

BEFORE THE ARBITRATOR

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 In the Matter of the Impasse Arbitration between )  
 WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW )  
 ENFORCEMENT EMPLOYEE RELATIONS DIVISION )  
 and )  
 BUFFALO COUNTY (SHERIFF'S DEPARTMENT) )  
 -----

WISCONSIN EMPLOYMENT  
 RELATIONS COMMISSION  
 No. 46767  
 MIA-1682  
 Decision No. 27523-A  
 DECISION and AWARD

Appearances: For the Association, Richard T. Little, Wauwatosa, WI.  
 For the Employer, Attorney Richard J. Ricci, Eau Claire, WI.

When the Wisconsin Professional Police Association/Law Enforcement Employee Relations Division (referred to as the Association) and Buffalo County (Sheriff's Department)(referred to as the County or Employer) were unable to complete negotiations for a successor collective bargaining agreement, the Association filed a petition dated December 27, 1991 requesting the Wisconsin Employment Relations Commission (WERC) to initiate final and binding arbitration pursuant to Section 111.77(3) of the Municipal Employment Relations Act (MERA). On January 6, 1993 the WERC determined that an impasse existed. Following notification by the parties to the WERC that they had selected the undersigned to serve as arbitrator, the WERC appointed her to so serve by order dated January 28, 1993.

By mutual agreement, a hearing was scheduled for March 10, 1993 at the Buffalo County Courthouse in Alma, Wisconsin. Due to severe weather conditions that morning, the arbitrator cancelled the hearing. The parties agreed that they would exchange exhibits instead of re-scheduling the hearing. They also agreed upon a schedule for the submission of briefs.

ISSUES TO BE DECIDED

There are only two issues contained in the parties' final offers: 1) wages for 1992 and 1993, and 2) a change in the number of years of service required in order to qualify for four weeks vacation. The Employer's final offer is annexed as Annex A and the Association's final offer is annexed as Annex B.

STATUTORY FACTORS

Section 111.77(6) of MERA states that the arbitrator shall give weight to the following factors:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.

- (d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:
  - 1. In public employment in comparable communities.
  - 2. In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

#### POSITIONS OF THE PARTIES

##### The Association

To support its final offer in this proceeding, the Association's brief systematically considers each of the above statutory factors and, where applicable, points to its evidence it has submitted. Subsection (c) of section 111.77 favors the Association, according to the Association's brief because the Association's wage offer is needed to maintain officer morale and to retain the most qualified bargaining unit employees.

The Association's arguments then emphasize external public sector comparability. As to the preliminary issue as to which counties constitute appropriate comparables, the Association notes agreement with the Employer on comparables with the exception of Barron County. The Association argues for the inclusion of Barron County, a position taken by the Employer in two prior Buffalo County arbitrations. It contends that Barron County is an appropriate comparable based upon population, number of law enforcement personnel with powers to arrest, and rates of violent crimes, property crimes, and clearance rates (when an offense is cleared or solved for crime reporting purposes), as detailed in Association exhibits.

The Association also argues that a scrutiny of external comparables discloses that acceptance of the Employer's final offer will shift the County's comparative wage position downwards for deputy sheriffs (although the Association notes that under either party's final offer the comparative wage ranking of the

jailer/dispatcher classification will retain the identical ranking). The Association also notes that the real weakness of both offers is that it permits the basic wage rate of the jailer/dispatcher classification to fall further behind the 1992 and 1993 average of the comparables.

Turning from the wage issue to the vacation issue, the Association argues that all its comparables, with the exception of Jackson County, supports the Association's final offer on vacations.

Next, the Association looks at internal comparability and points to language in other arbitration awards concluding that such data should be given little weight. In addition, the Association points out that only one of the represented bargaining units of the Employer has reached a voluntary agreement on a successor contract. Thus, there is no meaningful internal comparability pattern.

In its final argument, the Association makes two distinct points. First, it argues that, in regard to the cost of living criterion, it concurs with prior arbitral authority that looks to comparable settlements as the proper measure of protection against inflation and as a reasonable barometer as to the appropriate weight which should be given to the cost of living factor. Second, the Association questions the Employer's method of arriving at its 3.5% wage increase figure since the Employer's calculation includes employee movement through step progression as well as across the board increase in hourly wages. The Association concludes that the Employer's method artificially inflates the value of its final wage offer and, thus, should be "disregarded in its entirety."

For all the above reasons, the Association concludes that its final offer is more reasonable and should be selected by the arbitrator in this proceeding.

#### The Employer

The Employer first addresses the issue of what constitutes the appropriate comparables and argues that this issue should be considered a settled one since it was determined in two recent Buffalo County arbitrations. To overturn this settled point rejecting Barron County, the County believes that the Association must demonstrate error by the arbitrators or reasons to reverse these precedents. It concludes that the Association has failed to provide sufficient reasons to reopen prior arbitral exclusion of Barron County as too large and too remote to be a primary comparable for Buffalo County in interest arbitration. For the Employer, this is a key point since with the exclusion of Barron County the comparable rankings using the Employer's wage offer is maintained while with the inclusion of Barron County the Buffalo County ranking drops in its relative wage ranking.

The Employer next turns to the "harsh economic realities" currently facing Buffalo County. It points to extensive County exhibits relating to the overall lack of economic prosperity and thus the declining level of economic resources to support employee wage increases. The adverse economic indicators include a declining taxpayer population, a decrease in property values, a comparable decline in income, and a declining farm economy (in a county where 82% of the land is used for farming). In the face of these negative

economic indicators, there has already been increasing tax rates. Thus, section 111.77(6)(c) supports the Employer's final offer.

The Employer also contends that the structure of the Employer's wage offer is more reasonable than that of the Association since it offers an across the board 37¢ per hour in 1992 and \$39¢ per hour in 1993 and is intended to give an extra salary boost to the lower paid dispatchers within the framework of an overall 3.5%. The Employer emphasizes the importance of consistency among various County employees using a 3.5% internal settlement pattern. Historical patterns from 1987 to the present confirm, for the Employer, the importance and equity of consistent internal wage increase patterns.

Moreover, the Employer argues that wage increases unilaterally determined by the County for unrepresented employees should be given some weight, particularly when they are consistent with the County's position in two pending arbitration proceedings.

Turning to external comparables (and excluding Barron County), the County presents calculations to support its 3.5% offer as "more closely aligned with the external settlement pattern" based upon actual settlement costs. In 1992 only two of the comparables' settlement costs exceeded the Employer's 3.5% final offer (and both of these comparables were in the bottom half of all Employer comparables). In 1993 only one of the comparables' settlement costs exceeded the Employer's 3.5% final offer (and that was due to an Employer initiated change in health insurance carrier language). Moreover, in view of the Employer's willingness to improve the vacation benefit, an argument could be made to justify a lower wage increase by the Employer - but the County's offer, in fact, includes a wage increase in line with both internal and external comparables.

The Employer asserts that the Association cannot justify its proposed wage increase as "catch up" because County wages have always exceeded the comparables' average for deputy sheriffs and have consistently ranked third highest among the comparables. In this connection, the Employer insists that the Association's use of monthly wage rates as the basis for comparison is improper since in most of the comparables the deputies work 2,080 hours per year while in Buffalo County deputies work 2,061 hours per year. Thus, an adjustment should be made to reflect this disparity. According to the County, the proper basis for comparisons are hourly wage rates. As for jailer/dispatchers, the County points out that in Buffalo County they are civilians only and thus in a different wage position than deputies and jailer/dispatchers in other counties where they may have powers to arrest. Additionally, in this proceeding, both parties' offers result in an identical wage rate for jailer/dispatchers.

Turning to the dispute between the parties relating to vacations, the Employer is critical of the Association's position because there is no demonstrated need to change the status quo, no quid pro quo for the proposed change, and it exceeds the pattern in both internal and external comparables. In contrast, the Employer's position on vacations is a move toward internal consistency in this area and is competitive in relationship to external comparables.

Finally, addressing the cost of living statutory factor, the County argues that the Employer's offer is more reasonable. It is critical of the Association's costing method (based upon the March 1993 number of employees which is then cast backwards without consideration of the economic effect of step progressions) since the result, in the view of the County, significantly underestimates the costs of the Association's package.

For these many reasons, the County concludes that there are compelling reasons for the arbitrator to select the County's final offer.

### DISCUSSION

Although there are only two issues which appear to separate the parties in their final offers, in fact they have differences on several subissues which must be resolved in order to address their final offer differences. As in a number of other impasse arbitration proceedings, the subissues include disagreements over appropriate comparables and costing methods as well as other issues.

The first subissue raised by the parties concerns the appropriateness of including Barron County in the pool of primary comparables. Two previous arbitrators in proceedings involving Buffalo County have determined that Barron County is too remote and sufficiently different in size so that it should not be included in the primary pool of comparables, despite arguments made in those proceedings by the Employer. Accordingly, the undersigned believes that it is reasonable to accept these decisions as providing a rebuttable presumption in this proceeding that Barron County should not be viewed as an appropriate primary comparable. This approach provides an opportunity for a party to present sufficient evidence to rebut the presumption but the burden is on the party wishing to challenge the basis or application of these prior decisions on comparables. In viewing the Association's evidence in this proceeding, the undersigned concludes that the Association's evidence is insufficient to overcome the presumption that the prior cases were properly decided and applicable to this proceeding. Prior decisions such as these should carry some weight in subsequent proceedings in order to promote appropriate stability in the parties' collective bargaining relationship and avoid needless relitigation of comparability. Accordingly, Barron County will not be considered as a primary comparable.

Another subissue raised by the parties concerns their different costing methods. The most significant difference revolves around the appropriate treatment of costs associated with moving employees through the salary schedule steps. While there is no consensus yet on this key issue, the undersigned continues to believe that "some recognition" should be given to these Employer costs. Although the extent of appropriate recognition is also unsettled, there is no acceptable rationale for completely ignoring longevity costs. Particularly since overall compensation is a statutory factor which must be considered, longevity step costs (as well as roll-up costs for WRS and FICA) are relevant in deter-

mining which offer is more reasonable.

A third subissue raised by the County relates to section 111.77(6)(c) and Employer data concerning declining economic conditions in the County. In this proceeding, the Employer has not only made general assertions about taxpayer difficulties in funding wage increases, particularly the Association's package, it has documented these difficulties by submitting data on percentage of county land utilized in farms, declining milk and corn prices, and percentage of county residents employed in farming, forestry, and fishing and as laborers as a comparable basis. While the County does not use this evidence to make an inability to pay argument, it persuasively argues that there is real difficulty to pay the higher costs of the Association's package. Based upon the documentation submitted, the undersigned joins other arbitrators in concluding that difficult economic circumstances of this rural county cannot be ignored, particularly when the factual basis of the Employer's argument on declining economic conditions is undisputed.

Turning to the merits of the parties' wage dispute, the undersigned believes that the comparability data, excluding Barron County, which were submitted by the parties supports the Employer's final wage offer. Not only does external comparability data support the County's position, but the limited internal comparability data also are consistent with the County's position in this proceeding. In this case, internal comparability is entitled to more weight than it might be given in a proceeding involving only law enforcement officers because this bargaining unit consists of a majority of civilians (according to an Association exhibit, eight out of fifteen). In this regard, Buffalo County is different from a number of the external comparables. However, discussion of this point is moot because the parties' final offers are identical for jailer/dispatchers.

The Association has argued in this proceeding that its wage offer was more reasonable because it was needed for morale and retention purposes. No evidence was submitted in support of this contention. While these are serious considerations in situations where evidence is submitted to support these arguments, no weight has been given to these points in this proceeding.

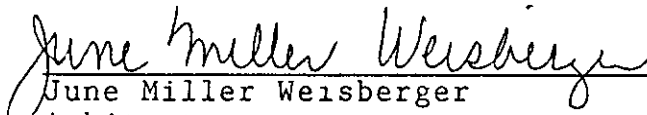
Finally, as to the vacation dispute, it is apparent that the parties consider this issue as secondary to their primary wage dispute. The arbitrator concurs with the parties' priority even if she were to determine that the Association's position on vacations was more reasonable. However, reviewing external and internal comparability, the undersigned concludes that the evidence submitted favors the County's final vacation offer. The Employer's offer incorporates a generous improvement to a competitive vacation policy.

For the above reasons, the arbitrator finds the Employer's final offer total package to be more reasonable.

AWARD

Based upon the record submitted in this proceeding (including exhibits and briefs), the statutory factors set forth in section 111.77(6), and for the reasons discussed above, the arbitrator selects the final offer of the County and directs that it be incorporated without modification into the parties' successor collective bargaining agreement.

Madison, Wisconsin  
June 21, 1993

  
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June Miller Weisberger  
Arbitrator

FINAL OFFER OF BUFFALO COUNTY  
TO THE  
BUFFALO COUNTY LAW ENFORCEMENT  
OFFICERS, LEER AND WPPA  
FOR A 1992 AND 1993 AGREEMENT

RECEIVED  
DEC - 8 1992

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

Appendix "A"

December 7, 1992

Except as set forth in this final offer and the tentative agreements of the parties, if any, the terms and provisions of the 1990-91 Agreement shall become the terms and provisions of the 1992-93 Agreement.

1. ARTICLE IX - VACATIONS - B. Change "twenty (20) years" to "sixteen (16) years."

2. ARTICLE XVI - WAGES - Change dates to reflect a 1992 and 1993 schedule. Remove reference to employee Randy Gotz.

Increase all wage rates 3.5% ATB based on the weighted average wage for 1992.

Increase all wage rates 3.5% ATB based on the weighted average wage for 1993.

3. ARTICLE XXI - DURATION - Change 1990 to 1992 and 1992 to 1993.

FOR THE COUNTY:

By: 

Dated: 12/7/92

Annex A



AMENDED  
FINAL OFFER

OF THE

WISCONSIN PROFESSIONAL POLICE ASSOCIATION  
LAW ENFORCEMENT EMPLOYEE RELATIONS DIVISION

TO

BUFFALO COUNTY

November 4, 1992

The final offer of the WPPA-LEER for a collective bargaining agreement between WPPA-LEER and Buffalo County is as follows:

A. All terms and conditions of the 1990-1991 Agreement shall be continued for a two (2) year term except as otherwise agreed to between the parties in their written stipulations and except as noted below:

B. Revise all applicable dates to reflect a duration of two (2) years. (1992-1993)

C. Amend ARTICLE IX - VACATIONS, Section B - Benefits, to read as follows:

B. Benefits: Each employee shall receive: one (1) week after (6) six months of employment to be taken within the first year of employment. If an employee ceases his/her employment within the first year of employment and has taken the six (6) days vacation pursuant to B., the six (6) days pay would be deducted from the final paycheck.

Two (2) weeks after one (1) year of continuous employment;

Three (3) weeks after seven (7) years of continuous employment;

Four (4) weeks after ~~twenty (20)~~ fifteen (15) years of continuous employment;

D. Revise ARTICLE XVI - WAGES to reflect the following:

Effective 1-1-92 Four percent (4%) across the board.

Effective 1-1-93 Four percent (4%) across the board.

Annex B

NOV - 9 1992

Appendix  
"B"