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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

WINNEBAGO COUNTY
(SHERIFF's DEPARTMENT)

-and-

LABOR ASSOCIATION OF WISCONSIN,
INCORPORATED

Case 195
No. 45197
MIA - 1591
Decision No. 27087-A

Impartial Arbitrator

William W. Petrie
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P. O. Box 320
Waterford, WI 53185

Hearing Held

March 2, 1992
Oshkosh, WI

Appearances

For the County

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For the Association

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Winnebago County Sheriff's Department and the Winnebago County Professional Police Association, affiliated with the Labor Association of Wisconsin, with the matter in dispute the terms of a two year renewal labor agreement between the parties covering January 1, 1991 through December 31, 1992.

After preliminary meetings between the parties had failed to result in a complete negotiated settlement, the Association on January 24, 1991 filed a petition with the Wisconsin Employment Relations Commission seeking final and binding arbitration of the matter in accordance with Section 111.77 of the Municipal Employment Relations Act. Following a preliminary investigation by a member of its staff, the Commission on November 25, 1991 issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration. On December 13, 1991 it issued an order appointing the undersigned to hear and decide the matter as the arbitrator.

A hearing took place in Oshkosh, Wisconsin on March 2, 1992, at which time the parties received full opportunities to present evidence and argument in support of their respective positions. Both closed with the submission of post hearing briefs and reply briefs, after which the record was closed by the undersigned effective June 8, 1992. Thereafter in a letter dated July 21, 1992 the Employer submitted to the Arbitrator a copy of a June 11, 1992 decision of the Wisconsin Supreme Court in Manitowoc County v. Local 986B, AFSCME, AFL-CIO, Case Number 90-2097; it urged that the Court's decision was material and relevant to the outcome of these proceedings, in connection with the Arbitrator's application of the lawful authority of the employer criterion referenced in Section 111.77(6)(a) of the Wisconsin Statutes. In a letter dated July 29, 1992 the Association opposed any arbitral consideration of the Court's decision; it challenged the introduction of any new evidence after the hearing had been closed by the Arbitrator, and alternatively urged that the matter was distinguishable from the case at hand.

THE FINAL OFFERS OF THE PARTIES

The certified final offers of the parties, hereby incorporated by reference into this decision and award, differ principally as follows:

(1) The Association proposes the following addition to the second paragraph of Article 6 of the expired agreement, entitled Discipline and Discharge:

"Only written reprimands or oral warnings that have occurred within the last twelve (12) months from the date of the most recent infraction can be used for the purpose of establishing an appropriate penalty under a progressive discipline theory."

(2) In their respective proposals for Article 7, entitled Work Week, the parties principally differ as follows, with respect to employees holding the Detective Sergeant, the Juvenile Officer, the Detective and the Welfare Fraud Investigator classifications.

(a) The Employer proposes the adoption of a 5-2 work week for such employees, covering Monday through Friday, with normal work days of seven hours and forty minutes duration, and an unpaid lunch period, which proposal would entail 261 work days per year.

(b) The Association proposes a 5-2, 5-2, 4-3 work week rotation for such employees, covering Monday through Friday and Monday through Thursday, with normal work days of eight

hours and forty minutes, and a paid lunch period, which proposal would entail 244 work days per year.

The Employer also proposes the addition of the terms "other than those set forth above," following the word "employee" in the fourth paragraph of the Article.

(3) In their proposals relative to what had constituted Article 20 in the prior agreement, entitled Compensation Plan, the parties differed as follows.

(a) The Employer proposes the following changes: redesignating the article as Appendix E in the renewal agreement; across the board increases of 3% effective 1/1/91, 1.5% effective 7/1/91 and 4% effective 1/1/92; an additional increase of 25 cents per hour for employees holding the Detective Sergeant, the Detective, the Juvenile Officer, and the Welfare Fraud Investigator classifications, effective with the implementation of the revised work schedule proposed by the Employer.

(b) The Association proposes the following changes: effective 1/1/91, that the Corporal's pay and Detective's pay shall be equal to 1/2 of the difference between Top Patrol and Sergeant; across the board increases of 3% effective 1/1/91, 1.5% effective 7/1/91, 4% effective 1/1/92, and 1% effective 10/1/92.

(c) Each party proposes the addition of the following language to the renewal agreement, with the Employer proposing an effective date of 1/1/90, and the Association an effective date of 1/1/92:

"Any officer hired after _______ shall be hired as either a Corrections Officer or a Police Officer. No officer hired after that date shall be allowed to transfer between the Patrol Division and the Corrections Division unless he meets the training prerequisites established for the position and successfully completes the Department's selection process for new hires."

THE STATUTORY CRITERIA

The decision and award of the undersigned in these proceedings is governing by the various arbitral criteria provided in Section 111.77(6) of the Wisconsin Statutes, which provides in part as follows:

"(6) In reaching a decision the arbitrator shall give weight to the following factors:

(a) The lawful authority of the employer.

(b) The 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 proceedings with the wages, hours and conditions of employment of 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 traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment."

POSITION OF THE ASSOCIATION

In support of its contention that the final offer of the Union is the more appropriate of the two before the Arbitrator in these proceedings, the Association emphasized the following principal considerations and arguments.

(1) That arbitral consideration of the lawful authority of the employer criterion favors the selection of the final offer of the Association.

(a) That one of the issues submitted by the parties to the arbitrator is the effective date of a change in working conditions for new hires.

(b) That while the Association agreed with the County to delete from the contract a provision which requires the Employer to send officers to recruit school to be certified as law enforcement officers, the Employer proposes to make the change retroactive to January 1, 1990, a date prior to the effective date of the renewal agreement, and one that would adversely affect eleven bargaining unit officers who were hired with the understanding that they would be sent to recruit school and would have the opportunity to transfer to road patrol thereafter.

(c) That the Association questions whether the Employer could legally impose its will on the eleven officers referenced above, and expresses its concern about the removal of benefits from them; that these concerns form the basis for its proposed January 1, 1992 effective date for the change.

In summary, that it is within the lawful authority of the County to accept and to abide by the terms contained in the final offer of the Association, but there is a serious question as to whether the benefits provided to employees under a previous contract can be lawfully taken away, as would result from arbitral adoption of the final offer of the County.

(2) That Arbitral consideration of the stipulations of the parties criterion favors the selection of the final offer of the Association.

(a) That five of the eleven stipulated items constituted

concessions on the part of the Association, and reflect the fact that it literally bent over backward during the negotiations process in an attempt to reach a voluntary agreement.

(b) In the above connection, that the Association agreed to the following: the rescheduling of the four least senior Corrections Officers, the Communication Sergeant, the Narcotics Officer, and those officers assigned to the Drug Awareness Retention Education Program (ie. the Dare Program); a new promotional procedure; a comprehensive drug testing proposal; and work on a complete set of rules and regulations.

In summary, that arbitral examination of the stipulations of the parties will reflect the scope of the concessions already agreed to by the Association, and will favor the selection of the final offer of the Association.

(3) That arbitral consideration of the Employer's attempt to change a major condition of employment without providing a quid pro quo, favors the selection of the final offer of the Association; that this consideration falls well within the general scope of coverage of Section 111.77(h) of the Wisconsin Statutes.

(a) That Article 7 in the old contract, entitled Work Week, provided in part as follows:

"Variations of the regular work scheduled of employees, other than Substitute Corrections Officers, or temporary job assignments in excess of ninety (90) calendar days in any twelve (12) month period shall only be made by agreement between the Department and the Association Board of Directors, and only as long as the regularly scheduled hours do not exceed an average of 38.2 hours per week."

(b) That the above language has been tested and confirmed on several past occasions, in the contract's grievance arbitration process.

(c) Without any advance negotiations or discussion on the matter, that the Employer proposed in its final offer, the addition of the following terminology, after the word employees: "other than those set forth above."

(d) That nowhere in the arbitration hearing did the Employer attempt to explain or to otherwise address the merits of its proposed change, and nowhere has it proposed any quid pro quo for the change.

(4) That arbitral consideration of the interests and welfare of the public criterion favors the selection of the final offer of the Association.

(a) That the Association's final offer better preserves the morale of the employees, and it contributes to the retention of the best and the most highly qualified law enforcement officers.

(b) That the officers' morale is ill served by the growing disparity between the benefits and the wage levels within the bargaining unit, versus those existing in the law enforcement community within Winnebago County, and in contiguous counties.

(c) That while the City of Oshkosh Police Department and the Winnebago County Sheriff's Department share the same building, the latter receive significantly lower salaries; in 1991, that bargaining unit Sergeants received $352.41 per month less than their City of Oshkosh counterparts, while Detectives received $370.39 less, and Top Patrol received $247.30 less.

(d) That pay and benefits should be stabilized for professional law enforcement personnel, so that they can have the security and the peace of mind to know that their service on the job will provide them with comparable wages and benefits packages, and improved working conditions.

(5) That there is no dispute that the County has the financial ability to meet the costs of the settlement.

(6) That the Association proposed primary external comparables are more reasonable than those proposed by the County.

(a) That Wisconsin interest arbitrators have long considered such factors as population, geographic proximity, mean income of employed persons, overall municipal budgets, total complement of relevant department personnel, and wages and fringe benefits paid such personnel, in determining comparability.

(b) That the Association considered the above referenced criteria, and it addressed the arbitral decisions in two prior interest arbitration proceedings between the parties, in concluding that the primary external comparison group should consist of: Brown County, Outagamie County, Sheboygan County, Fond du Lac County, Manitowoc County, City of Appleton, City of Oshkosh, City of Neenah, City of Menasha, and Town of Menasha. That these comparables are within the same geographic area, they share the same job market, and they interact on a regular basis at recruit training and annual in service training seminars.

(c) That the Employer has failed to fully substantiate the basis for its proposed external comparables.

(7) That the Association's discipline proposal is an attempt to preserve the status quo, and is consistent with internal comparables.

(a) During the course of the contract renewal negotiations, that the parties rewrote the existing rules and regulations pertaining to the members of the Association.

(b) That the Association did not agree with the Employer's proposal to utilize a two year period in applying the progressive corrective discipline system, and it proposed formalization and retention of the one year period that had been utilized by the parties over a period of many years.

(c) That it is undisputed that the County uses a one year period in various other employment units.

(d) That the Employer has offered no credible testimony as to either the intent of its proposed change in the status quo, or as to why a two year period was needed.

(8) That the Association proposed retention of the Detective work

cycle, is another attempt to preserve the status quo, is supported by arbitral consideration of comparables, and that the County has provides no appropriate quid pro quo in support of its proposal.

(a) That the County is attempting to change the work schedule in two principal ways: first, it would eliminate paid lunch periods; and, second, detectives would be required to work seventeen more Fridays in each calendar year.

(b) The Employer is proposing a 25 cents per hour wage increase in exchange for the proposed change in work cycle, which would translate into an increase of $487.00 per calendar year; that this increase would simply not justify giving up 244 days of paid lunch periods, and being required to work seventeen more Fridays in each calendar year.

(c) That while the Employer offered the testimony of Lieutenant Brooks at the hearing, to the effect that the County was prepared to remove the on-call status of detectives on weekends and holidays if its offer were accepted, such a commitment has never been confirmed, and was never put into writing as part of its final offer.

(d) That the work week of the detective bureau is a condition which has prevailed as the status quo for over five years, it has been sustained through the grievance and arbitration processes, the Employer has offered no adequate quid pro quo for the proposed change, and the status quo should be maintained by the Arbitrator.

(9) That arbitral consideration of the comparison criterion supports the selection of the final wage offer of the Association.

(a) That Association Exhibits 19 through 25 graphically display a decline in wages that began in 1988.

(b) During the above period, that Patrol Officers have gone from one of the highest paying law enforcement jobs in the County to a monthly level of $70.93 below average; that acceptance of the final offer of the County would increase the deficit to an average of $95.15 per month, while the offer of the Association would only maintain them at a monthly level of $70.32 below average.

(10) That the record supports a finding that Corporals should be upgraded in pay, commensurate with the responsibilities of the position.

(a) That the Winnebago County position of Corporal is unique among the comparables; that other enforcement agencies, however, utilize Sergeants to perform the same duties.

(b) Pursuant to the above, that the County has found a way to require the work and the responsibility of a Sergeant, and to pay a rate for the work that is far less than paid in comparable communities.

(11) That the record shows that Detectives are significantly underpaid, relative to the comparables.

(a) That Association Exhibits 27 through 34 indicate the sad plight of the Detectives.

(b) Since 1988, that Detectives have declined to a level $178.16

below average for 1991; that the County's offer would increase the deficit to $180.87 below the monthly average, while the Association's offer would reverse the trend and move them to a position $135.00 per month below average.

(12) That the command responsibilities exercise by Sergeants, require more pay; that in Winnebago County they are utilized as shift commanders on the road, and have county-wide jurisdiction.

(a) That Sergeants have gone from $125.17 per month below average to $156.93 below average by 1991; that adoption of the County's final offer would reduce them to $177.81 per month below average, while the Association's offer would place them at $151.00 below average.

(b) That the implementation of the Employer proposed 25 cents per hour increase for Detective Sergeants, in exchange for the work schedule change discussed above, would destroy the traditional parity between Detective Sergeants and Patrol Sergeants.

(13) That the Association's wage offer is identical to that of the County, except for the additional 1% percent adjustment effective October 1, 1992.

(a) That the extra 1% increment is consistent with other voluntary Settlements within the County.

(b) In accordance with the above, that it is clear that the County's final offer is below average when compared to the internal comparables.

(14) That arbitral consideration of movement in the consumer price index, favors selection of the final offer of the Association.

(a) That consumer prices increased 9.4% in the approximate two year period preceding the submission of the Union's final offer.

(b) That the aggregate wage offers of the Association total 9.5% over the life of the agreement, versus the 8.5% increase proposed by the County.

(15) That those employees hired since January 1, 1990, should be given the opportunity to go to recruit school, consistent with the terms of the collective agreement in effect at the time of their employment.

(a) During the course of contract renewal negotiations, that the Association reluctantly agreed to eliminate the requirement that correctional officers go to recruit school.

(b) That the Employer's proposal to make the change retroactive is unreasonable; that the eleven officers hired since January 1, 1990 should be given an opportunity to attend the law enforcement recruit training school, as was conveyed to them at the time of their hire.

In summary and conclusion, that the final offer of the Association is the more appropriate of the two offers before the Arbitrator for the following reasons: that it is within the lawful authority of the County to abide by the terms of the Association's final offer; that while the stipulations of the parties are not in issue, the concessions made by the Association should be considered by the Arbitrator; that the Employer's attempted insertion of

language into Article 7 would change a major condition of employment without the normal quid pro quo for such change; that the interests and welfare of the public are best served by the adoption of the Association's final offer; that the County has the financial ability to meet the costs of the Association's final offer; that the external comparables urged by the Association are more reasonable than those urged by the County; that the discipline component of the Association's final offer is an attempt to preserve the status quo ante; that the Detective Division work schedule component of the Association's final offer is an attempt to preserve the status quo ante; that the Association's final wage offer is supported by comparisons and reasonableness considerations; that the rank of Corporal should be upgraded in pay commensurate with the required work responsibilities; that the Detective's pay is a vivid example of the need to reverse the downward spiral in pay relative to the comparables; that the command responsibilities of the rank of Sergeant require more pay; that the Association's wage offer is identical to the County's except for the 1% adjustment effective October 1, 1992; and that employees hired after January 1, 1990 should be given the opportunity to go to recruit school consistent with the terms of the agreement in effect at the time of their hire.

In its reply brief the Association principally urged that various elements in the Employer's arguments relating to the training of Correctional Officers to be certified as Law Enforcement Officers were improper and/or misleading.

(1) That there is nothing in the record relating to the alleged costs of training the Correctional Officers which were alleged and argued by the County in its brief; similarly, there is nothing in the record to indicate the costs of replacing such officers during the training process. In brief, that the cost calculations put before the Arbitrator in the Employer's brief are without foundation and are greatly exaggerated.

(2) That the contract language provides that the timing of the assignment to the training program for all officers is at the discretion of the Employer.

(3) That if the Employer did not use one of the corrections officers from the jail, it would still have to hire someone else to train and send through recruit school; accordingly, that the costs of this training would still have to be borne by the Employer.

(4) That while the Employer decides to add an additional officer, decides when a person should be trained, and decides whether or not to pay overtime, the eleven persons hired after January 1, 1990 would have to be given the opportunity to be trained.

(5) That the position of the Association is supported by both the language of the collective agreement and by the past practice of the parties.

(6) That the record does not show that any decision to adopt a two track hiring system was ever clearly communicated to the eleven employees in question; to the contrary, that the list of conditions of employment sent to them by the County after January 1, 1990, indicated that a mandatory condition of employment was their completion of Law Enforcement Recruit Training School.

(7) That the County extended employment to eleven people hired after January 1, 1990, which was conditional upon successful completion of training school, and it is now trying to use the arbitrator to break this commitment.

(8) That the County cannot unilaterally change a condition of

employment that was voluntarily agreed to in a previous contract, and it cannot properly ask an arbitrator to go beyond the scope of the existing agreement.

POSITION OF THE COUNTY

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator in these proceedings, the County emphasized the following principal considerations and arguments.

(1) Preliminarily, it cited the following general considerations relating to the bargaining unit:

(a) That employees receive single or family health care coverage from among various alternative carriers and plans, with the Employer paying the full premiums for the lowest priced available plan.

(b) That the seven employees in the Detective Division currently work a 5-2, 5-2, 4-3 work schedule; that these employees hold either the Detective, the Detective Sergeant, the Juvenile Officer or the Welfare Fraud Investigator positions.

(c) That Corrections Officers are specifically assigned to duties related to the supervision of persons incarcerated within the Winnebago County Jail.

(d) That Patrol Officers are assigned patrol duties relating to providing police protection to unincorporated areas within Winnebago County.

(2) That the record supports the position of the County in connection with the Union's proposal regarding the discipline or discharge of officers.

(a) That Arbitrator Neil Gunderman in a 1982 award identified the primary external comparables as composed of Brown County, Fond du Lac County, Manitowoc County, Outagamie County, Sheboygan County and Winnebago County; that Manitowoc County is the only one of these comparables where the collective agreement within the Sheriff's Department contains a time limit on the use of past discipline for progressive discipline purposes.

(b) In considering internal comparables, that the Bridgetenders, the Courthouse Employees and the Professional Dispatchers bargaining units have no contractual limits on the use of past discipline in connection with the application of future progressive discipline; that Park View Health Center employees have a twelve month limit, but it does not apply to discipline related to the care of patients.

(c) That sheriff's deputies enjoy a great deal of authority and responsibility in carrying out their duties, many regularly carry firearms, many are involved in the arrest or the detention of alleged or convicted criminals, and many are regularly asked to respond to emergency situations and make decisions that may involve life or death situations. That the interests and welfare of the public would not be best served by any arbitrarily imposed twelve month limit in consideration of prior discipline.

(3) That the record supports the position of the County in connection

with the dispute involving the working schedule for the Detective Division, including the Detective Sergeant, the Detectives, the Juvenile Officer and the Welfare Fraud Officer.

(a) That the County is proposing a 25 cents per hour increase in wages for the affected employees, and further proposing that, except in cases of exceptional emergency, employees assigned to the Detective Division will no longer be subject to on-call status during week-ends and holiday periods, rather than being on call approximately fifteen week-ends each two years.

(b) That the 1989-1990 agreement referenced a 6-3 working schedule for Detective Division employees, but a side-bar agreement had provided that these employees work a 5-2, 5-2, 4-3 schedule; that rescission of the side bar agreement by management in January of 1989, resulted in an arbitral decision upholding the 5-2, 5-2, 4-3 work schedule.

(c) That all employees covered by the collective agreement work approximately 1986 hours per year, with the average work week for the bargaining unit at 38.2 hours; accordingly, that implementation of the final offer of the Employer would not increase the annual hours worked by the Detective Division.

(d) That arbitral consideration of the external comparables favors the position of the employer on this impasse item; in this connection, that Detective Divisions in similarly sized counties such as Brown, Fond du Lac, Outagamie and Sheboygan Counties operate on either 5-2 or 6-3 working schedules.

(d) That arbitral consideration of the interests and welfare of the public favors the position of the Employer on this impasse item for the following reasons: the County's proposal would enhance the ability of the Sheriff to effectively staff the Detective Division; that the Association's proposal would provide for a maximum of only 209 duty days per year, less sick days and ten days per year of recertification training; that the County is offering a 25 cents per hour increase for the affected employees and relief from being placed on weekend on-call status for fifteen weeks per two year period; and that the present system had negatively impacted upon the ability of the Sheriff's Department to perform necessary and timely criminal investigations due to a lack of manpower.

(e) That various other factors and considerations also support the final offer of the County in this area: that those in the Detective Division neither gained nor lost anything in the way of pay, pension benefits or hours worked, when they achieved their 5-2, 5-2, 4-3 work schedules; similarly, that management's proposed change would have no negative effect upon hours worked, salary, benefits or pensions paid to such individuals; moreover, that management has offered a 25 cents per hour increase and the foregoing of weekend on-call status for the affected employees; and that under the Employer's offer they would no longer be limited to a one-half hour lunch period, but could, with permission, extend this period beyond one-half hour.

(4) That the record supports the Employer in connection with the compensation component of its final offer.

(a) That the parties agree to a 3% across-the-board increase effective 1/1/91, a 1.5% increase effective 7/1/91 and a 4% increase effective 1/1/92; that the Union is requesting an additional 1% effective 10/1/92, and an increase in the pay of Corporals to a level 1/2 way between the Top Patrol and the Sergeant rates. As discussed above, that the Employer is also proposing an additional 25 cents per hour for the Detective Division employees.

(b) That the across-the-board increases agreed to by the parties for the 1991 calendar year are equal to or greater than the increases for all other internal comparables with the exception of the Professional Dispatchers, who received higher increases due to market conditions; that the proposed across-the-board increases are .5% higher than those provided for the Park View Health Center, and the Bridgetenders bargaining unit employees.

(c) That arbitral consideration of the external comparables favors the final offer of the County: that the 4.5% increase for 1991 is .5% higher than in Brown County, Fond du Lac County and Sheboygan County, is 1% below the increase provided in Manitowoc County, and 1.1% greater than the increase for officers in Outagamie County; that the across-the-board increase offered by the County for 1992 is below that of Fond du Lac, Manitowoc and Outagamie Counties, but this situation is offset by the County's continued payment of 100% of individual and family health care costs; and that the County is unable to find any external justification for the Union's demand for additional pay for the ranks of Corporal and Detective.

(d) That various other factors and considerations favor the final compensation offer of the Employer: that the County projects a 5.6% CPI increase for the period of the renewal agreement, which is closer to its than the Union's final offer; that the Association has shown no change in the duties of Corporals, and has provided no quid pro quo to support its requested extra increase for this rank.

(5) That the record supports the final offer of the County with respect to the effective date of the change governing transfers between the Corrections Division and the Patrol Division.

(a) That the Wisconsin Statutes require that law enforcement officers receive at least 400 hours, and corrections officers at least 96 hours of preparatory training.

(b) That the state reimbursed counties and municipalities for the training expenses of officers prior to January 1, 1990, after which the reimbursement was reduced to 55% for 1990, to 35% for 1991, and thereafter provided only for specific expenses approved by the Law Enforcement Standards Training Board.

(c) Because of the statutory changes, that management exercised its rights under Article 2 of the agreement to go to a two track hiring system wherein persons would be hired as either career Corrections Officers or career Patrol Officers.

(d) That while the Union seeks to preserve the transfer rights to Patrol Officer of eleven Corrections Officers hired after January 1, 1990, each of the eleven was hired as a Corrections Officer, they received no written documentation

that they would be provided a right to transfer to Patrol Officer, and they were told at hire that they had no such right of transfer.

(e) Should the Association's offer be accepted and the County become responsible for training such officers, the additional cost to the County could exceed $200,000; that the Association has provided no quid pro quo to justify this major additional expense.

(6) In summary and conclusion, that those statutory criteria principally supporting the selection of the final offer of the County include the following.

(a) That the interests and welfare of the public favor the position of the county in three major respects: that the significant amount of police officer authority and the safety of the public demand management leeway in administering corrective discipline without the time limit proposed by the Association; that the County's work schedule proposal for the Detective Division would ensure proper staffing, particularly at the end of each work week; and that the County should not be required to expend substantial unbudgeted expenses in connection with the training of the eleven Corrections Officers hired after January 1, 1990.

(b) That arbitral consideration of external comparables support the selection of the County's final offers, since its proposed pay rates would exceed those paid in Fond du Lac, Outagamie and Sheboygan Counties, its proposed Patrol Officer rates would exceed Manitowoc County, and in consideration of the fact that Winnebago County continues to pay the full premiums for health insurance for its employees.

(c) That arbitral consideration of internal comparables support the selection of the County's final offer, because the wage component of its offer approximates the wage increases provided to other County employees.

(d) That cost of living considerations favor the selection of the County's offer, in consideration of the Employer's 5.6% projected rate of inflation over the term of the renewal agreement.

(e) Overall, that the Arbitrator should consider the Employer's continuing willingness to pay the full costs of employee health insurance premiums, despite the rapid escalation in the cost of such premiums.

(f) That other factors favoring the position of the County include the requirement that the County be required to pay significant and unanticipated training costs without a quid pro quo from the Association; that the only change in the status quo requested by the County relates to a change in the work schedule within the Detective Division, which would not change the hours worked by the affected employees and which is supported by an adequate quid pro quo.

(f) That certain other factors favor the position of the County: that the County should not be required to pay significant and unanticipated training costs without a quid pro quo from the Association; that the only change in the status quo

requested by the County involves a working schedule change for employees in the Detective Division, which was supported by an adequate quid pro quo in the form of a 25 cents per hours increase for affected employees, and release from week-end on-call status.

In its reply brief the County emphasized the following principal considerations and arguments.

(1) That the Union's offer relative to transfers between the Corrections and the Patrol Divisions, would represent an alteration of the status quo.

(a) That Article IV of the agreement provides that "..successful completion of the mandatory recruit training program, when offered, shall constitute a condition of continued employment."

(b) That nothing in the contract mandates that the Sheriff's Department provide, at its own cost, a training program for those who wish to transfer into the Patrol Division.

(c) That the recruit training program specifically applies only to probationary employees.

(d) That the training in question is only a condition of continued employment when offered by the Sheriff, and there is no language in the agreement which requires the Sheriff to offer such training.

(e) Since the Union is arguing that it is entitled to a benefit which the contract has never provided to Union employees, it is requesting a change in the status quo.

(2) Contrary to the arguments advanced by the Union, that the Employer proposed addition of the terms "other than those set forth above" to Article 7, does not represent any change in a major condition of employment.

(a) To the contrary, that the proposed additional language is merely intended to clarify the meaning of the second sentence of the first paragraph of the article, the third sentence of the third sentence of the article, and the second sentence of the fourth paragraph of the article.

(b) That the Union is making a fuss about nothing, the Employer is not attempting to put anything over, but is merely attempting to clarify the language as described above.

(3) That there is no evidence in the record indicating any decline in the ability or morale of the Winnebago County Sheriff's Department as a result of its present pay.

(a) That the traditionally higher rates of pay for officers in the City of Oshkosh reflect differences in the duties and responsibilities of the officers.

(b) That the Association has never argued the need for catch up with the City of Oshkosh until the filing of its post hearing brief.

(4) That the Association proposed, one year limit on discipline is an attempt to reverse the status quo.

(a) The current agreement contains no such limit, and the Association alleged past practice is not supported by any evidence in the record.

(b) That the Union has provided no quid pro quo for this proposed change.

(5) That the present on-call status for Detectives was not intended as an act of retaliation, but was part of the Agreement relating to the change in work schedule for Detectives.

(a) That the decision of Arbitrator McCormick references a letter between the Sheriff and the Association which indicates that the seven employees assigned to the Detective Division will be 'on call' for the week-ends (Saturday-Sunday) on a rotation basis with each being 7.4 times per year. Call in provisions under Article XI will apply."

(b) Accordingly, the on-call status was not a decision that was unilaterally made, but was part of the Agreement which led to the present work schedule.

(6) That the duties and responsibilities of Sergeants and Corporals are not equivalent. That while Corporals have some of the same responsibilities as Sergeants, they are exercised only in the absence of a Sergeant.

(7) That the Association's brief exaggerates the responsibility of the Winnebago County Sheriff's Department. That it only patrols unincorporated areas, it provides assistance only when requested by police in incorporated areas, and the area patrolled by it is largely rural, with a population between 35,000 and 40,000 people.

(8) That the so called concession alluded to by the Association in its brief, should not be given any weight by the Arbitrator. That the contract language already agreed upon by the parties represents solutions as to issues which were mutually agreed to by both parties.

FINDINGS AND CONCLUSIONS

Prior to considering the evidence and the arguments of the parties in detail, applying the statutory criteria, and selecting the more appropriate of the two final offers, it will be necessary for the undersigned to consider the Employer's July 21, 1992 argument that the merits of the final offer selection process in this case, are subject to and governed by the June 11, 1992 ruling of the Wisconsin Supreme Court in Manitowoc County v. Local 986B, AFSCME, AFL-CIO, Case Number 90-2097.

The Constitutional Questions

The Association initially argued that the decision of the Court had been improperly submitted by the Employer, after the distribution of the parties' briefs and reply briefs, and after the record had been closed by the undersigned. Since Section 111.77(6)(a) and (h) of the Wisconsin Statutes require an arbitrator to give weight to the lawful authority of the employer and to changes in circumstances during the pendency of the arbitration proceedings, it is clear to the undersigned that the Employer's submission of the Wisconsin Supreme Court's decision and its related arguments submitted after the arbitral closing of the record, were statutorily proper; accordingly, they have been accepted into the record, and they will be considered in these proceedings.

In its decision, the Court determined that a specific instance of

enforcement of a provision in a collective agreement which required the use of a posting and bidding process in the filling of jobs, had infringed upon the Sheriff's constitutional duties of maintaining law and order and preserving the peace. At issue was the Sheriff's reassignment of a Deputy Sheriff from patrol duty to undercover drug enforcement, his promotion to Detective and a pay raise. In its decision the Court did not conclude that the applicable contract provision was unconstitutional per se, but rather concluded in material part as follows: "Because the posting requirement as applied to the Manitowoc sheriff's assignment of deputy Humphreys is illegal, the arbitrator exceeded his authority by enforcing that provision and the arbitrator's award was properly vacated by the circuit court." [1].

In urging the Arbitrator to apply the ruling of the Wisconsin Supreme Court in the above case to the dispute at hand, the County argued that the final offer of the Association would illegally impinge upon the constitutional duties of the Sheriff in two areas: first, in that portion of the offer which could require the Sheriff to transfer eleven Corrections Officers hired after January 1, 1990 to Patrol Officer; and, second, in that portion of the final offer which would require the Sheriff to maintain a 5-2, 5-2, 4-3 working schedule for certain employees in the Detective Bureau.

In the Manitowoc County case, the question before the Court was whether a particular application of the collective agreement was illegal, not whether the underlying provision in the agreement was illegal per se. The County would have the arbitrator conclude that both of the referenced elements in the Association's final offer were illegal on their face, and in the final offer selection process would preclude him from selecting the offer of the Association in its entirety. It is inconceivable to the undersigned that a Wisconsin interest arbitrator, who operates as an extension of the contract negotiations process, should be required to consider the hypothetical legal merits of moot cases in the final offer selection phase of the statutory interest arbitration process. Unless offers under consideration are clearly illegal in any and all probable applications, an interest arbitrator should leave for future resolution by the parties, any rights questions relating to the contractual and/or the legal propriety of future applications of the agreement. The undersigned simply cannot conclude that one provision which merely defines the normal working schedules for certain Detective Division Employees, and/or one which provides for the training and transfer rights of certain incumbent Corrections Officers, illegally impinge in any or all of their probable applications, upon the Sheriff's constitutional duties to maintain law and order and to preserve the peace. Provisions governing working schedules, training and transfer, fall well within the normal definition of wages, hours and terms and conditions of employment, they are normally addressed in both public and private sector collective bargaining agreements, and to exclude such provisions from collective bargaining in the manner urged by the County, would significantly interfere with the implementation of Wisconsin's statutory policies and provisions governing municipal collective bargaining.

After carefully considering the merits of the two elements of the Association's final offer challenged by the County under the rule of law enunciated by the Wisconsin Supreme Court in the Manitowoc County case referenced above, the Impartial Arbitrator has preliminarily concluded that neither is illegal per se; accordingly, the County's request for arbitral selection of its final offer on the basis of the referenced Wisconsin Supreme Court decision, is denied.

The Substance of the Impasse

In next addressing the negotiations impasse on the merits, the Impartial

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[1] Manitowoc County v.Local 986B, AFSCME, AFL-CIO, Case Number 90-2097, June 11, 1992, at page 11.

Arbitrator will initially observe that the case is highly unusual in the parties' emphasis upon certain so called non-economic or language items which bear upon the degree of management discretion to be enjoyed during the term of the agreement. While the costs of the wage components of the final offers are in the record and have been argued by the parties, along with the makeup of the pool of comparable employers, wage and benefits questions clearly have not commanded the attention in these proceedings that is typical in Wisconsin interest arbitration proceedings. Rather, the parties are in dispute with respect to certain changes in contract language and/or enforceable prior practices, each characterizes the other as seeking significant changes in the status quo ante, each advances the proposition that the proponent of significant change bears the burden of proof and the risk of non-persuasion, and each questions whether the other has proposed adequate quid pro quos to support the proposed changes. Prior to addressing these items on the basis of the evidence and the arguments of the parties, the undersigned will preliminarily address certain principles involved in the arbitration of interest disputes in Wisconsin, including the nature of the process, the significance of the status quo ante, the weight to be placed upon bargaining history considerations, and the makeup of the external comparison pool.

The Significance of the Status Quo Ante

Both parties urged the Arbitrator to consider the significance of the status quo ante in final offer selection process in these proceedings, and the Union also cited and relied upon language from two prior decisions rendered by the undersigned. Although both of the referenced cases were decided in accordance with arbitral criteria contained in Section 111.70(4)(cm)(7), rather than those appearing in Section 111.77(6) of the Wisconsin Statutes, the underlying principles relating to proposed changes in the status quo ante, the bargaining history, and the normal role of an interest arbitrator have equal application to the dispute at hand.

(1) In the first of the cited cases the undersigned indicated in pertinent part as follows:

"The Significance of the Status Quo Ante

Although the arbitral criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, contain no specific reference to such factors as the parties' bargaining history, their past practices, or their prior status quo, these considerations fall well within the coverage of sub-section (j), which direct arbitral consideration to other factors normally taken into consideration in public and private sector negotiations, mediation, fact-finding or interest arbitration.

When an interest arbitrator is faced with demands from either party, to significantly alter or modify the status quo, or to add new or innovative language, practices or benefits, he will tread very carefully, and will normally require the proponent of change to make a very persuasive case! This is true whether the practice or practices in question have resulted from the past negotiations of the parties, or from the unilateral action of an employer which preceded the obligation to bargain collectively. Both of the parties to the dispute at hand recognized and argued the significance of the status quo ante, but there was some dispute as to exactly which of the final offers reflected the status quo within certain of the individual impasse areas.

In addressing the matter of what constitute the status quo, arbitrators will normally look to the traditional considerations involved in addressing matters of past practice in rights disputes involving the interpretation and application of ambiguous contract language, or those involving attempts to enforce an alleged

practice. Stated simply, a past practice or a status quo is either a known and repetitious course of conduct, or one which has been regularly engaged in over a long enough period of time to justify charging the parties with constructive knowledge of the practice. [2].

(2) In the second of the cited cases, the undersigned indicated in pertinent part as follows:

"The Arguments of the Parties Relating to Changes in the Status Quo

As indicated and discussed above, interest arbitrators operate as an extension of the contract negotiations process and, as such, they seek to arrive at the same end point in the process that the parties would have reached across the bargaining table, had they been able to do so. From a practical standpoint parties do not begin from scratch when they are faced with contract renewals, but rather they start with the expiring agreement, and each party proposes modifications to the previous settlement. In the event that one party or the other is faced with demands to significantly modify past practice, to eliminate or to significantly modify previous language or benefits, or to add new language or innovative benefits, the process of give and take bargaining takes place. In the absence of extraordinary negotiating pressures, neither party would normally give up significant language or benefits or practices gained in past negotiations, without a so called 'quid pro quo' from the other party. When a negotiations impasse moves to interest arbitration, the arbitrator adopts the same rationale as the negotiating parties, and he will avoid changing the status quo by giving either party what they could not have achieved at the bargaining table. The proponent of change in the status quo has the burden of establishing a persuasive case for such change, and bears the risk of non-persuasion; if an interest arbitrator concludes that the proposed change would not normally have been acceptable at the bargaining table without a quid pro quo flowing from the proponent of change to the other party, he will be extremely reluctant to endorse the proposed change.

As emphasized in the post-hearing brief of the Association, many Wisconsin interest arbitrators have endorsed the above principles, the essence of which is also described in the following excerpt from a frequently cited interest arbitration decision authored by Professor John Flagler:

'In this contract-making process, the arbitrator must resist any temptation to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of extraordinary pressures which led to the exhaustion or rejection of traditional remedies.

The arbitrator attempts to accomplish this objective by first understanding the nature and character of the past agreements reached in a comparable area of industry and the firm. He must then carry forward the spirit and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past, but only that he understand the character of established practices and rigorously avoid

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[2] Village of Menomonee Falls, Case 35, No. 39141, INT/ARB 4498, August 8, 1988, at page 17.

> giving either party that which they could not have secured at the bargaining table.' "[3].

With the above principles in mind, it is next necessary to analyze the various elements in the final offers of the parties on the basis of the above principles, and any other of the statutory arbitral criteria contained in Section 111.77(6) of the Wisconsin Statutes.

The Detective Division Work Schedule Impasse

Although the prior collective agreement did not specifically describe the 5-2, 5-2, 4-3 work schedule that had been utilized within the Detective Division, there is no dispute that the Employer is proposing a significant change in a long standing practice which had become an enforceable part of the parties' agreement. In this connection it must be noted that Arbitrator Robert M. McCormick, on February 27, 1990, overturned the Employer's attempt to unilaterally change the 5-2, 5-2, 4-3 work schedule, and indicated in part as follows:

> "The undersigned concludes that a custom and practice existed here, where the County has done a certain thing for twenty-three months (applied a 5-2, 5-2, 4-3 schedule after securing agreement from the Association Board of Directors), and the matter is so well understood and taken for granted that it may be said that the contracts (i.e. 1988 and 1989) were entered into upon the assumption that such customary action would continue to be taken. I find such customary action constitutes an implied term of the parties' Article 7 work week language of the labor agreement." [4].

Since the Employer has proposed a significant change in the negotiated status quo ante, it has the burden of establishing a persuasive case for the proposed change. Since parties operating in the give and take of collective bargaining would normally require an adequate quid pro quo for such a change, arbitrators typically require similar justification in the interest arbitration process.

(1) In the above connection, the Employer urges that its proposed 25 cents per hour increase for the affected classifications in the Detective Division, plus its purported agreement that the Detective Division will no longer be subject to on-call status during week-ends and holidays, constitute a sufficient quid pro quo for the change in working schedule.

(2) The Association characterized the 25 cents per hour increase as insufficient to justify the loss of 244 paid lunch periods per year for the affected employees, and the requirement that they work an additional 17 days per year, both of which are part of the Employer proposal. It additionally urged that the Employer's purported offer to relieve the Detective Division of week-end and holiday on-call status was first raised at the arbitration hearing, and was not included in the final offer of the Employer.

First, it will be noted that parties to Wisconsin's statutory interest arbitration proceedings are normally precluded from unilaterally modifying their certified final offers, and the Employer's offer received by the Wisconsin Employment Relations Commission on November 11, 1991 and thereafter transmitted to the Arbitrator, makes no reference to any Employer proposal to

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[3] Twin Lakes #4 School District, Case 11, No. 43274, INT/ARB 5487, March 2, 1991, at pages 15-16. (Included quote from Des Moines Transit, 38 LA 666, 671.)

[4] Employer Exhibit #16, at page 6.

forego requiring the employees of the Detective Division to periodically accept on-call status during week-ends and holiday periods. Accordingly, this alleged component of the final offer of the Employer will not be considered by the undersigned in the final offer selection process.

Next, it will be noted that while the Employer has proposed a 25 cents per hour increase, to compensate the affected employees for the change in work schedule and the loss of their paid lunch periods, the question remains as to whether this constitutes an adequate quid pro quo for the proposed change. In the view of the undersigned the Association is quite correct that an increase in straight time annual earnings of slightly less than $500, is insufficient to justify both the loss of 244 paid lunch periods per year and the requirement to work 17 additional days each year. Accordingly, the Impartial Arbitrator has preliminarily concluded that the Employer has failed to propose an adequate quid pro quo for its proposed change in the work schedule for those employees working within the Detective Division.

On the basis of an examination of the evidentiary record in light of the various arbitral criteria, the undersigned has preliminarily concluded that consideration of this impasse item clearly and strongly favors the selection of the final offer of the Association in these proceedings.

The Dispute Relative to the Training of Corrections Officers

What next of the dispute of the parties relating to an obligation to train and to transfer Corrections Officers to Patrol Officer duties for those hired between January 1, 1990 and January 1, 1992? The evidentiary record is mixed with respect to this item, with Association Exhibits #59 through #64 indicating that newly hired corrections officers had continued to be informed by letter, between April 24, 1990 and January 24, 1991, that a condition of continuing employment was their successful completion of the mandatory recruit training program, when offered. On the other hand, certain testimony offered by the Employer indicated that the newly hired corrections officers had been informed at the time of their employment, that tranfers to Patrol Officer status would be significantly restricted.

The Union is quite correct that various of the specific cost arguments advanced by the Employer are not supported in the evidentiary record, but it is reasonable to infer that the training and transfer of Corrections Officers to Patrol Officers would entail some costs. On the other hand a strong equitable case can be made on behalf of those recently hired Corrections Officers who would prefer to have training and transfer consideration equivalent to that available in the past.

On the basis of a careful examination of the record and the various arbitral criteria, the Impartial Arbitrator has preliminarily concluded that neither party has made a completely persuasive case with respect to the effective date of the new contract language restricting transfers between the Corrections Division and the Patrol Division. Accordingly, this impasse item will not be accorded determinative weight in the final offer selection process.

The Wage Impasse

While the parties are not significantly apart in their final wage increase offers, the Association submitted that there had been a significant decline in the relative wages paid to those in the bargaining unit between 1988 and the present, and urged that arbitral selection of its final offer would tend to arrest the decline. In support of this proposition it emphasized certain data relating to the wages paid by various external comparables.

While Section 111.70(6) does not prioritize the various arbitral criteria, it is widely recognized in Wisconsin and elsewhere that the

comparison criterion is normally the most important of the various criteria, and that so-called intraindustry comparisons are generally regarded as the most important and the most persuasive of the possible comparisons. These conclusions are consistent with the following observations from the authoritative book by Irving 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 that it receives is clearly preeminent; it leads by a wide margin in the first ranking of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.
>
> Wage parity within the industry is so compelling to arbitrators that, absent qualifications dealt with below, they invariably succumb to its force. Its persuasiveness, in fact, provides as sound a basis for predictions as may be uncovered in social affairs. The loyalty of arbitrators to this criterion at the general level could be documented at length..."[5]

In the case at hand the parties are not in full agreement with respect to the composition of the primary intraindustry comparison group, with the Employer emphasizing the Group consisting of Brown, Fond du Lac, Manitowoc, Outagamie, Sheboygan and Winnebago Counties, and the Association urging consideration of a wider group. When parties disagree with respect to the makeup of the primary external comparison group, arbitrators will normally look to their bargaining history, including any prior interest arbitration proceedings, and they are extremely reluctant to abandon or change such established relationships. These principles are described as follows by Bernstein:

> "The last of the factors related to the worker is wage history. Judged by the behavior of arbitrators, it is the most significant consideration in administering the intraindustry comparison, since the past wage relationship is commonly used to test the validity of other qualifications. The logic of this position is clear; the ultimate purpose of the arbitrator is to fix wages, not to define the industry, change the method of wage payment and so on. If he discovers that the parties have historically based wage changes on just this kind of comparison, there is virtually nothing to dissuade him from doing so again..."[6]

In their previous interest arbitrations, Arbitrator Neil Gundermann in a July 9, 1982 decision, a copy of which is included in the record as Employer Exhibit #2, opined that the primary intraindustry comparison group consisted of the six counties referenced above; and on November 30, 1983, Arbitrator June Weisberger, in a decision included in the record as Union Exhibit #5, determined that the primary intraindustry comparison group should include the City of Oshkosh Police Department in addition to the counties previously identified as comparable by Arbitrator Gundermann. Accordingly, the undersigned has determined that the primary intraindustry comparison group should continue to consist of Brown, Fond du Lac, Manitowoc, Outagamie, Sheboygan and Winnebago counties, in addition to the City of Oshkosh.

The Arbitrator has tested the Association's arguments relating to an alleged deterioration in the relative wages paid within the Winnebago Sheriff's Department by revising the information contained in Association Exhibits #19 through #34, by using only the primary intraindustry comparison group identified above, with the following results:

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[5] Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, page 6.

[6] The Arbitration of Wages p. 66.

Top Patrol Officer

Year	Avg. Mo. Rate		Winnebago C'nty	Difference Per Mo.
1988	$2099		$2103.92	+$4.92
1989	$2211		$2188.25	-$23.75
1990	$2296		$2277.73	-$18.27
1991	$2394		$2380.37	-$13.63
1992	$2476	Assn	$2501.37	+$25.20
		C'nty	$2476.37	+0.37

Top Detective

Year	Avg. Mo. Rate		Winnebago C'nty	Difference Per Mo.
1988	$2269		$2142.13	-$126.87
1989	$2370		$2231.39	-$138.61
1990	$2462		$2320.78	-$141.22
1991	$2577		$2438.30	-$138.70
1992	$2660	Assn	$2524.38	-$135.62
		C'nty	$2565.77	-$94.23

Sergeant/Detective Sergeant

Year	Avg. Mo. Rate		Winnebago C'nty	Difference Per Mo.
1988	$2289		$2200.93	-$88,07
1989	$2384		$2292.64	-$91.36
1990	$2472		$2385.33	-$86.67
1991	$2603		$2492.94	-$110.08
1992	$2704	Assn	$2592.94	-$85.26
		C'nty	$2633,63	-$110.06
				-$70.37 *(after sch. chg.)*

In analyzing the above intraindustry comparisons it is apparent to the undersigned that while there had been a relatively consistent disparity between the average wages paid for the three classifications in Winnebago County, versus the averages for the six other employers in the primary intraindustry comparison group, the data does not, viewed alone, persuasively support the selection of the final offer of either party. The Top Patrol differential will apparently be eliminated with the adoption of either final offer, and the final offer of the Employer on the other two classifications is somewhat higher due to its proposed buy-out for the change in work schedule within the Detective Division. Accordingly, and despite the relative importance normally attached to the intraindustry comparison criterion, it cannot be assigned determinative importance in these proceedings.

What next of the arguments of each of the parties relative to the cost-of-living criterion, and their claims that this consideration favored the selection of their individual wage increase offers? The Employer projects a 5.6% increase in living costs during the terms of the renewal agreement and urges that its final offer is closer to this figure than is the final offer of the Union. The Union, on the other hand, cited an approximate 9.4% increase in consumer prices during the two year period preceding the submission of its final offer, and it urged that its aggregate wage increase proposal of 9.5% was very close to that necessary to offset cost of living increases.

Both parties are urging different base periods for estimating or measuring cost of living increases, which is a very common problem in applying the cost of living criterion in wage disputes. This problem and its normal handling in arbitration is discussed in the following additional excerpt from Bernsteins' book:

> "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."[7]

In accordance with the above, only those increases which have occurred since the parties last went to the bargaining table should appropriately be considered by the Arbitrator, and any excess of these increases beyond those anticipated and provided for by the parties in their last negotiations should be considered in determining subsequent wage increases. Even after movement in the index is measured, however, it is widely recognized and accepted that it 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.

In light of the different base periods urged for arbitral consideration, the lack of negotiations history on the cost of living item, the closeness of the final offers of the parties on wages, and the built-in inaccuracies in the index, the Arbitrator is unable to assign determinative weight to the cost of living criterion in the final offer selection process in these proceedings.

Finally, and without unnecessary elaboration, the Arbitrator will observe that the extra 1% increase demanded by the Association is somewhat supported by internal comparables; but it will also be observed that the Association's demands for additional wage adjustments for Corporals and Detectives, based upon their relationship to the Top Patrol and the Sergeant positions, are based more upon argument than upon hard evidence in the record. If the latter were the only impasse item in the record, the Arbitrator would be forced to conclude that a persuasive case had not been made for the increases, and to this extent arbitral consideration of this item somewhat favors the selection of the final offer of the Employer.

The Employer Proposed Addition to Article 7 and the Impasse Relating to the Application of Progressive Discipline

Although the parties argued the significance of these items at length, it is apparent to the undersigned that they are entitled to relatively less weight in the final offer selection process than other impasse items.

Whether the Employer proposed addition to Article 7 is intended to merely clarify the language or whether it is an attempt to substantially change the underlying substance of the provision is not for this arbitrator to determine. That facts remain, however, that no preliminary discussion of the proposed change took place in negotiations, and there was no substantial evidence introduced at the hearing to explain the perceived necessity or the anticipated meaning and application of the proposal; the County's failure to discuss the matter is particularly unusual due the parties grievance and arbitration history with the provision. Without unnecessary elaboration, the undersigned will merely indicate that arbitral consideration of the negotiations history criterion, clearly favors the position of the Association on this impasse item.

In next addressing the dispute of the parties relative to the

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[7] The Arbitration of Wages, page 75. (Included quote from Public Service Coordinated Transport, 11 LA 1050)

Association proposed twelve month time limit on consideration of prior discipline for future progressive discipline purposes, the arbitrator finds the following considerations to bear upon the merits of the Union's proposal: the past practice of the parties, if any, is not completely clear from the record; there is no evidence in the record that the parties have experienced any significant difficulty in this area; Employer Exhibit #3 indicates that only one of the primary intraindustry comparables has a contractual time limit on consideration of prior discipline; on the other hand, Employer Exhibit #4 shows that three of six internal comparables have such a limitation provided for in their collective agreements. Stated simply, the record is relatively evenly balanced relative to this item, and in considering the evidence against the various arbitral criteria, the Arbitrator has preliminarily concluded that the position of neither party is significantly favored over the other.

Summary of Preliminary Conclusions

As discussed in more significant detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions:

(1) The County's July 21, 1992 submission of the decision of the Wisconsin Supreme Court in Manitowoc v. Local 986B, AFSCME, AFL-CIO, Case Number 90-2097, and its accompanying arguments related to the case, have been accepted into the record pursuant to Sections 111.77(6)(a) and (h) of the Wisconsin Statutes.

(2) After carefully considering the merits of the two elements of the Association's final offer challenged by the County under the rule of law enunciated by the Wisconsin Supreme Court in the Manitowoc County case referenced above, the Impartial Arbitrator has preliminarily concluded that neither is illegal per se; accordingly, the County's request for arbitral selection of its final offer on the basis of the rule of law reflected in the Court's decision, is denied.

(3) Wisconsin statutory interest arbitrators operate as an extension of the parties' collective negotiations, and they seek to arrive at the same end point the parties would have reached at the bargaining table, but for their inability to agree. In so doing, these arbitrators normally respect the following principles:

(a) Contract renewal negotiations do not start from scratch, but rather start from the base of the expiring agreement, including enforceable practices which have become part of the parties' whole agreement.

(b) In the event that one party or the other is faced with a demand to significantly modify past practice, to eliminate or to significantly modify previous language or benefits, or to add new language or innovative benefits, the process of give and take bargaining takes place, and neither party would normally give up significant language or benefits or practices, without an adequate quid pro quo from the other party.

(c) When a negotiations impasse moves to interest arbitration, the arbitrator adopts the same rationale as the negotiating parties, and he will avoid changing the status quo by giving either party what it could not have achieved at the bargaining table; in this connection, the proponent of change has the burden of establishing a persuasive case for such change, and it bears the risk of non-persuasion.

(d) If an interest arbitrator concludes that a proposed change could not have been achieved at the bargaining table, he

will be extremely reluctant to adopt such proposed change.

(4) Parties to Wisconsin's final offer interest arbitration process are normally precluded from unilaterally modifying their final offers. The Employer's expressed willingness to forgo the scheduling of employees assigned to the Detective Division to on-call status during week-ends and holiday periods, was not included in its final offer submitted on November 11, 1991, and it had no right to change its final offer thereafter; accordingly, this alleged component of the final offer of the Employer will not be considered by the undersigned in the final offer selection process.

(5) The Employer has failed to propose an adequate quid pro quo to justify its proposed change in the work schedule for those employees assigned to the Detective Division, and arbitral consideration of this impasse item clearly and significantly favors the selection of the final offer of the Association in these proceedings.

(6) On the basis of a careful examination of the record and the various arbitral criteria, the Arbitrator has preliminarily concluded that neither party has made a completely persuasive case with respect to the effective date of the new contract language restricting transfers between the Corrections Division and the Patrol Division. Accordingly, this impasse item will not be accorded determinative weight in the final offer selection process.

(7) In next addressing the wage increase impasse item, the following preliminary conclusions are indicated.

(a) The comparison criterion is normally the most important of the arbitral criteria, and the so called intraindustry comparison is normally the most important and the most persuasive of the various possible comparisons. The primary intraindustry comparison group for the Winnebago County Sheriff's Department consists of Brown, Fond du Lac, Manitowoc, Outagamie, Sheboygan and Winnebago counties, in addition to the City of Oshkosh.

(b) Despite the relative importance normally attached to intraindustry comparisons, it cannot appropriately be assigned determinative weight in these proceedings.

(c) Cost of living considerations cannot be assigned determinative weight in evaluating the wage proposals of the parties.

(d) The Association's demand for the extra 1% wage increase is somewhat supported by internal comparables. It has failed to make a persuasive case for the additional wage increases for Corporals and for Detectives, however, and for tying their wages to the Top Patrol and the Sergeant positions; to this extent, arbitral consideration of this impasse item somewhat favors the selection of the final offer of the Employer in these proceedings.

(8) In next considering the Employer proposed addition to Article 7 and the impasse relating to the application of progressive discipline, the undersigned has concluded as follows: arbitral consideration of the negotiations history criterion clearly favors the position of the Association on the Employer proposed addition to Article 7; the record does not definitively favor the position

of either party on the Union's proposal for a time limit on the application of progressive discipline.

Selection of Final Offer

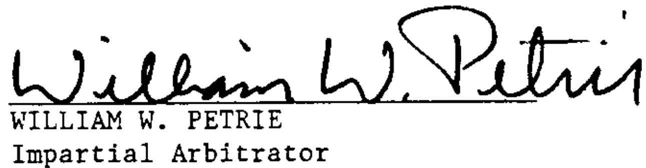
Based upon a careful consideration of the entire record in these proceedings, and a review of all of the statutory criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the Association is the more appropriate of the two final offers. This conclusion is most strongly supported by the evidence in the record which clearly and significantly favors the position of the Association on the County proposed change in the work schedule for employees of the Detective Division, in addition to the other considerations referenced above.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.77(6) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

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

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



WILLIAM W. PETRIE
Impartial Arbitrator

August 8, 1992