STATE OF WISCONSIN

BEFORE THE ARBITRATOR

In the Matter of the Petition of WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LEER DIVISION For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of DOUGLAS COUNTY (SHERIFF'S DEPARTMENT)	Case 200 No. 50324 MIA-1869 Decision No. 28342-A

Appearances:

Wisconsin Professional Police Association by Richard T. Little and Gary Gravesen, Bargaining Consultants.
Douglas County by John Mulder, Personnel Director.

ARBITRATION AWARD

The Douglas County Deputy Sheriff's Association consists of 35 regular full-time and part-time law enforcement personnel having the powers of arrest in the employ of Douglas County, excluding the sheriff, undersheriff and chief matron. The parties have been unable to agree upon the terms to be included in their contract for the period January 1, 1994 through December 31, 1995. A representative of the Wisconsin Employment Relations Commission met with the parties on April 20, 1994 in an effort to mediate the dispute. The investigator reported that an impasse existed. The undersigned was selected by the parties and was appointed by the Commission to enter a final and binding award pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act by order dated April 5, 1995. After proper notice,

the arbitration hearing was conducted at Superior, Wisconsin, on June 5, 1995. Both parties presented evidence on the record which, except for the delayed filing of corrected exhibits, was closed at the conclusion of the hearing. The parties' initial briefs were exchanged through the arbitrator on July 17, 1995. Reply briefs were exchanged on August 2, 1995, through the Arbitrator.

ISSUES IN DISPUTE

There are three principal differences in the two offers. The first relates to wages. The County has offered a 3% increase compared to the Union's 3.5% requested increase during calendar year 1994. The County has offered 2.5% effective January 1, 1995 compared to the Union's request for a 2% increase on each January 1, 1995 and July 1, 1995. The Union's wage offer would cost either an additional $9,955 (Employer's Exhibits 21 and 22) or $15,089 (Association's Exhibits 33-41). The Association's offer would also result in 2% greater lift than the County's offer over the two year contract period. The second difference arises out of the Union's request for the creation of a Voluntary Employee Beneficiary Association (VEBA) in order "to fund post severance of employment health care." The final difference relates to a new flexible benefit plan. Both parties' offers contain provisions for this new benefit, however, logistics relating to the new benefit are different under the respective offers. The differences relating to VEBA and the Flexible Benefit Plans are outlined in the discussion which follows.

THE UNION'S POSITION

The Association argued that statutory criteria support its offer as the more reasonable of the two offers in this proceeding. It then reviewed those criteria in the following manner. It noted that as far as the lawful authority of the employer is concerned, the only issue may be the Association's proposed creation of a Voluntary Employee Beneficiary Association (VEBA). It said that the evidence shows that a VEBA permits employees to set aside pre-tax funds for the purpose of supplementing post-separation health benefits. Other evidence provides documentation that the proposed VEBA meets federal guidelines. The Employer has not suggested that the proposed VEBA creates legal problems or that it does not have the authority to meet the Union's offer. "Accordingly, this criterion should not affect the arbitrator's decision." The Association said that the tentative agreements in this proceeding are of a "housekeeping" nature. Neither party provided any cost analysis of these issues. The tentative agreements should not affect the outcome of this proceeding.

The Union said that its offer will best serve the interest and welfare of the public in Douglas County, because, it would maintain morale with fair and equitable wages. It will not be possible to retain the best and most qualified officers with the Employer's proposal for substandard wage increases. It said that it is important that overall working conditions such as fair

salary, fringe benefits, steady work, morale and unit pride are of equal importance. The Union said that the importance of morale and pride in one's unit is magnified for law enforcement officers who work side by side with officers of other departments. It cited Elkouri and Elkouri:

> "in many cases strong reason exists for using the prevailing practice of the same class of employer within locality or the area for the comparison. Employees are sure to compare their lot with that of other employees doing similar work in the area; it is important that no sense of grievance be thereby created."

The Union argued that pride and morale are particularly important because of the unique circumstances of law enforcement work. Police and sheriffs' departments provide services 24 hours a day, 365 days a year. Officers must be physically and mentally ready to perform tasks every time the uniform is worn. The officers' "capabilities must be elevated to the highest degree possible through good health and the maintenance of his/her professional bearing."

The Association said that comparisons between officers in this unit with law enforcement officers employed by police and sheriffs' departments in surrounding communities are "the most significant factors in these proceedings." The Association is not attempting to obtain the highest pay. It is only attempting to maintain the wage relationship that has been established with comparable departments. It said that comparable departments had received wage adjustments averaging 7% over 1994-95, compared to

the Employer's offer of 5.5%. It argued that morale and pride "cannot be affected in a positive manner by such an offer, and reason dictates that the interests and welfare of the public will be similarly affected."

The Association said that its proposed VEBA would allow the employees to bank pre-tax dollars which would "save the Employer FICA taxes that would have normally been paid on these funds. ... Additionally, quite unlike the Employer's proposed flexible benefit plan, the Association proposes a plan that contains no associated administration expenses." It pointed to an exhibit that showed administrative savings of $9,239 and FICA savings of $6,575 and argued that its offer would have a lower dollar impact than the Employer's final offer. "The public will benefit by a reduction in operating costs for every dollar an employee elects to contribute as long as the VEBA is in place."

The Association reviewed the criteria relating to the Employer's financial ability to meet the Union's offer. The Employer has not alleged that it does not have the resources to fund either of the offers. Both offers will produce an identical financial impact. "Thus, inability to pay is not a factor and need not be addressed further."

The Union said that other sheriffs' departments in the northwestern counties of Barron, Polk, Ashland, Price, Rusk, Sawyer, Bayfield, Washburn and Burnett and the City of Superior's Police Department should be considered as external comparables in this proceeding. It noted that in two previous decisions

involving these parties, only Polk and Barron counties and the City of Superior were considered primary comparables. In another case, the arbitrator found that since Superior does not have a jail classification, it was a secondary comparable. It argued that many arbitrators recognize that if municipalities are substantially equal in population, geographic proximity, mean incomes, overall municipal budgets, compliments of personnel, and wages and benefits, they are comparable. It referenced its exhibits and argued that its proposed list of comparables met these criteria. It said that the Union did not object to the Employer's proposed comparables because they mirror the Association's list. However, "the Employer's list is simply too meager to draw valid conclusions from." It said that the staffing levels in the Employer's comparables are proportionately smaller and in some cases, one-forth the size of Douglas County. It argued that the arbitrator should use the Union's comparables because they best depict law enforcement comparables in northwestern Wisconsin.

The Association said that in 1989, Douglas County Sheriff's wage rates ranked third among those comparables. Those wages fell to fourth in 1991. Douglas County's wages will remain in fourth place under either of the final offers in this proceeding. The Association's offer of a 3.5% increase in 1994 produces .43% less lift and .25% less dollar impact than comparable districts received. The County's 3% first year offer would produce "a lift in base wages .93% and a dollar impact .75% below the average of

those same comparables during the same time period." For 1995, the Union's proposal for two 2% increases would produce "a .96% increase above the average lift, however, the split increase accomplishes this at a .13% above average cost." The County's offer of 2.5% for 1995 would result in "a lift in base wages .63% and a dollar impact of .42% that again falls below the average of those same comparables." The Association said that there has been no justifiable reason for the Employer's "substandard wage proposals."

The Union said that while the issue of wages is important, it is not a stand alone item. It noted that both of the parties had proposed "the inclusion of a Flexible Benefits Plan and that the Association also proposes the inclusion of the VEBA." It said that arbitrators in Wisconsin have held "that the burden of proof in making a change in contractual benefits must include the issue of comparability." The Union said that it had provided only limited data to support its proposed Flexible Benefit Plan while the Employer provided no external comparisons to support its proposal. The primary difference between the plans is the administration fee. "Under the plan proposed by the Association, there are no fees." It said that all costs for administering the VEBA are charged to the participants. Every dollar contributed to the VEBA will save the employer FICA taxes that would have to be paid if the employees received the contribution as a cash benefit. It recounted that the potential FICA tax savings is $6,575 to the Employer. The employees will also be able to

realize tax savings by using pre-tax dollars for health care expenses. "There can be no legitimate or compelling reason for the Employer to argue that the benefits proposed by the Association should not be included in the successor agreement."

The Association said that it is apparent that the Employer will contend that an internal pattern of settlements supports the Employer's offer. The Union said it recognized that arbitrators have given weight to internal comparables. It argued that recent arbitral opinion and the facts of this case dictate that internal comparables should be given limited weight. The Association cited a decision in which Arbitrator Bellman said that "placing a very high value on uniformity subordinates the public policy that justifies the units desire for simplicity." It also cited Arbitrator Fleischli's Portage County (Sheriff's Department), Case 73, No. 41434 MIA-1366

> Logically, there is a sound basis for comparing law enforcement personnel with other law enforcement personnel. Not only is the nature of their work significantly different than that which is performed by blue collar and white collar employees in the same community, a separate statutory procedure exists, and has existed for many years, for the establishment of their wages, hours and working conditions.

The Union argued that there is no evidence that internal comparisons have historically been important in establishing settlements with this bargaining unit. It said that the "majority of suggested internal comparables were not voluntary settlements, but were in fact arbitrated agreements and should be given no weight." It said no internal comparable offered a

program which would generate potential savings." (VEBA) This factor alone should further differentiate the law enforcement unit from the other internal comparables."

The Association said that comparisons with cost of living increases support the Union's offer. It cited a prior decision in which an arbitrator had found that "the patterns of settlements among comparable employees experiencing the same cost of living increases should be the determining factor in this dispute." It argued that based upon comparable settlements, the offers in this case "should approximate a 4% increase not 3 or 3 1/2 percent. The Union also reviewed Consumer Price Index data for non-metro areas. It said that CPI increases have been "above the 3% mark since the beginning of 1995 and above 3 1/2% for the three 1995 reported months prior to hearing." It said that costing data showed that the two offers are less than 1/2% apart for each of the two years covered by the proposed agreement. It argued that when savings generated by VEBA are considered, "the cost of the Association's final offer will be below the cost of the Employer's offer."

The Union concluded by stating that other statutory criteria are not relevant to the decision in this proceeding. It argued that, based upon the relevant criteria, the Association's offer must be considered the most reasonable proposal before the arbitrator.

THE COUNTY'S POSITION

The County said that it considered the following statutory criteria most germane in this case, to-wit:

1. The interest and welfare of the public and the financial ability of the unit of government to meet these costs.

2. Comparison of wages, hours and conditions of employment of the employes involved in the arbitration proceedings with the wages, hours and conditions of employment with other employees generally:

   A. In public employment in comparable communities.

   B. In private employment in comparable communities.

3. The average consumer prices for goods and services, commonly known as the cost-of-living.

4. 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.

5. 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.

The County said that "the internal settlement pattern should be given the greatest weight in this particular case." It argued, and cited arbitral authority, that "the internal pattern is more important than any single other criteria." The Employer said that it had reached voluntary settlements which make up 46%

of its unionized work force for 1994-95. Those settlements were for 3% in 1994 and 2.5% in 1995. It said that it had reached a tentative agreement with Health Department Nurses for 2.5% in 1995. The County said that it had prevailed in arbitration proceedings with three other unionized units. "Each of these three units received the same package relative to wages as the employees represented by Unions which reached a voluntary settlement with the County." The County reviewed a series of previous arbitration decisions in which arbitrators had found that, "where there is a pattern of wage level changes (increases), and a pattern of benefits, deserves great weight" (Vernon); "such concept of internal equity is a primary factor affecting the bargaining process on all terms and conditions of employment, but especially significant in the wage and benefit area" (Boyer); "...the arbitrator is satisfied that the interest and welfare of the public requires that the award fall in line with the pattern of increases agreed to by the Employer's other bargaining units (Rice); "an award which runs contrary to the pattern, can and most often is, most destructive to the collective bargaining process (Malamud)." The Employer said that it has been its goal to provide equity wage increases among it bargaining units. "This is best done by adhering to an internal settlement pattern-absent some glaring inequities." It argued that, if the Union's award is accepted in this proceeding, it would send the wrong message to other employee units.

The County said that it has historically maintained a pattern of internally consistent wage adjustments among its 7 bargaining units, and pointed to an exhibit to support that statement. It cited additional arbitral authority that "it is well established that where an internal pattern exists it deserves great deference, particularly where such a pattern has been historically observed."

The County anticipated Union arguments that comparisons with other law enforcement agencies should be primary. It said this argument should be rejected because differences in job responsibilities are reflected in wage relationships between the Employer on one hand and employee units on the other hand. If wage settlements are a protection against inflation, "would not all employees of Douglas County want the same protection since they share the same local economic conditions."

The Employer cited a prior arbitration decision supporting "the arbitral school that holds that cost of living factors should not be controlling in the face of strong and clear cut settlement pattern." It said that CPI exhibits established that consumer prices had increased at between 2.5% and 2.61% compared to the County's 3% offer for 1994. Those increases are "right around" the County's 1995 offer of 2.5%. It said these numbers favor the County's offer or "should be given little weight due to the internal settlement pattern."

The County said that it had used Ashland, Bayfield, Burnett, Sawyer and Washburn counties as external comparables because they

"have been consistently used in the past during bargaining and established by past arbitrators involving Douglas County." It said that the other counties recommended by the Union lacked geographic proximity, and should be used only as secondary comparables if there is no clear settlement pattern among the primary comparables. The Employer argued that the City of Superior should not be considered comparable. It cited a 1993 decision by Arbitrator Flatten, "the City of Superior has no Jailers and Jailers constitute over a third of the Union's employees. With that much of the work force performing disparate duties, the City of Superior becomes a secondary comparable."

The Employer reviewed wage data presented by both parties. It said there were only slight differences in their numbers caused by differing assumptions about holiday pay and annual hours. It said that the Union's exhibits show that Deputies in Douglas County exceed the average base rate by a minimum of .61¢. It said that "the County also maintains its rank with the exception of Superior." It said that Douglas County's Deputy wage rates were higher than Superior's top patrol position until 1991. The Employer said that there had been no explanation why Superior's top patrol wages increased by 6% between 1990 and 1991, while surrounding counties were settling between 3% and 5%. "The point here is that there was a change in the relationship between Douglas County and the City of Superior but there is no information of why the change occurred." The County argued that, if its offer is selected, Douglas County's Deputies will earn

.61¢ or 4.3% more than the average wage of the Union's proposed comparables. It cited a prior arbitration decision in which Arbitrator Vernon had observed that, "it is difficult to justify a catch-up argument when a bargaining unit finds itself above average."

The County argued that historical wage relationships between Jailers in Douglas County and elsewhere also support its offer. Its offer would result in Douglas County's Jailers receiving $1.43 an hour more than Jailers working for the counties' comparables. It repeated its objection to using the Union's comparables, but noted that the Employer's offer would result in Douglas County's Jailers receiving $1.25 an hour more than the Union's comparables. The Employer anticipated that the Union would argue that percentage increases among comparables were higher than the County's offer and, therefore, support the Union's offer. It responded that "Douglas County already has an above average rate." There is no reason to deviate from the County's internal settlement pattern. It concluded the wage argument by saying that its wage rates are not out of line and it has the ability to retain its employees. It said that the Union had the burden of proof to deviate from the settlement pattern that has been established.

The County said that the flexible benefit plan that was offered in this case contains the same language that has been included in 5 other labor agreements with unions representing other bargaining units. It cited arbitral authority that "the

Employer is better served if there is some degree of uniformity in the provisions that are contained in each of the collective bargaining agreements." It said that the Union's proposal would necessitate duplicative plan documents and administrative work for this unit.

The County noted that the proposed VEBA would require the employer to "contribute $50 per employee along with accumulated sick leave at termination of the employee to a trust for the purpose of health care expenses after retirement." The County argued that no other county that it considered comparable to Douglas County had a VEBA program. Only two other counties and the City of Superior of the Union's 13 comparables have the program. It cited a prior arbitrator, "arbitrators have demonstrated a disinclination to award provisions of the labor agreement that do not have substantial precedence in the labor agreements which are used for comparables."

The Employer said that it found a number of items in the proposed VEBA to be objectionable. Examples are requirements that the County enter into an agreement with the administrator without being able to negotiate the terms of agreement and a prohibition from the County disclosing the terms of the Trust Agreement to any third party. It said that new benefits, especially one this complicated, should be worked out in collective bargaining. It cited a series of prior decisions including one in which Arbitrator Nielsen had said that, "Arbitration is generally not an appropriate vehicle for

innovation. Major changes should, instead, result from voluntary collective bargaining."

The Employer said that its existing policy for post severance payment of accumulated sick leave to the members of this unit is consistent with its policy for the County's other bargaining units. It is, however, even more generous because there is no 120 day cap on the benefit if the Sheriffs' Department employees elect to use the accumulated benefit for the payment of health insurance premiums.

The County pointed to an exhibit which showed that among the County's comparables, only one permits its employees to convert accumulated sick leave for health insurance benefits. All of the other comparables cap the payout at a considerably shorter period of time than Douglas County. The County argued that for the foregoing reasons, its offer should be deemed the most reasonable.

REPLY BRIEFS

The Union said that the County had relied almost completely upon internal comparisons to support its offer. It said that the County's testimony established that there had been some wage adjustments above the pattern of internal settlements "based upon prevalent market conditions. There is no mention of these adjustments in the Employers written arguments or exhibits." It argued that since the market analysis for these adjustments could not have come from other internal units, it must have come from

external comparisons. It categorized the Employer's position "as the internal pattern is absolute, unless otherwise convenient."

The Association said that "the Voluntary Employee Benefit Association is created expressly for collectively bargained units of state and local governments and their political subdivisions." The parties' contract already permits these employees to convert their accumulated sick leave for the purchase of health insurance, therefore, "VEBA cannot be considered a new benefit, but, the refinement of an existing benefit through the reduction of financial liability and associated costs." It said that this contract will expire on December 31, 1995. "Yet, only now does the Employer question the legality, or more appropriately the content of the VEBA." The Union noted that the nondisclosure language in the proposed VEBA participation agreement is "subject to the same standards and statutory constraints as any similar document." It said that VEBA would not pose any additional cost to the County. The cost of VEBA would be deducted from employee wages at no cost to the County.

The County said that the Association's argument that its offer will maintain morale ignores the effect that an award which breaks the pattern of internal settlements would have on the rest of Douglas County's employees. It said that the Union had relied upon its comparison of percentage increases granted to external comparables. It argued that the percentage increases are not as important as the amount of the actual wage paid. Douglas County's wages are considerably above the average of comparables.

The Employer argued that the Union had failed to justify the need for awarding the VEBA as an additional benefit through the arbitration process. It argued that the post retirement health insurance benefit received by these employees is more favorable than the benefit received by any comparable employee.

The County reiterated its previous arguments that internal settlements have historically been an important factor in salary negotiations between these parties. It cited a series of prior decisions, including one by the undersigned, in which internal settlement patterns were accorded great weight. It responded to the Union's argument that arbitrated settlements should not be considered, by saying those decisions should be considered because they reflect what a neutral third party determines to be reasonable.

DISCUSSION

EXTERNAL COMPARABLES - It appears that both parties have attempted to finesse their choice of proposed comparables. The Union noted that in two previous decisions involving these parties, only Polk County, Barron County and the City of Superior were considered primary comparables. It also noted that in 1993, Arbitrator Flaten found that Superior was not a primary comparable. Notwithstanding, the Association suggested that the nine other counties in the northwest corner of the state and the City of Superior should be considered primary comparables in this proceeding. It introduced some evidence which tends to support its position, however, it neglected to present data relating to

equalized valuations, mill rate levies and per capita income. This latter data has been considered necessary information for arbitrators to consider in determining comparability.

The Employer suggested that Ashland, Bayfield, Burnett, Sawyer and Washburn counties are appropriate because they have consistently been used by arbitrators involving Douglas County. It did not assert that these counties have been found comparable in bargaining or arbitrations involving the Douglas County Sheriff's Department. The Employer did not present any data to support its proposed comparables.

It appears that these parties were able to negotiate their agreements between 1985 and 1992. They went to arbitration in 1993. Except for Arbitrator Flaten's determination that Superior was not a primary comparable, the record in this case does not indicate what decision, if any, Arbitrator Flaten made about comparability in that 1993 proceeding. The record in this proceeding is not adequate to support a finding of comparability for the parties to rely upon in future negotiations. All of the data presented by both parties relating to external settlements has been considered in this proceeding. The amount of weight accorded to that data is discussed below.

WAGE OFFERS - An analysis of the wage data presented for the two sets of external comparables is as follows. According to Association exhibit #33, fourteen members of this unit are Deputy Sheriffs. Among the Association's nine proposed comparables, excluding Superior, the top hourly wage paid to Deputies at the

end of 1993 ranged from $11.56 in Price County to $14.70 in Polk County. The average hourly wage for top Deputies was $12.98 an hour compared to $13.88 in Douglas County. In 1994, that average increased to $13.50 an hour compared to the $14.30 and $14.37 offered by the Employer and the Union respectively. The eight other counties that are settled for 1995 will pay an hourly average top Patrol wage of $14.07 compared to the County's $14.65 offer or the Union's $14.95 offer for 1995. Deputy Sheriffs in Douglas County who earned .90¢ an hour more in 1993, would average .80¢ or .87¢ in 1994 and either .58¢ or .88¢ an hour more in 1995 under the offers in this proceeding.

Twelve members of this unit are Jailers. The effect of the two offers on Jailer's wages is mixed. In 1993, the top Jailer's wage was $12.53 an hour in Douglas County compared to $11.20 an hour average in the Union's proposed comparables. Under the County's offer, the $1.33 differential would drop to $1.25 in 1994 and drop further to $1.09 in 1995 when Douglas County Jailers would earn $13.23 an hour compared to an average comparable wage of $12.04 an hour. The Association's offer would result in Jailers' wages that are $1.31 above average in 1994 and $1.45 above the average in 1995 when Douglas County's Jailers would receive $13.49 compared to $12.04 an hour in the Union's comparables. Douglas County would maintain its rank of third in Deputy wages and first in Jailers' wages under either party's offer.

All of the employer's proposed comparables are also included on the list of the Union's proposed comparables. A separate analysis of the data for Washburn, Bayfield, Ashland, Burnett and Sawyer counties, the County's proposed comparables, shows results that are similar to the analysis of the Union's comparables. In 1994, these five counties granted wage increases which averaged close to 4% compared to the 3% and 3.5% offered by the parties in this proceeding. In 1995, the comparables' average Deputy increase was 2.93% and Jailers received an average 3.28% compared to the Association's request for a split 3% and the County's offer of 2.5%.

In 1993, top Patrol Officers in Superior earned $14.26 an hour compared to the $13.88 received by Douglas County's Deputies. Superior's Patrol Officers received $14.68, a 2.95% increase, in 1994. In 1995, they received a 3.54% increase to $15.20 an hour. If the Employer's offer is accepted, the difference between Superior Patrol Officer wages will grow from .38¢ an hour in 1993 to .55¢ an hour in 1995. If the Union's offer is accepted, that difference will be reduced to .25¢ an hour by July 1, 1995.

The review of average wages and average wage increases above is somewhat distorted by the fact that the two counties with consistently higher top Patrol Officer wage scales than Douglas County, also appear to have more strenuous requirements to reach the top Patrol rate. In Douglas County, Deputies reach the top rate in 2.5 years compared to 14 years to attain the top rate in

Polk County. There is evidence that it takes only 1.5 years to reach the top Deputy wage in Bayfield County. However, Bayfield has three wage classifications for Deputy Sheriffs. Only top Deputy salaries have been compared in the wage analysis. There is no evidence of what Bayfield's Deputies have to do in order to become eligible for the top Deputy wage rate. Both of the offers are also very close to the City of Superior's 1994-95 wage settlement with its Police Officers' Unit. However, Arbitrator Flaten noted in August 1993, that because "the City of Superior has no Jailers and Jailers constitute over a third of the Union's employees ... the City of Superior clearly becomes a secondary comparable." No effort was made to show that the City of Superior's Police Officers should be found comparable to Deputy Sheriffs in this proceeding. Very little weight has been given to evidence of the Superior's wage settlement. From the foregoing, it appears that either party's wage offer is reasonable. The Association's offer appears to be most comparable to average wage settlements for 1994 and 1995 in those other counties which have been recommended as comparable by both parties herein.

The Employer has presented evidence that it has maintained a remarkably consistent pattern of internal wage settlements with all of its bargaining units over the past eleven years. Employer Exhibit #13 reflects the percentage wage increases that Douglas County granted to all of its employees for the period 1985-1995. It appears that between 1985 and 1990, there were 12 groups of

employees, eleven of which were represented. Five of the units consisted of nursing home employees. The two nursing homes were sold between 1991 and 1994. All reported wage increases for all employees were equal for the first five years except for some variations in nursing home wage adjustments. There is no evidence of why the nursing home wage adjustments were different than the adjustments received by other Douglas County employees, except for the general statement that the exhibit reflects "general percentage increases which do not include wage adjustments for market conditions."

In 1990, eight Douglas County employee groups including 2 non-represented groups received 3.5% wage increases. Two organized units received 3.25% increases and three represented nursing home units received 3% increases. It appears that the Parkland Nursing Home was sold prior to 1991. That year, there were 10 employee groups; nine of which received 3%-1% split wage increases. Only the Deputies group received 4% in 1991. In 1992, nine of ten units received 3%-1.25% split increases. Only the Health Department varied from the pattern with a 3%-1% split increase. In 1993, all ten employee groups received 3% wage increases. Three of those contracts, including the Deputies', were established through arbitration.

The Mid River Nursing Home was sold by 1994, leaving Douglas County with 7 represented units and a group of non-represented employees. Seven of those employee groups, all except this one, are settled for 1994-1995. Other employees received 3% in 1994

and 2.5% in 1995; three of those contracts were achieved through arbitration. In this instance, the Deputies have requested 3.5% in 1994 and a 2%-2% split increase in 1995. In the event that the Association's offer is accepted in this proceeding, members of this bargaining unit would receive a 1/2% greater wage increases in each 1994 and 1995 than other county employees have received. They will also have achieved a 2% greater lift over the term of the contract.

The foregoing appears to contradict the Association's assertion "that there is no evidence that internal comparisons have historically been important in establishing settlements with this bargaining unit." There is merit to the Union's argument that arbitrated agreements for 1994-1995 should not be given the same weight as voluntary settlements in assessing the pattern of settlements. Those arbitration decisions are very significant in other ways. First, in each of those three instances, the Employer kept its final wage offer identical with wage offers that resulted in voluntary agreements. Second, three different arbitrators in separate decisions noted the significance of the comparable internal pattern. The Association has not presented convincing evidence to distinguish the employees in this bargaining unit from other Douglas County employees who either negotiated or otherwise received wage increases identical to the Employer's offer in this case. The Employer's wage offer is preferred on the basis of internal comparisons.

Both parties introduced consumer price index and cost of living information into the record. Those raw numbers provide very marginal support for the cost of the Association's wage offer over the two year term of this contract. However, that data does not support the 7% lift that would result if the Union's offer is accepted. The most impressive cost of living comparison in this instance is with those other Douglas County employees who have either negotiated or been awarded wage increases identical to the Employer's offer in this proceeding.

VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION - If the undersigned understands the Association's VEBA proposal, it appears to be a very good idea. The undersigned understood that each employee would be required to make an initial $50.00 contribution to a trustee in order to set up the plan. Employees would also be required to contribute $50.00 a year to the plan until their retirement. Upon retirement, the employees could elect to transfer any amount up to 100% of the cash value of their accumulated sick leave benefits to the employees' separate trust. Thereafter, the trust would be available to provide benefits which qualified under IRS Sec. 501(c)(9), including the payment of post retirement health insurance premiums. The County assumed that it would be held responsible to make payments to the plan up to the time that the employees retired. Employer exhibit #21 shows that the County assumed the first year expense of $1,700 in its cost analysis.

The Association, in its reply brief, argued that the employees would be responsible for start-up costs and that VEBA would not impose any costs upon the County. Neither the Association's final offer nor its exhibits make clear who would be responsible for pre-retirement contributions to the VEBA. After reviewing the arguments and evidence in the record, the undersigned is not certain, if after the initial $50.00 per employee contribution has been made, annual post-retirement contributions to the trust are required.

If the Association's explanation of VEBA is correct, there does not appear to be any downside to the Employer's agreeing to participate in the plan. The proposal is extremely attractive to the members of this bargaining unit, who have valid concerns about being able to obtain and pay for health insurance at the early age that protective service employees face retirement.

Mr. Timothy J. Crossin; a Union witness, presented interesting and competent testimony and exhibits about Voluntary Employee Beneficiary Associations in a global manner. He explained how the movement to obtain tax exempt status for these plans has developed since the late 1980s. Crossin also explained that, based upon IRS private letter rulings, counties and municipalities that participate in these plans can save employer contributions for FICA taxes when employees elect to convert accumulated sick leave benefits to VEBA, for health insurance benefits which are not income under Sec. 501(c)(9) of the Internal Revenue Code. Other Union exhibits showed that 19

different law enforcement units in the State of Wisconsin have established VEBAs. Included in this group are the City of Superior's Police Association and the Price County and Polk County Deputy Sheriffs' Associations. Union exhibit #52 showed that the members of this bargaining unit have accumulated $207,114 in sick leave benefits. That exhibit also, based upon certain assumptions, reflected potential savings to the County from FICA tax liability at $6,575. From the foregoing, it appears that it would be in the best interest of both Douglas County and the members of this bargaining unit for the parties, to create a VEBA.

If the foregoing analysis of VEBA is correct, one can only wonder why the parties have failed to agree upon implementing such a plan. The reasons given by the Employer for not agreeing to VEBA do not appear to be of sufficient magnitude to prevent the parties from achieving an understanding about this subject.

The material introduced in Association's exhibits 54 through 59 is complex. There may have been valid reasons for the parties being unable to resolve their differences over the implementation of VEBA. Such reasons are not set out in the record of this proceeding. The Association's position on Douglas County adopting a Voluntary Employee Beneficiary Association for the members of this bargaining unit, while not supported by comparable comparisons, appears reasonable.

FLEXIBLE BENEFIT PLAN - The disagreement about which parties' proposal for a flexible benefit plan should be adopted

is perplexing because neither party bothered to introduce a copy of their proposed plan. Both parties included a Flexible Benefit Plan in their final offer. Since this is a final offer arbitration proceeding, one of the party's plans will be adopted without the arbitrator ever having seen the plan.

The Association has specified that it prefers a "Colonial 125 Full Flexible Benefits Plan." It argued that this proposal is preferable to the County's proposed plan because "unlike the Employer's proposed flexible benefit plan, the Association proposes a plan that contains no associated administration expenses." That assertion may be correct, however; it seems to promise a "free lunch." Without the opportunity to review the Colonial 125 Plan, and given the Employer's preference for paying the administration cost associated with its proposed plan, one is inclined to be suspicious of the promise of a free lunch.

In support of its proposal, the County said that, "the same language has been included in 5 other labor agreements with Unions representing Douglas County employees." The Union did not dispute the foregoing representation. Since a copy of "the same language " is not in evidence, it is not possible to evaluate the merit of the County's proposal for a flexible benefit plan. It seems probable that less mischief will be done by incorporating the flexible benefit language, which though not in evidence, has been included in five of the Employer's existing contracts than by requiring the Employer to accept a Colonial 125 Plan which is

not in evidence and which has not been embraced by the Employer or any of its other bargaining units.

CONCLUSION - The County has presented convincing evidence that it has maintained a uniform pattern of internal wage settlements over a period of years. It has been successful in maintaining that wage pattern with all of its employees for 1994-95, except for the members of this unit. That pattern is entitled to deference and provides a reasonable basis for an agreed upon wage settlement in this proceeding. The Association has presented evidence that its Deputies and Patrol Officers will experience some erosion in wage levels under both offers in this proceeding. Douglas County's Jailers would experience some wage erosion under the County's offer, the amount they receive above the average wage of comparable would increase marginally under the Union's offer. Douglas County's Deputies and Patrol Officers will maintain their current relative placement (third) in comparison to either party's set of comparables under either offer. Douglas County's Jailers will continue to receive higher wages than Jailers in either party's comparables under either offer. The County's wage offer appears to be most reasonable.

The Union's proposal for VEBA appears reasonable. It is a complex proposal which would impose some administrative responsibilities upon the County. The record in this proceeding does not contain sufficient information about the Association's proposal, specific to this employee group and to this Employer, to permit an analysis of: 1) how much administrative expense and

responsibility would be imposed upon the Employer, or, 2) the amount of the cost/savings to the Employer. The parties should be able to negotiate the adoption of a VEBA. The undersigned does not believe that this program should be imposed upon the employer through arbitration based upon the evidence in the record of this proceeding.

This arbitration decision will result in one of the two flexible benefit plans being awarded. There is nothing in the record to support the award of the Association's proposed plan except for the fact that it will not cost anything. The County's proposal has already been included in agreements with five other unionized bargaining units. The County's offer for this benefit is supported by arbitral preference for the uniformity of benefits among bargaining units.

For the foregoing reasons, the County's offer is preferred and it shall be incorporated into the parties' collective bargaining agreement for 1994-1995.

Dated at Madison, Wisconsin, this 21st day of August, 1995.

John C. Oestreicher
Arbitrator