

BEFORE THE ARBITRATOR

In the Matter of the Arbitration Between

MONROE HUMAN EMPLOYEES, LOCAL 2470-A
AFSCME, AFL-CIO

Case 141 No.57101 INT/ARB 8624
Case 143 No.57128 Int/Arb-8631

And

MONROE COUNTY

Decision Nos. 29593-A and
29594-A

Appearances	For the Association	Daniel Pfeifer Staff Representative
	For the County	Ken Kittleson, Personnel Director

Before: Fredric R. Dichter, Arbitrator

DECISION AND AWARD

On May 26 1999, the Wisconsin Employment Relations Commission, pursuant to Sec. 111.70(4)(cm)(6) of the Municipal Employment Relations Act, appointed Fredric R. Dichter to serve as arbitrator to issue a final and binding award. The matter involves an interest dispute between AFSCME, Local 2470-A, hereinafter referred to as the Association and Monroe County, hereinafter referred to as the County. A hearing was held on July 27, 1999 at which time the parties presented testimony and exhibits. Following the hearing the parties elected to file briefs. The arbitrator has reviewed the exhibits and briefs filed by the parties in reaching his decision.

ISSUES

The parties reached agreement on most of the terms to be included in the successor agreement. All of those tentative agreements are incorporated into this Award. There are two outstanding issues: wages and vacation. The parties propose the following:

ASSOCIATION

Wages

Effective 1/1/99.	3% increase ACB
Effective 1/1/00	3% increase ACB

Vacation

One (1) year	Two Weeks- 10 days
Six (6) years	Three (3) Weeks- 15 days
Fourteen (14) years	Four (4) Weeks- 20 days
Twenty-Two (22) years	Twenty-three (23) days

COUNTY

Wages

Effective 1/1/99	2.75% increase ACB
Effective 1/1/00	2.75% increase ACB

Vacation¹

One (1) year	One Week- 5 days
Two (2) years	Two Weeks- 10 days
Seven (7) years	Three Weeks- 15 days
Fifteen (15) years	Four Weeks- 20 days

BACKGROUND

Monroe County is located in Western Wisconsin. It has a population of just under 40,000 residents. Many of the County's employees are represented by a Union. There are numerous bargaining units in the County. None of those bargaining units have reached agreement on a 1999-2000 agreement. There are two separate bargaining units involved in this controversy. One of the units consists of Social Workers and is termed the "Professional Unit". The

¹ The County proposal seeks to maintain the status quo.

second bargaining unit contains the "Paraprofessionals". There are several different classifications covered by that agreement. Both disputes have been consolidated and are presently before this Arbitrator.

POSITION OF THE ASSOCIATION

The wage increase that it has proposed is clearly justified. Both its proposal and the County's proposal are less than the average increase given to similar classifications in other Counties. The external comparables unquestionably favors its proposal. This is the only critical factor involved in this dispute. While the average wage paid to the Social Workers may be more than the average paid by the comparables, that has always been the case. An arbitrator should not seek to move everyone towards the average. The goal is instead to "assure the offers approximate the types of settlements accomplished by others."

The Association's vacation proposal is also justified. This County's vacation allowance is behind the vacation time granted to the employees in the other comparable jurisdictions. It is the external comparables that should be given the greatest weight. Using internal comparables would not take into account the differences in the duties performed by the employees in these bargaining units with the duties of the employees in other bargaining units. Other arbitrators have awarded increases in benefits to a party when it has been demonstrated that the current benefits are contrary to the "pattern prevailing among the comparables." No quid pro quo is necessary when that occurs. That situation exists here and warrants adoption of its vacation proposal without a quid pro quo from the Association.

The County has offered an exhibit that attempts to calculate the cost of the Association's vacation proposal. That exhibit contains several errors. It assumes that the additional

vacation time is an expense to the County. The increase would cause a loss in productivity, but it would not cause any additional expense. In addition, the Association has merely sought to lessen by one year the time when each accrual would occur. The County in its exhibit noted an additional cost in both years of the agreement for some employees. In actuality, many of those employees would have reached the level necessary to increase their vacation time in the second year, even under the current agreement. Therefore, it was error to count both years in the calculations.

POSITION OF THE COUNTY

The increases proposed by both parties are not significantly different. An entry level Social Worker would only get \$.03 more per hour under the Association proposal. An entry level clerk typist would get \$.02 more per hour. The employees in these bargaining units are well paid when compared to the wages paid employees in the other Counties. Both offers also exceed COLA. There is no basis upon which to favor one wage proposal over the other.

Since both wage proposals are similar, the weight that should be given to the wage offers should be less than the weight that is accorded to the vacation proposal. The vacation proposal of the Association is so out of line that the negative factors that would point against adopting the Association's vacation proposal outweigh any preference that might be given to its wage proposal. The County proposes maintaining the status quo. The Association wants to change it.

Internal comparables favor the County. No bargaining unit would accrue vacation to the extent proposed by the Association. The employees in the two units involved here accrue vacation at the same rate as do all other bargaining units in the county, with one exception.

The Highway employees receive less vacation than do the other units, including the two in question here. It should also be pointed out that no other Union in any of the other units that are currently unresolved has sought to change the current vacation accrual.

External comparables also do not favor the Association proposal. While Monroe is not the leader, it is not at the bottom either. Those that give more did so through voluntary negotiations. No one knows what they had to give up in order to obtain that benefit.

In order to obtain the change that it seeks, the Association must demonstrate a need exists for the change. It has not done so. The Association has also failed to offer any quid pro quo for its vacation proposal. Arbitrators uniformly require the party seeking to increase a benefit to offer something in exchange. That is absent here. Finally, the Association is incorrect if it argues that this proposal has no cost. It does. Paying money to people who are not at work is a cost.

DISCUSSION

Wis. Stat. 111.70(4)(b) requires an arbitrator to give the greatest weight to any state law that limits the expenditures of an Employer. It then requires the arbitrator to give greater weight to the economic conditions that exist in the jurisdiction. Neither party has argued that either of these factors is applicable in this case. As will be discussed later in this Decision, the monetary difference between the proposals of the parties is not large. The Employer in its brief conceded that "there is not a significant disparity in wage offers in this proceeding." The increase sought by the Association in vacation accrual also does not add a significant

cost.² The Arbitrator has considered the application of these factors in this matter and finds that they do not impact upon my Decision.

Appropriate Comparables

There have been two previous arbitrations between the parties. Arbitrator Oestreicher included the Counties of Buffalo, Crawford, Jackson, Juneau, La Crosse, Richland, Pepin, Sauk, Trempealeau, Vernon and Wood as the appropriate counties to use for comparison. Arbitrator McAlpin did not include Buffalo and Pepin, but did include the Cities of Sparta and Tomah. At the hearing, the parties agreed that the list established by Arbitrator Oestreicher should be the one used by this Arbitrator. I shall use that list here.

Wage Proposals

External Comparables

This Arbitrator has already indicated which Counties shall serve as the comparables. There are eleven counties that are included on that list. Of those eleven, seven counties have settled their paraprofessional agreements with their union for the year 1999. The average percentage increase received by the employees in similar job classifications to that of the paraprofessionals here was 3.17%³ Buffalo County has not yet settled its agreement with the Association for the year 1999. The parties' proposals in Buffalo County were included with the exhibits. The County proposed a 3% increase. If that figure were included when calculating the average, the average would only drop .02%. It would be 3.15%. In 1998, Monroe paid \$.24 more than the average of the others as a starting wage. It paid \$.06 less than the average at the maximum wage. If the Association's offer were adopted, the County

² The full impact of the cost of the vacation proposal will be addressed when the offers of the parties are compared, however, the cost is not that which is set forth in Employer Exhibit 14

³ The Association in its brief used the Economic Support Worker position for comparison. Its Exhibit also uses that classification. The Arbitrator has randomly compared other positions to verify the accuracy of

would pay \$.19 over the average for the minimum and \$.28 less than the average as a maximum. Thus, the differential for both rates would be negatively impacted, even under the Association's offer. It would be even more adversely affected under the County's proposal. For those Counties that have settled, Monroe's minimum rate ranking would not change. That is also true for the maximum.

The Association used the Social Worker II for comparison in the Professional bargaining unit. Again, the Arbitrator finds no significant difference if other Social Worker classifications are used for comparison. Buffalo County did settle their agreement for these employees. They received a 7.3% increase. The average increase for the comparables was 3.82% with Buffalo and 3.3% without Buffalo County. Even without Buffalo, the average increase was greater than it is under either party's proposal. Obviously, the difference is greater if the County's proposal is adopted. The variance between Monroe's minimum and maximum rates and the average for the comparables would also be negatively impacted under either proposal. Unlike with the paraprofessionals, the ranking for the Professionals is near the top. They would stay at that level under either proposal.

There were an insufficient number of Counties that had settled their 2000 agreement to obtain a meaningful average. The sample is simply too small to be of any value. Therefore, I shall only consider 1999 in my comparison.

There is no question that the external comparables favors the Association. The 3% proposal of the Association is below the average increase received by the employees in other Counties.

using that classification. I did not find any significant deviation from those percentages when utilizing other classifications.

Internal Comparables

Where a clear pattern has been established, this factor takes on added importance. Where, however, there is no pattern, this factor carries far less weight than does the External Comparables. The County has proposed the same increase for all bargaining units. Unfortunately, it has not been accepted by any of them. All are still open. Consequently, there has been no pattern established. Accordingly, I find that this factor carries no weight.

COLA

Both parties' proposals exceed COLA. The Association proposal exceeds it by more than does the County's. This factor favors the County.

OTHER FACTORS

There were no other factors that either party argued were relevant in this proceeding. The County did introduce a Wage Survey for Western Wisconsin, which contained classifications similar to those involved here. Presumably, the document was offered to show what is being paid in the private sector. The document did show that the pay received by some classifications in the County, such as bookkeeper were higher than the average. Social workers were lower paid in the County. The exhibit does not reveal what the average raises were in the different classifications for 1999 or 2000. That is the critical issue. I find this document has little or no impact upon the outcome in this case.

Summary

In interest arbitrations involving wage increases, external comparables are highly relevant. This is especially so where ability to pay, State restraints on spending or the raises given to other internal bargaining units are not major factors in the dispute. In this case, the

wage increase granted by the comparable Counties is highly relevant. I find that this factor clearly tips the scales in favor of the Association's proposal.

VACATION PROPOSAL

The Association seeks to add to the vacation allowance currently existing. In most instances, it seeks to shorten by one year the time that it takes to reach the next plateau. Ten days would be reached the first year, instead of the second. The time to reach fifteen days vacation would go from 7 years to 6 and to reach 20 days would go from 15 to 14. It would then add an additional step at 22 years. An employee would get 23 days at that point. The Association justifies its proposal by referring to the vacation accumulation given to employees in the comparable Counties. It believes that what Monroe gives is far less than what others give and that an increase is, therefore, required, even in the absence of a concomitant quid pro quo.

It should be emphasized at the outset that the current schedule was reached by voluntary agreement between the parties. They negotiated the current schedule knowing precisely what other employees inside and outside the County were receiving. There is no evidence that any of the internal or external units being compared changed their vacation schedule at any time since the parties agreed to the current level of vacation time. There was give and take between the parties when they agreed to that which they did. The Association now wants the Arbitrator to change that agreement. In Omro School District, this Arbitrator quoted Arbitrator Petrie in Ripon School District. It is worth repeating that again:

"The Arbitrator has no unqualified charter to review the basis for the past negotiated settlements of the parties, and, accordingly, is a much more formidable task to establish the need for an extraordinary catch up increase, than to merely establish the basis for a competitive increase for the current year."

While that case addressed a wage catch-up, the same rationale applies. Has the Association demonstrated such a need in this case? If it has, I agree with the Association that a quid pro quo is not necessary.

This Arbitrator has compared the vacation accrual at each plateau between Monroe and the comparable Counties. I then ranked the Counties at each plateau under the current agreement and as proposed by the Association. Here is how they ranked:⁴

<u>Years</u>	<u>Days Accumulated</u>	<u>Rank</u>
1	5	Tied for 9 th
1	10	Tied for 5 th
6	15	Tied for 5 th
7	15	Tied for 8 th
14	20	7 th Alone
15	20	Tied for 7 th
22	23	5 have no additional step 6 have additional step

Monroe County is not at the top when it comes to vacation accrual. On the other hand, it is not at the bottom either. The Association is seeking to move Monroe higher in the ranking. It wants to catch-up to some of the other Counties. When arguing for the adoption of its wage proposal, the Association quoted from Arbitrator Imes in Fond du Lac County. That quote is relevant here: Arbitrator Imes noted that:

When Catch-up is awarded, it is not assumed that all employees considered comparable will be paid the same or the average, it only assumes that all employees within a comparable area will be paid within the range of rates established by the comparables since those rates are the end result of successful collective bargaining among the comparables.

The vacation time earned by the employees in the County at the present time is well within the range set by the comparable Counties. While the Association proposal would move them higher in the ranking, it cannot be said that the present level is improper. Given the fact that

there is no evidence that the ranking has changed in recent years, the argument in favor of maintaining the status quo becomes even stronger. The parties agreed to put this County at the rank where they presently are situated. . I am reluctant to change that position.

There is no other internal bargaining unit that receives more vacation time than the units here. Most get the same. None have sought to increase the amount of accrual. The Association notes that others are seeking wage adjustments in lieu of other proposed changes and that this proposal merely matches what the others are seeking. This arbitrator is not privy to the give and take that has occurred in other bargaining units. However, we are dealing here with a benefit. Vacation is a benefit. When it comes to benefits, arbitrators unlike they do for wages have given more weight to internal relationships than to external ones. This recognizes the need for uniformity for such items as vacation and sick leave. Otherwise, an employer is faced with the domino effect where each unit wants to catch up to the others. This can cause a never ending cycle of increases. This County has expressed a concern in that regard and rightly so. There are times when variations are justified by such factors as the nature of the facility involved.⁵ I do not find any evidence in this record that would warrant such a deviation here.

It is my finding that the vacation changes sought by the Association are not justified. The County's proposal to maintain the vacation status quo is favored.

CONCLUSION

I have found that the Association's wage proposal is favored and that the County's vacation proposal is favored. If I had the authority to decide this on an issue by issue basis, I

⁴ The only difference between the Social Workers and the paraprofessionals is in La Crosse. They get the same amount of vacation the first year as that proposed by the Association here.

⁵ For example, employees at a 24 hour facility may have different needs than employees at facilities that are only open during normal business hours.

would adopt the Association's wage proposal and the County's vacation proposal. Unfortunately, I do not possess that authority. It is all or nothing. It is a very close question. Arguments could be made for going either way. How then do I weigh these proposals to determine who is the ultimate victor? The first thing that needs to be done is to determine the cost of the proposals for the two issues.

The seniority list indicates that there are 47 employees in the two bargaining units. The County offered an exhibit showing the total package cost of the two parties' proposals. From those documents, the Arbitrator calculated the cost difference between the two proposals. The total difference for the two years for the Professionals is \$6966. The difference in the proposals for the Paraprofessionals is \$4796. The total difference for both bargaining units is \$11,742. This represents a total difference of .7% of the total wage and benefit costs over two years.⁶ The percentage is even smaller when taken as a percentage of total costs and not just wage costs. It can be seen that there is little cost difference between the parties offers. This small differential must be kept in mind when the expense of the vacation proposal is evaluated. The more costly the wage proposal, the more difficult it becomes to adopt a second proposal that also carries a price tag. Conversely, the smaller the cost, the smaller the burden.

I have found that the cost differential between the parties wage proposals is approximately \$12,000. The parties disagree as to the cost of the vacation proposal. The County exhibits attempt to show the cost to be \$16,994. The Association argues that there is no cost to its proposal since the employees are paid whether they are at work or not. It is only a matter of productivity. I disagree with the Association that this is only a question of

⁶ The reason that the amount exceeds .5% is the roll-up costs for retirement and other benefits that are associated with wage increases.

productivity. Having people at work is why employees are paid. The loss of those individuals impacts the operation of the facility. To say that those absences have no cost ignores the impact of the absences. Whether that cost is the full dollars paid to those employees or something else is debatable. In my mind, it is not a dollar for dollar cost. Paying employees new dollars has more of an impact upon the budget than does increasing an employee's time off, unless the absent employees must be replaced by someone else. That is something not argued here. I find that additional vacation accrual does not come without cost, but it is not a dollar for dollar cost either. The Association is correct that the cost of the vacation changes is overstated in the County's exhibits. Except for the addition of the last step, the proposal only moves up by one year the time when the next level is reached. Some of the employees on the list would reach the next level the second year of the agreement, even without adopting the Association's proposal. There are 20 names on the cost sheet submitted by the County. The cost associated with 13 of those names is twice as high as it should be. The total actual dollars on the chart should be \$10, 455.82.

It can be seen that even if the vacation costs were fully treated as an expense they are still less than the small wage differential. I also find particularly important the fact that the wage increase sought by the Association is less than the average increase granted to the external comparables. The Association did not seek to obtain the average, but is willing to accept less than the average. That certainly should be considered in its favor. Furthermore, I find that the vacation proposal has some rational basis to support it. While it moves the County up in ranking, it still does not put them at the top. Many of the other comparable Counties have incorporated into their agreements vacation language provisions that are even more generous than that proposed by the Association. All these facts favor the Association. On the

other side of the coin, the Arbitrator as I have already noted is keenly aware that vacation benefit changes have a major impact upon the other internal bargaining units. They will undoubtedly come to the bargaining table the next time and say "me too." That is why arbitrators give so much weight to internal comparables when addressing benefit proposals. Furthermore, the parties agreed voluntarily to the current level. All of these reasons explain why given a choice I would not adopt this proposal. Despite these negatives, I cannot agree with the County that overall the factors weighing against the vacation schedule outweigh the factors in favor of the wage schedule.⁷ As I noted at the beginning of this section, this a very close case. The scales do not tip perceptibly to either side. I find that on close scrutiny, however, I conclude that they tip it ever so slightly towards the Association. I must, therefore, adopt their total proposal.

AWARD

The Association's proposal together with the tentative agreement is adopted as the agreement of the parties.

Dated: September 28, 1999

Fredric R. Dichter,
Arbitrator

⁷ It should be remembered that the Association here stated that it was foregoing other wage adjustments in lieu of this proposal. When others come and ask for the same change, what other changes will they forego in order to obtain parity.