

FEB 23 1996

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

INTEREST ARBITRATION

FOREST COUNTY, WISCONSIN and
SHERIFF'S DEPARTMENT

Employer

and

FOREST COUNTY DEPUTY SHERIFF'S
ASSN. WPPA/LEER

Union

WERC Case 71 No.52290
MIA -1977

Decision No. 28490-A

Barbara W. Doering
Impartial Arbitrator

February 20, 1996

Opinion and Award

Hearing Nov.15, 1995 in Crandon, WI;
Record Closed, Reply Briefs: Jan. 9, 1996

APPEARANCES

For the Union: Richard T. Little, WPPA/LEER
Richard Daley, WPPA/LEER
Ken Van Cleve, Forest County Sheriff's Dept.
James R. Odekirk, Forest County Sheriff's Dept.

For the County: Dean R. Dietrich, Attorney
Chris Ring, Research Assoc./Paralegal
Sheryl Sleeter, Research Associate
Roger Wilson, Sheriff
Aron Huettl, Chief Deputy
Edward Huettl, County Board Chairman
Don Kline, Personnel Committee Member

THE DISPUTE

This is an interest arbitration under the Wisconsin law in a bargaining unit that includes 13 sheriff's deputies (1 captain, 1 lieutenant, 2 sergeants, and 9 deputies), 2 jailer/dispatchers (a newly created position) and 1 clerk/matron. Of these bargaining unit employees, only the clerk/matron works an 8 hour day and 5 day week. The others work 12 hour days on a 4-days-on / 4-days-off work cycle, which is reduced to the same annual hours as 8 hour/5 day employees, by 9 (12 hour) days (+ 2 additional hours, for a total of 110 hours) of Kelley time off. The dispute currently in arbitration concerns the terms of the one year contract for 1995 (now behind us). There are 4 issues in dispute, and under applicable Wisconsin law, the arbitrator must pick the entire package offer on

all issues of one side or the other without any modification. That is, not only is there no room for compromise by the arbitrator between the offers on a particular issue, but there is also no room for compromise by the arbitrator by selecting the offer of one side on one issue and the other side on another.

The four issues which the parties were unable to resolve in their negotiations and which they brought to final offer arbitration are: the general wage issue (3.5% in January or 3% + 1% in January and July); a specific wage issue (wage-rate for the new position of jailer/dispatcher); a Union demand for re-defining "days" and "weeks" of vacation, holidays, and sick leave, to coincide with the 12 hour, 4 day work cycle, softening the financial impact by also creating a special hourly rate applicable to vacation, holidays and sick leave (only) by adding in the 110 Kelley hours to increase annual hours to 2190 before dividing annual pay by annual hours to arrive at an hourly rate; and a Management demand for disallowing comp time as an optional form of compensation when overtime is contracted by 3rd parties.

The criteria by which the final offers are to be evaluated, briefly summarized, include: (a) lawful authority of the employer [not at issue here]; (b) stipulations of the parties; (c) the interests and welfare of the public and financial ability of the employer to meet the costs; (d) comparisons of wages, hours and conditions of employment with other employees performing similar services and other employees generally in both the public and private sectors; (e) average consumer prices and cost of living information; (f) overall compensation including time off and fringe benefits in addition to direct wage compensation; (g) changes in the foregoing during the pendency of proceedings [not at issue here]; (h) other factors, not confined to the foregoing, normally taken into consideration when determining wages, hours and conditions of employment through voluntary collective bargaining or mediation, fact-finding, arbitration or otherwise.

Two of the criteria, as noted in the summary above, are not relevant here. The remaining criteria do all have relevance and have all been carefully considered, even though they may not be specifically referenced in the written discussion that follows. The same can be said of the multitude of exhibits each side offered. These were very

helpful -- more helpful than simply a summary would have been -- in putting the whole dispute in perspective. Even though many of the exhibits may be only the subject of passing reference (or no reference at all) here, they were essential to an understanding of the issues and the comparisons each party urges. That is, after spending considerable time studying the exhibits, arguments, and prior awards in this record, it was clear that these parties are not unfamiliar with the interest arbitration process -- even though this arbitrator was unfamiliar with them and needed the extensive set of exhibits to get a handle on the situation. While it is tempting to move from such study to the writing of a lengthy discourse, the arbitrator has concluded that these parties, who already have a firm grasp of the criteria and how they have been applied by a variety of arbitrators, will be better served by simply being given the short answer -- or at least as short an answer as will indicate where the decision comes from.

1.WAGES -- Employer: 3.5% 1/1/95 Union: 3.0% 1/1/95 + 1.0% 7/1/95

The parties are very close on wages, with very little difference in cost during the life of the contract, although the Association offer leaves the bargaining unit a half percent better off going into the next negotiations. Neither offer is inconsistent with cost of living figures presented. Neither offer changes this county's next-to-last ranking among the 6 surrounding counties with which it is compared, although the Association's offer would narrow the amount by which it trails the average of the other 6 from \$.88 to \$.82. The County's offer, while not narrowing the gap, would equally not widen it, but rather would maintain the deputy pay at \$.88 below the average of the other 6.

The Association argues that over the last 10 years, a noticeable trend toward improvement vis-a-vis comparable counties was reversed in 1993. Association Ex. 40 shows that wages here trailed the average by about \$.90 from 1985 through '89 (with one jump, up over a dollar in 1986). In 1990 the gap was reduced to \$.80 and in '91 was further reduced to \$.69 and \$.68 in 1992, before dropping back to \$.86 in 1993 and \$.88 in 1994. The Association urges that its offer, which, with its split between January and July approximates the same cost over the life of the contract as the County's offer, is more ap-

propriate because it reverses the downward trend back to a positive direction.

The County argues that its offer holds its own by not widening the gap, and, in percentage the 3.5% exceeds what was offered in some of the other counties. The County pointed out, through a number of exhibits, that in comparison with its neighbors, this County has less to draw upon -- which tends to explain its position near or at the bottom of the ranking in pay comparisons with its neighbors. Although the whole region is relatively sparsely populated with few population centers and to a large extent a forest-dominated economy, median family income is significantly lower in this county than in the others. There are few private sector jobs and no high-wage private sector employers and three quarters of the land in the county is in non-taxable categories. While not arguing "inability" to pay, the County contends that the bleak economic picture must be taken into account in imposing wage increases that have to be funded by the County's hard-pressed tax-payers.

The County argued that where its offer keeps up with the cost of living and does not lose ground vis-a-vis external comparisons, weight should be accorded to the fact that its offer is consistent with the increases given other employees of this county. That internal equity is important cannot be doubted, and, in that regard, the County noted that the increases in the other 6 counties were similarly reflective of what they were doing in their other bargaining units. The County insists that settlements with other bargaining units of the same employer are good evidence of what might have been achieved through voluntary settlement, and argues that if the demand of one of its bargaining units for a higher wage increase is accepted there should be a special reason to justify that beyond simply the fact that it ranks, as it always has, at or near the bottom of comparable counties.

In the arbitrator's view, both sides make good arguments as to their wage offer, either of which could be accepted. In the context of this dispute, this is not the determinative issue and is not even a negative-decider, since the County offer does not widen the gap between it and external comparables (a basis for rejection in prior arbitrations).

2. JAILER/DISPATCHER

In 1995, a new classification of jailer/dispatcher was created and 28 people applied, of whom 5 were hired, with 3 subsequently moving on, and up, to deputy positions, and 2 remaining in the 2 jailer/dispatcher positions. The pay-rate set by the County was aligned with the negotiated pay-rate of the other civilian position in this bargaining unit, that of deputized clerk/matron. The Association takes the position that the jailer/dispatcher pay-rate should be much closer to that of deputy than that of the clerk/matron. The County, while agreeing that the jailer/dispatcher job is a good training ground for future deputies, contends that the responsibilities differ significantly from those of deputies and, for pay-rate, the job should be treated more like other office jobs. That is, unlike deputies, the County points out that jailer/dispatchers:

- are not a sworn officers
- don't carry a gun
- don't make transports
- don't go out on patrol
- don't enforce the law
- don't even need to know the laws in the same way a deputy does,
- don't even need to know the roads and the county in the same way
a deputy does,
- they work in an office
- the prisoners they deal with are in a contained space and are secured
- they just don't face the risks or have the responsibilities of deputies

In the County's view, even if jailer/dispatchers move on to become deputies (as 3 already have) the actual work required of them as jailer/dispatcher is comparable to work performed by the other civilian in the department, the deputized clerk/matron. The jailer/dispatcher position combines dispatching duties with responsibilities for male prisoners, whereas the clerk/matron job combines typing and filing duties with responsibilities for female prisoners. The County notes that the clerk/matron job description, also includes occasional dispatching, answering the phone, and transmitting and receiving radio messages. The County contends that starting both civilian positions at the same rate and letting the jailer/dispatcher go to a slightly higher maximum rate than the deputized clerk/matron is appropriate. The County notes there were plenty of applicants for positions it filled at the 1994 starting rate of \$8.00.

The Association argues that the jailer/dispatcher has many more prisoners to be re-

sponsible for than the clerk/matron because most prisoners are male. (At the time of hearing the jail population was about 19, all male). He also has dispatch responsibility for law enforcement, emergency medical, and even fire once the fire fighters are out on the trucks. The Association argues for a pay-rate only \$1.05 per hour less than the deputies and \$2.34 more than the clerk/matron, whereas the County argues for a pay-rate only \$.13 higher than clerk/matron at the max and about \$3.00 below deputies.

	Employer Offer		Association Offer (includes 7/1/95 incr.)	
	Start	2 Years	Start	2 Years
Full-time Deputy	\$11.03	\$12.31	\$11.10	\$12.37
Jailer/Disp.	\$ 8.28	\$ 9.06	\$10.15	\$11.32
Dep.Clerk/Matr	\$ 8.28	\$ 8.93	\$ 8.32	\$ 8.69

The Association says its offer is better supported by external comparison. (No comparisons were offered as to matron pay or pay in other civilian positions in the other counties, nor was any information given as to jail populations in the comparable counties, most of which have larger populations than this county). The County, for its part, claimed its offer is not inconsistent with comparison counties, but the average used in its argument appeared to count some counties more than once on account of split increases they gave. Looking at end of year figures for 1995, the following comparison results:

	Top Deputy	Jailer/Dispatcher Min	Jailer/Dispatcher Min.	Jailer/Dispatcher Max	Jailer/Dispatcher Max .
Florence	11.76	9.03	same	10.02	same
Forest (Er)	12.31	8.28		9.06	
Forest (Ee)	12.37	10.15		11.32	
Langlade	12.76	8.52	same	10.13	same
Vilas	12.72	8.77	same	10.75	same
Oconto	13.51	10.67	same	11.86	same
Oneida	13.94	11.08	8.59	12.15	9.65
Marinette	14.46	10.09	12.49	11.46	14.20 .
AVG other 6:	13.19	9.69	9.68	11.06	11.10
Employer	-.88	-1.41		-2.00	
Association	-.82	+.46		+.26	

It can be seen that 2 of the counties in the above comparison pay different amounts to jailers versus dispatchers. One treats the dispatcher more like the quasi-clerical rate this County Employer favors, whereas the other treats the jailer as the less high-paying of the two jobs, and treats the dispatcher as the Association here favors.

There are also private sector comparisons that can be made, and, in what is a civilian job, these may have greater relevance than is typically given to private sector comparisons with law enforcement jobs. The County noted that at a 2 year rate of \$9.06, the jailer/dispatcher job is better paid than most private sector positions with comparable duties, including supply supervisors (at \$8.60), clerks (\$6.21 - \$7.98), warehouse workers (at \$8.47), computer operators (at \$7.44), data entry people (at \$7.48), EMT/Ambulance people (at \$6.98), and even maintenance workers (at \$9.00) and CNC Operator/Programmers (at \$9.07).

In the arbitrator's view, both sides' arguments leave something to be desired. If compromise were possible, one might consider holding starting pay at the same level as the deputized clerk/matron but allowing it to rise a little higher in 2 years, as the County offer provides, but then letting it continue to rise for another year or 2 thereafter maxing out at some figure yet to be determined -- although not nearly so high as the Association proposes. The County argument that these people are not deputies is well-taken. As an "either-or," the Association treatment of the position as practically a deputy is not compelling and the County offer is preferable.

3. HOW MANY HOURS IN A DAY?

The issue with respect to the number of hours in "days" for purposes of vacations, holidays, and sick leave, is a major issue, if not the major issue, between these parties. Deputies work 12 hour shifts on a 4 days on/ 4 days off cycle with 110 hours (a little more than 9 12-hour days) of Kelley time to reduce annual work hours to 2080 -- or the same number of hours as are worked by other County employees. Up to now they have also been entitled to the same number of paid hours off for illness, or vacation and have been paid for holidays on the basis of the same number of holiday hours as other em-

ployees.

The 12 hour shift and 4 day cycle worked by deputies has been in place since the 1970s, and the County argues that there is no reason why the fact that these benefits have always been in 8 hour "day" units is suddenly "a problem." Certainly there would be a substantial monetary gain to the bargaining unit by effecting the change they seek, but it is not, says the County, clear -- particularly in view of Kelley time off making their annual hours the same as other county employees -- why deputies should have more time off for illness and vacation than other people working for the County. The County also argues that the language proposed by the Association leaves the question of already accumulated sick leave ambiguous, even though the Association indicated at the hearing that the intent was that the 12 hours would be applicable from this point forward and would not affect prior accumulation kept by employees. Secondly, the County contends that the lower hourly rate the Association includes with its wage proposal for these "days" shows that the Association knows it is asking too much here, and this attempt to soften the (financial) blow, while not effectively doing that, would in itself create problems and confusion. Finally, in addition to not having shown any need for the change and not having proposed language that clearly states the change, the County also accuses the Association of attempting to secure a major benefit without offering any quid pro quo -- that is, the County contends the Association has not proposed any concession in return and simply hopes to get in arbitration everything it might otherwise have gotten plus this major break-through issue as well.

The Association argues that it has offered a quid pro quo in the form of the lower hourly rate that it added to its wage proposal to be applied to these "days." The Association, for its part, contends that there is clearly a problem with the status quo because "...Every time an employee utilizes one of the above mentioned benefits, time must be borrowed, reconciled and adjusted or the employee faces loss of pay" [Brief p.10] and claiming [at p.16], that its members are penalized in the use of these benefits with "a reduction in pay of 33%." (which argument the County labels as simply ridiculous and untrue in light of the Kelley time off-set). The Association points out that if the hours of

the 9 holidays are re-cast in 12 hour units, there are in fact only 6 holidays paid for. The Association argues that every other comparison county (exception to the Oneida trial basis work schedule) gives days on the basis of actual daily hours. The Association contends that the current unjust system of benefit allotments affects morale and the interests and welfare of the public will be served by its offer that corrects the problem by making the number of hours in the benefits the same as the daily and weekly hours worked.

The County rejects the Association argument that external comparison supports a move to 12 hour days for benefits purposes. Three of the 6 are working 8 hour days or 8.5 hour days with a half hour unpaid lunch. The County points out that in those counties that have more than 8 hour days and give benefit time in the same 9, 10, 11 or 12 hour units, the deputies do not also get Kelley time off. That is, in those counties, deputies are scheduled to work a longer year than other, civilian, employees and it makes sense that they receive comparably more time off and sick leave. That is not the case here, and the County contends that there is no basis for the substantial increase the Association seeks with respect to holidays, vacation and sick leave, vis-a-vis other employees in this county. In fact, the County points out that among the tentative agreements that these parties negotiated for this contract, is an agreement to provide a 5th week of vacation after 25 years, keeping this bargaining unit comparable with other Forest County bargaining units which also obtained that improvement.

From the arbitrator's point of view, what the Association seeks here, even with its attempt to soften the blow with a lower hourly rate, is a pretty hefty increase. The County gives a dollar value for an average employee getting 3 weeks of vacation at about \$1500 over what these benefits would otherwise cost [Employer Brief p. 35]. By contrast, a 3.5% wage increase (at \$.42/hour for top deputy) only gives an additional \$873, or at the Union's increase (at \$.48/hour) would only give the employee an additional \$998 of direct wages. Moreover, there is merit to the County's complaint about the lack of quid pro quo. This arbitrator frankly doubts that this sort of major change and significant cost item could be bargained without some major concession in return -- such as (at

least) a multi-year contract, perhaps even with conservative wage increases in the next year or two. That is, at the very least, one would expect to buy a guarantee against the hassle of protracted bargaining and several years of known parameters for such a major item. Of course, in the context of arbitration, one can perhaps understand a hope that an arbitrator may be more comfortable imposing a "break-through" for only a year, or, at least, having an immediate second shot at it if the arbitrator does or does not buy it. In order to get this arbitrator to buy it, however, particularly in the absence of a significant quid-pro-quo, the "break-through" would have to be better supported.

With respect to time off issues generally, the arbitrator notes that time off is not a freebie -- the vacationing individual must often, if not usually, be replaced. This Employer already has an agreement that it may use part-timers, rather than regular deputies on overtime, to fill-in for Kelly time absence, so it is clear that replacement cost is a concern, and in the case of 50% longer vacations the part-timer exception would not be available to allow replacement without using overtime. It is also significant, as indeed the Employer insists, that the other departments giving longer "days" for these benefits do not have the Kelley time offset to reduce the length of the work year. More time off is not unreasonable when you are working more days in the first place. Beyond that, in the particular matter of vacation, there is an added dimension here in that among the TAs agreed to in negotiations leading up to this impasse was the addition of a 5th week of vacation for employees with more than 25 years service. With an issue on the table seeking to greatly increase the amount of vacation time for all employees in the unit regardless of length of service, it seems odd to this arbitrator that the Association accepted the offer instead of suggesting that the difference between this unit and the others be dealt with under its 12-hour day proposal instead of giving the extra week at 25 years. The County might not have been receptive -- probably not -- but making the argument would have been good strategy in light of the need for a quid-pro-quo (especially since, if the ploy failed, there is still another round of bargaining before anyone in this unit reaches 25 years).

Holidays and sick time, unlike vacation, are not so much time-off issues as pay

issues for this bargaining unit. While it is hard to see why the deputies should get any more sick time than other county employees working the same number of annual hours, in the matter of holidays a case could be probably be made for (more of) a difference. For other employees holidays are time off. Part of their 2080 annual hours of pay covers not working the 8 hours of each holiday. They get all the holidays because their schedules are set up that way and their offices are closed and work is not performed on the holidays. The deputies' jobs are staffed on holidays, and, with the 4 days on / 4 days off schedule they work, not to mention the Kelley time, it is not clear how many of the 9 holidays fall to each deputy. Deputies are given 8 hours pay above and beyond their 2080 hours of pay for each of the 9 holidays so that, regardless of their work schedule, they will have the same amount of pay for holiday "time-not-worked" as the others. The thing is, that having to work on a major holiday -- particularly having to work 12 hours -- may be worth more of a premium than the current arrangement provides. It would, however, take more information to see whether that be so and in the meanwhile, that was not the basis of the argument here and hardly justifies the major expense and increases for sick time and vacation that the Association also proposes. Moreover, the special hourly rate proposed to try to soften the blow looks like trouble in and of itself, not to mention the ambiguity with respect to already accumulated sick leave "days".

On this issue, the arbitrator is of the opinion that the Association offer asks for too much -- much of which does not appear to be justified -- to be achieved in a one year time span. Furthermore, the arbitrator must note that employers do not seem to get as much credit (from employees), nor probably leave themselves as open to credit or criticism (from taxpayers), for providing extra time off as they do for putting money into wages, and that is probably what should be done unless there is a real problem with inadequate time off. Of course, the Association contends there is a real problem here because the deputies work 12 hour days and get vacation, holidays and sick leave in 8 hour units. In view, however, of the inclusion of Kelley time (which is also not in 12 hour units, one might add), the arbitrator has difficulty accepting that as a real problem.

4. COMP TIME OPTION or NOT?

The question in the 4th issue is: whether compensation for voluntary overtime for 3rd party contractors should be limited to pay as opposed to the pay/comp time option otherwise applicable to overtime. The County says that in practice it has been offering the overtime that way anyway, but it wants to change the language so that it would not have to take on potential scheduling problems (inherent in comp time) whenever it lets 3rd parties contract for overtime work on the part of deputies. The Association likes the current option and sees no need to change it. From the arbitrator's point of view, this issue is one that can be lived with either way in a one year contract.

CONCLUSIONS

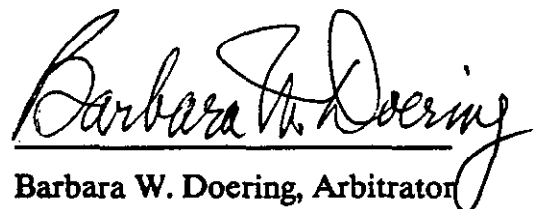
After two days of going through the record and the briefs and over the next few days mulling over the whole thing (i.e. the numerous exhibits and the parties briefs, and awards of other arbitrators and statements of philosophy by other arbitrators and by the parties as to how the criteria should be applied) before sitting down to write, it seems to me that application of the statutory criteria^{*} to this dispute favors selection of the Employer's final offer.

^{*}Section 111.77 (6), Wis. Stats. (summarized at p.2).

AWARD

The final offer of the Employer and the parties' tentative agreements shall be incorporated with unchanged terms of the predecessor collective bargaining agreement into the parties' written agreement for 1995.

Submitted this 20th day of February, 1996.


Barbara W. Doering, Arbitrator

FINAL OFFER
OF
FOREST COUNTY
TO
FOREST COUNTY DEPUTY SHERIFF ASSOCIATION

Case No. 71 No. 52290 MIA-1977

1. Article XX - Salaries, Section 20.01, revise to provide for a 3.5% wage increase in 1995 in accordance with the attached schedule.
2. Article XXIII - Overtime, Section 23.01, revise by adding the following to the paragraph:

Any employee, however, who works overtime for which payment is received by the County under a third party contract shall be required to receive compensation in the form of pay for overtime hours worked."
3. All tentative agreements previously agreed to by the parties shall be incorporated into the successor Labor Agreement.

Dated this 3rd day of August, 1995.

RUDER, WARE & MICHLER, S.C.
Attorneys for Forest County

By: *Dean R. Dietrich*
Dean R. Dietrich
State Bar Code No. 1018020

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RELATIONS COMMISSION

Article XX - Salaries

Schedule A: Effective January 1, 1994

	START	1 YEAR	2 YEARS
Full Time Deputy	1,847.94	1,953.39	2,061.28
Sergeant			2,086.93
Investigator			2,099.06
Lead Investigator			2,113.26
Jailor/ Dispatcher	\$8.00	\$8.35	\$8.75
Deputized Clerk/Matron	1,386.66/ \$8.00	1,473.33/ \$8.31	1,560.00/ \$8.63

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Article XX - Salaries

Schedule A: Effective January 1, 1995

	START	1 YEAR	2 YEARS
Full Time Deputy	1,912.62	2,021.76	2,133.42
Sergeant			2,159.97
Investigator			2,172.53
Lead Investigator			2,187.22
Jailor/ Dispatcher	\$8.28	\$8.64	\$9.06
Deputized Clerk/Matron	1,435.19/ \$8.28	1,524.90/ \$8.60	1,614.60/ \$8.93

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