

## BEFORE THE ARBITRATOR

In the Matter of the Final and Binding Interest Arbitration Dispute between

DOOR COUNTY COURTHOUSE EMPLOYEES LOCAL 1658, AFSCME, AFL-CIO

and

DOOR COUNTY

WERC Case 139, No. 62532, Int/Arb-9971  
Decision No. 30739-A

### APPEARANCES:

For the Union:

Mr. Neil Rainford, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 14002  
County Road C, Valders, WI 54245.

For the Employer:

Mr. Grant Thomas, Corporation Counsel, Door County, 421 Nebraska St., P.O. Box 670,  
Sturgeon Bay, WI 54235

### ARBITRATION AWARD

The Union has represented a general unit of Courthouse employees for many years; the parties have an existing collective bargaining agreement through December 18, 2004. During 2003, two long-established positions were accreted into the bargaining unit (Airport/Parks Lead Worker, and Parks Lead Worker.) On July 17, 2003, the Employer filed a petition with the Wisconsin Employment Relations Commission requesting arbitration pursuant to Section 111.70(4)(cm)6, Wis. Stats. concerning the wages of the two accreted positions. Efforts to mediate the dispute by a staff member of the Commission were unsuccessful, and an impasse investigation was closed by the Commission's order requiring interest arbitration, dated November 20, 2003. The undersigned Arbitrator was appointed by Commission order dated December 4, 2003. A hearing was held in this matter in Sturgeon Bay, Wisconsin on February 11, 2004, at which time the parties were given full opportunity to present their evidence and arguments. No transcript was made, briefs and reply briefs were filed by both parties, and the record was closed on April 7, 2004.

Statutory Criteria to be Considered by Arbitrator  
Section 111.70 (4) (cm) 7

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.

j. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Employer's Final Offer

**ARTICLE 16 WORK SCHEDULE, OVERTIME PAY, AND COMPENSATORY TIME**  
 Work shift for Airport Lead Worker and Parks Lead Worker - 7:00 a.m. to 3:30 p.m. with a one-half (1/2) hour unpaid lunch beginning between 10:30 a.m. and 12:30 p.m. scheduled by the Department Head

**ARTICLE 25 - SALARY SCHEDULE AND PAY PLAN**

<b>JOB TITLES 2003</b>	<b>Start</b>	<b>6 Mths,</b>	<b>1 Yr.</b>	<b>2 Yrs.</b>	<b>3 Yrs.</b>	<b>4 Yrs.</b>	<b>5 Yrs.</b>
	<b>STEP 1</b>	<b>STEP 2</b>	<b>STEP 3</b>	<b>STEP 4</b>	<b>STEP 5</b>	<b>STEP 6</b>	<b>STEP 7</b>
<b>CC Airport Lead Worker</b>	<b>14.96</b>	<b>15.18</b>	<b>15.41</b>	<b>15.87</b>	<b>16.34</b>	<b>16.83</b>	<b>17.34</b>
<b>Parks Lead Worker</b>							

Current Airport and Parks Lead Worker incumbents would be placed at Step 7 in the above pay grade in 2003 and the same annual increase for 2004 as agreed to in current collective bargaining agreement would be applied to the above pay grade.

The Union's Final Offer

**ARTICLE 16 – WORK SCHEDULE. OVERTIME PAY. AND COMPENSATORY TIME**

The Airport and Parks (Lead Workers) shift is:  
 7:00 a.m. to 3:30 p.m. with a one-half (1/2) hour unpaid lunch beginning between 10:30 a.m. and 12:30 p.m. scheduled by the Department Head

**ARTICLE 25 - SALARY SCHEDULE AND PAY PLAN**

Job Titles 2003	Start	6 Mos	1 Yr	2 Yrs	3 Yrs	4 Yrs	5 Yrs
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
B. Admin. Assistant IV / Cost Accountant (Highway)	15.19	15.42	15.65	16.12	16.60	17.10	17.61
Lead Worker (Child Support)							
Airport Lead Worker							
Parks Lead Worker							

EMPLOYEES SHALL BE CREDITED WITH CURRENT SERVICE TO THE COUNTY FOR THE PURPOSES OF LOCATION ON THE STEP SYSTEM AND FOR THE PURPOSE OF ESTABLISHING THEIR SENIORITY DATE EXCEPT THAT PARKS LEAD WORKER STEVE SIMONAR SHALL BE RED CIRCLED, WITH ANNUAL ACROSS THE BOARD INCREASES, UNTIL PLACEMENT ON THE STEP SYSTEM RESULTS IN AN INCREASE IN PAY.

The Employer’s Position

The Employer argues that the “greater weight” factor is relevant to the issue at hand, contending that the economy is sluggish, that Door County’s unemployment rate is high, that it has endured significant plant closings and the highest property tax levy in Wisconsin, and that Door also has among the lowest personal/annual income in the region. The County argues that the interests and welfare of the public support the County’s offer because that minimizes the financial burden on taxpayers; that both offers propose a wage increase greater than the increase in the cost-of-living but that the Employer’s is more closely aligned with the CPI; and that the overall compensation received by employees who are represented by the Union is extremely competitive.

With respect to internal comparables, the Employer forthrightly argues that the two positions at issue have “comparable duties, responsibilities, qualifications and working conditions” with the Highway Department Utility Worker positions, and have been pegged to those rates since 2001. The County argues that this is a three-year history of internal consistency which must be taken into consideration and given weight, in order to avoid the potential for inequity and engendering discord among employees. With respect to external comparables, the County argues for recognition that the established external comparable pool consists of Brown, Kewaunee, Manitowoc, Marinette and Oconto counties; the Employer argues that secondary comparables have not previously been established and that Shawano and Waupaca counties were merely suggested as entitled to some secondary weight by one arbitrator, while the Union’s list of cities, villages and outlying counties diverges dramatically from arbitral precedent. For reasons discussed below, the details of the County’s argument with respect to particular positions in certain of these comparables will not be treated in detail here.

In its reply brief, the County takes issue with the Union's argument that the hours of work and wage schedule included among the agreements in this proceeding should be counted as concessions the Union has made, and as justifying a higher wage proposal than the Employer's; the Employer contends that the agreed-on items were resolved to the parties' mutual satisfaction and represent a give-and-take in and of themselves. The County notes that the Union's final offer contains a seven step wage scale similar to the County's offer and to all other classifications within the bargaining unit. The County expands upon its arguments concerning external comparables (not discussed in detail here for reasons described below) and argues that the Union overstates the extent to which the Lead Workers function as supervisors, noting that for five months of the year, each Lead Worker supervises no one.

### The Union's Position

The Union argues that the accretion of these two positions has already involved significant concessions on the Union's part in order to fit the positions within the existing Courthouse structure, pointing particularly to the lengthening of the workday from eight hours to 8 ½ by inserting a half hour unpaid lunch. The Union contends that its proposal places both positions on the existing Courthouse wage schedule at the nearest existing step, which has mixed effects on earnings of the employees, allowing for a \$.27 increase in the terminal rates of the positions, a \$1.55 per hour decrease in the starting wage rates of the positions, and an elongation of the pay schedule from four steps over two years to seven steps over five years. The Union argues that the County's proposal to create a new grade in the pay scale that results in the same terminal rates as are currently paid the existing employees is inappropriate. The Union argues for a set of comparables as determined in a 1992 case in the Highway Department, consisting of Kewaunee, Marinette, Oconto, Manitowoc and Brown counties, with Shawano and Waupaca counties serving as secondary comparables in the event of a lack of settlements in the primary list. But the Union argues that inclusion of Shawano and Waupaca counties is unhelpful here because they do not contain similar positions, and offers a group of cities instead. The Union also points to a prior Door County case in which Brown County was considered an appropriate member of the pool even though its economic base is sharply different from Door County's.

The Union takes exception to the County's characterization of the County's wage offer as representing the status quo, arguing that the County's offer both creates an entirely new step in the existing Courthouse wage schedule, and reduces the starting rate of the positions involved, in addition to lengthening the step schedule. The Union argues that an internal comparison to the Highway unit favors the Union's offer because the County has equated the positions to the Highway Utility Workers, the lowest paid and least skilled employees in the Highway Department, while comparison of the job descriptions demonstrate that the County expects significantly more from the Lead Workers. In particular, the Union points to the requirement that the Highway Utility Worker must "follow" instructions and is responsible for the operation of only four main pieces of equipment, along with "general" mechanic duties such as

changing oil, greasing and changing blades, and welding/cutting. By contrast, the Airport and Parks Lead Worker descriptions require these employees to oversee seasonal workers or crews, to “analyze and resolve work problems..... or suggest changes in working conditions and use of equipment to increase efficiency of work crews” as well as to operate a “wide variety of construction equipment” and to perform highly skilled maintenance work, including electrical, plumbing and structural work. The Union points to testimony of the incumbent employees as supporting the job descriptions in differentiating these positions from that of Highway Utility Worker. The Union also draws detailed comparisons between both positions and a variety of positions both in the comparables argued for above, and a long list of cities in the area; for reasons discussed below, these will not be treated here in detail. The Union also argues that Door County’s economy is among the strongest in the comparability group.

In its reply brief, the Union argues that inclusion of cities and villages in the wage tables offered for comparison is appropriate in view of the shortage of exact equivalents to these positions among the primary comparables, and that the County should not be surprised by this because the Union made these points during bargaining. The Union takes exception to the County’s argument that the parties are scheduled to commence general negotiations this fall for a successor Agreement and that this dispute over wages would wait, pointing out that the parties are in a proceeding that is provided for by statute. And the Union argues that the “greater weight” factor is irrelevant where the differential between the parties’ proposals is so small, citing an arbitration decision to this effect and noting also that the Employer has not been consistent, making this argument at one time and avoiding it at another.

## Discussion

When addressing cases such as this, in which one or a few positions are at issue rather than an entire contract, arbitrators have routinely found that internal comparisons are more important than external, because typically it is seen as more important to align wages and other working conditions of the disputed positions in relationship to those of employees of the same employer than to single out a few positions for close comparison to similarly situated positions elsewhere, when many positions of a given employer may be dissimilar to external comparables. Here, an added impetus toward that conclusion is the lack of evidence of positions closely comparable to the Airport or Parks Lead Workers among the comparables; the airports primarily cited by the Union are much larger operations, while none of the external positions argued by either party for comparability was accompanied by thorough or convincing evidence of what that position actually entailed. At the same time, even if for purposes of argument the Employer's evidence of adverse economic circumstances in Door County were favored over the Union's evidence of prosperity, in this instance it would matter little, in the context of the "greater weight" factor or of the cost-of-living comparison: The amount in dispute is simply too small, at what both parties calculate at \$689 total. This amount represents a tiny fraction of the overall cost of the parties' collective bargaining agreement, and there is no evidence or precedent to suggest that the "greater weight" factor was designed to be invoked for trivial amounts.

The internal comparison, meanwhile, is revealing. Neither party argues that the two positions at issue can meaningfully be compared for duties and working conditions to any position in the Courthouse bargaining unit. The County argues that the positions should be considered comparable to the Highway Utility Worker position; but on review of the record, I am in no doubt that this view is in error. The three job descriptions adequately tell the tale:

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### UTILITY WORKER DOOR COUNTY HIGHWAY DEPARTMENT GENERAL SUMMARY OF POSITION:

Reports to the Patrol Superintendent and is responsible for operating varied highway construction equipment on an as needed basis. Assignments given may change from day to day and from season to season. Able to operate construction equipment and must be in good physical condition.

### ESSENTIAL DUTIES:

1. Operate the grader during winter season.
2. Operate backhoe, truck, and front-end loader as requested.
3. Control traffic around highway construction area.
4. Complete general mechanic duties to include but not limited to, changing oil, greasing machinery, changing grader blades, welding, and using cutting torch.
5. Complete any other manual or clerical duties as may be required.

**KNOWLEDGE, SKILLS, ABILITIES AND EXPERIENCE REQUIRED:**

1. Ability to read, comprehend, follow oral and written instructions, and communicate both verbally and in writing, at a level associated with completion of a high school degree or equivalent training.
  2. Able to operate trucks and other county owned road construction equipment in a safe and effective manner. Must possess a Commercial Drivers License (CDL).
  3. Able to read a grade level. Requires basic knowledge of road construction, which could be learned with six (6) to twelve (12) months of progressive road construction work experience.
  4. Knowledge of traffic laws and weight limits.
  5. Knowledge of the location of state, county, city and town roads.
  6. Training or skill in welding and mechanics is beneficial.
  7. Capable of accepting varied assignments from one day to another.
  8. Use tact and courtesy in dealing with other employees, county officials, taxpayers, and other county and outside agencies.
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**AIRPORT - LEAD WORKER DOOR COUNTY CHERRYLAND AIRPORT**

**GENERAL SUMMARY:**

Under supervision of the Airport Manager from November 1st - March 31st and under the supervision of the Parks Manager from April 1st - October 31st. Performs, operates, and completes maintenance and repairs on Airport grounds, facilities, runway lighting systems, and equipment. Lighting systems capable of producing 5000+ volts. Performs related duties as assigned. (See Parks Lead Worker job description for Parks duties and responsibilities.)

**ESSENTIAL DUTIES AND RESPONSIBILITIES:**

1. Maintains, trouble shoots and repairs various runway lighting systems to include but not limited to REILS, PAPIS, Lead In Lights and MIRLS.
2. Ability to read electrical schematics, and have knowledge of relays, diodes, transformers, bridge rectifiers, resistors, capacitors, etc.
3. Oversee work of seasonal workers.
4. Operates, maintains and repairs snow removal equipment to include but not limited to 14' tow behind sweeper, single axle dump truck with 12' plow and unimog snow blower to remove snow from runways, taxiways, ramps and parking lots.
5. Patrols airport as needed during winter to control blowing and drifting snow.
6. Reports to NOTAMS to Green Bay Flight Services (runway conditions - ice, snow, patchy snow, etc.).
7. Completes mechanics duties on above listed equipment to include, but not limited to changing oil, greasing, changing plow blades, welding, cutting, electrical, adjusting clutch and hydraulics.

**KNOWLEDGE, SKILLS AND EXPERIENCE REQUIRED:**



1. Knowledge of methods, materials and equipment used at the Airport grounds and facilities installation; maintenance and repair to include knowledge of electrical, plumbing and woodworking/carpentry.
  2. Knowledge of FAA rules regarding snow removal.  
Door County Airport Lead Worker Job Description, pg. 1
  3. Ability to operate a wide variety of hand and power tools including knowledge of electrical multi meter, i.e. volts, ohms, and amps.
  4. Ability to operate a wide variety of construction equipment.
  5. Knowledge of FAA rules regarding aircraft flying or taxing.
  6. Ability to perform heavy manual work.
  7. Ability to work outdoors in various weather conditions.
  8. Ability to understand and carry out written and oral instruction.
  9. High school diploma or equivalent with five (5) years related experience working in maintenance, grounds maintenance or closely related field. Must possess a valid Wisconsin Commercial Driver's License with air brakes and combination ratings.
  10. Ability to meet requirements of Parks Lead Worker job description.
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## **PARKS - LEAD WORKER DOOR COUNTY PARKS DEPARTMENT**

### **GENERAL SUMMARY:**

Under supervision of the Parks Manager. Performs and completes maintenance and repairs on parks grounds, facilities and equipment. Oversees and directs crews and projects.

### **ESSENTIAL DUTIES AND RESPONSIBILITIES:**

1. Maintains and performs repairs on parks grounds such as: mowing grass, brush and weed cutting, trash clean up and removal, tree cutting and trimming, etc.
2. Maintains and repairs Parks facilities such as painting, repairing and replacing a variety of facilities and building accessories such as toilets, doors, roofs and windows.
3. Inspects parks and facilities for cleanliness, vandalism, weather damage and safety.
4. Operates, maintains and performs repairs on equipment which includes: lawn mowers, vehicles, snow removal equipment, small engines, chain saws, etc.
5. Oversees seasonal crews and plans work of crew based on written or verbal orders/instructions from Parks Manager.
6. Maintains good public relations.
7. Enforces County and department safety regulations and security.
8. Build and/or assemble equipment or facilities such as chain or wooden fences, shelters, picnic tables, etc.
9. Analyzes and resolves work problems, or assists workers in solving work problems. Suggests changes in working conditions and use of equipment to increase efficiency of work crew.
10. Operates a variety of mechanized equipment such as a backhoe, skid steer, dump truck, forklift, front-end loader, farm tractor, snowmobiles and snow removal equipment.

11. Installs, maintains and repairs municipal buildings plumbing and electrical systems, including replacing wiring or defective parts such as switches and fuses.
12. Maintains and repairs wooden parts of buildings.
13. Replaces worn or damaged parts such as hoses, wiring and belts in machines and equipment such as truck, tractor and riding lawn mower.
14. Design and fabricate tools and structures as requested by Parks Manager.
15. Repair small engines and associated equipment.
16. Diagnoses, repairs and maintains Park's fleet.
17. Operates a variety of hand-powered tools and other related equipment such as surveyor's transit.
18. Assist Parks Manager with budget preparations.
19. Performs related work as assigned.

**KNOWLEDGE, SKILLS AND EXPERIENCE REQUIRED:**

1. Knowledge of methods, materials and equipment used in parks, grounds and facilities installation; maintenance and repair to include basic knowledge of electrical, plumbing, woodworking/carpentry and landscape maintenance.
2. Ability to operate a wide variety of hand and power tools.
3. Ability to operate a wide variety of construction equipment.
4. Ability to perform heavy manual work.
5. Ability to work outdoors in various weather conditions.
6. Ability to make mechanical repairs.
7. Ability to read and understand Chapter 12 of the Door County Code.
8. Ability to understand and carry out written and oral instruction.
9. High school diploma or equivalent with five (5) years related experience working in maintenance, grounds maintenance or closely relate field. Must possess a valid Wisconsin Commercial Driver's License with air brakes and combination ratings.

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The incumbent employees confirmed in testimony that they spend a significant amount of time doing skilled maintenance work, including both construction work and such specialized work as maintaining airport runway lighting systems and rebuilding faulty circuit boards. Each has day-to-day responsibility for substantial aspects of the management and maintenance of large properties of the Employer. And while the County accurately notes that for five months a year these positions do not involve supervision, I note that the WERC found that in the other seven months of the year the Lead Workers spend significant time overseeing other employees' work, and described the question of whether they were statutory supervisors as a "very close question."<sup>1</sup> While job descriptions for Highway Department employees other than the Utility Worker are not in the record, it is clear that if the Highway Department employs any

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<sup>1</sup> Employer's Exhibit 8, page 25.

classification that has as broad a range of responsibilities, the Utility Worker is not it. Furthermore, the County's proposal does not even maintain parity with the Highway Utility Worker which it claims is the comparable classification, because under the County's proposal, the starting rate for a new hire in either Lead Worker position would make \$1.78 per hour less (in 2003) than the significantly lower-skilled Highway Utility Worker position, and a newly hired Lead Worker would not catch up to the rate of the Utility Worker until he or she had worked three years beyond the two-year point at which the Highway Utility Worker reaches the top rate (of the faster pay progression under that contract.) This is inexplicable in terms of the Employer's claim to equate these positions.

The Statute's Weighing:

The “greatest weight”, lawful authority, private employment, “changes... during the pendency of the proceedings” and “other factors” elements were not argued. The “greater weight” factor, even if it were assumed to favor the County based on the evidence in the record, does so by an insignificant degree because of the insignificant amount at issue. Similarly, the interests of the public and the cost-of-living factors favor the County’s proposal but in insignificant degree. The overall compensation factor and the stipulations of the parties are neutral, since neither party made a significant case demonstrating superiority or inferiority of the overall package by any measure. The external comparables fail to reveal any persuasive evidence, while anyway being deemed less important than the internal comparables in a case involving only two positions. The internal comparables, however, strongly favor the Union’s proposal. The balance therefore also supports the Union’s proposal.

Summary

The statutory factors which favor the County’s offer do so to a minimal degree in a case which involves a low total amount and only two positions’ wages at issue. Internal comparisons carry the predominant weight, and these strongly favor the Union’s proposal.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

That the final offer of the Union shall be included in the parties’ existing 2001-2004 collective bargaining Agreement.

Dated at Madison, Wisconsin this 26th day of May, 2004

By \_\_\_\_\_  
Christopher Honeyman, Arbitrator