

**STATE OF WISCONSIN**

**Before the Interest Arbitrator**

**In the Matter of the Petition**

**of**

**AFSCME Council 40,  
Local 216-L**

**For Final and Binding  
Arbitration Involving  
Personnel in the  
Employ of  
Ashland County**

**Case 99**

**No. 55743 INT/ARB-8308  
Decision No. 29455-A**

**APPEARANCES**

**For the Union:**

**James Mattson, Staff Representative**

**For the County:**

**William Sample, Representative**

**ISSUE**

The Parties have reached an agreement on all issues in this negotiation with the exception of “catchup wage increases” for social workers, registered nurses and public health nurses. The Parties’ respective positions are as follows:

|                            | <u>UNION</u>  |               | <u>ASHLAND COUNTY</u> |               |
|----------------------------|---------------|---------------|-----------------------|---------------|
|                            | <u>7/1/98</u> | <u>7/1/99</u> | <u>7/1/98</u>         | <u>7/1/99</u> |
|                            |               |               |                       |               |
| <b>Registered Nurse</b>    | <b>\$.20</b>  | <b>\$.20</b>  | <b>\$.05</b>          | <b>\$.05</b>  |
|                            |               |               |                       |               |
| <b>Public Health Nurse</b> | <b>\$.20</b>  | <b>\$.20</b>  | <b>\$.05</b>          | <b>\$.05</b>  |
|                            |               |               |                       |               |
| <b>Social Workers</b>      | <b>\$.20</b>  | <b>\$.20</b>  | <b>\$.10</b>          | <b>\$.15</b>  |

**Note:** The Parties have agreed to a two-year contract and 3% across-the-board increases effective 1/1/98 and 1/1/99.

### PROCEEDINGS

**On October 21, 1998 the undersigned was appointed Arbitrator by the Wisconsin Employment Relations Commission pursuant to Section 111.70 (4)(cm)6. & 7. of the Municipal Employment Relations Act, to resolve an impasse existing between Sheboygan County Highway Department Employees, Local 216-L, hereinafter referred to as the Union, and Ashland County, hereinafter referred to as the Employer.**

**The hearing was held on February 12, 1999, in Ashland Wisconsin. The Parties did not request mediation services. At this hearing the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses and to make such arguments as were deemed pertinent. The Parties stipulated that all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on October 4, 1999 subsequent to receiving the final reply briefs.**

### **UNION POSITION**

**The following represents the arguments and contentions made on behalf of the Union:**

**The Union cites the following comparability group - Bayfield, Burnaught, Douglas, Iron Price, Sawyer and Washburn Counties. All have a close geographic proximity to Ashland**

County. All four contiguous counties, Bayfield, Iron, Price and Sawyer, are among the appropriate comparables. The levy rates place Ashland County in the middle of the Union's comparability group as does the per capita income. Computing patterns support the comparability of Bayfield, Iron, Sawyer and Price Counties. There has been one interest arbitration involving Ashland County which supports the Union's comparability group. Arbitrators have strongly opposed the alteration of a comparability set adopted in a previous case. The Union also proposes the School District of Ashland as a local labor market comparable.

A review of the comparables shows that for a social worker, even with the "catchup" proposed by the County, the positions remain below average and far behind wages paid to these positions in comparable counties. The same contrast exists regarding the position of public health nurse. It is noted the County is offering the least amount to them even though it is the furthest behind in the comparability group. Even though all of the 1999 settlements are not in, no matter what those settlements would be, the positions in question are still behind in the comparability group.

The settlement pattern for the public sector has been 3% during 1998 and 1999. In this case both the Union and the Employer are proposing a 3% across-the-board increase in each year. The central issue then is which offer most appropriately achieves "catchup" for the three positions in question.

The Employer argues that the levy limit needs to be given the greatest weight. The evidence at the hearing indicates that the operating levy rate limit has actually been reduced. Therefore, there is no statute restricting the County on the greatest weight factor. There is no limitation on expenditures because, according to its own exhibit, the levy rate is lower than that mandated by the state and has been dropping each of the last four years. The total levy rate also falls well within the comparable range even though the County chose to build a new jail which increased the debt levy portion of the County tax. In addition, the equalized value has increased significantly. The Union's exhibit shows that the per capita income of Ashland County is higher than average and it has fared quite well and is currently enjoying a healthy economy. Statistics from the private center also show significant wage increases in that sector.

The Union anticipates the Employer may argue its offer is the most appropriate given the internal pattern of settlements. In this case the internal settlement pattern cannot bind a valid need for "catchup" for the positions in question. The Union would note that other County positions receive "catchup" increases during the most recent round of bargaining. The Union would further note that the Employer assumptions regarding total compensation are flawed because of an assumption the Employer made with respect to the cost of health insurance.

The Union further suggests that the issue of cost of living must be balanced against the central issue of what is an appropriate wage "catchup" for the salaries of the positions in question. Arbitrators have found that cost of living criterion should be given less weight when there is a "catchup" situation.

**The Union also had its opportunity to respond to the Employer's initial brief:**

**As noted in its initial brief, the Employer argued the greatest weight factor is to given to state mandated limitations on expenditures. There is a levy rate cap, but the Employer's own exhibit clearly shows that the operating levy rate has been reduced. The cost of the new jail is not subject to the operational levy cap. The total levy rate of \$6.77 per 1,000 falls well within the comparable range even though the County chose to build a new jail facility. In addition, the equalized value has increased by 9.5%. This is the most recent and relevant data given the issue of what should be the most appropriate wages.**

**The County argued that the AGI statistics show that it was the second lowest in the comparability set; however, the per capita income introduced by the Union showed Ashland County to be the third highest. The County statistics should not be given credibility. The County argued that the equalized value had increased only marginally when compared to comparability counties. Employer Exhibit #7 illustrates an increase of 9.5% in 1998. This places the County's increased value in the mid range of comparable counties.**

**While unemployment may be used as a measure of how well the local economy is performing, the private sector settlement has clearly out-performed the public sector in terms of wage increases. The Union Exhibit #6 shows a far healthier economy and a superficial review of unemployment statistics. A comparison of the private sector and registered nurses**

**in the bargaining unit shows a large disparity.**

**The County notes that there is no dispute over the lawful authority of the County to employ and compensate employees. The County has stated that it wants to pay employees wages and fringes that are comparable to other counties but not at the low end or the high end of those comparables.**

**The County utilizes a number of flawed assumptions in its presentation. The County relies on a mythical, hypothetical average employee. No such creature exists. Arbitrators have found that benchmark comparisons are much more appropriate. The second assumption is that employees in all comparable counties have the same very low health insurance premium. This is an assumption - nothing more. No factual proof was provided. Likewise, the consumer price index and non-union wage adjustment should be given little or no weight by the Arbitrator.**

**The Employer's conclusion that the factor given greatest weight arguments should be the most important are not appropriate to this case. The sole issue centers upon wages and not fringe benefits. The Union has never accepted total costing. The County attempted to argue that the wages of employees are in the middle range of comparables. Nothing could be further from the truth. The County strangely offers the least amount of wage increase to the nurses who need the greatest "catchup" in wages. These concepts are favored by arbitrators in other decisions.**

**The Union would ask the Arbitrator to find that its proposal for “catchup” is the most appropriate. The evidence clearly proves that employees in these positions are far behind wages paid to employees doing similar work in comparable counties. Therefore, the Union respectfully requests the Arbitrator to incorporate the Union’s final offer into the successor labor agreement.**

### **COUNTY POSITION**

**The following represents the arguments and contentions made on behalf of the County:**

**The Arbitrator is required to give greatest weight to any state law or directive which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. In 1993 the state imposed a tax rate freeze that prohibited counties from increasing tax rates above the 1992-1993 levels. There are some exceptions. Those deal only with taxes imposed by an increase in County debt. The County may not increase its operating budget because of increase in costs of employee wages and fringes. The County’s exhibit shows that its debt levy has been over the amount set by the state statute because of the need to build a new jail facility. The facility was mandated because of over crowded conditions in the old jail. It is because of this building program that the debt levy was increased. In order to ease the burden somewhat on the taxpayer, the operating levy was reduced. However, in each**



succeeding year the total is over the mandated state limit.

Given mandates, the counties have sought ways in which to increase revenue. The most common method is to increase the equalized valuation. The Arbitrator can see from the County's exhibit that the equalized value has increased by 9.5% in 1998 and since 1992, increased by 39%. These are well below the average for the counties used by the County as its comparable counties. The County added the counties of Barren and Rusk to its list of comparables along with the seven counties considered by the Union. Because of this low increase in equalized valuation, the Ashland County has not enjoyed the opportunities for increased revenue that its comparable counties have enjoyed. Notwithstanding that fact, the County has still attempted to maintain wages and benefits and approximately the average for these comparable counties. Therefore, it is the County's position that must be favored with respect to the factor given greatest weight.

Of the other factors to be considered by the Arbitrator, the factor to be given greater weight is the economic conditions of the regions. The two most telling statistics are adjusted gross income per capita and unemployment. Ashland County has almost the lowest per capita income and the highest unemployment of the comparable counties. Ashland County is not as vibrant and growing as the Union would have us believe. Of the other factors, the interest and welfare of the public and the financial ability of the unit of government to meet the cost is at issue in this matter. It is in the interest and welfare of the public that the County not pay more in wages and fringes than is reasonable given the levy limit constraints imposed by the state.

**The County is interested in paying comparable wages but not at the low or high end of the comparables. With respect to comparability, employees covered by labor agreements enjoyed 3% increases in 1998 and 1999. In three of those units, specific classifications received adjustments. The County did agree to adjustments for certain positions, each of which were justified by specifics.**

**For purposes of comparables the County used an average employee - female with eight years seniority and family insurance. Additional assumptions were used in order to determine a hypothetical comparison. County employees have been successful in past negotiations in maintaining and increasing fringe benefits. As a consequence, their base wage may be somewhat lower. Fringe benefits have a cost and the County urges the Arbitrator not to ignore that cost. For a Social Worker II, for example, the County has a fringe benefit load that leads the highest of the other comparable counties. The same relationship is shown for registered and public health nurses. A review of the wage and fringe benefit comparisons shows that the Union's proposed increases, two of the three classifications move up in the ranking while one remains the same. In an arbitration with Ashland County, the Arbitrator stated that the Union must show convincing evidence for a significant adjustment. No such evidence was provided. The adjustments proposed by the Union were in excess of 4%, while the comparables show settlements from just under 3% to just over 3%. The County's proposed settlement is much more in line with the comparables. This is borne out by the consumer price index which has actually shown some declines.**

**The County also had the opportunity to respond to the Union's initial brief:**

**The issues in this matter are simple. First, fringe benefits should be included when considering and assigning rankings to various comparable employers. The Employer provided numerous authorities for this conclusion. Arbitrators have long considered the cost of fringe benefits when considering interest arbitration cases. When we look at a comparison of the major fringe benefits, the Ashland County employees fare very well, either being in the top half or in the middle. In the past employees have concentrated on benefits more than on wages. It is unfair that at this stage not to count the cost of fringe benefits. The County is attempting to maintain or to increase its ranking slightly. The Union with its proposed settlement will significantly change the ranking of two of the three classifications.**

**With respect to the comparables, a review of Arbitrator Fogelberg's decision shows that he did not establish comparables. In fact, it could be argued that since the County's position was chosen, those comparables were more appropriate. It may be further argued that, due to the new legislation, arbitrators need no longer make comparisons strictly under comparable communities. If the Arbitrator does establish a comparable list, it is the County's list that should be chosen.**

**Regarding adjusted gross income, it is true, as the Union has argued, that this is dependent on the number of tax returns. It is the people who file tax returns that support the activities of the County. This is an appropriate measure, and its data is more recent than the Union's.**

Concerning equalized value, the Union argued that a 9.5% is a healthy increase. This does not address the County's argument that the equalized value has not improved significantly since 1992. There are only one or two counties with less growth than Ashland. Even using the Union's comparables, the County is dead last in growth of equalized valuation. The fact is that Ashland County does not have as rosy an economic picture as the Union would paint. Likewise, the Union has very high unemployment compared to other counties. With respect to the Union levy limits argument, the state does not mandate that the County be at \$5.78 per \$1,000 with its operating levy. The County can be under that figure. The County had no choice but to build a new jail. The new jail was a less expensive option than renovating or adding to the existing jail. Building a new jail saved taxes to the residents of the County. The residents want the overall levy as low as reasonably possible. Because the debt levy had to be raised for the new jail, the operating levy had to be lowered.

The County admits that it made assumptions when developing its comparable data. The County is aware that different employers have different kinds of insurance and that costs are different. The County does not have easy access to that information from other counties. The rational approach is to compare the other counties wage and benefit structure using Ashland County's costs for insurance, workers compensation and retirement. The County is not aware that it has some of the lowest health insurance rates statewide. Finally, the Union should not object to using the 3% settlement pattern applied to some counties that had not settled yet. If the settlement occurred before the hearing and was introduced, it should be

considered. If not, the County assumption should stand.

Concerning the Union “catchup” ranking argument, there was no showing that other counties received an award higher than normal which upset the rankings. From an analysis of the Union’s own submission, there is no “catchup” problem. The external comparable ranking of the employees has remained essentially the same, at least since the 1988 decision by Arbitrator Fogelberg. The Arbitrator has no evidence of any compelling grounds for disruptive longstanding ranking amongst the comparables. There is simply evidence of the Union’s desire to move up in the ranking order. This desire in and of itself is not a sufficient reason for the ranking to be disturbed. For the reasons stated above, the Employer asks that the Arbitrator find that its proposal is the most appropriate and, therefore, should be adopted.

#### **STATUTORY CRITERIA**

7. "Factor given greatest weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

**7g. "Factor given greater weight." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.**

**7r. "Other factors considered." In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:**

- a. The lawful authority of the municipal employer.**
- b. Stipulations of the parties.**
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.**
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.**
- e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.**
- f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of**

employment of other employees in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal 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.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

j. 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.

### **DISCUSSION AND OPINION**

There is a disagreement between the Parties with respect to the Counties that should be considered in the comparable group. The County would add Barron and Rusk Counties to the comparable list proposed by the Union. The Union has argued that the 1988 interest arbitration award by Arbitrator Fogelberg involving the department of social services of

**Ashland County set the comparables for this case.**

**It is true, as the County has argued, that Arbitrator Fogelberg did not make an in depth analysis of the comparables. However, it is clear from that award that Arbitrator Fogelberg only considered the seven counties proposed by the Union in this matter in his analysis of the elements of that case.**

**It is an extremely important element of collective bargaining that the Parties have some certainty as they go through the collective bargaining process. This Arbitrator has found in other cases that, in order to change the comparable group, there must be compelling evidence that that change would be appropriate and necessary to the collective bargaining process and the intent of the legislature in establishing the interest arbitration criteria. No such compelling evidence can be found in the record for the inclusion of Barron and Rusk Counties into this comparable group. Neither county is contiguous to Ashland County and, while the economic data shows some comparability, it is not enough to overcome the precedent that this Arbitrator believes was established by Arbitrator Fogelberg. Therefore, it is the Union's comparability group that will be utilized in this case.**

**This case is unusual in that both Parties agree that an inequity increase is appropriate for the three classifications - registered nurse, public health nurse and social worker. The Parties do disagree as to the amounts of the inequity adjustments and how much "catchup" is required.**



**The Employer argues that while there is significant inequity among the comparables with respect to wages, the bargaining unit has concentrated on fringe benefits over the years and, when adding in the fringe benefit entitlements, the inequities are much less pronounced. The Union argued that fringe benefit considerations should not be determinative in this matter as these issues focus solely on wages. This Arbitrator has found in other interest arbitration cases that the total economic package with respect to employees should be considered as part of overall compensation. It is true that for some bargaining groups fringe benefits have been an important consideration and for others, wages have been predominantly important. It is clear from the record in this case that it is more the former rather than the latter with respect to those employees at issue here. The Employer in its analysis has chosen to utilize Ashland County costs in three of the major and most costly fringe benefit items, i.e. health insurance, workers compensation and retirement. The County stated that the reasons for it to do this was to have a fixed playing field for comparison and the difficulty of obtaining this appropriate data from other counties. Likewise, the County used a mythical average employee. The Arbitrator objects to these methods of comparison. This is similar to other cases where parties have relied excessively on percentage increases rather than actual costs. It is difficult, in fact impossible, to make any significant comparability study without the actual costs for these three major fringe benefits and true employee costs. The Arbitrator does note that with respect to other fringe benefits, it is clear that the Ashland County employees do enjoy a relatively high fringe benefit level compared to other counties in the comparable group. The Arbitrator will consider overall compensation in his analysis to the extent possible**

given the restrictions noted above.

The Arbitrator is required by statute to give the greatest weight to a criterion involving limitations on expenditures and revenues, and there is no question that the County operates under an operating levy cap system. The record also shows that the County is well under the cap and that the operating levy had dropped significantly over the past four years. This, however, was more than offset by the increase in the debt levy due to construction of a new county jail. The Employer in its briefs made excellent and compelling arguments for the building of the new jail facility. It appears from the record that the County simply had no choice but to build an entirely new facility. The other options were simply untenable or more expensive. However, given the criterion under which the Arbitrator operates and while noting that the debt levy does contribute to an overall high total levy, the operating levy which restricts the County is well below the maximum allowed by the legislature. Therefore, the factor given greatest weight would not preclude the County from paying the Union's proposal.

Regarding the factor given greater weight, i.e. the economic conditions in the jurisdiction of the Employer, the Arbitrator finds that the record in this case contains significant data from both sides. The Arbitrator would note that all of the data provided was appropriate for the Arbitrator to consider in this matter. The total of all of the data provided shows that Ashland County is doing better than some of the comparable counties and not as well as others of the comparable counties. Northwestern Wisconsin has certainly improved its economic position over the past several years and Ashland County has been involved in that

improvement. All in all the Arbitrator finds nothing in the record that would make the factor given greater weight determinative in this matter. The economic conditions in Ashland County are neither so poor nor so outstanding as to sway the Arbitrator to either side's position.

We are then left with other factors. The first of concern would be the interest and welfare of the public. The County has argued that the interest and welfare of the public would be best served by having the lowest wage and benefit costs possible. This may or may not be true in job categories where little education is required and where the employees might be somewhat interchangeable due to low required skill levels. However, in this case we are dealing with a group of professionals requiring college degrees and, perhaps, even post graduate education. It is not in the interest and welfare of the public to have the employees paid on a low basis since presumably at least some of the employees would opt to go to other employers and the hiring of competent replacements would be more difficult. The Arbitrator finds that the interest and welfare of the public are is determinative with respect to this case.

We come then to comparability. When one looks at wages alone utilizing the data provided by both sides, it is clear that, for these three groups, the actual wages paid are significantly lower than the average of the seven comparable counties however much more pronounced in the area of the social work. The wage comparability factor somewhat favors the Union's position. Likewise, the comparison of private employment wages with respect to

nurses favors the Union's position.

The average consumer price index and the overall compensation, as noted above, favor the Employer's position. Whether based on the consumer price index or other settlements in the area, either offer would exceed criterion g. As noted above, the overall compensation strongly favors the Employer's position, and it is clear from the record that this group has concentrated on benefits in previous negotiations.

The Arbitrator finds that none of the other criteria are determinative to this matter. We are then left with a rather typical situation where neither side has totally justified its position. This is not a situation where the Employer has not agreed to "catchup" at all but the disagreement centers on the amount. The County's offer does differentiate between the Social Worker and Nursing groups. A differentiation is appropriate. Given the lack of complete real employee, actual benefit and 1999 data on which to base a decision, the Arbitrator finds that while the County has not fully justified the "catchup" amounts in its final offer, it is the County's offer that more closely matches the requirements of the statutory criteria and, therefore, the County will prevail. The County should not view this award as a total vindication of its position. The Arbitrator would ask the Parties to revisit this issue in the next round of bargaining.

### **AWARD**

**On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the Employer is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining, constitute the 1998-1999 agreement between the Parties.**

**Signed at Oconomowoc, Wisconsin this 20<sup>th</sup> day of October, 1999 .**

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**Raymond E. McAlpin, Arbitrator**