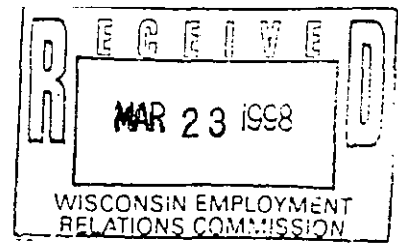


STATE OF WISCONSIN
BEFORE THE ARBITRATOR



In the Matter of the Petition of

OCONTO COUNTY
(SHERIFF'S DEPARTMENT)

Case #144
No. 54563
MIA-2088

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

Decision No. 29079-A

OCONTO COUNTY
(SHERIFF'S DEPARTMENT)

Gil Vernon,
Arbitrator

APPEARANCES:

On Behalf of the Employer: Dennis W. Rader, Esq. - Godfrey & Kahn,
S.C.

On Behalf of the Union: Richard T. Little, Bargaining consultant - Law
Enforcement Employee Relations Division of the Wisconsin Professional Police
Association

I. BACKGROUND

On January 28, 1997, the Parties met with a mediator from the Wisconsin Employment Relations Commission in an attempt to resolve the issues preventing them from agreeing upon a contract to succeed their Labor which expired December 31, 1996. The Parties were unsuccessful in resolving their dispute and the mediator recommended to the Commission that they appoint an arbitrator. Subsequently, the Parties selected the undersigned and his appointment was ordered.

A hearing was held on October 10, 1997. Post-hearing briefs were filed. The exchange of a reply brief filed by the County was complete January 13, 1998.

II. ISSUES AND FINAL OFFERS

The final offers of the Parties reflect that the following issues are unresolved: health and dental insurance participation by retirees, longevity, uniform allowance, length of contract, and across-the-board wage increases and wage structure.

A. Health And Dental Insurance For Retirees

The Employer proposes to add the following language:

"Upon retirement of an employee pursuant to the Wisconsin Retirement System, the employee, spouse or dependent(s) or surviving spouse and dependent(s) of employees who have died during the course of their employment with the County will be eligible to participate in the County's health and dental program until the employee or spouse is eligible for Medicare or other group coverage. The County shall contract with an insurance carrier which provides benefits to retirees, however, if no insurance carrier will cover retirees, the County shall not be responsible to provide insurance benefits to retirees. The total premium for these coverages will be the responsibility of the retiree or spouse.

The employee, at his/her option, may elect to use their own funds while employed or accumulated unused sick leave or vacation upon retirement for payment of health and dental insurance at group rates through a VEBA to the extent allowable by law. The VEBA shall be made available to employees upon the County's updating of its computer payroll software program to make such a plan technologically possible.

The sick leave bonus to be paid out each year may be paid into the VEBA plan."

The Union's final offer reflects no proposal in this regard.

B. Longevity

The Union seeks to maintain the status quo language on longevity. The previous contract to the one in dispute provided:

"After five (5) years of service, each employee shall receive longevity pay in the amount equal to three percent (3%) of his monthly wage multiplied by the number of years of service of each employee. Such longevity pay shall be paid on the anniversary of said employee's date of employment in each year."

The Employer proposes the following change to the current language:

"All current employees as of December 31, 1996 shall retain the current longevity program. New employees hired as of 01/01/97 and thereafter shall receive the following longevity program.

After five (5) years	-	\$200.00 annually
After ten (10) years	-	\$275.00 annually
After fifteen (15) years	-	\$350.00 annually
After twenty (20) years	-	\$425.00 annually"

C. Uniform Allowance

The Union proposes the following:

"6. Article XXVII - Uniform Allowance. Increase to three hundred seventy-five (\$375) in 1998."

The Employer's final offer on uniform allowance reads:

"8. Article XXVII - Uniform Allowance. Increase the uniform allowance to Three Hundred Seventy-Five Dollars (\$375) in 1997 and increase it to Four Hundred Dollars (\$400) in 1999."

D. Length of Contract

The Union proposes a two-year contract covering the years of 1997 and 1998. The Employer proposes a three-year contract covering the years 1997, 1998 and 1999.

E. Wage Increases and Salary Structure

The Employer proposes a three percent across-the-board increase in each of the three years of the contract. The Employer also proposes no change in current salary structure. Presently, new employees are hired at 10% below the base salary. After six months the salary is adjusted to 5% below the base. After eighteen months an employee begins to be paid at the base rate.

The Union proposes for 1997 a four-step structure for deputies and court security. The steps are start, six months, eighteen months and thirty-six months. For 1998 the Union proposes adding a fifth step of forty-eight months.

The following reflects the Union's proposal with respect to wage structure and wage increases:

"1997 Schedule

	Start	6 months	18 months	36 months
Deputy	\$13.92	\$14.13	\$14.34	\$14.56
Court Security				
Investigator	\$15.45			

Delete last paragraph of Article V reference new employees.

Effective 01-01-98, add 3% across-the-board to hourly rates. Add 48 month step.

	Start	6 months	18 months	36 months	48 months
Deputy	\$14.34	\$14.55	\$14.77	\$15.00	\$15.22
Court Security					
Investigator	\$15.91"				

The 1996 ending rate for investigators was \$14.54. Thus, the Union's 1997 proposal represents a .91 cent increase or 6.25% over 1996. The 1996 ending rate for deputies/court security was (including the shift differential of .05 cents) \$13.92. Thus, the 1997 proposal at the top rate represents a .64 cent increase or 4.6% over 1997. As noted in their final offer, they propose to increase 1997 rates in 1998 by three percent except the newly-added forty-eight month step for deputies increases the top rate by 4.5%.

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

First, the Union focuses on the Employer's "VEBA" proposal. They argue that the Employer plan is inaccurate and incomplete and is therefore unreasonable. While the proposal says employees have the option of using accumulated sick leave for retiree health insurance, once this plan is implemented participation is mandatory. This means that the

cash pay-out option is no longer an option if the employee is covered by a labor agreement which includes this type of benefit. Thus, the suggestion that the 'VEBA' is an option is inaccurate.

The Union also contends the proposal lacks other details such as: (1) who pays the administrative fee and (2) how monthly contributions are made. The Employer's VEBA proposal is a sudden and radical departure from the current system of pay-out for accumulated sick leave. This problem is magnified by the fact that the Employer proposes a three-year contract making it difficult to negotiate the unresolved issues.

Presently, an employee who is retiring can use their sick leave pay-out for specific purposes which may not be related to health insurance. In fact, as the Employer points out, no employee has ever placed their accumulated sick-leave pay-out into the available retiree insurance account. This makes it clear that employees prefer the cash pay-out option that the Employer is proposing to eliminate. While it may be true that 'VEBA' will result in more money for employees, it should be their choice, as finances are a personal matter.

They also ask the arbitrator to take notice of the fact that the Employer, under "VEBA" is freed from its obligation to pay employment-related taxes on the pay-out if funds were placed into a VEBA account rather than paid out in cash. In this regard the Employer has made no effort to share any part of these savings with the employees who will be affected if the Employer's offer is accepted. Thus, the arbitrator should reject the Employer's offer because it has such a large and unwanted impact on employees.

Next, the Union addresses the Employer's proposal to eliminate longevity for future employees. They attack the proposal as inordinantly costly, noting that it will cost an employee hired in 1998 almost twenty-seven thousand dollars over the course of a thirty year career. They note the Employer has offered no quid pro quo for the tremendous cost savings it is seeking to achieve. This is unreasonable given the drastic nature of the proposal. The Employer's longevity proposal will also, it is argued, create a two-tier system that may have the effect of creating a chasm within the bargaining unit. Older employees with longevity will be working alongside employees without longevity.

In support of its offer, the Union points to the external comparables. Noting there is a correlation between population and wage rates the Union draws attention to the fact that Oconto County falls toward the middle in population and middle in hourly wage rates.

The Union's offer, it is argued, would maintain its ranking relative to comparison groups. The Employer's offer would result in the deputies losing ground during the second year of the agreement. They also ask the arbitrator when reviewing the wage rate earned by Oconto County deputies, to remember that the shift differential is included in that wage rate, unlike the comparison groups. The result is that the wage rate for Oconto County is in fact lower than it might appear on the surface.

Not only is the unit's wage level consistent with the comparable bargaining units, so is the general wage increase and the type of step progression proposed by the Union. They argue police work has a learning curve much like any other professional occupation. A step procedure recognizes that learning curve and rewards employees accordingly. Also bearing on the wage comparisons is health insurance. Deputies in Oconto County pay as much as any other comparison group for their health insurance. Several of the comparable groups that earn a lower hourly wage rate do not pay any premium for their health insurance. The end result might very well be that the overall compensation for Oconto County deputies is lower than some of the groups with a lower hourly wage rate.

Last, the Union addresses internal comparisons relied on by the Employer. It is their position that comparing law enforcement officers to other employees does not provide a fair measure. There are significant differences in the nature of law enforcement work and non-law enforcement work such as stress. This is an integral part of law enforcement found in no other occupation except perhaps fire fighting. They must make decisions about life and death, and the denial of freedom that no other employee must make. Moreover, the Employer's exhibits that show other units accepted a 3% increase do not show what other changes were made in those Agreements which made the three percent wage rate acceptable or how these other internal groups rank in comparison to other like groups. The absence of this information makes it more difficult to make a fair comparison between the Association and other internal groups.

B. The County

First, in support of its offer, the Employer argues the Association's offer on wages and duration is totally inconsistent with other internal County settlements. Indeed, they describe the Association's offer as "exorbitant" compared with other settlements with the County. This should carry great weight, especially considering that there is a fifteen year history of consistent wages increases among internal units. This should hold for the length of the contract as well.

Next, the Employer looks to the external comparables. Here, too, they contend the Association is proposing wage increases which far exceed that of the increases granted to deputies by comparable employers. They make general points in this regard: (1) four of the nine comparables for 1997 have settled for wage increases consistent with what the County is offering; (2) with the exception of Vilas County, the Association's 1997 offer is significantly higher than that proposed by any municipality; the same picture holds true for 1998; (3) no comparable municipality has settled for even close to the 4.5% wage increase proposed by the Association; (4) the Association's wage proposal is one percent over the average for 1997 whereas the County's proposal is only .5% under the average; (5) for 1998, the County's proposal is on target with respect to the average increases of the comparables whereas the Association's proposal is far beyond the average increase provided to employees performing similar duties; and accordingly, the County's proposal is closer to the average percentage increases for the two-year period. The County suggests that the weight to be given to the Vilas County settlement should be minimal because it involved catch-up.

In terms of rankings among the external comparables, the County notes that the Association's offer increases its ranking in terms of annual wages among other comparable sheriff deputy units. There is no need for this. In comparison, the County's offer of 3% for 1997 and 1998 maintains the deputies' ranking. The Association's offer jumps Oconto's ranking three places and could, under described circumstances, result in a first place ranking.

The Employer notes too, that in addition to the Union's "outrageous" wage demand they propose a salary structure change that is also not supported by the evidence. On the contrary, Oconto's current salary structure is actually supported by the salary structures of the comparable municipalities. Six of the comparables provide for between one and three steps; only five provide for the steps greater than four which the Association is suggesting in this arbitration. There is also a negative aspect to an elongated structure as impacts on career earnings.

The County does not believe that the Association has justified why the County should fund the extra \$30,000 their offer would cost. This is particularly true in view of the fact that the benefits provided to county employees are similar to, if not above, those offered by comparable counties. This is true with respect to uniform allowance, health insurance, holidays, hours worked, shift differentials, sick leave, and vacation. Their offer is also consistent with the cost of living.

As background to their 'VEBA' proposal, the County contends that they provided notice to the Association of its intention to discontinue the past practice of allowing retirees to remain on the group health and dental insurance plan. Given this notification, the Association carries the burden of negotiating new language to continue the benefit previously provided by practice. Notably, the Association's offer does not contain any language with respect to providing retirees with access to County insurance. Nor does the contract language of Article X allowing employees to use sick leave and vacation for insurance payments, guarantee the practice beyond the allowable time-frame created by payments from accumulated sick leave and vacation. Simply, there is no guarantee to age 65 or Medicare. Indeed, at best, an employee based 1997 rates would have enough money to cover premiums for eighteen months. Moreover, the "practice" of allowing sick leave and vacation pay to be used for insurance is virtually non-existent since there is no evidence any retiree has ever used sick leave or vacation to fund his/her insurance upon retirement. This is because this money is taxable as income.

Given this background, the County contends the fact that the Association proposed health and dental insurance language for retirees in its bargaining proposal clearly proves that allowing retirees to remain on the insurance was only a practice, subject to employer discretion. This is the rationale for their 'VEBA' proposal which allows accumulations tax free. Additionally, it is preferable to have benefits guaranteed by contract rather than relying on practice.

The County also believes it is significant that the Association did not propose any language in its final offer regarding retiree insurance. Thus, because the previous practice was proper discontinued and because the Employer made its 'VEBA' proposal, the Association actually wins if it loses the arbitration. If the Association wins the arbitration, there will be no health insurance benefit for retirees. The Association may seek to litigate the discontinuance of the practice and thus ruling for the Association will create instability which the County states should be avoided. They suggest too that the Association could not prevail in this litigation because it has been held that a unilateral practice does not constitute the "Status Quo" for bargaining purposes.

Continuing with respect to health and dental insurance for retirees, the County contends there are no compelling comparables in support of this benefit. Only five of twelve comparables provide this benefit by contract. Even then these provisions are restrictive.

The Employer also explains its 'VEBA' proposal was in response to the Association's initial bargaining demands which provided employees total value of sick leave at retirement would be paid to a 'VEBA.' It is also argued that the County's proposal for the voluntary VEBA program solves the problem in Article XV, Section H, where current employees do not use sick leave or vacation to fund their retirement insurance. It does this by giving employees the voluntary option of placing sick leave dollars into the account. A typical employee could easily accumulate with interest over \$70,000 in their VEBA account.

The last subject addressed by the County is their proposal to change longevity for future employees. First, they note Oconto County's longevity benefit is the only one among the comparables which is based upon a percentage, not a flat dollar amount. This results in Oconto's longevity payments continually rising in comparison to other counties, three of which have no benefit at all. Even under the new proposal, the County's longevity benefit at the ten-year level will rank first.

The quid pro quo for its longevity proposal is its offer of contract language guaranteeing retirees to remain on the County's health and dental insurance. It is also offering a VEBA to assist employees in funding their premiums after retirement. This, in the opinion, far outweighs the longevity limitations. Allowing retirees to participate in the health insurance plan increases insurance premiums by an estimated amount of 7%. The savings in longevity overtime are outweighed by the cost of retirees participating in the health insurance. Additionally, in terms of a quid pro quo, the County contends that the evidence showing the overwhelming support in the external and internal comparables on the longevity issue diminishes the need to "buy it out."

Also relied on by the County is the fact that their proposal on insurance for retirees and the modified longevity program has been agreed to by the Teamsters and has been implemented by resolution for all non-represented employees. Teamsters Local 75 represents the telecommunicators and correctional officers for the County. The County believes this information represents a consistent and compelling pattern in support of its offer.

IV. OPINION AND DISCUSSION

A. Wage Increase And Wage Structure

When a municipal Employer has a variety of unionized employee groups, when there is a history of pattern bargaining within these groups and where there is a clearly established settlement pattern of wage increases for the current round of bargaining, the so-called "internal comparables" deserve great weight. This is determined to be the case here.

The internal pattern of wage increases for 1997, 1998 and 1999 is without exception 3.0%, which is identical to the Employer's offer. It is true, as the Union argues, that these bargaining units consist of dissimilar employees. Indeed, a comparison to employees doing the same work, the so-called external comparables is warranted and necessary. The considerations and the stability that results from an internal pattern of wage increases must be balanced against the employees' position in the external labor market for their services. An internal settlement pattern should not control if adherence to this pattern creates unreasonable wage relationships relative to employees doing similar work for comparable employers.

There are two ways to look at relative external wages. One can look at wage levels and wage level changes (increases). For purposes of balancing internal and external considerations, wage levels is usually the more useful analytical tool.

Nonetheless, in this case the evidence shows that adherence to the Employer's offer and the internal pattern will not disadvantage bargaining unit employees in either respect. Even under the Employer's offer employees will still enjoy wage levels (either in terms of annual or hourly rates) that exceed the average by not so insignificant amounts. Additionally, the increase offered by the Employer is more consistent with the increases given similar employees by comparable Employers.

In terms of wage levels, the County's offer in 1997 will still result in an annual wage which is almost \$1300 or 5.7% above the average. This is not a significantly lower positive differential from that which existed in 1996. The Union's much higher wage increase proposal -- which would break the internal pattern -- is not needed to catch up to or even keep up to the external market. Their demand would result in deputies being paid \$180 more per month or \$2,154 (7.3%) per year more than the average deputy salary in the comparables. This simply isn't justified given the internal pattern.

In terms of wage increases, the average wage increase in 1997 and 1998 in the comparables was 3.25% each year. Vilas County was excluded from the calculation

because they had a very large increase in 1997 for catch-up and a very small increase in 1998 because of a wage freeze along with some selected catch-up increases. The 3.25% increases are clearly more consistent with the Employer's 3.0% proposal in each 1997 and 1998. The Union's increase for deputies at the top rate when accounting for the additional steps was 4.6% for deputies and 6.3% for investigators in 1997. In 1998 it is 4.5% and 3.0% respectively.

It is noted that the Employer makes a three-year offer and the Union a two-year offer. The Employer's duration proposal is preferred in one respect because four out of six internal units have already settled for 1999. The Union's is preferred in a different respect because there are no settlements externally for 1999. Given the uncertainties of the future, this tends to favor the Association on the issue of duration. However, this must be weighed against the excessive impact of the Union's offer within those two years. This outweighs any preference for the Union on the duration question, particularly considering that even under the Employer's offer employees are above average by a healthy amount.

There is also the related issue of the Union's adding steps to salary schedules. This issue is viewed as having little impact. First, it isn't particularly justified by the comparables. Second, imposition of the status quo has no adverse impact on new officers. The opposite is true. The Employer's shorter schedule is advantageous because it allows an employee to reach the top rate faster than the Union's. Therefore, career earnings are enhanced.

B. Longevity

The merits of the Employer's proposal to change longevity is reasonable when compared to the much more modest longevity benefits in place in comparable counties. Nonetheless, one would expect in free collective bargaining that an Employer seeking to change such a lucrative benefit would have to pay a price, or as they say in latin and lawyerese, offer a "quid pro quo." The question here isn't if the move is justified but whether a sufficient price was paid.

In addressing this question it is helpful to put into perspective how healthy the present benefit is. Because it is based on an unlimited percentage of salary rather than a flat dollar amount, the longevity benefit for Oconto County far exceeds that in comparable counties. The difference is dramatic for veteran employees. For a twenty year employee at the 1996 wage of approximately \$30,590, the yearly longevity payment would be

slightly over \$1,500 per year. Four comparable employers offer no longevity for new employees. Of those that do offer longevity, the benefits range from \$230 per year to \$432 per year (and this is for a twenty-five year employee). This shows the Employer is justified in seeking a change.

In determining whether they have offered a reasonably sufficient incentive it must be noted the employer has offered to grandfather all employees hired before January 1, 1996. This assures them of their dramatic benefit and that it will continue to automatically increase with wage increases. It is helpful too that new employees will generally still enjoy the best longevity benefit in the comparables. Only in Vilas County will anyone, in this case a deputy with twenty five years of service, earn more longevity. This helps take the sting out of the employer's proposal too.

The Employer argues that their 'VEBA' proposal is a quid pro quo. However, the arbitrator isn't convinced there is a reasonable nexus between the two. In the final analysis the employer's offer to change longevity without some more direct quid pro quo is a negative factor. Of course, this will have to be weighed with all the other aspects of the final offer. For reasons expressed below health insurance eligibility for retirees is also not a sufficient quid pro quo.

C. Health Insurance and 'VEBA'

In this regard the Employer goes to great lengths to give itself great credit for proposing language to allow retirees to participate in the group insurance. This is, of course, after they unilaterally eliminate the practice of retiree participation in the health plan. This is a very clever gambit but one the arbitrator is not willing to put the Employer on a pedestal for. This arbitrator will not, in the context of an interest arbitration, make any implicit findings as to the outcome of a potential grievance arbitration.

Nonetheless, the Employer's offer in this regard is slightly preferable because it will avoid likely litigation over the issue of continuing the practice of allowing the participation of retirees in the health insurance plan. The likelihood of this litigation is brought to the surface because the Union made no proposal on this subject. If the arbitrator were to rule for the Union, it is almost certain there would be litigation to restore the practice and the outcome of such litigation is not certain.

For this reason the employer's proposal is preferred on this issue. The preference

for their offer in this regard is underscored by their 'VEBA' proposal. While not necessarily the jewel the Employer makes it out to be -- for instance it is not without benefit to the employer -- it was made in response to a union proposal and it undoubtedly is of value to employees who choose to use it. Any lack of clarity to the proposal, contrary to the arguments of the Union, is not significant enough to undermine the basic value of this benefit. It is also consistent with one other internal bargaining unit.

D. The Offers As a Whole

The Employer's offer is preferred on the issues of wage increases, duration, and retiree insurance/VEBA. The Union's offer is slightly preferable on the issue of longevity because of no direct quid pro quo. The uniform allowance is not significant enough to have a material bearing on the outcome of the case.

Overall, the Employer's offer is more reasonable when viewed in light of all the relevant statutory criteria.

AWARD

The final offer of the Employer is selected.



Gil Vernon, Arbitrator

Dated this 10th day of March, 1998