

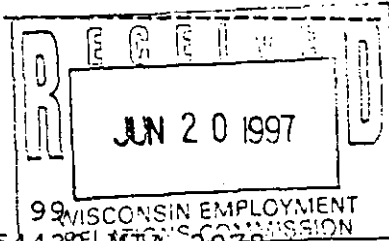
BEFORE THE ARBITRATOR

In the Matter of the Petition of

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, LEER DIVISION

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

Case 99 WISCONSIN EMPLOYMENT
No. 5443 PELMIA-2078
Decision No. 28984-A



VERNON COUNTY

Appearances:

Richard Little, Representative, appearing on behalf of the Union.

Klos, Flynn & Papenfuss - Chartered, Attorneys at Law, by Jerome Klos, appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

Wisconsin Professional Police Association/LEER Division, (herein "Association") having filed a petition to initiate interest arbitration pursuant to Section 111.77, Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and Vernon County (herein "Employer"); and the WERC having appointed the Undersigned as arbitrator to hear and decide the dispute specified below by order dated February 20, 1997; and the Undersigned having held a hearing in Viroqua, Wisconsin, on May 14, 1997; and each party having filed post hearing briefs, the last of which was received June 6, 1997.

ISSUES

The following is a summary of the issues presented with respect to the parties' agreement in effect for the calendar years 1997 and 1998. The parties final offers constitute the statement of the issues in dispute.

1. WAGE INCREASE: The Union proposes a 3% across-the-board increase effective January 1 of each year of the agreement. The Employer proposes a 2.8% across-the-board increase, effective January 1 of each year.

2. INCENTIVE PAY: Currently Appendix A provides for monthly incentive pay for various positions. It provides in relevant part:

"'A' 1.010 - <u>Classification</u>	1995-6 Basic Monthly Wage ***	Additional Monthly Incentive ***
------------------------------------	--	---

[irrelevant positions omitted.]

Jr. Investigator, full time	2,105.96	50.00 **
Chief Investigator	2,105.96	75.00 * & **
Sergeants	2,105.96	50.00 **

* The Chief Investigator position to be paid \$25 per month over base pay and to be paid \$50 per month over base pay beginning the sixth (6th) year of service in the Chief Investigative positions and \$100 per month over base pay beginning the eleventh (11th) year of service in the Chief Investigator position.

** Represents \$50 additional incentive pay per month since 1989 for Sergeants and full time Investigators.

*** as modified by step system set forth in 1.015"

The Union proposes: "Amend appendix 1.010 by deleting word "Jr." before investigator and by deleting asterisk and asterisk data and changing the additional monthly incentive for Chief investigator from \$75.00 to \$111.00 and that of sergeant and investigator from \$50 to \$85.00."

The Employer proposes: "Add an additional \$25 incentive for sergeants and investigators in 1997 and 1998."

3. NIGHT SHIFT DIFFERENTIAL: The Employer proposes to add Section 1.0175 to Appendix:

"A night differential premium of ten cents per hour will be paid all full-time employees who work regularly scheduled shifts for work between the hours of 3:00 p.m. and 7:00 a.m."

The Union proposes: "A night shift differential premium of ten cents (\$.10 per hour will be paid for all shifts scheduled to begin between the hours of 3 pm and 12 midnight."

4. SICK LEAVE PAYOUT: Currently there is no provision for any payout of sick leave upon retirement. The Union proposes to add to Article XIV the following: "Any deputy who retires from Vernon County shall be allowed to utilize up to twenty-five percent (25%) of their accumulated sick leave at the time of retirement to purchase continued coverage under the County group health insurance plan." The Employer opposes the establishment of this new benefit.

5. HOLIDAYS: Currently there are eight paid holidays. The Employer proposes adding one additional holiday, Veteran's Day.

POSITIONS OF THE PARTIES

The Employer argues that the arbitrator should primarily rely upon the internal settlement which was voluntarily negotiated between the courthouse and human service employees union and the Employer, for 2.5% wage increase and .3% increase in pension contribution. The Employer notes that it treated its 64 member

non-represented unit equally. The Employer asserts that its offer is an approximation of recent and current cost of living indexes (which it argues are defectively high). It states: when one compares the county offer with the unadjusted C.P.I. statistics of the past four years of approximately 2.8 and considers the downward adjustments of at least 1% to a level of 1.5% to 1.9%, a fair yardstick requires there should be no doubt the County offer fairly treats the contract employees." It urges the Arbitrator to note that the current step system affords an additional average increase of .5% per year.

It urges that Vernon County traditionally and currently is on the low side of county wage and fringe benefit comparisons. This is justified by the relative economic position of Vernon County in the state. The key factors distinguishing Vernon County from other counties is that while it is 7th from the bottom in terms of per capita income, it has the 7th highest tax rate. The county is primarily rural with low population and low population growth. It has rugged terrain and, therefore, has small farms. It has more roads to maintain than most counties.

It also distinguishes its situation from those in the counties which the Union has selected as comparison counties. It argues that Iowa, Sauk and Juneau all reflect higher general wages because much of those counties are in the Madison labor market. All have higher per capita income. Vernon compares favorably with Crawford and Jackson in per capita income and is taxing its residents at a higher rate than they are. Trempleau, Juneau and Monroe have higher per capita income and, therefore, higher wage scales in those counties might be appropriate. It argues that although Richland has a lower per capita income the reason that its wages are higher are that it has failed to properly negotiate. The Employer also notes that Jackson and Iowa do not have longevity programs and other counties' longevity programs are not as lucrative as Vernon County's.

The Employer urges that its proposal with respect to incentive pay for investigators and sergeants of \$35 effective January, 1, 1997, is adequate especially in the light of the fact that these officers are doing well under the new longevity pay plan. It also argues that its night shift differential is appropriate in that it specifically targets the specific hours that are onerous work hours.

The Employer has strongly opposed the creation of a new sick leave payout benefit. It has long opposed the use of sick leave for anything other than the employee's own illness.

Next, it notes that it has a budget levy with \$21,000 of its state imposed cap on a total levy of \$4,717,000 when its per capita income is among the lowest in the state.

The Union argues that the Employer has not established that it cannot legally meet the Union's offer. The Employer has not asserted that it lacks the ability to pay to meet the Union's offer.

It also argues that its offer better meets the public interest by retaining qualified personnel and maintaining their morale. The officers of Vernon County must work daily with the officers of other counties. Accordingly, the Union views comparisons with similar employees of comparable counties as the primary criteria for determining this dispute.

Sick leave payout is an issue which is very important in this dispute. Vernon County is the only county which does not have this benefit. The Union's proposal will allow an employee about six months of health coverage after they retire. The Union's proposal is the lowest benefit of other counties. This issue is more important than in other units because the retirement age in this unit is lower.

The Union heavily relies upon comparisons to other counties for its position. It relies upon Crawford, Iowa, Jackson, Juneau, Monroe, Richland, Sauk, and Trempeleau counties for comparison because other arbitrators have used this same group when hearing cases with Vernon County. The Union notes that it did agree to a wage freeze in 1995 and 1996, in exchange for the implementation of a substantial longevity program. Either party's offer would result in a wage rate which leaves Vernon County as eight among 9 comparables, but it would lose ground to the average of the comparison group.

The Association recognizes that arbitrators give weight to internal comparisons. However, in this case, internal comparisons should not be given weight because 1. there is no history of internal comparisons; 2. only one group voluntarily settled. (There is a significant difference in the total package that it received from the package proposed here); 3. there is no evidence that the unit that settled had equivalent standing among its comparables as this unit; 4. there is an arbitration award granting another unit more than that sought by the Union herein.

The Union also notes that direct comparison to the cost of living supports its position. Further, the other area settlements demonstrate how others bargaining under that circumstance would arrive at a settlement. [The Association notes that there is no substantial difference between the benefit level here and the overall level of benefits in comparable sheriffs' departments.

DISCUSSION

1. Wages

The Union heavily relied upon external comparisons for its position. It relies upon the comparable counties of: Crawford, Iowa, Jackson, Juneau, Monroe, Richland, Sauk and Trempleau. The Employer did not offer a proposed set of comparable counties, but distinguished Vernon County on the basis that it is more rural, has less usable farm land and has lower income than most of the cited counties.

Arbitrator Dichter in his 1997 award between the Employer and its highway department unit used the same set of comparables on the basis that they had been used in two prior awards involving the Employer. He concluded that there had been no change in circumstances and that he would not change the established comparable group. That position was well reasoned and will be adopted here.

This is not to say that this comparability group is ideal. It is the best that can be obtained under the circumstances. Crawford, Richland, Sauk, Juneau and Monroe counties are contiguous. Population is also a factor. All of the counties, except Sauk and Monroe are the same or smaller than Vernon County. However, Vernon has a substantially lower per capita income than all of the counties except Crawford and Richland. This is because Vernon is an agricultural county, but has terrain features which make its land less productive than its comparable counties.

Since 1990, Vernon County has paid its patrol officers at about the average of this comparability group. In the last agreement, the parties mutually agreed to exchange the adoption of the current longevity system which exceeds that of virtually all of the other comparable counties. In exchange, the bargaining unit accepted a wage freeze. As of 1996, Vernon County fell to second last among the comparables with respect to comparison of the bi-weekly wage rates of the top level patrol officer (without longevity). Senior officers in this county are well paid by comparison to comparable counties. The Union correctly does not seek a catch-up increase because none would be appropriate. What it does seek is a wage rate adjustment comparable to those obtained in comparable counties. For 1997, the following are the results in the comparable counties which have settled: Iowa, \$.40 per hour; Juneau 3.0%; Richland, 2.0% January 1 and 2.0% July 1; Sauk 3.5%. The external comparisons favor the Union's position for 1997. There is insufficient evidence to make any conclusion for 1998.

The County has four bargaining units, the Courthouse and Human Services unit of 45 members. It voluntarily resolved its calendar 1996-7 agreement for a 2.5% wage rate increase, plus .3% increase in the Employer's contribution to pension for 1996 and 2.5% wage rate adjustment for 1997 (using the average wage method). The result of the interest arbitration award for the 35 member Highway and Solid Waste Unit calendar 1996-7 agreement was a catch up increase of a 2% wage rate adjustment effective on each of the

following dates: January 1, 1996, July 1, 1996, January 1, 1997, and July 1, 1997. There were other individual wage adjustments included in that package. The fiscal year agreement with the 87 member Vernon Manor unit is not yet resolved. The Employer has not been inconsistent with its non-represented unit. When viewing wage increases alone, the voluntary settlement clearly favors the Employer's position. The average of the two settlements favors the Employer in cost, but the Union in year end wage rates.

2. Incentive Pay

The parties did not address these issues specifically.

3. Night Shift Differential

There is no costing data available to distinguish the cost difference between the parties' proposals. The primary issue with respect to this proposal was ease of administration. There is no evidence on this point other than argument. Both forms are used among the comparables. Both forms require a daily determination of the starting time of an employee's shift. The Employer's proposal requires additional determinations. It appears on this evidence that the Union's proposal is easier to administer. I would note that if the Employer's proposal were one which was common in its other collective bargaining agreements, I would have preferred it. However, there was no evidence on that point.

4. Sick Leave Payout

The Union's position is supported by virtually all of the external comparables. Jackson and Trempleau counties do not have any similar benefit. These two comparables support the position of the Employer. The Employer's position is supported by all of the internal comparables. There really is no dispute that this Employer has had long-standing inflexible opposition to establishing any benefit using unused sick leave. The parties have routinely settled without it. I note that in the recent settlement, the parties successfully engaged in substantial quid pro quo bargaining to establish a unique longevity plan in exchange for a wage freeze.

There is substantial merit in the Union's position as to this proposal when viewed from the public interest criterion. This unit is different from other bargaining units in that sheriff's deputies have an earlier retirement age and do not have the availability of Medicare immediately available upon retirement. The public interest in this benefit is in making reasonable efforts to facilitate the retirement of sheriff's deputies when they reach retirement age and choose to retire. This is a particularly relatively small department with a high level of responsibility. The public benefits by having officers fully committed to their work. Further, the cost of the benefit in this unit is partially

offset by the savings in the Employer will obtain when it hires replacements at the beginning of the salary schedule.

Nonetheless, the party seeking to establish a new benefit has to show that circumstances have changed such that there is a need for a new benefit and that its proposal is appropriate to fill the need. Alternatively, it must show that it has offered an equivalent quid pro quo for its offer. The Association has not offered a quid pro quo. Further, it has not shown that there has been a change in circumstances or that there is anyone who is likely to retire during the term of this agreement if this benefit is adopted. The Union has not met its burden here. Accordingly, the Employer's position is adopted.

5. Total Package

Internal Total Package Comparison

The Employer has heavily relied upon its assertion that the voluntary settlement with the Courthouse unit favors its position. Although that settlement involved a 2.5% across-the-board increase in the first year, the Employer has asserted that it included a .3% increase in Employer pension contribution which the Employer treats as a 2.8% "wage" increase in the first year, 2.5% second year. In fact, the Sheriff's unit had a .5% pension decrease for 1997. There is no evidence indicating that there is any other factor which is significantly different between these total packages. The available evidence indicates that Association's proposal, not the Employer's proposal is more consistent with the Courthouse settlement on a total package basis in the first year. When considering both years, it is debatable as to whose package is favored.

Interest and Welfare of the Public

The Employer has asserted that it is spending at nearly its proposed budget limitation. It asserts that the policy of this limitation is to reduce costs, not services. Accordingly, it believes that these cost limitations should be obtained by equivalent sacrifices among the bargaining units. The parties proposals are so close to each other on a total package basis that they essentially reflect about the same cost effect. The Employer has not demonstrated that adoption of the Union's proposal would make it difficult for it to comply with its budget limitations.

The Employer's position contains a second argument addressed to the interest and welfare of the public that the "tax effort" of the taxpayers in Vernon County is too heavy in comparison to the citizen's ability to pay and, therefore, some relief is necessary. Vernon County's tax rate for 1993 was higher than most of the comparable counties, except Iowa, Richland and Trempleau Counties. Of these, only Richland has average incomes as low as that in

Vernon County. Crawford is relatively close to Vernon County on both rate and income. Vernon County's local economy has unique characteristics due to the terrain and which are reflected in the lower per capita income. In 1989, the delinquent taxes in Vernon County were \$13,618. Since then the delinquent tax rate has skyrocketed steadily to \$693,264. There is no evidence as to the situation in the other counties. The preponderance of the evidence indicates that the taxpayers in this County have difficulty in sustaining their tax burden.

When an Employer has difficulty in paying arbitrators have to balance the need to maintain competitive salaries to attract and retain quality employees with the ability of the employer to maintain a minimum level of services. The Employer concedes that the wage rates in this unit do reflect the difference between the local economy of Vernon County and comparable counties. Less than an increase comparable to that similar employees receive in the comparable counties will result in further erosion of the wage level. The Employer has the ability to obtain reasonable savings without falling below a minimum level of service. There is a small difference between the parties' final offers. The evidence does not indicate that the Employer is operating at lowest possible level of services. Vernon County has a smaller complement of unit employees than most other counties even though it has many miles of road to patrol. Vernon County has a low incidence of property and a low incidence of serious crime. Although the Courthouse unit did acknowledge local situation by accepting a lower wage increase, the evidence in this case indicates that the Employer has adequate alternatives in this unit to reduce services.

Cost of Living

The Union presented the only total package costing of the offers of the parties.¹ The Union costs the Employer's offer at 1997, 3.12% and 1988, 3.26% and its offer at 1997, 2.83% and 1998, 3.44%. The December, 1996, North Central Urban Wage Earners cost of living index has changed 3.8% in that year. Because the Employer's offer is higher than the Union's in the first year, it favors the Employer's offer. The rate of change through 1997, supports the Union's offer for 1998. In this context, I view the index as favoring the Union's offer overall.

The Employer has made a number of arguments directed at the application of the index. First, it has submitted a newspaper article suggesting that some experts view the consumer price index as overstated. This argument has been known for many years, although recently it has gained momentum. The Legislature has addressed (and changed) the standards for interest arbitration a

¹There are some errors in this costing; however, they do not impact the application of those figures herein.

number of times. It has chosen not to change the consumer price index standard.

However, even if the application of the standard were now questionable, the evidence of how other parties in the external comparability group shows that they have all settled on wage increases in excess of the Employer's. This fact demonstrates how other relatively similarly situated parties would deal with the index.

Finally, the Employer has argued that the Union has historically made settlements in excess of the consumer price index and it has inferred that, therefore, the standard should be applied on a multi-year basis. This would clearly favor the Employer's position. The Undersigned believes the fairer application is to recognize bargaining history as a factor commonly recognized in collective bargaining and interest arbitration. The bargaining history tends to support the conclusion that these parties themselves have historically negotiated total packages which exceeded the cost of living. This pattern supports the Union position herein.

The Employer has heavily relied upon its one voluntary settlement. Setting aside the fact that I am not sure what that settlement was on a total cost, roll forward method, I think it is likely that that internal comparable would favor the Employer's position. The Employer has argued that that settlement is based in part on factors other than the cost of living. Accordingly, while that settlement clearly should be accorded appropriate weight for other reasons, it is entitled to less weight than the other factors listed in the paragraph above when evaluating the cost of living criterion. Accordingly, I conclude that the cost of living factor favors the Union's proposal.

I conclude that the evidence taken as a whole favors the adoption of the Union's proposal. The cost of living and external comparisons are entitled to the most weight in this proceeding. They support the first year of the Union's proposal. The cost of living factor suggests that the Union's proposal is closer to appropriate for the second year.

AWARD

That the parties 1997-1998 agreement contain the final offer of the Union.

Dated at Milwaukee, Wisconsin, this 18th day of June, 1997


Stanley H. Michelstetter II
Arbitrator