

ARBITRATION OPINION AND AWARD

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IN THE MATTER OF THE INTEREST	:	
ARBITRATION BETWEEN	:	
	:	
VILAS COUNTY SOCIAL	:	
WORKERS ASSOCIATION	:	CASE 61
	:	No. 57143
and	:	INT/ARB-8640
	:	Decision No. 29606-A
VILAS COUNTY	:	
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Designated Arbitrator: William G. Callow

Appearances:

Labor Consultant for Union

Patrick J. Coraggio
The Labor Association of Wisconsin, Inc.
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Wauwatosa, WI 53222

For Employer

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INTRODUCTION

This Arbitrator was appointed by Order of the Wisconsin Employment Relations Commission after their finding that an impasse existed between the parties on the issue of wages

for the Vilas County Social Workers. The Commission order was issued May 20, 1999. By mutual agreement of the parties, the Arbitrator scheduled a hearing in the Conference Rooms 2 and 3 at the Vilas County Courthouse in Eagle River, Wisconsin at 9:30 a.m. Friday, October 1, 1999. At the conclusion of the hearing the parties agreed to file briefs. The post-hearing briefs were to be filed by November 15, 1999. The parties later agreed to file responsive briefs. Those briefs were received by the Arbitrator early in January 2000.

This Arbitration results from the inability of the parties to resolve their bargaining agreement involving the issue of wages for the 1999-2000 term.

ISSUE

The parties agree the single issue to be determined by the Arbitrator is wages for the Vilas County Social Workers.

The statutory criteria to be utilized by the Arbitrator rendering the Award is governed by Wisc. Stat. III.70 (4) (cm). The specific sections applicable are 7, 7g, 7r, subsections a, b, c, d, e, f, g, h, i, j.

The Arbitrator must select which one of the final offers submitted by each party best meets the statutory criteria. The parties agree the Arbitrator must base the Award on the statute.

FINAL OFFER OF THE ASSOCIATION

Effective 1-1-99 Add fourteen cents (14¢) to the third year step (\$14.94) and then apply 3% across the board.

Effective 1-1-00 2% across the board

Effective 7-1-00 2% across the board

FINAL OFFER OF THE EMPLOYER

Appendix “A” Wage Schedule is amended to reflect the following:

Effective 1-1-99 3% across the board increase

Effective 1-1-00 3% across the board increase

EMPLOYEE ASSOCIATION AGREEMENT

The Association agrees the factor given greatest weight and the factor given greater weight as set forth in the statute were not argued by either party. (Nor did the Employer address this factor.)

The Association cited the statute noting the Employer has the lawful authority to accept and abide by the terms of the Association’s final offer.

The Association cites the statute noting the Arbitrator must give weight to the financial ability of the Employer to meet the cost of the Association’s final offer. The Association argues there is no evidence offered to support a conclusion the Employer would be placed “in dire straits” if the Association’s final offer is accepted. (The Employer concedes this fact.)

The Association argues their final offer has more comparability than the Employer’s, citing Wisc. Stat. Section 111.70(4)(cm)7 which references wages, hours and conditions of employment of other employees performing similar services. The Association argues it gave serious consideration to comparability of municipal employees involved in the Arbitration, employment generally in public employment in the same and in comparable communities, and with employees in private employment in the same or comparable communities.

The Association cites Arbitrators’ decisions that conclude that when internal patterns of settlements have been proven, that fact should be given great weight by the Arbitrator. The Association concludes the Employers simple observation that the Association has been offered wage increases identical to all other represented employees is not at all sufficient to warrant a conclusion that the Employer has shown that a “strong and consistent internal pattern of settlements does in fact exist.”

The Association denies the accuracy of the Employer's Exhibit 36 which sets forth the historical wage pattern affecting the Highway Union, Sheriff's Union, and Courthouse Union. The Employer offered this Exhibit to show these Unions have received identical wage increases for the past 15 years.

The Association's Exhibits 503 through 510 are introduced to show that unrepresented employees and other employee bargaining units in Vilas county have received wage increases which were substantially higher than the raises offered to the Social Workers Association employees. The Association argues the multiple exhibits concerning historical wage settlements lack verification. The Association supplements this challenge by arguing the Vilas county jailers and dispatchers received a 14% raise in 1995, and an 8.2% raise in 1996. In 1997 the Sheriff's Department employees received a 6% raise in contrast to the 4% raise received by the Social Workers in 1997. The Association cites a conclusion adopted by an arbitrator in a 1997 arbitration which declared "the County declares that they have promised consideration of catch-up for the Social Workers in 1997." The Association notes the County offered voluminous documentation of job descriptions and excerpts from contracts in comparable counties and similar documentation of the private sector comparability, but it failed to provide documentation to substantiate the percentages set forth in Exhibit 36.

The Association goes on to note the Sheriff's Department employees in 1998 received an additional 3% on top of the 6% raise received in 1997. The Association challenges the Employer's assertion that the pattern of wages was uniformly applied to all County employees. The Association notes appointed and elected officials received much higher wage increases. The Association argues the fact that 12 employees got raises less than 4% and 21 employees got more than 4%. Eighteen of the 21 received raises of between 4.5% to 10%. The Association, therefore, concludes there is no authenticity to the Employer's argument that there has existed for many years a uniform pattern of wage increases for County employees.

The Association challenges the significance of the testimony of John Prentice concerning

Iron County wages and a mistake that required adjustment of wages. The Association also argues that State and Federal funds were available to the County to fund a portion of the salaries paid to some social workers.

The Association argues the Association Exhibit 502 is persuasive in justifying the selection of the Association's final offer. The Association notes that in 1997 the parties to this Arbitration deleted the classification of Social Worker I and II. Since then, all Social Workers are classified as "Social Worker." The Association states that at this Arbitration hearing the parties agreed that in other comparison counties the position of Social Worker II was favored for comparison purposes.

In 1995 the Social Worker II was \$1.99 per hour below average. By 1998, the disparity between Vilas County and other county wages averaged less by 664. If the Association's final offer is accepted, the Social Worker's wages discrepancy will be reduced to 614 below the average. If the Employer's final offer is accepted, the Social Workers will fall further behind by having wages 764 below the average.*

The Association argues that a very modest amount of money is involved involving County funds because of the State and Federal grants.

The Association points out that by asking for 2% in January and 2% in July 2000, it produces an average of 3% for the year and defers the cost of the extra 1% for six months, but it also increases the Social Workers base pay by 1%. This will bring the Social Workers nearer the average wage of Social Workers in comparable communities. This computation recognizes the impact of Federal and State funding.

The Association recognizes the Arbitrator must take into consideration the overall compensation level of benefits received by employees. The Association believes its Exhibits 600 through 605 show the Vilas County Social Services compensation is, at best, just average, but this does not justify overall the low wages paid to Social Workers. It calls attention to the cost of health benefits, noting discrepancies between the single person and family health care costs

throughout the comparables.

The Association acknowledges that overtime pay is a recent benefit but notes it is similar to what other bargaining units have had for many years. Notwithstanding this, the Association argues that while overall compensation is average when compared externally, it does not justify below average wages paid to the Social Workers.

* The Forest County numbers are in arbitration and, therefore, speculative.

The Association addresses the 109 pages of the Employer's Exhibits 15 through 35, comparing the Vilas County's Social Workers to the private sector. The Association finds little value in the Employer's Exhibits showing the wage of a Northwood Medical Center social worker is \$14.27 and an Eagle River Health Center employee receives \$11.00 per hour in 1999. The Association observes there is no vital information describing the qualifications, duties, longevity, fringe benefits, associated with the positions that would make it useful for comparison.

Both sides recognize that each final offer is slightly above the Cost of Living Index.

EMPLOYER'S (COUNTY) ARGUMENT

The Employer challenges the post-hearing Forest County wage information as being beyond the supplement authorized by the Arbitrator at the close of the hearing and because it addresses an unsettled comparable. The Forest County Wage Exhibit addresses the two final offers by the parties to a pending Arbitration. The supplementary Exhibit was authorized to permit the Association to provide the name of the person who provided the exhibit information to the Association. The exhibit goes beyond that.

The Employer argues that the Employer's non-represented employees do not represent an

appropriate internal comparable and that the percentage average increase is not 6.5% as the Association concludes but, in fact, is only 5.98% for the 39 employees listed in the Association's Exhibit 504. The Employer argues that the merit increases cannot be considered in computing a comparable wage between computation for non-represented and the wage increase offered the Social Workers.

The Employer argues it has exclusive authority to determine the wages paid to unrepresented employees, while the law dictates the procedure for determining wages of represented employees. The Employer insists the only appropriate internal comparables are the employees represented bargaining units. Relying on this reasoning, the Employer notes that the Highway and Courthouse Units have settled for the same wage increase offered in this final offer by the Employer. The Employer explains the higher wage adjustment for jailer/dispatchers in 1995-96 collective bargaining resulted from an agreement changing the status of jailer/dispatcher to sworn employees. The Employer argues that the change in classification with Social Worker I to Social Worker having responsibilities equal to a Social Worker II is in essence a 15% increase of a Social Worker I position. The Employer insists it has shown a strong internal settlement pattern between bargaining units with appropriate catch-up for units and employees.

Since 1997-98 all Social Workers must have the same job qualifications, training and experience says the Employer. The Social Workers, it says, are required to perform social work duties and responsibilities for either Child Protective Services or Adult Protective Services. The Employer, in comparing Vilas to Langlade County, recognizes that the new Social Worker classification is the equivalent of the previous Social Worker II. The Employer acknowledges the external comparisons Exhibit 502 shows Vilas County Social Workers wages range between Social Worker I and II in all but one external comparable.

The Employer's Exhibit 37 is presented by the Employer to show the Vilas County Social Workers maintain their historical ranking among external comparisons. This position, it argues, is appropriate because notwithstanding the reclassification to Social Worker, the

equivalent of Social Worker II, the Social Worker does the work of the former Social Worker II.

The Employer claims the Association ignores any comparison of job qualifications, duties and responsibilities. The Employer presents Exhibits 39 through 67 setting forth the training and experience of the Social Workers in the five comparable counties. The Employer points out that other counties have Social Workers with higher qualifications than the Social Workers in Vilas County. Thus, the Employer concludes comparisons must be made to both Social Worker I and Social Worker II in other counties for the comparison to have any validity.

The Employer rebuts the Association's evidence that Vilas County ranked in the Top 10 counties experiencing the greatest growth in personal income between 1994 and 1995. The Employer points out that Vilas County is exactly in the middle of the comparable counties with respect to per capita personal income.

The Employer responds to the Association's reference to the wages of Social Workers are paid, in part, by State and Federal funds by saying all government money comes from taxes and the Employer must be very responsible in spending tax dollars.

The Employer, referring to factor "h" of the statutory considerations, reminds the Arbitrator he must also "consider all other benefits received." Vilas County is at the midpoint with the comparables involving longevity, holidays/personal days, sick leave, call time, WRS, vacations and health insurance. The Social Workers have benefits comparable to the County's other internal bargaining units.

Referring to the Consumer Price Index under Section 111.70(4)(cm)7r(g) Wisc. Stats., the Employer argues the final offer comes closer to the actual adjustment in the cost of living.

ASSOCIATION'S REBUTTAL

The Association finds similarity between the Association's Exhibits 502, 503 and 604

and the Employer's Exhibits 36, 37 and 73 and, therefore, doesn't accept the conclusion of the Employer that the Association's Supplemental Exhibits are prejudicial. These Exhibits are evidence of comparable county wages.

The Association responds to the Employer's objection to exhibits concerning wages paid to Vilas County's non-represented employees. The Association interprets Wisc. Stats. 111.70(4)(cm)7d to mandate a comparison and, therefore, assumes this statutory provision embraces non-represented employees performing similar services. Subsection 7e involves comparison of wages, hours and condition of employment of the municipal employees involved in these proceedings with wages, hours and conditions of other employees generally in public employment in the same community and in comparable communities.

The Association challenges the Employer's conclusion that "there is no comparison between the non-represented employee merit system and wage increase offered the Union (Association) here." The Association concludes their Exhibit 505 includes professional County employees who perform services which are similar to those provided by the Association's membership. The Association points out the Director of Social Services received a 5.5% increase in wage based on performance. Thus, the Association concludes, the Social Workers are professionals and their performance is the premise of the Employer's conclusion the Director of Social Services is worthy of the merit pay raise. The comparison is consistent with the statutory requirement says the Association.

The Association challenges the Employer's argument that for the Association to prevail, collective bargaining will come to a "screeching halt." The Employer argues that if the Arbitrator awards bargaining unit a higher wage increase after other bargaining units have settled for less, collective bargaining relationships will break down. The Association responds by saying that, under certain circumstances, that argument has merit but not here because Vilas County Social Workers were paid below the average in 1999 by between 584 to 764 per hour.

The Association responds to the Employer's argument that Social Workers do the work

of the former Social Worker I and Social Worker II. The Association cites the testimony of the Employer's witness Paralegal Patricia A. Aldrin, where she agreed that the Social Worker II position was the most accurate position to use when comparing Vilas County Social Workers with Social Workers in surrounding counties. The Association notes that 6 of the 8 Social Workers in Vilas County have more than 3 years' experience, which warrants comparison with the top level of pay for comparable counties.

The Association addresses the Employer's argument that "nothing in the Record indicates that this is deserving of 'catch-up' pay." The Association observes that if the Arbitrator chooses either the Employer or Association final offer, the historical ranking within the comparables will remain unchanged. It further notes the Employer's Exhibit doesn't compare highest pay rates but chose to compare pay rates with 3-year employees pay. The Association insists that even if the Association's final offer is chosen, the Vilas County Social Workers will, under the Association's evaluation, be the lowest paid among the exterior comparables.

The Association directs the Arbitrator's attention to the per capita income statistics that place Vilas county in the middle of the comparables. Thus, the Association says it would take an 8% in 1999 wage increase to bring the Social Workers to the middle of the comparables in wage paid to the Social Workers.

EMPLOYER'S REBUTTAL

The Employer denies it is acting with malice toward the Social Workers and blames the Association for failing to bargain a fair wage increase. The Employer says the Social Workers have already received a "catch up" wage adjustment. The Employer insists its wage offer is consistent with both external and internal comparables.

The Employer notes the Association fails to address the wages of non-represented employees who received less than a 4% wage increase and only dwelt on the Employees who received more than 4%. Thirty-six percent of the non-represented employees received less than a

4% wage increase. The Employer notes that the non-represented employees don't enjoy the benefit of overtime pay.

Therefore, the Employer concludes the Arbitrator should disregard wages paid to non-represented employees because the County "unilaterally sets" wages and such wages are not comparable.

The Employer faults the Association's reference to the Forest County comparable cited by the Association because it references wages paid to Forest County's two represented bargaining units, the Courthouse and Highway employees, and from an unsettled hypothetical Interest Arbitration Decision regarding Forest County Sheriff's Deputies. The Employer suggested there is insufficient evidence concerning the terms of the Forest County settlements and Arbitration final offers to warrant any informative conclusions.

The Employer finds the Association's external comparisons flawed and misleading. This is a reaffirmation of the Employer's evaluation of the Association's Exhibit in the principal brief.

The Employer notes that in 1997 the wage adjustment for Social Worker I amounted to 15% when the Social Worker I was reclassified to Social Worker II. The wage increase in 1997 for Social Worker II only amounted to 3.5% and in 1998 Social Workers received a 3.5% "lift" (wage increase) which exceeded any other Vilas County bargaining unit.

The Employer says that from 1986 to 1995 the County bargaining units settled for the same increase except the County addressed catch-up and reclassification issues as further wage adjustments.

The Employer is critical of the Association's limited reference to external comparisons. The Employer recognizes it is difficult to compile public sector data.

The Employer addresses the wage increase in relationship to the Cost of Living and declares the Employer's offer is more generous than the Cost of Living Index would warrant. This issue was covered in the initial briefs.

The Employer again speaks to the Association's references to the availability of State and

Federal funds for the payment of part of a Social Worker's wage. The Employer reaffirms its position that it never claimed an inability to fund the wages, the Employer cites another decision where the Arbitrator spoke of the impact of State and Federal funding, however, that decision seems to involve an argument by the County Employer that it lacked ability to pay. All the external comparables get State and Federal funding.

ARBITRATOR'S ANALYSIS

The first issue addressed by the Association deals with the greatest and greater weight factors. These factors deal with state law or directive lawfully issued by a state legislative or administrative officer, body or agency involving limitations on expenditures and revenues collected by a municipal employer. The Employer does not argue this issue. The Arbitrator finds no implication by either final offer that would offend the conditions imposed by the statute.

The Association argues their final offer is within the lawful authority of the Employer to accept and abide by the terms of their final offer. The Employer does not challenge this conclusion. This Arbitrator finds both final offers comport with the statutory obligations.

The interest and welfare of the public and the financial ability of the Employer to meet the cost involved in either of the final offers are accommodated by both final offers. This conclusion is supported by the absence of any evidence to the contrary.

The issue of comparability is vigorously argued by both parties. The Employer offers exhibits that support their conclusion that a historical wage pattern exists by virtue of the Highway and Sheriff's Department consistent annual wage increases from 1986 through 1996 as shown by Employer's Exhibit 36. The Association's Exhibits 503 through 510 show that unrepresented employees, as well as other bargaining units within Vilas County, historically have received wage increases which were substantially higher than the raises offered to the Social Workers.

The Employer argues the consistency of wage increases is not compromised by the

reclassifications that have occurred in recent years. The Jailers/Dispatchers were made sworn employees. A significant number of other employers gain substantial increases through the policy of reclassification or the new policy of merit increases. Using the exhibits and the testimony of witnesses, it is obvious that the Employer has aggressively investigated and then reshaped the status of many Vilas County employees. While this is very commendable and is consistent with the progress of employee/employer harmony, it does not support a conclusion that there has been a consistent pattern of wage adjustments throughout the total employment ranks. The Employer acknowledges that wage adjustment for Courthouse and Sheriff's Deputies bargaining units broke the internal settlement pattern, but concludes this is not sufficient justification to warrant the wage increase set forth in the Association's final offer. The Employer notes the Social Workers Association was organized in 1995 and negotiated the 1995-96 agreement. The Employer acknowledges this was at a time it was dealing with reclassification and wage adjustment throughout the entire employee cadre. The Employer acknowledges it promised to address catch-up at the next Collective Bargaining Agreement. The Employer argues they accommodated this promise by combining the Social Worker I and II classifications into a single "Social Worker" position. This resulted in a 15% lift for Social Worker I and 3.5% for Social Worker II during 1997. In 1998, the Employer gave the Social Workers a 4% and 3.5%. These raises modestly exceeded the raises paid to other bargaining units. The problem with the Employer's argument is that by recognizing there should be no distinction between Social Workers, the Employer made all Social Workers the same, presuming these employees are all capable of doing Social Worker II work. It is conceded that a Social Worker in Vilas county should be compared to a Social Worker II in other comparable counties. This Arbitrator must disregard the 15% raise that Social Workers I received because they were reclassified to the equivalent of Social Worker II and Social Worker II received only a 3.5% increase when they were classified as "Social Worker." Had the Employer elected to downgrade Social Workers to Social Worker I, then the catch-up that had been promised would have been accomplished. But

that didn't happen and the Social Worker classification received only a 3.5% or 4% wage increase.

The Employer argues that since reclassification "all Social Workers on the bargaining unit must have the same qualifications, training, and experience." This is difficult to accept since experience is so variable. However, the Employer acknowledges that all Social Workers must perform social work duties for either child Protective Services or Adult Protective Services which supports the conclusion that the position of Social Services I has been abandoned.

The Employer addresses the comparable County Social Workers Compensation and concludes the Vilas County Social Workers wages range between Social Worker I and II positions in all but one external comparable. Since the Employer acknowledges the Vilas County Social Workers wages average between Social Worker I and II in the comparables, it is obvious the Vilas County Social Worker II is paid less than the average Social Worker II.

It is apparent that the Employer failed to grant the catch-up pay promised to Social Worker II when that position was changed to "Social Worker" with Social Worker II responsibility.

While the Employer offers evidence that comparable counties have different fundamental qualifications, it must be presumed that Vilas County Social Workers are qualified by virtue of their state license and the presumption that Vilas County is receiving creditable work from their employees. The fact the Director of Social Services received a substantial increase in salary affirms the high quality of work performed by the Social Workers.

The Employer has offered exhibits showing the supplementary to wages benefits granted by comparable counties and the Vilas County supplementary benefits are quite comparable and this factor does not justify the imbalance with the comparables in the wage of Social Worker category.

The Consumer Price Index is accommodated by the final offer of both parties. The Employer objected to the admission of the post-hearing Exhibits. It is apparent that the

Exhibits go beyond identifying the source of the information. The Employer complains the additional information contained in the Exhibit is not subject to cross-examination. The supplementary Exhibit does have similarity to other received Exhibits and is a recitation of public records which involve a County whose comparables have been received. This Arbitrator, however, finds reference to arbitrations unresolved are very speculative. However, it is only the actual result that is speculative, because either one or the other offer must be accepted by the Arbitrator. The challenged Exhibits will not be excluded.

The contribution of State and Federal funds is not significant to the issue of a fair wage. The other considerations argued do not overcome the obvious conclusion, the Social Workers were assured they, too, would have a “catch-up” wage increase.

The conclusion by the Employer that comparisons may be made only to wages paid to represented Employees appears to be at odds with the Statutes 111.70(4)(cm)7 d, e. Accordingly, the Association’s comparisons in that regard are appropriate.

The private sector comparisons are inconclusive and cannot be weighed in favor of either offer.

There is no evidence the Employer has acted with hostility toward the employees. There are merits to the position of each party and the interests of each party have been fairly presented. The difference between the final offers are comparatively minor, but even minor differences have a long-range effect.

During this Arbitration, there are been no changes in circumstances that have been brought to the Arbitrator’s attention.

AWARD

Upon the application of the Statutory criteria found in Section 111.70(4)(cm)7a-j Wisc. Statutes and upon consideration of the evidence and arguments presented by the parties and for the reasons and analyses discussed, the Arbitrator selects the final offer of the Union which together with any stipulations of the parties are to be included as the Collective Bargaining Agreement concerning wages between Vilas County and the Vilas County Social Workers Association.

William G. Callow, Arbitrator

Dated:
January 26, 2000