

BEFORE THE ARBITRATOR

In the Matter of the
Interest Arbitration between

SHEBOYGAN COUNTY

And

SHEBOYGAN COUNTY SOCIAL WORKERS
LOCAL 437, AFSCME, AFL-CIO

Case 331 No. 59545
INT/ARB-9152
Decision No. 30190-A

INTEREST ARBITRATION AWARD

Appearances:

Ms. Louella Conway, Personnel Director, on behalf of the County.

Ms. Helen Isferding, Staff Representative on behalf of Local 437, AFSCME.

The above-captioned parties, hereinafter referred to as the County and the Union respectively, have been parties to a series of collective bargaining agreements throughout the years. The Union filed a petition to initiate compulsory final and binding arbitration pursuant to Sec. 111.70(4)(cm)6 Stats., with respect to an impasse between it and Sheboygan County. The undersigned was selected from a panel provided by the Wisconsin Employment Relations Commission. Hearing was held in Sheboygan, Wisconsin on November 9, 2001. No stenographic transcript of the proceedings was made. All parties were given the opportunity to appear, to present testimony and evidence, and to examine and cross-examine witnesses. The parties completed their post-hearing briefing schedule on January 14, 2002. The record was closed upon receipt of the last reply brief. Now, having considered the evidence adduced at the hearing, the arguments of the parties, the contract language, and the record as a whole, the undersigned issues the following Award.

ISSUE AND FINAL OFFERS:

The Arbitrator is charged with selecting a final offer for incorporation into the parties' collective bargaining agreement.

COUNTY'S FINAL OFFER

1. Tentative Agreements - Attached
2. Duration Two Year agreement – 1/1/01 to 12/31/02
3. Wages 3% Across the Board Effective January 1 of each year of the contract

ASSOCIATION'S FINAL OFFER

Duration – Two year Agreement – 1/1/01 to 12/31/02

1. All Tentatively agreed Item (sic) - See attached.
2. Wages Effective 1-1-2001 3% across the board
Effective 1-1-2002 3% across the board
3. Mileage – Effective 1-1-2001
Change Article 23 Expense Reimbursement 2. Mileage to to(sic) read:

Article 23 Expense Reimbursement

2. Mileage: Mileage shall be reimbursed at the Internal Revenue Service (I.R.S.) rate per mile as actually incurred in the performance of official duties. Liability insurance coverage minimums shall be at \$100,000/\$300,000/\$50,000 level (as per ordinance 17, 92-93) to receive said rate. Employees under the liability coverage minimum shall be paid mileage per County Board resolution. The date, destination and purpose of each trip shall be itemized with full detailed explanations.

Change to read:

8. Amendments: It is agreed by the employer that in the event the County Board of Supervisors modifies the reimbursement and expense policy (except for mileage which shall be as 2. Mileage above) of Sheboygan County for its employees or any portion thereof, said action of the Sheboygan County Board shall be incorporated within the provisions of this contract and put into effect as of the effective date of the said County Board action.

STATUTORY CRITERIA:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), Wis. Stats., 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.
- 7g. 'Factor given 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 under subd. 7r.

- 7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized in 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of employees performing similar services.
 - e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.
 - f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees 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 municipal employees, 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.
 - j. Such other factors, not confined to the foregoing, which are normally or traditionally taken in consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITION OF THE PARTIES:

County

The County agrees that the external comparable counties are not in dispute. They are Calumet Eau Claire, Fond du Lac, Kenosha, La Crosse, Manitowoc, Marathon, Outagamie, Ozaukee, Washington and Winnebago Counties. In its view, there is only one issue of contention and that is mileage reimbursement. The County is proposing to continue with the status quo and reimburse mileage at the state rate as provided by the County Board in Resolution 17. The State rate, which became effective July 1, 2001,

grants reimbursement at \$.325 per mile. The Union is proposing to change the status quo to receive reimbursement at the IRS rate, which is \$.325 until January 1, 2002, when it will increase to \$.365 per mile. This is the only issue of dispute.

The County submits that its offer is more reasonable for several reasons: First, it points to the internal comparables as supportive of its offer. Sheboygan County has established an ordinance, Ordinance 17, (1992-93) covering mileage reimbursement at the State rate providing the employee has the required insurance coverage in place as recommended by the County Manual. If the employee does not have the requisite insurance coverage, mileage is reimbursed at \$.26 per mile. The ordinance covers all employees of the County.

Furthermore, the agreements of the other bargaining units reflect the same explicit language that "In the event the County Board raises the mileage rate or grants an increased mileage reimbursement in any other labor contract involving county employees, such increase shall be paid effective as per said Board resolution or contract."

This language provides a fair rate for all County employees and there is no need for a change. Any change to the mileage reimbursement rate in this bargaining unit will also affect other contracts such as the nurses and supportive service employees which have the same language in their contracts because they have a "me too" clause with respect to mileage. The budgets of many departments will be affected and the ability to control mileage costs will be taken from the employer.

Furthermore the County notes that the additional cost for mileage pursuant to the IRS rate will be considerable. If paid at \$.325, the cost increases to \$3,159.00 and if increased by \$.365, the cost is \$6,769.00 for just this bargaining unit of 45 employees. If the County as a whole is included, the increase, if paid at the \$.325 rate, would be \$18,052.00; and at \$.365, the cost is \$38,683.00.

According to the County, the contract language has been consistent since 1993. This suggests that the mileage reimbursement rate was not of great concern because it has not been addressed in bargaining in the past although the reimbursement rate has not increased. Acknowledging that a grievance was filed by the Union protesting the requirement for insurance coverage to receive the higher mileage rate, the County notes that the grievance was denied because the option to receive or not receive reimbursement at the higher rate is fair and equitable.

The County also maintains that employees have another option to receive the IRS rate because they can deduct the difference as unreimbursed business expenses as a direct deduction from earnings and not part of the itemized deductions.

Finally, addressing the *status quo* argument, the County claims that the Union has not demonstrated a need for the change so that there is no need to change the present practice. The Union wants just "a little bit more". Because there is no need for it, the proposed change is not reasonable. The internal comparables do not support the change.

Furthermore, no *quid pro quo* has been offered. Accordingly, the final offer of the County must be preferred over that of the Association.

Union

As background for the instant dispute, the Union refers to an unfavorable arbitration award concerning the County's decision to require bargaining unit members to obtain a specific level of insurance coverage in order to receive an additional three cents per mile up to the State of Wisconsin rate as a mileage reimbursement, and to the fact that the County has not raised the reimbursement rate for seven years. It points out that the 2001-2002 contract negotiations are the first set of negotiations since the unfavorable decision whereby the Union can attempt to protect employees from both the fluctuating costs of using their private vehicles for work and the Employer's ability to hold hostage the amount of reimbursement by raising the required amount of insurance for the employee's private vehicle.

The Union's offer agrees to continue the practice of providing necessary documentation for reimbursement. It submits that its offer should be selected because it more closely meets the statutory criteria, referring to Section 111.70(4)(cm)7 which gives the greatest weight to "...limitations on expenditures that may be made or revenues that may be collected by a municipal employer." Here there is no evidence that the Union's proposal cannot be met because of limitations on expenditures or revenues or that any economic condition exists that should be taken into consideration.

This is not a matter of employees putting money in their pocket as wages - but it is a case of properly paying the employees the going rate for use of the employee's car for County business and not losing money out of pocket. Simply put, employees will continue to use their personal auto; but the County will pay the going rate. Employees had their car insurance requirements raised. Therefore, their working conditions changed and they incurred economic loss. The County has reaped the benefit by forcing the employees to bear the brunt of higher insurance for a less prevalent rate of reimbursement.

The bargaining unit employees are required to have a car when they were hired. Prior to the County's Board's action and prior to the time that the majority of social workers were hired, there were no insurance requirements at all to receive the only rate of twenty-six cents. Although the County was to submit job descriptions of employees in other bargaining units required to have a car, it has not done so. Therefore, this leads to the inference that this is the only bargaining unit with a car requirement. Of the 46 employees in the bargaining unit, 42 turned in mileage reimbursement requests in 2000 and 2001. Furthermore, many of the employees bought the higher insurance since 1998. According to the Union, only one employee, Patricia Holstein, continues at the lower rate of insurance, demonstrating that employees have acquiesced with the County's desire to buy higher coverage and the County has reaped the benefits of this acquiescence. Sheboygan County employees keep down the liability insurance for the County by buying personnel insurance out of their pocket. The Union has no objection to the

County saving money in this manner. It just wants to insure that employees are properly compensated as other social workers have been who have complied and purchased insurance at the higher levels.

The Union stresses that the intent of the Sub-Committee on Vehicle Liability and Safety recommendation in August of 1992 was to install a two-tiered system and at \$.28, the IRS allowable amount. It refers to Exhibit 21 which shows the State and the IRS rates for that period of time with \$.28 as the clearly identified IRS rate. The \$.28 cent IRS rate for that time period was proposed to the Personnel Committee and at the Personnel Committee the rate of \$.26 was adopted with employees who provided evidence of increased insurance coverage to receive any new increase by the State. Therefore, the employees were confined forever to a mileage floor of \$.26 per mile with no insurance, a State rate that would be set every two years, and only if the Personnel Committee voted approval. Meanwhile, employees must continue to provide cars and be subject to increases at the whim of the County's liability carrier.

The Union argues that the future level of required car insurance is fragile and that some counties have started asking for a \$500,00 limit instead of merely 100/300/100. There can be little doubt where this is leading in the future. The Union's proposal and language provide protection from any attempt to increase the requirements without negotiation.

Other comparable county social workers receive the IRS rates for using a personal vehicle with or without insurance requirements. A mileage rate is not just tied to the raising costs of gasoline. Although in the past the cost of gas did not amount to much in terms of total driving expenses, the IRS rate increased because it includes fixed costs for insurance, depreciation, licensing and registration. Furthermore, the potential for gas increases has expanded so as to warrant a yearly-adjusted rate. The most weighted criteria comparable should be other comparable social workers and here the Union is on solid ground. Nine of the eleven comparables pay the IRS rate, while another references the IRS rate from which it deducts two cents but pays an additional \$20.00 per month as a car allowance. Three of the counties have the same insurance level requirement but six have no level of insurance required for receipt of the IRS rate while one requires insurance but does not state the level required and the other has no insurance requirement but employees may use County-owned cars if available. Bargaining unit employees should enjoy the same prevailing practice that other social workers receive either as a result of successful collective bargaining language or voluntarily county policy.

The Union alleges that the internal settlement patterns also support the Union's offer, noting that in all other internal bargaining units, the employees received additional economic benefits. It refers to the additional \$.50 per hour received on January 1, 2001 and July 1, 2001 for the psychologists and psychotherapists, plus \$5.00 per day for holidays and weekends in the second year and yet an additional \$5.00 per day for holidays and weekends in the third year of the agreement. Law enforcement received \$10.00 each year as an additional clothing allowance and shift differential for relief shifts. The health care unit received additional money for LPNs, week-end differentials,

and reclassifications of the kitchen staff in addition to a plan to give part-time employees every other weekend off. The Sheboygan County Support Service, reclassified 74 of its 247 employees and the Highway Department received more than 3% when it agreed to keeping the work force at their higher rate for an additional 3 months, the net effect being an additional ½%. The pattern settlements with the other bargaining units clearly contain more than the barebones 3% offered to this unit. This bargaining unit is not asking for more pocket money but to have less taken out of the employees' pocket.

In addressing the County's "me too" problem, the Union argues that when the County agreed to these clauses, it already negotiated the chance that the mileage rate could go up in the other units. The County has already opened the door in the other units but this is not a sufficient reason to hold this bargaining unit back. The Union does not believe that this unit of social workers must be deprived because mileage is inconsequential in the other units. It stresses that there is no chance on the horizon that you can get out of owning a car if you are a social worker, so the social workers should be compensated appropriately.

The private sector uses the IRS rate, not the State rate. The Union insists that the County cannot argue that the employee can just take an amount under the IRS rate and use it as a tax deduction because mileage deductions are itemized as business deductions and are miscellaneous deductions subject to a 2% floor. The rise in the rate is attributed mostly to higher prices for new vehicles and partly to higher costs for maintenance and new tires plus the cost of insurance. There is no reason or rationale for a public sector employee to be paid less for the same expenses.

The Union's offer is also closer to the Consumer Price Index because the CPI for Midwest (size B/C) for January 2001 was 3.8%. The Union's offer more closely resembles the CPI than does the County's 3%. The Union's offer of the IRS rate provides flexibility to both the County and the Union. The IRS rate is adjusted annually and keeps pace with what others are receiving. It is not tied to the State rate or subject to the vote of the personnel committee who will not accept recommendation of other County Board sub-committees. Furthermore, the State rate is provided to state employees when no state car is available which is entirely different from social workers who have no opportunity of using a County-owned car.

Although the County has not raised the rate of \$.26 for seven years, during that same time period the IRS rate increased to \$.31. Furthermore, if the County's offer prevails, the contractual floor will be \$.24 which does not reflect the minimum of the County's Resolution. The Union's offer preserves the floor of \$.26 for the employees.

The Union's offer better meets the criteria of the law in that it is more comparable to private sector mileage reimbursement and to other comparable social workers. The increase in mileage is not outside the scope of the pattern of other settlement of County employees. Sheboygan has no inability to pay and the insurance level itself generates money. The Union's proposal of the IRS rate, will allow for yearly adjustments, up or down in these insecure times.

County's Reply

The County insists that the employees are not losing money out of their pockets by using their automobiles for County business because employees may receive additional reimbursement from the IRS through their tax return without any monetary loss to the employee. It disputes the contention that the County has reaped the benefits of the higher insurance coverage because the County has raised the rate for the employee to secure the higher coverage. The reason for the rebate on the County's liability insurance is the fact that there have been no serious accidents, not the fact that the employees have insured their vehicles at the higher levels.

Any references to the recommendation of the Loss Prevention Committee to utilize the IRS rate are irrelevant because it is advisory and this was not the policy adopted by the Personnel Committee. With regard to the union argument that the County could impose a \$500,00 level of insurance without negotiations, the County maintains that both the present and the proposed language provide for increased insurance levels because the contract language grants the County Board the authority to make changes which will affect this.

With respect to the argument that the floor for mileage will remain at \$.24, the language in #8, Amendments, clearly supersedes the \$.24 in the contract. This is a weak argument.

The internal settlement pattern does not support the Union's offer. Each contract has its own variations and adjustments which when reaching a settlement bring the parties together. This is not the case with this unit. There is no need for change to the higher reimbursement, no *quid pro quo* offered, and no support in the internal comparables. All internal comparables receive the State rate and this must be given great weight by the arbitrator. This criteria supports the *status quo*. The County's offer is preferred.

Union's Reply

The County's brief on page 3 misstates the IRS rate as \$.325 per mile. The IRS rate is \$.345 and will go to \$.365 on January 1, 2002. Even if the main criteria comparison is with the internal bargaining units, the other employees received more than the bare 3% settlement for the same time period. The County did not treat this unit the same as other employees.

This bargaining unit has unique issues by nature of the work performed which center around the issue of mileage. The comparison should be to other social workers who also have to provide cars for their county's business. With regard to the County's lament that it will lose control over the cost and the budget process, the Union regrets giving the County use of its members private cars at a reimbursement rate less than that enjoyed by other social workers and the private sector.

Assuming the County projection of an additional cost of \$6,769 for 2001 is correct, this equals \$.077 cents per hour or .044% on the lowest top wage of \$18.49. This additional money makes the settlement of 3% comparable to that of the other internal settlements. If the Union's offer is not accepted the cost of the additional car cost by the employee reduces the new money offered to about 2.5%.

The Union emphasizes that this is the first time since the adverse grievance decision that the parties have negotiated and the insurance did not become an issue until 1997. With respect to the County's argument that employees should merely claim the IRS rate on their taxes, the employees cannot claim the difference between the State and the IRS rate unless they itemize and the "business deductions are miscellaneous deductions itemized,...deductions are subject to a 2% floor."

The County does not deserve a *quid pro quo* because the Union has demonstrated the need for the change, the IRS rate reasonably addresses the issue and is supported by the external comparables and the private sector. The *quid pro quo* is the bare 3% when others receive more. Any arguments about dissention and inequity are not meritorious given the County's position in initiating a two-tiered mileage system based upon the level of insurance coverage. Paying the IRS rate is fair and the Union offer should be selected.

DISCUSSION:

Contrary to the assertions of the County, neither subsection 7 or 7g are controlling. There is no state law or directive lawfully issued by a state legislative or administrative officer, body or agency placing any limitations upon the municipal employer with respect to either offer and the economic conditions do not favor either offer. While it is true that acceptance of the Union's proposal may slightly increase the costs that the County must pay for mileage in this bargaining unit, there is no showing that the County cannot afford the increased costs or that the costs *per se* are extraordinary or unreasonable. Rather the dispute comes down to weighing the other factors considered pursuant to subsection 7(r). In particular, factors d., e., f., g., and h. are determinative. Factors b., i., and j. are not relevant to the instant dispute. It is noted that the County has the lawful authority to set mileage reimbursement by ordinance and the County has the ability to meet either offer. Factor a. slightly favors the County's position and the public interest in keeping mileage costs for affected public employees low also slightly favors the County's offer under factor c.

Factor f. strongly favors the Union's offer. Most private employers compensate employees for mileage pursuant to the IRS mileage reimbursement standard. Factor g., while not determinative in and of itself very slightly favors the Union's position. It should be noted that, under this criteria, the average cost for maintenance, gasoline, insurance and upkeep of a private vehicle varies from year to year, but all employees who are required to drive as part of their job descriptions are subject to the same general expenses as outlined in Exhibits 43 and 46.

The internal and external comparables also weigh heavily in evaluating which is the preferred offer. It is undisputed that employees in the other bargaining units in Sheboygan County receive mileage reimbursement based upon the State rate as computed every two years. There is, however, no showing that possessing and driving a private vehicle is a part of the job requirement for any other positions outside of the social worker bargaining unit. This is an important difference suggesting routine and essential driving of private vehicles on the part of the social workers as contrasted to occasional and sporadic usage by other County employees. Furthermore, while it is true that currently all County employees are subject to the same language as currently exists in the social worker contract pegging the mileage reimbursement to the State rate, many of these units have negotiated “me too” clauses which mandate a change should the social workers receive one.

The fact that all internal units are now subject to the State rate does favor the County’s offer and there is a great benefit in uniformity among the internal bargaining units. But this is not the end of the analysis insofar as comparison of the internal comparables is concerned. The Union’s contention that each of the other units received “a little something else” in addition to the 3% offered for each year of an economic nature while the social workers did not must also be considered. Surely, a uniform allowance increase is the same type of small economic benefit tailored to an enforcement unit as a mileage increase that is tailored to address increased requirements for insurance coverage in a unit required to drive its own vehicle. When all of the smaller economic agreed-to benefits in the other internal units are taken into account, it must be concluded that the internal comparables do not strongly favor the County’s offer.

Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of employees performing similar services under factor d., that is., other social workers, does, however, strongly favor the Union’s offer. The undersigned is persuaded that the vast majority of the comparables accept the IRS mileage standard or some variation thereof as fair and reasonable compensation for operating a personal vehicle for the benefit of the municipal employer. The County simply cannot justify its position in terms of the external comparables when the comparable counties are considered.

One additional point needs to be made concerning the rate received by state employees who may or may not be social workers. These individuals have the option of driving state-owned cars or their own vehicles when there are no state cars available. Here, social workers do not have a choice of utilizing County-owned vehicles, rather than their own vehicles, to perform their duties. They must own, maintain and drive their own cars to perform their jobs. This is an important distinction from the State’s mileage policies and reimbursement practice.

The County has argued that the Union’s proposal deviates from the status quo and does not meet the requisite tests to support the change. It is true that the Union’s proposal deviates from the status quo. There is, however, good reason for the proposed

change, namely, the County's change in insurance coverage requirements when coupled with the unfavorable grievance arbitration. The Union's proposal, in essence, is an economic proposal to peg the mileage reimbursement, which everyone agrees is needed, to a different standard: the IRS standard issued annually, rather than the State rate issued biannually. The County has raised the insurance coverage requirements for an employee to collect any significant portion of the costs of operating their personal vehicle for the County's benefit. The unfavorable award merely points out the obvious, that this requirement was not a violation of the parties' collective bargaining agreement although the County gained a valuable benefit by doing so. The evidence introduced at hearing convinces the undersigned that the IRS standard better addresses the real costs of maintaining and operating a vehicle.

The County argues that there is no need for the change because employees can be reimbursed at the IRS rate through tax-filing. The Union has countered that this is only the case if an employee itemizes and has business deductions greater than 2%. The employee should not be compelled to itemize to receive reimbursement and there is a significant chance that many will not have business deductions greater than 2%. Therefore, it is concluded that the Union has established the need for the change and that its proposal reasonably addresses the need. The comparables, especially the external comparables and to some degree the internal comparables, also support the change.

Given the economic nature of the proposal and the fact that other bargaining units received various economic benefits expressly tailored to the needs of the unit, a *quid pro quo* is unnecessary in the instant case.

Because the external comparables and practices in the private sector support the Union's offer, the internal comparables do not strongly support the County's offer, and the Union's offer under a departure from the status quo analysis is deemed reasonable, on balance, the Union's offer is preferred.

AWARD

That the Union's final offer is adopted as the award in this proceeding and incorporated into the parties' 2001-2002 collective bargaining agreement along with the stipulations of the parties.

Dated this day of 25th day of January, 2002, in Madison,
Wisconsin.

Mary Jo Schiavoni, Arbitrator