STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of:

OUTAGAMIE COUNTY PROFESSIONAL POLICE ASSOCIATION

For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of

OUTAGAMIE COUNTY (SHERIFF'S DEPARTMENT)

Case 220
No. 48372 MIA-1768
Decision No. 27849-A

APPEARANCES

Frederick J. Mohr, Attorney at Law, on behalf of the Outagamie County Professional Police Association

Roger E. Walsh, Attorney at Law, on behalf of Outagamie County

BACKGROUND

On November 23, 1992, the Outagamie County Professional Association (hereafter referred to as "the Association") filed a petition requesting the WERC to initiate compulsory final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act (MERA), for the purpose of resolving an impasse arising in collective bargaining between it and Outagamie County (Sheriff's Department) (hereafter referred to as "the County") on matters affecting the wages, hours and conditions of employment of non-supervisory law enforcement personnel in the employ of the County.

On October 27, 1993, after being advised by its informal Investigator that the parties were at an impasse and that the Investigator had closed his investigation on that basis, the WERC found that an impasse, within the meaning of Sec. 111.77(3) of the MERA, existed between the Association and the County with respect to negotiations leading toward a collective bargaining agreement for the years 1993 and 1994 covering wages, hours and conditions of employment for non-supervisory law enforcement personnel employed by the County, and ordered that compulsory final and binding interest arbitration pursuant to Sec. 111.77, Stats. be initiated to resolve the impasse and that the parties select an arbitrator.

On November 22, 1993, after the parties notified the WERC that they had chosen the undersigned, Richard B. Bilder, Madison, Wisconsin, as the arbitrator, the WERC appointed him as impartial arbitrator to issue a final and binding award in the matter pursuant to Sec. 111.77(4)(b) of the MERA. On February 11, 1993, the undersigned met with the parties at the Outagamie County Courthouse in Appleton, Wisconsin, to arbitrate the dispute. At the arbitration hearing, which was without transcript, the parties were given a full opportunity to present evidence and oral arguments. Post-hearing briefs and reply briefs were submitted by the parties, the last reply brief being received by the arbitrator on April 18, 1994.

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

ISSUES

The parties have reached agreement on various matters. The issues which have not been resolved voluntarily by the parties, and which have been placed before the arbitrator, include both economic and management issues and are as follows:

1. Retirement Contribution. The County proposes to maintain the language of prior Collective Bargaining Agreements and to increase the County's dollar amount of its payment toward the employee's required contribution as follows:

MONTHLY COUNTY RETIREMENT CONTRIBUTION FINAL OFFER

	Existing 1992 Rates	1/1/93	7/1/93	1/1/94	7/1/94
Investigator, Sergeant, Law Enforcement Specialist	$164.13	$185.00	$185.00	$190.00	$195.00
Patrol Officer	$151.87	$170.00	$170.00	$175.00	$180.00
Process Server	$130.17	$160.00	$160.00	$165.00	$170.00
Assistant Process Server	$115.07	$140.00	$140.00	$145.00	$150.00

The Association proposes that the County agrees to contribute an amount equal to 7.2% of the employee's earnings toward the employee's share of the contribution to the Wisconsin Retirement System.

2. On Call Payment for Investigators. Section 22.07 of the 1990-1992 Collective

Bargaining Agreement provides as follows:

> 22.07 - Investigators will rotate being on call on a weekly basis. This on-call period will begin at 8:00 a.m. on Monday, and remain until 8:00 a.m. the following Monday. An Investigator shall be paid $105.00 per week for such on-call duty (effective January 1, 1991, $115.00 per week.)

The County proposes to delete this section, effective on the date of the Arbitrator's award. The Association proposes no change in this section.

3. Retroactive Payment of Wages and Benefits. Section 4 of the Memorandum of Understanding between the parties dated 12/6/90 and attached to the 1990-1992 Collective Bargaining Agreement provides as follows:

> 4. Retroactive payment of wages and benefits will be made only to employees on the payroll as of the date the County Board ratified the 1990-1992 Agreement.

The County proposes to maintain this language, modifying the language slightly to include employees on the payroll as of the date in which the County Board ratifies the 1993-94 Agreement or the date of the Arbitrator's award, whichever is earlier. The Association submits no proposal on this issue.

4. Specific Work Hours for Investigators, Sergeants and Criminal Justice Unit Employees. The prior Collective Bargaining Agreement contained no specific work week or work hour provisions for any employees, including the Investigators, Sergeants, and Criminal Justice Unit employees. The County proposes to maintain the status quo. The Association proposes that the workweek for full-time Investigators, Sergeants, and employees assigned to the Criminal Justice Unit (CJU) shall be specifically stated to be Monday through Friday from 8:00 a.m. to 4:00 p.m. or from 9:00 a.m. to 5:00 p.m.

5. Work Schedule for Law Enforcement Specialists. Under the prior Collective Bargaining Agreement, the shift times for Law Enforcement Specialists could vary from shift times for Patrol Officers, up to four (4) hours before or after the Patrol Officer shift times, and shift times could be changed for any one or all of the Law Enforcement Specialists upon twenty-four (24) hour prior notice to the employee or employees involved. The County proposes to continue the status quo. The Association proposes to eliminate this practice.

6. Holiday Issues. Sections 11.01, 11.02, and 11.03 of the 1990-1992 Collective Bargaining Agreement pertaining to the specific issue are as follows:

11.01 - Paid holidays included in this Agreement are:

New Year's Day	Labor Day
Good Friday	Thanksgiving
Decoration Day	Afternoon of December 24
Independence Day	Christmas Day
	Afternoon of December 31

11.02 - All permanent employees, except those working on a 5-2 work schedule, Monday through Friday, will receive one (1) days' pay for each of the above described holidays that are not worked in addition to the employee's regular pay. Any such employee working any of the above described holidays as part of the employee's regular work schedule shall receive time and one-half pay. . . . Such employees . . . shall in addition to the above described holidays, receive two (2) floating holidays per calendar year. . . .

11.03 - Employees working a 5-2 work schedule, Monday through Friday, shall receive time off with pay for the above holidays, provided however, that for such employees December 24th and December 31st will be full day holidays. . . . Such employee shall, in addition to the above described holidays, receive one (1) floating holiday per calendar year . . .

a) Scheduling Investigators to Work on Holidays and Number of Regular Floating Holidays for Investigators. The County proposes to maintain what it regards as the status quo, i.e., Investigators, whom it regards as 5-2 employees, are covered under Section 11.03, and are scheduled to be off with pay on all holidays, and receive one floating holiday and full day holidays on December 24 and December 31. The Association proposes to amend the Agreement by inserting "except Sergeants, employees assigned to the Criminal Justice Unit (CJU), Process Servers and Assistant Process Servers" after "All permanent employees" in Section 11.02. The impact of the change is to put Investigators under Section 11.02, which covers 5-2, 5-3 employees, bringing them within the provisions of that section with respect to any work on holidays that fall on Monday through Friday, and giving Investigators two (2) floating holidays and one-half holidays December 24 and 31.

b) Investigator's Extra Floating Holidays. The County proposes to include in the Memorandum of Understanding attached to the Agreement the following language, restricting additional floating holidays to employees classified as Investigators or Sergeants as of June 1, 1993:

2. Employees classified as Investigators or Sergeants as of June 1, 1993 will, in lieu of the additional two (2) floating holidays each year that are provided for in Section 8.01B, receive an additional five (5) floating holidays each calendar year, provided however, that such employees who had at least fifteen (15)

years of service in the Outagamie County Sheriff's Department as of January 1, 1991, will, in lieu of the additional two (2) floating holidays each year that are provided for in Section 8.01B, receive an additional six (6) floating holidays each calendar year. These floating holidays are to be scheduled as time off at a time mutually agreed upon between the department head and the employee. In the event any such employee terminates employment without having taken one or more of these floating holidays during the calendar year, such floating holiday(s) shall be cancelled and may not be reinstated or paid for. No such employee will be allowed to use a floating holiday(s) after having given a notice of termination.

The Association proposal would include, as a final paragraph of Section 8.01, the following language, providing Investigators with additional floating holidays without restriction as to the date of classification:

> Investigators shall receive an additional five (5) floating holidays each calendar year instead of an additional two (2) floating holidays each calendar year (provided, however, that such employees who have at least fifteen (15) years of service in the Outagamie County Sheriff's Department as of January 1, 1991, will receive an additional six (6) floating holidays each calendar year instead of an additional two (2) floating holidays each calendar year), said floating holidays to be scheduled as time off at a time mutually agreed upon between the department head and the employee.

7. Salary. The County proposes a 3.0% wage increase for all employees on January 1, 1993, a 2.0% wage increase for all employees on July 1, 1993, a 3.0% wage increase for all employees on January 1, 1994, and a 1.0% wage increase for all employees on July 1, 1994, for a combined total wage increase of 9.0%.

The Association proposes in effect a 3.0% wage increase for the positions of Law Enforcement Specialist, Patrol Officer, Process Server and Assistant Process Server and a 5.6% wage increase for the position of Investigator on January 1, 1993, a 3.0% wage increase for all employees on July 1, 1993, a 3.0% wage increase for all employees on January 1, 1994, and a 3.0% wage increase for all employees on July 1, 1994, for a combined total wage increase of 14.6% for Investigators and 12.0% for all other employees.

THE APPROPRIATE SET OF COUNTIES FOR EXTERNAL COMPARISON PURPOSES

Section 111.77(6) of the Municipal Employment Relations Act requires that the Arbitrator compare the parties final offers to wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public and private employment in comparable communities. As a threshold matter, the

parties disagree as to the other counties which should be regarded by the Arbitrator as external comparables in this respect. Both parties agree that Brown, Winnebago, Sheboygan and Fond du Lac Counties should be regarded as comparable to Outagamie County for purposes of this arbitration. However, the County would also include Manitowoc, Calumet and Waupaca Counties as comparables. Both parties agree that the appropriate criteria for comparability, as suggested by Arbitrator Yaffee in School District of Mishicot, WERC Decision No. 19849-A (2/83), are generally: (1) Similarity in the level of responsibility, the services provided by, and the training and/or education required by such employees; (2) Geographic proximity; and (3) Similarity in size of the employer.

In support of its position, the County argues that proposed group of comparable counties are either contiguous to Outagamie County, are considered a "Fox Valley County," or are of sufficient size and geographic proximity to be considered as comparable to Outagamie County. It would include Waupaca County since it is contiguous, and Calumet and Manitowoc Counties since these are most similar in number of officers per 10,000 population. In the County's view, the Sheriff's Departments of all seven counties it proposes as comparables perform similar services and require approximately the same level of responsibility and training. Finally, the County argues that in a prior 1980 arbitration involving the Outagamie Sheriff's Department, the Association successfully proposed the inclusion of Manitowoc, Waupaca and Calumet Counties as external comparables; the County urges that the Association should not now be allowed to reject a grouping of comparables it had previously successfully proposed in an arbitration similar to this, and that the grouping accepted in this prior arbitration should not be changed without good reason.

The Association agrees that all seven counties proposed by the County may qualify due to location, but argues that Waupaca, Calumet and Manitowoc County should be excluded because of their small population as compared with Outagamie County; Waupaca has only 33% of Outagamies' population, Calumet has only 36% and Manitowoc has only 57%. It urges that the four county pool of comparable counties it proposes has an average population of 134,414, roughly equivalent to Outagamie County 143,765, whereas the county's proposed seven county pool has an average population of only 102,707 or 71% of Outagamie County's population.

As many arbitrators have pointed out, comparability is a matter of degree. While criteria such as those suggested by Arbitrator Yaffee can be a very useful guide, the determination of external comparables cannot be reduced to a simple formula. However, on balance, the Arbitrator finds the County's argument that Waupaca, Calumet and Manitowoc County should be included in the group of comparables, more persuasive. In the Arbitrators opinion, while Calumet and Waupaca Counties are smaller in size, this factor is offset by their geographic contiguity to Outagamie County. As regards Manitowoc County, it seems fairly close in population to the other counties the Association agrees should be included, such as Fond du Lac County, and has about

the same number of officers per 10,000 as Outagamie County; moreover, if Sheboygan and Brown Counties are included, it seems somewhat anomalous geographically to exclude Manitowoc County. The geographic clustering of the County's proposed group suggests that all of these counties generally share similar types of problems and work conditions and expectations, and that they constitute a generally related market; the Association does not appear to have introduced persuasive evidence, other than the differences in total population of each County, to indicate otherwise. Finally, while it does not appear that there has been any clearly established practice of these parties as regards comparables, the County's argument that the Association has previously urged the inclusion as comparables of the counties it would now exclude, and that a previous arbitrator in fact accepted this grouping, is of some weight.

For these reasons, the Arbitrator finds the following counties appropriate for external comparison purposes in this arbitration: Brown, Calumet, Waupaca, Winnebago, Fond du Lac, Manitowoc, and Sheboygan.

DISCUSSION AND ANALYSIS OF THE SPECIFIC ISSUES

The parties indicate that there are currently 43 employees in this bargaining unit, comprising 1 Sergeant, 6 Investigators, 7 Law Enforcement Specialists, 22 Patrol Officers, 5 other Patrol Officers in the Criminal Justice Unit, 1 Process Server and 1 Assistant Process Server. The 29 regular Patrol Officers and Law Enforcement Specialists work a 5-2, 5-3 schedule. The 14 other employees, including the Investigators, work a 5-2 Monday-Friday schedule.

1. Retirement Contribution. The County's proposal would continue the language format generally used in past agreements concerning Deputy Sheriffs as to the County's contribution towards the employees portion of the Wisconsin Retirement System (WRS), which divides the unit into Protective and Non-Protective Employees and further divides these groupings into various job classifications, with specific maximum dollar contributions limits set for each job classification. The County's proposal updates this language to specifically state job positions in the unit and increases the employees contribution rates by particular dollar amounts as of 1/1/93, 1/1/94 and 7/1/94. The County explains that its proposal is designed to cover the full employee pension contribution on each employee's regular straight time monthly earnings. The Association's proposal could replace the present language with language requiring the County to contribute "7.2% of the employees earnings" to WRS.

The County argues that the Association, as the party seeking to change the status quo, has the burden of showing some justification, proven need or quid pro quo, for its proposal and that it has failed to do so. It points out that two of the comparable counties -- Brown and Fond du Lac -- similarly express the employer's contribution in a dollar amount. Moreover, the non-sworn Sheriffs Unit in Outagamie County has settled a 1993-95 contract with the County which will continue to contain for a three year term,

covering 1993, 1994 and 1995, a fixed dollar maximum amount provision similar to that here proposed by the County for the Deputy Sheriff's unit. Finally, the County emphasizes that the total employee contribution rate for protective employees set by the State is 6.6% for Outagamie County as well as comparable counties and 6.2% for non-protective employees, rather than the 7.2% proposed by the Association. The County argues that, despite the Association's concession that it was in error in setting this 7.2% figure and that the Association does not intend that the County pay more than 100% of the employer's contribution, the County will nevertheless under the Association proposed contractual language, according to at least one past arbitral decision, in all likelihood be required to pay this 7.2% contractual amount, which is .6% more towards the employee's pension contribution for protected employees and 1.0% more for non-protective employees than is required by the State. The County argues further that in any event, the ambiguities created by the Association's final offer in this respect can only lead to further confusion and controversy, including possible litigation through arbitration proceedings.

The Association argues that its proposal will bring the contractual language regarding retirement contribution for this unit in line with external comparables, which generally express the employer's contribution in percentage terms. The Association further points out that under the County's offer the amount of retirement contribution is capped and the maximum amount paid by the County is less than 100% of the base rates at the employee's maximum pay levels; moreover, police officers traditionally have worked substantial amounts of overtime, which are not covered by a County contribution under the present or the County's proposed language. The Association argues that its proposal, which would require the County to pay all of the employee's contribution, is generally also more in line with the situation both as to internal and external comparable units. The Association asserts that internally the County pays its other units 100% of the employee retirement contribution on all monies earned, whereas under the County's proposal it would not pay an employee's retirement contribution for premium pay or overtime. As to external comparables, it claims that only Fond du Lac does not fully fund an employee's contribution for all forms of compensation; in its view, the County's offer is the lowest among the external comparables. Finally, the Association explains that the 7.2% figure used in its final offer was in error, resulting from inaccurate information it received from the State Trust Fund Board as to the current contribution level for Protective Service employees, and asserts that it is <u>not</u> its intent to require the County to pay more than the maximum employee contribution presently required by the State. In the Association's view, the bargaining history of the parties clearly show the intention of the Association to request only 100 percent of the employee's contribution, the Association is on record to this effect, and its final offer should be construed accordingly.

With respect to the language format of the provision -- the use of dollar amounts rather than percentages, the Arbitrator finds somewhat the more persuasive the County's arguments that this format is long established in the parties' prior contracts, that it is

consistent with internal comparables and at least one external comparable, and that the Association has failed to show good reason to change the status quo. On the other hand, as to the extent of coverage, the Arbitrator finds more persuasive the Association's argument that both the internal and external comparables are somewhat more generous as regards retirement contributions and tend to support the Association's arguments for the Association's proposal for the employer's full payment of the employee's portion of the retirement contribution. Thus, the County appears to pay the full amount of the employees contribution for the Highway Health Center, Social Services and Court House Unit, and at least five of the comparable counties pay the employees full share.

The most difficult problem with respect to this issue, however, is the question of how the Arbitrator should treat the Association's assertion that the 7.2% figure used in its final offer is in error based on incorrect information it received from the State Trust Fund Board -- since the State requires only a 6.6% contribution for protective employees and a 6.2% for non-protective employees, and that its intent is to require only full payment of the employee's portion of the contribution and no more. The Arbitrator notes that the final sentence of Sec. 111.74(4)(b) of the MERA mandates that the "arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification." The Arbitrator interprets this provision as limiting his or either parties' unilateral discretion to change either the language or substance of their final offers once submitted. (The Arbitrator does not need here to address a possible situation where there is an obvious topographical error and clear argument for reformation.) Consequently, in the Arbitrator's opinion, it is not open to him to consider this issue as if the Association used the language it said it really meant, rather than the 7.2% figure it actually used. Moreover, as the County contends, any such attempted reinterpretation of the Association's language could involve uncertainty, ambiguity and possible future disputes. Consequently, the Arbitrator believes he must consider this issue on the basis of the 7.2% figure that in fact appears in the Association's final offer.

So viewed, the Arbitrator agrees with the County that the 7.2% figure proposed by the Association, taken on its face, is out-of-line with both internal and external comparables and otherwise not justified. In the Arbitrator's opinion, this consideration tips the balance in favor of the County's proposal on this issue.

2. On-Call Payment for Investigators. Section 22.07 of the 1990-92 Agreement provides that Investigators will rotate weekly on-call duty and will receive $115.00 per week for such duty. Investigators now work a standard 5-2 schedule Monday through Friday and consequently are not on duty in the late afternoon and evening, during the night and on weekends. There are presently 6 Investigators, which results in weekly assignment of 8 plus weeks per year, resulting in their each receiving an average of $996.66 per year as on-call pay. The County proposes to eliminate this section, while the Association wishes to retain it.

The County argues that this provision was required in past agreements because at times in the past it was necessary to call on an Investigator to investigate some occurrence during the Investigator's off time, for example, during evenings or nights or weekends. However, it believes that with the creation by the County Sheriff's Department in 1991 of the new position of Law Enforcement Specialist (LES), the necessity for the performance of on-call duty by Investigators is no longer required. The LES position is a hybrid position of patrol officers with investigative skills, with a pay level equal to Investigators; the LES is a shift officer, working on a schedule such that there is normally a LES on duty capable of performing an Investigator's duty if there is a need for investigation outside the period of an Investigator's normal schedule. Consequently, the County argues that, in view of the creation of the LES position, the need for on-call duty by Investigators is obsolete and the provision should be deleted. The County further argues that, while the Association has informally suggested that assignment of Investigators to on-call would be discretionary, the Association has not included such language in its final offer and the current language of the provision requiring Investigators to rotate being on-call and be paid for such assignment is arguably mandatory rather than discretionary under the Contract. Finally, in its exhibits, the County points out that only one of the comparable counties has contractual provisions for on-call pay.

The Association acknowledges that actual assignment to on-call duty is discretionary on the part of management and that the present Sheriff has implemented a system allowing LES employees to share the burden of investigating duties, with the intent of deleting the on-call assignment of Investigators. The Association argues, however, that in the future management policy may change in this respect and that the provision should therefore be retained in the agreement for possible future use; otherwise, in the event such a change in policy occurs, the Association would have to bargain to get this language back into the contract.

The Arbitrator finds the County's arguments on this issue more persuasive. in view of the establishment of the LES position, this provision seems outdated. While the Association argues that the language of the provision is discretionary, the County's concern that the provision could be argued to be mandatory is not without basis. It seems unreasonable to require the County to rotate or pay Investigators for on-call duties when this is no longer required and they are unlikely to be used. Thus, in the Arbitrator's opinion, the evidence supports the County's position that, in light of the establishment of the LES position, there is good reason to change the previous agreement in this respect. Should the situation change, the parties can readjust their arrangement in the light of the then existing circumstances.

3. Retroactive Payment of Wages. The 1990-92 Agreement contained a provision in the Memorandum of Understanding that:

"4. Retroactive payment of wages and benefits will be made only to employees on

the payroll as of the date the County Board ratified the 1990-1992 Agreement."

The County in effect proposes the continuation of this provision for the 1993-1994 Agreement, modifying it only to include employees on the payroll as of the date on which the County Board ratifies the Agreement or the date of the Arbitrator's award, whichever is earlier. The Association's proposal has no such provision, which would have the effect of deleting it.

The County argues that this type of provision has been in effect in Outagamie County for this unit and all other bargaining units for the past two contracts. In answer to the Association's allegation that the County was neglectful in not raising this issue in negotiations and that it was a surprise to the Association, the County contends that it clearly included this provision in its final offer and that the Association had ample opportunity to offer its own retroactive pay proposal if it had wished. Moreover, the County notes that, while the Association now objects to the retroactivity pay provision because it does not exempt employees who retired or died, the Association voluntarily agreed to a similar provision in the 1990-92 Agreement which also did not exempt employees who retired or died.

The Association objects to this provision because it would deny retroactive pay for employees who have retired or left their employment prior to arbitration award, which it regards as very unfair. It argues that other internal comparables' contracts deny retroactive pay only to employees who have voluntarily left County employment, but provide retroactive payment to those employees who retired or died, and that the external comparables also generally provide for such retroactive pay. The Association claims that, because the County did not raise the issue during negotiations, there was no meaningful discussion of this issue and the Association did not have an opportunity to negotiate a provision similar to that agreed to by other units which would provide retroactivity for individuals who retired or died. Consequently, adoption of the County's proposed language would punish long-term employees who stayed with the County until their retirement or death. Finally, the Association contends that it agreed to the non-retroactive provisions in the prior agreement only because it knew at the time that there would be no impacted retiring employees during the period of that contract, which it cannot at this time say will be the case here.

The Arbitrator considers the Association's position on this issue the more persuasive. The Arbitrator does not find in the record any indication of unfair surprise or inappropriate conduct on the part of the County. However, in the Arbitrator's opinion both the internal and external comparables tend to give more support to the Association's position that the proposed Agreement should not bar retroactive pay at least for retired or deceased employees, than to the County's position in this respect. The Arbitrator finds particularly persuasive in this respect the fact that almost all the internal comparables appear to include in their contracts an exception permitting

retroactive payment for employees who retired or died.

4. Specific Work Hours for Investigators, Sergeants and Criminal Justice Unit Employees

Section 8.01 of the 1990-92 Agreement does not include any language specifying specific work hours for the Investigators, Sergeants and Criminal Justice Unit employees. The Association proposes that Section 8.01 of the Agreement be revised to provide such specific hours, to read:

> "The normal work week for full-time Investigators, Sergeants, and employees assigned to the Criminal Justice Unit (CJU) shall be Monday through Friday from 8:00 a.m. to 4:00 p.m., or from 9:00 a.m. to 5:00 p.m."

The County has not proposed any change in this respect and would maintain the status quo.

The County argues that the Association has failed to present any justification for its proposal to change the status quo by inserting specific work hours for only these few employees, has not presented any evidence of existing problems with the work hours of these particular employees, and has not proposed any quid pro quo for such a significant change. The County notes that the usual work hours of Sergeants and Criminal Justice Unit employees have not been changed by the County, and that the Investigator's work hours were temporarily changed only in an emergency situation when the Association was opposing introduction of the LES position; consequently, it sees no need for such new language in the Agreement. Moreover, the County argues that the external and internal comparables support its position.

The Association argues that its proposal would simply memorialize the existing practice of the parties regarding the hours of Investigators, Sergeants and employees in the Criminal Justice Unit, and that its proposal is supported by the external comparables. It urges, moreover, that it has a compelling need to specify the hours of Investigators in the agreement since the County has taken the position that under the present contract language it can reassign Investigators from their normal day hours to a rotating shift without financial penalty. In the Association's view, it is the County that has the burden of showing a compelling need in order to circumvent the Association claims is an employee's justifiable right to know when they will be working. Moreover, the Association notes that its proposal would not prohibit management from changing the hours of Investigators to non-day hours but merely would require premium pay for those hours.

On this issue, the Arbitrator considers the County's arguments the more persuasive. The Arbitrator agrees that the Association's proposal for a new contractual provision specifying work hours for this particular group of employees is a significant

change in the status quo, and that the Union has failed to offer good reason for such a change. While there was apparently a temporary emergency situation involving some shifting of Investigator's hours at one time in the past, the evidence does not suggest any frequent or continuing abuse or unreasonable conduct by the County with respect to the normal working hours of the affected employees. Moreover, both the external and internal comparables seem generally more supportive of the County's position than that of the Association. As the County points out, four of the seven comparable counties have no contractual work schedule language whatsoever, and Sheboygan County specifies work hours only for the Court Bailiff position, reflecting the Court's hours. Calumet and Fond du Lac County do both have specific work hours listed in their contracts for Investigators, Detectives and Sergeants; however, these two counties list work hours for all employees in the bargaining unit, not just for the particular members covered by the Association's proposal. As regards internal comparables, four bargaining units have no specific hours listed in their agreement. One unit, the Highway Department, does list specific work hours, but the contract permits these hours to be altered for certain emergency operations and street marking.

5. Work Schedule for Law Enforcement Specialists (LES). As previously indicated, the position of Law Enforcement Specialist (LES) was created in 1991 and the positions were filled in 1992. As also previously indicated, the LES position is a hybrid position of patrol officer with investigative skills, with a pay level equal to Investigators. The LES is a shift officer, working a schedule of 8.33 hours per day, 5 days on, 2 days off, 5 days on, 3 days off. The LES also works one of the three shifts during a 24-hour day. There is normally a LES on duty capable of performing investigatory duties. The County unilaterally implemented the LES position after seeking but failing to obtain the Association's voluntary agreement regarding the position. The WERC subsequently dismissed the Association's prohibited practice complaint against the County regarding its unilateral establishment of the LES position (Case 218, No. 47750, MP-2624, Decision 2734-A, March 8, 1993). The addition of the LES positions resulted in a reduction in the number of Investigator-Sergeants and an altering of the Investigators' work schedule in effect to a 5-2 work schedule (week days on, weekends off).

With respect to the work schedules for LES's, the County proposes that Section 8.01(B) of the Agreement be revised to include the following provision:

> "Shift times as Law Enforcement Specialists may vary from shift times for Patrol Officers, up to four (4) hours before or after the Patrol Officer shift times. Shift times may be changed for any one or all of the Law Enforcement Specialists upon twenty-four (24) hour prior notice to the employee or employees involved."

The Association proposal does not include any such provision.

The County argues that its proposed language is taken directly from two Memoranda of Agreement relating to its establishment of the LES position which were

tentatively agreed to in 1991 by the Association's Bargaining Committee but later rejected by the Association's membership. The County also notes that when it implemented the LES position, it also implemented a flexible work schedule, and that the flexible schedule represented in its proposal reflects the flexibility utilized in actual shift schedules from April 1992 through January 1994; that is, in the County's view, its proposal represents the status quo. Finally, the County cites the testimony of the current Sheriff as to the necessity to have the ability to change the shift schedules of the various LES's to achieve needed efficiency and flexibility, since no one can predict with certainty at what time a criminal investigation will need to take place. It also points out that the LES position is a unique position, that no other comparable County has employees either identified as LES's or doing work similar to that performed by a LES, and that the work schedule policies in comparable counties are consequently immaterial to this proceeding. Finally, the County argues that the Association has presented no evidence or testimony supporting its claim that the LES's suffer a substantial inconvenience when their work hours are changed.

The Association does not dispute the County's authority to change the work hours of LES employees but maintains that these employees should in such cases be entitled to additional payment of overtime or call-in pay. It points out that under the present contractual language, other employees in the unit are entitled to time and one-half premium pay for hours worked outside of their normally scheduled work day when their hours are changed on such short notice, and that, under the County's proposal, a LES would be treated differently from these other employees. It further argues that the County's proposal would be unique among the comparables, all of which provide premium pay under such circumstances where employees are subjected to substantial inconvenience. Finally, the Association takes the position that the County's proposal rather than the Association's position, represents a change in the status quo which requires justification, and that the County has failed to show a proven need for its proposal. In its view, the County's proposal places an enormous burden on an LES in terms of the uncertainty of work hours, for which they should be entitled to additional remuneration.

The Arbitrator finds the County's position on this issue more persuasive. As the Arbitrator understands the Law Enforcement Specialist position, it is intended as an innovative and unique approach to law enforcement capability, which seeks more efficiently to combine certain law enforcement functions and fill particular needs. As indicated in the evidence presented to the Arbitrator, a need for some flexibility in the working hours of those holding this position in order to respond to investigative exigencies seems to have been contemplated in the establishment of the LES position and reasonably to be considered as part of the job. The Arbitrator found the Sheriff's testimony and the evidence that this has been the established practice since the position was implemented credible in this respect. Since the County's evidence is persuasive that the LES position is unique and has special requirements and responsibilities, comparisons with either other internal units or other counties would not appear to be

directly relevant and must be made with caution. Finally, the Arbitrator agrees with the County that the evidence presented fails to establish either that the flexibility as to hours of LES employees reflected in the County's proposal is either unreasonable or that it imposes unforeseen uncertainty of hours or undue hardship on those accepting such positions.

6. Paid Holidays.

a) Scheduling Investigators to Work on Holidays and Number of Regular Floating Holidays for Investigators. The relevant provisions of Sections 11.01, 11.02 and 11.03 of the 1990-92 Agreement covering paid holidays is set out in the ISSUES section above. Currently Investigators, Sergeants, Process Servers and employees assigned to the Criminal Justice Unit work a 5-2 schedule, Monday through Friday, and therefore are considered to fall with respect to holidays under Section 11.03 of the prior agreement which covers "employees working a 5-2 schedule, Monday through Friday" rather than Section 11.02, which covers 5-2, 5-3 employees. This means they are entitled to be off with pay on all holidays and that they receive one (1) floating holiday and full day holidays on December 24 and 31. The Union proposes a change to Section 11.02 adding the following underlined language to that Section:

> All permanent employees, except Sergeants, employees assigned to the Criminal Justice Unit (CJU), Process Servers, and Assistant Process Servers working a 5-2 work schedule, Monday through Friday will receive one (1) days pay for each of the above-described holidays that are not worked as part of such employee's regular work schedule in addition to the employee's regular pay. . .

The effect of this proposal is to put Investigators under Section 11.02, and thus as entitled to receive one day's pay for each of the holidays not worked in addition to the employees regular pay or time and one-half pay for each holiday worked, and two (2) floating holidays and one-half holidays December 24 and 31. The County proposes to leave this language unchanged, thereby continuing to treat Investigators as covered under Section 11.03 and scheduled to be off with pay on all holidays and to receive one (1) floating holiday and full day holidays on December 24 and 31.

The County argues that the Association's proposal to revise Section 11.02 is unreasonable and would only result in confusion and ambiguity. With respect to the possible effect of this change with respect to scheduling Investigators to work on holidays, the County contends that the proposal is particularly confusing. In its view, if the Association's intent is simply to permit Investigators to work on holidays, the change is unnecessary since, if the holiday is an off-day for that Investigator, he or she can be called in on overtime to perform the work. Moreover, putting Investigators who work a 5-2 schedule under Section 11.02, which applies to employees working a 5-2, 5-3 schedule, will lead to additional questions and grievances as to the interpretation of the provision with respect to Investigators. If, on the other hand, the Association's intent is

that Investigators must be assigned to work on all holidays that occur on a Monday through Friday, and be paid the time and one-half rate for the work on that holiday, even if there is little or no work for the Investigator to perform on that holiday, the County contends that the proposal is unreasonable. In its view, very little investigative work, if any, is performed on holidays, and that work can easily be handled by a LES officer, one of whom, as a shift employee, is almost always on duty. Consequently, it is undesirable, as well as economically irresponsible, for Investigators to be taken away from their families on a holiday when very little work can be accomplished.

With respect to the impact of the proposed change on the number of paid holidays for 5-2 employees, the County argues that the Association's proposed language would make little substantive difference, since all employees have the same total of ten holidays, whether they fall under Section 11.02 or Section 11.03, the only difference resulting from the Association's proposal is that Investigators would only have one floating holiday rather than two. In the County's view, the Association has provided no logical basis for this differentiation with respect to Investigators and its proposal merely results in confusion. Finally, the County points out that, in the WERC's recent decision between these same parties dismissing the Association's prohibited practice complaint against the County (Case 224, No. 49691, MP-2776, Decision No. 27861-A, 3/22/94), Hearing Examiner Crowley clearly held that Investigators are on a 5-2 schedule and covered by Section 11.03, and that the plain language of the expired contract represents the status quo.

The Association argues that the Investigator's prior designation as 5-2, 5-2, 6-2, 4-2 employees was not lost merely by change of work days during the mid-term of the prior agreement which resulted in an effective 5-2 work schedule for Investigators, or by the parties' agreement to delete reference in this contract to the prior work schedule of Investigators. The Association contends that its proposal maintains the status quo by treating Investigators as they have been treated historically.

The Arbitrator finds the County's position on both of these issues somewhat more persuasive. The evidence indicates that in 1991 the Investigators voluntarily agreed to go to a 5-2 schedule, which would permit them weekends off, and that in 1993 the County stopped assigning Investigators to work on holidays because they did not need or use them. Since, as the Association appears to concede, Investigators are now effectively working a 5-2 work schedule, it seems most reasonable to treat them as to holidays similarly with other 5-2 employees. In the Arbitrator's opinion, the above-mentioned recent ruling by the WERC's Hearing Examiner lends support to this conclusion. With respect to such holidays, the Investigators appear to receive treatment equal to that of other unit members on a similar 5-2 schedule, as well as members of other internal comparables on such a schedule, and generally as favorable treatment as employees in those external comparables which have employees on a 5-2 schedule. As the County suggests, the Association has failed to provide any good reasons for its proposal and it is possible that it could cause uncertainty and confusion in its application.

b. Investigators Extra Floating Holidays. The County proposes to include in the Memorandum of Understanding attached to the Agreement the following language:

> 2. Employees classified as Investigators or Sergeants as of June 1, 1993 will, in lieu of the additional two (2) floating holidays each year that are provided for in Section 8.02B, receive an additional five (5) floating holidays each calendar year, provided however, that such employees who had at least fifteen (15) years of service in the Outagamie County Sheriff's Department as of January 1, 1991, will, in lieu of the additional two (2) floating holidays each year that are provided for in Section 8.01B, receive an additional six (6) floating holidays each calendar year. These floating holidays are to be scheduled as time off at a time mutually agreed upon between the department head and the employee. In the event any such employee terminates employment without having taken one or more of these floating holidays during the calendar year, such floating holiday(s) shall be cancelled and may not be reinstated or paid for. No such employee will be allowed to use a floating holiday(s) after having given a notice of termination.

The Association's proposal would include, as a final paragraph of Section 8.01, the following language:

> Investigators shall receive an additional five (5) floating holidays each calendar year instead of an additional two (2) floating holidays each calendar year (provided, however, that such employees who have at least fifteen (15) years of service in the Outagamie County Sheriff's Department as of January 1, 1991, will receive an additional six (6) floating holidays each calendar year instead of an additional two (2) floating holidays each calendar year), said floating holidays to be scheduled as time off at a time mutually agreed upon between the department head and the employee.

The County argues that its proposal is the more reasonable in view of the special purpose of the insertion of the additional floating holiday provision in the 1990-1992 Agreement. In the County's view, that purpose was to address a special problem for certain employees arising from the change in the definition of "a work week" in the vacation provisions of Section 12.05 of that Agreement, which had the effect of shortening the "work week" for these employees from 6 days to 5 days. The County contends that the three or four additional floating holidays (in excess of the two floating holidays given to all employees covered by Section 8.01B, including Investigators) were granted to compensate employees who had previously been working a 5-2, 5-2, 6-2, 4-2 work week and who previously had been given vacation on the basis of a "six day work week"; the reason for the differentiation between three and four additional holidays was whether the employee had 15 years of service on January 1, 1991, since 15 years is the length of service needed to qualify for four weeks of vacation. Thus, three additional floating holidays were given to employees eligible for three weeks of vacation (i.e., one

day for each week of vacation), and four additional floating holidays were given to employees eligible for four weeks of vacation (i.e., one day for each week of vacation). The County notes that the parties voluntarily agreed that the fourth floating holiday would be given only to employees with 15 years of service as of January 1, 1991.

The County further argues that, since the 5-2, 5-2, 6-2, 4-2 work schedule was no longer in effect as of June 1, 1993, and since no employee who became an Investigator or Sergeant after that date would ever receive vacation on a six day work week basis, these new Investigators and Sergeants do not need to be compensated for the change from the six day vacation work week to the five day vacation work week. Therefore, the County proposes the "grandfather" clause for the Investigators and Sergeants who in the past received vacation on a six day work week basis. In answer to certain Association's arguments, the County maintains that its placement of this language in the Memorandum of Agreement rather than in the contract paper is of no significance, since it remains equally binding; and that its provision for proration of the floating holiday provision if an employee terminates employment with the County during the calendar year is not a change in the Agreement since identical proration language was contained in both of the prior 1990-1992 Agreement and in the new Agreement under both parties final offers.

The Association argues that the County's proposal would significantly change the status quo by (1) removing the floating holiday benefit for Investigators from the contract paper and attach it as a Memorandum of Agreement; (2) grandfathering the benefit, making it available only for Investigators and Sergeants in that classification effective June 1, 1993; and (3) prorating these holidays should an employee terminate their employment during the calendar year. It points out that the "grandfathering" provision will impact all future promotions to these positions, since the present group of Investigators is relatively senior, and as they retire or are promoted, these vacancies will be filled by newer employees who would not qualify under the County's offer. The Association argues that, under the County's proposal, this benefit for Investigators will gradually be eroded.

On this issue, the Arbitrator finds the County's proposal the more reasonable. The County's explanation as to the origin and structuring of the Investigators' extra floating holiday provision is persuasive, and, in view of this history, its provisions for "grandfathering" this benefit seem appropriate. The Arbitrator also agrees with the County that the placement of this provision in the Memorandum of Agreement rather than in the contract paper is not legally significant, and that the County's proposal regarding prorationing of these extra holidays does not effect a change in the Agreement.

7. Salary. The parties appear in agreement that salary is a major issue in this arbitration. The County proposes in effect the following wage increases for all employees of the bargaining unit: 3.0% effective January 1, 1993; 2.0% effective July 1, 1993; 3.0% effective January 1, 1994; and 1.00% effective July 1, 1994; for a combined increase of 9.0%. The Association proposes the following wage increases for all

employees of the bargaining unit: 3.0% effective January 1, 1993, except 5.6% effective January 1, 1993 for Investigators; 3.0% effective January 1, 1993; 3.0% effective January 1, 1994; and 3.0% effective July 1, 1994; for a combined increase of 14.6% for Investigators and 12% for all other employees. While the Association has not stated its proposal in percentage terms, it has not challenged the County's figures in this respect.

The County maintains that its 9.0% combined 1993-1994 wage increase is more consistent with the internal and external comparables and the Consumer Price Index than is the Association's 12-14.6% wage increase, and that its proposal maintains approximately the same relationship of this units wages to the average wage rates of the external comparables as existed in 1992. It argues that the Association's proposal of a 14.6% combined 1993 and 1994 wage increase for Investigators and a 12% combined 1993 and 1994 wage increase for all other employees is simply out of line. In the County's view, neither the internal nor the external comparables nor the CPI support the Association's position, nor has the Association offered any other justification for such a large salary increase.

The Association maintains that its proposal as to wages is justified by the need to "catch-up" the salaries of the members of the unit with the salaries of employees performing similar work in comparable counties. It argues that, while Outagamie County is the second largest among the comparable counties, and as such it is only reasonable that it pay an hourly rate at least equivalent to the average of other comparables, Outagamie County lags far behind this average and will continue to do so even if the Association's proposal is accepted. Indeed, the Association maintains that the County's offer will result in a widening of the gap between Outagamie County and the average of the comparables between 1993 and 1994.

The parties differ dramatically in their comparisons of both present wages and wages under their respective proposals with wages in comparable counties and internally, and each attacks the other's figures, comparisons and arguments as inaccurate and misleading.

According to the figures presented by the County in 1992, the last year of the current contract, Patrol Officers received a year-end hourly wage rate of $14.45, which was $.04 higher than the average of $14.41 in comparable counties. In 1993, the County proposes a year-end hourly wage rate for Patrol Officers of $15.18, $.09 above the external comparable average, and in 1994 the County proposes a year and hourly wage rate of $15.79, $.02 below the external comparable average of $15.81. Thus, the County maintains that the Association's offer regarding Patrol Officers is $.24 over the average of external comparables in 1993 and $.45 over the average of external comparables in 1994. Moreover, the County argues that its wage offer for Patrol Officers will maintain approximately the same relationship to the average wage rates that existed in 1992, and it urges that the maintenance of such a consistent ranking is an important consideration to which the Arbitrator should give considerable weight.

The County argues that its wage offer for Investigator also maintains the same relationship to the average wage rates that existed in 1992. It asserts that the average hourly wage rate for Investigator in 1992 was $15.25, whereas Outagamie's wage rate was $15.22, $.03 lower than the average. In 1993, the County is proposing a wage rate of $15.99, $.04 above the average, while it maintains that the Association is attempting the wage rate for Investigators to $16.56, $.61 above the average. In 1994, the County is proposing a wage rate of $16.64, $.01 above the average, while it claims the Association is proposing a wage rate of $17.57, $.94 above the average. The County contends that, while under the Association's proposal the Investigator wage rate ranking as compared with comparable counties increases from fourth place in 1992 to third place in 1993 and to second place in 1994, under the County's offer, the wage ranking remains consistent, fourth place in 1992, fifth place in 1993, and fourth place in 1994.

With respect to the pattern of external settlements for 1993-94 for comparable units in comparable counties, the County argues that the combined 1993 and 1994 average wage increases of the external comparables is 8.65%, slightly below the County's final offer of 9% combined for 1993 and 1994. The County maintains that, in contrast, the Association's 12% combined 1993 and 1994 wage increase for all employees but Investigator is 39% higher than the average of the comparables, and its combined wage increase of 14.6% for the Investigator position is 69% higher than the average of the comparables. With respect to the pattern of internal settlements thus far reached for 1994, the County suggests that an internal pattern of wage rate increases for Outagamie County bargaining units can be established for 1993 in the 4%-5% range with a decreasing trend to 3.75% for 1994. It argues that, while the County's offer approximates this pattern, the Association's proposed 8.6% and 6% wage increase for 1993 and 6.0% wage increase for 1994 would greatly exceed and severely disrupt this pattern.

Finally, the County notes that the average annual wage increase in the Consumers Price Index for 1993, the first year of the Contract was 2.96% under the all-Urban Consumers Index and 2.83% under the Urban Wage Earners and Clerical Workers Index, and that there is no indication that increases in the CPI are much different in 1994. The County points out that its 5.0% wage rate increase in 1993 is much more in line with the Consumer's Price Index than the Association's proposal of an 8.6% wage rate increase for Investigators and a 6.0% wage rate increase for all other employees, which are respectively almost double and triple the Consumer Price Index for 1993.

The Association, on its part, argues that what it regards as a significant lag in the wages of employees in this unit behind the wages of employees in comparable units justifies a "catch-up" for the unit, and particularly for the Investigators who it asserts will suffer the loss of several financial benefits under the agreement. The Association claims that the County's exhibits are deceptive, since, in its view, the County has calculated hourly rates for Outagamie County which include longevity rates while excluding the longevity pay of comparables. It claims that the County has also failed to include Brown

County's 10 Investigative Sergeants in its analysis of Investigators; has failed to provide comparable figures for the Law Enforcement Specialist position, which it believes should be compared to Sergeant positions in comparable counties; has failed to include figures for Process Servers for Brown, Winnebago and Sheboygan counties; and includes comparisons from Calumet, Waupaca and Manitowoc counties, which the Association regards as not comparable.

The Association in its brief presents revised charts incorporating the above changes, which it believes demonstrates the reasonableness of its own offer. According to the Association's figures, under the Association's offer the hourly rate for Patrol Officers would be $16.26, which it calculates as $0.52 less than what calculates as the average of comparables; in contrast, by its calculation, under the County's offer, Patrol Officers would be paid $0.99 per hour less than average, lower than any of the comparables. Similarly, it contends that under the Association's offer at the end of 1994, Outagamie County would still lag $0.17 per hour below the average while the lag would be $1.10 under the County's offer, less than in any comparable County. It calculates similar results with respect to the Law Enforcement Specialist position and Process Servers.

The Association argues that its position is even more compelling when viewed in the light of the overall cost to Outagamie County of its protective service personnel, which lags significantly behind that of comparable counties. Finally, it argues that, even if Investigators receive the Association's proposed increase, they will still lag behind comparable officers in comparable units, whereas their annual earnings will actually decrease under the County's proposal. The Association notes that the adjustment sought for the Investigators is an attempt to partially compensate them for losses they will suffer as a result of the holiday pay and call-in situations. In response to the County's argument that the cost of living supports its position, the Association argues that, in a catch-up situation, the cost of living is not a relevant consideration. Finally, the Association argues that its recent agreement to implement a new health care plan could negatively impact the units members.

The County, in rejoinder in its reply brief, strongly attacks the validity of the Association's above arguments and exhibits, claiming that they are wholly unsupported and confusing and that they should be rejected by the Arbitrator. Among the long list of objections raised by the County to the validity of the Association's submissions are: the Association attempts to add a longevity factor to the hourly rate comparisons by using a longevity rate for the other counties that is in fact attained by only a few employees thus significantly distorting these comparisons upwards; the Association's exhibits give a distorted picture of comparisons of overall compensation by excluding benefits such as vacation and insurance; in its list of percentage increases under both parties' offers, the Association fails to include the 1995 carryover increases of 1/2% under the County's offer and 1 1/2% under the Association's offer that will result from the double wage rate increases granted in 1994, and also fails to show the additional 2.6% wage rate increase

in 1993 for the Investigators; the Association improperly uses or combines different types of wages for comparison purposes; the Association fails to include significant longevity dollar figures in its 1993 and 1994 five year comparisons for Patrol Officer, Investigator and Sergeant; the Association uses incorrect longevity figures in its ten year comparison; the Association improperly attempts to factor into the total compensation of Investigators a loss of Holiday Pay for work on holidays and the loss of on-call pay; the Association compares Outagamie County process servers with Patrol Duty wage rates for three of its four comparables; and a variety of what the County regards as other inaccuracies and inconsistencies by the Association. The County also points out that it did not provide comparisons for the Law Enforcement Specialist position because there is no comparable position in the external comparables and it rejects the Association's position that the wage rates of County LES position should be compared to Sergeant positions in comparable counties. In particular, the County argues against the Association's contention that a "catch-up" is necessary for Investigators. In the County's view, the County's proposal will place the wage rate in 1993 and 1994 for Investigators above the average for comparables and will continue the Investigators' consistent fourth place position among the seven comparable counties in terms of the wage rates offered in 1992, whereas the Association's proposal would increase this ranking to second place in 1994. Finally, the County rejects the Association's suggestion that the County's proposal should be considered less acceptable because the County delivers its police protection with fewer sworn officers than its comparables.

With respect to this salary issue, the Arbitrator believes that the County's proposal is on balance the more reasonable. As indicated, the parties' arguments and evidence on this issue has primarily related to the statutory criteria of external and internal comparability and cost of living, so the Arbitrator will principally address those factors.

As regards external comparability, the Arbitrator finds persuasive the County's evidence and argument, particularly as presented in its Exhibits ER 39-42, that its wage rates in 1992 roughly approximated the average of that in comparable counties; that its proposed wage increase will generally maintain its wage rates at approximately the same relationship to the average wage rates that existed in 1992; and that the County's proposed 9.0% combined 1993-94 wage increase appears to approximate or exceed the pattern of wage settlements for this period in the comparable group of counties. In contrast, in the Arbitrator's opinion the Association's 14.6% combined 1993 and 1994 wage increase for Investigators and 12% combined 1993 and 1994 wage increase for all other employees appears both significantly larger than the pattern of relevant wage settlements in comparable counties and to represent an effort to improve the relative position of the County vis-a-vis the wage rates of comparable counties.

The Association in part justifies its proposal as a "catch-up," presenting figures suggesting that employees in the bargaining unit, and Investigators in particular, have lagged far behind the average rates of employees performing similar duties in

comparable counties. However, the County has raised credible questions concerning certain of the evidence presented by the Association in this respect, and, on balance, the Arbitrator is of the view that the evidence and comparative figures offered by the County are in general more authoritative and useful. For example, the Arbitrator does have some question as to the Association's comparison of LES's to Sergeants in other comparables, since the responsibilities of LES's seem quite different, as well as to some other of the Association's figures about which the County has expressed concern. After weighing the parties' evidence and arguments in this respect, the Arbitrator is not persuaded that the wage rates of the County employees here involved have lagged significantly behind those of similar employees in comparable counties -- and in any event, in the Arbitrator's view, not so significantly as to support the Association's argument that its wage proposal, even if otherwise high in relation to the cost-of-living or other factors, is otherwise justified by the need of these employees to "catch-up."

As regards internal comparability, the County's evidence is again persuasive that proposed wage increase is consistent with the pattern of internal settlements for 1993 and thus far reached for 1994, which the County, without contradiction, asserts are in the 4-5% range for 1993 with a decreasing trend to 3.75% for 1994. In contrast, the Association's proposed wage increase would significantly exceed these amounts and thus be less comparable to these internal settlements. Indeed, the Association has presented little argument or evidence on this issue.

Finally, as regards the factor of cost-of-living, in the Arbitrator's opinion there can be little question but that the County's proposed wage increase is much closer to the less-than-3% rise for 1993 and similar rise for 1994 than is that of the Association. Indeed, the Association does not appear to challenge this conclusion, as indicated arguing rather that the cost-of-living is irrelevant to a situation involving a "catch-up."

OVERALL ASSESSMENT OF THE RESPECTIVE OFFERS AND CONCLUSION

Each party has ably argued why its offer should be preferred and there is much to be said for each proposal. As the previous discussion indicates, the Arbitrator has concluded that County's proposal is more reasonable with respect to the issues of Retirement Contribution; On-call Payment for Investigators; Specific Work Hours for Investigators, Sergeants and Criminal Justice Unit Employees; Work Schedule for Law Enforcement Specialists; Paid Holiday Issues, including Scheduling Investigators to Work on Holidays and the Number of Floating Holidays for Investigators; Investigator's Extra Floating Holidays; and Salary. On the other hand, the Arbitrator has concluded that the Association's proposal is more reasonable with respect to the issue of Retroactive Payment of Wages and Benefits.

As apparent from the above summary, the Arbitrator believes that, as to the substantial majority of these issues and in terms of the statutory criteria, the evidence

and arguments more strongly support selection of the County's final offer than that of the Association. Moreover, the issues on which the Arbitrator has found the County's proposals the more reasonable include those which the parties themselves have regarded as most significant, in particular salary and working hours. Thus, even had the Arbitrator's decision been otherwise as to one or another strongly-contested issue, such as Retirement Contributions, the weight of the findings, in the Arbitrator's opinion, would still on balance be more supportive of the County's proposal.

Consequently, the Arbitrator concludes that the County's final offer is overall more in accord with the statutory criteria than is the Association's and that it therefore should be selected.

AWARD

Based upon the statutory criteria contained in Section 111.77, the evidence and arguments of the parties, and for the reasons discussed above, the Arbitrator selects the final offer of the County, and directs that it, along with all already agreed upon items, and those terms of the predecessor Collective Bargaining Agreement which remain unchanged, be incorporated into the parties 1993-1994 collective bargaining agreement.

Richard B. Bilder

Madison, Wisconsin
June 7, 1994

Richard B. Bilder
Arbitrator