

STATE OF WISCONSIN
BEFORE THE ARBITRATOR

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 In the Matter of the Petition of :
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 WISCONSIN PROFESSIONAL POLICE :
 ASSOCIATION/LAW ENFORCEMENT EMPLOYEE :
 RELATIONS DIVISION :
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 For Final and Binding Arbitration : Case 128
 Involving Law Enforcement : No. 53371 MIA-2008
 Personnel in the Employ of : Decision No. 28649-A
 :
 GREEN COUNTY (SHERIFF) :
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Appearances:

Wisconsin Professional Police Association by Richard Little, Bargaining Consultant.
 Green County (Sheriff's Department) by Brennan, Steil, Basting & MacDougall, S.C. by Howard Goldberg, Esq.

ARBITRATION AWARD

The parties have been unable to agree upon the terms to be included in their contract for the period January 1, 1996, through December 31, 1997. On November 17, 1995, the Wisconsin Professional Police Association (Union) filed a petition with the Wisconsin Employment Relations Commission, wherein it requested final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act. The Commission caused an investigation to be conducted by a member of its staff on January 10, 1996. On January 31, 1996, the investigator informed the Commission that the parties had arrived at an impasse. The undersigned was selected by the parties, and was appointed by an

order from the Commission, to act as arbitrator on February 26, 1996. After due notice, the arbitration hearing was conducted at the Green County Courthouse on April 26, 1996. Evidence was received on the record, the hearing was concluded and the record was closed on that date. The parties exchanged their initial briefs through the arbitrator on June 5. The County filed its reply on June 10, the Association informed the undersigned that it did not intend to file a reply brief by letter dated June 13, 1996.

ISSUES IN DISPUTE

The only substantive issue in dispute is the size of the wage increases to be received by these employees over the term of the contract. The County has offered 3.25% on January 1, 1996, and 3% on January 1, 1997. The Union has offered 3% on January 1, 1996, and 1% on July 1, 1996, and 2% on each January 1, and July 1, 1997. Further, the parties did not agree which other counties constitute an appropriate pool of external comparables.

THE ASSOCIATION'S POSITION

After reviewing the statutory criteria for the determination of reasonableness set forth in Sec. 111.77(6) Wis. Stats., the Association said that five of those criteria were not relevant to a decision in this case. It said that neither evidence had been presented nor argument made that there is any legal impediment to the County's meeting, or having the inability to pay the cost of

either offer. It said that there was insufficient evidence of overall compensation and benefits provided to these employees or to comparable employees to justify the undersigned giving weight to this criteria. It said that the criteria relating to changes in circumstances is not applicable to the facts of this case. The Association said that the only monetary impact arising out of the parties' stipulations is that Green County did not experience any increase in health insurance costs during 1996. "Yet the stipulation with regard to this issue does not merit weight by the arbitrator."

The Association argued that the interest and the welfare of the public would be best served by the Association's offer, because, it recognizes "the need to maintain the morale of its officers and to retain the best and most qualified officers." It said that intangible benefits including pride and morale are particularly important in law enforcement units, because, officers work side by side with officers from other departments on a daily basis. The Union cited Elkouri to support that argument. "The Association views the comparison of law enforcement officers employed with the Green County Sheriff's Department to law enforcement officers employed by similar departments as the most prevalent comparison made in these proceedings." It said that a high level of morale may be jeopardized by implementing the Employer's offer. It said that under the Employer's offer, during 1996, top deputies with two years service would slip to \$1.44 an hour below the average of

comparable departments. Five year veterans would earn \$1.08 an hour, or \$2,253 a year, less than comparables. "Only after twenty-five years of experience do the base wages of Green County deputies approach the average base wage that the comparable departments reach after an average of 3.2 years. The Employer can provide no justification for the existence of this disparity." The Union said that its offer would slow the widening gap between Green County deputies' salaries and comparable salaries. The Union said that it is not asking for 11% over two years to attain the average, "the offer only slows the inexplicable downward spiral in wages." It argued that the unit's morale cannot be affected in a positive manner by declining wages, and that the welfare of the public must be similarly affected.

The Association said that its list of proposed external comparables is preferable to the Employer's list. It said that a relevant comparable group has never been established for this unit. It said that it based its recommendations upon the comparables' geographic proximity, mean incomes, municipal budgets, total personnel and wage and fringe benefit packages. The Union said that the Employer's list, which mirrors the Association's recommendations, "is simply too meager to draw valid conclusions from." It noted that the County had objected to including Columbia and Sauk Counties as comparables. It argued that they are similar to Green County in many ways and are also, like Green County, contiguous to Dane county which is the

primary economic influence in the region. It said that the Employer's objections to considering the Cities of Monroe and Brodhead are not valid, and cited discussions by previous arbitrators who found that, municipal police departments in and around Portage and Oneida Counties were appropriate comparables in those counties' sheriff's department arbitration cases.

The Association noted that the only unresolved issue is wages. It pointed to comparisons of wages for "Top Patrol/Top Deputy" in Green County and in its recommended list of comparables for the period 1992 through 1995. It said that Green County was in seventh place in 1991 and "second to last place overall in 1992 through 1995. Under either final offer, the position will remain unchanged for 1996." It argued that Green County's relative positions on the wage scales for sergeant, detective, and jailer would be similarly affected. The Association argued that its offer would only "slow the fall of base wages when compared to the average of comparable." It said that the County's offer would result in Green County deputies with two years of service receiving \$1.44 an hour, or \$3,004 a year, less than the average salary received by deputies with similar service in comparable communities. The Union anticipated that the County would "argue that there are additional wage steps available over the two year step which will bring base wages closer to the average." It said that many of the comparables now receive substantial longevity benefits while Green County deputies wait for their base wages to catch up with comparable wages.

The Union said that it anticipates that the County will argue that internal settlements justify the County's offer. It said that recent arbitral opinion and the facts of this case dictate that internal settlements should be given limited weight. It cited comments from other arbitrators that: "The very essence of separate bargaining units is allowing employees with varying communities of interest to speak to wage, hours and working conditions distinctly. ... placing a very high value on uniformity subordinates the public policy that justifies the units' desire for simplicity" (Bellman). And, "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 other employees in the community), a separate statutory procedure exists ... for the establishment of their wages, hours and working conditions" (Fleischli). The Association said that while the record indicates that the Employer followed a uniform wage policy for other units, it abandoned uniformity to provide higher wage increases to Human Services' employees in 1996. The Employer justified those higher wages, because, it said that Human Services' employees' wages were substandard. The Union said that the Employer had looked at wages outside of Green County to arrive at that conclusion. "This contention is identical to the Association position in these proceedings." It said that the record does not show that internal comparisons have served as the

controlling factor in establishing settlements with this unit in the past.

The Union said that comparable settlements were consistent with increases in the Consumer Price Index. It cited a previous arbitrator as having concluded "that the proper measure of the amount of protection against inflation to be afforded the employees should be determined by what other comparable employers and Associations have settled for" It argued that other voluntary settlements for 1996 and 1997, are similar to the proposals of the parties in these proceedings. It said that the Association's offer would cost only .23% more than the Employer's offer in 1996, and only .47% more in 1997. Both offers are below the CPI data provided by the Association.

GREEN COUNTY'S POSITION

The County noted that the Union had offered split wage increases, and that the Union argued that its offer was appropriate in light of wages paid in comparable counties and cities. The County said that external comparisons should not control the outcome of this proceeding. It said that Green County deputies' wages are not low, and no matter which offer is selected, there will be no significant difference in wage rankings when wages in Green County are compared with wages in other counties. It argued that the Employer's offer is consistent with internal settlements, and said that the Union's offer is not.

The Employer said that an arbitrator is required to consider several factors in arriving at a decision. It said that the Association has placed its entire emphasis upon external comparisons with Crawford, Richland, Grant, Sauk, Columbia, Lafayette and Iowa Counties and the Cities of Brodhead and Monroe. "No prior arbitration decisions were provided which found such a diverse group of counties to be appropriate." It said that in a previous arbitration case involving Green County's Human Services Department, the arbitrator found only Lafayette, Iowa, and Grant Counties comparable. In that case, the arbitrator found that contiguous or geographically proximate counties were comparable. "In the case at bar, the Association is relying on counties, such as Crawford, Richland, Sauk, and Columbia which are not geographically proximate to Green County. Such counties should be excluded from ... consideration."

The Employer noted the Union's suggestion that the members of this bargaining unit, clericals, dispatch, jail, patrol sergeant, detective, and chief detective classifications, should be compared with police personnel in the Cities of Monroe and Brodhead. "While it is true that police officers and sheriff's deputies are both involved in 'law enforcement', the similarity ends there." The County enumerated the duties that are assigned to sheriff's deputies under Chapter 62 Wis. Stats., and noted that police officer duties are set forth in Chapter 59 of the Statutes. "It is certainly true that both police officers and sheriff deputies have the powers of arrest, and they both have

the power to issue tickets for moving violations; however, there is really a vast difference in the duties routinely performed by a city police officer and those routinely performed by a deputy sheriff." The Employer argued that it is not appropriate to compare police officer wages with deputy sheriff wages in interest arbitration proceedings.

The County said that even if external comparable factors are relevant, "it appears clear that the wages proposed by the Employer are more appropriate than the wages suggested by the Association." It said that the Association had proposed 8% lift and the County had proposed 6.25% lift for the two year, 1996-1997, contract period. The County reviewed evidence of settlements in Iowa, Lafayette, Richland and Columbia Counties for 1996 and 1997. It argued that the "Association's 1996 wage proposal is higher than all of the other bargaining units, with the exception of Lafayette, Columbia and Richland Counties." "In 1997, the Association's offer is higher than all of the others." The County said that the Cities of Monroe and Brodhead had agreed to 1997 wage increases of 3% and 3.5% respectively. "For the reasons stated above, the Employer rejects comparisons with any external municipalities, other than the Counties of Iowa, Lafayette and Grant."

The County said that when considering how the two offers might effect the wage rankings of Green County's wages with wages in other counties, there is no significant difference in the two offers. It said that the Association's exhibits demonstrate

"that the rankings of Green County wages, under either offer, are the same, with very few exceptions." It said that the Association has not claimed, and the evidence does not support an argument that Green County deputies need a catch-up increase. Top patrol wages in Green County were higher in 1994 and 1995 than like wages in Crawford, Grant, Iowa, Lafayette and Richland Counties. The County said that since Green County's wage ranking will not be significantly affected by either offer, "the arbitrator should focus his attention on the internal settlements."

The Employer said that the Association is wrong in ignoring internal settlements. It said the statute requires arbitrators to consider both internal and external settlements. It cited arbitral authority and argued that, "arbitrators traditionally consider internal comparisons to be more important than the external comparisons when deciding interest arbitration cases." The County said that it has eight separate employee units, six of which are represented by labor unions. Two are Teamster units, three are AFSCME units, and this unit is represented by the Wisconsin Professional Police Association. "The County has set the wages and fringe benefits for all of the other county employees for the 1995 and 1996 calendar years. All of these settlements were voluntary." This unit had Green County's only 1994-95 contract. The County reviewed evidence relating to other Green County settlements in the following manner. In 1995, deputies received a 3.5% wage increase. Highway Department

employees received 3.25%, all of the other bargaining units and the unrepresented employees received 3% wage increases that year. "In 1996, all of the bargaining units settled for a 3.25% wage increase, with the exception of the highway department and the human services employees." It explained that the highway department's three year contract called for those employees to receive 3.25% in 1995 and a 3% increase in 1996. It said that human service employees had received 2% on January 1, 1996, and 2.5% on July 1, 1996, "based upon the fact that Human Service Employees' wages were low in comparison to those wages paid to Human Services Employees in other counties." All of the foregoing settlements were voluntary.

"Internal comparable comparisons are more important than external comparisons." The Employer cited a 1993 decision in which the arbitrator said that "as a general proposition, arbitrators are inclined to look toward internal comparables rather than external comparables where a clear pattern of voluntary settlements exists." It cited another 1993 decision to support its argument that it would not be equitable for these employees, "who already received the highest percentage wage increases in 1995, to also receive the highest wage increase for 1996." It argued that other county employees would be justifiably upset if deputies receive higher wage increases two years in a row.

The County said that Consumer Price Index data for 1995 showed a 2.5% increase. It said that both parties' offers exceed

the cost of inflation. The Employer concluded its initial argument by saying that there is no justification for the Association's proposed 8% lift over two years.

COUNTY'S REPLY - The County said that the Association had attempted to distort the evidence by including data from Columbia and Sauk Counties in order to increase the statistical average of comparable wages. It pointed to Association exhibits which compared incidents of crime, and argued that the evidence does not support including Green County with Columbia and Sauk Counties. The Employer argued that Columbia and Sauk have 53% and 61% greater population, and 67% and 94% greater assessed valuations respectively than Green County. The Employer repeated its earlier arguments that police departments have different responsibilities than sheriffs' departments, therefore, Monroe and Brodhead should not be considered comparable. It asked why the Union had included only two of the smaller community police departments in Green County as comparables? "The inference is clear - they picked only those communities that paid high wages." The Employer said that it is no coincidence that wages paid Monroe and Brodhead police and Columbia and Sauk County deputies are always in the top 5 of the Association's wage comparison rankings.

The County said that if Iowa, Grant, Richland, Crawford, and Lafayette Counties are considered comparable, Green County's wages would be superior under either of the parties' offers. It reviewed the Association's exhibits and concluded that the

average 1996 wage for Patrol/Deputy in these counties is \$13.01. Under the Employer's offer, maximum and 10 year wage rates would be \$13.56 and \$13.30 respectively compared to \$13.66 and \$13.40 under the Association's offer. Top comparable patrol sergeant rates will average \$13.93 in 1996, compared to either \$14.82 or \$14.93 under these parties' offers. The Employer noted that the Union had criticized the fact that it takes 25 years to reach maximum wage rates in Green County. "This rate came into existence as a result of prior bargaining." Top wages for detective/investigator will average \$13.21 in Lafayette, Richland, and Iowa Counties. The maximum and 10 year rates under the Union and County offers would be \$15.59 and \$15.29, or \$15.48 and \$15.18 respectively. The County said that the foregoing analysis "should enable the arbitrator to see that Green County wages are not 'behind' as the Association claims."

The County said that the Association had acknowledged that there is no significant difference in rankings for 1996 under either offer.

The Employer argued that the Association's argument that internal settlements deserve only limited weight ignores the law. It said that the County does not believe that all of its employees must be treated alike. Deputy wages are higher than virtually all of the other County employees' wages. It said that the pattern it had established for all of its employees "was deemed acceptable by the majority of them."

The County said that the Association had offered no substantive discussion to support its 1997 wage offer. "One would think that the Association would present some justification for invoking the 'lift technique.'" It argued that since Green County deputies' wages are not lacking, there is no justification for implementing a lift two years in a row. The Employer said that the Association's data showed "that virtually all of the communities that have settled for 1997, have granted the exact same percentage increases as is being offered by the Employer in this matter." The County concluded that its offer should be found to be superior and adopted by the arbitrator.

DISCUSSION

The only issue in dispute is wages. The difference in the cost of the two offers for this 1996-97 contract period is not large. Under the Association's offer, 38 members of the bargaining unit would share \$2,576 more in wages and \$2,666 more in total compensation at \$3,336 greater package cost to the Employer during 1996. During the second year, employees would receive \$8,115 more in wages and \$8,396 more total compensation under the Union's offer. The Union's offer would result in \$17,181 more total package costs than the Employer's, over the two year contract period. The essence of the dispute is the 1.75% greater lift included in the Association's offer. That increased lift would result in approximately \$18,500 greater wage costs and \$27,500 higher total package costs per annum after

1997. The Association has relied primarily upon comparisons with external comparables to support its offer. The County has relied primarily upon internal comparisons to support its offer. Based upon the data and the parties' arguments, both of the final offers appear to be reasonable.

Selection of appropriate external comparables for this bargaining unit is a matter of first impression in this case. Since both parties have proposed Crawford, Grant, Iowa, Lafayette, and Richland Counties as comparables, they shall constitute an agreed upon base of comparables. Grant County has not settled for 1996. Crawford County's contract extends only through 1996. Iowa, Lafayette, and Richland Counties all have contracts extending through 1997. The populations in these counties range from approximately one-half to two-thirds of the population of Green County. Contrary to the County's arguments that Sauk and Columbia Counties are too large to be considered comparable, they are closer in relative size to Green County than the smaller counties suggested by the Employer. The addition of Sauk and Columbia Counties, both of which have roughly 60% greater populations than Green county, will add some balance to the evidence, which would otherwise reflect data for a disproportionate number of smaller counties. Since two contiguous counties (Dane and Rock) are too large to be comparable, it is necessary to reach beyond the circle of adjacent counties in order to identify at a reasonable number of comparables. The fact that Sauk and Columbia Counties are

somewhat distant from Green County, does not diminish the value of wage data for sheriffs' department employees in those counties, which appear to have much in common with Green County.

In spite of the Employers' protestations to the contrary, wages paid to law enforcement personnel employed by the two largest cities in Green County are relevant to the wage dispute in this proceeding. There are some differences in the kinds of routine responsibilities performed by some deputy sheriffs from routine responsibilities performed by some police officers. However, both groups, deputy sheriffs and police officers, are recognized as professional law enforcement personnel. Members of both groups are drawn from the pool of individuals who are attracted toward professional careers in the field of law enforcement, and share the risks attendant to their profession. It should also be noted that the proceeding has been brought in accord with the provisions of Wis. Stat. Sec. 111.77(6) which applies to Police and Sheriff's Department personnel exclusively. Many Wisconsin arbitrators have routinely compared the wages and benefits received by police and deputies' bargaining units in proximate communities when applying Wis. Stat. 111.77(6)(d)1 in arbitration proceedings. The pool of comparables suggested by the Association, including Crawford, Grant, Iowa, Lafayette, Richland, Sauk, and Columbia Counties and the Cities of Brodhead and Monroe, appears to be reasonable.

The Association relied almost entirely upon its comparisons of "Top Patrol/Top Deputy" wages in Green County with those wage

categories in comparable jurisdictions. The following discussion relates to evidence that the Association presented for Top Patrol/Top Deputy wage classifications in Green County and in the 7 comparable counties, and in the Cities of Monroe and Brodhead. Deputies in Green County have historically received below the average of comparable wages. In 1991, the average hourly rate was \$10.92 among comparables compared to \$10.87 in Green County. Green County deputies at the top of the wage scale earned \$10.40 after 2 years, \$10.71 after 5 years, \$11.03 after 7 years, and \$11.35 after 10 years. These deputies ranked 7th out of 10 comparables after 2 and 5 years and 5th of 10 comparables after 7 and 10 years of seniority in 1991. Data indicates that there were no changes in hourly wages in Green County in 1992, while the average comparable wage increased to \$11.59 an hour. Green County's rating slipped to 9th of 10 after 2 and 5 years, 8th after 7 years, and 6th after 10 years. In 1993, when Green County's average was \$11.51 compared to \$12.10 for comparables, wage rankings were 9, 9, 7, and 5 respectively.

In 1994, Green County adopted a 25 year wage rate. Average Top Deputy/Top Patrol wages among the comparables were \$12.61 an hour compared to \$12.07 in Green County. Green County deputies ranked 9 of 10 after 2 and 5 years, 8th after 7 years, 6th after 10 years, and 5th after 25 years of seniority. During 1995, average comparables earned \$13.08 compared to \$12.49 in Green County. Green County deputies ranked 9th after 2 and 5 years, 8th after 7 years, and 6th of 10 after both 10 and 25 years of

seniority. The 8 comparables settled for 1996 (Grant County is not settled), pay an average of \$13.66 an hour compared to \$12.90 offered by the County, and \$12.99 offered by the Union. The parties agree that there would be no change in the deputies' wage rank under the Employer's offer and only a minimal change from 9 to 8 after 5 years of seniority under the Association's 1996 offer. The average comparable lift in 1996 was 3.76% compared to the offers of 3.25% (Employer) and 4% (Association) herein.

Only 5 comparables are settled for 1997. Those settlements averaged 3.3% lift and result in average wages of \$14 an hour, compared to the Association's offer for 4% lift and average top deputy wages of \$13.52, or the County's offer for 3% lift and average wages of \$13.29 an hour.

The foregoing demonstrates that over the two year contract period, the two offers are very close to being equidistant from the average comparable settlement. The Association's offer is higher, but, closer to the average 1996 settlement than the Employer's offer, which is below the average. Only five of nine comparables are settled for 1997. The County's 1997 offer, though lower than the average settlement, is closer to the average than the Association's offer.

The Association has argued that in addition to the wage disparity discussed above, there are two additional considerations which support its offer. They are the length of the Green County pay schedule and longevity pay. Both of these factors seem to support the Union's offer. No comparable

employees have to work more than 5 years to reach the top of their salary schedule. In Crawford County, deputies reach the top in one year, it takes two years in Iowa and Sauk Counties, 3 years in Lafayette and Columbia Counties, 3½ in Richland, and 5 years in Grant County. Patrol personnel reach the top of their schedules in 4 years in the City of Monroe, and in 5 years in Brodhead. The average of the foregoing years to the top of the schedule is 3.2 years. Prior to 1994, it took 10 years to reach the top of the schedule in Green County. There were separate starting rates, probationary rates and additional steps after 2, 5, 7, and 10 years. The parties' 1994-95 contract added a 25 year wage rate. Only 2 members of the bargaining unit have 25 years seniority. Sixteen members of the unit have between 10 and 22 years of seniority. All of these more senior employees will receive wages that are below both median and average base wages among comparables under either offer. In addition to the difference in base wages, employees with 10 years seniority in all of the comparable communities except Iowa County and Brodhead, receive longevity payments. Those benefits appear to range from \$200 a year in Columbia County to \$1,737 a year in Sauk County. The City of Monroe's longevity benefit after 10 years is \$1,800 per annum.

The remaining 20 members of the bargaining unit have between 1 month and 6.3 years of seniority. These employees spread across 5 separate wage scale benchmarks will receive wages that rank 8 or 9 of 10 under the Association's offer, or will receive

wages that remain 9 of 10 under the County's offer for 1996. Employees with more than three years of employment are eligible for longevity ranging from \$60 a year to \$400 a year in five comparable communities. Seven of 9 comparables offer longevity ranging from \$100 to \$1,137 after 5 years of seniority. Based upon the foregoing, it is clear that comparisons with other employees performing similar services in comparable communities support the Association's offer.

It is also clear that internal settlements support the Employer's offer. Though the evidence does not demonstrate that the Employer adhered to a uniform pattern in settling with other represented and unrepresented employees, it does show that the County's offer to this bargaining unit for 1996 is more in line with the wage increases granted to other County employees than the Association's offer. The fact that the County agreed to a 3.25% wage increase which provided its Human Services' employees a 4.5% lift in 1996 was explained as "based on the fact that Human Services employees' wages were low in comparison to those wages to paid (sic) Human Services employees in other counties." Since it has been found that wages paid to Green County's Deputies is also low in comparison to the wages paid to external comparables, the Employer's argument that internal settlements deserve primary consideration are not convincing in this case.


Both parties discussed the cost of living criteria. The Employer correctly concluded that it is somewhat lower wage offer

for 1996-97 is closer to 1995 increases in the Consumer Price Index than the Association's offer. The amount of the differences between the Employer's 3.25% offer, the 3.3% CPI increase, and the Union's 3.5% offer for 1996, and the parties' 1997 offers are so minor that the differences are not significant. The significant difference between the offers, noted above, is the future cost of the additional 1.75% lift that the Association built into its offer. The cost of living arguments do not address the basis of the parties' disagreement whether there is justification for the additional lift in base wages.

The Association argued that the interests and the welfare of the public support its offer. Parties to arbitration proceedings routinely attempt to develop substantive arguments in order to invoke the benefit of this nebulous direction, that "the arbitrator shall give weight to the interests and welfare of the public and the financial ability of the unit of government to meet these costs." The arguments are usually necessarily, self-serving and impossible to quantify. In this instance, the Association's argument does not establish that its offer is more reasonable. It does, however, tip the balance in favor of the Association's argument that, the members of this bargaining unit should receive compensation that is equivalent to the compensation received by comparable employees in comparable communities. Comparisons with external comparables establish that the Association's offer is the more reasonable.

The offer of the Wisconsin Professional Police Association shall be incorporated into the parties' 1996-97 collective bargaining agreement.

Dated at Madison, Wisconsin, this 2nd day of July, 1996.



John C. Oestreicher, Arbitrator