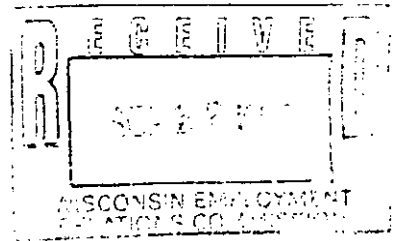


STATE OF WISCONSIN
BEFORE THE ARBITRATOR



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In the Matter of the Petition of :
 :
WISCONSIN PROFESSIONAL POLICE :
ASSOCIATION/LEER DIVISION :
 :
For Final and Binding Arbitration : Case 154
Involving Law Enforcement Personnel : No. 53853 MIA-2056
in the Employ of : Decision No. 29033-A
 :
DANE COUNTY :
----- :

Appearances:

Wisconsin Professional Police Association/LEER Division, by
Cullen, Weston, Pines & Bach, by Gordon E. McZuillen, Esq., and
Richard T. Little.

Dane County (Sheriff), by Godfrey & Kahn, S.C., by Jon E.
Anderson, Esq.

ARBITRATION AWARD

Wisconsin Professional Police Association/LEER Division
(WPPA, Association or Union), is the exclusive bargaining
representative of all regular full-time deputy sheriffs in the
Sheriff's office excluding the Captains, Sergeants, Lieutenants
and Chief Deputy. The parties have been unable to agree upon the
terms to be included in their successor contract to the agreement
that expired on December 23, 1995. On February 23, 1996, the
Association filed a petition with the Wisconsin Employment
Relations Commission (Commission) wherein it requested the

Commission to initiate final and binding arbitration pursuant to Sec. 111.77(3) of the Municipal Employment Relations Act, for the purpose of resolving their impasse on matters affecting wages, hours and conditions of employment. The Commission caused a member of its staff to conduct an investigation. The investigator advised the Commission on March 11, 1997 that the parties were at an impasse. The parties selected the undersigned from a panel of arbitrators furnished by the commission; the undersigned was appointed to act as the arbitrator by an order of the Commission dated April 7, 1997. After due notice, the arbitration hearing was conducted in the Dane County City-County Building on June 13, 1997. Both parties presented oral and written testimony into the hearing record which remained open for the filing of supplemental data through June 27, 1997. Initial briefs were exchanged through the undersigned on July 30, and reply briefs were exchanged on August 25, 1997.

ISSUES IN DISPUTE

The parties have both identified five areas of their expired contract about which they have been unable to agree. Both have identified the size of their proposed wage increases as the most significant dispute. Other disagreements relate to proposed changes in holidays, sick leave accumulation, uniform allowances and proposed changes in the payroll processing system. The parties' positions on these issues are outlined below.

THE ASSOCIATION'S POSITION

The Association reviewed the provisions of Sec. 111.77, Wis. Stats., and then spelled out the language of the two final offers. It stated that an analysis of the statutory criteria will establish that the Association's offer is more reasonable than the County's offer. It said that there is neither evidence nor argument that the Employer may not meet the terms of the Union's offer. Accordingly, the Criteria relating to the legal authority of the Employer should not affect the decision herein. The Association said that the stipulations or tentative agreements that were arrived at during negotiations were primarily housekeeping matters and should bear little or no affect upon the decision.

The Association said that its offer will best serve the interest and welfare of the public "by recognizing the need to maintain the morale and health of [Dane County's] police officers and thereby retaining the best and most qualified officers." It said that these intangibles are as important as direct benefits particularly because Dane County's officers work side by side, on a daily basis, with officers of other departments. "The Association views the comparison of the law enforcement officers employed with Dane County to law enforcement officers employed by similar departments as the most prevalent comparison made in these proceedings."

The Association cited authority for comparing the prevailing practices of the same class of employer within a locality or

area. It said that pride and morale are particularly significant "when one recognizes the unique circumstances under which law enforcement officers must function." It argued that the fact that police and sheriff's departments have to provide law enforcement services 24 hours a day, 365 days a year, distinguishes them from other municipal employees. The Association pointed to a series of exhibits which provide a statistical profile of crime in Wisconsin, and argued that the data shows the type of issues police officers are expected to deal with. It said other municipal employees did not have to deal with these problems, and "crime levels are not simply a matter of municipal population."

The Association said that the Dane County Sheriff's Department has a severe shortage of qualified personnel. As a result, "all employees have been placed on 'alert' status" for the third time in history. The Association said that it is appropriate that the Department maintains high standards and employees only the most qualified individuals. Five newly hired employees failed to pass their probationary period. Staffing problems "have been further exasperated by nineteen resignations and sixteen retirements since January of 1996." It cited testimony that the foregoing has placed additional strain on departmental employees and contributed to their "getting burned out." "Reason dictates that officer morale will inevitably suffer."

The Association said that the primary issue in this proceeding is its three-fold wage strategy, "which incorporates an equalization of step increases, an addition of one step to occur on the last day of the agreement, and a fair and equitable increase to all employees." It said that the Union's offer directs funds to the top of the scale in order to maintain current senior personnel. The Union said that the Employer's offer would provide the deputies "with the second lowest 'in pocket' increase of any of the settled law enforcement units." It said that only a freeze on Kenosha County wages prevents the Employer's offer from being the lowest. The Association said that unit morale and the welfare of the public would not benefit from the Employer's offer, therefore, the Association's offer must be deemed more reasonable.

The Association said that there has not been any evidence or argument that the County doesn't have the financial ability to meet the Association's offer. The ability to pay factor should not be a consideration in this case.

The Association said that comparisons of wages, hours and conditions of employment between the members of this unit with law enforcement personnel in similar communities, supports the Association's offer. The Association said that in past arbitration decisions involving these parties, the City of Madison and Wisconsin's ten largest counties, excluding Milwaukee, have been considered comparable. It said that the 1989 decision in which Arbitrator Neilsen included state troopers

was case specific because of a health insurance issue. It said that the Employer's exhibits in this case demonstrate the difficulty, if not the impossibility, of including state trooper wage and benefit data with wage and benefit data from other comparables. The Union said that its proposed comparable group should be deemed most appropriate for decision making in this proceeding.

The Association reviewed its wage offer which would provide a .76% increase on December 24, 1995, an additional 2% on June 23, 1996, 2% on December 21, 1996 and 3% on June 22, 1997. It also proposed than an additional "pay step of 4% above the current top steps" should be added to the compensation schedule. It said that its wage offer is more reasonable than the Employer's offer for .76% on December 24, 1995, 1% on June 23, 1996, 2% on December 21, 1996 and 1.5% on June 22, 1997. To support its position, the Association pointed to exhibits which compared top patrol officer' wages in Dane County and in the Association's proposed comparables for the previous five years and for the period covered by the offers in this proceeding. It summarized that comparison as showing that Dane County Deputies ranked seventh in each of the previous five years. They would remain in seventh place during both 1996 and 1997 under the County's offer. If the Association's offer is selected, they would rank in sixth place in 1996 and fourth place under step 8 in 1997. Those deputies who qualified for the new step 9 in 1997 would rank third among the comparables.

"It is clear that wage rates in Dane County have improved (.93¢ per hour below average in 1990 to .08¢ per hour above average in 1995)." The Association emphasized that the foregoing analysis was based upon comparisons of average top wages not the top pay. It said that it has not attempted to reach the top, "only [to] prevent backward movement which will be the result under the Employer's offer." It said that Dane County deputies worked twenty years to reach the top pay scale compared to similar comparables which like Sheboygan, required two years to reach the top. The Association said that the increases it requested are necessary to maintain a reasonable standard of living. "... [T]he employer simply cannot justify that base wages must now step backwards."

The Association said that Kenosha County's three year contract which did not contain any wage increase in either 1996 or 1997, affects the wage comparisons. It reviewed the fact that the Kenosha contract had provided a 6% increase in 1995 followed by a two year freeze in wages. "However, perusal of the contract provides clarification of the actual settlement reached in [Kenosha]." It pointed out that a one time grant of six extra vacation days in 1997 was equal to a 2.5% wage increase. The Association said that the Employer's offer for a 2.5% "in pocket" increase in 1996 and 2.75% increase for 1997, is lower than increases in comparable communities. Average increases in comparable communities including Kenosha will be 2.81% in 1996 and 2.7% in 1997. If Kenosha is excluded, the average increase

will be 3.16% and 3.08% in 1996 and 1997 respectively. It said that the additional pay step the Association has proposed, would take effect on the last day of the proposed agreement. Since it does not produce any additional cost during the term of this contract, it should not be "a primary factor in these proceedings."

The Association said that its offer would increase the number of hours of sick leave that the deputies can accumulate from 1504 to 2000 hours and it would increase the number of hours that retiring deputies will be allowed to convert for continued health insurance coverage from 1504 hours to 1600 hours. It anticipated the County would argue that internal comparisons do not support increasing sick leave benefits. It argued that since protective service employees retire ten years earlier than other employees and since Medicare coverage is not available when law enforcement officers retire under the Wisconsin Retirement System, the members of this unit are different than other County employees. The Association's offer would provide four additional months of paid health premiums for employees with family coverage and eight additional months for those with single coverage. It said that some counties provide retired officers with health insurance coverage outside of the right to convert banked sick leave.

The Association noted that it has proposed a modest .11% increase in the officers' annual uniform allowance. It said that

the analysis of that cost is included in its total package cost analysis.

The Association anticipated that the County would argue that its settlements with other employee units supports the County's offer. It said that though arbitrators have considered internal comparables, recent arbitration decisions and the facts of this case dictate that internal comparables should be given limited weight herein. It cited Arbitrator Bellman's comments 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." It noted that Arbitrator Fleischli said that there may be reasons for comparing law enforcement units with one another rather than with other groups of municipal employees. He observed that the nature of law enforcement officers' work is different than the work of other municipal employees, and a separate statutory procedure has existed for many years for dealing with their contract disputes.

The Association said that while the record shows that the County offered other bargaining units the same kind of increases it offered this unit, "[t]he Employer provides no data on wage rates for the internal comparisons." It argued that wage levels and data about the relative position of other employee units with their external comparables is relevant to the argument that the level of the wage increase is reasonable. "Finally, the record fails to establish that internal comparisons have, in the past,

served as the controlling consideration in establishing settlements with the bargaining unit."

The Union said that employer contributions to the cost of retirement programs for protective service employees have been reduced by 1.4% over two years while those costs have increased for general employees by .4%. It argued that if internal comparables are considered, these changes are also relevant.

The Association noted that both parties had submitted evidence about cost of living increases. It cited Arbitrator Kerkman's often cited conclusion that the appropriate measure for protection against inflation "should be determined by what other comparable employers and associations have settled for" It cited CPI data that shows increases in the north central region have been at or near 3%. The Association said that the 1996 cost of its package is 3.71% compared to 1.9% for the Employer's offer. It argued that while its 1997 cost is 3/4% higher than the CPI, "the Employer offer will once again fall below the data provided. The Employer does not provide one iota of evidence that suggests that such an offer be considered reasonable under this criteria."

The Association said that its offer would provide its members with wages and benefits that are comparable to their law enforcement counterparts. It said that no part of its offer "elevates the members of the Association to any position giving cause to find its final offer as unreasonable." It concluded

that, based upon the criteria set forth in Sec. 111.77(6), Wis. Stats., its offer is the more reasonable and should be adopted.

THE COUNTY'S POSITION

The County anticipated that the Association would "likely describe this case as that of a traditional wage dispute. It is much more than that." It said that the Association was asking for: an additional 1.75% wage increase, a change in the salary schedule, uniform allowance accumulation, and increased sick leave benefits. "In totality, the Association's offer is much too broad and far reaching in impact."

The Employer's wage offer is for .76% effective 12/24/95 and 1% on 6/23/96. Second year increases would be 2% on 12/21/96 and 1.5% on 6/22/97. It said the cumulative offer was a 6.5% lift "(3.00 in 1996 and 3.50 in 1997)." It said that the County's 1995 base year salary cost was \$9,846,783. The Employer's offer would add 1.28% or \$126,453 in 1996, and 2.81% or \$280,145 in 1997. "The County's two-year actual impact is 4.13% or \$406,598. The County said that the Union's offer would result in "significant salary schedule structure changes effective 12/24/95" plus 2% increases on each 6/23/96 and 12/21/96 and a 3% increase on 6/22/97. Its offer would create two additional salary steps at schedule maximum on 6/22/97. The Employer said that the maximum rate for Deputy Sheriff (I-II) would increase by 4.3% or .76¢ in 1996 and by an additional 9.3% or \$1.72 an hour in 1997 under the Union's offer. It placed the two year impact

of the Association's offer at 6.64% or \$693,939. "Cumulatively, the parties are \$247,341 apart on wages." The County anticipated that the Association would argue that its offer is supported by both internal and external comparables. The County said that it would show that the additional cost of the Association's offer is excessive.

The County explained that its offer would replace the current 4 paid holiday hours provided to employees on Good Friday by increasing the number of floating holiday hours employees receive by 5 hours. The County's offer would result in the employees receiving an additional hour of holiday pay.

The Association's offer would increase the officers' uniform allowance by \$50 to \$500 a year. The County would retain the existing \$450 uniform allowance. Currently, employees may accumulate up to 1,504 hours of unused sick leave. Upon retirement, accumulated sick leave can be converted to paid up health insurance benefits. The Association's offer would increase the number of hours that the employees can accumulate to 2000 and increase the number of hours that can be converted to 1,600 hours. The Employer's offer would retain the existing benefit levels for sick leave accumulation and conversions.

The Employer cited comments from three recent decisions in which the arbitrators discussed the importance of maintaining internal comparability among the settlements within a municipality. It noted that Arbitrator Sherwood Malamud said that "Patterns of settlement are difficult to achieve. Where

they are achieved, this arbitrator finds such patterns persuasive, if not determinative, of the dispute." The County said that it has 8 represented bargaining units; all are settled for 1996 and 1997 except for the 2 law enforcement units.

The Employer summarized evidence of settlements between the County and all of its bargaining units and unrepresented employees from 1985 through 1997. The data showed uniform settlements for the period from 1985 through 1995, with 1 outlier unit in each 1988 and 1995, 2 outliers in each 1985 and 1987 and 3 outliers in 1990. It said that all but the two deputy units have settled for 2% and 1% split increases in 1996 and 2% and 1.5% split increases in 1997. The County said that in this dispute, the Union's offer would generate 4.3% at the Deputy Sheriff's maximum rate during 1996 compared to the County's offer for a 2% and 1% split increase. The Association's 1997 offer is for 3% on January 1, and 2% on July 1, 1997. It would also create 2 new maximum wage steps on December 20, 1997. The County said that its wage offer to the members of this unit is identical to the offer that it made all of its other employee units. The Employer said that 82% or 1,602 of its 1,951 employees have voluntarily accepted its offer. "Deviation from such an overwhelmingly clear and convincing internal settlement pattern should not be condoned."

The County began the comparison of its offer with external comparables by citing arbitral authority "that the internal pattern will prevail unless there is compelling reason to the

contrary." It cited a decision in which Arbitrator Imes discussed the relative weight to be given to internal and external comparisons. She found that external comparables favored the Union's proposal but found that, since the employer's offer in that case would not "seriously alter the rank among external comparables," there was no reason to deviate from the prevailing practice of the parties which was established by the internal comparison pattern.

The Employer said that these parties had gone to arbitration in 1989 and in 1992. "In his 1989 award, Arbitrator Nielsen concluded that the appropriate comparable pool for this unit should include the 10 most populous counties within the state (excluding Milwaukee), along with the City of Madison and the State of Wisconsin." It proposed the same comparables in this case and noted that, except for including the State of Wisconsin, the Association had agreed to the same comparable pool.

The County pointed to evidence of Deputy Sheriff minimum and maximum wage rates in the ten comparable counties for 1995 through 1997. It said 1995 wage rates in Dane County "were quite strong, with both the minimum and maximum ranking fourth." It said that the County's offer would maintain the fourth place maximum wage ranking in 1996 and move to third place in 1997. It said that the Association's offer would improve the County's rank to second at the end of 1997. The County said that it had not included data from Brown County in the 1996-97 analysis because

data from Brown County, which reflects reduced numbers of average work hours, would skew the results.

The County compared the average of the minimum and maximum deputy sheriff wages in nine comparable counties in 1996 and 1997 with wages that would result in Dane County under the two offers in the proceeding. The minimum deputy wage in Dane County in 1995 was \$14.40. That was 49¢ above the comparable minimum average. In 1996, Dane County's minimum would drop to 1¢ below the \$14.67 average for other counties under the Employer's offer. It would drop to 13¢ above the average under the Association's offer. The average comparable minimum deputy wage is \$15.05 an hour in 1997. Under the County's offer, the 1997 average of \$15.17 would be 12¢ above the average, compared to being 50¢ above the average comparable as a result of the Association's offer for \$15.55 an hour.

Dane County Deputies who earned the maximum wage of \$17.80 in 1995 earned one dollar an hour more than the \$16.80 average earned by their counterparts. Under the Employer's offer the difference would be 79¢ in 1996, and 86¢ in 1997, when Deputies in Dane would earn \$18.76 an hour compared to the \$17.90 comparable average. Under the Association's offer, top deputies would earn wages that exceed the average by \$1.23 an hour in 1996 and by \$2.38 an hour in 1997, when Dane County Deputies would receive \$20.28 an hour.

The Employer argued that the "minor slippage" that occurs under its 1996 offer is due to Marathon County having created a

Deputy IV position. The \$17.26 wage for that classification is well above the 1995 comparable average of \$14.67. "By 1997, the County's final [offer] rebounds and still keeps the Deputies in Dane County earning well above average." The County said that the Association's offer would result in maximum wages that are \$2.38 an hour above the average 1997 wage. That would be a gain of \$1.38 an hour increase above the one dollar difference that existed in 1995.

The County said that Dane County Deputies have the opportunity to earn additional pay through educational incentive increments of up to 18% of base pay. They also receive up to an additional 11% of base pay for longevity. "All told, each employee has the opportunity to maximize his/her hourly rate by a full 29%! None of the other comparables provide for such lucrative benefits." The Employer cited evidence that, based upon the County's offer for 1996, Deputies who earned the maximum wage of \$18.12 an hour could receive an additional \$5.25 an hour longevity payments and educational incentive pay. This \$23.37 hourly maximum under the County offer is \$4.56 an hour more than the comparable average of \$18.81, but, it is 57¢ an hour less than the maximum wage, longevity and educational incentive that deputies would receive under the Association's offer. The County cited a recent arbitration decision involving the City of Madison's Police Department. In that decision, Arbitrator Malamud analyzed the relationship of the costs of the educational incentive increment and longevity payments with the cost of the

wage only offer. He concluded that "Longevity and the educational incentive are significant elements of the compensation provided to Madison police officers, and these payments must be included in the analysis of the wage level issues." The Employer said its offer would provide total salary nearly 25% above the comparable average. "The additional compensation sought by the Association is completely unjustified."

A comparison of maximum wage rates paid State Troopers and Madison Police places Dane County Deputies in second place in 1995. The County's offer would retain that ranking in 1996. The Association's offer would result in improving the Deputies' rank to first place in 1996. The State has not settled with the Troopers for 1997. The County said that the above average increases contained in the Union's offer "Catapults these bargaining unit members' wages over and above the City of Madison wages." It said that the only reason the Employer's offer slips below average in 1997 is because the State wage increases, which are below the County's wages, have not been settled for 1997. It said that the Association's offer would result in a 1997 wage that is \$1.35 above Madison's.

The County reviewed evidence of the amount of lift that was provided to salary schedule in comparable Counties compared to the lift that results from the adoption of the offer in this case. Eight of nine comparables, all except Waukesha County, have settled for 1996. Four departments received a 3% lift, two

received a 3.5% lift, and one, Sheboygan, received four percent. Kenosha is reported as settling for a zero increase in both 1996 and 1997. The County concluded that its offer for a 3% lift in 1996 was greater than the comparable average 2.88% lift. It said that the Association's offer of 4.27% in 1996 is excessive. Seven of nine comparables settled for an average lift of 2.75% in 1997. The County's offer exceeds that average by .75% while the Association's offer is 2.25% above the average. The City of Madison's Police received 3% in both 1996 and 1997. "Clearly, the County's final offer is much more reflective of the level of wage rate increases ... among the area police units."

The Employer explained that all of its bargaining units, except for this one and the Supervisory Deputies units, have accepted the Employer's offer to eliminate the Good Friday holiday. It said that the County's offer to add five hours to the floating holiday pool would provide the employees an additional hour of holiday pay. The employers said that the fact that all settled units had accepted its offer shows that the offer is reasonable. "The County's position does no more than continue the ongoing tradition of internal consistency."

The County said that the Association's offer, which contains changes in contract language affecting salary structure, uniform allowance and sick leave benefits, would result in substantial changes in the status quo. "All of these issues are enhancements in the contract language -- none of which have been accompanied by any requisite quid pro quo to the County." The Employer noted

that different arbitrators have established different standards to determine whether a proposed change in a contract is acceptable. It noted that Arbitrator Malamud had discussed the three part test many arbitrators have applied to proposed changes in contract benefits. "(1) Has the party proposing the change demonstrated a need for the change? (2) If there has been a demonstration of need, has the party proposing the change provided a quid pro quo for the proposed change? (3) Arbitrators require clear and convincing evidence to establish that 1 and 2 have been met." The Employer argued that the Association has failed to either demonstrate need for the changes that it has proposed or offer a quid pro quo for the changes.

The Employer said that the parties' 1992-93 contract had a seven step salary schedule. The expired contract provided for eight salary steps commencing in October 1994 for Deputies I and II. It said that the Association's offer would extend the salary schedule to nine steps. "The initial schedule deceptively presents a start rate that is identical to the County's final offer, but offers a maximum hourly wage that is 2.25% more than the base year maximum." It said that additional increases over the life of the contract would raise the maximum hourly wage for the Deputy Sheriff I-II classification to \$2.48 or 14% over the base year maximum.

The Employer said that the prior contract provided for a \$450 annual uniform allowance, that is the highest among all external comparables. It said that the Association did not

present any evidence to demonstrate the need to increase the allowance. It said the current \$450 compares to the average \$377 comparable allowance. "Clearly, the Union has failed to justify a compelling need for the proposed change."

The County reviewed the sick leave provisions included in the expired contract, which it said are the same benefits enjoyed by all of the County's other bargaining units. It reviewed the Association's proposal to improve these benefits (outlined at page 12 above). The Employer said it had worked to maintain internal consistency among its bargaining units, and it cited testimony about problems that it encountered before a uniform sick leave policy was achieved. The County reviewed evidence of sick leave policies in effect in other comparable municipalities including the City of Madison. "With the exception of Racine County, Dane County Deputies are on top of the list with 188 days available for accumulation and payout." It noted that the next highest is the City of Madison with 150 days. The comparable average is 130 days. The County said that its potential exposure from the Association's sick leave proposal would be \$498,888. It said that the Association had failed to justify the need to enhance sick leave benefits.

The County concluded by saying that since the Association had failed to justify the need for any of its proposed changes, it is not even necessary to determine whether a quid pro quo has been offered. It added that there is no evidence of any quid pro quo for the changes the Association is seeking.

In its reply brief, the County said that there are numerous reasons for the high number of vacant deputy positions in Dane County including retirements, failure to pass probationary periods, discharges and disabilities. It said that the reason some positions have been vacant for a long time is not because of the County's wage offer, but rather due to the fact that it takes six months to fill a vacancy. The County said that the Association had ignored the fact that the replacement factor for holidays, sick leave, vacation days, etc., require 1.9 new deputies to fill each vacant position. "The interest and welfare of the public would not be better served by the selection of the Association's final offer.

The Employer repeated its earlier assertion that the Association failed to justify the changes that it proposed in the structure of the salary schedule. It cited additional arbitral authority for the proposition that "the arbitration forum is not the appropriate place to secure salary schedule structure changes." It argued that "alterations of the magnitude sought by the Association must be accomplished through voluntary negotiation."

The County noted the Association's argument that the implementation of an additional pay step on the last day of the proposed contract period should not produce additional cost during this contract period, and should not be a primary factor in these proceedings. The Employer said that in fact the Association had proposed the creation of "two new maximum steps

that are added the last day of the contract." It said that the proposal has significant cost implications for the future. The County reviewed data that shows "scores" of deputies would be eligible for step 8 and 32 deputies would be eligible for placement at step 9 on the last day of the contract. "The Association has simply chosen to disguise all associated costs by delaying the implementation date of the additional salary schedule steps." The Employer said that the Association had attempted to disguise the "massive" year end increases by using June 22, 1997 wage rates rather than year end rates in its analysis." It said that the Association had created a cloud of deception.

The Employer responded to the argument that reported wage rates which compared a Dane County Deputy with 20 years of service to "comparable employees reaching the top of the pay scale in as little as two years." It said longevity payments should be included in the wage comparison. After four years of service, a bargaining unit member is eligible for 3% in longevity pay. The maximum longevity of 11% is available after 19 years. It compared Dane County's \$4,010 longevity pay after 20 years of service to the comparable average of \$1,398.

The County concluded its reply brief by repeating many of the arguments it made previously about the Association's sick leave and uniform allowance proposals. It also reiterated its analysis and arguments that comparable internal settlements provide support for the Employer's offer.

In its reply brief, the Association said that CPI data suggests that this is a time of unprecedented economic growth. It said that the Employer's salary offer is less than the CPI, while the Association's offer virtually mirrors changes in the index.

The Association said that the County has overstated the cost of the Association's offer. It said that "In actuality, the additional step (ten year) impacts 50 existing employees (16.1%) on the last day of the proposed agreement." It said that the existing wage structure also "spreads step increases well into a Dane County deputy's career." It said that deputies reach top pay well before 20 years in many comparables. The Association pointed to a chart which shows that if the County's offer is selected, Dane County deputies will earn a total of \$37,001 less than the average total salary received by deputies in comparable counties over a 20 year period.

The Association said that employee turnover had effected employee vacations and the overall strength of the Department. It said employee retention is a critical problem. It argued that additional step incentives would help insure an adequate corps of deputies when they are needed. It said that the Employer could have offered a lower starting wage and agreed to the Association's step program to reward retention. It said that the only rationale for the County's unreasonably low wage offer with across-the-board increases, was internal comparability.

The Association responded to the argument that it had not offered a quid pro quo in return for additional salary steps. "However, the Association's additional steps do not represent a 'new' benefit." It said that based upon the County's argument that a quid pro quo is required for a change in an existing benefit, the County's proposal must fail because of its proposed changes in Good Friday and payroll processing policies.

The Association responded to the Employer's statement "that there has been a historical consistency in the internal settlement patterns." "Indeed, since 1985, there have been only four years in which the non-supervisory deputy sheriffs have agreed to the 'internal comparable.'" It argued that since 1990, "there has not been a single settlement, among all of the voluntary internal agreements, that has tied the non-supervisory deputy sheriffs to the internal comparables." It noted that the largest exception to internally comparable settlements was the arbitration award in favor of the County's Attorneys' Association in 1995. The Association said that the Employer's argument "that it is entitled to rely on historically recognized internal comparables is just wrong."

The Association said that there are sound reasons for treating deputy sheriffs different than other employees. It said that their work is so much different from that of other employees, that law enforcement arbitration proceedings are governed by a different section of the statutes than proceedings for other employees. It said no other group of employees is in

"harm's way every minute of every hour of every day that they work."

The Association said there is no merit to the argument that "interest arbitration should not be used to achieve greater economic ends than can be achieved through voluntary agreement." It argued that the interest arbitration law plainly contemplates that economic issues will predominate. It argued that the Employer has agreed that its offer does not keep pace with external comparables. "Thus far from compensating officers for their difficult jobs and to counter the serious turnover within the ranks, the Employer's offer erodes the bargaining unit members' relative position and promises to exacerbate the turnover problem of failing to offer the sorts of long-term incentives that the Association's proposal offers."

DISCUSSION

It has been difficult to decide which of the two base wage offers in this proceeding has the greatest support from evidence in the record. It appears that the Employer's offer to increase base wages by 4.13% with a 5.26% lift over two years is low. The Association's base wage offer to provide 7.76% lift over the two year period of the contract appears high.

The Association's offer would also create two additional steps in the salary schedule. Employees with 20 years of service would go from \$17.50 an hour in Step 7 to \$18.20 an hour in the new Step 9 on December 24, 1995. Employees with at least 10

years of service would not benefit from the new Step 8 until December 20, 1997, at which time they would receive a .74¢ an hour increase. The full cost of adding these two new steps to the salary schedule would not impact during this contract period because a substantial portion of the cost would not take effect until the last day of this contract period. The future cost of those structural improvements suggests that the Association's offer will be considerably more expensive than has been indicated. Table I has been created in order to compare the impact of the two offers on the wage schedule. The column on the far right reflects the amount that the respective employees' salaries would be increased annually as a result of all of the increases that are included in the two offers. Since the sum of the proposed increases would be added at 6 month intervals through June and December 1997, the employees would not receive these annual increases during this contract period.

TABLE I

ASSOCIATION'S OFFER						
	Base	6/97	12/20/97	\$Increase	Annual Increase	
Deputies I&II						
Range 15-Step 1	\$14.40	\$15.55	- -	\$1.15	\$2,242	
Step 3	\$15.34	\$16.67	- -	\$1.33	\$2,593	
Step 7	\$17.13	\$18.76	- -	\$1.63	\$3,178	
Step 8	\$17.80	\$18.76	\$19.50	\$1.70	\$3,315	
New 9	\$17.80	\$18.76	\$20.28	\$2.48	\$4,836	
Deputy III						
D.A. Investigators						
Range 16-Step 1	\$15.90	\$17.17	- -	\$1.27	\$2,476	
Step 3	\$16.75	\$18.39	- -	\$1.64	\$3,198	
Step 5	\$17.67	\$19.51	- -	\$1.84	\$3,588	
Step 6	\$17.67	\$19.51	\$20.29	\$1.93	\$3,763	
New 7	\$18.36	\$20.29	\$21.10	\$2.74	\$5,343	

Traffic Investigators

Range 17-Step 1	\$16.43	\$17.74	- -	\$1.31	\$2,554
Step 3	\$17.28	\$19.00	- -	\$1.72	\$3,354
Step 5	\$18.29	\$20.16	- -	\$1.79	\$3,490
Step 6	\$19.02	\$20.16	\$20.96	\$1.94	\$3,783
New 7	\$19.02	\$20.96	\$21.80	\$2.78	\$5,421

COUNTY'S OFFER

Deputies I&II

Range 15-Step 1	\$14.40	\$15.17	- -	\$.77	\$1,501
Step 3	\$15.34	\$16.16	- -	\$.82	\$1,599
Step 7	\$17.13	\$18.05	- -	\$.92	\$1,794
Step 8	\$17.80	\$18.75	- -	\$.95	\$1,852
There is no Step 9.					

Deputy III

D.A. Investigators

Range 16-Step 1	\$15.90	\$16.75	- -	\$.85	\$1,657
Step 3	\$16.75	\$17.65	- -	\$.90	\$1,755
Step 5	\$17.67	\$18.62	- -	\$.95	\$1,852
Step 6	\$18.36	\$19.34	- -	\$.98	\$1,911
There is no Step 7.					

Traffic Investigators

Range 17-Step 1	\$16.43	\$17.31	- -	\$.88	\$1,716
Step 3	\$17.28	\$18.21	- -	\$.93	\$1,813
Step 5	\$18.29	\$19.27	- -	\$.98	\$1,911
Step 6	\$19.02	\$20.03	- -	\$1.01	\$1,969
There is no Step 7.					

Sheriff's Departments from the 10 largest counties in Wisconsin, excluding Milwaukee and the City of Madison's Police Department, have been agreed upon comparables during past negotiations and in previous arbitration proceedings. They are also an agreed upon pool in this proceeding. The County suggested that the State of Wisconsin's "State Troopers" should also be included in the pool, because, they had been included in the comparable pool by Arbitrator Nielsen in a 1989 case involving these parties. The Association argued that the dispute

in that case was limited to health insurance issues. It argued that data that is available for the State Trooper unit is not subject to comparisons with data for the other comparables in this proceeding. There is merit to the Association's argument. While Arbitrator Nielsen said that the State unit was comparable in that 1989 decision, it is not clear that he placed much reliance upon data for this group of employees. State Troopers were not included in the comparable pool when Arbitrator Tyson decided a case between these parties in 1992. The agreed upon pool of 9 other sheriff's departments and the City of Madison's Police Department will constitute the primary external comparable pool in this proceeding.

Comparing the two wage offers in this proceeding with wage increases and resulting wages in comparable departments is a complicated and challenging exercise. The Association emphasized that the County had offered the second lowest "in pocket increase" of any settled comparable. It reiterated that top deputy wages in Dane County would continue to rank seven of ten under the County's offer. The County noted that both minimum and maximum Deputy wages in Dane County ranked fourth. It emphasized the fact that Dane County's wages at those benchmarks will continue to be between .79¢ and .86¢ an hour above the average if the County's offer is accepted, compared to a maximum wage that would be \$2.38 above the average if the Association's offer is accepted. The Employer also emphasized how Dane County's Deputies receive up to an additional 11% of base pay for

longevity and can receive an additional 18% of base pay through educational incentive increments. Employer Exhibit #9 indicates that 296 bargaining unit members that were on the payroll on June 10, 1997. During calendar year 1996, 165 of the 296 received longevity increments and 168 received educational incentive pay. Based upon data in Joint Exhibits #1-3 and Employer Exhibit #9, it appears that the supplemental longevity and educational benefits received by approximately one-half of the employees will be equal to approximately 11% of the Employers' total wage cost during this contract period under both offers. The benefit that Dane County Sheriff's Department employees receive from these wage enhancements must be considered when comparing Dane County wages with wages received by Sheriff's Department employees in comparable districts.

The Employer presented a series of exhibits (Rev. Ex. 31, 32, 34, 35, 37, 54 and Ex. 33) which compared wage, educational increment and longevity data as well as data relating to percentage increases in comparable districts for the period 1995-1997. Data for the Brown, Marathon, Outagamie, Racine, Rock and Winnebago Counties' Sheriff's Departments and the City of Madison Police Department is available for the entire period. The data shows that minimum base wages for Deputy Sheriffs in Dane County in 1995 were \$14.20 compared to the \$13.91 average for nine other counties. Dane County's minimum ranked number four behind Marathon, Waukesha and Kenosha. In 1997, Dane County Deputies earning either the \$15.17 minimum under the County's offer or

\$15.55 under the Association's offer, would rank second to only Deputies in Marathon County. Dane County Deputies earning the \$17.80 maximum wage in 1995 ranked fourth behind Deputies in Racine, Kenosha and Brown Counties. At \$18.75 under the Employer's offer or \$20.28 under the Association's offer for 1997, Dane County Deputies earning maximum wages would rank either fifth or second in wages only. Deputies at minimum wages earned .26¢ an hour less than Madison's Police Officers of \$14.40 compared to \$14.76 in 1995. On June 30, 1997, Deputies at minimum would earn \$15.55 an hour under the Association's offer or \$15.17 under the County's offer compared to \$15.66 an hour earned by Madison Police at minimum wages.

The foregoing demonstrates that there is little to chose between the two offers when the impact on base wages during this contract period is considered. The Association's offer appears to be marginally preferable because the "in pocket increases" provided by that offer appear to be more in line with increases granted by comparable employers. When enhancements for educational credits and longevity are considered along with base wages, Dane County's senior deputies are better compensated than senior personnel in comparable departments. That ranking will not be affected by the selection of either offer herein. The fact that the overall compensation received by many of Dane County's senior deputies exceeds overall compensation available to other senior deputies, raises questions about the priority for

the two new steps that the Association's offer would add to the salary schedule.

The fact that during their last round of negotiations, the parties agreed that a .20¢ an hour across-the-board wage increase would become effective on the last day of the prior contract period but included in the costing for this contract period has increased the cost of both of the offers in this proceeding by approximately \$173,000. All that is in the record about that deferred .20¢ increase other than its cost is that it was negotiated and agreed upon by the parties. In this instance, the Association's offer would impose two new wage steps upon the Employer without negotiations. The increased cost of one new step and the cost of a December 20, 1997 wage increase for the second new step would be deferred until the next contract period. There is no evidence about the future cost of these structural changes proposed by the Association, in the record of this proceeding. This proposed restructuring of the salary schedule detracts from the Association's offer and weighs heavily in favor of the Employer's offer. Changes in wage structure should always be arrived at through bargaining. If the Employer is having a difficult time either hiring or retraining law enforcement personnel as was suggested by the Association, it is even more important that the parties negotiate changes in the wage schedule in order to promote stability in the work force.

The other unresolved items pale by comparison to the wage issue. The Employer's position appears to be preferable on three of those four issues.

The Association's request for a \$50 a year increase in uniform allowances is not supported by any evidence in the record. Though the \$15,400 cost of that proposal is minor compared to the other disputed matters, the Association does have the burden of establishing the basis for its request. It did not do so.

The Association's request to increase sick leave accumulation to 2000 hours and increase the payout to 1600 hours does not appear to be necessary, and there does not appear to be comparable support for the proposal.

There is little in the record relating to the Employer's proposal to delete references to Good Friday, and grant the employees five additional hours of compensatory time off. However, the undersigned will take arbitral notice of the Federal Court determination that it is not appropriate for public employers to recognize the Christian holiday. With that said, the Employer's proposal seems reasonable.

There is nothing in the record to shed any light on the reason for the Employer's proposal to study increasing the amount of time for processing payroll or discussing the implementation of changes during future negotiations.

The Association's argument that arbitrators have recognized that there are valid reasons for distinguishing between wage and

benefit increases that municipalities provide their law enforcement personnel and the remuneration that is provided for other employees is well taken on the basis of the record in this proceeding. For that reason, the fact that internal comparability does support the County's offer has not been given much weight in evaluating the relative merit of the two offers herein.

The Association correctly stated that the primary issue in this proceeding is its three-fold wage strategy. That strategy included adding two additional steps to the bargaining units wage schedule in this arbitration proceeding. There may have been merit to the Employer's argument that that strategy would have resulted in a change in the status quo. It did not appear to be reasonable to summarily refuse to consider the Association's offer because it had failed to demonstrate either the need to change the structure of the wage schedule through arbitration or to offer a quid pro quo for the proposed change. It appeared to be more reasonable to recognize that there was at least some merit to the Association's argument that "the new steps are a modification in a longstanding benefit that the parties have modified many times in the past." The Association's argument that since the cost of one of those additional salary steps will not be felt during this contract period, that unquantified cost should not be a factor in this proceeding is not reasonable. The Association assumed the burden of establishing that its

unorthodox wage offer in this proceeding is more reasonable than the parsimonious offer that was made by the County.

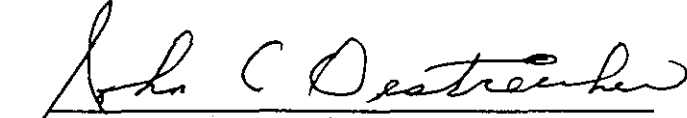
If the Association assumed that the Employer's offer was so inadequate that it did not deserve serious consideration, the Union fell victim to its own rhetoric. Comparisons of the wages and fringe benefits received by the members of this bargaining unit with the wages and benefits that law enforcement personnel receive in comparable municipalities is a complicated exercise, because, while these units are comparable, they are also distinct. There are many differences in the comparables' contracts which appear to represent differing priorities in different communities. Evidence in the record appears to establish that the wages and benefits that are received by the members of the Dane County Sheriff's Department have been as good or better than wages and benefits in comparable units. Adoption of the County's offer will result in some erosion in this unit's position when base wages only are compared. The County's offer is not so inadequate that its adoption will affect the ranking of wages received by the members of this unit among comparables.

The Association's offer on the other hand presumes too much. The record shows that base wages for Dane County's top patrol officers were .93¢ an hour below average in 1990. They remained below average until 1995 when Dane County's top patrol officers earned \$17.80 an hour compared to the \$17.76 average. The Association's offer would increase top deputy wages to .59¢ above average in 1997. Evidence in the record fails to justify the

Association's proposed December 20, 1997 wage increases for:
Range 15-Steps 8 and 9, Range 16-Steps 6 and 7 and Range 17-Steps
6 and 7.

For the reasons discussed above, Dane County's offer shall
be incorporated into the parties' 1995-97 collective bargaining
agreement.

Dated at Madison, Wisconsin, this 19th day of September,
1997.



John C. Oestreicher
Arbitrator