

STATE OF WISCONSIN  
BEFORE THE ARBITRATOR

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WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

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In the Matter of the Arbitration  
of a Dispute Between

THE WISCONSIN PROFESSIONAL POLICE  
ASSOCIATION/LAW ENFORCEMENT  
EMPLOYEE RELATIONS DIVISION

and

LA CROSSE COUNTY  
(SHERIFF'S DEPARTMENT)

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Case 110  
No. 41498  
MIA-1375  
Decision No. 26493-A

APPEARANCES:

Robert Taunt, Assistant County Personnel Director, on behalf  
of the County

Gordon McQuillen, Attorney at Law, Cullen, Weston, Pines and  
Bach, on behalf of the Association

BACKGROUND

On December 27, 1988, the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (hereafter referred to as "the Association") filed a petition requesting the Wisconsin Employment Relations Commission (WERC) to initiate compulsory final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act (MERA), for the purpose of resolving an impasse arising in collective bargaining between it and the La Crosse County (Sheriff's Department) (hereafter referred to as "the County") on matters affecting the wages, hours and conditions of employment of law enforcement personnel in the employ of the County.

On May 22, 1990, after being advised by its Investigator that the parties were at an impasse and that the Investigator had closed his investigation on that basis, the WERC found that an impasse, within the meaning of Sec. 111.77(3) of the MERA, existed between the Association and the County with respect to negotiations leading toward a collective bargaining agreement for the years 1989 and 1990 covering wages, hours and conditions of employment for law enforcement personnel employed by the County, and ordered that compulsory final and binding interest arbitration pursuant to Sec. 111.77 be initiated to resolve the impasse and that the parties select an arbitrator.

On June 7, 1990, after the parties notified the WERC that they had chosen the undersigned, Richard B. Bilder, of Madison, Wisconsin, as the arbitrator, the WERC appointed him as impartial arbitrator to issue a final and binding award in the matter pursuant to Sec. 111.77(4) of the MERA.

On August 21, 1990, the undersigned met with the parties at the La Crosse County Courthouse in the City of La Crosse to arbitrate the dispute. At the arbitration hearing, which was without transcript, the parties were given a full opportunity to present evidence and oral arguments. Post-hearing briefs were submitted by the parties and received by the arbitrator on October 4, 1990. Reply briefs were subsequently submitted by the parties, and last reply brief was received by the arbitrator on November 19, 1990.

This arbitration award is based upon a review of the evidence, exhibits and arguments, utilizing the statutory criteria set forth in Section 111.77.

#### ISSUES

The parties are in agreement that the successor agreement should have a term of two years, commencing January 1, 1989 through December 31, 1990, and have reached agreement on various other matters. The issues which have not been resolved voluntarily by the parties, and which have been placed before the Arbitrator, concern wages and the status for retirement purposes of certain members of the bargaining unit -- the Jail Officers (Jailers). The respective final offers can be summarized as follows:

#### A. The County's Final Offer

The County's final offer is directed solely at an across-the-board increase in wages:

1. Effective January 1, 1989, \$.20 per hour increase across the board to all employees of the unit.
2. Effective July 2, 1989, \$.30 per hour increase to all employees of the unit.
3. Effective December 31, 1989, \$.45 per hour increase across the board to all employees of the unit.

#### B. The Association's Final Offer

The Association's final offer is directed not only to an increase in wages, but also to a change in the status for retirement purposes of, and the retirement contributions applied to, those members of the bargaining unit classified as Jailers and currently covered for retirement under the General Service Schedule rather than, as is the case with the Deputies and

Investigators in the bargaining unit, the protective service schedule:

1. Effective January 1, 1990, approximately eighteen out of the thirty-seven full-time equivalent employees in the bargaining unit (the employees classified as Jailers rather than as Deputies or Investigators), who are now classified as "General Service" employees for retirement purposes, will be reclassified in the agreement as "Protective Service Schedule" employees for retirement purposes under the Wisconsin Retirement System, and the County is to pay the full amount of the difference in conversion. This will put the Jail Officers in the same status of "protective service" employees for retirement service as the Deputies and Investigators in the unit. Thus, effective on that date, the County shall pay the full amount of the established employers and employees' "protective service" contribution rates for all deputies and jailers covered by the agreement.
2. With respect to wages, effective January 1, 1989, those employees who currently receive protective service retirement (the Deputies and Investigators) will receive \$.44 per hour increase across the board. Those employees currently on the general service schedule for retirement purposes (the Jailers) will receive \$.20 per hour increase across the board.
3. Effective January 1, 1990, those employees who were previously in the protective service schedule (the Deputies and Investigators) will receive a \$.46 per hour increase. However, those employees formerly designated as "general service schedule" (C) (the Jailers), who will now (as of January 1, 1990) be reclassified to be in the "protective service schedule" for retirement purposes, will receive no raise for the year 1990.

Thus, the Association's offer in effect proposes a more modest wage increase over the next two years for some of its members -- in particular those classified as Jailers, in exchange for granting the Jailers, effective January 1, 1990, the same protective service status for retirement purposes currently enjoyed by the other members of the unit (the Deputies and Investigators).

#### CONTENTIONS OF THE PARTIES

##### The County's Position

The County, in the hearing and its briefs, argues that the Arbitrator should accept the County's proposal for a simple wage increase, rather than the Association's proposal for a wage increase coupled with a granting of protective service status to all employees in the unit for retirement purposes, because:

1. The County offer is more simple and straightforward. It provides greater compensation to both protective and non-protective employees than does the Association's proposal; provides a wage increase to all employees across the Board, rather than the differential increases proposed by the Association; better addresses the Association's concerns about low wages; and keeps pace with contiguous and comparable counties better than does the Association's final offer. In contrast, the Association's wage offer is less than the County's; would drive Jailer wages down making them less comparable and making future wage comparisons more difficult; and would benefit a minority of the bargaining unit members to the detriment of all.
2. The Association's final offer is complex and confusing. It would result in variable pay increases in the first year of the agreement and a partial wage freeze in the second year of the agreement. There are fewer non-protective Jailers than protective officers that will benefit from the Association's offer, which would involve a lower overall compensation for both. Moreover, if protective retirement is given the Jailers, this would have adverse implications for this and other bargaining units in La Crosse County, with great potential for disrupting the labor relations process. Moreover, the Association's offer will result in all employees being treated as protective service for retirement purposes, but would leave unchanged language in the agreement which differentiates between protective and general employees for other matters such things as training and pay classifications.
3. The Association's final offer regarding protective status is not justified because:
  - (a) La Crosse County and its Deputy Sheriffs and Jailers have a history of differentiating between protective and general service employees. The title of the unit -- "Deputy Sheriffs and Jailers" -- reflects the long-standing recognition of these differences.
  - (b) The County has demonstrated by its evidence the basis for and sources of these distinctions between Law Enforcement Officers such as Deputies and Jail officers, which are well recognized by State Law Enforcement Officials. These distinctions are also reflected in various state statutes which set out different and substantially greater training requirements for Law Enforcement officers than for Jail officers. They are also reflected, inter alia, in Wisconsin statutes distinguishing between protective and general service occupations for purposes of contributions to the public employee

trust funds on the basis of involvement in active law enforcement which requires frequent exposure to a high degree of danger or peril.

- (c) The evidence presented by the County, and not contradicted by the Association's evidence, fails to show a good reason or need for classifying the Jailers as a protective occupation for retirement purposes, rather than as a general service occupation. This evidence indicates, for example, that Patrol Deputies and other active law enforcement officers have different and more taxing kinds of duties and responsibilities, have a much more frequent degree of peril and danger, and require much more training in this respect, than do Jail officers.
- (d) The Association has not met its burden of proof for changing the status quo and creating a new fringe benefit for the Association.
- (e) The Association's attempt to show a quid pro quo falls short of the cost of the benefit sought. While the Association proposes that the Jailers forgo a partial wage increase for 1989 and a full wage increase for 1990 as a quid pro quo for the increased cost to the County of its contributions to the Retirement Fund resulting from the transfer of the Jailers to protective status, the county calculates that these wage savings will still fall considerably short of its increased retirement contributions during the years of this agreement, not to mention its increased future costs, while at the same time placing Jailers far behind their counterparts in comparable counties.
- (f) The County's evidence as to comparability with respect to Jailers classification in a non-protective rather than protective status indicates that, in both 1989 and 1990, the majority of La Crosse County comparables classified their Jail officers as "non-protective," rather than "protective," and that there seems, moreover, to be a trend in at least two of the thirteen comparables to move from protective to non-protective status for Jailers.
- (g) Finally, the County urges that the Arbitrator should be reluctant to impose fundamental changes in contract language in arbitration, and particularly new or innovative benefits, especially since in this case the issue of protective status for Jailers is one of first impression before an arbitrator in Wisconsin.

4. The County's comparables are more appropriate than the Association's. La Crosse County has traditionally used counties that are within plus or minus 25 percent population in the State of Wisconsin as comparable counties, in addition to the four contiguous counties. Moreover, practice has been not to use the City of La Crosse as a comparable, since City Police Departments and County Sheriff's Departments have traditionally not been regarded as comparable, particularly since in this case the work of the City of La Crosse Police Department is very different and greatly exceeds in scope the work of the County Sheriff's Department. In contrast, the Association's use as comparables of only the contiguous four county's, which are much smaller in size, the City of La Crosse is inappropriate.
5. The County's costing is more appropriate than the Association's. The Association's figures of comparative wages do not shed light on the cost basis used and are not useful, since they give only wages and fail to give hours per week involved. Moreover, the Association's costing is incomplete, since it does not include the cost of FICA nor the Health Insurance comparison, does not include part-time employees and incorrectly calculates the number of full-time equivalent employees for costing purposes.

#### The Association's Position

The Association, in the hearing and its briefs, argues that the Arbitrator should accept its proposal because:

1. The County may legally meet the Association's final offer.
2. The parties' stipulations illustrate that agreement has been reached on all issues which were in dispute for a successor to the parties' 1988 collective bargaining agreement except for the issue of wages and retirement.
3. The interests and welfare of the public would best be served by an award in favor of the Association, in that the Association's offer would recognize the need to maintain morale of the unit's officers and to retain the best and most highly qualified officers. The Association's proposal will, in particular, address problems of morale arising from the disparity in benefits between County law enforcement officers and those employed by the City of La Crosse, which the Association considers the most important external comparable.
4. The County has the financial ability to meet the costs of the Association's final offer.

5. A comparison of wages of employees represented by the Association with the wages of other employees in public employment performing similar services in comparable communities strongly favors the adoption by the Arbitrator of the Association's offer.
- (a) The Association contends that its proposed comparability grouping is preferable to that of the County, in particular in that it includes the City of La Crosse and compares Deputy Sheriffs to Jailers.
  - (b) The acceptance of the Association's final offer is supported by its wage offer, since its wage offer is in fact less than that of the County.
  - (c) The Association's costing of the parties' final offer is preferable to that of the County, inter alia, because (1) the County has attempted to inflate the cost of the offers by adding employees into the bargaining unit, and (2) the County has failed to recognize the cost savings generated during the first year of the agreement under the Association's offer and has attached the entire cost of the change to the retirement contribution to the second year of the contract, thereby raising the cost of the Association's offer over the offer of the County.
  - (d) The County's position on increased retirement contributions for jailers is not justifiable, since, in the Association's view, the duties of a jailer have nothing to do with benefit levels of a retirement program: as in the analogous case of a private sector retirement program, the individuals affected by the Association's offer seek only a level of benefits equivalent to the remainder of the bargaining unit members and are willing to bear the burden of costs.
6. The average consumer price for goods and services, commonly known as the cost of living, supports the Association's final offer, in that the Association's offer is lower in cost than the County's, and thus more closely approximates the increase in the consumer price index.

#### DISCUSSION

The issues in dispute between the parties in this interest arbitration, as reflected in their respective final offers, are: (1) the level of wages for the members of the bargaining unit during the period of the proposed agreement, which both agree should be for the two calendar years January 1, 1989 to December

31, 1990, and (2) the question whether, as the Association proposes, Jail officers, who are presently classified by the County as general service employees for retirement purposes, should instead, effective January 1, 1990, be classified (as are the Deputies and Investigators in the bargaining unit) as protective status employees for retirement purposes.

The bargaining unit has comprised over the period of proposed agreement (1989-90) some thirty-seven to thirty-nine full-time equivalent employees (the parties differ somewhat in the calculation). Of these approximately eighteen are Jail Officers (Jailers), who are currently considered in a general service status for retirement purposes, and the rest are Deputy Sheriffs or Investigators, who are currently considered in a protective status for retirement purposes. In 1990 the County will contribute to the State Retirement System 11.7% in addition to the gross salary of an employee in a general status for retirement purposes, and 19% in addition to gross salary of an employee in a protective status for retirement purposes. Thus, the conversion of Jailers from a general status to a protective status for retirement status, which the Association proposes in its final offer and wishes incorporated in the Agreement, would involve a significant increase in annual County retirement contributions for the Jailers involved -- an increase of 7.3% of the Jailers gross salaries for 1990.

The County's final offer proposes simply an across-the-board wage increase in three steps over the two-year period of the agreement, consisting of 20 cents per hour on January 1, 1989, 30 cents per hour on July 2, 1989 and 45 cents per hour on January 1, 1990, or 95 cents over the entire period.

As indicated, the Association's final offer proposes that, effective January 1, 1990, the Jailers in the bargaining unit be converted by the County to protective service employees for retirement purposes. This would involve an increase in County retirement contributions of the difference between the general service rate and the protective service rate -- for 1990, a difference of 7.3% of the gross salaries of the eighteen F.T.E. Jailers in the unit. As a "trade off" or quid pro quo, the Association proposes in its final offer that the bargaining unit members, and particularly the Jailers, receive less of a wage increase than the County has proposed. Thus, under the Association's proposal, as of January 1, 1989, the employees presently considered as protective employees for retirement purposes (the Deputies) would receive a 44 cent per hour increase, but the non-protective employees (the Jailers) would receive only a 20 cent per hour increase. Then, on January 1, 1990 (the time when Jailers would be converted to protective status employees), the employees who have always had protective status (the Deputies) would receive a 45 cent per hour increase, but the former non-protective status employees (the Jailers) would receive no increase for the 1990 year. Thus, the wage and retirement classification issues are clearly interrelated in the



Association's proposal; as stated in the Association's Reply Brief: "The Association's final offer provides an exchange of wage dollars for retirement dollars for the Jail Officers, nothing more."

Since the County's wage offer is more generous than that of the Association, it is evident that the negotiations between the parties have foundered primarily due to the County's refusal to agree to the reclassification of the Jailers as protective service employees for retirement purposes and to the increased retirement contributions this would involve.

The parties arguments have focused in particular on several issues, which it may be useful to discuss separately.

#### 1. The Appropriate Comparables

The Association argues that the appropriate comparables for the purpose of wage and benefit comparisons under Section 111.77 of the MERA are the four counties contiguous to La Crosse County -- Jackson, Monroe, Trempealeau and Vernon Counties, and the City of La Crosse.

The County argues that the appropriate comparables are not only the four contiguous counties, but also other counties of roughly similar population -- Dodge, Eau Claire, Fond Du Lac, Manitowoc, Marathon, Sheboygan, Walworth, Washington and Wood Counties. It contends that its position is supported by long-standing precedent regarding labor negotiations involving the County, as well as general arbitral precedent. The County contends that the City of La Crosse cannot appropriately be considered as comparable, because cities have traditionally not been considered comparable to counties for such purposes. It argues that, in addition, the nature and quantity of the law enforcement responsibilities of the City of La Crosse Police Department differ substantially from that of the La Crosse County Sheriff's Department and the City of La Crosse Police Department does not include Jail Officers, the employee classification here primarily at issue.

The Arbitrator agrees with the County that its list of comparables is more appropriate for the reasons it has suggested. While the four contiguous counties should certainly be included as comparables, they are considerably smaller in size than La Crosse County and there does not appear to be any good reason for excluding other Wisconsin counties of similar size and other characteristics from consideration. Moreover, the City of La Crosse does appear from the evidence to have different and substantially greater law enforcement responsibilities and consequently to be less useful for purposes of comparison.

## 2. The Wage and Fringe Benefit Increase

While there are some differences between the parties as their calculation of the amount of wage and fringe increase, the County's calculations are, in the Arbitrator's opinion, persuasive. According to these figures, for the year 1989, the County offer for the unit amounts to 3.36% increase in wages plus 1.70% increase in fringes, for a total wage plus fringe increase of 5.06%. The Association offer for 1989 amounts to 3.16% increase in wages plus 1.70% fringes, for a total of 4.86%. For the year 1990, the County offer amounts to 4.40% wages plus 2.03% fringes, for a total of 6.43%. The Association offer for the year 1990 amounts to 2.43% wages plus 2.03% fringes for a total of 4.46%; however, when the increased WRF contribution of 3.35% for the eighteen FTE Jailers is added in, by the County's calculation the Association's increase for 1990 amounts to 7.81%.

The County argues that the wages of the members of the bargaining unit have lagged behind those of employees in Sheriff's Departments in other comparable counties, and that its higher wage offer is best calculated to move towards a "catch-up" in this respect and to provide more comparability with other Departments. It contends that, in contrast, the Association's wage proposal will provide less comparability, and will tend to significantly worsen the situation of La Crosse County Jailers as compared with those in other counties.

The Association does not appear to contradict this position or, indeed, to object to the County's higher wage offer. In its brief, the Association states: "Were the issue here limited to wages alone, in all probability there would have been no impasse." Instead, the Association's opposition to the County's offer appears primarily based on its insistence that Jailers be converted to protective service status for retirement purposes.

In the Arbitrator's opinion, the evidence indicates that the general wage level of the employees in the bargaining unit, including the Jailers, has lagged below that of Sheriff's Departments in comparable counties. It follows that the higher wage offer proposed by the County does seem likely to bring these wages more into line with those of comparable counties than does the Association's proposal. Consequently, with respect to the issue of wage rates alone, and based primarily on the statutory criterion of comparability, the Arbitrator considers the County's proposal preferable to that of the Association.

## 3. The Jailer Retirement Contribution Issue

The principal issue in dispute is the Association's proposal that, effective 1 January, 1990, the County change the classification of Jail Officers for retirement purposes from their present status of general service or non-protective status employees to the status of protective service employees. As previously indicated, in 1990 the County will contribute 11.7% in

addition to gross salary towards retirement of its general service status employees and 19% in addition to gross salary towards retirement of its protective service status employees, a differential of 7.3%. Thus, the conversion of some eighteen or so Jail Officers -- almost half the employees in the bargaining unit -- from general to protective status will obviously involve significant increased costs to the County.

The Association argues in support of its proposal that Jailers in at least some of the contiguous counties are considered as protective employees for retirement purposes; that the nature of Jailers' duties justifies their classification as protective service employees; and that considerations of fairness and morale within the Sheriff's Department require the abolition of the present distinction with respect to retirement between the Deputies and the Jailers.

In opposition to the Association's proposal, the County argues that most of the comparable counties or its more extensive list classify Jailers as non-protective rather than protective employees; that the distinction between Deputies who perform active law enforcement duties and Jailers is well established both in the practice of the County and in Wisconsin statutes and law enforcement practice more generally; and that a comparison of the duties of Jail Officers with those of Deputies, does not support the Association's claim that the nature of the Jailer's duties support their claim to similar treatment with Deputies as protective service status employees. Moreover, the County urges that the Association, as the party proposing a significant change or addition in the agreement, has a substantial burden of persuasion in this respect; in the County's view, the Association has failed to carry this burden or to present a persuasive reason for the substantial change in the agreement which it proposes.

The Arbitrator agrees with the County that, with respect to this issue of changing the status of the Jailers from general service status employees to protective service status employees for retirement purposes, the Association, as the proposing party, carries the burden of persuasion.

With respect to comparability, the County's evidence indicates that, out of the four contiguous counties and nine other counties of generally comparable size on which data was presented, in 1989 six counties classified Jailers as non-protectives, four classified them as protectives, and three considered some Jailers as protectives and some as non-protectives, depending upon their duties. In 1990, seven counties considered jailers as protectives, three as non-protectives, and three had a mixed classification. In 1990, several counties which in 1989 considered Jailers as protectives either abolished the Jailer protective position (Walworth County) or added a non-protective position to a protective position (Eau Claire County). This evidence indicates that slightly more of the comparable counties appear to classify their Jail Officers as

non-protective status employees for retirement purposes than as protective status employees, and that the trend, if anything, is towards considering Jailers as non-protective status employees. The Association's evidence in this respect is based on 1985 data and, in the Arbitrator's opinion, was less useful or persuasive. Thus, viewed solely in terms of comparability, this evidence tends to favor the County's position somewhat more than that of the Association. At the least, it provides little support to the Association's claim that the County's practice prior to and under the present agreement, under which Jailers are considered as general service status employees for retirement purposes rather than as protective service employees, is substantially out-of-step with the practice in comparable counties.

The County points out that Chapter 40 of the Wisconsin Statutes establishes the distinctions between protective and general service occupations for the public employee trust fund (Wis. Stats. 40.02(48)) by defining "protective occupation participant" as follows:

"'Protective occupation participant' means any participant whose principle duties are determined by the participating employer, or by the department head in the case of a State employee, to involve active law enforcement or active fire suppression or prevention provided the duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning."

The County also presented evidence that Deputy Sheriffs are defined by statute to involve employees whose principal duties involve active law enforcement; that there are other historical distinctions between general service and protective personnel; that the County has historically elected, consistently with what the statutes permit, to treat the position of jailer as a "specialized non-law enforcement position"; and that the agreement has treated (and will continue to treat) Deputies and Jailers differently as to wage rates and training. Arguing that the rationale for creating protective service retirement was to compensate Law Enforcement Officers for the additional stress and physical demands of their job, the County has presented a considerable amount of evidence which it contends demonstrates that Deputies and other active law enforcement officers are subject to considerably more danger and stress than Jailers. For example, in 1989 and 1990 two Deputies were killed in the line of duty, whereas there is no record of a Jail Officer dying in the line of duty, within the last ten years or more. Again other comparisons indicate that Deputies have a higher percentage of workers compensation injuries than Deputies.

The Association, on its part, contended that the duties of Jail Officers do involve a high degree of danger or peril. However, it presented little specific evidence specifically bearing on this point, or establishing that the Jailers

responsibilities in this respect were comparable in danger or peril to those of Deputies.

The Arbitrator has no doubt that the position of Jail Officer involves significant responsibilities and risks. Moreover, it is apparently the case that Jailers may, under certain circumstances or in particular counties or other jurisdictions, be given duties that involve active law enforcement or "frequent exposure to a high degree of danger or peril."

However, in the Arbitrator's opinion, the evidence before him fails to establish that the Jail Officers in this bargaining unit, as compared with the Deputies, are routinely either involved in active law enforcement or that their duties routinely involve "frequent exposure to a high degree of danger or peril," at least to an extent that presents a persuasive case for an obvious and inherent inequity in treating Jailers differently from Deputies with respect to their classification as protective service employees for retirement purposes. As the County points out, Arbitrators in interest arbitrations have generally been reluctant to impose through arbitral decision substantial changes in contract language, preferring that any significant changes or new benefits be settled by the parties' own bargaining. The fact that most of the comparable counties do not consider Jailers as entitled to protective service status for retirement purposes buttresses the Arbitrator's conclusion that the Association has failed to present a compelling case for the Arbitrator here to mandate such a change regarding the La Crosse County Jailers, in the absence of a negotiated agreement between the parties in this respect. Thus, in the Arbitrator's opinion, viewed in terms of a comparison of the Jailers responsibilities with those of Deputies, the evidence for the County's position with respect to the Jailers retirement proposal is also more persuasive than that of the Association.

#### 4. Other Considerations

As indicated, the parties have argued the wage issue and issue of jailer retirement contributions primarily in terms of comparability and general considerations of reasonableness and equity with respect to the question of classifying Jailers as protective service employees rather than general service employees for retirement purposes. Consequently, there has been little discussion of other statutory criteria.

Taking the County's figures for the rise in cost-of-living as indicated by the CPI -- 4.7% for 1989 and 5.2% for 1990 -- and the County's calculation of the increase in wages plus fringes under the respective offers -- for 1989, 5.06% under the County offer and 4.86% under the Association's final offer, and for 1990, 6.43% under the County's final offer and 7.81% under the Association's final offer -- both appear in total to exceed the CPI, with the Association's somewhat closer. However, in the

Arbitrator's opinion, any difference in this respect is not significant.

The County has not advanced any substantial argument concerning its ability to pay, and this again does not appear to be a significant issue.

While the Association has argued, particularly in its brief, that the morale of the Jailers, and thus the public interest, is adversely affected by their classification as non-protectives rather than protectives for retirement purposes, little persuasive evidence was introduced regarding this issue one way or another.

The County has argued that the Association's proposal will have the effect of increasing the disparity between the wage level of the La Crosse County Jailers and that of the La Crosse County Deputies as well as of the wage level of both the Deputies and Jailers in other comparable counties, and suggests that this is an undesirable situation which is likely to cause continuing problems in future labor relations and negotiations.

In answer, the Association in its Reply Brief states:

"The Employer argues that the Association's final offer will drive down Jailer wages and make future wage comparisons more difficult. It is clear that wage levels will be set for Jailers. An award in these proceedings in favor of the Association will set the wage level of Jail Officers in exchange for an improvement in a level of benefits. Incorporating language into a labor agreement stating such would have an identical effect.

"The Association would be hard-pressed to argue that there is a need for 'catch up' in future negotiations. There can be no doubt that in any future arbitration case involving an unusual wage adjustment for the jail classification, the County would include the award received in these proceedings as its primary exhibit."

While, as indicated, the Arbitrator's decision in this case is based primarily upon other criteria and factors, the Arbitrator believes that there may well be grounds for concern that an agreement which resulted in sharply increased wage disparities between one group of County employees and both their departmental coworkers and similar employees in other counties might pose difficulties for the relations of the parties in the future.

### CONCLUSION

The Arbitrator has concluded that the County's proposal is the more reasonable with respect to principal issues both of wage increase and of Jail Officer retirement contribution. Consequently, the Arbitrator finds that the County's final offer is, on balance, the more reasonable.

### AWARD

Based upon the statutory criteria contained in Section 111.77, the evidence and arguments of the parties, and for the reasons discussed above, the Arbitrator selects the final offer of the County, and directs that it, along with all already agreed upon items, and those terms of the predecessor Collective Bargaining Agreement which remain unchanged, be incorporated into the parties 1989-90 collective bargaining agreement.

Madison, Wisconsin  
December 27, 1990



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Richard B. Bilder  
Arbitrator