

BEFORE THE ARBITRATOR

In the Matter of the Petition of

LOCAL 227, AFSCME, AFL-CIO

To Initiate Arbitration
Between Said Petitioner
and

Case 169
No. 57117 INT/ARB-8627
DECISION NO. 29742-A

La CROSSE COUNTY

Appearances:

Daniel R. Pfeifer, appearing on behalf of the Union.

Robert Taunt, appearing on behalf of the Employer.

INTEREST ARBITRATION AWARD

Local 227, AFSCME, AFL-CIO, (herein "Union") having filed a petition to initiate interest arbitration pursuant to Section 111.70(4)(cm), Wis. Stats., with the Wisconsin Employment Relations Commission (herein "WERC"), with respect to an impasse between it and La Crosse County (herein "Employer"); and the WERC having appointed the Undersigned as arbitrator to hear and decide the dispute specified below by order dated November 1, 1999; and the Undersigned having held an evidentiary hearing in La Crosse, Wisconsin, on March 14, 2000; and each party having filed post-hearing briefs, the last of which was received June 30, 2000.

ISSUES

The parties reached impasse with respect to a successor agreement to their agreement expiring December 31, 1998. The stipulation of tentative agreements sets forth that the parties' mutually agreed upon a two year successor agreement retroactive to January 1, 1999, with minor exceptions to the retroactivity. The parties' final offers state the issues in dispute. I summarize them as follows:

1. WAGES: The parties mutually agreed to annual increases at the beginning of each year of 3% in each year. The Union proposes to modify the current salary schedule (which is Appendix A of this award) by adding a Step 4 at 60 months at \$.23 per hour over the previous step effective 7/1/99 and increase that step by \$.23 per hour effective 7/1/2000. The Employer opposes the creation of the new step.

2. TOOL ALLOWANCE: The Union proposes to create a tool allowance by adding a new provision, Section 17.04.4 to read; "Mechanics will be reimbursed up to \$50 per year for necessary tools purchased for County business upon presentation of a receipt showing the actual purchase price of the tool." The Employer opposes the creation of the tool allowance. There is no tool allowance in the current agreement.

3. CDL: The Employer proposes to change the "Truck Driver" pay grade to CDL Truck Driver. The Union opposes this change.

POSITIONS OF THE PARTIES

The Union asserts that the controlling issue is its request for a "catch up" increase. It supports this by relying solely upon the comparison criteria. It has selected the proposed comparables. Dodge, Eau Claire, Fond du Lac, Jefferson, Maintowoc, Marathon, Monroe, Ozaukee, Sheboygan, St. Croix, Walworth, Washington, and Wood, which it argues were established by Arbitrator Ostreicher.

It argues that the Employer's attempt to delete Jefferson, Ozaukee and St. Croix Counties to include Jackson, Trempleau and Vernon Counties is without merit because they are not within the population parameters the Employer argues is appropriate. The Union states that its comparisons support its proposed addition of a step after 60 months. In the positions of patrolman, heavy equipment operator and mechanic, wages here are substantially below the average of the comparable counties. When longevity is added to the comparison, this unit is even further behind. La Crosse does not have a longevity program while many other counties do. The Union points to precedent to support its view that the additional step is warranted as a move to catch up to these rates. The Union denies that a quid pro quo is required for a catch up increase.

It asserts that none of the higher priority factors interfere with its request for catch up. Specifically, as to the local economic conditions factor, it argues that La Crosse County has a robust local economy. It has a substantially lower property tax raised per thousand of property value than the average of the comparables. La Crosse is 66 of 72 Wisconsin counties in levy rate. While La Crosse has a lower tax effort than other counties, it has a per capita income near average of the counties. La Crosse has a low unemployment rate of only 2.8% as of 1999. From 1997 to 1998, county sales tax distributions rose 14.3%. While the Union contends that other measures of comparison are irrelevant to the issues at hand, it disputes the Employer's total cost figures because they allegedly "double count" step increases and tool allowance increases.

The Employer asserts that the issue of comparable counties should be resolved. The two prior awards do not fully resolve that issue. The Employer asserts that the appropriate comparable counties include Dodge, Eau Claire, Fond du Lac, Manitowoc,

Marathon, Sheboygan, Walworth, Washington and Wood Counties. The Employer states it has consistently used this list since at least 1991. It asserts that the Ostreicher Award accepts those counties as comparable. The Employer's list includes counties which are within 25% of La Crosse County's population. Further, these are generally also comparable with respect to equalized valuation and personal income. It concedes that not all proposed comparables are comparable on all of the above points.

It argues that the comparables proposed by the Union are not appropriate. Ozaukee County is a bedroom suburb of Milwaukee with equalized value and income substantially in excess of that in La Crosse. Similarly, St. Croix is a bedroom community for Minneapolis/St. Paul area. Jefferson County has population and per capita equalized value substantially in excess of that of La Crosse. By comparison, Dodge, Eau Claire, Fond du Lac and Manitowoc and Sheboygan are comparable in all 4 areas. Marathon is comparable in 3 of 4, with population being larger than La Crosse. The Employer argues that the comparables which it submitted are reasonable, especially because 6 of the 9 are on the wealthier eastern side of the state.

It also argues that the arbitrator adopt as comparable, the four contiguous counties; Jackson, Monroe, Trempleau and Vernon. It argues that under the "greater weight" criteria, it is appropriate to give greater weight to the local economic conditions of La Crosse. Since these counties all share a similar economic base, the arbitrator should give greater weight to wages paid under similar economic conditions in the region.

The Employer also notes that its total package offer is supported by the cost of living, other comparable total package settlements. The parties have agreed upon the appropriate general wage increase for unit employees.

It also argues that the Union's proposed additional step to the salary schedule is not justified because: 1. it does not coincide with a pay period as the parties' have otherwise agreed; 2. the first \$.23 is a varying percentage to different pay grades; 3. the Union's proposal is ambiguous as to whether it includes seasonal positions (there are none now); 4. it is ambiguous as to how it applies to the park seasonal laborer; 5. it is ambiguous as to whether it is job specific or it is based upon service in any position; 6. it is ambiguous to step movement provisions in Section 17.06.1 of the Agreement and computation of the 60 month period. The Employer believes that the implementation problems alone should defeat this proposal.

The Employer believes the other remaining proposals are minor items not affecting the result. It asserts its proposal to add CDL to the truck driver is because it believes that all employees in this category will be required to have a CDL. It has never had

a tool allowance and does not think the creation of one is supported by the evidence.

DISCUSSION

Pursuant to Section 111.70(4)(cm), Stats., the arbitrator is to select the final offer of one party or the other without modification by applying the criteria specified in the statute as follows:

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 the 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

- f. Comparison of wages hours, and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally 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 employes, 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 parties, in the public service or in private employment.

The parties agree that the determinative issue in this matter is the additional salary schedule step proposed by the Union and second year adjustment to it. Arbitrators have uniformly essentially required that a party proposing a new or additional term of a collective bargaining agreement establish that circumstances have changed such that a change is necessary and that that party's proposal is reasonably necessary to accomplish the needed change.

The factor requiring greatest weight does not apply to this dispute. Both parties addressed some argument to the factor requiring greater weight. The arguments raised do not affect the pivotal issue of appropriate wage rate level in this case, except that the effect of differences in wage levels in La Crosse generally and other parts of the state has been considered and is discussed below.

The Union's sole argument for the addition of the new salary schedule step is that wages for La Crosse County workers in this unit are behind the average of similar wages in comparable counties. It has selected the proposed comparables. Dodge, Eau Claire, Fond du Lac, Jefferson, Maintowoc, Marathon, Monroe, Ozaukee, Sheboygan, St. Croix, Walworth, Washington, and Wood, which it argues were established by Arbitrator Ostreicher. A

review of Arbitrator Ostreicher's 1991 award between the parties reflects that Arbitrator Ostreicher was faced with two primary issues in that award, insurance premium employee contributions and wage increase. It appears all parties gave more weight to the insurance issue. Both parties supported their positions largely on the basis of comparisons to employees in similar positions in counties with populations plus or minus 25% of La Crosse County and the four counties contiguous to La Crosse County. The Union used the same list it proposes here. Arbitrator Ostreicher stated that the record was insufficient to make a determination of which proposed comparable counties were in fact comparable. He stated he relied upon "all of the data" from all of the proposed comparables.

However, his reasoning shows that he selected the final offer of the Employer primarily using the Union's proposed data. After a careful review of that arbitration award, I do not conclude that there is an established set of comparable counties with respect to this unit.

There are several factors recognized by arbitrators in determining comparability among public employers and used by the parties herein. They are; 1. location; 2. population and geographical size; 3. total property value; 4. per capital property value; 5. per capita income; 6. whether or not the proposed comparable is in the same or similar labor market. The following is the non-geographical comparative data.

COMPARABLE		98 population	98 full value	per capita val.	97 per. cap. inc.
Dodge	mutual	83,348	3,388,238,170	40,652	\$19,123.00
Eau Claire	mutual	90,691	3,450,894,050	38,051	\$21,674.00
Fond du Lac	mutual	96,151	4,071,358,100	42,343	\$23,865.00
Jefferson	union	73,340	3,452,670,445	47,078	\$21,848.00
Manitowoc	mutual	84,434	3,113,670,000	36,877	\$22,292.00
Marathon	mutual	125,491	4,967,829,640	39,587	\$22,937.00
Monroe	mutual	38,758	1,209,434,300	31,205	\$17,391.00
Ozaukee	union	80,098	5,793,754,200	72,333	\$35,879.00
Sheboygan	mutual	111,427	4,801,831,450	43,094	\$24,009.00
St. Croix	union	57,113	2,944,299,500	51,552	\$26,051.00
Walworth	mutual	84,414	6,429,221,500	76,163	\$22,261.00
Washington	mutual	112,326	6,483,409,530	57,720	\$27,691.00
Wood	mutual	77,538	2,810,608,300	36,248	\$24,831.00
average					
La Crosse		105,299	3,859,953,100	36,657	\$23,123.00
contig. counties					
Jackson	employer	18,304	658,604,500	35,981	\$17,521.00

Monroe	mutual	see above for all statistics			
Trempleau	employer	26,314	805,938,800	30,628	\$18,043.00
Vernon	employer	26,492	813,970,900	30,725	\$14,978.00

The Employer has agreed with the selection of the above comparisons, except as noted below. The Employer has correctly challenged the inclusion of Ozaukee County. It is substantially a bedroom suburban area of the Milwaukee metropolitan area. Ozaukee has a per capita property value twice that of La Crosse County and per capita income about twice that of La Crosse County. Ozaukee is in the eastern part of the state while La Crosse is in the western part of the state.

St. Croix County is in the western part of the state, but is substantially affected by its proximity to the Twin Cities. It has a substantially smaller population than La Crosse County. Similarly, Jefferson has a lower population than any of the counties mutually agreed to by the parties, except Monroe. Monroe is contiguous and, therefore, represents the same local economic conditions. Wood County, has more geographical similarity to La Crosse than Jefferson. The use of either Jefferson or St. Croix as comparables will not affect the result in this case and there is no need to enhance the remaining list of comparables.

The Employer has proposed to include the other surrounding counties besides Monroe. However, it did not provide any wage or other comparative data useful for the substantive issues herein. Jackson, Trempleau and Vernon, all have populations less than 27,000 and per capita incomes at least \$5,000 less than La Crosse. The counties are only comparable on the basis that they share some of the same local economic characteristics as La Crosse. They are not otherwise directly comparable. The parties have previously used Monroe as the closest comparable of all the contiguous counties. I have continued to do so for the purpose of consistency and to provide some balance.

The seniority list demonstrates that there are 58 employees in the unit, including the probationary employee. The Union made wage rate comparisons on the basis of the positions of patrol worker, mechanic and heavy equipment operator. There are 18 patrol workers

Crosse's Heavy Equipment Operator. the average is \$15.26 while La Crosse is \$14.57. The mechanic is also similar. Only Monroe and Eau Claire pay less. The average is \$15.48 while La Crosse is \$14.69 These comparisons on their face heavily support the position of the Union for a catch-up increase of the magnitude it is seeking.

The Employer has countered the above by making three arguments. First, that the salary schedule proposed by the Union is not comparable to any other salary schedule within the other units of the Employer and that there are enumerated technical difficulties. The Employer is correct in much of this position, but it is outweighed by the strength of the Union position with respect to wage rate comparisons.

The Employer makes two other arguments against a catch-up increase. First, that the alleged disparity is really a function of differences in the relative wealth and income levels of different regions in the state. It points to the fact that wages here are higher than surrounding counties and that wages here are higher than those in Eau Claire which is in the western part of the state. Second, that since there is an adequate applicant pool, wages here must be adequate. I note there are seventeen employees in the unit with more than 20 years experience and 19 with over ten years experience. The record would suggest that turnover is otherwise low.

Addressing the second argument first, I find that it has substantial merit. One would expect that turnover would tend to be high were wages here significantly lower than those for comparable jobs. This is a strong argument in the Employer's favor and is entitled to weight, it is not determinative under the circumstances here.

Addressing the second argument, the size of the disparity here appears on its face to be too large to be represented solely by differences in the economies. While neighboring Monroe County pays less, it is smaller, more rural and has a much lower per capita income. Eau Claire pays less and Wood County which is arguably as close pays substantially more. Wood County is closer in population and has a per capita income higher than that of La Crosse by essentially as much as Eau Claire is lower. The per capita property value of Eau Claire is very close to that of La Crosse while that of Wood is much higher. The wage rates proposed by the Union also appear comparable to likely similar positions in the City of La Crosse. Thus, the Employer's argument that the general wage disparity here is essentially a function of differences in pay rates in different regions of the state is weak.

The Employer also attempted to support the first point by "adjusting" the wage rates in the comparable counties by the ratio of per capita property value to that of La Crosse. That adjustment is not a measure of relative wage levels. A better rough measure

of difference between the wage levels in the comparable counties compared to La Crosse is to adjust the relative value of per capita income to that of La Crosse. I note that while this adjustment tends to equalize the differences between the economies, it can only be a rough gauge. This is true because there are many demographic factors affecting per capita income other than the mere comparable worth of jobs. Further, the use of this measure of comparison makes the unlikely assumption that there is a linear relationship between per capita income in a county and wage rates. Even with these significant limitations, it appears the best available adjustment in this record. The adjusted data is contained in Appendix B. As adjusted, this method of comparison favors the Union position. Accordingly, the best judgment on the available record is that the unit is entitled to a "catch up" increase and that its offer is closer to appropriate to accomplish than that of the Employer. The other issues are minor. Accordingly, the final offer of the Union is adopted.

AWARD

That the final offer of the Union be incorporated into the parties' collective bargaining agreement.

Dated at Milwaukee, Wisconsin, this 29th day of August, 2000.

Stanley H. Michelstetter II,
Arbitrator