IN THE MATTER OF ARBITRATION BETWEEN

Wisconsin Council 40 - County and Municipal Employees (Sauk County Highway Department)	)	OPINION AND AWARD
	)	Interest Arbitration
	)	Arbitrator:
-and-	)	John W. Boyer, Jr.
	)	WERC No. 134,
Sauk County Baraboo, WI	)	No. 55916,
	)	INT/ARB-8364 Decision No. 29516-A

APPEARANCES

For Wisconsin Council 40 - Sauk County Highway Department
David White, Staff Representative
Don Jones, Secretary Local 360
Neil Olson, President Local 360
Steven Schmidt, Treasurer Local 360

For Sauk County
James P. Gerlach, Attorney
Joel Kanvik, Attorney
LaROWE, GERLACH & ROY
Lawrence Dahl, Sauk County Comptroller
Bob Flaming, Sauk County Board
Patrick Glynn, Sauk County Personnel Director
Todd Liebman, Sauk County Corporation Counsel
Charlie Montgomery, Sauk County Board

Date of Hearing
April 15, 1999

Close of Hearing
June 10, 1999

BACKGROUND AND STATEMENT OF JURISDICTION

The Union represents "employees of the Highway Department", with the exception of the Commissioner, Patrol Superintendent, Office Manager, Confidential Secretaries and Foremen. The

Agreement between the Parties expired on December 31, 1997, and in September 1997 they commenced negotiation of the instant Agreement to become effective on January 1, 1998.

On December 22, 1997 after three (3) additional bargaining sessions the Union filed a Petition for Arbitration, pursuant to Section 111.70(4)(cm)6, Wis. Stats., and the Wisconsin Employment Relations Commission (WERC) appointed Stuart Levitan to investigate whether an Impasse existed. Levitan conducted an investigation and concluded the Parties were at Impasse, and requested each to submit Final Offers. Such were duly submitted with stipulations of matters decided upon, and on December 15, 1998 the WERC issued its "Findings of Facts, Conclusions of Law, Certification of Results of Investigation and Order Requiring Arbitration." The Parties selected the Arbitrator, who was appointed in January 1999 as Interest Arbitrator.

Subsequently, pursuant to the provisions of the Wisconsin Municipal Employment Relations Act, as amended, the Hearing was conducted in Baraboo, Wisconsin. At the Hearing each of the Parties were afforded opportunity to present testimony under Oath, evidence and arguments, and the matter was transcribed. The Parties requested opportunity to submit Post-Hearing and Reply briefs, such were duly submitted, and the Hearing was declared closed.

THE ISSUES

1) Wages - 1998 and 1999, including retroactive wage rate increase for Shop Personnel.

2) Vacation.

3) Health Insurance.

FINAL OFFERS OF PARTIES

THE UNION

1) Wages: Wage rates shall be increased by 2% on January 1 and July 1, 1998 and 2% on January 1 and July 1, 1999. Further, the existing wage rates for Shop personnel shall be increased 25¢ per hour prior to the January 1, 1998 increase cited.

THE COUNTY

1) Wages: Wage rates shall be increased by 3% on January 1, 1998 and 3% on January 1, 1999. Further, the existing wage rates shall be increased 15¢ per hour prior to the percentage increases cited on January 1, 1998 and January 1, 1999.

2) Vacation: The Vacation entitlement schedule shall be amended to provide for three (3) weeks of vacation after seven (7) years of service, rather than the existing eight (8) year service requirement.

3) Health Insurance: The Health Insurance benefit shall be pro-rated for part-time employees hired after January 1, 1998. Specifically, part-time employees shall be required to contribute more toward their health insurance coverage based upon average hours worked during a pay period.

OPINION AND AWARD

On the basis of the considered evaluation of all documents, testimony and arguments presented by the Parties, and the applicable statutory criteria of Wisconsin Statutes 111.70(4)cm(7) the decision of the Arbitrator is the Final Offer of the Employer shall be included in the Parties 1998-1999 Agreement. The primary reasons for the Award are the following:

1) Initially, the Arbitrator can readily empathize with the mutual concerns and apparent frustration inherent in the disparate positions of the Parties when confronted with the emotion-laden matter of resolution of significant differences in proposed economic terms and conditions of employment through Interest Arbitration following reaching Impasse in the collective bargaining process, that necessitates adjudication through the proceedings.

Therefore, the Award shall not be interpreted as reflecting upon the integrity of the principals given the behavior of each exhibited at the Hearing could be characterized as an open, reserved, and sincere attempt to provide convincing argumentation supportive of their positions. Nevertheless, the Award was predicated upon well documented standards of Interest Arbitration and applicable statutory criteria recognized by both the principals in a dispute and neutrals alike.

2) As cited above, the applicable statute mandates the Arbitrator consider specified criteria in the process of selecting the most appropriate Final Offer of either Party to be Awarded. In the instant matter, several must be characterized as the more critical factor, including the following:

A) The voluminous Record indicates the Parties do not dispute the contention of the Union relative to the absence of any applicable limitation(s) upon expenditures and/or revenues that may be collected by the County. Similarly, the Record is void of any explicit and/or implicit contention by the County relative to an inability to pay the costs of any proposed settlement.

However, the Record also indicates the cumulative cost of the Union proposal would be 8.32% over the term of the Agreement, whereas the cumulative cost of the County proposal would be 6.16% over the same period.

B) THE CONSUMER PRICE INDEX - The Record includes numerous and disparate contentions relative to the alleged impact of the Consumer Price Index (CPI). Nevertheless, while scholars may disagree upon the accuracy of that standardized measurement, the reality is such overstates the "real impact" of inflation. Further, while such may appropriately function to provide "maintenance of purchasing power" protection during a period of medium to high inflation that has traditionally characterized the

national and required economies, such has been dramatically reversed during the most recent six (6) to seven (7) years to record low rates of increase as well documented by the public media.

Accordingly, this factor was not adjudged to be of sufficient significance to justify the Union position that exceeds the 4.9% CPI increase for the period by approximately 3.4%, given the County position Awarded actually exceeds that standard by approximately 1.26% for the same period. Further, in making both the internal and external wage comparisons below, the Arbitrator is compelled to assume all reflect a decision based to some degree upon consideration of the inflationary factor.

C) INTERNAL COMPARABLES -

1) Internal comparables are traditionally perceived to be critical consideration in both the bargaining process and in resolution of any resulting Impasse given such provide an indication of an "acceptable package" to other bargaining and/or non-represented groups with substantially similar economic needs employed in the identical region by the County.

The Record indicates the County has successfully negotiated a pattern of three (3%) percent wage increases with its other three (3) Unions, and established such for its non-represented employees. Specifically, the Record indicates the Union that represents the instant Highway Department unit and a small Health

Care Center unit that remains unsettled is the only Union not to have reached virtually the identical settlement for the period as follows:

Employee Group	1998	1999
United Professionals	3%	3%
WPPA	3%	3%
Teamsters	3%	2%/1.5%
Non-Represented	3%	2.5%

Further, the County contends without contradiction the minimal difference in the Teamster settlement for 1999 was to "buy" a third year and achieve acceptance of the Health Care language changes, and such must be characterized as typical of the bargaining process.

However, the Arbitrator is not compelled by the explicit and/or implicit contention of the County that it "bargains" with its non-represented employees in a traditional sense, given such is clearly not indicative of the process, and such employees are not represented by a duly authorized exclusive representative nor do they have the other options including the instant proceeding of the Union.

2) Such internal comparables are also critical considerations in assessment of competing "benefit packages", given both Unions and Employers generally recognize the value and administrative convenience of standardizing benefit language to minimize potential employee dissatisfaction, and Unions typically successfully utilize allegations of "inequity" between units as a

bargaining strategy to achieve parity for all.

The Health Insurance benefit Issue is highly indicative of an instance where such internal considerations must be accorded great significance. The Record indicates that all other bargaining units and non-represented employees have accepted the revised health insurance premium County contribution plan for part-time employees as follows:

Category	**Hours Normally Worked in a Pay Period**	**Percentage of Premium Paid by Employer on Base Plan**
Category 1	70 or more hours	90%
Category 2	At least 60 hours but less than 70 hours	67.5%
Category 3	At least 38.75 hours but less than 60 hours	45%
Category 4	Less than 38.75 hours	Not eligible to participate in employer provided plan

Further, the applicable Article 14 - HEALTH AND WELFARE BENEFITS would be amended to provide for a detailed system of Placement of Positions in Categories by the Employer based upon the number of hours a position is normally expected to work in a two week pay period per the table above, and a procedure for Review of Categories and adjustment of contribution rates based upon actual hours worked, etc. all detailed in Contract language submitted.

Finally, as cited above, the Record indicates the only exception to the pattern is the WPPA unit, where such Part-Time employees contribute fifty (50%) percent for their benefit.

Further, the Record indicates the instant Highway Department has no Part-Time employees, nor does the County have any immediate need or intention to hire such. Accordingly, there is no negative impact upon any currently employed employee in the unit, and such functions to "balance" the benefit contributions for any Part-Time employees, based upon their actual hours worked so as not to vest a Part-Time employee with the same benefit as a Full-Time, that would constitute a disproportionately high benefit in contrast to those of Full Time employees. Further, other departments typically employ more Part-Time employees, and the County persuasively contended a need to be prepared for such if dictated by regional labor market conditions and/or to address the well-documented propensity of employees to demand such flexible part-time options to "balance" family and job obligations, etc.

Further, the Record as cited above indicates the County already utilizes Part-Time employees in other departments. For example, approximately 60-70 of the 140 employees in the Health Care Center, 20 of the 126 employees in the Teamsters unit, and 12-16 employees in the WPPA unit. Accordingly, it is readily apparent the issue is not "new" in the area, and the Arbitrator

is totally cognizant of the potential for its future utilization and of the disparate contentions articulated by both Parties. However, such must be interpreted as a single component of the competing Final Offer "packages", and the alleged and/or potential impact of such shall not be characterized as sufficient to negate the inappropriateness of the Union wage proposal component that would constitute the alternative, and such is reflected in the Award.

The County also contends the Union is simply attempting to "protect" its position in the Health Care Center where Part-Time employment may be a far more significant issue, and while such is not an atypical strategy, the Arbitrator prefers the validity of such contention remain for conjecture.

3) The Record indicates the Parties have a long bargaining history, and the County has attempted since 1990 to develop a standardized "benefit package" and to reduce its contribution for health insurance. Such is typical of both the public and private sectors, where the "drive" toward such cost-sharing is being motivated for a variety of economic and personal responsibility reasons that need not be cited here. Accordingly, prior to 1994 the County paid 93% of the premium cost, but has successfully gradually reduced such to 90% for all units. The County contending the negative impact of such is negated by the employees net saving in Social Security payments not made on the

premium contribution. However, all units did not accept such at the same time, resulting in the inequity alleged by the Union.

Accordingly, given the criteria of the statute, the Arbitrator is compelled to assess the relative impact of this Issue as part of the "total" wage and benefit package included in the "Final Offer" of each. Simply stated, such involves selecting the "most appropriate" and/or "least inappropriate" package offered.

Therefore, the absence of agreement with the instant and Health Care Center AFSCME units, regardless of their individual or collective numerical size shall not be characterized as sufficient to deny the existence of a pattern of internal settlements as extensively contended by the Union. Rather, such patterns are predicated upon "units", not employee numbers or unit membership.

Further, given the findings above relative to the appropriateness of the County position on wages, the health care premium Issue shall not be construed as sufficient to negate such. However, had the Issue been a "stand alone" matter in a traditional arbitration format, the Arbitrator prefers the extent to which the Award would/could have been different also remain for conjecture.

Finally, the Record also indicates the County proposes to re-arrange job titles by progressive grades to achieve uniformity

in all of its Agreements. Such editorial change was not addressed by either Party, nor shall it be addressed here, but is included in the Final Offer awarded as outlined in relevant part below:

APPENDIX A
Wages & Classifications
1998-1999

Grade	Classification	1/1/98 Rate Per Hour	1/1/99 Rate Per Hour
1	Laborer (Unskilled or Seasonal)	*	*
2	Timekeeper	*	*
3	Patrolman Helper Assistant Sign Maker	*	*
4	Patrolman	*	*
5	Laborer (Skilled) Sign Maker Janitor Truck Driver	*	*
6	Large Truck Driver (Tandem)	*	*
7	Light Equipment Operator: -Bituminous Distributor Operator -Front End Loader -Roller Operator -Large Truck Driver (4X4/snow removal) Parts Man Shop Bookkeeper	*	*
8	Gas & Oil Delivery Operator	*	*
9	Skilled Equipment Operator: -Motor Grader Operator (Construction & Finishing) -Shovel Operator (Crawler & Mobile)	*	*

	-Tractor Operator Mechanics Helper		
10	Welder Mechanic	*	*

D) EXTERNAL COMPARABLES

1) The Record includes extensive, disparate and compelling contentions of the Parties relative to the nature of the appropriate external comparison group to be considered. Essentially, the Union explicitly and implicitly contends the primary if not singular unit is Columbia County as allegedly consistently determined by a variety of local and other Interest Arbitration decisions. To the contrary, the County contends the relative importance of Columbia County has diminished because of its alleged necessity to compete for workers and pay wages more comparable to Dane County, that is grossly different in size and cosmopolitan structure than the instant Sauk County.

Accordingly, the Arbitrator is compelled to "weigh" competing sets of well structured contentions, each buttressed by allegedly superior supporting rationale, and the primary findings follow:

A) Initially, the Arbitrator is compelled to comment that Interest Arbitrators are reluctant to change a carefully crafted, negotiated or arbitrated "external comparison group."

However, the Record clearly indicates the totally disparate contentions of the Parties must be characterized as compelling in part, and may function to literally "cancel" the impact of the others. Further, the Arbitrator acknowledges the nature of the local economy is changing, and the County is impacted by "forces" from both the nearby Columbia and more distant Dane Counties, and both positions rely to some extent upon conjecture. Nevertheless, the Arbitrator is compelled to conclude that while Sauk County is apparently more economically stable than Columbia, such shall not justify the disproportionate wage increase proposed by the Union. Clearly, Columbia County is a significant comparable, but it is not the only external comparable that must be considered, and any such external comparables must also be assessed relative to the internal comparisons addressed above and non-specified other local factors to accurately consider the statutory criterion of local economic conditions cited as the "Factor Given Greater Weight" in the statute.

B) The County makes the strong argument that work force commuting patterns function to drive the level of wages and wage increases, such that a significant portion of Columbia County's workforce commutes daily to Dane County, and such causes Columbia to compete directly with the allegedly higher wages of the Dane County metropolitan area. Further, the Record indicates that Columbia County is routinely compared to other more urban and

allegedly higher paid counties such as Adams, Dane, Green Lake, Jefferson, Marquette, Rock and the instant Sauk County.

Accordingly, regardless of the specific counties selected, the readily apparent result is that urban counties tend to pay higher wages, and proximity to such metropolitan areas drives local wage rates because of any number of well documented labor market factors.

C) Both Parties submit compelling "comparables" related to specific and allegedly similar job titles or classifications to buttress their contentions. Here, the comparisons are totally serving, but some such data is less than sufficient to impact the decision. Specifically, the Record indicates a lack of job descriptions or even a list of job duties to permit a valid assessment relative comparability, and in the instance of the Union's contention relative to "Mechanic" and "Master Mechanic" is less than accurate or compelling, given such are clearly different positions with substantially different entrance requirements and job responsibilities, that predictably result in different wage rates or structures.

Similarly, the Arbitrator is equally less than impressed with the precise comparability of a generalized job classification such as "patrolman", given such seemingly similar titles in different counties can be significantly different in skill requirements depending upon the specific job assignment,

the variety of equipment operation required, responsibility for a single fixed area of roads, etc., all of which can result in legitimate wage differentials not truly reflected by the title alone.

D) The Record also clearly indicates differences between Columbia County and the County relative to the structure of their negotiated wage structures. Columbia County has a traditional step-based or "graduated scale" with automatic periodic increases, whereas the County does not, causing valid comparisons to be difficult.

Similarly, the Arbitrator is compelled to characterize the additional wage increase accorded skilled Shop personnel as a partial recognition of the necessity to alleviate any alleged external inequity resultant from such comparative data.

Further, the Record is less than incontrovertibly clear relative to the comparable "benefit packages" of Columbia County and the County, with the County contending its are superior, and Sauk County employees have lower deductibles, etc. than Columbia. However, the availability of convenient health care is also in dispute, and the Record indicates Columbia County employees have more convenient access to various and allegedly superior quality Dane County facilities, whereas unit employees have allegedly more limited access to only local or smaller regional health care facilities and/or hospitals. Accordingly, while both contentions

may be partially or totally credible, such is not considered to be a significant indication of alleged comparability.

E) The Arbitrator is compelled to reject the explicit and/or implicit contention of the County that the lack of "turnover" in the unit indicates satisfaction with the existing wage-benefit structure. Such is simply not consistent with applicable studies of regional labor markets. Further, as cited above job titles can vary, and the duties of a "patrolman" can be grossly different in skill requirements depending upon the job assignment and equipment operation location.

F) The Arbitrator is compelled to reject the explicit and/or implicit contention of the County the lack of "turnover" in the very senior Highway Department indicates satisfaction with the existing wage-benefit structure. Such is simply <u>not</u> descriptive of the basis for such individual employee decisions, especially where such may have limited transferrable job skills and/or has numerous years of service, etc., nor is such a contention consistent with research on job satisfaction or studies of regional labor market inter-employer employment patterns.

Accordingly, given the variety of equally compelling contentions and findings above relative to allegedly external comparables, the Arbitrator finds the County offer Awarded to be

reasonably premised upon a comparison with its traditional Columbia County neighbor standard, responsive to the local and regional wage patterns, consistent with a finding that local and regional economic conditions are changing both rapidly and differentially, and the County Final Offer "package" must be construed as the most consistent with and/or least inconsistent with such findings.

E) THE ALLEGED QUID PRO QUO REQUIREMENT

The Record reflects considerable discussion relative to the alleged Arbitral and/or bargaining requirement the County has failed to offer a "quid pro quo" for its proposed change in health care language as contended by the Union. However, such is not consistent with the specifics of the Record or the Interest Arbitration process as follows:

1) The County's Final Offer includes a proposal to increase the Vacation entitlement beyond any proposal of the Union, and such was clearly portrayed as a "quid" in exchange for the language in dispute. Further, such a proposal must be deemed as significant, given Employers do not typically propose such increases in a traditionally expressive benefit without offering such "in exchange" for some item and/or as a counterproposal to a Union bargaining proposal. Similarly, the County contends such was expressly recognized and accepted as a "quid" by the other bargaining units that accepted the language modification.

2) Given the Final Offer by "package" structure of the Arbitration proceeding, the total "package" constitutes the "quid" offered for the Agreement.

3) Finally, given the language relative to Part-Time employees shall not be construed to reduce benefits of current Full-Time employees, a traditional "quid" is not required.

Therefore, given such findings and the well-documented Arbitral Standard that no specific "quid" must be offered for every and/or any proposed change in the Agreement, the Arbitrator is compelled by the "reality-base" of the County relative to its perceived necessity to make employment policy more "family friendly", permitting and/or encouraging greater flexibility in employment actions, etc. as addressed in detail above.

AWARD

The decision of the Arbitrator is to direct the Final Offer of the County and attached stipulations of the Parties be included in the Parties 1998-1999 Agreement.

The Arbitrator assumes and appreciates the desire of the Parties to cooperate in implementation of the Award. However, the Arbitrator shall retain jurisdiction to resolve any matter(s) relative to implementation or administration of the Award.

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John W. Boyer, Jr., Ph.D.
Arbitrator - NAA

Dated: August 10, 1999

IN THE MATTER OF ARBITRATION BETWEEN

Wisconsin Council 40 - County and Municipal Employees (Sauk County Highway Department)	) OPINION AND AWARD)) Interest Arbitration)
-and-	) Arbitrator:) John W. Boyer, Jr.)
Sauk County Baraboo, WI	) WERC No. 134,) No. 55916,) INT/ARB-8364 Decision No. 29516-B

CLARIFICATION OF AWARD

Pursuant to the Arbitrator's retention of jurisdiction and the mutual request of the Parties, the Clarification is issued and shall be attached to and considered as part of the Award in the matter.

"THE COUNTY" position in paragraph 1 of the Final Offers of the Parties as summarized on page 3 of the Award states in relevant part "...the existing wage rates shall be...", and such shall be modified to state "...the existing wage rates for skilled shop personnel shall be..." (Emphasis Added)

The basis for such conclusion being the Record incontrovertibly indicates the position and intent of the County and the mutual understanding of the Parties was the increase

cited is applicable only to the specified skilled personnel. Similarly, such is correctly interpreted and stated on page 16 of the Award.

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John W. Boyer, Jr., Ph.D.
Arbitrator - NAA

Dated: 9-15-99