

**STATE OF WISCONSIN**  
**BEFORE THE ARBITRATOR**

**In The Matter Of The Petition Of**

**ONEIDA COUNTY HIGHWAY  
DEPARTMENT LOCAL 79**

**To Initiate Interest Arbitration  
Between Said Petitioner and**

**ONEIDA COUNTY**

**Case 169, No. 63991  
INT/ARB-10269  
Decision No. 31582-A**

**APPEARANCES:**

Mr. Dennis O'Brien, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5590 Lassig Road, Rhinelander, Wisconsin 54501, on behalf of Oneida County Highway Department Local 79.

Mr. Carey Jackson, at hearing and initial post-hearing brief, Personnel Director, P.O. Box 400, Rhinelander, Wisconsin 54501, and Attorney John J. Prentice on reply brief, Petrie & Stocking, S.C., 111 East Wisconsin Avenue, Suite 1500, Milwaukee, Wisconsin 53202 on behalf of Oneida County.

Oneida County Highway Department Local 79, hereinafter referred to as the Union, filed a petition with the Wisconsin Employment Relations Commission to initiate interest arbitration pursuant to Section 111.70(4)(cm) of the Municipal Employment Relations Act with respect to an impasse between it and Oneida County, hereinafter referred to as the County. The undersigned was appointed as arbitrator to hear and decide the dispute, as specified by order of the Wisconsin Employment Relations Commission, dated January 12, 2006. Hearing was held on May 12, 2006, without the services of a court reporter. At the hearing the parties jointly requested an expedited award. Post-hearing briefs were exchanged by November 14, 2006, marking the close of the record.

Now, having considered the evidence adduced at the hearing, the arguments of the parties, the Final Offers, and the record as a whole, the undersigned issues the following Award.

### **TENTATIVE AGREEMENTS**

Tentative agreements include the following:

1. Duration of two years (January 1, 2005 – December 31, 2006);
2. Wages: 2.7% - 2005, 3.0% - 2006;
3. Implement State Income Continuation Program - County will pay for the 180 day waiting period;
4. As a quid pro quo for the 2004 Health Plan changes, the wage schedule of all classifications will be increased by ½ % for 2005;
5. The Health Insurance changes contained in the Group Health Trust plan design 6-1-04;
6. \$0.15 per hour increase to the wage schedule of Equipment Operator I on July 1, 2005;
7. Status quo on remainder of agreement.

### **FINAL OFFER OF THE UNION**

\$0.15 per hour increase to the wage schedule of Equipment Operator I on December 31, 2006

### **FINAL OFFER OF THE COUNTY**

No additional changes proposed.

### **STATUTORY CRITERIA**

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.70(4)(cm), 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 performing similar services.
- e. Comparison of the wages, hours and conditions of employment 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 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 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 UNION**

### **INITIAL BRIEF**

With respect to the external comparables, the Union argues that the County and the Union have been signatories to a long series of collective bargaining agreements; however, they have never been to interest arbitration. Therefore, the appropriate comparables for this unit have not been established. The County purports to demonstrate that the arbitrators in five separate decisions have included many of the same comparables proposed by the County in this dispute. However, several points must be made.

Four of the five decisions involve the Sheriff's Department employees. After a comparable set is established for a given group of employees, arbitrators are very reluctant to alter the composition without compelling reason to change. As noted above, no such comparable set has been established for this group of employees. In the Public

Health employee unit case, Decision No. 28021, Arbitrator Malamud declined to consider Oconto because he believed there was not enough data in the record to justify its use. The record in the instant matter does not suffer from those deficiencies. In fact, both the County's and Union's exhibits contain a great deal of data on the demographic comparison of the proposed comparables. In Decision No. 29972-A, Arbitrator Vernon found for the County in another dispute involving Sheriff Department Employees. It is unclear, however, if he rejected the proposed comparables urged by the Union, which included Oconto, for he did not address how he determined which external entities are appropriate.

No arbitrators have ruled that Oconto is excluded as an appropriate comparable for the Oneida County Highway unit, because they have not previously been to interest arbitration. The criteria include: are the counties reasonably comparable as governmental entities by population, revenues, providing similar services, and geographic proximity. Those are the factors traditionally referenced by arbitrators while determining comparability between counties, cities and school districts.

Population and state aids demonstrate that Oconto is a reasonable comparable for the Oneida County Highway bargaining unit. It is conceivable that when evaluating a highway unit the number of miles of roads to be maintained within the County could be an important factor for comparison between counties. However, it is well known that county highway departments maintain not only "county highway miles," but also state highways within their borders. Moreover, many townships commission county highway departments to maintain the town roads. Therefore, the County's reliance on "county highway miles" is a rather crude attempt at creating a meaningless distinction between

Oconto and the County's proposed comparables. There is nothing in the record to tell us how much of the town roadwork is performed by any of the proposed counties. However, Oneida is 14% below the group average while Oconto is 25% above the same group average when both county and state road miles are considered. If Oneida is reasonably compared to the group, then so is Oconto.

In addition, Oneida and Oconto have virtually identical populations, both of which are somewhat greater than any of the other proposed counties. Oconto's levy rank and levy rate are far closer to the group average than Oneida's, as is the full property value and the percent increase of property value from 2003 to 2004. Oconto ranks similarly for per capita value and per capita rank. Finally, the county tax indicates that Oneida is 16% less than Oconto, but 15% greater than the next closest county, Vilas, and far more than Forest, Langlade, or Price. Similar patterns develop when income is considered. Oneida and Oconto are more comparable to each other than to Forest, Lincoln, Langlade and Vilas.

With respect to geographic proximity, while it is undeniable that all the counties proposed, except Oconto, are contiguous to Oneida, that does not suggest that Oconto should be immediately excluded as a comparable. It is still very proximate, in the northern part of the state and is contiguous to Forest and Langlade, two counties that are included in the comparables. A distance of approximately 70 miles is not significant in sparsely populated northern areas. In fact, many areas of Vilas, Forest, Langlade, Lincoln, and Price are geographically more distant from Oneida than areas in Oconto.

The County resists comparison to Oconto County because Oconto pays better. The County likes to be compared to the small rural counties because it makes it easy for

Oneida to meet its obligations in bargaining. Some of those small rural counties may be relatively poor, but that is not so for Oneida. Oconto is a solid comparable and should be included in the set.

With regard to the Union's request for a \$0.15 per hour wage adjustment on December 31, 2006, the adjustment would affect only the Equipment Operator I position, approximately 15 individuals, or slightly more than one-half of the unit.

The Union believes that many of the criteria to be considered by the Arbitrator in 111.70 (4)(cm) do not apply.

However, the adjustment is supported overwhelmingly by those criteria that are relevant to this analysis. Under Section 7r.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), the Union's offer is preferred. There is no question as to the County's ability to pay the cost of the Union's offer. During the term of this collective bargaining agreement there is no cost to the County for the adjustment sought by the Union. The adjustment moves the Equipment Operator I in line with external and internal comparables. The adjustment serves the interest of the public because it establishes an equitable treatment which affects employee morale. When employees perceive fairness from their employer, loyalty is encouraged, which fosters a more efficient and productive workplace.

The criteria of internal and external comparables most clearly demonstrate the reasonableness of the Union's proposed adjustment. The record indicates that the Equipment Operator I is \$0.04 below average when the \$0.15 per hour is included. However, the position would remain \$0.19 below the group average if the County's offer

were selected. Because the Equipment Operator I position lagged the group average substantially more than the Equipment Operator II or Mechanic's positions, the Union would seek to obtain an adjustment to allow the position to catch-up to its own group average.

The record illustrates that when compared to other employees of the Oneida County Highway Department, the Union offer is more reasonable. It seeks to move the Equipment Operator I towards the group average. The Union's offer does not alter the job classification's ranking among the external comparables. In 2004 the Equipment Operator I position in Oneida County was 6<sup>th</sup> out of 7. It moves to 5<sup>th</sup> out of 7 not as a result of the \$0.15 adjustment on December 31, 2006, but rather as a result of the voluntary adjustment on July 1, 2005. Furthermore, the Mechanic's position starts in 4<sup>th</sup> position in 2004 and remains there throughout the term of this dispute. Similarly, the Equipment Operator II starts at 5<sup>th</sup> in 2004 and remains there.

When comparing wage rates for a given group of comparables, if one comparable's rate is significantly higher or lower it can tend to skew the mean score away from the best representation of the group. In this matter, Forest County is, in fact, significantly below the other wage rates paid by the comparables.

Another measure used to represent scores in a group is the median score. In this group, the data indicates that of the six comparables offered by the Union and the City of Rhineland, (Employer Exhibits 1 and 2) and Oconto, the median score would be \$17.41, somewhat higher than the mean of \$17.22. Whether comparison to the mean or the median, the Union's wage request is reasonable.

The Union contends that even if the Sheriff's Deputies in Oneida County were to accept a wage freeze for 2006, their 2005 wage rate would still exceed any of the proposed comparable's wage rates for 2006. Similarly, the Public Health Nurse classification for Oneida County is paid at the top rate of any of the proposed comparables. The Oconto County Professionals are in interest arbitration but they have agreed to a 3% per year increase in each of 2005 and 2006 and that increase has been implemented. These comparisons indicate that the County has chosen to negotiate with some of its employees reaching the top pay rate within their proposed external comparative set. And yet, in a bewildering, inconsistent manner the County objects to this position in the Highway Department reaching the group average rate.

The Union believes that the external comparables demonstrate that Oneida County, by any reasonable measure, is at or right below the top of the group, and yet it resists this modest request for equitable treatment for this group of highway employees. The data demonstrates that when property values and the taxes that are generated are considered, Oneida is clearly better positioned than the comparables, with Vilas the sole exception. However, when personal income and employment are considered Oneida County moves closer to the top of the group.

The County tax levy has decreased in each of the last four years. Moreover, the County has taxed at a rate well below the allowable operating levy from 86% of the levy in 2003 to 71% in 2005. Finally, Oneida is very well-positioned when compared to the external counties in the housing market. U.S. Census information indicates that the median value of a home in the County is \$106,000, which is exceeded only by Vilas. The wealth present in the County is also related to the educational level of the citizens when

compared to the external counties. Twenty percent of the Oneida workforce has a Bachelor's or higher degree. When comparing the County to any of the external comparatives in the totality of all factors, the unmistakable conclusion: Oneida is the leader of the group.

Whether considering internal comparisons with members of its own Union, external comparison to other county highway departments, or to other employees of Oneida County, the Union's request for a modest wage adjustment for Equipment Operator I in the Highway is completely justified. It is preferable under all comparability criteria.

The Union introduced evidence that in December 2004 the CPI was 3.4%. Additionally, the delay inherent in the interest arbitration process allows us to know that in December 2005 the inflation rate at the onset of the second year of this dispute was 4.3%. The general wage increase for this Union was 3% in 2005 and 2.7% in 2006. Under this criterion, the Union's request is reasonable. Upgrades in catch-up situations are not counted by many arbitrators as part of the general increase.

With respect to the criterion of "such other factors" under Section 7r.j., the Union believes the issues of the health care plan and the maintenance of the status quo are very significant to its position. The Oneida County health care plan contains a provision that provides for an annual deductible for prescription drugs which is separate and distinct from other annual out-of-pocket expenses. The prescription drug maximum deductible is \$1,325 per year for Group 1 and \$1,416 per year for Group 2. In June 2004 the County unilaterally changed insurance coverage. It is this unilateral change which imposed the prescription drug deductible upon the Highway Department employees. The dispute was

arbitrated, and in August 2005, the arbitrator held that the County did not have the right to change the health insurance plan without bargaining over the changes.

The County never mentions that the 0.5% quid pro quo comes as a result of the settlement in the above referenced grievance. The County now wishes to seek credit for that violation by claiming that its offer is a generous 3.98%. The County's offer is a 3% general wage increase for all positions in the unit and a \$0.15 per hour increase on July 1, 2005 for those individuals in Equipment Operator I. The wage adjustment for the settlement of the grievance should accrue no credit in this dispute. If it did, then the County's Final Offer should be amended to include the acceptance of the drug card. The Union notes that health insurance, either costs or plan design, are not an issue in this dispute. The County's cost for insurance is typical of the comparable counties. The Union made a large concession when it settled the grievance by accepting the drug card deductible. It should not be made to pay for it twice by allowing the County to claim its cost in this dispute, but ignore the savings it accrued by the plan design changes for settlement of the grievance.

By altering the status quo, the County changed one of the most significant aspects of how to evaluate the reasonableness of the opposing final offers. The Union does not insist that the changes made to the health insurance plan be a factor in determining the outcome of this dispute. However, when the County includes that, it adds a 0.5% additional wage increase as a quid pro quo without any explanation to place it in context, the Union does object.

Despite the costing methods used by the County it is recognized by many arbitrators that when catch-up is included, the wage rates are compared, not total package percentage costing.

There are two other aspects of this dispute which have significance. Employer Exhibit 21-A, is a comparison of a percentage increase for internal units of Oneida County. In theory, it purports to show that Oneida Highway has received, and is asking in the instant matter, for a far more generous settlement than other employees of the County have received. First, the Union demonstrated above that some of the other employees receive compensation at the very top of the comparables. The Equipment Operator I classification involved in this dispute is paid below the group average, even if the Union prevails with its wage adjustment. Secondly, when catch-up is involved, the internal settlement pattern is not as significant in the resolution of disputes. Arbitrators generally insist on comparison with other employees doing similar work, establishing a labor market rate.

Lastly, where, as here, the adjustment sought is for a position which is out of balance with the comparables and not for a general unit wide increase, arbitrators consider that appropriate. In fact, in a case referenced at Employer Exhibit 5-B, Arbitrator Vernon discussed the rationale of a targeted wage adjustment. Both the County and the Union proposed adjustments but the arbitrator preferred the County's offer because it placed the money where it was most justified by comparison to comparables which established a market rate.

The Union's request for a modest adjustment in the wage rate of the Equipment Operator I position is supported by all criteria necessary to the resolution of this dispute.

The County is, by comparison, a rich and financially powerful entity, at or near the top of the proposed comparables. The adjustment sought by the Union targets one position which is lagging the wage rate established by the external comparables. The Union's offer will cause no economic difficulties on the County. The County cannot point out the low ranking among the comparables for its highway unit, then proceed to voluntarily bargain with other units so as to reach the top of those same comparables. The Union asks for a reasonable adjustment to the group average and that its offer be included in the successor agreement.

### **REPLY BRIEF**

In response to the County's arguments, the Union agrees that the levy freeze places some stricture on the County's finances; however, the effect is inconsequential. The County's undesignated fund has grown from 4.7 million to 11 million in five years. The Union's proposed \$0.15 per hour increase on December 31, 2006 cost nothing during the term of the agreement. The Union seeks to allow the Equipment Operator I position to be more aligned with the average wage of external comparables. The adjustment will affect 15 men at a total cost of about \$4,700.

The Union objects to Addendum 2 of the County's initial brief because it is an attempt to enter an entirely new exhibit. The County's characterization of various arbitrators' views on appropriate comparables is misleading. Contrary to the County's suggestion, the comparables have not been agreed upon. Moreover, Oconto is more similar to rural agricultural Counties Price, Langlade, and Lincoln than Oneida.

With respect to internal comparability, the County's inclusion of Income Continuation Insurance as wages is not appropriate, for we are discussing wages, not benefits.

The Union has not sought to compare wage rates of Highway Department employees to Sheriff's Department employees, but rather rankings in comparison to external counties. The Deputies are the very highest paid of the comparables. How can the County be so reasonable with the Deputies but not Highway employees? Many arbitrators consider it appropriate to compare various classifications with their external comparables.

While the County argues otherwise, there is no unique situation with respect to health insurance when considering external comparables. In fact, the County ignores the significant concession by the Highway Union when it accepted a \$1,400 stand-alone deductible for prescription drugs.

Responding to the County's reply brief, the Union believes it includes many inaccuracies. The Union asserts that the County belittles the Union's request for catch-up, claiming it is too insignificant to justify catch-up. However, each of the 15 Equipment Operator I employees feels it is important. While the County contends the Union attempts to alter the comparable group, the comparative set for these employees has not been established. The County's mischaracterization of the Sheriff and Public Health Nurses should not be given weight.

The County's claim that it incurs increased dental insurance costs is totally fabricated because the County does not provide dental insurance for these employees.

Finally, the County's argument that the Equipment Operator I does not compare with other counties' patrolmen is inaccurate. At no time during the proceeding was that objection raised. Rather, the evidence indicates the Union scrupulously compared the Equipment Operator I to similar jobs in the comparable counties.

In conclusion, the Union contends that it has demonstrated that the Equipment Operator I position merits the requested wage adjustment. The Union cites arbitral authority in support of its position.

## **POSITION OF THE COUNTY**

### **INITIAL BRIEF**

With respect to the appropriate group of external comparables, the County contends that the agreed-to comparables of Forest County, Langlade County, Lincoln County, Price County, Vilas County, and the City of Rhinelander are appropriate, but that Oconto County should not be included. The County contends that it is too geographically distant from Oneida County. The County further points out that it believes that the Union wishes to include Oconto County because its Bulldozer Operator position has a higher wage rate than all the others, at \$17.73 per hour.

Moreover, Oneida County has 173 county highway miles, while Oconto has 314. Oneida County has 29 employees; Oconto County has 47 employees. Oconto leads the comparables in State aids, live births, and percentage increase in population. Oneida County's economy is largely based on tourism, while Oconto's is mainly agricultural.

Oneida County and its bargaining units have been involved in five interest arbitration cases, four with the Sheriff's bargaining unit and one with the Public Health

unit. All used only the five surrounding counties. The City of Rhinelander was also used with the Sheriff's. It is important to have a stable, well-known set of comparables.

No current employees were hired from Oconto County. Oconto County is adjacent to large, industrialized Brown County and the City of Green Bay. The Union's exhibit reflects that no one lives in Oneida County and works in Oconto County. However, in Oconto County, 50% travel outside that county for work.

The County believes that the agreed-to external comparable group is sufficiently large to provide reliable data.

The sole issue under the Final Offers is whether it is necessary to include an additional \$0.15 per hour for the Equipment Operator I classification. The County points out that in 2001 the Equipment Operator I classification was \$0.52, or 3.54%, behind the average external comparable. In 2004 that was reduced to \$0.41, or 2.54%. In 2005, the first year of the new labor agreement, that difference is reduced to \$0.22, or 1.34%. That is not a sufficient basis for catch-up. When the classification is so close to the average, it should be left up to the parties to determine whether catch-up is appropriate.

The Equipment Operator I classification received a 4.46% wage increase in 2005, which exceeds the internal settlement average of 3.19%. As a group, the Union received a 3.98% increase for 2005, and a wage and benefit increase of 2.96% for 2006.

The County also argues that the internal settlement pattern supports its position. The year the Income Continuation Insurance (ICI) program was implemented, all the bargaining units received a 2.7% increase. The unions chose the ICI program over wages, so a portion of the money the County was offering in wages was used to purchase ICI. The Highway unit also agreed and in 2006 they also received a 2.70% increase.

However, the Union is seeking an additional \$0.15 per hour for the Equipment Operator I classification. That \$0.15 is outside the internal settlement pattern.

In 2006 all the other internal bargaining units settled for a 3.0% wage increase for 2006. When the 2.7% increase is added to the cost of ICI, the Highway unit received a 2.96% wage increase, which is virtually identical to the internal settlement pattern for 2006.

The County maintains that it is inappropriate to compare the Highway unit with the Sheriff's unit, as the Union attempts to do. Arbitrators have agreed they should not be compared.

The County's 2005 wage increases exceeded the 3.4% CPI-W. The County also notes that the cost of providing health insurance to its employees continues to rise. In 1999 the family premium was \$5,040, while in 2006 the cost is \$16,642. The employee pays 5%. For the successor labor agreement that is being arbitrated, there is an additional cost to the County of \$38,911 or 3.99% more than in 2004. This additional cost needs to be recognized and given due consideration. Combined with the 2006 wage increase and ICI cost, the County will have to fund an additional 6.95% in 2006, which does not include the Union's proposed additional \$0.15 per hour for the Equipment Operator I classification.

Furthermore, the Union's proposal creates compression and separation problems. In 2004 the separation between the Equipment Operator I and II classifications was \$0.499, or 3.14%. In 2005 that separation was reduced to \$0.366 per hour, or 2.21%. The Union's proposal would reduce that separation to \$0.226 per hour, or 1.32%. That

will cause a group of employees to be unhappy with their pay and make future negotiations more difficult.

The Union's Final Offer also creates a separation issue between the Equipment Operator I classification and the Highway Maintenance Worker classification. Separation between the two would increase from \$1.143, or 7.76%, in 2004 to \$1.519, or 9.70%. This will also create other unhappy employees and make future negotiations more difficult.

### **REPLY BRIEF**

In response to the Union's arguments regarding the appropriate comparables, the County contends that the external comparables have been established since 1985. Once established, arbitrators are loath to alter the comparables unless there has been a significant change. Consistency in the comparables helps bring certainty to the process. There is no justification for changing the comparable group. The County argues that precedent has been set with regard to the appropriate external comparables, and that precedent has been respected by several arbitrators.

The previously agreed-to comparables accurately reflect the workforce and industrial environment in northern Wisconsin. While the comparables have not been set for this bargaining unit, they have for the other County's units. A change in the comparable set would adversely affect bargaining with the other bargaining units.

Although the Union claims the County resists inclusion because Oconto County pays better, that is exactly why the Union wishes to include Oconto County. To include Oconto County as a comparable would substantially change the parameters for bargaining, because Oconto County is part of the Fox River industrial economy. Oconto

County is not significantly comparable to Oneida County, other than having a similar population.

The Union's proposal to increase the wage of the Equipment Operator I by \$0.15/hour should be rejected. While the County may have the financial ability to pay, it is already at its levy limit for 2006. The County continues to incur increased structural health and dental insurance costs. Employers nationwide have experienced skyrocketing fuel and utility costs, and the County is no different. 2007 will be no better, for the County will continue under the statutory levy limits. The County's proposed package will cost 2.96%, far exceeding the 2.1% levy limit, and is more reasonable than the Union's package that will cost 3.41%.

Although the Union contends that its Final Offer would be in line with the external comparables, it has not been demonstrated that the Equipment Operator I classification is similar to the other jobs from the external comparables. The County uses a more valid and objective comparison of positions and wages with the comparable counties, including a review of a wider range of job classifications from those comparables.

The Union's catch-up argument also should be rejected, for it is not justified. It is unclear from the Union's argument when the wage differential between classifications would not require catch-up. The contractual rates of pay reflect management's valuation of the work that the various positions perform. The Union has been unable to produce evidence that demonstrates the need to reject management's valuation.

The Union seems to “cherry pick” its comparisons with other bargaining units and job classifications. It is not valid to compare this Union with the work performed by the Sheriff or the Public Health Professionals.

In conclusion, the County submits that its Final Offer is more reasonable and should be adopted here.

## **DISCUSSION**

### **APPROPRIATE EXTERNAL COMPARABLES**

This is the first time the parties have proceeded to interest arbitration. While the parties were unable to agree to all of the external comparables, they do concur that: Forest County, Langlade County, Lincoln County, Price County, Vilas County, and the City of Rhinelander are appropriate external comparables. The Union proposes the additional comparable of Oconto County.

There have been four interest arbitration awards involving the Oneida County Sheriff's Department (Dec. No. 29472-A, Vernon, 1999; Dec. No. 27160-B, Flaten, MIA-1423, Gundermann, March, 1990; and Dec. No. 21827-A, Fleischli, April 1985) and one award involving Oneida County Public Health Department (Dec. No. 28021, Malamud, 1994). Each of the arbitrators agreed that the appropriate external comparable group should include: Forest County, Langlade County, Lincoln County, Price County, Vilas County, and the City of Rhinelander.

In essence, the Union asserts that, because the external comparable group has not been determined for this bargaining unit, then those previous awards involving other internal bargaining units should be given minimal weight. However, arbitrators generally believe that it is important that the same set of comparables be used for the different

bargaining units of the same municipal employer. This is so in order to provide consistency, reliability, and stability in negotiations. The criteria under the Municipal Employment Relations Act for like-situated municipalities typically apply across bargaining units of the same municipal employer. However, if a given bargaining unit can demonstrate bona fide differences that would justify some other comparable group, then it may be appropriate to include different comparables.

Although Oconto County may have certain similarities to Oneida County, the undersigned believes that the principle of consistency across bargaining units outweighs the need to include that additional county. The current group is a fair and reasonable representative roster. Moreover, there has not been a showing that this particular bargaining unit has unique circumstances that set it apart from the other bargaining units of the County so as to require a different set of external comparables. Therefore, the undersigned finds that Forest County, Langlade County, Lincoln County, Price County, Vilas County, and the City of Rhinelander are an appropriate group of external comparables.

### **ANALYSIS**

The Union argues that the Equipment Operator I should receive a “catch-up” hourly wage increase of \$0.15 on December 31, 2006, the last day of the labor agreement. In order to prevail with a catch-up wage adjustment for a given job classification, the proponent should demonstrate that the job classification is unfairly lagging behind similar positions among the comparables. As Arbitrator Nielsen stated in Cudahy Schools, Dec. No. 25125-B, 6/88:

A catch-up argument is essentially one of fairness, and the best measure of a fair ranking is that which the parties have achieved through voluntary negotiations. The Union does not offer any evidence of events beyond its control which led to a wage rank below the average of the comparables, nor does it appear that wages are so far below the norm as to be, on their face, unfair.

The following table illustrates where the Equipment Operator I for Oneida County Highway falls among the comparables<sup>1</sup>:

<b>MAXIMUM HOURLY WAGE RATE OF EQUIPMENT OPERATOR I</b>					
<b>COMPARABLES</b>	<b>2001</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>FOREST</b>	\$13.93	\$15.61	\$16.08	\$16.48	
<b>LANGLADE</b>	\$14.80	\$16.21	\$16.70	\$17.20	
<b>LINCOLN</b>	\$14.51	\$16.05	\$16.53	\$17.03	
<b>CITY OF RHINELANDER</b>	\$14.73	\$16.46	\$17.13		
<b>PRICE</b>	\$15.18	\$16.54	\$17.04	\$17.56	\$18.08
<b>VILAS</b>	\$14.97	\$16.86	\$17.37	\$17.89	
<b>AVG W/O ONEIDA</b>	\$14.687	\$16.288	\$16.808	\$17.23	\$18.08
<b>ONEIDA COUNTY OFFER</b>	\$14.167	\$15.875	\$16.583	\$17.03	
<b>ONEIDA UNION OFFER</b>				\$17.18	
<b>\$ DIFFERENCE</b>	(\$0.520)	(\$0.413)	(\$0.225)	(\$0.20) – Cty Offer (\$0.05) – Un. Offer	
<b>% DIFFERENCE</b>	-3.54%	-2.54%	-1.34%	-1.16% – Cty. Offer -0.2% Un. Offer	

(Data derived from Union Exhibit 4-B and County Exhibit 18-A)

The table reflects that in 2005 there were two external comparables with lower wage rates than the Equipment Operator I for Oneida County. In that year, the Equipment Operator I did not lag behind the other comparables, nor was it particularly unfairly paid. In fact, over the last few years, the County's wage rate for that classification has improved

<sup>1</sup> The County argues in its reply brief that the evidence does not reflect whether the jobs in the external comparables are similar to the Equipment Operator I job classification. The undersigned notes that the exhibits from both parties consider those jobs from the external comparables as valid and rely on them. The comparison with the job classifications from the external comparables is therefore appropriate.

among the comparables. Under the County's offer in 2006, the Equipment Operator I matches Lincoln County's, and again there are two counties with lower hourly rates. The instant record thus does not indicate that there is a substantial disparity between the Equipment Operator I classification and other external comparable positions.

The Union asserts, however, that the Equipment Operator I should receive a catch-up increase of \$0.15 to move it closer to the average of the external comparables. Its proposal would bring it to within \$0.05 of the average by the end of 2006. While the dynamics of Section 111.70(4)(cm) of the Municipal Employment Relations Act tend to result in a movement toward the mean, there is nothing under the Act that mandates such an outcome; i.e., a wage rate below the mean, by itself, does not require a wage adjustment toward the average.

Finally, as the County points out, in 2004 the wage separation between the Equipment Operator I and II classifications was \$0.499, or 3.14%. In 2005 that separation was reduced to \$0.366 per hour, or 2.21%. The Union's proposal would reduce that separation to \$0.226 per hour, or 1.32%, resulting in a wage compression concern between the Equipment Operator I and II classifications.

With respect to other criteria under the Municipal Employment Relations Act, the undersigned agrees with those arbitrators who subscribe to the proposition that generally the prime focus with a catch-up argument is to first determine whether there is an unjustified disparity between the job classification at issue and other comparable positions. If that has not been demonstrated, then the other criteria under the Act would usually not change the balance. None of the other criteria in this instance outweigh the

finding that there is not an unfair discrepancy, and a catch up wage adjustment for the Equipment Operator I classification is not justified.

### **CONCLUSION**

Having considered the statutory criteria, the evidence and arguments of the parties, and based upon the above and foregoing, the undersigned concludes that the Final Offer of the County is more reasonable and therefore should be favored over the offer of the Union. In that regard the undersigned makes and issues the following:

### **EXPEDITED AWARD**

The County's Final Offer shall be incorporated into the January 1, 2005 – December 31, 2006 two-year collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement which they agreed were to remain unchanged.

Dated in Madison, Wisconsin, on November 24, 2006, by

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Andrew M. Roberts, Arbitrator