OF THE LAW ENFORCEMENT
 EMPLOYEE RELATIONS DIVISION OF THE
 WISCONSIN PROFESSIONAL POLICE
 ASSOCIATION (WPPA/LEER)
 * * * * *

Case 55
 No. 39710 MIA-1266
 Decision No. 25570-A

Door County, Wisconsin, hereinafter referred to as the County or Employer, and Wisconsin Professional Police Association/LEER Division, hereinafter referred to as the Association, were parties to a collective bargaining agreement which expired on December 31, 1987, and covered certain employees of the Sheriff's Department. The parties were unable to resolve certain issues during negotiations for a successor agreement, and on November 16, 1987, the Union filed a petition requesting the Wisconsin Employment Relations Commission to initiate compulsory final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act. The WERC certified that the conditions precedent to interest arbitration had been met, and it issued an order dated July 8, 1988 requiring interest arbitration. The parties selected the undersigned to serve as the impartial arbitrator, and the WERC issued an order dated August 2, 1988 appointing the undersigned as the arbitrator. The parties waived a hearing, instead electing to submit to the arbitrator exhibits as well as briefs and reply briefs. Originally the parties agreed to submit briefs on October 24, 1988 and reply briefs on November 7, 1988. Subsequently, the parties agreed to extend the dates for filing to October 27, 1988 and November 10, 1988, respectively.

FINAL OFFERS OF THE PARTIES:

County's Final Offer: A two-year agreement for 1988-89 with a wage freeze in 1988 and a 2% across-the-board

increase in wages for 1989. Amend Article VII, Section 7.03 to read:

Vacations shall be granted at any time of the year at the Employee's option, but there shall be only three (3) persons on vacation at a time, for a period of no longer than a week at a time, from the Friday before Memorial Day through and including the Sunday of Fall Festival. One (1) person shall be a Road Deputy, and one (1) person shall be a Sergeant, but in no case may more than one (1) person from a shift ever take vacation at the same time . . .

Association's Final Offer: A two-year agreement for 1988-89 with the following wage final offer:

ARTICLE XXVII - WAGES (APPENDIX "A")

Effective 1/1/88, 2% across-the-board increase of
Top Patrol

Effective 7/1/88, 2% across-the-board increase of
Top Patrol

Effective 1/1/89, 2% across-the-board increase of
Top Patrol

Effective 7/1/89, 2% across-the-board increase of
Top Patrol

ASSOCIATION'S POSITION:

The Association argues that its final offer is the more reasonable of the final offers presently before the arbitrator. Section 111.77(6)(a) provides that in reaching a decision the arbitrator must give weight to the lawful authority of the employer. Since neither party raised any arguments challenging the County's lawful authority to meet the Association's final offer, this criterion should have no effect on the arbitrator's decision.

It is noted by the Association that the parties' stipulations illustrate that agreement has been reached on all issues which were in dispute for a successor to the

parties' 1987 agreement except for wages and vacation language. Significantly, during those negotiations the Association consented to a health insurance cost containment program in an effort to keep employe welfare costs at a reduced level. The Association asserts that the stipulations illustrate that the parties have not agreed to any other significant economic benefit for the members of the bargaining unit which would buffer them from the effect of the wage freeze proposed by the County for 1988. However, the stipulations represent a willingness on the part of the Association to work with the County in cost containment measures, which ultimately should bear some weight in the arbitrator's decision.

The Association also argues that the interest and welfare of the public is best served by an award in favor of the Association. Members of the bargaining unit, like all other residents, provide and pay taxes for the operation of the County. Depriving the deputies of a pay increase in 1988, and providing a substandard wage increase in 1989, means that those officers have reduced spending power which will clearly impact negatively upon the economic interest and welfare of the County's business community. Thus, the arbitrator should determine that the interest and welfare of the public would be best served by an award granting the Association's final offer.

The County has the financial ability to meet the cost of the Association's offer. The evidence establishes that the

County had set aside funds for employe wage increases in the proposed 1988 budget, however these funds were removed from the finalized budget. The fact that the County elected not to budget money for salary increases for its employes cannot be used to establish anything of significance. This is particularly true because the County made the decision to reduce by \$100,000 the budget allotted for employe wage increases and then created a new account in the amount of \$150,000 to help fund the building of a new courthouse or grandstand. Although the County may consider a new grandstand a greater priority than providing a modest wage increase for its employes, the Association does not agree. Additionally, the County, with a net budget of \$5,874,940 for 1988, reduced the previous year's budget by approximately \$11,000 through its realignment of funds. The Association submits that the County waived the tax-cut flag and then sent the bill to the County employes.

The Association asserts that a comparison of wages of the employes represented by the Association with the wages of other employes in public employment performing similar services in comparable communities strongly favors the adoption by the arbitrator of the Association's offer. It is noted by the Association that there is no history of litigation which the arbitrator can turn to, to determine the appropriate comparability grouping. Nevertheless, the Association believes that its proposed comparables are more reasonable than the County's for several reasons.

First, the Association's comparison group contains all the counties in northeastern Wisconsin, with the exception of Menominee County which does not operate under a collective bargaining agreement. Second, all comparisons are made between law enforcement personnel and their respective county sheriff departments. Last, with the exception of Brown and Outagamie Counties, all departments are of relatively equal size and lie within counties of similar population. Although Brown and Outagamie Counties are substantially larger than the County, the Association believes that its comparison group provides the best overview of surrounding departments. Additionally, the Association cannot be accused of "shopping" for appropriate comparables in order to shade the facts. Accordingly, the Association's comparables should be viewed as the most relevant.

The Association submits that its wage offer would allow it to maintain its relative position with respect to a comparison of average base salary. The evidence reveals the historical ranking of top deputy sheriffs' annual base wages. It can be ascertained from that data that from 1980 through 1984 the County's deputy sheriffs consistently were ranked in the second or third positions. In 1985, its position dropped to seventh as a result of a reduction in the number of annual hours worked by the County deputies. It can also be ascertained that under either final offer, the employees will remain in the seventh position. The true determination of what will happen to the deputies' wages can be seen by

comparing the top deputy classification within the County Sheriff's Department to the average base wages of all comparables previously discussed.

Even under the Association's final offer some slippage will occur in comparison to the average in 1988. However, if the County's final offer is selected, a major disruption in the historical relationship will occur, dropping the County deputies' base wages \$471 below the average of the other departments. The Association submits that its final offer best maintains the relationship long established between the County and the surrounding communities. The Association's proposed wage increase is at best an average wage increase, falling slightly lower in terms of dollar increase and percentage increase than the average. A review of the comparables submitted by the Association establishes that no other sheriff's department in this area of the State received a wage freeze for 1988. Accordingly, the Association's final offer for 1988 must be deemed as more reasonable.

The Association concedes there is a problem when attempting to determine the 1989 wage increases. Of the comparables urged by the Association, only two have settled: Waupaca County which will receive a 3.5% increase in 1989, and Langlade County, which will receive 4% in 1989. In order to provide the arbitrator additional data with which to make a valid judgment, the Association has provided a list of all the 1989 settlements for law enforcement units that are represented by the Wisconsin Professional Police

Association/LEER. Three important factors can be derived from this listing.

First, the pattern of settlements at the time of submission of the exhibits in these proceedings clearly indicate wage increases of more than the 2% contained in the County's final offer. The Association notes that only one department had settled for a 2% increase or less. Second, the Association's final offer for 1989 follows the pattern of settlements that have already been reached. Third, and most important, if the County's final offer were to be accepted, the below average wage increase in 1989, compounded with a wage freeze in 1988, would place the employees in such a position in comparison to surrounding counties the Association would be required to continually argue catch-up in future contract negotiations.

The Association argues that a review of the information provided by the County regarding non-law enforcement employee groups clearly indicates that no trend exists toward freezing employee wages for 1988. The employee groups settled for 1988 and utilized by the County are teachers, private sector businesses and other Door County bargaining units not directly involved in these proceedings. A review of the evidence provided by the County also indicates that a majority of the employees in the private companies surveyed are not members of a labor organization. Additionally, several of the exhibits have completion dates which range back to March of 1987.

The Association submits that the County has attempted to flood the record with comparisons and information of employes that are not normally considered comparable to law enforcement classifications. Furthermore, many of the County's exhibits contain information that should be regarded as questionable at best.

In concluding its arguments the Association contends that the average consumer price for goods and services, commonly known as the cost of living, supports the Association's final offer. The Association maintains that settlements within the comparable area have been relatively consistent with the CPI. The Association's position is best stated by this arbitrator in City of Superior, Dec. 20422-A:

"These settlements negotiated by other public employers in 1983 were negotiated under the same economic conditions as are confronting the City, including the same increase in the cost of living. This clearly suggests that where voluntary agreements have been reached, while the cost of living may have been a factor, it was not the controlling factor. Certainly as the cost of living has fallen, so has the pattern of settlements. However, the pattern of settlements has not been the increase in the cost of living."

Regardless of which consumer price index or time period is viewed, it is clear that the cost of food, clothing, shelter and fuel, transportation, doctors' and dentists' fees, drugs, and other goods and services that people buy from day to day continue to rise. The Association's final offer merely attempts to stay on even ground with the ever increasing cost of living. The County's final offer does not

provide any buffer for its employes in 1988 against rising costs, and therefore must be viewed as unreasonable.

Although the issue of wages is an important issue to all members of the Association, it is emphasized by the Association that it cannot be viewed as a stand-alone item in these proceedings. In impasse proceedings it is undeniable that arbitrators are unwilling to change working conditions through a binding arbitration award in the absence of an affirmative demonstration of need by the party seeking the change. The burden of proof relative to a change proposed by the County on the issue of vacation was most clearly set forth by Arbitrator Yaffe in School District of La Crosse, Dec. 19714-A (1/83), when he stated the standards to be met by the party proposing a change in status quo:

"In this regard the Association is proposing a major change in the agreement, it has the burden of demonstrating not only that a legitimate problem exists which requires contractual attention, which it has done herein, but that its proposal is reasonably designed to effectively address that problem."

In the La Crosse decision the arbitrator outlined the burden of proof which must be met by a party seeking to modify or change contractual language. The test applied is: (1) whether a legitimate problem exists which requires contractual attention; and (2) whether the proposal under consideration is reasonably designed to effectively address that problem. The Association contends that the County failed to establish either that a legitimate problem exists or that the County's proposal reasonably addresses the

problem. The County further failed to provide "persuasive reason" for elimination of a clause contained in a past written agreement. School District of Greendale, Voluntary Impasse Procedure, (9/78). It is the Association's position that the County has not met the burden of proof necessary to change the vacation requirement and therefore requests that the Association's proposal maintaining the status quo be deemed as more reasonable.

The Association respectfully requests that the arbitrator accept its offer as final and binding on the parties.

COUNTY'S POSITION:

It is the County's position that its final offer is the more reasonable of the offers presently pending before the arbitrator. The County contends it is a unique and independent economic center which defies traditional comparability analysis. The most obvious and unique feature of the County is its geography, being a peninsula surrounded by Green Bay to the west and Lake Michigan to the north and east. Its population is 26,342; and the County seat, Sturgeon Bay, with a population approaching 10,000, is not only the largest city in the County but also the largest city in the surrounding three-county area of Door, Oconto, and Kewaunee Counties.

The economic base for the County consists of three primary sectors: (1) agriculture (2) tourism, and

(3) manufacturing. Of these three sectors, manufacturing accounts for nearly one-third of all jobs in the County, agriculture approximately 22%, and tourism-related retail and service jobs, just under 18%.

Manufacturing is the most important in the County's economy, averaging a weekly wage rate of \$417 in 1986, while the average weekly agricultural rate was \$223, and that for retail service was between \$156 and \$207. Manufacturing is also significant because it offers greater stability to the economy than do tourism and agriculture which are seasonal in nature.

The County's manufacturing activity is located almost exclusively in Sturgeon Bay, with the highest concentrations of manufacturing work force employed in the shipbuilding industry. Three shipbuilders are located in Sturgeon Bay: Bay Shipbuilding Corp. ("Bay Ship"), Peterson Builders, Inc. ("PBI"), and Palmer Johnson, Inc. Bay Ship and PBI are engaged primarily in the business of building ships for the Navy and private industry, while Palmer Johnson builds luxury yachts and cabin cruisers for use on the Great Lakes. All three companies own a substantial amount of property in Sturgeon Bay and are located within scant minutes of the heart of the City's central business district.

At the peak of their employment in 1986, Bay Ship, PBI and Palmer Johnson had approximately 3,000 people, or nearly 75% of the work force engaged in manufacturing in the County. Bay Ship employed slightly less than two-thirds of the 3,000

workers, while PBI employed one-third and Palmer Johnson employed about 3%.

Due to the over-concentration of shipbuilders in Sturgeon Bay, the County's manufacturing sector is highly dependent upon the shipping industry.

The County is also unique because of the composition of its economic base. Although many of the surrounding counties rely upon agriculture, none rely upon orchard crops (apples and cherries) and fruit processing as a segment of the agricultural sector as does the County. The same is true of the County's tourism sector. There is no other county comparable in size to Door County which is subject to the same or even remotely similar economic conditions. The County thus contends that the "comparison" criterion is not applicable to the determination of which final offer should be selected in this case because there is no true external labor market from which valid comparisons with the County can be made.

In the event the arbitrator concludes that external comparables can be properly established, the County proposes that the following counties be identified as comparables:

Kewaunee, Oconto, Langlade, Marinette,
Shawano, Waupaca

The County submits that these counties are comparable because of their geographic proximity to the County and relative similarity to the County with respect to population size, number of full-time law enforcement employees, and total revenues and expenditures.

It is argued by the County that of the comparables proposed by the Association, Brown, Outagamie, Oneida, Vilas, Forest and Florence Counties are not comparable to the County in terms of population size, geographic proximity and total expenditures and revenues, and thus should be rejected by the arbitrator as comparable. Brown County has a population over seven times the size of the County. The same is true of Outagamie, which has a population of more than four times that of the County. Additionally, the two principle cities in these two counties, Appleton in Outagamie and Green Bay in Brown, have populations of 62,964 and 93,942 which exceed the total population of the County by nearly three and four times respectively.

The Association's comparison between the County and Vilas, Oneida, Forest and Florence Counties is misplaced because these counties are not contiguous to or in close geographic proximity to the County.

The obvious lack of comparability between the County and the Association's proposed comparables is clearly established by the 1986 expenditures and revenues.

The essential purpose of this proceeding is to determine which final offer is closer to where the parties would have settled voluntarily had they been able to do so. With this guiding principle in mind, the County contends that the inherent fairness of its final offer is clearly demonstrated by the following discussion.

The County's wage offer for 1988 is more reasonable than that of the Association and is fully supported by a study of the prevailing hourly wage rates among its proposed comparables at the Road Deputy/Patrol Officer, Sergeant, and Communication/Security Deputy job classifications. The County submits the evidence establishes that the County Sheriff's Department employes will continue to maintain their salary ranking among the comparables under the County's final offer. They are number 2 in the Road Deputy/Patrol Officer classification, and in the Communication/Security classification, and they're number 1 in the sergeant classification. It is noted by the County that 90% (26 of 29) of the bargaining unit employes are employed in the three classifications, and of this number, 21 (or 72%) of the bargaining unit employes are at the maximum step of the salary schedule for their respective positions.

The County contends the Association has offered no explanation of why this group should receive a substantial 8% salary increase as they do under the Association's final offer. Even if some wage erosion were to occur under the County's final offer, there is no justifiable reason for the County to join a perpetual leap-frog race of ever increasing salary settlements with the external comparables. The County believes its offer is reasonable and keeps pace with the prevailing wage rates among the external comparables. The County notes that in 1987, the employes received an increase of 5%--an amount 2% greater than the average of the comparables.

It is the County's position that traditional comparability analysis offers little guidance in this matter because no other County employer in Wisconsin is currently subject to the severe economic problems that confront the County. The County's problems are due entirely to the loss of nearly 1,750 jobs at Bay Ship, the cornerstone of the County's economic foundation and its single largest employer. The devastating loss of Bay Ship to the County is rivaled only by the announcement of the Chrysler Corporation that it was closing its assembly plant in Kenosha. Recent public sector settlements in Kenosha in both the county and school district have recognized the economic crisis faced by that community.

The economic impact of the layoffs at Bay Ship on Sturgeon Bay and the County are far greater, however, than is the impact on Kenosha of Chrysler's decision to close its assembly plant. With population nearing 80,000, the City of Kenosha (not to mention Kenosha County) is in a much better position to absorb the loss of jobs than is the County able to withstand the loss of Bay Ship.

The County notes that there have been only two settlements for 1989 among those counties which have been presented as external comparables, and no settlements among the relevant internal comparables. Therefore, the County urges the arbitrator to give greater weight to the other statutory criteria. The Association's request to expand comparison factors to include those counties, villages and

cities scattered across the State which have settled for 1989 should be rejected by the arbitrator for several reasons. First, the Association has made no attempt to show that these employers are comparable to the County in terms of geographic location and size, total population, economic base, or any of the other time-tested factors of comparability. Secondly, arbitrators have repeatedly held that the most "comparable communities" are cities with cities and counties with counties. See City of Tomah, Dec. No. 18273-A (Gundermann, 1981). Lastly, the Association's settlement data does not provide the answers to several questions including whether the 1989 settlements are the second year of a multi-year contract, represented trade-offs in bargaining by which salary increases were exchanged for fringe benefits or language items, and whether the settlements were the product of arbitration awards rather than mutual agreement.

In contrast, the County has provided strong authority to support its position that the arbitrator should give greater weight to other statutory criteria in the instant case. It is well established that where there is a dearth of comparable settlements, or when an employer is distinguished by local economic conditions from previously established external comparables, that the other statutory criteria set forth in the interest arbitration law must be given greater weight and consideration. See City of Racine, Voluntary Impasse Procedure (1988); School District of Sevastopol, Case No. 37923 (1988); Marinette County (Sheriff's Department),

Dec. No. 22910-A (1986). Therefore, to the extent that the essential purpose of this proceeding is for the arbitrator to select the final offer which best approximates what the parties would have settled for voluntarily had they been able to do so, and given there is no pattern of internal or external settlements for 1988 and 1989, or an established labor market from which any valid comparison can be made, the other statutory factors (particularly the public interest and welfare) must be given greater emphasis in this case.

The County argues the public interest and welfare fully support the County's final offer. Arbitrators have consistently held in a long series of decisions that evidence of local economic conditions, as considered under the statutory factor of the public interest and welfare, is entitled to great weight when determining the reasonableness of the parties' final offers, because "collective bargaining does not occur in a vacuum totally isolated from those factors which comprise the economic environment in which bargaining occurs." School District of Cudahy, Dec. No. 19635-A (Gundermann, 1982). See also De Pere Education Association, Dec. No. 19728-A (1982); Madison Area Vocational, Technical and Adult Education District, Dec. No. 19783-A (1982).

The County notes that the arbitrator in School District of Sevastopol, Dec. No. 24910-A (1988), stated that the public interest and welfare factors strongly favored acceptance of the district's final offer because of the

economic impact of the depressed shipbuilding in neighboring Sturgeon Bay on Sevastopol residents and taxpayers.

". . . One doesn't need an econometric model to appreciate the impact Bay Shipbuilding alone, not to mention PBI and Palmer Johnson, can have on the property taxpayers whether they may have been employed at Bay Ship or were employed in a business or service dependent on Bay Shipbuilding and/or its employees. This kind of situation as far as this record shows is either wholly distinguished from other Districts and/or occurred subsequent to settlements in other Districts that may be similarly affected.

The economic situation and its impacts definitely cause the District's offer to be in the public interest and welfare to a greater degree than the Association . . . However, the various facets of the public interest must be weighed and when significant economic factors are adversely affecting the public as a whole to the degree they are here, these economic factors shape the public interest to a greater degree over this contract period."

The current depression in the shipbuilding industry is far different from any past downturns because of the devastating and lasting impact on the County, its residents and the local economy. As of December 4, 1986, Bay Ship had 1,194 active employes, and as of June 15, 1988, Bay Ship had 60 active employes, or a net loss of 1,134 jobs during that period. The unemployment rate for the County from January through July of 1988 was 11.2% in contrast to an average of adjoining counties of only 6.91%. The actual impact of layoffs at Bay Ship on the County's economy has just started to become apparent as more and more Bay Ship workers are beginning to run out of their 26 weeks of unemployment benefits.

It is argued by the County that the layoff at Bay Ship hit local merchants particularly hard, with retail sales in Sturgeon Bay being aptly characterized as "flat." The County notes that Bay Ship's troubles also carry over to its many relationships with vendors and subcontractors in the County. This impact represents a loss of \$2 million to local vendors and suppliers.

The County argues that what this case boils down to is the fact that the public interest and welfare demands the fiscal restraint embodied in the County's final offer for the contract years in dispute because of the local economic devastation caused by the massive layoffs at Bay Ship and the resulting permanent restructuring of the County's economic base.

The 1987 cherry season was a financial catastrophe for commercial cherry growers in the County, and the outlook for 1988 appears to be just as bleak. The growing and processing of tart cherries is a major industry in the County, with the County and Wisconsin ranked sixth among the states in cherry production. Within the County, there are 160 commercial cherry growers who harvest some 350,000 trees. The County contends the current plight of local cherry growers concerns the public interest and welfare and further demonstrates the reasonableness of its final offer.

The County further argues that private sector settlements support the County's proposal. Those settlements are relevant for determining the rates of salary increases, if any,

which are given to employes in the same community. Analysis of this statutory criterion reveals that private sector settlements in Sturgeon Bay and the County are far more comparable to the County's final offer than to the final offer submitted by the Association.

The County also argues that its final offer is extremely reasonable given the wage gains Door County Sheriff's Department employes made relative to the cost of living. A comparison between the salary increase that the County's courthouse employes received in 1986 and 1987, and changes in the Non-Metro Urban Areas North Central States Consumer Price Index from December 1985 to December 1987, indicates that the CPI increased 2.98% while the salary increases for 1986-87 equalled 9%. Moreover, the 6.02% increase that the Sheriff's Department employes have enjoyed in their standard of living since 1986 will more than offset the wage freeze proposed by the County for 1988. In contrast, the Association has presented no justification for the 8% salary percentage increase that it seeks here.

According to the County, its proposed contract language regarding vacations is reasonable and should be selected by the arbitrator. In the past, 60% of all tourism-related revenues in the County have traditionally been generated in the months of July and August. The current tourism season runs from Memorial Day until shortly after Labor Day when the County's fall festival is held. The parties have recognized in the existing language of Section 7.03 that the busiest

time of the year, and the greatest need for law enforcement services, occurs in the summer tourism season. By amending Section 7.03 to include "the Friday before Memorial Day" and "the Sunday of Fall Festival," the County's proposal merely serves to "catch up" to the expanded tourist season. Accordingly, the County's proposed contract language is reasonable and should be selected by the arbitrator.

The County challenges the Association's assertion that during negotiations the Association consented to a health insurance cost containment program in an effort to keep employe welfare costs at a reduced level. The parties have eliminated employe deductibles for major medical coverage and a \$150 inpatient hospitalization deductible from the group health insurance plan which will be in effect for the life of this agreement. This is significant because the Association had agreed to include these deductibles in the parties' health insurance plan during the bargaining for the 1986-87 contract as a trade-off for a higher salary settlement in 1986--one which exceeded the average salary increase received by the County's other bargaining unit employes by .69%. As a result of the negotiations which occurred for the current agreement, members of the Sheriff's Department now have the same health insurance coverage and deductibles as are provided to the County's other bargaining units, plus the extra .69% salary increase first implemented in 1986.

It is further noted by the County that in 1987 it granted an increase of 5% to members of the Association which

exceeded the average of the comparables by 2%. Additionally, the combined increase of 4% in 1986 and 5% in 1987 exceeded the average. The Association has provided no evidence in support of its contention that an 8% increase during the term of this agreement is the appropriate rate of increase to be given.

The County also challenges the Association's comment regarding the County's budget. The County notes its insurance carrier condemned the existing grandstand at the Door County Fairgrounds in 1987 as a fire and safety hazard and required the County to tear it down immediately. Without a grandstand there would not have been a fair held this past summer. For that reason, the County Board of Supervisors had to allocate monies for the construction of a new grandstand. Similarly, the County set aside additional monies in recognition of the anticipated need to renovate the County's courthouse. The original portion of the courthouse is over 100 years' old and the present electrical system is fast becoming a fire hazard. Also, many areas of the courthouse are not accessible to persons who are handicapped.

The record establishes that the teachers in both Sturgeon Bay and Sevastopol have "paid the price" for the depressed state of the shipbuilding industry. Sturgeon Bay teachers received a 5.81% salary increase in 1986-87, and were awarded the district's final offer of a 5.13% increase for 1987-88 school year. This was the lowest settlement reported in the Packerland Conference and was approximately

2% under the State-wide average for each of the respective school years. The same is true for the teachers in neighboring Sevastopol who were awarded the district's final offer and thus paid the price for Bay Ship by receiving salary and total package increases which matched those teachers in Sturgeon Bay and likewise were approximately 2% below the respective State-wide average.

For all of the reasons stated in its brief and in its reply brief the County requests that its final offer be awarded by the arbitrator.

DISCUSSION:

The threshold issue in this case is what, if any, comparables should be considered by the arbitrator in his deliberations. The County argues that it has no comparables due to its unique geographic location and economic base.

While the County does have a unique geographic location in the State, other counties in geographic proximity employ law enforcement officers to perform the same functions the County's law enforcement officers perform. Under the statutory criteria, it must be concluded that there are indeed comparables.

The County proposes that, in the alternative, if the arbitrator concludes there are comparables, the following counties are comparable: Kewaunee, Langlade, Marinette, Oconto, Shawano, and Waupaca. The Association accepts the six comparables proposed by the County and urges the

inclusion of six additional counties: Brown, Florence, Forest, Oneida, Outagamie, and Vilas. The County objects to the inclusion of these counties as comparables based on either their size, population, or geographic proximity. The Association notes it has simply taken those counties in the geographic area without consideration to size or population in an attempt to obtain a representative grouping.

Sec. 111.77(6) (d) Wisconsin Statutes states in relevant part:

"(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

1. In public employment in comparable communities."

The issue thus becomes, which of the proposed comparables meet the statutory test of "comparable communities." The parties agree that six counties are "comparable."

It is difficult to conclude that Brown and Outagamie are comparable counties given their population of 187,471 and 135,910, respectively, compared to the County's population of 26,342. Forest and Florence Counties are smaller counties and not really in geographic proximity. Oneida and Vilas are also not in geographic proximity, and Vilas has a smaller population. Under the circumstances, the most appropriate comparables appear to be the counties of Kewaunee, Langlade, Marinette, Oconto, Shawano and Waupaca.

An analysis of the wage data in this case is made

somewhat more difficult due to the fact that the County's analysis is based on hourly rates and the Association's analysis is done on the basis of annual rates. The following tables reflect the data provided by the parties for 1987 and 1988 for the Deputy and Sergeant classifications. These two classifications are used because the Deputy is generally the most populated classification and most departments have the Sergeant classification. Comparison of the Communication/Security Deputy is more difficult due to the fact that counties differ as to the method utilized to man these jobs.

TABLE 1

1987 Maximum Wage Rate for Deputy (Patrol)

<u>County</u>	<u>Association Data</u>	<u>County Data</u>
1. Kewaunee	\$21,820	\$11.21
2. Langlade	20,010	9.62
3. Oconto	22,045	10.56
4. Marinette	21,528	10.35
5. Shawano	20,251	9.86
7. Door	21,378	10.98

1987 Maximum Wage Rate for Sergeant

1. Kewaunee	\$22,322	\$11.46
2. Langlade	20,682	9.45
3. Oconto	20,621	9.88
4. Marinette	21,528	10.87
5. Shawano	--	--
6. Waupaca	23,185	11.15
7. Door	23,325 (1)	

(1) Rate is for Road Sergeant

Table 1 establishes that for 1987 the County ranked second in the hourly rates for the Deputy classification and first for the Sergeant classification. When the County is

ranked according to annual compensation, the data used by the Association, the County drops to fifth in the Deputy classification but retains its ranking of first in the Sergeant classification. The explanation for the County having a higher than average hourly rate and median average annual salary is that the County's deputies work fewer hours than the deputies in the other counties. The parties' 1986-87 collective bargaining agreement states the work cycle is based on 1,947 hours, substantially below the 2,080 hours frequently calculated for a work year.

Neither party provided data regarding the hours of work for the other counties, however, based on the data provided by the County under Tab 17, the hours of some of the comparables can be determined by taking the bi-weekly rate, multiplying it by 26, and dividing by the hourly rate contained in the agreement. The same computation can be performed for monthly rates. Using these formulae, the annual number of hours worked can be determined for the Deputy classification for the following counties:

Kewaunee	$839.24 \times 26 \div 11.21 = 1,946.5$
Marinette	$1,794 \times 12 \div 10.35 = 2,080$
Shawano	$20,251 \div 9.86 = 2,054$
Waupaca	$1,843.75 \times 12 \div 10.64 = 2,079$

Two of the four counties which have higher annual salaries work more hours in the year than do the County's deputies. This explains the higher annual wage.

An annual wage is significant in terms of income to the individual; however, it is less significant for comparison purposes than the hourly wage rate which reflects the earnings for each hour of work performed. Certainly on an hourly basis the County is competitive, and indeed among the leaders of the comparables in the wages it paid its deputies and sergeants in 1987.

Table 2 shows the settlements for 1988.

TABLE 2

1988 Maximum Wage Rate for Deputy (Patrol)

<u>County</u>	<u>Association Data</u>	<u>County Data</u>
1. Kewaunee	\$23,072	11.85
2. Langlade	21,612 (1)	10.39
3. Oconto	21,136	10.12
4. Marinette	23,172	11.14
5. Shawano	N/A	N/A
6. Waupaca	23,878	11.48
7. Door	a. 24,026 (2)	12.46 (3)
	b. 23,325 (2)	11.98

(1) Split increase

(2) Road Sergeant

(3) Rate shown would be effective 7/1/88

An analysis of the data provided by the parties establishes that for 1988 the increases among the comparables range from a high of 4.55% for Langlade to a low of 2.5% for Oconto. The average increase for the comparables is 3.23% if the Association's data is used and 3.18% if the County's data is used. This is in comparison to the County's final offer of "0" percent for 1988 and the Association's final offer of 2% effective 1/1/88 and 2% effective 7/1/88.

There is limited data available for 1989, with only two of the comparables having settlements for that year--Langlade and Waupaca. The increase for Langlade in 1989 will be 4%, and the increase for Waupaca will be 3.5%. The Association provided data for 1989 settlements in law enforcement units State-wide including counties and municipalities. The County objected to any consideration being given to that data on the grounds the data didn't represent comparables; the County couldn't determine from the data whether 1989 settlements were part of multi-year agreements, represented trade-offs for other items in the negotiations, or were voluntary or arbitrated settlements. Generally, State-wide data has little, if any, applicability in interest arbitration due to the lack of comparability. However, where there is a paucity of data available for comparables, State-wide data may be used to determine a broad pattern. In the instant case the settlements of two of the six comparables is more significant.

While settlements in all of the comparables would be preferable in determining the pattern of settlements for 1989, such data is not available. Based on the information that is available, it appears that 1989 settlements will approximate, if not exceed, the 1988 settlements of 3+%. The cost of the Association's final offer for 1989 approximates the cost of settlements for 1989. In contrast, the County's offer of 2% is below the projected settlement pattern.

A review of the data available establishes that among the public employe comparables, the Association's final offer more closely approximates the settlement pattern than does the County's final offer, and for that reason it is to be preferred. There is one disturbing aspect to the Association's final offer: the split increase which will result in an increase of 8% on the rates over the two-year period. This is in excess of most of the other settlements. Still, it more closely parallels the 6% increase in rates for the comparables than does the County's 2% increase in rates over two years.

Data provided by the County for private sector settlements in the County indicate that with the notable exception of shipbuilders, increases for 1988 range from 1.5% to 6%. This suggests that private sector employers are granting increases despite the devastation experienced by the shipbuilding industry in the County. Of the nine private sector settlements appearing at page 49 of the County's brief, excluding Bay Ship and PBI, the average increase for 1988 is 3.78%. Private sector data doesn't support a wage freeze for 1988.

Ability to pay is not an issue in this case. Rather, the County argues that the public interest and welfare is best served by its final offer of 0% for 1988 and 2% for 1989. Essentially, the County argues that its largest economic base is manufacturing which provides not only the largest number of jobs but the greatest income for residents

of the County; and with the devastation experienced by the shipbuilding industry, the manufacturing base has been permanently eroded adversely affecting the County's residents. Additionally, the County's agricultural sector has been experiencing severe economic problems. The County argues that given this economic climate, it is not in the interest and welfare of the public for the County to grant an increase greater than that which is contained in its final offer.

The devastation experienced by the shipbuilding industry in the County is well documented in the County's exhibits. The depth of the devastation upon employes of Bay Ship in particular is readily apparent from the number of employes who have been laid off. It is highly questionable whether many of those employes will ever again work in the shipbuilding industry. There can be no doubt that those employes have suffered a severe economic loss; one which may indeed be permanent.

The economic impact resulting from the loss of shipbuilding jobs has not gone unnoticed by arbitrators. In School District of Sevastopol, No. 37923, Arbitrator Vernon noted:

"One doesn't need an econometric model to appreciate the impact Bay Ship Building alone, not to mention PBI and Palmer Johnson, can have on the property tax payers whether they have been employed at Bay Ship Building or were employed in a business or service dependent on Bay Ship Building and/or its employees."

In recognition of the economic conditions, Arbitrator Vernon awarded the district's final offer. The district's final offer included a salary increase of 5.9% for 1986-87 and a 5.21% increase for 1987-88. Thus, despite the economic conditions, the district's final offer was substantially above that being sought by the Association in this case. It must also be noted that a substantially larger proportion of the property tax is allocated to the school districts than is allocated to the County.

Presumably, the community most adversely affected by the loss of jobs in the shipbuilding industry is the City of Sturgeon Bay in whose environs the shipbuilders are located. There have been two recent arbitration awards involving the City and its employees, one involving employees of the Department of Public Works and the other involving employees of the Police Department. The City's final offer in the Department of Public Works was 2% for 1988 and 2% for 1989. Its final offer in the Police Department was 2% for 1988 with a one-year agreement. The City's final offer was awarded in both cases. Thus, the governmental unit most impacted by the economic condition of the shipbuilding industry, other than the Sturgeon Bay School District, concluded it was in the "interest and welfare of the public" to offer a 2% wage increase for 1988. This is in contrast to the County's offer of 0%.

The Sturgeon Bay School District went to arbitration for the 1986-87 and 1987-88 school years. The district's final

offer, which was awarded, was a salary increase of 5.81% for 1986-87 and 5.13% for 1987-88.

Although the City of Sturgeon Bay and the Sturgeon Bay School District were adversely impacted by the layoffs in the shipbuilding industry, neither concluded it was in the public's interest and welfare to freeze salaries for 1988. The County has failed to establish that it has been more adversely impacted by the decline of shipbuilding than either the City or the School District, or is otherwise unique thus warranting a wage freeze for 1988--especially when ability to pay is not an issue.

Based on the available evidence, it appears that in the comparable counties law enforcement personnel have received an average 3+% increase for 1988 and will receive an additional 3+% for 1989, or more than 6% over the two years. Under the Association's final offer the costs for 1988 and 1989 will be approximately 6%, although the rates will increase by 8%. Under the County's final offer the rates will rise 2%. Although it may be argued that the County should not have to grant the same increase granted by the comparables due to the economic climate, an argument accepted by the arbitrators in Sevastopol, Sturgeon Bay School District, and the City of Sturgeon Bay, the evidence does not support a wage freeze under the facts of this case. The undersigned awarded a final offer which included a wage freeze in a county law enforcement agency case where ability to pay was the issue. See Crawford County, No. 34448 MIA-

1212, Dec. No. 24500-A. No such argument has been made in this case.

In Sevastopol, City of Sturgeon Bay, and Sturgeon Bay School District the employers argued that due to the economic conditions arising out of the layoffs in the shipbuilding industry the employers should not be compelled to grant increases in wages equal to the increases granted by comparable employers. The arbitrators accepted the employers' arguments in those cases, recognizing that the extensive layoffs had an adverse economic impact on those communities. Despite the economic impact on those communities, none sought to freeze wages for 1988. Those communities were impacted by the layoffs at least as severely as the County.

As noted by the County, this arbitrator has concluded that "collective bargaining does not occur in a vacuum totally isolated from those factors which comprise the economic environment in which bargaining occurs." Certainly the City of Sturgeon Bay negotiated in the same economic environment as did the County, but concluded the economic environment in which the bargaining occurred did not warrant a wage freeze. Neither did the majority of the private sector employers.

Both parties point to the CPI in support of their respective positions, with conflicting results. The evidence indicates that the wage increases granted for 1985 and 1986

exceeded the cost of living by 6.02%. However, the cost of living as measured by the CPI has increased in the area of 4% for 1988 and is projected to increase at least that much in 1989. Under the Association's final offer the Association will remain even with the projected increase in the cost of living. Under the County's final offer any gain made in 1986 and 1987 will be reduced significantly. While the cost of living is a statutory criterion to be considered, it is not the controlling criterion here.

In this case, the undersigned is confronted with the alternative of selecting the Union's proposal, which is comparable in cost to the 1988 settlements and which approximates what appears to be the emerging pattern for 1989 (although the rates will be higher after 18 months); or selecting the County's final offer of a wage freeze for 1988 and a 2% increase for 1989, which is substantially below the settlements in comparable counties, below the private sector settlements in the County, and below other public sector settlements in the County. Based on all of the evidence, it is the opinion of the undersigned that of the alternatives available, the Association's final wage offer is the more reasonable.


The remaining issue is the change sought by the County in the present vacation language. The County is seeking to extend the period when employees are limited in the taking of vacation from July 1 through Labor Day, to the Friday before

Memorial Day through and including the Sunday of Fall Festival. The County argues persuasively that the tourism season in the County has been expanded to encompass a longer portion of the summer. Obviously, during the peak tourism season the need for law enforcement is greater than at other times. In the opinion of the undersigned, the County's request regarding vacation is reasonable and if this were the only issue to be determined, the County would prevail.

After reviewing the evidence and arguments submitted by the parties, and giving due consideration to the statutory criteria, the undersigned renders the following

AWARD

That the stipulations entered into by the parties as well as the Association's final offer be incorporated into the collective bargaining agreement covering calendar years 1988 and 1989.


Neil M. Gundermann, Arbitrator

Dated this 16th day
of December, 1988 at
Madison, Wisconsin.