STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of
DOOR COUNTY COURTHOUSE EMPLOYEES
LOCAL 1658 AFSCME AFL-CIO
To Initiate Arbitration Between Said Petitioner and
DOOR COUNTY

Case: 119
No: 58481, Int/ARB 8929
Decision No. 30096-A

APPEARANCES:

Door County Courthouse Employees Local 1658, by
Neil Rainford Staff Representitive Wisconsin Council
40 AFSCME, AFL-CIO;

Door County, by Grant P. Thomas, Esq.
Door County Corporation Counsel.

ARBITRATION AWARD

Door County Courthouse Employees Local 1658 (Union) is the exclusive collective bargaining agent for all regular full-time and regular part-time employees in the Door County Courthouse and associated departments, excluding supervisory, managerial, confidential, executive and professional employees. Door County (Employer) is a municipal employer within the meaning of Section 111.70(1)(J) of the Municipal Employment Relations Act. The parties have been unable to come to an agreement regarding the terms to be included in the terms to the successor of their contract which expired on December 25, 1999. The Union filed a petition requesting the Wisconsin Employment Relations Commission (Commission)to initiate compulsory final and binding Arbitration pursuant to Sec. 111.70 (4)(cm)6 of the Municipal Employment Relations Act on January 24, 2000. the commission assigned an investigator to look into the matter. After conducting mediation sessions in May and November in 2000, and on

January 5, 2001, the investigator informed the Commission that an impasse existed. The Commission appointed the undersigned to act as arbitrator by order dated April 3, 2001.

After due notice to the public, the Arbitration Hearing was conducted at the Door County Courthouse, in Sturgeon Bay, WI on June 4, 2001. Both parties presented documentary evidence into the record; some of that evidence was provided through the mailing of delayed exhibits by both parties on June 7, 2001. Upon receipt of those delayed exhibits the record was closed. The parties agreed to amend the original briefing schedule, and exchanged their initial briefs by transmittals dated August 6, 2001. Reply briefs, dated August 24, were received by the undersigned on August 27. Thereafter, letter briefs regarding the admissibility of a late filed exhibit were exchanged, the last of which was dated September 11, 2001.

ISSUES IN DISPUTE

The record does not disclose the parties original final offers. It does disclose that by the time the parties presented evidence at the June 4, 2001 hearing, they had agreed to modify the elapsed contract for the period December 26, 1999 through December 22, 2001 in a number of areas. The parties have agreed to increase wages across the board by 3% in both 2000 and 2001. They agreed to modify contract language relating to contract article 16 relating to overtime pay and compensatory time off. The parties also agreed to equity wage adjustments ranging from $.26 to $.31 per hour to $.94 to $1.41 per hour for employees in nine wage classifications.

The two contract issues the parties have been unable to resolve are:

1. The Union's request for a $.15 an hour shift differential

for all employees whose shifts commence at 3pm or later.

2. Equity wage increases for 3 existing classifications ranging from $.19 to $.22 per hour to $.86 to $1.01 an hour and , increasing the Maintenance Tech. II classification from $.96 to $1.13 per hour, by creating a new pay grade.

There is also a procedural disagreement over what other counties should be included in the external comparable groups. Finally, a dispute arose about the admissibility of an exhibit attached to the Employer's Reply Brief.

THE UNION'S POSITION

After reviewing the parties offers and the statutory criteria, the Union said that it would "demonstrate through internal and external comparisons that its proposal to reclassify the four positions and to implement the shift differential is the more reasonable resolution of the dispute." It noted that the only time these parties were involved in arbitration, in 1988, the arbitrator found that it was not necessary to establish an external comparable group. It argued that a 1992 Door County Highway Department arbitration award clearly established that Kewanee, Marinette, Oconto, Manitowoc and Brown Counties are comparable to Door County. In that proceeding Shawano and Waupaca Counties were secondary comparables. "The Employer's attempt to alter the comparability group as evidenced by their inclusion of Langlade and Oneida Counties and their exclusion of Brown County… must be rejected" The Union cited arbitral authority for the importance of maintaining established comparable groupings in order to provide stability and predictability in the collective bargaining process. " The comparability group has been

established and the Employer has provided no compelling evidence to justify the modification of that grouping"

The Union reviewed economic and tax data for Door, Brown, Kewaunee, Manitowoc, Marinette, and Oconto counties. In 1999, Door county had the highest per capita value of taxable property and the lowest tax levy among comparables. Its per capita income was second only to Brown County and, over the period 1995-1999 its "rank improved from 20 to 15 statewide; this is an increase unparalleled by any of the other counties in the comparability group." It argued that this data shows the "absolute relative health of Door County's economy." The Union reviewed increased sales tax reimbursements averaging 8.6% from 1995 to 2000 as evidence of strong growth in the local economy. The Union said that Door County's economy is thriving. It cited Arbitrator Weisberger's 1998 Lincoln County Highway Department award, and argued that the foregoing economic data favors the Union's offer under the Greater Weight criteria of Wis Stat 111.70 (4) cm (7g).

The Union said that Consumer Price Index data for the periods December 1999 to January 2000 and February through April of 2001 "are the most appropriate data because they provide an indication of the rising cost of living over the period covered by the agreement in question." It argued that data for the later period should be given the greatest weight. It said this data suggests an average increase in the CPI of 3.4%, and supports the Union's offer. The Union said that its offer would offset the employee's loss of real wages during the first contract year with a greater number of equity wage adjustments and the addition of the shift differential.

The Union argued that both internal and external comparisons favor its offer for a $.15 an hour shift differential. The four maintenance employees who would receive this $373 annual increase are the only Courthouse employees that do not "receive compensation for their evening schedules." It reviewed data that showed second shift differentials of $.20 for Door County Bridge Tenders and $.35 for Sheriff Department employees; third shift differentials are $.25 and $.35 respectively. Among external comparables, only Kewaunee does not pay a late shift premium. Brown County pays an additional $.20 for second shift and $.25 for third shift employees. Manitowoc pays $40 a month, Marinette $.25 and hour and Oconto $.20 an hour for shift differential.

The Union said that its proposal for reclassifying or adjusting wages for four positions is based upon the need to reduce inequities between Door County's wage scale and wages paid in comparable counties. It said that the Union had compared like job titles and "similar status." Similar status is a means of identifying the position in the comparable county that is most similar in its place in a hierarchy of positions." It said Clerk Typist II, the top level clerk position in Door County, should be compared to top level clerk typists in Manitowoc. It argued that the Employers "had manipulated the comparative process by matching top level positions in Door County to lower level positions in the comparable counties." The Union said that Clerk Typist II wages in Door County should be compared to Manitowoc's Clerk Typist IV not its Clerk Typist II wage scale. It made similar arguments about Clerk Typist III wages in Shawano County, and the Employer's choice for comparison in Marinette County. It argued that the County's use of comparisons with wages in Langlade and Oneida Counties is improper, as they have never been comparable counties for the purpose of interest arbitration. The Union said that its offer would

result in Clerk Typist II wages that are $.80 an hour below the mean average of comparables compared " to more than a full dollar behind the mark."

The Union said that the County had made inappropriate comparisons with the Door County Administrative Assistant/Account Clerk job classification. It said that the Kewaunee County comparisons should be with Kewaunee's Clerk III rather than its unoccupied Administrative Assistant position. It argued that the County's comparison with Oconto's Public Health Technician is inappropriate. Oconto's "Administrative Assistant positions comprise the vast majority of duties performed by the Door County position in question." The Union said that its offer would exceed average comparable wages by about the same amount that the Employer's offer falls short of the average. Both offers would result in a 3 out of 6 ranking in 2000. It said that many of the duties performed by the position in Door County are performed by department directors in comparable counties. That "suggests that this position is underpaid for the value of services provided to the County of Door."

The Union said that the Employer had used improper comparisons for Door County's Child Support Account Clerk classification with Kewaunee and Oconto Counties. Oconto no longer has "Child Support Revenue Workers," the appropriate comparison is "Financial Specialist." The Union said that it erred in its comparison with "Financial Worker" in Kewaunee County, the Employer's comparison with "Support Administrative Assistant II" is correct. With these corrections "the Union's wage proposal is slightly higher than the mean average." It is below the median "And leaves the employee in the bottom half of the rankings at fourth out of six primary counties." It said that the Employer's offer would retain that rank, but would "relegate wages in this classification closer to the bottom of the pay range."

The Union said that the Maintenance Techs II, who are responsible for the infrastructure of the County's buildings, are usually certified in several areas of building maintenance. They are easily distinguishable from lower level custodial employees "who are primarily concerned with keeping the buildings clean and with minor repairs…" The Union said that the equivalent position in Manitowoc County is labeled Maintenance Tech I. " The Employer, on the other hand, has made an inappropriate comparison to the Maintenance I position." The Union argued that the mean average hourly wage for persons performing comparable work in the primary comparable counties is $15.41 compared to the Union's proposed $14.90, and the Employer's offer for $13.77 for the year 2000. It said the Employer's offer is wholly inadequate, it would keep Door County's Maintenance Techs II "at the very bottom of the rankings." The Union said that its offer requires the creation of an additional step in the pay structure because, the distance between pay grades B and C is too great ($2.20) to accommodate gradual reclassification. "Eventually, the parties will need to address the problem of this chasm in the wage scale by adding an intermediary step between grade B and C."

The Union said that "the most recent round of Door County Settlements, and tentative agreements for the instant bargaining unit, support the Union's offer." It reviewed data from the Employer's settlements for 2000 and 2001 with its Highway Department, Social Services unit and Sheriff's Department as well as the tentative agreements with these Courthouse employees. All of these agreements call for "a minimum of a 3.0% wage increase in each year plus adjustments" for specified job classifications. The Highway Department settlement added shift differentials of $.15 to $.20 and $.20 to $.25 for bridge tenders. It also granted a $.15 an hour adjustment to "Seasonal Pavement Marking Operator," resulting in a total wage adjustment of

3.9% for that position in 2000. The Department of Social Services settlement increased weekend stand-by-pay for approximately eight employees by approximately $150.00 a year starting in 2000. Two employees lost approximately $35.00 a year through the restructuring of holiday stand-by-pay.

Three wage classifications received wage adjustments ranging from $.35 to $.50 an hour during 2000, and two of those classifications received $.7 and $.10 additional wage adjustments during the second contract year. The Union calculated total adjustments in these three categories from 5.6% to 6.9% in 2000, and from 3.7% to 3.8% in two wage classifications in 2001. The Union reviewed eight modifications contained in the Employer's contract with the Sheriff's Department for 2000 and 2001. These included the elimination of longevity pay for new hires, and increase in "Acting Sergeant" pay, investigator's clothing allowance, increased compensatory time accumulation and workers compensation benefits and the implementation of additional dental care and prescription benefits in 2001. The Sheriff's Department agreement also provided selective wage increase in some maximum wage rates starting in January 1999 which the Union calculated would result in three average increases of 3.7% for Patrol Detectives and Security Deputies and 6.7% for Telecommunicators.

The Union reviewed the tentative agreements that the Employer entered into in this proceeding. Those agreements will result in wage adjustments in excess of 3% for eleven job classifications. The size of the additional wage adjustments range from $.31 an hour (2.95%) for a Clerk Typist I to $1.10 an hour for a 13.2% increase for Deputy I Clerk of Courts. All of these adjustments will become effective during the first year on the contract. The Union noticed that the four wage adjustments that remain in dispute in this proceeding involve proposed 2000 wage

increase of 5.5% for Clerk Typist II; 4.7% for Administrative Assistant/Account Clerk; 5.0% for Child Support Account Clerk; and 10.7% for Maintenance Tech II. It argued that these additional adjustments are necessary in order to avoid creating an additional new inequity between those Courthouse Employees who have received equity adjustments and those employees whose request for equity adjustments has been denied. It argued that the adjustments that remain in dispute are squarely within the range of the other equity adjustments the Employer has agreed to for other bargaining units. It concluded that the adjustments are most reasonable in order to minimize the inequities that exist between these employees and both internal and external comparables.

THE EMPLOYER'S POSITION

The employer reviewed the provisions of Sec.111.70(4)(cm)7 Wis Stat. it said that neither the "Greatest Weight nor Greater Weight" factors are material to the issues in dispute. It said there is no question that the Employer either lacks the authority or has the financial ability to meet the costs of either offer. The County said that the interest of the public favors its offer because the Employer's offer better balances the provision of appropriate services while minimizing the adverse fiscal impact upon Door County taxpayers. The County said that both internal and external comparable comparisons "merit strong consideration in the instant case," and it cited arbitral authority that these comparisons are "generally regarded as the most persuasive of the statutory criteria."

The Employer referred to the evidence of its settlements with five bargaining units from 1990 through 2001, "[T]here is, and historically has been, consistency (virtual uniformity) in wage increases across the Employer's five bargaining units." It said that this fact should be given considerable weight. The County noted that unrepresented employees and represented units received 3% across the board wage increases during the relevant time period. "This well-established internal pattern should prevail, absent a clear showing that an unacceptable disparity in wages exists between the bargaining unit and any appropriate external comparables." It said that the Union had not made such a showing, and argued that internal comparables do not support equity wage adjustments. The Employer said that the equity adjustments it agreed to with other bargaining units, and with this unit, were made to "catch-up" to the external comparables. It said that those wage adjustments were targeted and agreed upon by negotiation, based upon the particular facts of each case. They should not be considered part of the across the board wage increases. All parties understand that it is improper to include "catch-up" as part of the general across the board wage increases.

The County argued that as far as shift differentials are concerned, internal comparability should not be the controlling factor. The fact that Door County's bridgetenders and Sheriff's Department employees receive a shift differential is based upon what those parties previously agreed upon in contract negotiations. "Only a small percentage of Door County employees have a per hour shift differential." Shift differentials for bridgetenders and Sheriff's Department employees constitute the status quo. The Employer said that it would not be proper to impose shift differentials for courthouse employees through arbitration. It argued that internal comparables support the County's offer.

The County noted that the parties agree that Kewaunee, Manitowoc, Marinette and Oconto Counties should be deemed comparable to Door County for this proceeding. It noted the Union's arguments that Brown County should also be considered a primary comparable, and Shawano and Waupaca Counties should be secondary comparables. The County said that in addition to the agreed upon comparables it believes Langlade, Oneida and Shawano Counties should be included in the comparable pool. It said that the fact that Brown County was included as a comparable by arbitrator Zeidler in a 1992 Door County Highway Department case should not be controlling herein, that is particularly true since Arbitrator Mechelstetter declined to include Brown County in the 1988 Door County Highway arbitration case. The Employer said that the arbitration decisions in those dated Highway Department arbitrations are inconsistent and irreconcilable. "Consequently we are compelled to reexamine the issue of external comparables in general, and the propriety of using Brown County as an external comparable specifically."

The Employer reviewed data showing that Brown County has a much larger population, larger economic base, greater revenue base and larger workforce than Door County. It argued that Brown County is considerably more urban and "lacks independence with Door County." It argued that the only similarity between Door and Brown Counties is geographic proximity, and that is not a sufficient basis to establish comparability. The County said that the differences between Brown County and other suggested primary and secondary comparables is even more dramatic. It concluded that the inclusion of Brown County 's revenue and other economic data with data from the smaller counties "distorts and skews the average of established comparables. These measures provide support for the Employer's argument that the inclusion of Brown County as a comparable is inappropriate."

The Employer said that in addition to the agreed upon comparables, Langlade, Shawano and Waupaca counties have similarities to Door County. It said that these counties should be considered secondary comparables. The County said that data from these comparable pools shows a "prevailing pattern of roughly three percent across the board wage increases for 2000 and 2001." It argued that the data shows that there is no unacceptable disparity in wages in Door County, and there is no prevailing practice for paying shift differentials. The Employer said that the Union failed to show that, even if its preferred comparable pool is considered, either of the offers would have any significant effect upon Door County's wage ranking among comparables. The Employer argued that the important question is wage ranking not wage parity. "The Union has furnished no basis for the arbitrator to determine that erosion or slippage has occurred, nor that 'catch-up' is appropriate."

The County said that it has received notice that the Union is prepared to begin negotiations over the parties' 2002-2003 contract. It said that this is a factor to be considered in rendering the decision herein. It said that given the long history of peaceful labor relations between the parties and the circumstances of the case, there is merit in permitting the parties to address their disagreements during their next round of bargaining. The County cited evidence that the Union's proposed shift differential would cost $2,984.00, and its wage adjustments $14,795. over the two year contract period. It argued that these costs would have a negative impact upon the County. The County said that the Union has not offered quid pro quo for its proposed changes. It pointed to evidence, and argued, that the overall compensation received by the employees herein "is extremely competitive with the comparables."

The Employer said that both the shift differential and wage adjustments, sought by the Union, constitute changes in the status quo. It noted that arbitral authority requires that the party proposing to change established contract provisions bears the burden of proof to show that the change is necessary. It said that the Union has failed to meet that burden, and it has also failed to offer quid pro quo. The Employer opened its reply brief by discussing the difference between the meaning of the terms reclassification and equity wage adjustment. It said that the reclassification typically involves a material change in job duties, functions, responsibilities, or tasks. "No straight faced argument can be made in this case, in any manner, involves reclassification." It said that the issue in this case is the Union's request for "catch-up" or equity wage adjustments. It argued that the equity adjustments "are appropriate only when an employee or position is sharply underpaid by comparison to appropriate comparables." The County summarized its position:

> Employer maintains that it is patently inappropriate to include equity wage adjustments ("catch-up") as part of the general across-the-board wage increase for the purposes of evaluating the total economic value of an award or settlement. Doing so artificially inflates the true across-the-board wage increase; unjustly benefits employees who have not and cannot demonstrate a need for catch-up; and will have a chilling effect on negotiation, i.e., employers will be reluctant to agree to equity wage adjustments, Equity wage adjustments must be differentiated and kept separate from general across-the-board wage increases when analyzing the economic value of an award or settlement.

The Employer anticipating that the Union would cite prior Lincoln and Price County arbitration awards (the Union did not) distinguished those disputes by their facts. The County said that the equity adjustments it agreed to, with other internal bargaining units, "were

targeted and based upon the singular facts of each particular case." It said those adjustments arrived a through bargaining demonstrate that it is willing to recognize the need for catch-up when it is merited. The Employer said that the fact that it had recognized that a small number of employees in other units deserved wage adjustments does not mean that the adjustments this unit is seeking are justified. It said that the Union misrepresented the value of the seasonal wage premium that the County agreed to pay Pavement Marking Operators. It explained that the premium is paid only when pavement is "actually being painted" it is not a "year round" position or premium.

The Employer said maintaining internal equity, with units who bargained their settlements is a primary concern. It said that the Union's offer would result in its Clerk Typist II position receiving $.17 an hour more than Clerk Typist II position in its Social Services unit. The County said that the Union's internal comparisons of shift differentials is defective. It cited the fact that the Union referred to second shift differentials, when there is no second shift, "rather, there are different starting times for various positions." It said that units with shift differentials have 24/7 work schedules, this unit does not, "therefore, these are not meaningful comparisons." It said that the additional 5 cents an hour paid to bridgetenders was based upon the Highway Department Unit agreeing to a voluntary settlement. It said that the shift differentials paid to bridgetenders and Sheriff's Department employees were achieved through bargaining and represent a longstanding status quo. The imposition of differentials upon the Employer in this proceeding would cause resentment in other units, discourage future settlements and run contrary to the public policy of encouraging settlements.

The Employer said that there is no well established pool of external comparables. It argued that the 1992 Highway Department Award, which found Brown County comparable, was too remote in time to be determinative. It said that these parties, who were not parties to that dispute have not relied upon the comparables from prior arbitration awards, "and the issue of what constitutes the appropriate external comparables deserve a "fresh look."

The County said that the Union's external comparisons failed to provide "clear evidence as to exactly what classifications perform what comparable work," and fail to show the "hierarchy of the classifications, or ranges in the external comparables to allow comparison of the same" to this unit. It said that absent that raw data the external comparisons are meaningless.

The County said that it disagreed with the Union's tax rate analysis. It pointed to a publication, The Wisconsin Taxpayer June 21, 2001, which is not included in the record. From data included in that document, the Employer argued that Door County has the second highest property tax per capita in the State of Wisconsin. It noted that Door County has elected impose a sales tax in order to reduce its property tax levy. Brown, Kewaunee and Manitowoc have not adopted the sales tax, and Marinette will levy the tax for the first time in 2000. The County said that the reason that Door County's tax levy rate is low is because it uses sales tax revenue to reduce its reliance upon property tax levies. By comparison to Door County's $575. property and sales tax burden, Manitowoc's burden was $216, Marinette's $234, and Oconto's $289.

The Union responded to the Employer's external comparable argument by accusing it of "cherry picking." It said that the issue was settled in the 1992 Highway Department

arbitration which included Brown County as a comparable. It argued that the parties have abided by that decision for nearly a decade. It argued that it presented comparable data in this proceeding to support its contention that Door County's geographic and income data show that it is more comparable to Brown County than it is to Kewaunee, Marinette or Oconto Counties. The Union cited arbitral authority that proximity and the presence of a common labor market are more important measures including size. The Union said that the argument that the parties "had not even considered Brown County as an external comparable during bargaining is false." It offered copies of wage comparisons, which it said were submitted to the Employer during December 1999 and January 2001 negotiating sessions. The Union said that Langlade and Oneida Counties should be rejected for the same reasons that Brown County should be included in the comparable pool.

The Union said that the fact that its offer would cost more than the County's is not relevant to the best interest of the public, because there is no evidence that the cost of either offer would impact services. It said that its offer would best serve the public interest through the recruitment and retention of qualified employees.

The Union argued that the evidence that the Employer granted its non-represented employees 3% across the board increases does not support the Employer's internal comparability argument, because those employees don't have an equal bargaining relationship. The Union repeated its earlier argument, that when the many equity adjustments granted to other Door County units are considered, the internal settlement pattern supports the Union's offer.

The Union argued that the Employer's argument, that the Union should have offered quid pro quo for the requested wage adjustments, is not supported by arbitral authority. It cited a series of previous awards in which Wisconsin arbitrators said that quid pro quo was required only where an employer seeks benefits or where an employer seeks concessions in the form of take backs. It cited arbitrator Stern's 1990 Marathon County award:

> In interest arbitration, in determining whether an economic benefit should be changed, as in a wage or benefit dispute, there is no burden of proof on the petitioning party. The parties share the burden equally. Nor is a quid pro quo necessary in situations where the Union is seeking catch up or pattern increase….

The Union concluded that is has shown that there is a wage disparity between the four disputed positions in Door County where the employees are considerably underpaid in comparison with employees in comparable counties. It said that it has shown that the majority of internal and external comparables enjoy the shift differential that it seeks herein.

The Union reviewed wage rates in Door County and compared them with median average wage rates in Brown, Kewaunee, Manitowoc, Marinette, Oconto, Shawano and Waupaca Counties. It repeated many of the arguments contained in its initial brief. It concluded that review by saying that this proceeding is "all about equity for thirteen Door County Courthouse employees." Nine of these employees work in classifications that are decidedly underpaid vis-à-vis their counterparts in comparable counties." It said that they are also underpaid relative to other Door County employees "whose wage rates are very near or above the comparable averages." It argued that four more employees are being a shift differential

"enjoyed by every single regular second shift employee within the county and almost every single of their counterparts in comparable counties."

After receiving the County's reply brief, the Union filed an objection to an exhibit that the Employer had attached thereto. It argued that the publication The Wisconsin Taxpayer, June 2001 was submitted after the record in this proceeding had been closed. It moved that the document, and the Employer's arguments relating to it, be stricken from the record.

The County responded by letter brief. It argued that since the Union had raised the issue of taxes in its initial brief, it was appropriate for the County to cite the periodical publication as a secondary authority for argument purposes in its reply brief. It said that it had appended a copy of The Wisconsin Taxpayer for the convenience of the arbitrator.

In further reply to the County's response the Union renewed its objection to the receipt of the publication and cited a long list of arbitration awards in which arbitrators excluded evidence which had been found to be inadmissible. It renewed its motion to strike the exhibit and arguments based on thereon from the record.

DISCUSSION

The Wisconsin Taxpayer, June 2001 contains statistical data which is not included elsewhere in the record of this proceeding. Since that information was not placed in the record, it

was not appropriate for the County to base the argument in its reply brief upon data contained in the publication. The Union's request to strike the publication form the record is granted.

The motion to strike the County's argument, on the other hand, is too broad. The analysis of final offers in interest arbitration cases necessarily involves a range of tax impact analysis. The parties in arbitration are free to make any argument they may believe supports their respective position. It is only after the argument has been made that the arbitrator, as the finders of fact, determines whether there is sufficient evidence to support the argument.

In this instance the County's assessment of both sales and property tax burdens in its reply brief is a valid argument that lacks support in the record. In this instance neither party relied heavily upon ability to pay or tax impact arguments, for that reason disagreements about the amount of weight to be accorded to the County's sales and property tax rate argument appears to be a tempest in a teapot. The only time these parties were involved in arbitration previously, in 1988, the Employer took the position that because of the unique composition of Door County's economic base there was "no true external labor market from which valid comparisons can be made." In that proceeding the Union argued that Kewaunee, Oconto, Marinette, Brown and Manitowoc counties should be included in a pool of external comparables. In deciding the case Arbitrator Petrie noted that, normally an arbitrator is faced with the need "to resolve the preliminary disputes of the parties with respect to which group of employees/employers constitute the principal or primary intra-industry comparison group." Petrie found in that, since virtually all external comparables favored the Union's offer, it was unnecessary to establish an appropriate comparable pool. In this instance the parties agree that

Kewaunee, Marinette, Oconto, and Manitowoc counties are comparable. Their only disagreements are about Brown County and secondary comparables, if any are required.

Arbitrators recognize that establishing an external comparable pool assists parties in future collective bargaining. For that reason the undersigned finds that the four agreed upon counties and Brown County are comparable to Door County in the proceeding. A simple glance at a map of the northeast section of the State of Wisconsin supports including Brown County in the pool. Brown County's geographic similarity and proximity are remarkably similar to the other comparables. The fact that it has a heavier industrial economic base and has a much larger population accounts for the fact that it has greater per capita income, tax valuation and tax levies. Those differences are not a sufficient reason to offset the value of including Brown County which shares a common labor market, geographic similarity and economic inter-dependence with Door County and the other comparables. As customary, each party selected secondary comparables whose wage rates support its position in this proceeding. As Arbitrator Zeidler noted in 1992, consideration of appropriate secondary comparables is appropriate where there are insufficient settlements among agreed upon comparables. As will be seen below, the decision is this proceeding is not dependant upon external comparisons. For that reason, and because neither party made a compelling argument for its choice of secondary comparables, no preference for secondary comparables is expressed herein.

Both parties reviewed all of the Statutory Criteria to be considered by the arbitrator under the Municipal Employment Relations Act. They agreed that neither the Greatest Weight nor the Greater Weight factors support the adoption of either party's offer. Both parties concluded that the decision in this proceeding should be based upon comparisons of their offers with internal

and external comparables. Though the parties agree that the comparison criteria are most appropriate, their arguments ranged far across the spectrum of arbitral authority to support their respective positions. The disagreements over which party has the "burden of proof" and whether "quid pro quo" is required underscore the need to put the scope of the parties disagreements into perspective before making the comparisons.

Except for the fact that disputed wage adjustments were included in the Union's wage offer, there is no disagreement over the size of the wage increase to be received by the seventy Union members. The 3% across the board increases each year and the agreed upon wage adjustments will total $11,517. 00 during 2000 and $22,197.00 in 2001. Those adjustments amount to total wage package increases of 3.95% and 3.58% under the County's offer. The additional wage adjustments/reclassifications included in the Union's offer would add .24% or $4865.00 during 2000 and an additional .13% or $2812.00 during 2001. These calculations, based upon Er. Ex. #8 Revised, indicate that the Union's total offer is for 8.05% over two years compared to 7.67% for the County's offer. It should be noted that the undersigned has not been able to reconcile differences in some of the numbers and projections in the County's costing exhibits. The Union did not provide separate cost data, and did not object to the County's numbers. It appeared that the Union's shift differential would add $1,248.00 each year, and the Unions proposed wage adjustments/reclassifications would add $2,976.00 in 2000 and $2,496.00 in 2001. The total difference over two years is $8,283.00. When this difference is viewed in the perspective with the total base year, 1999, compensation of $2,029,832.00, it is apparent that this dispute is not about money. The dispute is about the Union's demand for additional changes in the wage structure.

The prevailing opinion among arbitrators is that the party seeking to change the status quo has the burden of showing that the proposed change is necessary. In this instance, the parties have been able to negotiate a number of agreed upon modifications to the wage schedule in their prior contract. That contract and the parties tentative agreement constitutes the status quo. That status quo came about through the parties collective bargaining over the past twelve years. The Union, proposing further changes to the wage structure has the burden of showing that the additional changes are necessary. It has failed to do so.

Its argument that it is inequitable that four maintenance employees do not receive a shift differential raises the question why is it inequitable? The principal reason for shift differentials is to compensate employees who work what are considered undesirable shifts an amount of money over and above the wages that are agreed upon for job performance. It appears that all four of the maintenance employees work the same hours. The job description for those four positions are not in evidence. It seems reasonable to assume that the job requirements specify the time of day that the job responsibilities will be performed. There is no evidence what time of day the maintenance employees perform their responsibilities or that those times have been changed over time. There is no evidence that the Union has attempted to negotiate higher wages or shift differentials for these employees prior to this round of bargaining. Absent evidence to the contrary it is reasonable to assume that the job description, requirements and compensation were arrived at through the bargaining process and have been deemed equitable to date. The fact that Door County has agreed to pay some Highway Department employees and Sheriff's Department employees second and third shift differentials is not evidence of internal comparability. There is no evidence that maintenance job responsibilities are comparable in any way to Sheriff's

Deputies and Bridgetenders responsibilities. The fact that the four of the five comparables have shift differentials for courthouse employees lends limited support for the Union's position.

The fact that courthouse employees in Brown, Manitowoc, Marinette, and Oconto Counties receive shift differentials is not sufficient reason for awarding a .15 cent an hour shift premium to Door County courthouse employees whose work schedule begins at 3pm or later through arbitration. Absent the showing of necessity for the shift differential, the Employer's request for quid pro quo for the requested change is justified.

When analyzing the Union's request for equity wage adjustments for nine employees in four job classifications we come back to the fact that the Employer's offer and the adjustments included in the tentative agreements represent the contractual agreements that these parties have negotiated over the past twelve years. The prevailing view of arbitrators is that a party seeking to catch-up pay adjustments or wage reclassifications has the burden to show that the changes are necessary. The Union having achieved a substantial number of wage adjustments during this round of bargaining insists that additional wage adjustments are necessary for the Clerk Typist II, Administrative Assistant/Account Clerk and Child Support Account Clerk positions, and it wants a wage adjustment and reclassification of the Maintenance Tech II position. In the first three classifications the Union argues that the work performed by the employees in those positions justifies equal wage compensation with the employees in higher wage classifications in one instance internally and in many instances externally. The first problem with that argument is that the Union was party to establishing the existing wage classifications through bargaining over time, and there is no evidence that job responsibilities for either these nine Door County employees or comparable employees elsewhere have changed.

No job descriptions for the four existing classifications in Door County or in comparable counties have been provided. The Union submitted a series of exhibits from which it attempted to show that many of the job duties performed by Administrative Assistant/Account Clerks in Door County are performed by higher classified and supervisory employees in comparable counties. That evidence, while admissible, is not convincing. It is at best a summary of data which the Union requested, organized and presented to support its position. Due to the very subjective nature of that process, where the data was received by the Union's representative by telephone inquiries to represented employees in similar job classifications in comparable counties, the evidence has little probative value.

The Union's argument that the Clerk Typist II wages in Door County, should be compared to the top level Clerk Typist positions in other counties may have some merit. However it does not follow that all of the Clerk Typist II in Door County are performing the highest level functions performed by those in higher classifications elsewhere. Nor is there evidence that the Clerk Typist II job responsibilities have changed since the parties negotiated their last contract.

The Union's argument that the Child Support Account Clerk position is based in part upon that same questionable data. It compared Door County's Support Clerk wages with higher level classifications in Oconto and Kewaunee Counties, and concluded that the Employer's proposal would leave the position in its present rank of fourth among its six comparables. That conclusion does not support the need for an "equity adjustment" for the Support Clerk classification.

The Union supported its Maintenance Tech proposal in part by arguing that the Tech II wages in Door County should be compared to Maintenance Tech I wages in Manitowoc County. Even without that adjustment it appears that Maintenance Tech II wages in Door County are lower than similar wages in four out of five comparable counties. It appears that the Employer's offer would leave Door County's Maintenance Tech wages 5 out of 6 in 2000. The $.89 an hour disparity between Door County's offer for 2000 and the comparable average of $14.66 an hour is not a sufficient disparity to justify a request for catch-up pay increase under the circumstances that exist in this proceeding.

Both of the offers in this proceeding appear to exceed the other internal and external settlements. The Employer's offer for 3% across the board plus adjustments equal 3.95% in 2000 and 3.58% in 2001. The Union's offer is for 4.19% in 2000 and 3.71% in 2001. Both of those offers exceed the County's 3% across the board settlements with it's Deputy Sheriff's Department, Highway Department and Social Services agency for the two year period. It also appears to exceed the amount of both parties offers to Door County's Emergency Services employees whose contract is being arbitrated. External settlements are as follows. Kewaunee settled for 3% in 2000, and is not settled for 2001. Both Manitowoc and Oconto Counties settled for 3% in 2000 and 2001. In Marinette County 2000 is the third year of the parties' contract which provided for a 3% increase for 1998 and split increases of 2% in January and June of 1999 and 2000. The Brown County Courthouse Employees contract was also for 3 years, 1999, 2000 and 2001. It called for 3% increases in 2000 and 3.4% in 2001. It appears that the County's wage offer for 3% across the board each year with wage adjustments agreed to by the parties is most

comparable to other Door County settlements and Courthouse employee settlements in comparable counties.

For the forgoing reasons the tentative agreements previously negotiated, and the County's final offer shall be incorporated into the parties 2000-2001 collective bargaining agreement.

Dated at Monona, Wisconsin, this 1st day of October, 2001.

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John Oestreicher, Arbitrator