

BEFORE THE ARBITRATOR

In the Matter of the Petition of

THE LABOR ASSOCIATION OF WISCONSIN, INC.

To Initiate Arbitration Between
Said Petitioner and

WASHINGTON COUNTY (DEPARTMENT OF
SOCIAL SERVICES)

Case 138

No. 60925 INT/ARB-9566

Decision No. 30459-A

Appearances:

Mr. Kevin W. Naylor and Mr. Benjamin M. Barth, Labor Consultants, The Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin 53022, on behalf of the Union.

Davis & Kuelthau, S.C., Attorneys at Law, by Ms. Nancy L. Pirkey, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, on behalf of the County.

ARBITRATION AWARD

The Labor Association of Wisconsin, Inc., hereinafter referred to as the Association, and Washington County, hereinafter referred to as the County or Employer, met on one occasion in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on December 31, 2001. Said agreement covered all regular full-time and regular part-time employees working twenty (20) or more hours per week employed by the Washington County Department of Social Services, excluding professional, supervisory, confidential and managerial employees. Failing to reach such an accord, the Association, on February 21, 2002, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration, pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act, and following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties

on September 10, 2002, issued an Order wherein it determined that the parties were at an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of seven arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on September 30, 2002, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted hearing in the matter on January 8, 2003, at West Bend, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. Initial and reply briefs were filed and exchanged, and received by March 8, 2003. The record was closed as of the latter date.

THE FINAL OFFERS:

Association's Final Offer

The 2000-2001 collective bargaining agreement will continue on into 2002-2003 with the following modifications.

1. The tentative agreements attached hereto as Appendix A dated February 18, 2002 and the side letter regarding health insurance.
2. **ARTICLE XV – VACATIONS**

A) *Section 15.01 – Vacation Allowance, Page 17.*
Effective 12-31-03, change “Four weeks (twenty [20] working days) after the fifteenth (15th) year.” to “Four weeks (twenty [20] working days) after the fourteenth (14th) year”.
3. **ARTICLE XVIII – FUNERAL LEAVE**

Page 21, Section 18.01 – Leave. Change the first sentence to read as follows. “All ~~full-time~~ employees including probationary employees, shall be entitled...”

4. **APPENDIX “A1”** *Page 28.* Revise the wages as follows:
- | | |
|------------------|--|
| Effective 1-1-02 | Add \$.20 to the 66 mo step and \$.20 to the 18 mo step of the Financial and Employment Planner. Then apply 3% ATB on all steps. |
| Effective 7-1-02 | Apply 1% ATB on all steps. |
| Effective 1-1-03 | Add \$.20 to the 66 mo step and \$.20 to the 18 mo step of the Financial and Employment Planner. Then apply 3% ATB on all steps. |
| Effective 7-1-03 | Apply 1% ATB on all steps. |

County’s Final Offer

The County proposes that the provisions contained in the 2000-2001 collective bargaining agreement between Washington County and Local 809, LAW, be continued in a new two year agreement, except as modified by the following:

1. **TENTATIVE AGREEMENTS:** Tentative agreements dated February 20, 2002 and the Side Letter of Agreement on health insurance dated June 6, 2002.
2. **WAGES:** Provide for an increase in wage rates as follows:

Effective January 1, 2002 3.00% increase to all rates.

Effective January 1, 2003 3.00% increase to all rates.
3. **DURATION:** Change all dates to reflect a 2-year agreement, effective January 1, 2002 through December 31, 2003.

TENTATIVE AGREEMENTS:

See Appendix “A”

BACKGROUND:

In addition to the Social Services Paraprofessional unit herein, Washington County has the following bargaining units: Deputy Sheriff's Association, Corrections and Communication Officers, Highway Department, Parks/Golf Department, Samaritan Health Center, and Social Workers.

The Sheriff Deputies, corrections and communication officers and professional social workers are coming off of two-year agreements with common expiration dates of December 31, 2001. The Highway Department contract expired mid-year on June 30, 2001. These three units voluntarily settled two-year successor agreements for 2002 and 2003. Samaritan Health Center and the Parks Department are coming off of two-year agreements which expired December 31, 2002. They are in negotiations for successor agreements, but remain unsettled.

The health insurance changes tentatively agreed to by the parties in this unit are identical to those agreed to by the other six units. Further, all units, including this unit, agreed to implement new employee co-pays and increase existing co-pays for prescription drugs.

All units have voluntary settlements through 2002. Additionally, the Sheriff's Deputies, Corrections and Communication Officers, Professional Social Workers and Highway ¹ units have settlements for 2003. The wage increases in the various units for 2002 and 2003 are as follows:

	Term of Contract	2002 Inc.		2003 Inc.		Additional Inc.
Sheriff deputies	2002 and 2003	1/1/02	3%	1/1/03	3%	\$.20 increase on 12/31/01 and 12/31/02 to stop step of Inv II and Deputy Sheriff
		7/1/02	1%	7/1/03	1%	

¹ The Highway Department contract expires June 30, 2003.

Communication and Corrections	2002 and 2003	1/1/02	3%	1/1/03	3%	
Professional Social Workers	2002 and 2003	1/1/02	3%	1/1/03	3%	1/1/02 and 1/1/03 \$.40 additional to top step of S.W. 1/1/02 and 1/1/03 \$.20 additional to top step of Sr. S.W.
Highway	7/1/02 – 6/30/03	7/1/01 1/1/02	2.5% 1.5%	7/1/02 1/1/03	2.5% 1.5%	
Parks	2001 and 2002	1/1/02 7/1/02	3% 1%	N.S.		
Samaritan	2001 and 2002	1/1/02 12/31/02	5% 1%	N.S.		
Non-Represented	2002 – 2003	1/1/02	3%	1/1/03	3%	

Association witness, Linda Hunt,² testified that in this round of negotiations the Association determined that the most important issue was wages because of the large turnover in their unit. In the last two years, twelve out of 27 employees have left the unit. (Association Exhibit 1)³ Eight were Economic Support Specialists. She testified that it takes about five months to train an Economic Support Specialist and that while the unit is short handed those remaining must pick up the work. Hunt testified that the problem is compounded by a constant increase of incoming cases to the Department. The average monthly number of cases has increased from 1,785 in 1997 to 2,300 in 2001. (Association Exhibit 2) Hunt testified that the

² Ms. Hunt is an Economic Support Specialist and served on the Association's bargaining team.

³ Two of the twelve were due to retirement and one was a discharge.

Association agreed to either new or increased co-pays as well as premiums so that they could improve lagging wages and address the turnover problem.

Gary Moschea, Director of Human Resources,⁴ testified that the reason the County agreed to more than a 3%, 3% increase over two years with the sheriff deputies was because of turnover. Moschea testified that Washington County deputies' average wage was below the average of the other seven law enforcement departments of communities in Washington County.

With respect to the Highway unit, Moschea testified that the County agreed to a split increase totaling 4% per year for two years because in return the County was able to get changes regarding call-in policy and contract bidding language.

Turnover was also the reason for the 2002 5%, 1% increase in the Samaritan unit. Moschea testified that the County realized it had to do something about the wages at Samaritan or they would have to close the doors to their operation. Turnover has improved there, but is not at the desirable level.

Moschea testified that the reason the professional Social Workers received additional increases at the top step of the Social Worker and Senior Social Worker classifications was because they did not compare well with internal non-represented Social Workers.

Moschea acknowledged that there was turnover in the instant unit and percentage-wise it may be as high as Samaritan, but with much less numbers.

Even though the parties are in arbitration, the changes in insurance premiums and co-pays became effective January 1, 2003.

POSITIONS OF THE PARTIES:

⁴ Mr. Moschea is responsible for negotiating contracts with all seven represented units.

The following is a brief recap of the parties' main arguments which were presented at length and in depth in their briefs.

Association's Position

Internal Comparables

It is the Association's position that the most important criterion in deciding this case is the internal comparables. The Association cites numerous arbitration awards in arguing the importance of internal comparables. Further, it argues, the County has argued and demanded internal consistency in prior interest arbitrations, but now argues otherwise because it does not favor its position. The Association contends that, clearly, internal consistency is still desirable and should be applied by the Arbitrator in this case.

With respect to the internal comparables, the Association claims that the County's settlements with its six other bargaining units favor its final offer and, further, that the Association's final offer more closely reflects the position the parties would have found themselves in had a voluntary agreement been reached.

With respect to the two benefits issues, the vacation scheduled improvement (4 weeks after 14 years) and applying the funeral leave provision to part-time employees, the Association argues that all other County bargaining units either had or were granted these same benefits in their recent contracts. Therefore, it is argued the internal comparables clearly favor the Association's final offer.

With respect to the wage increase issue, the Association notes that all of the other units have voluntary settlements through 2002 and, except for the Parks Department and Samaritan Health Center, all have settled for 2003. It is the Association's position that the County routinely agreed to provide its other bargaining units with substantially higher wage increases and

improved vacation schedules as well as additional improvements which added future economic value to the voluntary settlements.

The Association contends that every other bargaining unit was granted more than the straight 3% increase as granted here except for the Corrections and Officers unit. But, according to the Association, the wage rates for employees in the Corrections unit far exceeds the average wage rate of its comparables. That is not the case here, it is argued, where the average wage rate is below its comparables. The only other unit to receive a 3%, 3% increase was the Professional Social Worker unit but the top step for Social Workers and Senior Social Workers was increased 40¢ and 20¢, respectively, each year.

The Association argues that the same is true with the Deputy Sheriff's unit. They received a 3%, 1% split year increase in 2002 and 2003, and additionally in 2002 and 2003 the maximum step of Investigator II and Deputy Sheriff was increased 20¢ per hour. The County's reason for the additional increase was the turnover rate in the unit, but, the Association argues that the same turnover problem exists in this unit.

With respect to the remaining units, the Association argues that the Highway Department settlement is far more generous with its 2½, 1½ split year increases in 2002 and 2003 as well as other improvements including a funeral leave improvement.

The Parks/Golf and Samaritan Health Center have not settled for 2003 but their 2002 settlement was for 3%, 1% split and 5%, 1% split, respectively.

External Comparables

There is a difference between the methodology used by the two parties in calculating the average wage rate of comparables. The Association notes that the County derived its averages by combining the wage rates of several positions within a job classification. Therefore, for

example, the County asserts the appropriate average rate in Dodge County is \$12.73, which is an average of the three Account Clerk positions.

However, it is argued, the methodology fails to compare apples to apples and is unfair to the Account Clerks within Washington County who are performing duties that are equivalent to the duties of an Account Clerk III in Dodge County. The same applies in Ozaukee, Sheboygan and Waukesha counties as well.

Moreover, the Association argues that even if the County's flawed methodology is applied, the wages received by the Association's membership are below average when compared to the comparable counties.

In contrast to the County methodology, the Association's averages are based not only on titles but also on job descriptions that were obtained from the various counties. The Association argues that after reviewing the job descriptions found in the Association's membership justify comparing their wage rates to the higher rates found in the comparable counties.

Overall Compensation

It is the Association's position that in reviewing Association Exhibits 800 – 807, it can clearly be established that the overall benefit level received in Washington County is average at best when compared to both other County employees and employees in the surrounding counties.

In comparing vacations, funeral leave, health insurance, sick leave, holidays, WRS and longevity, the Association argues that the Association is low compared to internal and external comparables. Therefore, it is argued, the County is unable to justify its below average wage offer based on its fringe benefits.

Based on the above, the Association argues that its offer is the most reasonable and, therefore, should be selected by the Arbitrator.

Employer's Position

Benefits

The County argues that the Association is requesting an increase in two benefits without offering a compelling need for the changes.

Citing external comparables, the County contends that with respect to the vacation improvement proposal, one-third require more service time to receive 20 days of vacation, one-third less service time and one-third the same amount of service time. The result, it is argued, is a neutral comparison and not supportive of the Association's offer.

With respect to the improvement in funeral leave so that it applies to part-time employees, a comparison with the external comparables establishes that 20% provide no benefit for part-time employees, 40% provide pro-rated benefits and 40% full benefits. This, the County asserts, does not support the Association's final offer proposing full funeral leave benefits for part-time employees.

Lastly, the County argues that since the Association has not established a compelling need for the benefit changes, it is required to provide a quid pro quo for said changes. The County argues that since no quid pro quo has been offered for the additional benefits sought, the Association's proposal must be deemed unreasonable as compared to the County's.

The County submits that the Association has failed to provide any justification to support its request for additional benefits other than to argue that other County units received the same benefits. It is the County's position that while this may be true, they were all the result of voluntary settlements. The County argues that public policy dictates that the Association should not be rewarded for taking its case to arbitration. The benefits now demanded were incentives

agreed to with other units to voluntarily settle. This unit is not entitled to the same through arbitration.

Wages

External Comparables

The County stresses that the final offer presented by the Association proposes first a 20¢ increase to all the top steps of the salary schedule, followed by a 3% across-the-board increase. This according to the County represents anywhere from a 5.46% to 5.89% increase for the various classifications. This, it is argued, is simply not supported by the external comparables. Dodge, Fond du Lac, Ozaukee and Sheboygan counties have all settled in 2002 for a 3% wage increase. Waukesha County is not settled. Thus, it is argued, 80% of the comparables are at a 3% settlement in 2002.⁵ This overwhelmingly favors the County's final offer.

The County acknowledges that while the Association may argue that this unit's wage rates are lower than the comparables, the County argues that (1) it is more important to compare percentage wage increases rather than wage rates, (2) that the parties have settled voluntarily in the past and therefore established the current ranking and that the Association cannot now complain and change same when the County has offered a wage increase comparable to the external comparables, (3) that there is no case here for "catch-up" and that with the County's final offer the County will maintain its ranking in the comparable pool, and (4) that the methodology used by the Association painted a worse picture than exists because it compared the highest paid position in each classification of external comparables in averaging the wage rates instead of averaging same as did the County.

⁵ Only one comparable is settled for 2003. Therefore, no meaningful comparisons can be made for 2003.

Internal Comparables

The County contends that there is no internal settlement pattern as claimed by the Association. Each unit is different for its own reason.

The Corrections and Communications Officers received the same 3% in 2002 and 3% in 2003 as the County's final offer. They also received a change for 20 days of vacation after 15 years to after 14 years. This was agreed to because said unit voluntarily settled.

The County explains that the Deputy Sheriffs received a 3%, 1% split increase in 2002 and 2003 because of a high turnover rate in said unit. The County bargained wages to match the average of its comparables to address the turnover problem. Additionally, as an incentive for a voluntary settlement, the unit was granted the vacation benefit now sought by the Association.

The Highway Department, the County contends, was settled two years ago and they were given a higher settlement because of language concessions which the County requested. The County obtained a change in the job bidding and job assignment language and changes to the procedure on call-ins. This was the quid pro quo for the higher wage increase. Said unit was also granted an improvement in vacation benefit, as requested now by the Association, to achieve a voluntary settlement.

With respect to the Parks Department unit, an agreement was reached at a 3%, 1% split increase in 2002 under the economic conditions then, which has since changed.

The Samaritan Health Center settlement, as explained by the County, was a 5%, 1% split because the County was not able to retain employees. The additional wage increase was needed to provide adequate care to its residents.

The Social Workers settled for the same 3%, 3% two-year increase as offered here, but an additional step increase was given at the top step of Social Worker and Senior Social Worker

positions because non-represented Social Workers were paid more than represented Social Workers.

Non-represented employees received the same wage increase as offered to the Association. They also received an improvement in vacation schedule to provide 20 days' vacation after 14 years of service.

In summary, the County argues that there really is not an internal pattern of settlement. The Employer asserts that is consistent with its practice in the past of treating each unit differently in terms of percentage wage increases based on each unit's specific situation.

Other Criteria

It is the County's position that the County's final offer is clearly supported by the Consumer Price Index. It is argued from 1996 – 2001 the CPI rose 15.15% while this unit received wage increases of 19.375%. As for this contract, it is argued, that the County's 6% offer of two years is more closely in line with the CPI than the Association's offer.

Further the County claims, the benefits received by this unit are very competitive with its external comparables. When the longevity benefit and holiday benefit is considered with the other benefits (County Exhibits 5 and 9), it is the position of the County that this unit is competitive with the external comparables and when considered in conjunction with the County's wage offer the County's final offer should be found to be more reasonable than the Association's final offer.

Response to Association's Arguments

The County urges the Arbitrator to disregard the Association's claim that the Association's request of higher wage rates is justified because the workload of the

paraprofessionals has increased. The County claims no evidence was presented to prove or disprove such a claim. Further, there is no proof that the increased workload is disproportionate when compared to other internal bargaining units.

The Association offered a list of paraprofessionals who have terminated their employment with the County over the past two years, and argues that the turnover rate supports their wage offer proposal. The County argues that there is no evidence as to why these employees terminated their employment and, therefore, there is no evidence that an increase in pay would decrease the turnover. Thus, the Association's argument in this regard should be disregarded.

Lastly, the County takes issue with the Association's claim that its wage offer is justified when a comparison is made between the wages of the unit position Economic Support Specialist and the non-unit position of Elderly Benefits Specialist. The County claims there are more differences in job duties and responsibilities than similarities. The County argues that the only similarities are those of a clerical nature. It is argued that the Elderly Benefit Specialist is more professional in nature with more responsibility and therefore is higher paid.

Reply Briefs:

In their reply briefs both parties defend their method of calculating the external average wage rate for comparison purposes. The County argues its method presents a true and accurate picture while the Association claims otherwise, arguing that if the County's methodology is accepted it would be free to require its employees to meet the highest level job requirements found in comparable counties while only compensating them at mid-level wages. The Association urges the Arbitrator to compare the job descriptions of the positions and base the averages on same.

The Association takes issue with the County's argument that its offer is reasonable because it does not change the County's ranking among external comparables. The Association argues that rankings are not set in stone and there should be no objection if the Association moves up a ranking. Further, it is argued, even if the Association's offer is selected, all but one bargaining unit position will remain significantly below average in 2002 and 2003.

With respect to the County's position that the Association's offer regarding benefits is unreasonable because it has offered no quid pro quo in exchange, the Association argues that a quid pro quo is not required because all other units enjoy the benefit and they made very little, if any, concessions to get the same benefits. Further, the Association claims its voluntary insurance concessions constitute a quid pro quo. The County disputes that the insurance concessions can be considered a quid pro quo.

The Association further argues that the parties' concessions and stipulations in general should be considered by the Arbitrator in determining which of the final offers is most reasonable.

The County challenges the Association's claim that it seeks "parity" with other internal units as misleading and not supported by the facts. With respect to benefits, the County argues that this unit's concessions in health insurance did not become effective until six months after the other units. Further, the County did not make adjustments to the Social Workers to give them "parity" with non-unit Social Workers as alleged by the Association. An adjustment was made to close the gap, but it did not provide parity. The County argues that the Association uses this in an attempt to support its position that the Financial and Employment Planner should receive a 20¢ bump. But the Association ignores that its final offer also includes an additional 1% wage increase each year that the Social Workers did not receive.

With respect to position comparisons, the County points out that the Association went to great lengths at the hearing to compare the Economic Support Specialist position to the non-represented Elderly Benefits Specialist. It is argued that the Association discarded this argument in its brief and instead compared the Elderly Benefits Specialist to the represented Financial and Employment Planner position. It is the County's position that these two positions are not comparable nor is any other non-represented position comparable to the Elderly Benefits Specialist or Financial and Employment Planner positions. Therefore, no wage comparison can be made or wage adjustments be made.

The County, in replying to the Association's brief, reiterates that this unit should not be rewarded in arbitration, either in benefits or a higher wage settlement, for holding out in reaching a voluntary settlement. Here, it is argued, the Association is seeking a much higher wage increase than it portrays. When the 20¢ across-the-board adjustment to the top steps of all categories is added to the percentage wage increase, to totals for 2002 vary from 5.46% – 5.63% well above the internal and external comparables.

The County notes that in part the Association argues that its offer is supported by the fact that it needs to "catch up." But, the County argues, the rates were established through voluntary agreement and the Association cannot now attempt to make up for wage rates they agreed to with the County.

Based on the above, each party argues that its final offer is the most reasonable and, therefore, should be selected by the Arbitrator.

DISCUSSION:

Section 111.70(4)(cm)7 directs the Arbitrator to give weight to the following arbitral factors:

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 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 employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other 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 proceedings.

The Arbitrator, in applying the above criteria, must determine which offer is more reasonable based on the evidence presented.

Clearly, the statute requires that limitations on expenditures or revenues that may be collected (factor 7.) and the economic conditions of the municipal employer (factor 7g.) be given greater weight than the other statutory factors. In this case very little reliance was placed on these factors by the parties. The Arbitrator, nonetheless, has considered same and concludes that there is no evidence in the record to establish that there are any limitations or that the economy of Washington County convincingly favors either final offer. Thus, the Arbitrator will make his determination based on the other statutory factors relied upon by the parties.

The Association and County relied primarily on internal and external comparables and the overall compensation presently received by employees in this unit in support of their respective final offers. Additionally, the Employer relied on the cost-of-living factor as well. The remaining factors, 7r., a., b., c., f., and i. were not relied upon by the parties. Therefore, the Arbitrator concludes, as did the parties, that said factors are not influential in deciding the issues presented.

There are three issues in dispute: lowering eligibility to receive 20 days of vacation from 15 years to 14 years, extending funeral leave to part-time employees, and wages.

With respect to the benefit issues, the parties, philosophically, view the issues differently. The Association sees the issue primarily as a matter of internal comparability. It argues that all of the other County bargaining units already have the two benefits now proposed by the Association. With such overwhelming internal support, it is the Association's position that its offer is therefore more reasonable than the County's offer. Further, the Association argues that

no quid pro quo is required because all other units now receive the benefits and it is highly unlikely they made much of a concession, if any, in negotiating same.

The County, on the other hand, takes the position that the other bargaining units were granted the vacation and funeral leave benefits through voluntary settlements, not arbitration. The benefits were incentives to reach a voluntary agreement. It is the County's position that since the two benefits were incentives, this unit is not entitled to gain the same through arbitration.

The Arbitrator is limited to selecting the total package offer of one of the parties. Here, of the three issues in dispute, the wage issue is by far the most important issue and, as such, is the determinative issue. The parties are 2% apart on the across-the-board percentage increases over the term of the contract plus a wage adjustment totally 40¢ over two years. With such a difference in the wage package, the benefit issues pale in comparison. The Arbitrator finds the impact of the wage issue to be so much greater that the outcome of the vacation and funeral leave issues will not influence the outcome of the case. In other words, if the County has the more reasonable offer on wages, it should not have to pay the higher wage increases because of the two benefit issues. Conversely, the benefit issues should not deprive employees of the higher wage increases, if it is determined that the Association's wage offer is more reasonable than the County's.

In so concluding, the Arbitrator does not disagree with the County's position that public policy should favor voluntary settlements and that some risk in using arbitration is beneficial to the collective bargaining process. Here, the Employer argues that the Association is not entitled to the two benefits proposed, even though all or most of the other County units receive same, because this unit did not voluntarily settle like the other units. However, one of the statutory

factors is internal comparability. The Arbitrator must apply this factor. Thus, if internal comparables favor the Association's offer, the Arbitrator cannot disregard the internal comparables factor because the benefit in issue was gained through voluntary agreement and not arbitration. In the final analysis, the County's strategy of putting risk into the arbitration process in this case rests on the reasonableness of its wage issue.

Here, the internals clearly favor the Association's offer. All of the County's bargaining unit employees (and non-represented employees), except Parks/Golf and Samaritan Health, receive four weeks of vacation after 14 years of service. What's more, the only unit in which funeral leave is limited to full-time employees is the Social Workers units.

Further, the vacation benefit was part of the same 3%, 3% package offered to the Association with no additional quid pro quo. It is abundantly clear to the Arbitrator that had the parties settled voluntarily, the package would have included the vacation and funeral leave improvements.

In the end, as stated earlier, this case will not be won or lost on the benefit issues. The deciding issue is the wage issue.

In support of their wage offers, the Employer relies primarily on external comparables and the Association on internal comparables.

Generally stated, both employers and employees have the same interest when it comes to internal comparables. Both recognize that consistency among various bargaining units and equitable treatment of employees promotes stability in the collective bargaining process and positively impacts employee morale. It is for said reason that arbitrators favor internal comparables over external comparables where a pattern exists, unless there is good reason to deviate.

Here, there is no common wage settlement among the six Washington County bargaining units. For 2002, the settlements range from a low of 3% (Corrections and Officers) to a high of a 5%, 1% split (Samaritan Health). For 2002 and 2003, it is apparent from the record that the Employer considered a 3%, 3% wage increase to be reasonable and that any additional increase required a special need. Thus, the Deputy Sheriffs received split increases of 3%, 1%, and a 20¢ per hour increase at the maximum step of Investigator II and Deputy Sheriff in 2002 and 2003. This was because of employee turnover and a lower wage rate than other law enforcement departments within Washington County. The Social Workers unit received a 3% increase and an additional 40¢ and 20¢ per hour to the top steps of the Social Workers and Senior Social Workers classifications, respectively. This was because of their internal comparison with non-represented Social Workers. The Samaritan Health unit received a 5%, 1% split increase in 2001 and 2002 because of a high rate of turnover. The Highway unit received a split increase of 2.5% and 1.5% in 2001 and 2002⁶ in exchange for certain language changes. The Parks/Golf unit received a 3%, 1% split increase in 2001 and 2002. The latter contract was negotiated when the economic conditions were stronger.

Given the range of internal settlements, the issue becomes: where does this unit most reasonably fit in? While there is no set pattern of settlements within Washington County, this unit's settlement must, nevertheless, be somewhere within the range of settlements in order to promote the consistent treatment of Washington County employees.

In this regard, the only other unit that received a 3%, 3% wage increase was the Corrections and Communications Officers unit. Gary Moschea, Director of Human Resources, testified that the Corrections and Communications Officers unit was offered and settled at 3%,

⁶ The annual term of the Highway contract runs from July to July.

3% because they were well above the pack in comparison to external comparables. Indeed, this was the case. Even with a 3%, 3% settlement, Correction Officers ranked second out of the six comparables, 42¢ above the average, and the Communications Officers ranked number one, \$1.96 above the average. (See Association Exhibit 613-614).

Certainly, this is not the case with this unit. At the end of the last contract, the Account Clerk classification was ranked fourth, the Clerk Typist fifth, the Financial and Employment Planner third, and the Economic Support Specialist sixth among the six external comparables. Fourteen of the twenty-seven unit employees are Economic Support Specialists. They ranked dead last.

Further, and importantly, this unit, as was the case with the Deputy Sheriffs and Samaritan Health, experienced a high rate of turnover of employees. In the last two years, twelve of the twenty-seven unit employees, eight of whom were Economic Support Specialists, left their employment with the County. Two were retirements and one was a discharge. Even so, nine out of twenty-seven employees, or 33%, is a very high rate of turnover.

Both the Deputy Sheriffs and Samaritan employees were given additional increases above the 3%, 3% across the board increases, because of turnover and to improve wages to better compete. While the Arbitrator is not convinced this unit's ability to retain employees is as serious as Samaritan's, it, nevertheless, appears to have a problem similar to the Deputy Sheriffs. However, unlike the Deputy Sheriffs, all of the classifications in this unit, except one, rank below the average of the external comparables and the Economic Support Specialists, who comprise half of the unit, rank last. This remains true under both final offers. To the contrary, the top step Deputy Sheriffs and Investigator II's rank third and second, respectively, among the six traditional external comparables. They, however, did not compete well with other law

enforcement departments within Washington County which necessitated a need to build up their wage rate.

While it is true as argued by the County that the record does not establish the exact reason for each employee's departure, a 33% turnover cannot simply be ignored. It is an extremely high rate of turnover of employees in two years, most of whom were ranked last in wages among the comparables. Eleven unit employees, nine of whom are Economic Support Specialists, have been with the County less than four years. One can pretty safely assume that the wage rate is at least a consideration in the high turnover rate.

What's troublesome to the Arbitrator, however, is the percentage increase the Association is seeking. Its average top step increase is approximately 5.65% each year. This is greater than the Deputy Sheriffs' approximate 5% increase each year and the Social Workers 5.25% and 5.1% increases. Samaritan Health received a 5%, 1% split in 2002, but their situation is simply more serious and the Arbitrator does not view the two units as equally comparable.

While the Association's offer is higher than what the Arbitrator considers reasonable,⁷ the County's offer is on the low side when compared to other internal units. As discussed above, the only unit with a 3%, 3% settlement is the Corrections and Communications Officers unit, but they are ranked number one and two among the external comparables while a majority of this unit (Economic Support Specialists) are ranked last. The Association offer is approximately .6% higher than the Deputy Sheriffs and approximately .5% higher than the Social Workers. On the other hand, the County's offer of a straight 3%, 3% is approximately 2% per year below the

⁷ This is true even though only fourteen employees are at the top step.

Deputy Sheriffs, 2.1% per year below the Social Workers, 1% below the Highway and Parks/Golf in 2002, and 3% below Samaritan in 2002.⁸

In the final analysis, the Arbitrator does not find either offer to be particularly reasonable. If the Arbitrator had the authority to do so, he would fashion a wage increase above 3%, 3% but below what the Association has proposed. Since the Arbitrator must select one of the two final offers, the Arbitrator selects the Association's offer even though it is higher than it should be because it is, nevertheless, the most reasonable of the two. The Arbitrator reaches this conclusion because this unit has reason for an increase in excess of the standard 3%, 3% as with five of the other internal units. Again, the only unit that settled for a 3% increase in 2002 and 2003 was the unit with no turnover problem and whose employees ranked number one and two among the external comparables.

With respect to the external comparables, the record presented establishes that they clearly favor the County's offer. In 2002, all of the comparables settled for a 3% increase, and in 2003 the only settlement was for 4%. However, as discussed earlier, internal comparables are more significant than external comparables unless there is good or compelling reason to deviate. The instant case is not a case where the external comparables should control. This is not a case where this unit is at the top or near the top of the external comparables, like the Corrections and Communications Officers, which would make an increase above the average of the external comparables unwarranted.⁹ Here, the paraprofessional unit is ranked last or next to the last in two of the classifications (over half of the unit) and in the idle with two others. Except for the

⁸ 2002 is the second year of a two-year agreement for Parks and Samaritan.

⁹ The Arbitrator notes that many times it is the Union that does not want to be restricted by the internal comparables and seeks the higher settlements of the external comparables. In such cases, like here, the internal comparables control unless there is good reason, like "catch-up", to do otherwise.

Account Clerk, which moves up one spot, the rankings remain the same. There is no reason to deviate from the internal settlements and treat this unit of employees differently by giving them a lesser increase than that received by five of the six internal unit employees.

Other Criteria

Both parties argued that the overall compensation received by this unit of employees compared with external comparables favors their final offer. The Arbitrator has reviewed same and finds that at best this unit would rank with the average in overall compensation. As such, the Arbitrator does not find this criterion to be sufficiently in favor of either offer to affect the outcome of the case.

Also, the Employer in support of its wage offer relies on the cost-of-living criterion. The CPI in 2001 was 2.82% which clearly favors the County's offer. However, the County settled with several of its other units at a time when the cost-of-living increase was the same. For said reasons, the Arbitrator finds the internal comparables to be more persuasive than the cost-of-living criteria.

Conclusion

Having considered the statutory criteria, the evidence and arguments presented by the parties, the Arbitrator, based on the above and foregoing, concludes that while the Association's offer is higher than it reasonably should be, it is more reasonable than the Employer's final offer. Based on same, the Arbitrator makes and issues the following

AWARD

The Association's offer is to be incorporated in the 2002-2003 two-year collective bargaining agreement between the parties, along with those provisions agreed upon during their

negotiations, as well as along with those provisions in their expired agreement which they agreed to remain unchanged.

Dated at Madison, Wisconsin, this 7th day of May, 2003.

Herman Torosian, Arbitrator

WASHINGTON COUNTY DSS EMPLOYEES ASSOCIATION, LOCAL 809
TENTATIVE AGREEMENTS

Appendix A

June 18, 2002

ARTICLE XII - INSURANCE

Section 12.01 - Health Insurance, Page 14. Delete obsolete language and revise the first paragraph to read as follows:

" After ~~six (6) months~~ **one (1) month** of employment with the County, all full-time employees shall be ~~eligible to participate in the Group Health Insurance Program duly adopted by the County Board of~~ Supervisors. The ~~six (6) months~~ **one (1) month** waiting period shall not apply to reinstated (re-employed) employees."

Section 12.02 - Life Insurance: Revise to read as follows:

"After ~~six (6) months~~ **one (1) month** of continuous employment with Washington County, each full-time employee shall, at no cost to such employee, be eligible to receive Twelve Thousand Dollars (\$12,000.00) of term life insurance pursuant to the Group Life Insurance program duly adopted by the County board of Supervisors. This benefit is not available to part-time employees."

ARTICLE XXVII - DURATION

Section 27.01 - Duration and Reopening Date, Page 26: Change the dates in this section and any other appropriate section to reflect a two year agreement commencing January 1, 2002 and concluding on December 31, 2003.

MEMORANDUM OF AGREEMENT

Page 30. Delete paragraph A in its entirety.