

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of an Arbitration  
between  
  
ONEIDA COUNTY  
  
and  
  
THE WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION/LAW ENFORCEMENT  
RELATIONS DIVISION  
  
\* \* \* \* \*

Case 65 No. 41965.  
MLA-1423  
Decision No. 26116-A

The parties in the above matter agreed to cancel a scheduled hearing, and as an alternative the parties agreed to submit exhibits and briefs to the undersigned. Exhibits were exchanged through the undersigned on December 14, 1989, and the undersigned exchanged the parties' briefs on January 9, 1990. Mr. Lawrence R. Health, Corporation Counsel, submitted exhibits and brief on behalf of the County, and Mr. Richard T. Little, WPPA/LEER Business Agent, submitted exhibits and brief on behalf of the Association.

Association's Final Offer

1. Effective 1/1/89 2% across-the-board increase to all classifications.  
  
Effective 7/1/89 2% across-the-board increase to all classifications.  
  
Effective 12/1/89 1% across-the-board increase to all classifications.  
  
Increases to be applied to 7/1/88 rates for all classifications.
2. Contract term from 1/1/89 through 12/31/89.
3. Tentative agreements to be incorporated into agreement.
4. Remainder of contract remain unchanged.

County's Final Offer

1. Effective 1/1/89 3% across-the-board increase to all classifications.  
  
Effective 7/1/89 1% across-the-board increase to all classifications.

Increases to be applied to 7/1/88 rates for all classifications.

2. Contract term from 1/1/89 through 12/31/89.
3. Tentative agreements to be incorporated into agreement.
4. Remainder of contract to remain unchanged.

ASSOCIATION'S POSITION:

It is the Association's position that based on the evidence the arbitrator should select its final offer as the more appropriate of the two final offers before him for consideration. The Association contends that its final offer best serves the interest and welfare of the public by recognizing the County's need to maintain the morale of its officers and retain the best and most highly qualified officers. It is obvious that the overall working conditions offered must be desirable and reasonable. These conditions consist of tangible as well as intangible items. The intangible items include morale, feeling of accomplishment, unit pride, and quality of performance. The importance of these intangibles is most apparent when one realizes that officers in one department work side by side, on a daily basis, with officers of other departments.

Arbitrators have found that the imposition of different benefits and wage scales upon the same class of employes in the same locality causes trouble both with the employer and the association members.

The Association contends that the law enforcement officers employed by the City of Rhinelander is one of the most important comparables utilized in these proceedings, although it must be

emphasized that the Association is not trying to obtain the top pay scale in the area through arbitration but is merely attempting to regain its historical relationship with the City of Rhinelander and the other comparable departments. The evidence establishes there has been a significant decline in the comparison of annual base wages paid to the deputies in the County when compared to the base wages of other comparable departments.

Ability to pay has not been a factor raised by either party and therefore is not an issue which must be addressed in these proceedings.

It is argued by the Association that its proposed comparability grouping is preferable to that of the County. The Association has used the traditional top Deputy/Patrolman classification as its benchmark for comparability purposes. The Association asserts it has long been recognized by arbitrators that municipalities are comparable where they are substantially equal in the following areas: population, geographic proximity, mean income of employed persons, overall municipal budget, total complement of relevant department personnel, and wages and fringe benefits paid such personnel.

In reviewing the past decisions involving the parties, it becomes clear that the arbitrator will be unable to examine any history of litigation where an appropriate comparability grouping has been established. Nevertheless, the Association believes that its proposal is more reasonable than the County's for several reasons.

First, the Association's comparison group contains all counties in northeastern Wisconsin, with the exception of Menominee County whose employees do not operate under a collective bargaining agreement. Additionally, Marinette and Florence Counties have been excluded due to their relative size. Second, all comparisons are made between law enforcement personnel in their respective county sheriff departments. Last, all departments are of relatively equal size and lie within counties of similar population. The Association believes that its comparison group provides the best overview of surrounding departments upon which the arbitrator can base his decision. It cannot be claimed that the Association was "shopping" for appropriate comparables in order to shade the facts.

It is emphasized by the Association that its wage offer would allow it to regain its relative position with respect to comparison of average base salaries. The evidence establishes that from 1980 to 1988 the County's deputy sheriffs have fallen from a rank of third position in 1980 to seventh in 1988. The record is void of justification for this type of decline and it is the Association's position that the adoption of its final offer will provide the necessary remedy to arrest the decline. The Association claims that based on the evidence it is clear that its final offer will best repair the deputy's wage level as compared to the average.

The Association's primary concern of the effects of the respective wage offers is brought to light when the City of Rhinelander base wage rates are compared to those of the County.

The evidence establishes that the annual base wages of the County's deputies fall further and further below what the Association believes is the most prevalent comparable used in these proceedings. It is this progressive downward trend, beginning in 1980, that the Association requests be halted and believes will be halted under its final offer.

The Association takes the position that the internal comparables do not support the County's final offer. It is apparent that the County will contend the internal pattern of settlements for 1989 has been established for all represented employes. It is also apparent that this pattern will indicate a 3% wage increase is the established norm in light of those settlements. Information provided by the County indicated that all of the represented bargaining units settled for 1989 have contracts extending over a two-year period. Each of the parties in these proceedings has proposed a single-year agreement. There is no indication that other benefits may or may not have been included in those settlements. However, the most important fact is that the information has been presented in a factual vacuum, as there is no way to determine that any of the settled units have suffered the declining wage comparison that has been shown to exist within the Sheriff's Department. Therefore, the Association asks the arbitrator to give little weight to the internal comparables in making his decision.

Generally, one of the major factors in determining interest arbitration is the Consumer Price Index. The Association believes it has met the Consumer Price Index expectation by having a 4.82%

actual dollar cost impact to the County, while the County's final offer contains a financial impact of 5.18%. While it is unusual that the Association is placed in a position where its final offer is lower in cost than the County's final offer, and, in fact, lower than the relevant Consumer Price Index, the Association asserts that it has remained cognizant of the current economic climate, and has framed its final offer in what it believes to be a fair and equitable manner.

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

COUNTY'S POSITION:

It is the County's position that its final offer is to be preferred by the arbitrator, and therefore he should award the County's final offer. The County submits that it is in the best interest and welfare of the residents and taxpayers of the County that the employees within its various bargaining units be treated on a fair and equitable basis. While the Association may argue that the members of its bargaining unit may suffer from low morale problems if its final offer is not accepted in order to "catch-up" with comparable law enforcement departments, an analysis of the overall compensation paid by the County to members of the bargaining unit compares well with the overall compensation paid by other comparable departments as well as the overall compensation paid by the County to members of the Courthouse and Highway bargaining units who have worked under the terms and conditions of a negotiated contract for the year 1989. The County has a substantially greater number of employees who are either in

other bargaining units or are nonbargaining unit employees than it has who are members of the Sheriff's Department bargaining unit.

The County submits that the interest and welfare of the residents and taxpayers of the County extends to the contractual relationship which the County has with its other two bargaining units just as it does to the Sheriff's Department bargaining unit. The evidence establishes that the Courthouse and Highway bargaining units reached voluntary settlements with the County for two-year contracts covering the years 1989 and 1990. The County's final offer to the Association is identical to that which the Courthouse bargaining unit members voluntarily agreed to for calendar year 1989. In that regard, the County's final offer consisting of a 4% year-end lift impact and a 3.5% cost impact is identical to the percentages which were voluntarily agreed to by the Courthouse union. It is emphasized by the County that the Courthouse bargaining unit is represented by the same parent organization, the WPPA.

Similarly, the voluntary settlement reached by the union representing the Highway bargaining unit provided for a wage settlement in 1989 which had both a 3.5% lift impact and a 3.5% cost impact. The County submits that it is in the interest and welfare of the public to encourage voluntary settlements between the County and the unions representing its respective bargaining units. The County's final offer to the Association in this matter has been consistent with the voluntary settlements it has reached with the unions representing the other two bargaining units.

It is argued by the County that if it were to have settled on the basis of the final offer proposed by the Association after having reached good-faith voluntary settlements with the unions representing the other two bargaining units, a clear message would have been sent to the members of those two bargaining units that it is not in their interest to amicably resolve contract negotiations in either a fair or expeditious manner. That message is not in the interest and welfare of the residents and taxpayers of the County. The County submits the Association has made the calculated decision to proceed to arbitration on the basis that it could not lose vis-a-vis its internal comparables and could not lose vis-a-vis the external comparable counties.

The County does not agree with the Association's list of comparable counties which include Shawano, Oconto or Taylor. Of the counties the County deems comparable, its final offer meets the lift impacts of Vilas County, and meets the cost impact of Langlade and Shawano counties, and otherwise exceeds the lift and cost impacts of every other comparable county identified by the Association.

The County respectfully submits and believes the Association made the calculated decision to proceed to arbitration in this matter on the basis that it could not "lose." The City of Rhinelander police bargaining unit was involved in a pending arbitration for calendar year 1989 in which the city's final wage offer called for a 3.5% average wage increase and the Rhinelander Professional Police Association had a final offer wage proposal of 4.5% across-the-board. The County notes the arbitrator issued a

decision dated December 4, 1989 in favor of the City of Rhinelander.

The comparables which the County requests the arbitrator use in this proceedings consist of the County employes in the Court-house bargaining unit and the Highway bargaining unit and the external comparables consist of the City of Rhinelander Police Department bargaining unit and the sheriff's department bargaining units in the counties immediately surrounding the County, namely: Forest, Langlade, Lincoln, Price and Vilas. It is the County's position that its external comparables are more appropriate in that those counties are immediately contiguous to the County and therefore most likely to draw from the same labor market.

In analyzing the respective exhibits submitted by the parties concerning compensation, the County respectfully asserts that the arbitrator should consider not only the base wage, but also the hourly shift differential and the education allowance and longevity allowances which are set forth in the evidence. It is noted by the County that every member of the County Sheriff's Department bargaining unit benefits from the hourly shift differential which is substantially better than any of the comparables. The annual average hourly shift differential received by every County employe who works a three-shift rotation is 20 cents. If that average hourly benefit which is enjoyed by every Deputy Patrolman and every other bargaining unit member who works on a shift rotation basis is fairly taken into consideration, the County compares favorably with every other county other than Lincoln.

The County also requests the arbitrator to take into consideration the education allowances and longevity allowances which are or are not offered by the external comparables. The County acknowledges that the contracts which have been negotiated with the Association over the past many years have not included an allowance for longevity even though every other comparable, both internal and external, has such benefit. The reason for this is that the County has consistently taken the position that the education allowance provided by the County is substantially higher than is found anywhere else, and effectively is a substitute for any longevity benefit which the employe would otherwise enjoy. Of all the external comparables, only Forest County offers an education allowance and that allowance amounts to one-half of that offered by the County. The County provides a maximum education allowance of \$100 per month and that is enjoyed by almost all top patrolmen, deputies, sergeants and investigators in the bargaining unit. If this benefit is fairly taken into consideration, it results in an even more favorable ranking of the County in comparison with the identified external comparables, even when it is recognized that the County bargaining unit members do not have a longevity allowance.

Although the Association argues that it has lost ground when its wages are compared to the wages received by employes of the comparable counties, the County submits that if one takes into consideration the additional hourly benefits enjoyed by members of this bargaining unit as a result of the County's superior shift differential pay and superior education allowance plan, the County

already compares favorably. Therefore, the County submits it should not be subjected to the future burden of a 1% lift which the Association has attached to its final wage proposal for the month of December, 1989. Even though the Association can correctly indicate that the cost impact of its proposal is less than that of the County's for calendar year 1989, it goes without saying that the cost impact of such proposal would thereafter be present in every future contract between the parties.

The County also wishes to address the fact that for every contract year since 1980, the parties have negotiated a voluntary agreement with the exception of the two-year contract for the years 1984 and 1985. It is submitted by the County that the Association should not be able to assert an argument that there is need for "catch-up" when, in fact, the Association has voluntarily negotiated the wage adjustments and other fringe benefit adjustments it has obtained over those years in the context of the negotiations, arbitrations and settlements that have been ongoing in the surrounding comparable counties and the City of Rhinelander.

The County also argues that its offer compares favorably with the increases in the Consumer Price Index, particularly if one looks to the indices for the northcentral region, non-metropolitan areas, which best describe the County since it has a population substantially less than 50,000.

The County respectfully requests that based on the evidence the arbitrator award its final offer.

DISCUSSION:

The only issue in dispute in this case is the wages to be paid for 1989. The Association's final offer provides for a 2% increase effective 1/1/89, a 2% increase effective 7/1/89 and an additional 1% increase effective 12/1/89. The County's final offer provides for a 3% increase effective 1/1/89 and a 1% increase effective 7/1/89. Both parties' final offers apply the increases to the 1988 rates. As noted by the Association, the County's final offer costs more than does the Association's final offer for 1989.

The internal comparables, the settlements the County has reached with other bargaining units for 1989, support the County's position in this case. The County's final offer closely approximates the voluntary settlements entered into by the Courthouse bargaining unit and the Highway Department bargaining unit. Although the Association doesn't dispute the fact that the County's offer approximates the other settlements, the Association argues that those settlements were for multi-year agreements and therefore shouldn't be given any significant weight in these proceedings.

Although the other agreements are for two years, there is no evidence to indicate that either of the bargaining units which have settled accepted a lesser increase during the first year of their agreements in return for a larger settlement the second year. Additionally, the Association offered no evidence to indicate the settlements of the other units for 1989 were impacted by any unusual circumstance such as a significant insurance

increase. In the absence of such evidence, there is no reason not to give appropriate weight to the internal comparables.

It is generally recognized by arbitrators that settlements arrived at between an employer and other bargaining units should be given significant weight when determining which final offer should be awarded. The rationale for giving internal comparables significant weight is that voluntarily negotiated agreements represent the best evidence as to where the parties would have settled if they had reached an agreement. It is also generally recognized by arbitrators that the party seeking to break a negotiated pattern has the burden of establishing some justifiable reason why that party should be treated different from the other units. Arbitrators are aware that if one unit is successful in breaking a pattern through arbitration without persuasive justification it may have a chilling effect on future negotiations, as those units that reached voluntary settlements may be reluctant to do so in the future if another unit obtains more through arbitration. In this case the Association argues that because over the last eight years this unit has dropped in its relative position compared to the comparables, this unit is entitled to a "catch-up" increase which the additional 1% increase effective December 1 represents.

A review of the evidence, and particularly Association Exhibit No. 25, establishes that the County's final offer contains a "lift," the increase in the wage rates during the term of the agreement, of 4%. Only one other of the Association's comparables, Vilas County, gives a lift of this amount. In terms

of cost to the County and money to members of the bargaining unit, only the City of Rhinelander has a cost in excess of the cost to the County of its final offer. The cost of the City of Rhinelander settlement was 3.6% compared to the 3.5% cost of the County's final offer. The only conclusion that can be drawn from the evidence is that the County's offer for 1989 equals or exceeds in both lift and cost most of the offers of those employers deemed comparable by the Association for 1989. None of the comparables have given a lift of 5%, the amount sought by the Association.

Association Exhibit No. 23, entitled "ANNUAL BASE RATE COMPARISON 1989 TOP DEPUTY/TOP PATROL," appears to reflect the maximum annual base salary for the top deputy or top patrolman excluding such things as longevity, shift differential and educational incentive. Association Exhibit No. 23 shows the following rates:

Lincoln County	\$23,340
Oconto County	23,303
Rhineland	21,924
Oneida County	21,793 (1)
Langlade County	21,756
Taylor County	21,711
Oneida County	21,707 (2)

- (1) County's final offer  
 (2) Association's final offer

The Exhibit purports to show the annual salaries and appears to do so for those counties which do not have a split increase and for the City of Rhinelander. The figures shown for Oneida County reflect not the wage rate for the top deputy or patrolman

classification, but rather the 1989 earnings based on the number of months the rates are in effect. The figure shown under the County's final offer reflects the 3% increase effective 1/1/89 and the 1% effective 7/1/89. Similarly, the figure shown for the Association's final offer reflects an increase of 2% effective 1/1/89, a 2% increase effective 7/1/89 and a 1% increase effective 12/1/89. The figures used by the Association reflect the earnings during 1989 of an employe at the maximum of the deputy or patrolman classification, not the wage rate effective 7/1/89 or 12/1/89. For comparison purposes it would appear that the wage rate would be more significant, as this is what future earnings are based on.

Under the County's final offer the maximum annual base wage effective 7/1/89 would be \$21,900 (\$1825 x 12 months). Under the Association's final offer the maximum annual base wage effective 12/1/89 would be \$22,116 (\$1843 x 12 months). Under the County's final offer the County would be fourth among the comparables, \$24 per year below Rhinelander, while under the Association's final offer the County would be third among the comparables. Under either final offer the County will improve its relative standing among those counties which the Association considers to be comparable, and it will improve its position relative to Rhinelander.

Considering the internal comparables, the fact that the County's final proposal exceeds in both lift and cost most settlements among those comparables relied upon by the Association, the fact that no comparable settled for a 5% lift,

and considering the relative improvement which will result from the County's offer, the undersigned is persuaded the County's final offer is the more reasonable of the final offers.

It therefore follows from the above facts and discussion thereon that the undersigned renders the following

AWARD

1. That the County's final offer be incorporated into the collective bargaining agreement effective January 1, 1989 through December 31, 1989.
2. That all other tentative agreements be incorporated into said agreement.
3. Those items not changed as a result of negotiations continue in said agreement.

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Neil M. Gundermann, Arbitrator

Dated this 5th day  
of March, 1990 at  
Madison, Wisconsin.