STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of ROCK COUNTY DEPUTY SHERIFF'S ASSOCIATION For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of ROCK COUNTY (Sheriff's Department)	Case 233 No. 40445 MIA-1319 Decision No. 25698-A

Appearances:

Kelly and Haus, Attorneys at Law, by Mr. William Haus, appearing on behalf of the Association.

Mr. Bruce K. Patterson, Consultant for Rock County, appearing on behalf of the Employer.

ARBITRATION AWARD:

On October 11, 1988, the undersigned was appointed to serve as Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.77 (4)(b) of the Municipal Employment Relations Act, to resolve an impasse existing between Rock County Deputy Sheriff's Association, referred to herein as the Association, and Rock County (Sheriff's Department), referred to herein as the Employer. Hearing was conducted at Janesville, Wisconsin, on December 21, 1988, at which time the parties were present and given full opportunity to present oral and written evidence and to make relevant argument. The proceedings were not transcribed, however, briefs and reply briefs were filed in the matter. Final briefs were exchanged by the Arbitrator on March 20, 1989.

THE ISSUES:

There are two issues disputed between the parties: wages, and an Employer proposal to modify the hours of work provisions of the Collective Bargaining Agreement at Article VIII, Sections 8.01 and 8.02.

With respect to the wage dispute, the Employer offers a 3% across the board general increase effective January 1, 1988, and a 3% general increase effective January 1, 1989. The Association offers a 3% general increase effective January 1, 1988; a 2% general increase effective January 1, 1989; and a 2% general increase effective July 1, 1989. In addition, the Association proposes that at Section 8.07 (A), Pay Progression:

Add to current language: Effective January 1, 1989 employees who have

completed or upon completion of one hundred sixty eight months of service shall be advanced to step F of the wage schedule (Appendix B). Add to Appendix B as Step F figures that are 3 percent above those applicable to Step E.

With respect to the hours of work dispute, the Association proposes to retain the language of the predecessor Agreement found at Sections 8.01 and 8.02. The Employer proposes the following

8.01 WORK SCHEDULE

The hours of work for all regular full-time employees shall average forty (40) hours per week annually. The work shall be a five (5) days on/two (2) days off, five (5) days on/three (3) days off schedule or a straight five (5) days on/two (2) days off schedule.

8.02 SHIFT STRUCTURE (HOURS)

A. The hours of work for employees, assigned the work schedule of five (5) days on/two (2) days off, five (5) days on/three (3) days off, shall be on either the first shift (7:00 AM to 3:00 PM), second shift (3:00 PM to 11:00 PM) mid-shift (7:00 PM to 3:00 AM) or third shift (11:00 PM to 7:00 AM). All employees on this shift schedule shall report to work one-half (1/2) hour prior to commencement of their shift. It is understood and agreed that employees may be called for emergency work at anytime.

B. Exemptions from the above scheduled hours may be adopted for Detectives, Special D.A. Investigators, Process Servers, Court Officers, Juvenile Officers, Metro Officers. Such employees shall ordinarily work a 5-2 schedule with work days and hours as follows:

Civil Process-Ordinarily--Monday thru Friday, 7:00 AM-3:00 PM/ 1:00 PM-9:00 PM.

Detectives-Ordinarily--Monday thru Friday, 7:30 AM-3:00 PM/ 3:00 PM-11:00 PM.

Metro Officer-Flex hours only.

Juvenile Officer-Flex hours only.

Court Officers-Ordinarily--Monday thru Friday, 7:00 AM-3:00 PM/ 9:00 AM to 5:00 PM.

The hours of exempt employees shall be scheduled in advance and in writing. Changes in said schedule shall be based on a demonstrated need of the employer and as directed by the Sheriff.

Should the Department establish new assignments, the Department shall have the right to establish the required work schedule.

C. Should the County add positions in any of the noted exempt positions, the work schedule may, if deemed necessary by the County, be on the basis of a 5-2, 5-3 schedule.

D. The Employer shall continue the practice of considering requests for shift preference based on seniority, subject to the staffing requirements of the employer; however, such requests must only be honored when a vacancy or staffing change occurs; no bumping shall be allowed.

DISCUSSION:

Wis. Stats. at 111.77 (4) provide for two alternative forms of arbitration. In form 1, the Arbitrator shall have the power to determine all issues in dispute involving wages, hours and conditions of employment; and in form 2, the Arbitrator shall select the final offer of one of the parties, and shall issue an Award incorporating that offer without modification. The parties to this dispute have opted for form 2, and, consequently, the Arbitrator is limited to a decision which would select either the final offer of the Association or the final offer of the Employer in its entirety.

In making his decision, the Arbitrator, by statute at 111.77 (6) is directed to give weight to the following factors:

(a) The lawful authority of the employer.
(b) Stipulations of the parties.
(c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
(d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:

    1. In public employment in comparable communities.
    2. In private employment in comparable communities.

(e) The average consumer 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.

The undersigned, therefore, in arriving at his decision in this matter, will consider all of the statutory criteria, focusing particularly on those criteria to which the parties have directed their evidence and to which they have made argument.

THE WAGE ISSUE

The Employer argues that its final offer should be adopted, because the internal patterns of settlement militate for its adoption. The Employer cites the following arbitrators in support thereof: Arbitrator Vernon, Dec. No. 24319-A; Arbitrator Kessler, Dec. No. 22572-A; Arbitrator Krinsky, Dec. No. 22569-A; Arbi-

trator Grenig, Dec. No. 20600-A; Arbitrator Malamud, Dec. No. 21699-A and Dec. No. 22910; Arbitrator Haferbecker, Dec. No. 21878; Arbitrator Hutchinson, Dec. No. 17729-B; Arbitrator Monfils, Dec. No. 19800-A; and Arbitrator Michelstetter, Dec. No. 20455-A.

The Association relies on external comparables in support of its final offer. The Association proposes that the external comparables should include Walworth County, Dane County, Jefferson County, as well as the cities of Janesville and Beloit. The Association argues that these are the counties which have been relied on in prior arbitrations, and in the collective bargaining process between the parties, citing prior arbitrations between these same parties decided by Arbitrators Krinsky, Dec. No. 11581-A; Grenig, Dec. No. 20600-A; and Fleischli, Dec. No. 22594-A. In support of its argument that the comparison pool relied on by the foregoing arbitrators be maintained, the Association also relies on the opinions of the following arbitrators: Rothstein, Dec. No. 19898-A; Grenig, Dec. No. 22823-A; Imes, Dec. No. 22247-A; additionally, the Association cites Arbitrator Fogelberg in St. Croix Falls School District, (Dec. No. 22307-A).

Initially, it should be stated that in considering the final offers dealing with wages, there is no need for the undersigned to consider the year 1988, because both parties propose that the wage increase be 3% effective January 1, 1988. It is in the second year that the parties' final offers with respect to wages differs, and it is, therefore, the year 1989 on which this decision will focus.

The Employer relies heavily on internal comparables. The opinions of the arbitrators cited by and relied on by the Employer certainly support the Employer argument that internal comparables are an important and primary determinant in setting wages. Here, the evidence indicates that the patterns of settlement among the internal comparables, i. e., the other unions with which the Employer bargains, supports the Employer offer in this dispute. The internal comparables establish that the settlements for 1989, which have been reached with other unions and this same Employer, support a 3% offer. County Exhibit No. 7-2 reveals the following settlement for 1989: AFSCME, Local 1077, 3%; AFSCME, Local 1258, 0%; AFSCME, Local 2489, 24¢ (3%); Attorneys, 2.5%; Teamsters (Child Care Workers), 3%; Teamsters (Juvenile Probation Officers, 3%; Public Health Nurses, 3%; IAMAW (Social Workers), 3%. In addition to the above settlements, there remain unsettled Deputy Sheriff Supervisors, AMHS (Psycho-social Workers and Registered Nurses) and the unilateral increases which will be implemented for unrepresented employees effective January 1, 1989. The foregoing internal patterns of settlement support a 3% offer. The offer of both parties, however, calculate to 3% for the year. The Employer offer is a straight 3% effective the beginning of the year; the Association offer is 2% effective January 1, 1989, and a general increase of 2% July 1, 1989, which gives an effective increase for 1989 of 3% as it relates solely to the amount of increase for 1989. The Association offer does provide more lift and provides for an additional 1% cost impact immediately upon the turning of the calendar to January 1, 1990. However, when considering only the cost for 1989, as it relates solely to the general increase, the Association offer can be supported by the internal comparables, because, it, too, equates to a 3% settlement for 1989. The question remains, however, whether the additional 1% lift generated by the Association offer is supported by the comparables and whether the additional step proposed by the Association, Step F for Deputy Sheriffs, which would create an additional 3% step effective January 1, 1989, is also supported by the comparables. The new step in the wage progression for Deputy Sheriffs causes the total compensation increase of the Association offer to calculate to 6.23% compared to a total compensation increase of the Employer offer for 1989 of

5.34.14%. If the new Step F proposed by the Association for 1989 is included as part of the general salary increase, the general salary increase for 1989 would calculate to 3.97%. The foregoing percentage is calculated from Employer Exhibit 6-2.

From the foregoing, it is clear that the Association wage proposal, inclusive of its new Step F proposal, at 3.97% exceeds the internal settlement patterns by almost one full percentage point. If the Arbitrator were to decide this matter solely on the basis of internal comparables, then, clearly, the decision would favor the Employer. Internal comparables, however, are not the totality of the criteria which the Arbitrator must necessarily consider, because there is the statutory proviso to consider wages, hours and conditions of employment among employees performing similar services in comparable communities. There is also the traditional comparison of patterns of settlement in comparable communities, which the Arbitrator must necessarily consider, if he is to carry out the statutory directive. While the Arbitrator is mindful of all of the case law supporting the primacy of internal comparables, that is not the totality of the case law, nor do internal comparables make a prima facie case for the party whose offer falls squarely within those parameters. The Arbitrator must necessarily look to the other external comparables to determine whether the record evidence justifies breaking the internal patterns of settlement under the circumstances of the case at bar. The foregoing squares with the dicta of Arbitrator Vernon in Decision No. 24319-A, which is relied on by the Employer, wherein, Arbitrator Vernon stated: "In other words, consistent internal comparisons, even though they involve dissimilar employees, should be adhered to unless the wage rates of the bargaining unit are just too far out of line. . . ." Consistent with the foregoing, then, the Arbitrator will evaluate the external comparisons, both wage rate to wage rate, as well as patterns of settlement, to determine whether the 1989 wage increase for this bargaining unit in excess of the 3% internal pattern is warranted.

We turn now to the external comparisons among the comparables, and find that the parties rely on different sets of comparables. The Association proposes that the comparable comparisons be limited to the immediate surrounding counties of Walworth, Dane and Jefferson, as well as the two largest municipalities internal to Rock County, Janesville and Beloit. The Employer submits data for 13 counties in addition to Rock County comprised of the counties of Brown, Eau Claire, Fond du Lac, Jefferson, LaCrosse, Manitowoc, Marathon, Outagamie, Ozaukee, Sheboygan, Walworth, Washington and Winnebago. Employer Exhibit No. 14 is the only demographic exhibit the Employer has produced to support its selection of comparables. Employer Exhibit No. 14 sets forth the populations of the counties for which it submits wage and fringe data for comparisons in these proceedings. Rock County is a county of 139,275 population. The counties advocated as comparable by the Employer range in population from a high of 188,850 in Brown County to a low of 66,624 in Jefferson County. The undersigned is of the opinion that attempting to make a case that counties are comparable solely on the basis of population is too narrow a demographic data base to establish that contention. Furthermore, the very difference in geographic location among the counties for which the Employer submits data suggests that the counties upon which the Employer relies are inappropriate. Finally, the undersigned considers the fact that other arbitrators have adopted the comparables relied on by the Association as the appropriate comparables for the determination of which final offer should be accepted to resolve prior impasses. After careful reflection on all of the foregoing, the undersigned adopts the Association comparables, because it is in the interest of the parties that the comparables not be tampered with once they have been set in three prior arbitrations (Krinsky, 4/27/73, Dec. No. 11581-A;

Grenig, 1/30/84, Dec. No. 20600-A; and Fleischli, 1/22/86, Dec. No. 22594-A), and because the Employer itself in its reply brief makes it clear that it does not espouse the 13 counties contained within County Exhibit Nos. 14 and 17 are comparables, but are merely offered for the purpose of showing that the wages and benefits in Rock County are consistent with other law enforcement agencies.

Having concluded that the appropriate comparables to be considered in this matter are the counties of Walworth, Dane and Jefferson, and the municipalities of Janesville and Beloit, we now turn to a comparison of wage rates paid in those jurisdictions as compared to the proposals for 1989 in Rock County. Association Wage Comparison Exhibit No. 4 sets forth a comparison of wage rates paid among the comparables compared to the offers of the parties for 1989. The data in Association Exhibit No. 4 relating to the municipality of Janesville is corrected pursuant to the post-hearing submission of Mr. Lehtinen dated January 6, 1989. Exhibit No. 4 reveals that there are wage settlements for 1989 in the jurisdictions of the City of Janesville, the City of Beloit and Dane County. There is no settlement data available at the time of hearing for the jurisdictions of Walworth and Jefferson Counties. In order to make a comparison of wage rates, the undersigned assumes a 3% increase for both Walworth and Jefferson Counties, a percentage increase which may well be on the low side, but one that is certainly within the realistic expectations for 1989 in those jurisdictions. After applying a 3% increase factor to Jefferson County and Walworth County, we find that the hourly wage rates range from a low of $12.46 in Jefferson County to a high of $14.90 in the municipality of Janesville for work performed on a 5-2/5-3 schedule; or a high of $15.68 in the municipality of Janesville for work which is performed on a 5-2 schedule. Exhibit No. 4 also provides two wage rates for Dane County, one for a Deputy Sheriff II classification, and a second for Deputy Sheriff III classification. Deputy Sheriff II's are paid an hourly rate of $14.26 in Dane County and Deputy Sheriff III's are paid wage rate of $14.75. The Association, here, proposes that the maximum rate for Deputy Sheriffs after the addition of the new Step F and after the 2% increase on July 1, 1989, will be $14.41. The Employer offer will generate a maximum rate of $13.84 for 1989. Thus, if the Employer offer is adopted, the maximum wage rate for Deputy Sheriffs will rank fifth of the six jurisdictions which constitute the comparables. If the Association offer is adopted, the wage rate of $14.41 at the Deputy Sheriff maximum will rank third among the comparables if the Deputy Sheriff II classification is considered in Dane County. If the Deputy Sheriff III classification is considered in Dane County, then, the Association offer will rank fourth among the six jurisdictions constituting the comparables.

The average hourly rate among the five comparable jurisdictions, when considering the lower of the two rates in Janesville and Dane County, calculates to $14.14 and when considering the higher of the two rates in Janesville and Dane County averages $14.37. Thus, the Employer offer is 27¢ under the lower of the averages, and the Association offer is 30¢ above the lower of the averages. The Association offer, however, is almost directly on the average when considering the average of the higher of the two rates in Janesville and Dane County (4¢ over that average), whereas, the Employer offer is 53¢ under the average when considering the higher of the two rates in the City of Janesville and in Dane County.

Association wage comparison Exhibit No. 7 sets forth a comparison of maximum salaries inclusive of educational incentive pay among the comparable jurisdictions. This comparison assumes a BA Degree. If the same three per cent settlements are assumed for the two unsettled counties of Walworth and Jefferson, we find that the low average hour rate for the comparables is $14.69; whereas, if the high rates are

averaged the hourly rate among the comparables is $14.95. (The low average includes the hourly rate in Janesville for those on a 5-2/5-3 schedule, and in Dane County for the Deputy II position. The high average includes the rate for a 5-2 schedule in Janesville and the Deputy III position in Dane County) If the County offer is adopted, the maximum salary including incentive pay - BA Degree will be $14.13; whereas, if the Association offer is adopted, the rate will be $14.70. Thus, the Association offer more nearly squares with the average rate including incentive for a Deputy with a BA Degree than does the offer of the Employer.

After considering all of the foregoing evidence with respect to the wage rates at the maximum salaries, and the maximum salaries including incentive pay (BA Degree), among the comparable jurisdictions, the undersigned concludes that the Association offer is justified.

We now turn to a consideration of the patterns of settlement among the same comparable group of the cities of Janesville and Beloit, and the counties of Walworth, Dane and Jefferson for 1989. The record evidence establishes that the wage increase in Janesville for 1989 as corrected in Lehtinen's letter of January 6, 1989, is a 3.7% increase; that the City of Beloit negotiated a 4% increase; and that Dane County negotiated a 3% increase. As noted earlier, Walworth County and Jefferson County were not settled at the time of hearing. The Employer offer for 1989 is 3%, whereas, the Association offer has been determined from data contained within Employer Exhibit 6-2 to be 3.97%, inclusive of the new Step F of the salary schedule. The 4% settlement ranks approximately even with that negotiated in the City of Beloit, and exceeds both Dane County at 3% and Janesville at 3.7%. The Employer offer here is 3% for the second year (1989). Thus, both offers are within the patterns of settlement among the settled districts of the comparables.

We now consider whether the Association has presented convincing evidence that the external comparable comparisons should cause the Arbitrator to adopt the Association salary offer, or whether the internal comparisons should prevail which would cause the Arbitrator to adopt the Employer offer. When considering the patterns of settlement, there is nothing in the patterns of settlement which would convince this Arbitrator that the Association offer should be adopted, because the Employer offer is within the range of the patterns of settlement as is the Association offer, and the Employer offer maintains the consistency of settlements which are established by the internal patterns of settlements. Comparisons of the maximum salary rates, both with and without education incentive, however, causes the Arbitrator to draw a different conclusion. Because the maximum salary rate proposed by the Association is closer to the average salary rate among the comparables; and, because the maximum salary rate proposed by the Association more nearly approaches the prevailing salary rate of the comparables, exclusive of Jefferson County, which is significantly below the remaining jurisdictions; the undersigned concludes that the Association has presented convincing evidence that its salary offer should be adopted.

We now turn to a consideration of the remaining criteria to which the parties have addressed evidence and made argument. The Employer points to criteria b, the stipulations of the parties, arguing that the stipulation with respect to the County's continuation of paying 100% of health insurance is significant, because the County protects the employee from costs relative to medical care, and because the increased costs of these insurances ran in excess of 50% over the term of this Agreement, constituting a significant portion of the Employer final offer. The undersigned has considered the argument of the Employer, and agrees that the cost significance of the health insurance premium increases as it relates to the criteria of the stipulation of the parties favors the adoption of the Employer offer.

The Employer also argues that the interest and welfare of the public, and the financial ability of the unit of government to meet the cost (criteria c) favors the adoption of the Employer offer, because the adoption of the Association offer in excess of the other voluntary settlements will undoubtedly discourage other units from reaching voluntary settlements in the future; and because the County believes that the Award for the Association position will, in the long term, impact on its financial ability to support accelerated costs for law enforcement functions of the County.

With respect to the second of the County's arguments relating to criteria c, the undersigned is unpersuaded, because there is nothing in the record which would support the conclusion which the County urges. With respect to the first argument that the award for the Association will destroy the integrity of bargaining and undoubtedly discourage other units from reaching settlements in the future, the undersigned is unpersuaded that that will follow given the unique circumstances which exist here. If an Association is able to establish satisfactory evidence that the external patterns of settlement and wage rate comparisons support the adoption of the Employer offer, then, voluntary settlements in the future should not be influenced by the higher award to this unit, because, for another Union to refuse to settle in anticipation of a higher award then the emerging patterns of settlement would require that Union to produce evidence that the internal patterns of settlement should be broken. If a recalcitrant Union is unable to do so, it will only work to its own disadvantage, because proceeding through the arbitration process is both time consuming and bears an additional cost to that Union. Put another way, the Union who refuses to settle where it has no case to depart from the internal patterns of settlement will merely delay the general wage increase and have the Employer offer imposed on it which it could have had much earlier had it settled voluntarily, without the added cost of proceeding through the arbitration process. Consequently, the undersigned is unpersuaded that failing to award for the internal patterns of settlement will work adversely to the interest and welfare of the public.

Turning to criteria e, the average consumer prices for goods and services commonly known as the Cost of Living, both parties have submitted identical offers for 1988 at 3%. Consequently, no consideration will be given under this criteria through the year 1988. It is year 1989 where the parties differ, the Employer offering 3% and the Association offer calculating to 3.97% for that year. The Cost of Living Index (CPI) released December 20, 1988, reveals that the cost of living increase for the United States for Urban Wage Earners and Clerical Workers increased 4.17% from November through November, and for small metro areas, 4% for the same period. Thus, the CPI increases for 1988 support the Association offer of approximately 4% rather than the Employer offer of 3%.

Both parties argue to criteria f, overall compensation. The undersigned has reviewed the evidence contained within the exhibits presented by the parties, and the argument the parties have advanced with respect thereto, and concludes that the overall compensation criteria presents essentially the same picture as the conclusions drawn from criteria d, the comparison of wages, hours and conditions of employment.

When considering all of the criteria, the undersigned now concludes that the Association offer with respect to wages is preferred.

HOURS OF WORK PROPOSAL OF THE EMPLOYER

The Association proposes to continue the language of the predecessor Agreement at Article VIII dealing with hours of work. The Employer proposes the modification of sections 8.01 and 8.02 described in the issue section of this Award. The primary distinctions from the predecessor Agreement are found at 8.02 (B), which provides for alternate hours for civil process employees, detectives and court officers. Additionally, metro officers and juvenile officers are designated as flex hours only. B further specifies that the hours of the aforementioned exempt employees shall be scheduled in advance in writing and that changes in the schedule shall be based only on a demonstrated need of the Employer and as directed by the Sheriff. Additionally, B provides that the department establishes new assignments, the department shall have the right to establish the required work schedule. There also is a proposed change by the Employer offer as 8.02 D wherein the Employer shall continue the practice of considering requests for shift preference based on seniority, subject to the staffing requirements of the employer; however, such requests must only be honored when a vacancy or staffing change occurs; no bumping shall be allowed.

With respect to the foregoing changes from the predecessor Agreement, the predecessor Agreement read at 8.02:

> Shift Structure. The hours of work for employees, except for swing shift personnel, shall ordinarily be either the first, second, mid or third shift, provided that employees shall respond to a call for emergency work at any time.

The history of bargaining with respect to the Employer proposal initiated with a grievance from an employee in the bargaining unit named David Behr, a court officer, whose hours were changed with some degree of regularity by the Employer from the regular 7:00 a.m. to 3:00 p.m. shift to other hours. The parties agreed that they would attempt to resolve the problem in the bargaining process, putting the grievance in abeyance while they attempted to negotiate a resolution to the problem. At a meeting of January 12, 1988, the parties entered into what the Association believed was a tentative agreement modifying sections 8.01 and 8.02 of the Collective Bargaining agreement dealing with hours of work. (Testimony of William Haus) On January 29, 1988, Bruce Patterson, for the Employer, directed a letter to Haus, Attorney for the Association, which capsulized a telephone conversation between the two of several weeks earlier. The letter reads as follows:

> Pursuant to our phone conversation of several weeks ago, I am submitting a revision of the County's position relative to Article 8.02 (D). This is done after review with the County's bargaining team and the Sheriff. The revised language is as follows:
>
> 8.02 (D) The employer shall continue the practice of considering requests for shift preference based on seniority, subject to the staffing requirements of the employer; however, such requests must only be honored when a vacancy or staffing change occurs; no bumping shall be allowed.
>
> The County believes this language is more reflective of existing practice relating to authorizing shift preference requests of employees in this bargaining unit.

If you have any questions relative to this proposal, please contact me at your convenience.

No further discussions over the hours of work issue followed in the process of bargaining, and what the Association had believed was a tentative agreement fell by the wayside. The matter remained dormant until the Employer filed its final offer which contained the revisions in 8.01 and 8.02 as set forth supra. The revisions of the Employer final offer relating to 8.01 and 8.02 (B) reflect changes in the status quo language of the predecessor Agreement as described above, and, further, the revisions in 8.02 (B) are not reflective of what the Association thought was embodied in the tentative agreement of January 12, 1988.

The Employer argues that its proposal reflects the status quo because it merely codifies practice which was not set forth in the terms of the Collective Bargaining Agreement. The Association disagrees that the Employer final offer is reflective of prior practice, arguing that it goes well beyond what had been the prior practice, and the Association avers that the Employer proposal would give the Employer unfettered power to set the hours of those employees who are designated exempt under the terms of the Employer offer. The Association argues that those changes should be left in the bargaining process, or, alternatively, that such broad powers should not be awarded, the Association citing: Kessler, Dec. No. 23373-A, 12/9/86; Krinsky, Dec. No. 22200-A, August 16, 1985; Pegnetter, Dec. No. 23314-A, March 25, 1987; and Briggs, Dec. No. 22737-A, June 30, 1986.

The undersigned is persuaded that the language of the predecessor Agreement should remain in place, and that the language proposed in the Employer final offer at Article VIII, Sections 8.01 and 8.02 should not be adopted. If the Employer is correct that the language merely codifies the pre-existing practices, then, arguably, at least, the Employer will prevail in a rights arbitration under the predecessor language if a rights arbitrator finds the language to be ambiguous and relies on prior practice as an aid to an interpretation of the Contract. If, on the other hand, the Association is correct that the Employer is attempting to provide language which goes beyond a codification of what was the prior practice, then, the undersigned is of the opinion that the record fails to support the change the Employer advocates. The record simply is not sufficient for the Arbitrator to conclude that it was the prior practice for seniority to be only considered for the purpose of filling job vacancies, or if seniority was a controlling consideration. Furthermore, it would appear that the addition of metro officers to the list of exempt classifications departs from the prior practice.

Finally, the undersigned considers the Employer argument in its brief as follows: "The Union was unable to demonstrate harm from the schedules and, therefore, the matter should not be determinative in this matter." Since the Employer argues that the work schedule proposal should not be determinative in this matter, it suggests that the determination of the work schedule dispute should be determined by whichever party's final offer prevails on the wage issue.

From all of the foregoing, the undersigned concludes that the status quo language on work hours should prevail, and that the Employer offer with respect thereto should be rejected.

SUMMARY AND CONCLUSIONS:

The undersigned has concluded that the Association offer is preferred with

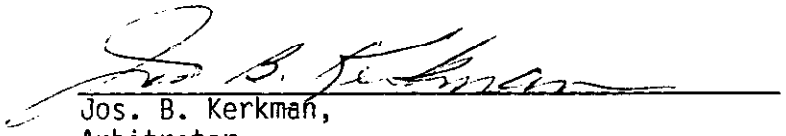
respect to salary, and that the predecessor language should prevail with respect to Article VIII, Sections 8.01 and 8.02 of the Collective Bargaining Agreement. It follows from the foregoing that the Association final offer in this dispute should be adopted, and it will be so ordered.

Therefore, based on the record in its entirety, after considering all of the statutory criteria and the arguments of the parties, the undersigned makes the following:

AWARD

The final offer of the Association, along with the stipulations of the parties, and those terms of the predecessor Collective Bargaining Agreement which remained unchanged through the bargaining process, are to be incorporated into the parties' written Collective Bargaining Agreement for the years 1988 and 1989.

Dated at Fond du Lac, Wisconsin, this 19th day of May, 1989.



Jos. B. Kerkman,
Arbitrator

JBK:rr