ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
)
WAUPACA COUNTY)
)
And)
)
WAUPACA COUNTY LAW ENFORCEMENT)
OFFICERS ASSOCIATION)
)
)

Case 65
No. 43807
MIA-1525
Decision NO. 26526-B

Impartial Arbitrator

William W. Petrie
217 South Seventh Street, #5
Post Office Box 320
Waterford, Wisconsin 53185

Hearing Held

Waupaca, Wisconsin
October 30, 1990

Appearances

For the Employer:

GODFREY & KAHN, S.C.
By James R. Macy, Esq.
219 Washington Avenue
Post Office Box 1278
Oshkosh, Wisconsin 54902

For the Association:

FREDERICK J. MOHR, Esq.
Attorney at Law
414 East Walnut Street, Suite 261
Post Office Box 1015
Green Bay, Wisconsin 54305

BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between Waupaca County and the Waupaca County Law Enforcement Officers Association, with the matter in dispute the terms of a two year renewal labor agreement covering January 1, 1990 through December 31, 1991, with the matters in dispute the amount of general wage increases effective January 1, 1990 and January 1, 1991, the Employer's demand for discretion to change carriers and funding methods in the areas of group medical and life insurance, and the Association's demand for reslotting the Dispatcher/ Jailer, the Patrol Officer and the Investigator/Sergeant classifications effective January 1, 1990.

The parties preliminarily met with one another in unsuccessful attempts to arrive at a voluntary settlement, after which on March 21, 1990 they filed a stipulation with the Wisconsin Employment Relations Commission seeking final and binding arbitration pursuant to Section 111.77 of the Municipal Employment Relations Act. After preliminary investigation by a member of its staff, the Commission on June 25, 1990 issued certain findings of fact, certification of results of investigation and an order requiring arbitration. On September 21, 1990 it set aside a previous order appointing another Arbitrator, and appointed the undersigned to hear and decide the matter as arbitrator.

A hearing took place in Waupaca, Wisconsin on October 30, 1990, at which time all parties received a full opportunity to present evidence and argument in support of their respective positions, and both parties thereafter closed with the submission of post hearing briefs and reply briefs, after which the record was closed by the undersigned effective January 19, 1991.

THE FINAL OFFERS OF THE PARTIES

The final offers of the two parties, which are hereby incorporated by reference into this decision, provide in substance as follows:

(1) The County's final offer includes: modification of Article XVI, entitled Group Medical and Life Insurance, to provide the Employer with the authority to change carriers or methods of funding, providing there is no reduction of benefits; and general across the board salary increases of 3.5% effective January 1, 1990 and January 1, 1991.

(2) The final offer of the Association includes: reslotting of the Dispatcher/Jailer classification at a rate 2.4% higher than previously, the Patrol Officer classification at a rate 5.2% higher than previously, and the Investigator/Sergeant at a rate 6.7% higher than previously; and general across the board salary increases of 4.0% effective January 1, 1990 and January 1, 1991.

THE ARBITRAL CRITERIA

Section 111.77 of the Wisconsin Statutes provides that the Arbitrator shall give weight to the following arbitral criteria in reaching a decision and rendering an award in these proceedings:

"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 employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees 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 employees, 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 traditioanlly 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."

POSITION OF THE EMPLOYER

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the County emphasized the following principal arguments:

(1) That the primary intraindustry comparison group should consist of the contiguous counties of Shawano, Waushara, Marathon, Menominee, Oconto, Outagamie, Portage and Winnebago.

(a) That the comparison pool was selected on the basis of geographic proximity, type of political entity and size.

(b) That the group is identical to that relied upon by the Union in the only other previous Waupaca County arbitration.

(c) That the Employer suggested comparables are supported by the thinking of various Wisconsin interest arbitrators who have been called upon to determine appropriate groups of comparable employers.

(d) That while the Union suggested comparison group contains the counties contiguous to Waupaca, it also includes the considerably smaller municipalities of Clintonville, New London and Waupaca; that the Union has presented no evidence as to why these cities should be considered part of the primary comparison pool, and that their inclusion is inconsistent with certain Wisconsin interest arbitration authority, which holds that comparisons between comparable counties are more valid than comparisons between county and municipal police officers.

(2) That the Employer proposed insurance language is consistent with and supported by other internal settlements.

(a) That the proposal is reasonably designed to bring the language into conformity with that adopted within the other bargaining units within the County; with the exception of the Highway Department bargaining unit, which is not yet settled, all other units have voluntarily settled their contracts with the inclusion of the County proposed insurance language.

(b) That the proposal is designed to allow the County to better address the ever increasing insurance premiums, and to provided coordinated language within the various bargaining units.

(c) That there is absolutely no basis for the Union's membership to expect special consideration in an area where other County employees have already agreed to a change.

(d) That the Employer proposal would ensure that coverage is not diminished with any change of carriers, and the Union has presented no evidence in support of its proposed retention of the status quo ante; that it is virtually impossible to competitively shop insurance plans when different "change" language exists in different bargaining units.

(e) That two of the primary intraindustry comparison group retain the right to change carriers conditioned upon no reduction of coverage, while two others have no language restricting the employer to equal or better benefits. That the more persuasive comparisons, however, are the internal comparisons within the County.

(f) That internal settlement patterns among employer bargaining units of the same employer, have been accorded significant weight by Wisconsin interest arbitrators, because it adds an element of predictability to the bargaining process, encourages prompt settlements, and promotes equity between and among various employee groups.

(3) That the adoption of the Employer's final offer would maintain an established settlement pattern.

(a) That the county's offer is consistent with its other internal settlements.

(b) That every bargaining unit settled for 3.5% in 1989, and that the 3.5% figure has been the maximum percentage increase for first of the year increases among those voluntarily settled units for 1990, 1991 and 1992; further that non-represented employees also received a 3.5% increase for 1990.

(c) Based upon the established internal settlement pattern within the County, that the Association's 6.4% to 10.7% proposal for 1990 is simply unfounded.

(d) That any union claims that certain units settled for more than 3.5% should not be credited by the Arbitrator, because certain increases were due to necessary reslotting of individual jobs; in any event, that the increases demanded by the Union are a far cry from what the other bargaining units received in their voluntary settlements.

(e) That the County's final offer is in line with comparable external settlements: that the Employer's 3.5% settlement in 1989 was right on target; in 1990, that Shawano County settled at 3.5%, Outagamie County at 1.0% and 1.0% split increases; Marathon County at 2.0% and 2.0% split increases; Winnebago at 3.0% with a 1.0% schedule increase, spent 3.5%; and the Waushara increase of $59.00 per month approximated 3.5%. That an examination of the external settlements shows the reasonableness of the Employer's

3.5% offer, and shows also that the Union's demand for 6.4%, 9.2% and 10.7% increases are overreaching and should not be adopted by the Arbitrator.

(4) That any Union claim of "catch up" is unreasonable and out of line.

(a) That an analysis of the average maximum hourly wage rates shows the reasonableness of the County's final offers: that the Dispatcher Classification at Waupaca ranks first among the seven comparable counties in both 1989 and 1990; that Waupaca Jailers rank third among comparable counties in 1989 and 1990; that Patrolmen rank third in 1989 and 1990, while Investigator/Sergeants move from fifth in 1989 to fourth in 1990.

(b) Pursuant to the above, that adoption of the Employer's final offer would result in no bargaining unit classifications losing ground.

(c) That substantial arbitral authority among Wisconsin interest arbitrators holds that catch up increases should not be granted where it would disrupt internal consistency in settlements.

(d) That the Union has the burden of proof and the risk of non persuasion in establishing the need for catch up; that it has failed to meet its burden.

(5) That the Waupaca County Sheriff's Department employees receive certain benefits not afforded other county employees.

(a) That the Sheriff's Department alone provides dental insurance to its employees; that the Sheriff's Department also has three times more life insurance than any other internal comparable.

(b) That dental insurance is a benefit offered by only one of the other Counties comprising the external intra-industry comparison group.

(6) That the Board's offer guarantees increases that exceed increases in the cost of living.

(a) That final year of the expired agreement is the appropriate time frame to review for cost of living purposes; that Small Metro CPI increase from December 1988 to December 1989 was 4.17%, as compared to the County's 1990 offer of 3.53% and the Union's offer of 8.82% in increases. That the County's 1991 increase would improve wages and benfits by 5.01%, and would provide a significant improvement in the economic position of those in the bargaining unit over the life of the two year renewal agreement.

(b) Historically, that wage progression in the Sheriff's Department has far outstripped concurrent increases in the CPI.

(c) That the Employer's offer of 7.06% salary increases over the life of the agreement, with a total cost increase of 9.31% is more than reasonable when compared to the Union's salary proposal of 12.85% and its total package increase proposal of 14.6%.

(d) That the value of the insurance benefits recieved by those in the bargaining unit must also be considered in determining which is the more reasonable offer.

(7) That the Union's interpretation of a recent wage study is critically flawed, and it does not support its demand for excessive wage increases.

(a) That the crux of the Union's wage case is based upon its interpretation of a study by Arthur Young, which conducted job evaluations of all positions within the county, assigned salary grades on the basis of evaluation point ranges, and developed a salary schedule with approximate hourly rates for each salary grade.

Salary increase guidelines were formulated and have been followed throughout negotiations in other bargaining units. Two guidelines for the study were that compensation within 95% and 105% of the midpoint would be deemed to be competitive, and that all employees would be allowed to reach a competitive position (mid-point) in a two to three year time frame.

(b) That in comparing maximum rates within the bargaining unit with the 95% to 105% range and against the 95% mid-point, it was found that the jobs were competitive. That all three classifications were within the 95% to 105% range, the Dispatcher/Jailer classification already exceeded the mid-point, and the Patrol Officer and the Investigator/Sergeant were somewhat below the mid-point.

(c) That the above facts do not justify the proposals for 6.4%, 9.2% and 10.7% increases as demanded by the Union; that the study showed that the Sheriff's Department was competitively paid.

In its reply brief the Employer reiterated and expanded upon many of the positions taken in its initial brief, and emphasized the following principal arguments.

(1) That the Association's complete case is based upon a misreading and a misinterpretation of the County wage study conducted by Arthur Young International, and the recommendations comprising a part of the study.

(a) That the County Board approved use of the study as one of the tools in developing equitable increases in the bargaining units; and the use of this tool was conditional upon economic feasibility.

(b) That settlements within other bargaining unit entailed three year phase-ins of wage adjustments that were indicated as justified by the study.

(d) That non-represented employees were to be brought up to the minimum levels in the various rate ranges in 1989, not to the mid-points as argued by the Union.

(d) That the unrefuted testimony of the study's author indicated that the Sheriff's Department positions were one of the groups found to have been most competitively paid.

(2) That the County's final offer is the more reasonable when viewed in light of the settlement pattern maintained among other Waupaca County employees. That granting the Union a much larger increase than received by other County employees would adversely affect the relationship between the County and all other bargaining units.

(3) That the Union's wage proposal is not justified by the Comparables, or by any demonstrated need to catch up.

(a) Contrary to the position of the Union, that current wages are not well behind the comparables.

(b) That none of the comparables, internal or external, have equaled the 6.4%, 9.2% and 10.7% increases demanded by the Union.

(4) That Union reliance upon crime rate statistics is not supportive of its final offer, and is based upon unsupported evidence having a complete lack of foundation as evidence in this case.

(a) That the referenced material does not establish that those in the bargaining unit are overworked or underpaid.

(b) That the Union fails to take into account the fact that the county wide population figures fail to reflect that various Waupaca County municipalities (Clintonville, New London and Waupaca) have their own police departments which are responsible for their own territories.

POSISITON OF THE ASSOCIATION

In support of the contention that its final offer is the more appropirate of the two before the Impartial Arbitrator, the Association emphasized the following principal arguments.

(1) Preliminarily it submitted that the three statutory criteria having primary application in these proceedings are: (1) the comparison criterion; (2) the cost of living criterion; and (3) the other factors criterion, referring in general to consideration of factors normally taken into consideration in bargaining, mediation, fact-finding and interest arbitration.

(2) That the results and recommendations of the wage study commissioned by the County and carried out by Arthur Young International, supports the selection of the final offer of the Assocation in these proceedings.

(a) That employees cooperated with the wage study and were told that salaries would be adjusted based upon the results of the study.

(b) That the County Board passed Resolution 17 pertaining to the study, providing for the adoption of the plan and directing its implementation for both represented and non-represented employees, subject only to the economic feasibility of implementation within the strictures of the County budget. That the study provided that unrepresented employees be brought to the midpoint level of the rate ranges, and that steps be taken reclassify certain represented positions as a result of the recommendations contained in the study.

(c) That the positions represented by the Association all fall near the very top of the point classifications within each grade in the wage structure, with the Dispatcher/Jailer in Labor Grade 10, the Patrol Officer in Labor Grade 12, and the Investigator/Sergeant in Labor Grade 13.

(d) That Appendix B in the study indicates market predicted midpoints for 1989 at the following levels: Grade 10 - $23,146.00; Grade 12 - $26,025.00; and Grade 13 - $27,597.00. That the 1989 rates for the three bargaining unit positions were as follows: Dispatcher/Jailer (LG 10) - $22,152.00; Patrol Officer (LG 12) - $23,587.20; and Investigator/Sergeant (LG 13) - $24,668.76.

(e) That adding the County 3.5% general wage increase to the midpoints and then comparing the final offers of the parties results in the follow comparisons:

	Midpoint '90	Assn. Ofr.	Cnty. Ofr.
Grade 10	$25,402.00	$23,591.00	$22,927.00
Grade 12	$26,936.00	$25,806.00	$24,413.00
Grade 13	$28,563.00	$27,374.00	$25,532.00

(f) Pursuant to the above, that even adoption of the Association's offer will result in the positions being below the midpoints in 1990.

(g) That the County Personnel Director indicated that it was the County's position that salaries should fall within plus or minus 5% of the midpoint of the ranges; that further examination of the above figures shows the following relationships of salaries to the midpints.

	Midpoint '90	Assn. Ofr.	Cnty. Ofr.
Grade 10	100%	92.9%	90.3%
Grade 12	100%	95.8%	90.6%
Grade 13	100%	95.8%	89.4%

That the above comparisons indicate clearly that the County's offer does not accomplish its own stated goal.

(3) That arbitral consideration of internal comparables in relationship to the wage study, supports the adoption of the final offer of the Association in these proceedings.

(a) That the County has offered 3.5% increases in other bargaining units, similar to the final offer herein in dispute. That the County also, however, has given reclassification increases to various specific positions in those bargaining units which are more than 5% from the midpoint identified in the study.

(b) In addition to the above, the County has granted to all non-represented positions, increases in line with the study.

(4) That arbitral consideration of external comparables supports the selection of the final offer of the Association.

(a) That Association Exhibits #5, #6 and #7 indicate that the manpower of the Waupaca County Sheriff's Department is significantly below comparable units.

(b) Pursuant to Association Exhibit #8, that Waupaca has the lowest personnel per population, but also has the third highest crime rate. That Waupaca County's tax rate is below that which would be expected of a county of its size.

(c) Although police officers are not paid on a piecework basis, that the above statistical data indicates that Waupaca County Sheriff's Department employees are underpaid.

(d) That Association Exhibit #9 shows hourly rate comparisons, and indicates that with the acceptance of the Association's final offer, Waupaca County would still rank fifth among seven comparables. That an examination of the percentage increases over 1989, 1990 and 1991 also supports the adoption of the Association's final offer.

(e) That the Arthur Young study indicates that the County of Waupaca underpays in relationship to comparable sized counties in the State of Wisconsin as a whole, and that it also underpays in comparison to contiguous counties.

That the strongest evidence for acceptance of the Association's final offer is the very study which was commissioned and accepted by the County itself.

(5) That arbitral consideration of the cost of living criterion supports selection of the final offer of the Association.

(a) Over the past two and one-half years, that that the CPI has increased in excess of 10%, but the County is offering only 7% increases over the term of the two year renewal agreement.

(b) That an Employer's exhibit purports to show that those in the bargaining unit have kept pace with inflation over a ten year period; that an examination of the last three years, however, shows wage increases totaling 9.0% at a time when the CPI increased over 13%.

(c) That significant recent loss of ground to cost of living was probably a contributing factor to the inequities found in the Arthur Young study.

In its reply brief the Association addressed six separate areas which were addressed by the Employer in its initial brief, and it offered the following arguments and conclusions within each area.

(1) In addressing the makeup of the external intraindustry compables, it urged inclusion of City Police Departments within Waupaca County. In this connection it cited various arbitral decisions, and urged labor market considerations in support of its recommended comparables.

(2) It urged that the County, as the proponent of change in the insurance language impasse item, had the burden of proof and bore the risk of non-persuasion. It submitted that no persuasive basis had been advanced in support of the proposed change in insurance language.

(3) It submitted that the county's final offer did not maintain internal consistency. In this connection, it argued that the Courthouse professional unit received two year average increases totaling almost 10%, that the Courthouse/Human Services unit also received almost 10% in a majority of the classifications over a two year period, that in the Lakeview unit the LPNs get a 14% total increase over the two year period, and that equity demands that the Arthur Young study be implemented in all of the bargaining units.

(4) That the selection of the Association's final offer is supported by consideration of external comparables. That there are certain deficiencies in the Employer's methodology of comparing classifications, that certain data used in the Employer's brief is at

variance with the contents of Employer exhibits, and that much of the Employer's arguments are contradicted by the Arthur Young Wage Study.

(5) That cost of living considerations favor the selection of the final offer of the Association. That the base rate increases sought by the Association are less than CPI increases for the relevant periods, and that additional increases are sought as a result of the Arthur Young study.

(6) That the Young Wage Study clearly supports the arbitral selection of the final offer of the Association. That the County has acknowledged its desire to bring salaries to the appropriate midpoints; while the County argues that they are paying all positions within the mid-points this is not true when the actual midpoints appearing in Appendix C are utilized; that the Appendix C midpoints must be used for analysis, rather than the self-serving midpoints of recommended salary increases in the study.

FINDINGS AND CONCLUSIONS

This is an unusual interest arbitration proceeding on at least two grounds: first, the parties are considerably further apart in their final wage offers than is typically found under Wisconsin final offer arbitration proceedings; and second, a major bone of contention between the parties relates to the contents of a 1989 wage study commissioned by the County, conducted by an independent consultant, and thereafter acted upon by the County Board.

The Wage Study

In first addressing the significance of the wage study, it will be necessary for the Arbitrator to make two preliminary determinations:

(1) What weight, if any, should be placed upon the wage study, its results, the recommendations of the consultant, and the actions of the County Board?

(2) What does the wage study show relative to the bargaining unit classifications in dispute, and what impact should it have upon the compensation to be paid to these classifications?

One of the most frequently cited and most important of the various arbitral criteria is comparisons. External intraindustry comparisons with comparable employers is generally regarded as the most persuasive of the various comparisons, but internal comparisons are also important in that

they reflect what has been implemented within other groups of employees or other bargaining units within the County. The wage study in question has been argued to impact upon the arbitral application of both the external intraindustry comparison, and upon the internal County comparison criterion.

Initially it will be noted that the methodology of the Arthur Young external wage survey conducted for the purpose of pricing the wage structure which evolved out of its internal job evaluation study, was neither coextensive with, nor comparable to the normal determination of comparables either under the external intraindustry or the internal comparison criterion under Section 111.77 of the Wisconsin Statutes. The statutory comparison criteria normally includes a limited group of external employers which the parties have identified as comparable in their past negotiations or interest arbitrations, and/or such internal comparisons as have been utilized by the parties in determining their settlements in the past.

(1) In arguing its case the Employer suggests that the intraindustry comparison group should consist of the eight counties contiguous to Waupaca County, or the counties of Shawano, Waushara, Marathon, Menominee, Oconto, Outagamie, Portage and Winnebago, urging that these comparable employers have been properly selected on the basis of geographical proximity, type of political entity and size. The Association agreed to the use of these comparables, but it also suggested the inclusion of three cities located in the County.

(2) At page 6 of the wage study, the author indicates that the wage survey had solicited information from some forty counties and other organizations, and at page 7 it indicates that responses were received from twenty of those solicited for survey responses. The wage study does not indentify the criteria used in selecting the employers to be surveyed, does not indicate the public or private sector nature of those responding, and does not indicate which of the replies, if any, fell within the primary external intra-industry comparison group normally used by the parties in their past collective bargaining.

While there seems to have been a significant degree of acceptance by the parties of the job evaluation findings and recommendations contained in the wage study, and acceptance also of the wage structure recommended by the

consultant, the study's recommendations relating to the pricing of the wage structure are in dispute; in this connection it must be emphasized that the pricing of the structure by the consultant cannot be unilaterally regarded by either party as an appropriate replacement for either the normal collective bargaining process, per se, or for the interest arbitration process. The Union would have no obligation, for example, to accept the wage study results and recommendations if they had indicated that the bargaining unit wages were higher than justified, and it similarly cannot unilaterally elect to rely upon the wage study to the exclusion of normal wage determination processes, because it now perceives it to be favarable to its position.

To the extent that the recommendations of the wage study have been implemented by the Employer within other County bargaining units, or within one or more groups of non-represented employees, the normal internal comparison criterion would apply; there is no appropriate basis to distinguish for comparison purposes, between factors which motivate an employer to unilaterally adjust wages or benefits for non-represented employees, and no appropriate basis to distinguish between collective bargaining settlements in other bargaining units that either have or have not been impacted upon by the results of an employer commissioned wage study. To the contrary, the internal comparisons criterion is based upon what has been implemented or negotiated for other employees of an employer, rather than the motivating factors underlying such implementations or settlements.

In connection with the market comparison - midpoints contained in Appendix C of the wage report, it will be noted that the "Waupaca Predicted" column consists of averages of the various classifications, bargaining unit and otherwise, which have been slotted into the various labor grades as recommended by the wage study; the "Market Predicted" column apparently derives from information contained in the wage survey responses from the

unidentified employers which is referenced above. These averages are entitled to far less weight in pricing the structure, than the more traditional methods of pricing the structure which have been utilized by the parties in the past, and/or which are provided for in the Wisconsin Statutes.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that the wage study and appended recommendations are entitled to some weight in these proceedings, but they cannot be assigned greater weight in pricing the structure than the various statutory criteria that normally govern the outcome of Wisconsin interest arbitration proceedings. To the extent that the wage study recommendations have been implemented for other County employees, they may be accorded normal arbitral consideration as reflecting internal comparisons, but the merits of the two final offers must also be considered in light of the remaining statutory criteria. Since it is inappropriate to separately consider the Union's equity based wage increase proposals for the three classifications in question on the basis of the purported inequities reflected in Appendix C, the merits of its final wage offer must be measured on the basis of the aggregate wage increases proposed by it, as compared to the Employer's final wage offer.

The statutory criteria principally emphasized by the parties in their analysis of the wage elements of the final offers were cost of living considerations, internal comparisons and external intraindustry comparisons. For the sake of clarity, each of these considerations will be separately addressed below.

Cost of Living Considerations

It is a well established principle in the interest arbitration process that the parties are conclusively presumed to have disposed of all of the elements of wage determination, including cost of living considerations, in their most recent prior settlement. This principle and its underlying rationale

are discussed as follows in the highly respected book by Irving Bernstein:

> "Base period manipulation...presents grave hazards. Arbitrators have guarded themselves against these risks by working out a quite generally accepted rule: the base for computing cost-of-living adjustments shall be the effective date of the last contract (that is, the expiration date of the second last agreement). The justification here is identical with that taken by arbitrators in the case of a reopening clause, namely, the presumption that the most recent negotiations disposed of all factors of wage determination. 'To go behind such a date,' a transit board has noted, 'would of necessity require a re-litigation of every preceding bargain concluded between the parties and a re-examination of every preceding arbitration between them.' This assumption appears to be made even in the absence of evidence that the parties explicitly disposed of cost of living in their negotiations. Where the legislative history demonstrates that this issue was considered, the holding becomes so much the stronger." 1./

In the situation at hand, the parties' last renewal agreement covered calendar years 1988 and 1989; accordingly, only the CPI increases that occurred after Janaury 1, 1988 are appropriately before the Arbitrator, and any excess of such increases above and beyond those anticipated and provided for by the parties in their contract renewal negotiations may appropriately be considered in determining the amount of needed wage increases. Even after the amount of movement in the index is determined, however, it is widely recognized that the index somewhat overstates the actual impact of inflation upon employees, due to the makeup of the market basket of goods and services upon which price changes are measured. Consumer changes in buying patterns or in frequency of purchases are not directly measured, for example, and the cost of health and medical costs, a significant element in the index, may be largely paid for by employer supplied medical insurance.

In examining the contents of Association Exhibit #10 and Employer Exhibit #20, it is apparent that CPI increases in 1988 and 1989 aggregated between 8.2% and 8.3%, at a time when the three classifications in the bargaining unit had two year increases ranging from 6.51% to 6.69%; accordingly, there is nothing

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1./ Bernstein, Irving, The Arbitration of Wages, University of California Press, 1954, page 75. (Case citation was 11 LA 1050)

in the record to suggest that those in the unit have suffered from unusually large, unanticipated increases in cost of living since the last time that the parties went to the bargaining table. Despite some recent fluctuations in the index due to the Mid-East conflict and the current state of the economy, there is nothing in the record to suggest major increases in cost of living over the 1990-1991 time frame; it is reasonable to infer that the movement in the index over these two years will be significantly closer to the 7.0% in general wage increases proposed by the Employer, than to the approximate 10.4% to 14.7% increases proposed by the Association. Accordingly, it is clear to the undersigned that arbitral consideration of the cost of living criterion favors the selection of the final offer of the Employer.

The Internal Comparison Criterion

In next addressing internal comparisons the Arbitrator will note that Employer Exhibit #18 identifies the following increases within other units of County employees:

(1) Courthouse non-professional employees are to receive 3.5% in split increases in 1990, with 5.5% to 6.0% in split increases in both 1991 and 1992.

(2) Courthouse Human Services employees are to receive 3.0% to 3.5% in 1990, with additional split increases of 5.5% to 6.5% in 1991 and 1992.

(3) Lakeview employees are to receive 3.5% in 1990 and in 1991, with an additional 3.5% for LPNs each year; in 1992, they are scheduled for an additional 4.0%.

Arbitral consideration of the amounts of increases granted to other County employees over the two year term of the parties' renewal agreement would support increases for those in the bargaining unit somewhat greater than the 7.0% in increases proposed by the Employer, but well below the 10.4% to 14.7% increases proposed by the Association. Since the final offer of the County is significantly closer to the internal comparables, it clearly favors arbitral

selection of it in these proceedings.

The External Intraindustry Comparison Criterion

The normal persuasive force of the intraindustry comparison criterion is widely recognized in the interest arbitration process, and this factor is described as follows by Bernstein:

> "a. Intraindustry Comparisons. The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. More important, the weight it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards."
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> "A corollary of the preeminence of the intraindustry comparison is the superior weight it receives when found in conflict with another standard of wage determination." 2./

In addressing the application of the intraindustry comparison criterion to the dispute at hand, the Impartial Arbitrator will preliminarily offer two observations relative to the makeup of the group, and the time frame for arbitral consideration of comparisons.

(1) The parties are in agreement that the contiguous counties of Outagamie, Portage, Shawano, Waushara, Marathon and Winnebago should be part of the primary cmparison group. While the Union urged the inclusion of the cities of Waupaca, New London and Clintonville, the Arbitrator finds no persuasive basis for the selective inclusion of three cities in the primary comparison group. There is nothing in the record to persuasively indicate that the parties have included these cities in their primary intraindustry comparison group in the past, and no persuasive basis has been presented for their inclusion in this group for the purposes of these proceedings.

(2) As referenced above in the cost of living discussion, the parties are conclusively presumed to have disposed of all elements of wage determination in their last contract renewal negotiations and, accordingly, the current wage increase comparisons to be used in these proceedings are those for calendar years 1990 and 1991.

In examining the percentage wage increases for Sheriff's Department employees for 1990 and 1991 within the primary intraindustry comparison group,

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2./ The Arbitration of Wages, pp. 56, 57.

as referenced in Association Exhibit #9 and Employer Exhibit #19, the Arbitrator notes as follows:

(1) That Marathon County employees received 4.5% split increases in 1990, and have not yet settled for 1991.

(2) That Outagamie County employees received 2.0% split increases in 1990, and Employer exhibits indicate 3.35% split increases in 1991 and 6.6% in split increases in 1992; the Union exhibits indicate a 6.0% increase in 1991.

(3) That Portage County employees will receive either the Employer's offer of 5.0% split increases or the Union proposed 6.0% in split increases in 1990, and they have not yet settled for 1991.

(4) That Shawano County employees received 3.5% in 1990 increases, and have not yet settled for 1991.

(5) That Waushara County employees settled for an approximate 3.5% increase in each of 1990 and 1991.

(6) That Winnebago County employees settled for split increases totalling 4.0% in 1990, and have not yet settled for 1991.

No sophisticated analysis is required to show that while the intra-industry comparables have settled for somewhat more than the 7.0% two year offer of the Employer, the settlements are well below the 10.4% to 14.7% increases demanded by the Union for the term of the two year renewal agreement. Since the Arbitrator is limited to selection of the final offer of one party or the other, it is apparent that consideration of the intraindustry comparison criterion favors the selection of the final offer of the Employer in these proceedings. Any catch up or equity based increases falling within the final offers of the parties should be addressed by the Employer and the Union in future negotiations.

Various Other Considerations Urged by the Association

Union Exhibits 5 through 7 urge arbitral consideration of various other considerations in the final offer selection process, including such matters as the relative sizes of departments per population, crime rates and recent increases in crimes, relative dollar expenditures for law enforcement among

comparables, and the relative taxes levied by comparable employers.

The referenced exhibits have been carefully examined and considered by the undersigned, but I am unable to conclude that they should be assigned determinative importance in the final offer selection process in these proceedings. Not only are many of the relationships between the reported data and the final offer selection process somewhat tenuous, but the importance of any conclusions derived therefrom would fall far short of the weight attributed to other criteria such as comparisons and cost of living.

The Insurance Language Impasse Item

Without unnecessary elaboration it will be noted by the undersigned that the insurance language impasse does not represent a major consideration in the final offer selection process. The Employer has made the modest request for the authority to change carriers or methods of funding, conditioned upon no reduction of benefits for those in the bargaining unit. While the change is supported by internal comparables, it will be noted that the final offer selection process turns principally upon consideration of the wage offers of the parties, and the insurance language question simply cannot be assigned determinative weight in these proceedings.

Summary of Principal Preliminary Conclusions

As elaborated upon in more detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) The wage study and recommendations favor the Union's offer, and they are entitled to some weight in the final offer selection, but they cannot be assigned greater weight in pricing the structure and in paying the various classifications, than the normal statutory criteria. The merits of the Union's final offer must be evaluated by the undersigned on the basis of the total aggregate wage increases proposed by it, including the equity adjustments purportedly based upon the contents of Appendix C of the study.

(2) Arbitral consideration of the cost of living criterion favors the selection of the final offer of the Employer.

(3) Arbitral consideration of the internal comparison criterion favors the selection of the final offer of the Employer.

(4) Arbitral consideration of the intraindustry comparison criterion favors the selection of the final offer of the Employer.

(5) Arbitral consideration of various other considerations cited by Union cannot be assigned determinative weight in these proceedings.

(6) Arbitral consideration of the insurance language impasse cannot be assigned determinative weight in these proceedings.

Selection of Final Offer.

After a careful review of the entire record, including consideration of all of the various statutory criteria, the Arbitrator has preliminarily concluded for the reasons discussed above, that the final offer of the Employer is the more appropriate of the two final offers.

AWARD

Based upon a careful consideration of all of the evidence and argument, and upon a review of all of the various arbitral criteria described in Section 111.77 of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of Waupaca County is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the County, hereby incorporated by reference into this award, is ordered implemented by the parties.

WILLIAM W. PETRIE
Impartial Arbitrator

March 11, 1991