BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

and

SHEBOYGAN COUNTY
(SHERIFF'S DEPARTMENT)

Case 260
No. 51955
MIA-1942

Decision No. 28476-A

Appearances: Richard T. Little for the Association
Louella Conway for the County

Before: Fredric R. Dichter, Arbitrator

DECISION AND AWARD

On August 8, 1995, the Wisconsin Employment Relations Commission. pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act, appointed Fredric R. Dichter to serve as arbitrator to issue a final and binding award. The matter involves an interest dispute between the Wisconsin Professional Police Association/ LEER Division, hereinafter referred to as the Association and Sheboygan County, hereinafter referred to as the County. A hearing was held on October 3, 1995 at which time the parties presented testimony and exhibits. Following the hearing the parties elected to file briefs and reply briefs. Those briefs have been received by the arbitrator. The arbitrator has reviewed the testimony, exhibits and briefs filed by the parties in reaching his decision.

ISSUES

The parties reached agreement on many of the items to be contained in the successor agreement. The following are the outstanding issues.

The Association:

Wages
3% across the Board increase effective 1/01/95
1% across the Board increase effective 7/01/95
3% across the Board increase effective 1/01/96
1% across the Board increase effective 7/01/96

Insert a new pay step at 60 months equal to a 3% increment above the current highest step.

Increase shift differential to $.30 per hour for second and swing shift and $.35 per hour for third shift.

Pay Periods
Require County to pay employees in 26 equal pay periods.

Health Insurance
Include a "me too" clause in agreement that would extend any improvement in health insurance benefits given to any other bargaining unit to the employees covered by this collective bargaining unit.

Uniform Allowance
Employer to provide uniform for new employees at County expense.
Uniform based upon pre-approved list.
Increase Uniform allowance for current employees to $370 effective 1/01/95 and $400 effective 1/01/96.

Term of Agreement
The Association proposes a two year agreement.

The County:

Wages
3% across the board increase effective 1/01/95
3% across the board increase effective 1/01/96

Add $.50 per hour to top rates for deputies and detectives

Grandfather all employees hired before 1/10/95 under present longevity system.
All employees hired after 1/01/95 shall receive longevity as follows

$10.00 per month after 5 years of service
$20.00 per month after 10 years of service.
$30.00 per month after 15 years of service.

Health Insurance
No "me to" clause added to agreement

Uniform allowance
Increase initial uniform allowance for new employees to $425

Weekend Work
Scheduled weekend work on Saturday only for 1 detective.

Term of the Agreement
The County proposes a two year agreement.

BACKGROUND

Sheboygan County employs approximately 1400 employees. There are 56 employees in the bargaining unit in issue here, of which 46 of those employees are deputies. Ten are detectives.

The County is in interest arbitration with four other bargaining units at this time. Longevity is addressed in the County's offer in each of those units. Those matters are still pending.

STATUTORY CRITERIA

The parties have not established their own procedure for resolving impasse over the terms for a new collective bargaining agreement. They have agreed to binding arbitration under the Municipal Employment Relations Act. Section 111.70(4)(cm)7 provides that an arbitrator consider the following factors in reaching a decision:

a. The lawful authority of the Municipal Employer.
b. Stipulations of the parties.
c. The interests and welfare of the public and the financial

ability of the unit of government to meet the costs of any proposed settlement.
d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services.
e. Comparison of wages, hours, and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
f. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees in the private employment in the same community and in comparable communities.
g. The average consume prices of goods and services commonly known as the cost-of-living.
h. The average compensation presently received by the municipal employees, including direct wage compensation, vacation holidays, and excused time, insurance and pensions, medical and hospitalization benefits, the continuity of stability of employment, and all other benefits.
i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITION OF THE ASSOCIATION

The Association contends that the implementation of the County's proposal on longevity would create a morale problem with the employees. Employees would be working side by side and earning two different wage levels. In police work, it notes, morale is a important factor that would be significantly undermined by the two tier system proposed.

The Association proposes the inclusion of Kenosha County to the list of comparables proposed by the County. The population of Kenosha compares favorably with that of Sheboygan. The crime

statistics and staffing levels are also similar.

The comparables demonstrate that its proposal should be favored. The Deputies would continue to be ranked ninth or tenth, as it has been in each of the last ten years.

The longevity proposal of the County, in addition to its effect on morale, is not justified. Longevity currently exists in the agreement. The County is seeking to change the status quo. Under the County proposal, longevity for a twenty year employee would go from $2888 per year to $360 per year.

The addition of the extra pay step is consistent with the extra step proposed by the County in their agreement with the Social Workers. There is a commonality between social workers and the employees in this unit that justifies this comparison.

The County sought to coordinate the health insurance provided to all employees. It promised to offer the same benefits and contributions to the employees in this bargaining unit as it did to others. It is now trying to renege on that promise. When discussing health insurance, internal comparables are to be given great weight. That weight justifies the inclusion, under the facts of this case, of the "me too" clause.

The County proposal for Saturday work is vague. It should not be considered by the arbitrator. There is an unresolved question whether employees will receive compensatory time at time and one-half or be given an alternate day off, instead. There is also confusion over who would work on Sunday if needed. These ambiguities flaw the County's proposal.

There is no consistency in the amount of pay that employees receive. Employees work 6 days on and three off. Consequently, the amount of days worked in a pay cycle varies, "causing feast or famine." Employees are unable to budget their funds to cover their expenses. Programming twenty-six equal paychecks is feasible. It is not as costly to implement as alleged by the County.

The cost of clothing has increased over the years. The proposed Association increase for current employees is modest. The full clothing allowance is not used by every employee, thus diminishing the cost of this proposal. The proposal for new employees is also warranted. New employees are faced with a great financial burden in obtaining the necessary uniforms, and have to pay a good deal of that money from their own pocket. The cost of this proposal is minimal. There were no new hires in 1995, and there will be no more than 3 new hires in 1996. Finally, the County's assessment as to the number of shirts needed for a new officer is in error. Three shirts is not too many, and the two shirts suggested by the County is unreasonable given the 6 day work schedule that employees are required to work.

POSITION OF THE COUNTY

The tax levy on residents of the County is the third highest on the list of comparables. Residents should not be asked to pay more to support the law enforcement personnel.

Kenosha County should not be included in the list of comparable. Of the agreed upon nine comparables, the start rate for the County is higher than that of five other counties, and similar

to one other. The time to reach the top rate is less than that of the other Counties.

The cost of the Association proposal for an additional 3% step at 60 months is approximately equal to the cost of the County proposal to add $.50 to the top step, except that employees would receive the benefit of the County's proposal at 18 months. Most employees would gain a benefit from the County proposal during the term of the agreement. They would not under the Association's.

Employees currently receive a longevity increase after 5 years of service equal two and one-half per cent of their base pay. The inclusion of the extra step at 60 months proposed by the Association gives employees a "double bump."

The employer proposal is in line with the increase of the CPI during 1994 and 1995. It is comparable to raises contained in Union agreements during 1994 in the private and public sector. The total roll-up cost to the County under the County's proposal is over 8% for 1995. It is in line with other settlements for 1996.

The County offered to employees in the bargaining unit the same health insurance benefit offered to the other County employees. The employees in this bargaining unit were paying 5% of the premiums. They were given the option to pay $5 for single coverage and $10 for family coverage. This was all that was agreed to by the County. It never agreed, and it is not justifiable for the Association to automatically be given any increase obtained by any other bargaining unit.

The shift differential proposed by the Association is higher

than that of any of the comparable communities. The increase in cost would be in excess of $6000 per year.

The Association seeks to have the County provide full uniforms to each new employee. This would cost an additional $1200 per new employee over the County's offer. Two new employees are expected to be hired in 1996. The County offer to increase the uniform allowance for new employees to $425 is above all but one of the comparables. The Association wishes the County to provide body armor as part of the uniform for new employees. No other comparable employer provides it.

The County would have to hire a new employee to implement the Association's proposal for 26 equal pay periods. The cost would be over $32,000 to implement the proposal. The County would also have to revert to a manual system.

The County proposal for Saturday work is not a cost factor. Currently one detective is scheduled to work Saturday and Sunday. Under the County proposal, Sunday would be eliminated. This would give employees more time off. Employees would receive compensatory time off for Saturday. The change in schedule enhances productivity.

The County has proposed a change in longevity for all units in arbitration. Longevity has been discontinued for non-represented employees. The flat dollar rate proposed here was implemented for them. The County has tried to change the present system in previous negotiations. The current plan is more generous than any other longevity system. It costs the County an additional $13,000 for

1995 and over $16,000 more for 1996. The total longevity cost for all County employees is over $1 million per year. Its attempts to change longevity in arbitration in the past failed because it offered too little. Here its proposal to increase the top pay by $.50 and to grand-father current employees is a sufficient quid pro quo to justify the change. The proposal meets the criteria for changing existing language.

DISCUSSION

Some of the criteria set forth in Section 111.70 the parties either specifically agreed were not applicable or simply did not raise. The lawful authority of the Employer, stipulations of the parties, ability of the employer to pay and any changes in circumstance since the arbitration hearing all fall into those categories, and for that reason, will not be addressed during this discussion. The remaining factors set forth in Sec. 111.77(6) will be discussed as they apply to the outstanding issues.

WAGES AND LONGEVITY

Both the Association and the County have proposed 3% increases on January 1 1995 and January 1, 1996. The Association is also proposing a 1% increase on July 1, 1995 and July 1, 1996, and an additional pay step for employees that have been employed for 60 months. The step would be 3% above the pay of the previous step. Currently, the top step is reached after 18 months. As noted, the County has proposed an additional $.50 be added to the 18 month step. They do not propose any additional steps. They do seek to end

the current longevity system for new employees. Presently, longevity is as follows:

5 years	2 1/2%
10 years	5 %
15 years	7 1/2%
20 years	10 %
25 years	12 1/2%

The County proposes to grandfather all current employees and to provide longevity to new employees as follows:

5 years	$10 per month
10 years	$20 per month
15 years	$30 per month

It should be noted at the outset of this discussion that both parties acknowledge that the cost of their respective wage proposals is almost identical, The $.50 per hour increase proposed by the County for all employees employed for 36 months together with its proposal for a 3% increase is approximately equal to the Association's proposal for an additional step and a 3% and 1% wage increase. In 1995, the employer's offer costs slightly more than that of the Association. In 1996, the Association's is slightly greater. That might help explain why ability to pay has not been raised by either side as a factor to be considered by this arbitrator.

This arbitrator's duty is to compare the respective proposals. In order to truly compare the proposals of the parties, it is first necessary to ascertain what is being compared. There is an intimate connection between the wage proposals of the parties and their longevity proposals. As was noted, if base wage were considered alone, there would be little difference in accepting one proposal

over another. Base wages, however, cannot be segregated from the parties longevity proposals. The County offer of $.50 is made as a quid pro quo to the modification of longevity. Both are important components of base wage. The arbitrator notes that this interrelationship between wages and longevity is consistent with the County's own past understanding of longevity payments. In 1981 the County sought to eliminate longevity. It passed a resolution to that effect. In their resolution it discussed why longevity was offered in the first place. Resolution No. 9 from 1981 (Employer Exhibit 50) states that "Whereas many year ago Sheboygan County adopted an employees' longevity wage plan, both as an inducement for making employment with the County a career and as a supplement to pay, as Sheboygan County's wage policies were modest by comparison to the private sector." As can be seen, the Board of Supervisors recognized this same correlation between wages and longevity that this arbitrator has found. Therefore, in order to evaluate the parties proposals, I must look at these components together.

Interests and Welfare of the Public

The Association maintains that a two-tier wage system adversely impacts upon morale. The County Sheriff testified in support of this contention. The Association emphasizes that two employees could be working side by side, but each receiving different wages. This causes problems among those employees. The County disagrees. It notes that employees already receive different rates based upon length of service. In addition, it states during

the term of this agreement no one will be adversely affected by its the new longevity system.

The Association position is true to a degree. There can be some dissention in the future once new employees reach the first longevity step. There would probably even be dissention after these employees are hired, when they learn that longevity was changed immediately preceding their hire. Therefore, I conclude that this factor does favor the Association's proposal, although I do not consider this factor as significant as the other factors that will be discussed below.

Comparison of Wages

The list of comparable Counties suggested by the parties is identical with one exception. The Association proposes the inclusion of Kenosha County. It argues that the population and crime statistics for Kenosha is comparable to that of Sheboygan County.

Arbitrators have considered such factors as population, proximity, mean income, budget, number of employees and total wage and fringe benefits when deciding upon the appropriateness of a particular comparable. The past history of the parties is highly significant. In reviewing the past arbitration decisions provided to this arbitrator, there does not seem to be a clear pattern. The comparables vary from decision to decision. Some decisions do not include Kenosha, others do. Arbitrator Petrie did.(Employer Exhibit 28). He found that the comparables included those counties "historically utilized by the parties in the past," and that

Kenosha fell within that category. Arbitrator Stern (Employer Exhibit 27) did not include Kenosha. His decision involved the same law enforcement personnel as are involved here, although represented by a different labor organization. In his case, there were differences in the proposed comparables. Decisions were cited by the parties pointing in different directions. He emphasized that "the relevant comparable should continue to be those that the parties have agree upon and which have been accepted by the parties because of past arbitration awards." He had no specific information as to why certain counties were included in some cases, and not in others. For that reason, he excluded the disputed Counties, including Kenosha. The parties here have agreed upon 9 comparable Counties. For the same reason that Kenosha was excluded by Arbitrator Stern, I shall exclude it. I find it also significant that Kenosha is separated by several counties from Sheboygan and from the nearest other comparable. Thus, it also fails to meet the proximity test.

The County correctly notes that the starting wage for employees in the bargaining unit is exactly in the middle of the comparable counties. The Association correctly notes that the top rates for Sheboygan rank near the bottom, and that it has fallen throughout the years. Association Exhibit 36 demonstrates that the average top wage for the 9 other counties is $16.28 (Kenosha was excluded from the calculation). The top wage for Sheboygan was $14.81. For 1995, not all Counties have finalized rates. Exhibit 37 shows the estimated average to be $16.93. Under the County

proposal, the top wage would be $15.77, and under the Association proposal it would be $15.87. This would still place Sheboygan's top rate above only one other County. When one looks at longevity, an opposite result is reached. Sheboygan is clearly at the top of the comparables. No other County pays longevity as a percentage of base wage. Some do not have any longevity payments. The highest among those that do is just over $30 per month. Computed on a monthly basis, assuming the normal work hours in a month, Sheboygan's most senior employees in the bargaining unit receives over $320 per month. (Association Exhibit 46.) Thus, it can be seen that as Sheboygan argues, its plan is second to none. The County proposes to change longevity to a maximum of $30 per month after 15 years of service. That proposal would still place Sheboygan at the top of longevity for all employees with fifteen years of service. It would only be behind one comparable for possible maximum longevity that could be earned by any employee.

Both parties agree that the burden is upon the party that seeks to change current language to justify that change. The County sets forth four issues that must be addressed by the arbitrator when confronted with a proposal like that made by the County. Is there a demonstrated need for the change? The degree to which the proposal meets that need? Is there support in the comparables? What is the nature of the quid pro quo offered? All four elements must be present to justify the change. The County argues that the mere fact that its program is the richest in the State demonstrates that there is a need for the change. A review of the comparables, it

notes, supports the change. The quid pro quo it emphasizes comes in two forms. First, all current employees are grandfathered under the present system. Secondly, it has proposed adding $.50 to the top rate. This proposal it contends meets all four tests.

In analyzing the factors required by Statute, I have already stated that because of the interconnection between longevity and wages that I have combined these items in this analysis. Longevity is added to base wage. Therefore, in reviewing the wages paid by Sheboygan with that of other Counties, I must compare the overall wage that it pays with the overall wage paid by the comparables. Where does this place Sheboygan under the parties respective proposals?

In its reply brief, the Association points out that the total average longevity payments for employees calculated on an hourly basis is equal to $.76 per hour, which when added to base wage is still below the average wage of the comparables. This arbitrator has reviewed the seniority lists provided by the parties and calculated that by December 31, 1996 the average longevity percentage earned by members of the bargaining unit, assuming no change in employee makeup, would be 5.8%, or approximately $.92. If this amount is added to the base wage for 1995 and 1996, this would put Sheboygan just below the average base wage for the comparable Counties. The average longevity for the nine counties must then be added to their average base wage. Longevity for the 9 Counties averages approximately $.05 per hour. Thus the average wage for the nine counties with longevity included for 1995 is just under $17

and is approximately $17.50 for 1996. Sheboygan's wage with longevity would be approximately $16.80 under the Association proposal and $16.70 under the County's. As shown, this is under the average, although it does place them near the average of the comparables.

In doing this analysis I have used the average longevity of 5.8%, and not the maximum 12 1/2%. I do this for several reasons. First, most employees are not at the maximum. As of the end of this contract, there are only ten employees that would be at that level, assuming that all ten stay with the County for two more years. Secondly, it takes 20 years to move to 10% and 25 years to move to 12 1/2%. According to Employer exhibit 22, the maximum time for an employee of any of the comparable Counties to reach the top of their pay scale is 54 months. While these Counties longevity does increase after 15 years, longevity is just not a significant portion of their wage package. Most of their wage payments are in the form of base wages. Using five years as a comparison is in keeping with the length of time required for employees of those communities to reach the maximum, and in keeping with the actual longevity for this bargaining unit.

It is the above analysis that causes me to conclude that this statutory criteria favors the Association's proposal. Even with the remarkable longevity program offered, the total wages paid by the County to its law enforcement personnel is still in line with that paid by other comparable counties. It is not at the top, but just below the average. If I were to adopt the County's final offer, and

were to apply longevity in the future as they propose the employees with five years of service five years from now would be near the bottom of the list. Contrary to the Association's contention, they are not there now. When the longevity proposal of the County is considered, that proposal provides much too great a drop in the rankings within the comparable communities to be justified. The County has asserted that it has offered a quid pro quo for its proposal. That quid pro quo is a $.50 addition to the top step. I find that this is not a sufficient quid pro quo. A quid pro quo should leave the employees in relatively the same status as they were before the proposed change. Dropping the average wage from the middle to the bottom does not do that. On the other hand, the Association's proposal will maintain that status quo.

Cost of Living and Tax Levy

The County has presented evidence concerning the cost of living increases in 1994 and 1995. It notes that its 3% offer is more than the cost of living rose during this time frame. Were there a disparity in the proposals of the County and the Association, this factor would come into play. Where the total cost of the proposals is equal this clearly is not a significant factor. The cost to the County for 1995 is more under the Employer's proposal. It is slightly less for 1996. Since both offers exceed COLA by the same amount, it is difficult to find that this factor has relevance to the ultimate determination here. It is true that if one only looked at the percentage increase offered by the parties, and nothing more, the County's proposal would be

consistent with COLA. However, as was discussed in detail above, a single component of the wage proposal cannot be singled out. The entire effect on overall wages must be analyzed. That analysis indicates that the total proposals are sufficiently similar in cost to negate COLA as a factor here.

The County also argues that its tax levy is among the highest, and that this factor lends support to its proposal. For the same reason that COLA plays no part in the evaluation, this argument also must be rejected. Neither proposal affects the tax levy or conversely, they effect it in the exact same way. In either event, the conclusion is the same.

Summary of analysis

As noted, many of the factors that must be considered by the arbitrator are not relevant given the similarity of the costs of the proposals. Both proposals are in line with the average percentage increases for the comparables. In doing my analysis, I compared the entire wage packages of both parties. There are portions of the County's wage proposal that would be chosen if they could be taken alone. The arbitrator recognizes that there is merit to the County's argument that the Association's new step together with longevity gives employees a "double bump," although that would also be true to some extent for current employees under the County's proposal. Were it possible to separately chose from each component of the wage proposals of the parties, perhaps some of the potential unfairness of this situation could be tempered. Unfortunately, it is simply not permissible to do so. Consequently,

I find that a review of all of the statutory factors causes me to favor the Association's total wage package over that of the County.

SHIFT DIFFERENTIAL

The Association has proposed increasing shift differential from $.20 to $.30 per hour for swing shift and from $.25 to $.35 per hour for night shift. The County seeks to keep the amounts at the present rate.

The Association recognizes that its proposal would put it atop the comparables. Only Brown County would be as high, although their differential is paid as a flat monthly sum that equals to 3 to 4 times the hourly wage of the employee. Employees of Brown County that are at the top of their scale would receive approximately the same amount as that proposed by the Association here. Lower paid employees of Brown County would receive less.

It is unknown whether any of the comparable Counties received an increase in shift differential during 1995 or will receive an increase in 1996. Even if they did, the figures contained in Employer Exhibit 33 and Association Exhibit 49 unquestionably illustrate that the present shift differential paid by Sheboygan County to employees in this bargaining unit is in line with those paid by other Counties. There are more than four counties that do not pay any differential at all.

The Association must prove that its proposal is justified. The Association has failed to offer any explanation for this increase other than to note that the total wages received by the employees

in the bargaining unit is not more than that received by the comparable communities. While I agreed with the Association that wages and longevity need to be taken as a package, I do not agree that the same is true when analyzing shift differential. There is a distinct rationale for a shift differential. Some communities believe that the imposition to employees for working odd hours requires a premium for those employees. Other communities do not. That is evident when one looks at the four counties that do not pay any differential. This premium and the reasons behind it have no applicability to the base wages all employees in the bargaining unit receive. Therefore, this proposal must stand on its own. I find that it cannot. There is no justification for the proposal. I find that the County's proposal should prevail on this issue.

UNIFORM ALLOWANCE

The Association seeks to increase the clothing allowance for current employees from $360 per year to $370 in 1995 and $400 in 1996. It also seeks to have the County pay for the cost of uniforms for new hires. The County proposes increasing the clothing allowance for new hires from $360 to $425 per year. It does not propose changing the allowance for current employees.

It is difficult to quantify the cost of the Association's proposal. The testimony at the hearing was that not all employees used the full allowance. Therefore, the cost of the proposal cannot be determined by simply multiplying the dollar increase by the number of employees. The proposal certainly does represent some increase. The Association observes that the cost of uniforms has

increased regularly. It's proposal is meant to keep pace with those increases. The County counters that the increase is not justified, and must be supported by a quid pro quo to be considered. In terms of cost, neither proposal significantly impacts the total costs to the County. For all current employee, the maximum possible toatl increase in cost for 1995 is $560. It is approximately $2000 for 1996. Thus, in evaluating the parties proposals for all issues, I do not give this particular issue a great deal of weight. It has little impact on the overall costs.

As was true when examining shift differential, I do not know whether there were increases in Uniform allowances in the agreements already negotiated by the comparable Counties. It appears that there was an increase in Calumet to $350 from $300,(Employer Exhibits 34 and 62 and Association Exhibit 50), but it is unknown whether that was standard or the exception.

Current Employees

There is some disparity in the amounts that the parties list for current clothing allowance amounts for the comparables. For example, Fon du Lac is listed on the Employer exhibit as paying $350, while on the Association Exhibit it is listed as the County fully providing uniforms. The same is true for Ozaukee. I have reviewed Employer Exhibits 61-69, which are the actual agreements for all the comparable Counties, and find that the amounts listed by the Association are the correct amounts. Ozaukee includes a cleaning allowance in addition to providing uniforms. That is the amount listed in Employer Exhibit 34. A similar difference is

listed for Fon du Lac. I will use the amounts listed in Association Exhibit 50 for comparison purposes.

Currently, Sheboygan ranks below the three counties that provide uniforms, and behind two others that pay a clothing allowance. For 1995, that ranking would not change under either proposal. For 1996, Sheboygan would be tied for fifth (second among those paying allowances) under the Association proposal and would stay where it is under the County proposal. It is true, as the Association contends, that costs have increased. The increase proposed in 1995 is similar to the increase in the cost of living during 1995. The increase proposed for 1996 is larger. I do not find that the increase in 1995 is unreasonable given the rise in COLA and in the cost of uniforms. I find that the increase proposed for 1996 is more than is required to keep pace with COLA and increased uniform costs. On the other hand, I find that the County's proposal to keep the allowance at its present rate for both years, diminishes the real purchasing power for the employees during that period. Therefore, I favor the 1995 proposal for the Association and neither proposal for 1996.

New Hires

It is anticipated that there will be 2-3 new hires during 1996. There were none in 1995. Both sides offer to raise the allowance. The Association wants the total costs for uniforms paid by the County. The County offers to increase the allowance to $425. Based upon Association Exhibit 65, the cost of a new uniform, without body armor, is $1229. The cost with body armor is

approximately $1700. The difference in the two proposals, assuming two new hires, is a little over $1600 for 1996, and there is no difference for 1995. As was the case for current employees, three comparable Counties provide uniforms. Others pay a specific amount, but also pro rata the annual allowance. Accordingly, where Sheboygan ranks depends upon when the employee is hired during the year.

It is true, as the Association argues, that new hires can least afford the costs of new uniforms. It is also true, however, that new hires have had to pay for their uniforms under the current contract. The Association is seeking to change the practice. The County has questioned whether there is a quid pro quo for the change? While I do not believe a quid pro quo was required for an increase in allowance for current employees, there does seem to need to be some give with regard to this requested change in practice for new hires. For current employees, one would no more require a quid pro quo for a wage increase then require one for an increase in uniform allowance. Here the Association is not merely asking for an increase, it is seeking a change in policy. While a specific quid pro quo might not be required, some strong justification for the change must be demonstrated. I do not find any new factors that would warrant changing the scheme that has been in place between the parties under the current agreement. I favor the County's proposal for new hires.

I do agree with the Association that its list of items in Exhibit 63 is reasonable. Two shirts for officers that work 6

consecutive days is too little. It would require the officer to wash their shirts daily to have a clean one available. With three shirts, a wash need only be done every other day to have clean shirts and once a week if the shirt were worn twice before washing.

HEALTH INSURANCE

The only difference in the two parties proposals concerns the Association's request for a "me too" clause in the agreement. They state that they were promised the same benefits as other bargaining units.

The Association insurance plan had been different than that of the other bargaining units. They paid a percentage of total premiums, but also received certain benefits not provided to the other units. The remaining bargaining units paid a flat dollar amount towards health insurance contributions. They paid $5 per month for single coverage and $10 per month for family coverage. Prior to the negotiation of the agreement in issue here, the County sought to convert to a preferred provider system. This would save the County considerable funds. They jointly negotiated with all bargaining units on this issue. It offered this new plan to the Association. After some debate, the Association agreed. The parties now disagree over what it is the Association agreed to accept.

In many ways the issue here is more analogous to a grievance arbitration than an interest arbitration. What was the Association promised during negotiations? Each party has a different opinion. In a grievance proceeding, the bargaining history would be critical. What was proposed and said at the table? That is in

essence what the parties are asking the arbitrator to decide. Witnesses called by the Association, who participated in the negotiation of the insurance plan, testified to their understanding. These witnesses readily admitted that they were not at the table for any of the negotiation sessions that preceded this arbitration. They did say that at the joint session it was their understanding that there would be uniformity between the bargaining units. They also testified that insurance was not,thereafter, to be part of subsequent individual unit negotiations. They believed that the County's initial proposal here was contrary to that understanding. The County argues that it only agreed to discuss the change during negotiations, and that no promises were made. (Jt Exhibit 1, Employer response to stipulation 3H).

The County wanted to unify insurance levels for all bargaining units. This was a change from an earlier 1991 position. There were benefits to the Unions and the County in unifying health insurance. According to an AFSCME representative, this matter would then be taken off of the table. Obviously, that has not occurred. I find merit to the position of the Association and to the witnesses of the other unions that appeared in this matter. Uniformity was what the County sought, and to what the unions' agreed. Under those circumstances, the Association's proposal appears to be nothing more than a reaffirmation that uniformity will be maintained as previously agreed. Ordinarily, a "me too' clause is viewed by this arbitrator with skepticism. In this case, it is justified. Based upon the testimony of the various witnesses for the other unions in

the County, it does not appear that the Association's proposal adds anything to what had already been determined. Therefore, I adopt the proposal of the Association on this issue.

EQUAL PAY PERIODS

Employees work six days and are then off for three days. As a result, the number of workdays in a payroll period varies. The amount employees receive in their paycheck varies with the number of hours they worked. The Association wishes to stabilize the paychecks into twenty-six equal pay periods. A computer programmer testified for the Association that such a change could be made. The County counters that while a programming change can be made, calculations would have to be made manually to adjust for leave and overtime. They indicate that a new payroll clerk would have to be hired to make these entries. It estimates the cost for this change to be $32,300. The Association believes that this figure is much too high.

The parties did not have many negotiations sessions before this case was sent to arbitration. It is clear to the arbitrator that the parties have not fully explored the ramifications of this proposal. It may be that the change is not nearly as burdensome as the County contends. Conversely, it might be a nightmare to implement. More information from computer personnel would have been beneficial to the parties in discussing this question. That person could have sat with the parties to go over exactly what it would take to make this change. Unfortunately for this arbitrator, exactly what this proposal entails is anything but clear. The

burden, however, is upon the party seeking the change to justify that proposal, and to prove that it is not an overly burdensome request. The Association has brought forth evidence that a programming change can be made. That evidence does not address the problems raised by the County relating to the manual adjustments that would be necessitated by the change. Are they overstated? This arbitrator is not convinced by the evidence, or lack thereof, that the Association has effectively answered this claim. They have not met the burden placed upon them to justify the change that they are seeking. I find in favor of the County on this issue.

WEEKEND WORK FOR DETECTIVES

Currently one detective is assigned each weekend to work. They receive compensatory time off at time and one-half for the weekend work. The county has proposed "scheduled weekend work on Saturday only for detectives."

As was stated with regard to the proposals for equal pay periods, the parties limited negotiation sessions has created problems between the parties in understanding precisely what this proposal means. The County indicates that it is only seeking to change the current language to eliminate Sunday scheduling. The remainder of the current Section would stay intact. The Association argues that the County proposed changing the days off for employees from weekends to midweek. Employees would then work Saturday at straight time. Employer's Exhibit 10 it points out states precisely that. There unquestionably has been a communications gap between the parties over this item.

If the provision means what the County states that it does, there is merit to its argument that it is beneficial to both sides. The County would save on Sunday, a day in which little work for detectives can be accomplished. Detectives would have an additional free day for themselves and for their families. Can one conclude from the proposal that this is what it means? Exhibit 10 does seek to change the language much more significantly than this. It seeks to change days off. Unfortunately, the final proposal of the County does not set forth the entire language of Section IV as proposed. The Association witnesses testified that they were unaware of the purported meaning now attached to this proposal until the hearing itself. Again, communications failed. The arbitrator must now try to ascertain what was really meant by this proposal.

The burden here is upon the County to justify its proposal. The Association in its brief cites Elkouri and Elkouri for the proposition that ambiguities should be resolved against the drafter. That section of Elkouri discusses interpreting language in grievance arbitration. Its applicability here is limited, but there is a deficiency in the Employer's arguments. The County is asking the arbitrator to adopt its proposal. Exhibit 10 shows significant changes to the agreement. As interpreted by the County, its current proposal substantially modifies that proposal. There is no evidence that the meaning of the changed language was explained to the Association at any time before the hearing. It is for this reason that the arbitrator is concerned by what is now stated. The interpretation given this language by the County is not

unreasonable. The negotiation history of the parties must, however, be considered. The Association discussed Exhibit 10 at the table, and knew what was meant by it. It was operating under the assumption that was still the position of the County in the final offer. While one might argue that the Association should have understood the depth of the change in position from simply reading the proposal, this arbitrator cannot say that the meaning of the new proposal should have been known to the Association, especially in light of the subsequent confusion that ensued. Obviously, for what ever reason the meaning was not understood by the Association to be that which the County claims. What they propose may be a good idea, and be of benefit to all concerned, but the burden is upon them to prove that fact and to articulate what they were proposing to the Association. They failed in both counts, and consequently, failed to meet their burden. I find for the Association on this issue.

COURT CANCELLATION

The parties agreed at the hearing that this issue was no longer a part of the Associations's proposal. The Association did address the matter in its brief. The County did not address this issue other than to refer to the parties agreement. Given the parties stipulation, the arbitrator does not consider this matter before him, or part of the Association's final offer. Therefore, it is not addressed in this decision

SUMMARY AND CONCLUSIONS

This entire matter has been extremely troubling to the arbitrator. There are issues in each parties proposals that the arbitrator favors. Conversely, there are issues in each parties proposals that the arbitrator dislikes. No doubt parties include in their proposals items that under different circumstances they might not otherwise include. Be that as it may, under the law I must take one parties entire proposal and reject the other. I find in favor of the Association.

It is the longevity proposal of the County that tips the scales against the County. Changing longevity is a major change, even where current employees are grandfathered under the provision. Employees in the future would be considerably less well off than those presently employed. Their ranking would be diminished. I do not agree with the County that there is no effect during the term of this agreement to its proposal, and that no one knows what might be included in subsequent negotiations. Such a position is unrealistic. Once this proposed change is made, longevity will be modified in perpetuity. Any attempt by the Association to reestablish the current program would be faced with the task of justifying a change to the then current language. For the arbitrator to place the Association in this position, requires more than is being offered by the County. As was shown earlier, $.50 is simply too little. It does not maintain the employee status vis-a-vis the employees of other Counties.

I find longevity so significant that I must weigh it more

heavily than all other factors in deciding which total proposal to accept. I am extremely bothered by the Association's proposal for twenty-six even pay periods. Nobody, including this arbitrator, knows what it entails. I am so troubled by this proposal that it almost tips the scales the other way. I am also troubled that I must adopt the new shift differential proposed. It is not justified. Notwithstanding these concerns, the longevity issue together with my findings in the Associations's favor on other outstanding issues causes me to rule as I have. It is admittedly an imperfect result.

AWARD

The final offer of the Association will be incorporated into the Labor Agreement for the two year term of 1995 and 1996.

Dated: January 12, 1996

Fredric R. Dichter,
Arbitrator