

BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitration
Petition Between

MILWAUKEE DEPUTY SHERIFFS'
ASSOCIATION

and

MILWAUKEE COUNTY

Case ID: 161.0086

Case Type: MIA

Appearances:

MacGillis Wiener, LLC, by Attorney Christopher J. MacGillis, and Attorney Bridget M. Smith, on behalf of the Association.

Office of the Corporation Counsel for Milwaukee County, by Assistant Corporation Counsel Melinda S. Lawrence, on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, herein “Association” and “County, selected the undersigned to issue a final and binding award pursuant to Section 111.70(4)(jm) of the Municipal Employment Relations Act, herein “MERA.” A hearing was held in Milwaukee, Wisconsin on June 19, 2023. The hearing was not transcribed and the parties subsequently filed briefs and reply briefs that were received by August 18, 2023.

Based upon the entire record and the arguments of the parties, I issue the following Award.

INTRODUCTION

The Association represents for collective bargaining purposes a law enforcement bargaining unit consisting of Deputy Sheriffs employed by the Milwaukee County Sheriff's Department.

The parties engaged in negotiations for a successor collective bargaining agreement, herein “Agreement,” to follow the prior agreement that expired on December 31, 2020. The

parties filed a joint petition with the Wisconsin Employment Relations Commission, herein “WERC,” and the WERC on March 3, 2023 issued an Order appointing the undersigned as the Arbitrator.

The parties subsequently submitted their Briefs and Reply Briefs by August 18, 2023 and they have agreed to a number of tentative agreements, one of which is the three-year duration of the Agreement that runs from January 1, 2021 to December 31, 2023.

The two issues in dispute are wages and retroactive salary payments.

The parties have agreed upon the across-the-board wage increases for 2021 while the across-the-board wage increases for 2022 and 2023 are in dispute.

Their final wage offers state:

Year	ASSOCIATION FINAL OFFER		COUNTY FINAL OFFER	
	Effective Date	% Increase	Effective Date	% Increase
2021	Jan. 1	2%	Jan. 1	2%
	July 1	1%	July 1	1%
2022	Jan. 1	5%	Jan. 1	2%
		-	July 1	2%
2023	Jan. 1	3%	Jan. 1	2.25%
	July 1	1.50%	-	-
Total % Increase		12.5%		9.25%

¹ For the effective dates of the County’s increases, Pay Period 1 corresponds to January 1 and Pay Period 14 corresponds to July 1 (County Ex. 1).

The Association’s wage proposal represents a 12.5% wage lift and the County’s wage proposal represents a 9.25% lift over the term of the Agreement.

The difference between these two offers is 1.2 million over the term of the Agreement.

The second issue is the Association's request for retroactive salary payments for Association members who left the force during the term of the 2021, 2022, and 2023 Agreement.

Its proposal reads:

All MDSA members employed during the years of 2021, 2022, and 2023 shall receive retroactive salary payments. That includes any employee who retired prior to the agreement being ratified and approved by the parties (C. Ex. No. 2, Item 4).

The cost of this benefit is \$170,156.

POSITIONS OF THE PARTIES

The Association states the County's economic conditions favor the Association's offer pursuant to 111.77(6)(am) and that it should be given the greatest weight in this matter. It asserts "The County can pay the Association's offer but is unwilling to do so" in spite of its 13.1 million surplus in 2023, and that the County can pay the Association's offer through unspent COVID funds and the increased revenues it will collect in 2024 by its sales tax. The Association adds that no consideration should be given to the County's claim that it faces a "structural deficit" in the upcoming years because that may or may not happen and because it does not impact the County's ability to pay in 2023.

It further states that the County in negotiations never raised the issue of internal comparables and that Arbitrator William Petrie earlier ruled that internal comparables should not be considered. It also asserts that the County is trying "to change the status quo" regarding retroactivity, and that the Association is not required to offer a quid pro quo to have that language in the instant Agreement. The Association also contends that "Inadequate compensation levels breeds low retention rates, inadequate staffing and a culture of excessive overtime. . ." that cause low morale.

It adds that “a culture of excessive overtime exists as a result of inadequate compensation prompting low retention rates. . .”, as it points to Exhibit 14 which shows the impact of such overtime on each member:

OVERTIME BURDEN PER MDSA MEMBER

January 2021 – April 2023

Hours of Overtime Per MDSA Member		
Yearly	429.8 hours	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p style="text-align: center;">This equates to losing one of two off days <u>each week</u> per member.</p> </div>
Monthly	34.6 hours	
Weekly	8.7 hours	

The County states its wage offer should be adopted because it best maintains the status quo between the parties, and that “comparison of the entry level wages for Milwaukee County Deputy Sheriffs should be compared to external comparable units. The County acknowledges that its top wage rate is below the average of top wages paid to primary comparables by an average of \$2.24 an hour and asserts that the County’s offer “provides significant advancement” for MDSA members by eliminating part of that gap. The County also states its “ability to raise revenue is limited”; that its cost to continue to exceed its ability to generate revenue resulting in an annual structural deficit; and that its recent spending was bolstered by one-time federal funding and lower personnel costs due to higher vacancy rates.

The County adds the Association’s argument that its proposed higher wages will boost employee morale and result in higher retention rates is “total conjecture” that must be rejected, and that the Association is inconsistent because under its “own evidence, overtime is the primary reason that their members resign or retire.” The County also contends that “The percentage of one-time funds needed to pay [Association’s] wages is not the issue” because the County does

not have the present ability to continue paying those wages in the future at the size of its present work force. It further states that “its ability to raise revenue is limited”; that there are limitations on its debt service revenue; that its five-year fiscal outlook” is the result of a long-term funding imbalance”; and that its annual structural deficit that will “explode” in 2025 when the stimulus funding runs out (Ex. 26, p. 2, ¶2)

DISCUSSION

This matter is governed by Section 111.77(6), Wisconsin Statutes which states:

In reaching a decision, the arbitrator shall give greater weight to the economic conditions in the jurisdiction of the municipal employer than the arbitrator gives to the factors under par (brn).

(brn) In reaching a decision, in addition to the factors under par. (am), the arbitrator shall give weight to the following factors:

1. The lawful authority of the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
4. Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - a. In public employment in comparable communities.
 - b. In private employment in comparable communities.
5. The average consumer prices for goods and services, commonly known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
7. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
8. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Economic Conditions of the County

The County faces difficult fiscal problems as it points out that its “ability to raise revenue is limited” and that it faces a “fiscal cliff.” It also faces “heavy restrictive state-imposed levy limits; flat share revenue; and limited increases in state reimbursement for mandated services” (C. Ex. No. 34, p. 2, ¶2). The County adds that it has “growing expenses” in retiree health care costs; pension obligations; and a huge backlog of infrastructure needs. It further states that it no longer will receive pandemic stimulus funds in 2025 and that its budget “will explode” when that funding runs out and that, “Budgetary constraints have not allowed Milwaukee County to keep up with recent salary increase overages (C. Ex. No. 37, p. 2, ¶1). The County also claims that the Association’s wage issue is “not the issue” because the County does not have the “present ability” to continue paying those wages at the size of its present workforce.”

However, the County’s fiscal situation is improving because the County in 2024 can raise its sales tax, thereby taking some pressure off its fiscal problem.

The County claims that added sales tax revenue remains “tentative and should not impact this arbitration”, and that the proposal should be viewed in light of the knowledge available to the parties at the beginning of 2023 when their Final Offers were submitted and during the preceding period of negotiations.”

I disagree. For while there may be some uncertainty over how much added revenue will be generated in higher sales’ taxes, there can be no question but that it will increase the County’s revenue stream which, in turn, will help it pay higher wages.

The County’s economic conditions thus support the Association’s wage offer and must be given “great weight” than the Factors below.

THE OTHER STATUTORY FACTORS

Factors 1 and 2 regarding the lawful authority of the County and the Stipulation of the parties do not favor either party.

Factor 3. The interests and welfare of the public and the financial ability of the unit of government to meet these costs

The Association states the interests of the public support the Association because “it is contrary to public policy for the County to refuse backpay” because that incentivizes the County to drag out negotiations. It also argues that its offer “helps with retention by paying competitive wages. . .” that is in the public’s interest. The Association further states that the County is not making an “inability to pay” argument, and that “the County’s multimillion dollar surplus” will enable it to “draw the funds to pay for the Association’s offer.”

This Factor favors the Association’s position because the County has the financial ability to pay for the Association’s proposal in light of its 13.1 million budget surplus; the availability of Covid funds; and because the Association’s wage offer should help retain Deputy Sheriffs.

Factor 4. Comparables

The parties agree that the 19 municipal police departments within Milwaukee County are the primary comparables and that 4 contiguous counties are secondary comparables.

The Association states that the primary and secondary comparables favor its offer; that internal comparisons should not be given significant weight; and that its wage offer would maintain the top patrol rate below the primary comparables.

The County states that its wage offer is “more reasonable” with the historical trends among the comparables than the wage increases proposed by the Association, and that the Association “seeks to dramatically alter the parties’ position among the comparables.” The

County adds that the internal comparables support its wage offer; that its wage increases “are more consistent with the historical trends among the parties’ external comparables. . .”; that is offer “also improves the position of the top wage rate for deputies; and that they improve their position for entry level wages. . . .”

The top step wages for the 19 primary external comparables are as follows:

TOP STEP WAGES				
Department	2021	2022	2023	Average 2021-2023
Bayside PD	\$39.06	\$39.94	\$40.84	
Brown Deer PD	\$38.93	\$39.71	\$41.31	
Cudahy PD	\$37.08	\$38.01	\$39.16	
Fox Point PD	\$39.45	\$40.34	\$41.25	
Franklin PD	\$39.41	Not Settled	Not Settled	
Glendale PD	\$38.82	\$39.99	\$41.39	
Greendale PD	\$39.21	\$40.77	\$42.41	
Greenfield PD	\$40.65	\$41.46	\$42.29	
Hales Corners PD	\$37.10	\$37.66	\$38.22	
Milwaukee PD	\$41.94	\$42.78	Not Settled	
Oak Creek PD	\$39.89	\$40.68	\$41.50	
River Hills PD	\$38.44	\$39.21	\$40.78	
Shorewood PD	\$41.13	\$42.05	\$43.31	
South Milwaukee PD	\$39.55	\$40.35	\$41.77	
St. Francis PD	\$39.09	\$40.27	\$41.49	
Wauwatosa PD	\$39.56	Not Settled	Not Settled	
West Allis PD	\$38.99	Not Settled	Not Settled	
West Milwaukee PD	\$40.04	\$41.14	42.78	
Whitefish Bay PD	\$40.69	\$41.71	\$42.96	
Average hourly top step	\$39.42	\$40.38	\$41.43	\$40.41

The Deputy Sheriff’s thus earn less than the external comparables, a point acknowledged by the County which states that the top wages are below the primary comparables by an average of 2.24 an hour.

These hourly wages do not tell the whole story. They do not address the take-home pay Deputy Sheriffs receive because of their high pension contributions as shown by the following chart (Revised Ass'n Ex. 38):

Employee Pension Contribution Rates 2013-2023		
	ERS	WRS
	MDSA/Milwaukee County Public Safety Employees	Non-Milwaukee County Public Safety Employees
2023	9.8%	6.8%
2022	9.9%	6.5%
2021	9.7%	6.8%
2020	9.0%	6.8%
2019	9.5%	6.6%
2018	8.3%	6.7%
2017	8.1%	6.8%
2016	7.9%	6.6%
2015	5.3%	6.8%
2014	5.2%	7.0%
2013	5.4%	6.7%

Deputy Sheriffs therefore contribute 3% more than non-Milwaukee County Public Safety employees, thereby diminishing their take-home pay by that amount.

The Association's Offer also is supported by the following secondary external comparables:

	Waukesha	Racine	Washington	Ozaukee	Association Offer	County Offer
2021	2.25%	0.50%	3%	2.50%	3%	3%
2022	11.4% ¹⁷	11.1% ¹⁷	3%	3%	5%	4%
2023	2%	2.50%	8%	4%	4.50%	2.25%
Total % Increase	15.65%	14.10%	14%	9.50%	12.50%	9.25%

(Ass'n Ex. 34, 35)

The Association correctly points out that “Over the relevant period, the Association’s wage offer of 12.5% is reasonable and, even modest compared to Waukesha, Racine, and Washington Counties” and that by contrast, “the County’s offer of 9.25% puts the Association at the bottom of the list.”

The County also argues that a comparison of its entry level wages supports its proposal because that would result in over the average entry level wages in the primary comparables (C. Ex. No. 56, 62).

Those entry level wages, however, are not as important as the top wages, as there are many fewer Deputy Sheriffs at the entry level than at or near the top wages.

The County also claims internal comparables “should carry heavy weight in arbitration proceedings,” quoting my decision in Milwaukee Police Supervisors Organization and City of Milwaukee, Case No. 64279, MIA-2629, No. 32301-A, at 7 (2008). That quote comes from Arbitrator Zel Rice’s Award which addressed the parity between the police department and the fire department.¹ That, of course, is different than comparing the Deputy Sheriffs to the other 3,409 employees employed by the County.

Arbitrator William W. Petrie, in a case involving these same parties, stated that interest arbitrators should only “place significant weight in the final offer selection process on internal wage comparisons, when supported by the bargaining history of the parties.”²

There is no such bargaining history here and internal comparables thus will not be considered.

The external comparables thus support the Association’s offer.

¹ See Milwaukee Police Supervisors Organization and City of Milwaukee, Decision No. 25223-B (Rice, 1988), pp. 6-7.

² See Milwaukee County (Deputy Sheriffs), Dec. No. 32154-A (Petrie, 2008), at 39.

4. Factor 5. CPI “The average consumer prices for goods and services commonly known as the cost of living.”

The Association states that “Historic increases in the cost of living support the Association’s offer” because “its offer is closer to the CPI during the term of the agreement” as shown by its following chart (Assn’s Ex. 36-37):

CPI

Year	CPI Percentage	Association Offer	County Offer
2021	7%	4.5%	2.25%
2022	6.5%	5%	4%
2023 ³	1.7% ²⁰	3%	3%
Total	15.2%	12.5%	9.25%

The County contends that the cost of living supports its offer because it historically has not had “strong relation to the wage increases for this unit and that it warrants little to no consideration of this factor here.” It also states that “most arbitrators acknowledge that it is the CPI increase for the previous years of the proposed contract that is the appropriate increase to analyze when making comparisons to the cost of living” and that, “it is sensible to allow the parties to implement incremental adjustments to wages . . . while waiting for more information.”

The County also argues that the Association “provides no basis for using the U.S. BL’s data. . .” over the “data reported by the WERC. . . and that there is no evidence in this record that the parties have ever relied on the U.S. BL’s data in their history.” The County also states that the CPI between 2021-2023 is “11.03% as reported by the WERC” (C. Ex. No. 70-89), and that the U.S. BLS should not be used because it covers the entire Midwest Regions.

That WERC data is still closer to the Association’s offer than the County’s offer.

³ Bureau of Labor Statistics, *Consumer Price Index – June 2023*, U.S. Dept. of Labor (July 12, 2023).

The County quotes Arbitrator Herman Torosian’s decision in South Milwaukee⁴ where the parties there agreed that “in considering the CPI factor, it is the increase in previous years of the proposed contract that is the appropriate increase to analyze when making comparisons to the cost of living.”

There is no such mutual agreement here. Furthermore, the recent cost of living has gone up more than at any other time since the early 1980s, nearly 40 years ago. That being so, there is no valid reason to delay a cost-of-living adjustment until the next contract is reached between the parties when that may be years away.

In this connection Arbitrator Kerkman in *Merrill Area Education Assoc.*, Dec. No. 17955-A (1981), stated:

...

Consequently, the undersigned concludes that the proper measure of the amount of protection against inflation to be afforded the employees should be determined by what other comparable employers and associations have settled for who experienced the same inflationary ravages as those experienced by the employees of the instant Employer. The voluntary settlements entered into in the opinion of the undersigned create a reasonable barometer as to the weight that cost of living increases should be given in determining the outcome of an interest arbitration. The employees as a party to interest arbitration are entitled to no greater or less protection against cost of living increases than are the employees who entered into voluntary settlement. Thus, the patterns of settlements among comparable employees experiencing the same cost of living increases should and will be the determining factor in resolving this dispute (Emphasis added).

...

This Factor thus supports the Association’s proposal.

⁴ See South Milwaukee Professional Police Association and City of South Milwaukee, Dec. No. 39428-B, at 42 (Torosian, 2022), in support of its position. The County also cites Arbitrator Dennis McGilligan’s decision in City of Glendale, Glendale Professional Police Officers Association, Local 212 and City of Glendale, Dec. No. 38786-B, at 14 (McGilligan, 2021).

Factor 6: Overall compensation.

The Association states this Factor supports its offer because its members pay a higher employee pension contribution than comparable groups thereby diminishing their take home pay, and the County acknowledges that its top wage rate is about \$2.24 an hour less than the primary comparables.

The County states this Factor supports its offer because it “compares well with respect to health care premiums”; number of holidays/personal days; number of sick days; vacations; and payment of “other types of compensation.” It further states that “None of the comparable units grant more vacation time or provides more holiday time than Milwaukee County.”

This competing data cuts both ways and this Factor thus does not favor either party’s offer.

7. Factor 7: Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

The Association points out that the County since the hearing has reported that it will have a projected 13.1 million surplus (County Ex. 36.D, at 1), rather than its earlier estimate of 10.6 million at the arbitration hearing.

The County argues I “should not consider the impact of Act 12” which enables the County to collect higher sales tax in 2024 because “the scope and nature of these impacts remain tentative and should not impact this arbitration.” The County also states that “the proposals before this arbitrator should be viewed in light of the knowledge available to the parties at the beginning of 2023 when their Final Offers were submitted. . . .”

While there may be uncertainty over how much revenue will be generated over the higher sales tax, it is clear that the higher sales tax will help the County’s fiscal situation. Furthermore, it is proper to consider changing circumstances.

This Factor thus supports the Association's offer.

8. Factor 8. Other factors

The Association points out that Association President Bruno and Trustee Berlin both testified, without contradiction, that members are leaving the Department because of low morale; lack of better pay; increased overtime hours; and safety issues. The Association also argues that "A culture of excessive overtime exists as a result of inadequate compensation prompting low retention rates. . ." and that, "excessive overtime" causes stress, burnout, health problems and less time with family."

Given that uncontradicted testimony there is no merit to the County's claim that it is "total" conjecture that higher wages will boost morale and result in higher retention rates.

This Factor thus supports the Association's offer.

2. RETROACTIVE SALARY PAYMENTS

DISCUSSION

A tangled web surrounds this issue.

The 2015-2018 Agreement between the parties provided for such retroactivity, and the County made such payments to all affected Association members pursuant to that language. Following the expiration of that contract, the parties agreed to a successor contract for 2019-2020 and they signed a tentative agreement which did not strike out Section 3.01, entitled "Wages," (Assn Ex. 20).

The Association correctly points out "it is customary during collective bargaining negotiations once the parties agree on terms for a successor agreement, a redlined version of the agreement is shared between the parties"; that "removed language is struck out"; and that "The parties revise the redlined version of the agreement until all language is mutually agreed upon."

That did not happen here. Instead, the County unilaterally removed the language in the prior 2019-2020 contract relating to retroactive salary payments and it failed to provide retroactive pay to Association members who left their employment.⁵

Attorney Melinda S. Lawrence on behalf of the County acknowledged that the retroactive language “was inadvertently, though admittedly incorrectly, removed from the 2019-2020 successor Agreement” which the County calls a “scrivener’s error.” There thus was never any mutual agreement between the parties to delete the language relating to retroactivity. Employee Relations Director Charteisha Carson-Clark also testified that “the County has no evidence about facts and no evidence about bargaining regarding the removal of the language regarding retro pay.”

The County adds that it “did not refuse to pay retroactive wages to MDSA’s former members because the language in the 2019-2020 contract was no longer in the parties’ contract as MDSA claims.” In other words, the County claims that its “scrivener error” should be honored even though the Association in negotiations was unaware of it; even though the Association never agreed to it, and even though the County never made the Association aware of that very important fact.

In this connection, it is well established that:

...

“Estoppel” or “equitable estoppel” is a “defensive doctrine preventing one party from taking unfair advantage of another when, through false language or conduct the person to be estopped has induced another person to act in a certain

⁵ The Association has filed a grievance about the missing language that is the subject of an arbitration proceeding before a WERC staff member.

way, with the result that the other person has been injured in some way.” The scope of estoppel claims in arbitration cases continues to grow. (Footnote citations omitted)⁶

...

Equitable estoppel applies here because the County took unfair advantage of the Association when it failed to cross out the retroactivity language in the draft of the 2019-2020 contract and when it failed to put the Association on notice that it was doing so. That induced the Association to agree to the 2019-2020 contract which did not provide for retroactivity and injured the Association by taking away that benefit from its members. No weight therefore can be given to that bargaining history or the absence of the retroactivity language in that contract.

The County claims the Association’s proposal for retroactive backpay cannot be granted because it seeks “the functional equivalent of a unit clarification petition which is solely within the authority of the WERC to grant,” and “not appropriate for an interest arbitration award.”

There is no merit to this claim. To the contrary, the proposal simply represents the Association’s statutory right to bargain over wages which encompasses its right to bargain for retroactive wages. Furthermore, the Association states that the County’s objection is untimely because it was not made until after the close of the investigation (Ex. 18).

The County claims the Association’s proposal is “administratively burdensome for the County; that the cost of \$170,174 for the proposal “adds significant costs” to the County during this period of economical difficulty and uncertainty; and that it would “exacerbate” its staffing crisis by granting backpay to those that leave the bargaining unit.

Granting retroactivity will involve some administrative efforts. However, the County has the records of those former Deputy Sheriffs who left and what they had earned during the

⁶ See, Elkouri and Elkouri, How Arbitration Works, 8th Ed., ABA, 2016), at 10-74.

duration of the 2021-2023 Agreement. Assessing those records should not be that difficult, as there is no record evidence showing that granting retroactivity during the 2015-2018 contract imposed any such heavy administrative burden on the County.

The \$170,174 cost of the proposal certainly must be considered. But as stated above at 6, the County is fiscally able to meet such costs.

Furthermore, the County **can** pay for its proposal on retroactivity by using unspent COVID funds, shown by the following exchange I had with the County's Director of Financial Services Cynthia Paul:

- Arb. Greco: As of today, have all \$160 million of funding been spent?
Dir. Pahl: They are all allocated, but I'm not sure if they have been spent.
Arb. Greco: As of today, it is possible that all of the COVID dollars have not been allocated or spent.
Dir. Pahl: Correct.
Arb. Greco: As of today, no one has told you how to restrict.
Dir. Pahl: Correct.
Arb. Greco: So as of today, why can't you put that money toward union salaries?
Dir. Pahl: The County wants to use COVID funds on one-time things.

Federal and state guidance expressly state that those Covid funds may be used to pay public safety employees' wages.

The County's refusal to use those Covid funds to help pay for the Association's wage proposal undercuts the County's claim that it cannot afford the Association's economic package.

The County also claims that retroactivity should be rejected because it is vague, unclear and is likely to result in additional litigation, and that the Association improperly "seeks to get through interest arbitration what it failed to achieve through bargaining."

There is no merit to these claims. No consideration can be given to possible litigation and the language in dispute is **not** "vague" or "unclear" since it refers to "All" affected members who will receive retroactive pay. The Association therefore can seek retroactivity just as it did

for the 2015-2018 contract, because an interest arbitration proceeding represents the culmination of the bargaining process where it is entirely proper to seek what was not obtained in bargaining.

“All” members under the 2015-2018 contract received retroactive payments per Director Luis Paddilla’s March 22, 2017 letter that informed Association President Robert Ostrowski (Ex. 9):

...

All MDSA members who have been employed during 2015, 2016, and 2017 will, under the terms of the County final offer dated February 13, 2017 (and all County offers previous to that), receive retroactive salary payments. This would include any employees who retire prior to the final resolution of the current negotiations. Any assertion to the contrary is inaccurate and false.

...

The Association’s language here therefore shall be applied in the same manner as the retroactivity language in the 2015-2018 contract.

The County argues that the Association’s proposal “is not supported by any quid pro quo” and that there are no extraordinary circumstances” that warrant it, citing my decision in AFSCME Local 990J and Kenosha County, Dec. No. 33025-A, at 13 (2011) which addressed a quid pro quo.

I there stated:

In determining whether this status quo should be changed, the proponent for a significant contract change ordinarily must establish:

- (1) a compelling need for the change, (2) that the proposal reasonably addresses the need for the change, and (3) that a sufficient quid pro quo has been offered. In each case the sufficiency and weight to be given to each element must be balanced.

As related above at 16, “No weight” can be given to the absence of the language regarding retroactivity in the 2019-2020 contract. The 2015-2018 contract thus was the last

mutually agreed-to language regarding retroactivity. There is no record evidence showing that the Association in those negotiations offered a quid pro quo in order to obtain that retroactivity. In light of that precedent and the County's removal of that language in the 2019-2020 contract without alerting the Association to that removal, I find that no quid pro quo is required.

The Association's proposal on retroactivity thus shall be adopted and incorporated in the 2021-2023 Agreement.

CONCLUSION

Based upon all of the above and the County's economic conditions which must be given "greater weight" and the statutory Factors, I conclude that the Association's Final Offer should be adopted.

I therefore issue the following

AWARD

1. The Association's wage proposal shall be included in the 2021-2023 Agreement.
2. The Association's retroactivity proposal shall be included in the 2021-2023 Agreement.
3. All of the parties' tentative agreements shall be included in the 2021-2023 Agreement.

Dated: September 8, 2023

Amedeo Greco /s/

Amedeo Greco, Arbitrator