

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

THE COUNTY OF ROCK (DEPARTMENT OF
PUBLIC WORKS)

and

ROCK COUNTY HIGHWAY EMPLOYEES UNION
LOCAL 1077, AFSCME, AFL-CIO

Case 368
No. 65240 INT/ARB-10543
Decision No. 31679-A

Appearances:

Mr. Thomas A. Schroeder, Corporation Counsel, Rock County, 51 South Main Street, Janesville, Wisconsin 53545, on behalf of the County.

Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1734 Arrowhead Drive, Beloit, Wisconsin 53511, on behalf of the Union.

ARBITRATION AWARD

The County of Rock (Department of Public Works), hereinafter referred to as the County or Employer, and Rock County Highway Employees Union Local 1077, AFSCME, AFL-CIO, hereinafter referred to as the Union, met on several occasions 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, 2003. Said agreement covered all regular full-time and regular part-time employees of the Department of Public Works and maintenance employees of the General Services, but excluding all executive, managerial, supervisory, confidential, clerical and craft employees. Failing to reach such an accord, the County, on October 19, 2005, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration, pursuant to Section 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 by April 21, 2006, 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 June 5, 2006, 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 a hearing in the matter on October 18, 2006, at Janesville, 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 February 7, 2006. The record was closed as of the latter date.

THE FINAL OFFERS OF THE PARTIES:

The Union and City Final offers are attached and identified as Attachment "A" and "B," respectively. The list of tentative agreements is attached to each final offer.

BACKGROUND:

The instant DPW unit, with approximately 75 employees, is one of eight bargaining units in the County. The others are Local 2489 AFSCME, Local 1258 AFSCME, 1199 Public Health

Nurses, Attorneys, Sheriff Department Deputies, Local 579 Juvenile Correction and two units in Mental Health: AMHS-HCC and AMHS-HSD.

Except for the instant unit, all of the internal units have settled. They all settled for a 2%, 1% split in 2004 and 2005 except Locals 2489 and 1258 settled for a 2%, 1% split in 2004 and 2% in 2005, and Local 1199 (Nurses) settled for a 2%, 1% split in 2004 and a 2.5%, 2% split in 2005.

At the hearing, the County and the Union presented exhibits in support of their positions and reviewed and explained the exhibits to the Arbitrator. Additionally, each side offered testimony in further support of its position. The County's witness, Benjamin Coopman, Director of Public Works, testified to various positions and how they compared to the external comparables. The Union's witness Martha Kraetsch, a Research Analyst with AFSCME Council 40, offered testimony, likewise, comparing comparable positions of the external comparables. Tom Larsen offered testimony regarding the mechanic classification and comparison with the cities of Janesville and Beloit.

POSITIONS OF THE PARTIES:

The parties filed comprehensive, well-reasoned briefs citing previous interest arbitration awards in support of its positions. What follows is not intended to represent a thorough review of the parties' positions, but rather, a summary of their main arguments.

Employer's Position

The Employer while recognizing the importance of the "greatest weight" and "greater weight" statutory factors, acknowledges that the difference in the parties' final offers of \$53,244,

although not de minimus, will not be decided on those factors but, rather, with the remaining factors.

With respect to the other statutory factors, the Employer argues that when it comes to wages, there is considerable arbitral authority for the proposition that where a pattern exists among internal comparables, significant weight should be given to the internal pattern.

It is argued that County Exhibit 9 reveals a consistent internal pattern of settlement for 2004-2005. Of the remaining nine Unions, six (as well as the County's unrepresented employees) settled for the wage and benefit package put forth to Local 1077 in the County's final offer. Of the remaining three Unions, one (Local 1199 representing the Public Health nurses) received a more lucrative settlement. That was done to address hiring/retention issues largely related to the shortage of RN's. The other two AFSCME locals received a lesser wage increase than offered (and accepted) by all other Unions because they were unwilling to accept all the health insurance concessions made by the remaining bargaining units. In its totality Union Exhibit 9 presents an entirely consistent internal pattern of settlement. Rock County has had a pattern of consistent internal wage settlements for a number of years.

Also, the language modifications proposed by the County are consistent with internal comparables. The controversy revolves around whether employees are eligible for overtime compensation based on "hours worked" or "hours paid."

The County's proposal would make the "hours worked" language consistent with all other applicable Unions and, significantly, consistent with the language already found at Section 14.011 of this collective bargaining agreement (p. 14 of County Exhibit 1) which is applicable to those members of the bargaining unit working within the General Services Department. The Union's proposal, on the other hand, would insert "hours paid" language

which would deviate from the language of all applicable internal comparables and, significantly, alter the status quo language of their contract in Section 14.011.

Based on a stipulation at the hearing, this proposed addition to Section 14.010 would not have a financial impact on employees of Local 1077. The County admitted that even though all other applicable collective bargaining agreements contained the “hours worked” trigger for overtime calculation, in fact the members of those Unions were paid overtime based on “hours paid” in excess of eight hours per day or forty hours per week. The County indicated it still was interested in proceeding with the language modification to achieve County-wide consistency, but agreed that no changes would be made in the method used by payroll to trigger overtime compensation. The ability to implement the language would necessarily be deferred to negotiations for successor agreements.

The language modification contained in the County’s final offer, therefore, creates consistency with the internal comparables, as well as within Local 1077 itself. Unlike the Union’s offer, it requires no modification to the status quo language found in Section 14.011. It is achieved at no cost to either party.

It is also the County’s position that its final offer is consistent with wage settlements among the external comparables.

The Employer claims what the record reveals is that the increase in wages proposed by the County for Local 1077 for 2004-2005 is, at worst, right in line with wage increases granted the external comparables. The County submits, however, what the record reveals, in actuality, is that the relative ranking of Local 1077 to the external comparable under the County’s offer improves over that achieved by the Union in their voluntary settlement for the 2002-2003

collective bargaining agreement. The factor that produces that conclusion is the “Effective Wage Rate.”

In almost all of the external comparables employees must pay a share of the premium for health insurance coverage. The “Effective Wage Rate” is defined to be the hourly rate (at the top of the range) less the portion of the health insurance premium (family plan) paid by the employee (converted to an amount per hour). The County submits this is clearly the appropriate basis for making comparisons to the externals. Premium share contribution is almost universally achieved with a quid pro quo consideration of an extra bump in wages. To compare only pure wages when Rock County requires no premium share would create an unfair bias. The easily-measurable financial impact of that premium share must be addressed to create a fair comparison.

The County compares the top of the range wages of the heavy equipment operator, patrol worker and mechanic classifications. Based on purely wages, the percentage increase in wages under the County’s final offer for the 2004-2005 period is essentially right at the average of its external comparables. The Union’s final offer exceeds those averages.¹

In comparing the EWR for Rock County and the externals, Rock County exceeds the average and improves its relative ranking.² The Union’s offer far exceeds the average. Under the Employer’s offer, the ranking for the heavy equipment operator remains fifth out of ten; the patrol worker ranking improved from seventh to fifth to third out of eight. Acceptance of the

¹ Employer Brief Exhibits 101, 102 and 103.

² Employer Brief Exhibits 104, 105 and 106.

County's offer, consistent with internal comparables, would positively impact on the Union's standing with its external comparables.

With respect to other statutory criterion, the Employer argues that the County's offer is more favorable when compared to the cost of living criteria; the interests and welfare of the public are better served by the County's final offer; and the County's offer is supported by the other factors criterion. With respect to the latter, the County argues that the fact that the parties reached a tentative agreement, with the same wage increase, which the membership voted down, is evidence that the County's final offer is reasonable and should be given some weight.

Union's Position

Wages

The Union, like the Employer, does not believe that the "greatest" weight and "greater" weight criterion are determinative in this case in that, among other things, the County is taxing and operating well below its maximum allowable and the record shows both an improving labor market and growth in property value for Rock County.

There is no dispute over the appropriate pool of external comparables. In making external comparisons, it is the Union's position that the patrolman, heavy equipment operator and mechanic are hallmark benchmark positions and provide the most compelling comparisons. The Union, citing numerous cases, argues that arbitrators have been reluctant to deviate from the three benchmark analysis, one that has lent predictability over the years.

The Union argues that wage rates are the determinative issue in this case. In making wage comparisons with the externals, it is the Union's position that wage rates including longevity must be used. Such inclusion, it is argued, has strong arbitral support. It best measures equal pay for equal work.

As illustrated by the chart on page 13 of the Union's brief, Rock County wages fall well below the average of the external comparables at the absolute maximum wage rate for the three positions of patrolman, heavy equipment operator and mechanic. Five of the seven comparables have a higher wage rate than Rock County for the patrolman position, four of the nine comparables have a higher wage rate than Rock County for the heavy equipment operator, and seven of the nine comparables have a higher wage rate than Rock County for the mechanic. Thus, besides being below average in wages, the majority of workers in comparable units are being paid at a higher wage rate than Rock County employees.

If one considers wage rates not at the absolute maximum, the difference between Rock County and the comparables amplify. As shown in Union Exhibits 8, 9 and 10, the starting pay of patrolman, heavy equipment operator and mechanic positions in Rock County are \$1.19, \$0.70 and \$1.05 below the comparable average, respectively, in 2003. At the maximum wage rate not including longevity, Rock County employees are even more so lagging behind. At the wage rate the patrolman, heavy equipment operator and mechanic positions are \$1.80, \$1.38 and \$1.74 below the average of the comparables.

The Union has clearly demonstrated that the external comparables enjoy much higher wages than Rock County employees. In its final offer, the Union is seeking to bring Rock County employee wages more in line with the comparables.

The parties on page 15 of the Union's brief indicate that patrolman, heavy equipment operator and mechanic wages for Rock County employees improve under the Union's final offer, and as such, these employees move closer to the comparable average in both 2004 and 2005. That being said, the Union's offer leaves the employee wages below the average, indicating that the wage increase proposed by the Union is both reasonable and conservative.

It is interesting to note that Rock County employees fall further behind the comparables under the Employer's final offer. While the Employer may argue that this deterioration is insignificant, this would be disingenuous given that in the 1987 interest award involving this unit, Arbitrator Vernon determined the Union offer was more appropriate because it brought the wage rate levels to a more acceptable level. In the instant matter as well as in 1987, the Union's final offer is more preferable as it brings Rock County employees' wages in harmony with the externals, whereas the Employer's final offer allows the wages of Rock County highway employees to slip farther behind the externals.

Lastly, with respect to wage comparisons, the Union compares the wage rate of employees with the same years of seniority.

The charts on page 17 of the Union's brief seeks to compare the wage rates of the "average" Rock County worker in the patrolman, heavy equipment operator and mechanic classifications to the average wage of their peers in the external comparables as impacted by the parties' final offers. To determine the wage rate of the "average" worker, the seniority list of the unit was used to calculate the average length of service for workers in each job classification. Then using the wage schedules of the external comparables, the wage rate of a worker at an equivalent length of services as the "average worker" was found. In 2005, the "average" worker in each classification for Rock County has a wage rate well below the external comparables.

Under the Employer's final offer, Rock County workers will earn on average from \$1.00 to almost \$2.00 less per hour than their peers with similar seniority. Under the Union's final offer, Rock County employees receive a reasonable and well deserved wage adjustment which brings their wages close in line with the externals.

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The Union argues that a clear case of “catch up” is present in this case. From the above, it is clear that the wages of Rock County fall well below the average rates of the external comparables. The most telling are the career earnings comparisons (Union Exhibit 10).

After 26 years of employment, a significant disparity between Rock County and comparable employees exist in terms of aggregate pay received. Over their careers, under the Employer final offer Rock County patrolman will earn \$74,902 less than the average and \$44,918 less than the median of the comparables. Over their careers, under the Employer final offer Rock County heavy equipment operators will earn \$59,022 less than the average and \$19,178 less than the median of the comparables. Over their careers, under the Employer’s final offer Rock County mechanics will earn \$80,254 less than the average and \$46,571 less than the median of the comparables.

The Union argues that while the Union’s final offer on the wage increases may exceed the internal and external increases, arbitrators have held that in catch-up situations, wage level data proves more relevant than percent increase statistics.

Overtime Language

The Union notes that the Employer at the hearing for the first time advised the Union that it was disavowing its letter terminating the past practice regarding the payment of overtime. No change will be made in this contract.

It is undisputed that the current practice of Rock County is to calculate and pay overtime based on the hours paid of the employee, meaning that paid time off such as vacation, comp time and sick leave are considered when calculating overtime pay for employees. The Union is simply seeking a change so that the contract language and the practice of the Employer are consistent. Such a change is reasonable, and it is the Union's position that its proposal represents the practice which exists in Rock County.

However, the Department of Public Works (DPW) and General Services-Maintenance have different overtime language in the contract, despite being in the same unit. For DPW employees, Section 14.010 is silent with regards to the calculation of overtime. In this case the Union's proposal is for language which codifies the longstanding practice of the County.

General Services-Maintenance employees have language in Section 14.011 which states that overtime shall be received in excess of hours worked. In this case, the Union argues that this language is ambiguous and as such is seeking a change so that the practice and the contract language coincide, thus avoiding the need for unnecessary litigation.

The Union contends that there is overwhelming support for the Union's proposal from the external comparables. As shown in Union Exhibit 12, of the relevant external units, all but one have the practice of using time paid for the purposes of calculating overtime. Moreover, a significant number of these units have this practice delineated in their contract.

Finally, it is the Union's position that, contrary to the Employer's urging, the Arbitrator should give no weight to a tentative agreement that was reached by the negotiation committee

and later rejected by the Union's membership. The Union views an arbitrator giving weight to a rejected tentative agreement as fundamentally undermining the collective bargaining process because the parties' ability to achieve mediated settlements would certainly become more difficult. Arbitrators must access the final offers of the parties and not what transpired in negotiations.

County's Reply Brief

The County used the Union's benchmark positions in formulating its arguments and also includes longevity in the pay rates of the external comparables. Further, the County bases its arguments on data supplied by the Union in charts contained at pages 13-15 of the Union's original brief (Employer's Reply Brief Exhibits 204, 205 and 206).

It is the Union's position that the disparity in wage rates between Rock County and the external comparables is driven by Kenosha County. The County adjusts for Kenosha County being 16.3% to 19.2% above the average by including calculations relative to the 95% confidence level for the average and standard deviation. It is argued the Kenosha County's wages are abnormal.

Without Kenosha County the maximum wage rates reveal the Rock County employees to be average (median) for the positions of patrolman and heavy equipment operator and below average for the position of mechanic.

The County's position is best summarized in its brief (pp. 11 and 12) as follows:

. . . The relative rankings remain consistent from the end of the previous contract (which the Union voluntarily entered into) to the end of the proposed contract. Admittedly, the County has some external equity issues when comparing the strict dollar levels of the "unrefined" maximum wage rates. Except for the position of Mechanic, those equity issues are largely overcome when Kenosha County is

eliminated from the calculations. Statistical measures of confidence levels in the fairness of the average demand that action.

When consideration is given, as it must be, to employees sharing in costs of health insurance premiums in a majority of the external comparables, Rock County's percentage increase in the "Effective Wage Rate" from 12/31/03 to 12/31/05 significantly exceeds the average. Rock County's relative ranking also improves. In looking at the strict dollar levels of the EWR, except for Mechanic, Rock County compares very well. Any deviation that exists does not warrant a \$.20 per hour sweetener mid-year in both years of the proposed contract. When Kenosha County is eliminated, again as good statistical methodology would mandate, Rock County, except for Mechanic, exceeds the resultant average of the other comparables.

There would seem to be three comparisons that can be made relative to wages: percentage increase, relative ranking, and strict dollar levels. The County's offer is clearly more reasonable when using two of those measures. The County contends that its final offer is also most reasonable for the third measure when a fair comparison is made."

The above establishes that catch up is not warranted.

Further, when making the appropriate comparison including the impact of the health premium co-pays of a majority of the comparables, the wages of the vast majority of this unit are not out of line.

To justify its demand for catch-up pay, the Union calculates the aggregate earnings over 26 years. Once again, it is submitted, the Union totally ignores the direct out-of-pocket expense for health insurance co-pays in a majority of the comparables. While the County is uncertain of the exact methodology employed by the Union in making these calculations, suffice it to say we feel safe in stating their alleged point is overcome by the inclusion of the consideration of 54,288 hours (26 years x 2088 hours/year) multiplied by the premium share figures set forth in the County's exhibits.

With respect to the overtime language, the County takes issue with the Union and claims it did withdraw its December 5, 2003 letter regarding past practice.

The County argues that the 2002-2003 collective bargaining agreement between the parties already includes language the County is attempting to replicate to make it consistent. Not only would the language then be consistent within this Local but consistent with all applicable Unions county-wide. The Union, on the other hand, attempts to change the quid pro quo without justification or consideration.

Also, the County's language offer is more reasonable based on internal comparables. While this is not the main issue in this case, in a situation in which the Arbitrator feels it is a close call as to whether catch up is warranted or whether the Union may have over reached, this issue would tip the balance in the County's favor.

Based on all of the above, the County's final offer should be selected as the most reasonable final offer.

Union's Reply Brief

With respect to internal comparables, the Union argues that such a comparison is proper when the wage rates in issue are not lagging behind the external comparables. Where they are, to limit the increases to those of the internal settlement pattern, leads to further wage erosion. This is the case here.

The following are the Union's remaining arguments as outlined in its reply brief:

The County in its brief at pages 14-15 introduced an "Effective Wage Rate" analysis. Effective Wage Rate is an unusual argument, one not typically forwarded in interest arbitration cases. County makes many assumptions in its Effective Wage Rate analysis. For example, the County assumes every employee takes health insurance. Moreover, the County assumes every employee takes family health insurance. However, the County failed to include any evidence into the record to support these claims or show that its analysis is accurate.

The County chose to isolate on the cost of the health plan. Not taken into consideration were costs of other benefits such as dental, vision or disability pay.

The County's analysis also is flawed as it does not take into account the quality of the health insurance plans received. In one case a health plan may have a low premium cost to the employee but has high deductibles, coinsurance, office co-pays, prescription drug co-pays and other out of pocket expenses the employee must bear. In another case a health plan may have a high premium cost but have minimal additional out of pocket expenses for the employee. The Effective Wage Rate analysis fails to account for the aggregate health insurance costs of the employee, making it imprecise and potentially misleading.

At pages 12-13 the County attempts to justify its' (sic) proposed change to the overtime language. The County initiated this issue by serving on the Union the letter terminating the overtime past practice at the commencement of negotiations. This necessitated the Union proposing language to maintain the status quo regarding the payment of overtime. It wasn't until the day (sic) the hearing in this matter that the County announced that it was in effect withdrawing the past practice termination letter.

The Employer proposal does represent a change (sic) the contract language. Union proposal is preferable because it aligns the contract language to the current (and past) practice of the County. Under either party's offer, the current practice of the County will continue. Under either party's offer, if the county chooses to change its overtime calculation practice in the future, it will have to bargain with the Union.

Based on the above, the Union urges the adoption of its final offer as the more reasonable final offer.

DISCUSSION:

Section 111.70(4)(cm)7 of the Wisconsin Statutes directs the Arbitrator to give weight to the following criteria:

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 expenditure 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.
- e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes 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 employed, (sic) including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization 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 Arbitrator in applying the above criteria must determine which offer is more reasonable based on the evidence presented.

There are only two issues in dispute – wages and overtime language.³ The parties agree that the wage issue is the major and determinative issue. Therefore, unless the reasonableness of the parties’ final offers on wages is equal or very close, the overtime issue will not make a difference in this case and, therefore, need not be discussed.

Further, the main determinative criteria in this case are the internal and external comparables. In this regard, while both parties believe the “greatest weight” and “greater weight” criteria favor their position, they agree said factors are not determinative. Likewise, the Arbitrator has considered, but does not find the other criteria to be determinative. Specifically, with respect to the “Other Factors” criterion, the Arbitrator attaches little significance to a tentative agreement reached by the parties over a 2004-2005 collective bargaining agreement that was rejected by the Union membership. On this point, the undersigned agrees with Arbitrator Jay Grenig’s rationale in a prior case involving the instant parties in which the County took back an offer to the County Staff Committee which was rejected:

. . . treating the County’s action as some sort of admission as to the reasonableness of the five percent offer would have negative consequences in future negotiations. Neither a Union nor an Employer would be willing to enter into tentative agreements or present proposals for ratification if the mere presentation of the proposal could be considered as an admission against interest.⁴

With respect to the wage issue, the parties agree on a general increase of a 2%, 1% split in each of the two calendar years (2004 and 2005). The difference is that the Union in its final offer has included a market rate adjustment of 20¢ per hour for all employees effective July 1 of each year.

³ While the parties differ over the contract language pertaining to the method of paying overtime (hours worked versus hours paid), the Employer’s position is that its change is not effective during the term of this agreement and must be negotiated.

⁴ Rock County (Department of Public Works) and Local 1077, AFSCME, Decision No. 22551-A, 10/85.

There is no real dispute over the internal comparables. The settlements with the remaining eight Rock County units were for the same 2%, 1% split in 2004 and 2005 except AFSCME Local 2489 and 1258 settled for a 2%, 1% split in 2004 and a 2% increase in 2005 and the Practical Health Nurses unit settled for a 2.5%, 2% split the second year and the same 2%, 1% split in 2004 (Union Exhibit 13).

The record clearly favors the County's final offer based on internal comparables. The only settlement that exceeds the 2%, 1% split is the Practice Health Nurses settlement, but that was based on market considerations. Moreover, the parties have a pattern of consistent internal wage settlements (County Exhibit 10). Regarding the importance of internal comparables, the undersigned, in previous awards, has held that significant weight should be given to the internal pattern and that if there is no compelling reason to deviate from the internal pattern of settlements, then the internal pattern prevails.⁵

Thus, for the Union to prevail, it must be on the external comparables and the catch-up factor. In making comparisons among the comparables, the parties agree that (1) the appropriate external comparables consist of Brown, Kenosha,⁶ Marathon, Outagamie, Racine, Sheboygan and Winnebago counties and the cities of Beloit and Janesville; (2) for comparison purposes, the benchmark positions are Heavy Equipment Operator,⁷ Patrolman and Mechanic; and (3) longevity should be included in the wage rates to be compared.

⁵ Sawyer County, Decision No. 31519-A, 9/20/06 and Langlade County (Sheriff's Department), Decision No. 29916-A, 1/01.

⁶ While the County agrees that Kenosha County is in the comparable pool, it points out that its rates are significantly higher and skews the averages.

⁷ Although the County questions the merit of using the position of Heavy Equipment Operator as opposed to Truck Driver, the County, nevertheless, uses the Union's benchmark

To begin with there is no real dispute over the reasonableness of the general across-the-board increase, as compared to the external comparables, in that the parties through their final offers agree to a 2%, 1% split in both 2004 and 2005. The evidence presented establishes that a 2%, 1% increase is in line with the external settlements.

The issue the parties are apart on is whether the Union's market adjustment of 20¢ each year to all employees is warranted. The Employer thinks not.

The market adjustment, or catch-up, is based on the external comparable criterion. Traditionally, in determining the necessity of "catch-up," arbitrators compare wage rates and relative ranking among the comparables. The percentage of wage increase is also considered in some cases, but here the parties agree that the percentage of the general increase is in line with the external settlements. Thus, this does not favor either final offer. Of course, the Union's offer including the catch-up will result in a higher total percentage, but that is, of course, the result of catching up with the comparables. Otherwise, there will be no gain on the field in terms of ranking or the average wage rate. So the fact that the Union's percentage wage increase offer exceeds the average of the comparables is not dispositive.⁸ The issue is whether (1) there is a compelling need for catch-up and (2) does the Union's offer reasonably address the issue.

positions in formulating its arguments (Employer Reply Brief, p. 5). It should be noted that the Truck Drivers and Patrolman are in the same pay range as is the case with a majority of the comparables.

⁸ See Washington County, Decision No. 21515-A, 11/84, Vernon, wherein the Arbitrator held: "In a catch-up situation, increases are bound to exceed the cost of living and the amounts received by other employees, internally and externally. Thus, little weight can be given to these arguments. Further, the internal pattern which normally deserves great weight, is much less significant in a case where there is substantial disparity between the bargaining unit and the external comparables. The internal pattern of increases must give way in such a case." See also, Brown County, Decision No. 26206-A, 4/90, Malamud.

The Arbitrator begins his analysis with a comparison of Rock County with its comparables at the end of its predecessor agreement in 2003.

The maximum wage rates, including longevity, of the comparables are agreed upon as reflected in the Union's charts contained at pages 13-15 of the Union's original brief.

2003 Maximum Wage Rate Comparison (including maximum longevity)

Patrolman

Kenosha County	21.45
Racine County	19.70
Sheboygan County	17.96
Brown County	17.90
Winnebago County	17.81
Rock County	17.73
Outagamie County	17.17
Marathon County	16.87

Heavy Equipment Operator

Kenosha County	21.72
Racine County	19.83
Janesville	19.41
Beloit	18.29
Rock County	18.26
Winnebago County	18.18
Brown County	18.03
Sheboygan County	17.96
Outagamie County	17.91
Marathon County	17.19

Mechanic

Kenosha County	22.10
Racine County	20.29
Janesville	19.20
Beloit	18.70
Brown County	18.65
Outagamie County	18.63
Winnebago County	18.40
Rock County	18.26
Marathon County	17.95
Sheboygan County	17.88

2004

Patrolman

<u>County's Final Offer</u>		<u>Union's Final Offer</u>	
Kenosha County	22.31	Kenosha County	22.31
Racine County	20.39	Racine County	20.39
Sheboygan County	18.49	Sheboygan County	18.49
Winnebago County	18.40	Rock County	18.46
Rock County	18.26	Winnebago County	18.40
Brown County	18.24	Brown County	18.24
Outagamie County	17.69	Outagamie County	17.69
Marathon County	17.38	Marathon County	17.39

2004

Heavy Equipment Operator

<u>County's Offer</u>		<u>Union's Offer</u>	
Kenosha County	22.59	Kenosha County	22.59
Racine County	20.52	Racine County	20.52
Janesville	20.41	Janesville	20.41
Beloit	18.84	Rock County	19.02
Rock County	18.82	Beloit	18.84
Winnebago County	18.78	Winnebago County	18.78
Sheboygan County	18.49	Sheboygan County	18.49
Outagamie County	18.45	Outagamie County	18.45
Brown County	18.37	Brown County	18.37
Marathon County	17.70	Marathon County	17.70

Mechanic

<u>County's Offer</u>		<u>Union's Offer</u>	
Kenosha County	22.98	Kenosha County	22.98
Racine County	21.00	Racine County	21.00
Janesville	20.42	Janesville	20.42
Beloit	19.26	Beloit	19.26
Outagamie County	19.19	Outagamie County	19.19
Winnebago County	19.01	Rock County	19.02
Brown County	19.00	Winnebago County	19.01
Rock County	18.82	Brown County	19.00
Marathon County	18.46	Marathon County	18.46
Sheboygan County	18.41	Sheboygan County	18.41

2005

Patrolman

<u>County's Offer</u>		<u>Union's Offer</u>	
Kenosha County	23.09	Kenosha County	23.09
Racine County	20.80	Racine County	20.80
Winnebago County	19.10	Rock County	19.22
Sheboygan County	19.01	Winnebago County	19.10
Rock County	18.82	Sheboygan County	19.01
Brown County	18.75	Brown County	18.75
Outagamie County	18.36	Outagamie County	18.36
Marathon County	17.82	Marathon County	17.82

Heavy Equipment Operator

<u>County's Offer</u>		<u>Union's Offer</u>	
Kenosha County	23.38	Kenosha County	23.38
Racine County	20.93	Racine County	20.93
Janesville	21.03	Janesville	21.03
Beloit	19.50	Rock County	19.79
Winnebago County	19.49	Beloit	19.50
Rock County	19.39	Winnebago County	19.49
Outagamie County	19.15	Outagamie County	19.15
Sheboygan County	19.01	Sheboygan County	19.01
Brown County	18.88	Brown County	18.88
Marathon County	18.14	Marathon County	18.14

Mechanics

<u>County's Offer</u>		<u>Union's Offer</u>	
Kenosha County	23.78	Kenosha County	23.78
Racine County	21.42	Racine County	21.42
Janesville	21.04	Janesville	21.04
Beloit	19.93	Beloit	19.93
Outagamie County	19.77	Rock County	19.79
Winnebago County	19.73	Outagamie County	19.77
Brown County	19.52	Winnebago County	19.73
Rock County	19.39	Brown County	19.52
Sheboygan County	18.92	Sheboygan County	18.92
Marathon County	18.90	Marathon County	18.90

The impact on wages and ranking of the two offers can be summarized as follows:

	Patrolman	Heavy Equipment Operator	Mechanic
2003 Wage Rate Difference Between Rock County and Comparable Average and Relative Ranking	-.68 6/8	-.46 5/10	-.83 8/10
2005 Wage Rate Difference Between County Offer and Comparable Average and Relative Ranking	-.74 5/8	-.53 6/10	-.94 8/10
2005 Wage Rate Difference Between Union Offer and Comparable Average and Relative Ranking	-.34 3/8	-.13 4/10	-.54 5/10

The comparison shows that under the County's offer wages in 2005 for the Patrolman, Heavy Equipment Operator and Mechanic fall behind the 2003 comparable average by 6¢, 7¢ and 11¢, respectively. In terms of ranking, the Patrolman advances one ranking, Heavy Equipment Operator falls one ranking and the Mechanic remains the same.

Under the Union's offer, wage rates for Patrolman, Heavy Equipment Operator and Mechanic improve from the 2003 comparable average 34¢, 33¢ and 29¢, respectively. Further, all positions advance in ranking. The Patrolman from 6th to 3rd, Heavy Equipment Operator from 5th to 4th and the Mechanic from 8th to 5th.

Thus, under the County's offer the wage rates of the benchmark positions fall further behind the average of the comparables. This is true, as well, with the Patrolman position even though its ranking improves.

Under the Union's offer the positions gain ground in both the wage rates and rankings.

What must be determined is whether catch-up is warranted under the circumstances and if the Union's offer reasonably addresses the problem.

One can argue that those performing similar work should be compensated at substantially the same wage rate. That may be true ideally, but, in the practical world, factors such as the

economic conditions in the jurisdiction of the Employer, the financial limitations placed upon the Employer, and the labor market lead to differences in wage rates paid for similar work. These local factors are recognized by the parties in their negotiations and, thus, a ranking among comparable employers develops, mainly through voluntary settlements. Everyone wants to be number one or improve their ranking, but that in itself is not a sufficient reason for a “catch-up” request.

It is generally accepted by Arbitrators, including the undersigned, as discussed earlier, that once a pattern of internal settlements has been established, the criterion of internal comparables outweighs the criterion of external comparisons, unless a compelling need for catch-up can be established.

In evaluating the need for catch-up, a historical perspective is important to determine where the parties were, relative to the external comparables, as compared to now. This is not to rule out cases where the Employer’s offer is so unjustifiably low as to create a need for catch-up in the instant contract term in dispute in order to prevent a substantial backslide. This, however, is not the case here.

Here, the Employer’s offer results in the benchmark positions of Patrolman, Heavy Equipment Operator and Mechanic falling behind the average wage rate of comparables an additional 6¢, 7¢ and 11¢, respectively. This, in itself, however, is not substantial enough to create a compelling need for catch-up. This is especially true when the impact of health insurance premium sharing is factored in and a similar comparison is made with the external comparables. In this regard, it is not realistic for the Arbitrator to ignore the relationship between wage rates and health insurance premium contributions required of employees. After all, the parties themselves in collective bargaining recognize that the two are intertwined. In fact

two of AFSCME's Locals (Local 1258 and Local 2489) settled for less of an increase in exchange for less health insurance concessions.

It is not easy to make a definitive comparison of the impact of premium sharing, but it is clear that this unit of employees makes no contribution while the comparables vary from no contribution (Kenosha and Beloit) to a high of 69¢ per hour (family) in Outagamie County. The average of those that contribute is approximately 53¢ for family coverage.⁹ The Arbitrator agrees, as argued by the Union, that such consideration must include concessions made by this unit in co-pays, deductions and benefits. However, it is noted that among the comparables every comparable has increased contributions from 2003 to 2005 ranging from 11¢ per hour to 44¢ per hour except for Kenosha County and City of Beloit who remained at zero.

All in all, as stated earlier, an exact and definitive comparison of the health insurance benefit is hard to make. But, given what is known as discussed above, the Arbitrator cannot conclude that the Union has met its burden of establishing a compelling need for catch-up even though there is some slippage with the Employer's offer.

Further, there is no record evidence of a historical erosion of wage rates to support catch-up. The Arbitrator was provided with 2003 figures as a benchmark, but there is no evidence of whether the Union lost or gained ground in that settlement. The same is true of the prior years as well. The parties reached voluntary settlements for a number of years. It could be there has been a significant erosion of the benchmark position wage rates over the years that may support a catch-up, but the Arbitrator is unable to make that determination from this record. The last time the parties submitted to arbitration was the 1987 contract.¹⁰ The issue was solely the appropriate

⁹ County Exhibits 13A – 13I.

¹⁰ Union Exhibit 5.

wage increase. The Union relied on catch-up to support its increase. The Arbitrator concluded that the Union had satisfied its burden “albeit marginally.” The Arbitrator used the Truck Driver, Patrolman and Mechanic position as benchmarks. The Union’s offer left Rock County 70¢, 81¢ and \$1.00 behind the average wage rate of the comparables and ranked 7th, 8th and 9th among the comparables. That was 20 years ago. The 2003 comparisons represent an improvement, but it may be that it is less than what was gained between 1987 and 2003. The wage history between 1987 and 2003 could be critical in establishing catch-up to the comparables.

The Union also makes a comparison out into the future comparing career earnings over a period of 26 years. However, to make such a comparison over such a long period of time meaningful, the amount of premium contributions for health insurance must be factored in as well. Such a comparison is lacking.

In the final analysis, the Union has not shown a compelling need based on catch-up to deviate from the internal comparables. Since the internal comparables favor the County’s offer, the Arbitrator selects the County’s offer as the most reasonable.

AWARD

The Employer’s final offer is to be incorporated in the 2004-2005 collective bargaining agreement between the parties, along with those provisions agreed upon during negotiations, as well as those provisions in their expired agreement that they agreed were to remain unchanged.

Dated at Madison, Wisconsin, this 29th day of March 2007.

Herman Torosian, Arbitrator
