EDWARD B. KRINSKY, ARBITRATOR

In the matter of the Petition of	
Local 1625, WCCME, AFSCME, AFL-CI0	Case 78
	No. 66868 INT/ARB-10924
To Initiate Arbitration Between Said Petitioner and	Decision No. 32180-A
Buffalo County (Highway)	

Appearances: Weld, Riley, Prenn & Ricci, S.C. by Ms. Mindy K. Dale, for the County

Wisconsin Council 40, AFSCME, AFL-CIO by Mr. Daniel R. Pfeifer, for the Union

By its Order of September 13, 2007 the Wisconsin Employment Relations Commission appointed Edward B. Krinsky as the arbitrator "to issue a final and binding award, pursuant to Sec. 111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act," to resolve the impasse between the above-captioned parties "...by selecting either the total final offer of [the Union] or the total final offer of [the County]."

A hearing was held at Alma, Wisconsin on December 10, 2007. No transcript of the proceeding was made. The parties had the opportunity to present evidence, testimony and arguments. The arbitrator received the parties' reply briefs on February 19, 2008, and thereafter received two interest arbitration decisions issued in disputes involving two other County bargaining units, matters which were pending at the time of the arbitration hearing in this matter.

In their negotiations for a 2007-2008 Agreement, the parties did not agree on two items: wage rates, and language pertaining to loss of a Commercial Drivers License [CDL]

The County final offer on wages is: "Effective 1/1/07, increase wages 2.0% across-the-board. Effective 1/1/08, increase wages 2.0% across-the-board." The County's final offer proposes no language pertaining to CDL.

The Union's final offer on wages is: "Effective 1/1/07 - An increase of 1.5% ATB. Effective 9/1/07 - An increase of 1.5% ATB. Effective 1/1/08 - An increase of 2% ATB. Effective 7/1/08 - An increase of .25/hour ATB." The Union's final offer includes the following language pertaining to CDL:

4. Article XVIII - General Provisions - Add Section 5:

> CDL [Commercial Driver's License] - Employees shall be responsible for maintaining the CDL licenses required for their positions. An employee who fails to maintain the necessary license or who subsequently has his or her license suspended or revoked may be temporarily assigned to work in the department for which he/she is qualified at the sole discretion of the department head. The employee's pay during the period of reassignment shall be the regular pay for the work to which he/she has been assigned. If there is no work available for which the employee is qualified, the employee shall be laid off. No more than two (2) employees in [sic] may be reassigned or laid off at any one time because they have lost their license. If more employees have lost their licenses, the most senior employee(s) shall be reassigned and/or laid off and the less senior employee(s) shall be terminated. If an employee on reassignment or layoff has not regained his or her license within fourteen (14) months, the employee shall be terminated.

The parties are in agreement that the appropriate counties to be used as external comparisons are: Clark, Dunn, Jackson, Monroe, Pepin, Pierce and Trempealeau.

CDL Issue

Effective in September, 2005 the US Department of Transportation promulgated rules whereby an employee who receives a traffic conviction while not at work may be prohibited from driving County vehicles which require the employee to hold a CDL. In order to protect employees in that eventuality, the Union has proposed language which would allow the County, at the discretion of the department head, to give such an employee temporary assignments not requiring a CDL for up to 14 months, (the 12-month period of loss of the CDL, plus a period of time for application for a new CDL). In the Union's view, its proposed language doesn't hamper the County at all.

The Union argues that the need for CDL language came about because of an unforeseen change in federal law which the Union characterizes as "a drastic change to the employment security of the Highway Department Employees."

In the County's view, the Union has not demonstrated a need for the language. In its view, the "...loss of an employee's CDL, resulting from the employee's own actions, does not demonstrate a need for the language."

The County disagrees with the Union's argument that its proposal is not a burden on the County. It argues that it would have to lay off an employee who lost a CDL and pay that employee Unemployment Compensation. The County would fill the employee's position with a temporary employee who has a CDL in order not to be short staffed and to avoid

having to pay overtime, and when the permanent employee regained the CDL and returned to work, the County would probably have to lay off the temporary employee and pay that employee Unemployment Compensation. Given the County's financial situation, it argues, "any additional expenditure resulting from an employee's loss of the CDL is unnecessary and fiscally burdensome to the County." The County notes further that under the existing language of the collective bargaining Agreement, an employee may request a leave of absence without pay for personal reasons, and the County has the discretion to grant it or not.

The County notes also that it has had to reduce its Highway Department work force significantly over the past several years and that most of its jobs require operation of a vehicle requiring the operator to have a CDL. Moreover, possession of a CDL is a condition of employment. "Requiring the County to provide available 'tasks' for a few hours a day or days a week, on an occasional basis, is simply not practical."
County Highway Commissioner Brevick testified that in the period since CDLs have been required, there has been one revocation of an employee's CDL, about six years ago. The revocation was for six months. In accordance with the federal rules then in effect, the employee was issued an occupational license. According to Brevick, the Highway Department now has no positions which could accommodate an employee who does not have a CDL. He acknowledged on cross-examination that there are some tasks which employees do for which they would not need a CDL such as manual labor, cutting brush, mowing and operating graders or end loaders.

The Union asserts that the impact of its proposal is unknown with respect to Unemployment Compensation, since "...the parties don't know if employees on lay-off status would even be eligible for UC because of the issue of availability for work. This issue would be determined by UC regulations."

In making his decision, the arbitrator must give weight to the statutory factors. Both parties argue that factor 7r(d) which takes into account conditions of employment in comparable units of government is relevant to the CDL issue.

The County points out that of the seven agreed upon comparables, Pierce County has no CDL language, and Monroe County is in arbitration proposing the same language which is contained in the Jackson County Agreement. Four of the other comparables offer some protection from discharge for loss of CDL, but three of them [including Jackson] have agreed to CDL language on a trial basis in a temporary side letter. "None of the four have agreed to language as stringent as that proposed by the Union." In two of the comparables [Pepin and Trempealeau] the employees are placed on unpaid leave of absence.

The County notes also that the Union's proposed language protects employees for 14 months, which is longer than any of the comparables. Clark's protection is for 6 months; Dunn, Pepin and Trempealeau are 12 months; Jackson is 13 months.

The County notes other differences. The language in Jackson and Trempealeau Counties applies only to non-work related loss of the CDL. The Union's proposed language covers loss of the CDL on or off the job. The language in Jackson, Pepin and Trempealeau Counties protects employees only for the first time that they lose a CDL. The Union's proposed language does not have that limit. Only Dunn County has permanent contract language which protects employees from losing their job upon loss of CDL for as long as a year.

The Union is correct that with one exception, or perhaps two depending on the outcome of the Monroe County arbitration, the comparables have taken steps to address the issue of employees who lose a CDL. That said, however, there is no established pattern with respect to the nature of those provisions. They vary considerably with respect to what is covered and for how long, what the status of the employee is during the period, and whether the contract language is temporary or permanent. In short, there is nothing in the comparables which persuades the arbitrator that there is compelling reason to select the Union's proposed language. The arbitrator is persuaded by the County's statement in its brief: "The external comparables clearly do not support permanent contract language which requires [arbitrator's note: the Union's proposed language is discretionary] the employer to hold a position open for as long as 14 months, sets no limits on the number of instances in which an employee is protected from losing his/her job due to loss of CDL, and requires the same protections regardless of whether loss of the CDL results from on-the-job or off-the-job activity."

In favoring the County's final offer with respect to the CDL issue, the arbitrator is not suggesting that the CDL issue is not significant, or that there is not a need for some kind of job protection for someone who temporarily loses a CDL. The arbitrator also is not persuaded that the financial burden on the County is so great as to warrant a preference for its final offer on that basis. The issue which the arbitrator views as most important is the absence of a pattern to the language in place in comparable counties, and the absence in the comparables of the same or very similar language which the Union is proposing in its final offer. Under those circumstances, it is the arbitrator's view that the Union's proposed language should not be imposed on the County at this time. Rather, the parties should continue to attempt to negotiate mutually acceptable language.

Wage Issue

"greatest weight"

The arbitrator is required to consider the "greatest weight" factor, (factor 7) which directs the arbitrator to : "consider and...give 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 County argues that State-imposed tax levy limitations restrict the County's available revenue and make it increasingly more difficult

to offer wage increases which exceed its allowable tax levy increases." That is why the County has not offered increases of more than 2% per year. Both the 2006 and 2007 budgets were restricted by the statute to a 2% increase.

The County presented a long list of the budget cuts which it had to make in 2006 and 2007 to stay within its budget. In 2006 these included reductions in planned road reconstruction, and reducing the annual hours of all employees except law enforcement by 64 hours. The list for 2007 included reducing Highway Department personnel by three through retirements and then not filling the positions; purchasing used vehicles for law enforcement; continued reduced road reconstruction, and not filling the County Administrator position after the incumbent resigned in March, 2007.

At the time final offers were submitted, the allowable levy increase for 2008 was not known, but was anticipated to be 2%. Since then, the Governor implemented a 3.86% increase for 2008. The County argues that this higher levy will be consumed by the unanticipated size of the increase in health insurance premiums which were budgeted for 2008 in the 7-8% range but which were in fact a 15% increase for single coverage and 19% for family coverage.

The Union acknowledges that the County has financial problems, but it argues that "its demographics are not significantly different than those of the comparable counties," and the Union notes that the County's tax levy rate went down from 2005 to 2006. The Union notes that the County has almost three million dollars in its undesignated general fund some of which, it argues, could be used to offer higher wage increases. The Union notes also that there is more than six hundred thousand dollars in the County's insurance fund.

The Union argues further that if the County is going to rely on the greatest weight factor because of levy limit caps, then it should have the burden to show that there is a relationship to the final offers of the parties. In fact, it argues, the County has submitted no evidence to show that the labor costs for the Highway Department have increased from 2006 to 2007 or from 2007 to 2008, and the County has presented no costing information for 2007. The Union argues that as of the date of the arbitration hearing in late December 2007, figures for 2007 should have been available.

The County acknowledges that it has a general fund balance of approximately $ 2.5 million, but in keeping with advice from its auditors, the County has not used this fund to pay larger wage increases. Acting County Administrator Twidt testified that the auditors told the County Finance Committee that the general fund should not be lowered "or the County will not be able to cover the minimum number of months required to meet operating expenses."

The County acknowledges that it has not costed the parties' final offers, citing the difficulty of costing wage adjustments made seasonally for Operators and State Section Patrolmen who are paid a different wage rate from May through October than they are

from November through April, and with the further complication of the Union's proposed wage rate changes on September 1, 2007 and July 1, 2008, as well as the typical January 1 wage increase."

The arbitrator is not persuaded that a costing of the parties' packages could not have been done, even if the results were imperfect and based on various stated assumptions. Even in the absence of such costing figures, however, it is clear that the County's ability to raise new funds has been hampered significantly by the levy limit caps and lack of growth, and that as a result the County has been struggling to stay within its budget and meeting its obligations, and that remains the case even after allowing for the unanticipated additional tax levy available to the County for 2008. These considerations outweigh the Union's arguments about possible use of the general fund to support additional wage increases. In the arbitrator's opinion, the greatest weight factor clearly favors the County's final offer.

internal comparables

One of the factors which the arbitrator must consider is factor 7r(e), comparisons "with the wages, hours and conditions of employment of the ...employees...with [those] of other employees generally in public employment in the same community..."

The County argues that the wage offer which it has made to the Highway bargaining unit is the same one which has been accepted voluntarily by two other of the County's bargaining units represented by AFSCME [Human Services Professionals; Human Services Paraprofessionals]. Two additional bargaining units, Law Enforcement and Courthouse unit were in arbitration at the time of the arbitration hearing in this case; see further discussion below.

In the County's view, there is no justification for giving greater percentage wage increases to the Highway unit than to the settled units. To do so, it argues, would make future voluntary settlements more difficult to achieve.

The Union argues that those two settlements do not establish an internal pattern because the two settled bargaining units represent a minority of the County's represented employees (23 of 91).
It should be noted that in 2005 all five of the bargaining units received the same percentage wage increase (3.0%), and the same was the case also in 2006 (2.75%) except that in the Law Enforcement settlement there was additional money put on the 30 month step of the wage schedule.

As mentioned above the Courthouse unit, also represented by AFSCME, was in interest arbitration at the time of the hearing in this matter. The parties' final offers in the Courthouse case were the same as the final offers in the present case. On February 15, 2008, Arbitrator Dichter made his decision in favor of the County's final offer. Thus, as of this writing, the County's offer of a 2% increase in wages in 2007 and 2% in 2008

is in place for three bargaining units representing 37 of the County's 91 represented employees**.**

Also as of the date of the arbitration hearing the Law Enforcement bargaining unit (18 employees), represented by WPPA was in arbitration. The County's final offer, as in the present case, was to increase wages 2% on January 1, 2007 and 2% on January 1, 2008. On February 28, 2008 Arbitrator Vernon made his decision in favor of the Association's final offer of 2% on January 1, 2007; 1% on July 1, 2007; 2% on January 1, 2008 and 1% on July 1, 2008. He did so because he was persuaded that the wage comparisons with the external comparables clearly justified that result, notwithstanding that it would result in a greater wage increase than had been given to the two settled units and perhaps the other units which were in arbitration [Vernon's decision does not indicate that he was aware of the Dichter decision in the Courthouse case].

Thus, as of the writing of this decision, three of the County's four other bargaining units will receive the wage increases offered by the County in this proceeding. It is the arbitrator's view that unless there are other factors which persuade him to select the Union's final offer, the County's final offer should be supported with respect to the internal comparables, as it attempts to maintain internal consistency in its treatment of internal bargaining units with respect to wage increases.

external comparables

One of the factors which the arbitrator must consider is factor 7r(d), comparisons "with the wages, hours and conditions of employment of the ...employees...with [those] performing similar services."

The Union notes that for 2007, with the exception of Trempealeau County, the wage increases in the comparables "are equal to or greater than the wage increases being offered by the County. The data for 2007 show that 5 of the 7 settled comparable units received wage increases of 2% in January, and then an additional lift (1% in 4 of the units; $.35 in the 5th) in July. There was a wage freeze in Trempeleau County.

For 2008 Clark County's wage increase is 2% in January and an additional 1% in July; Dunn County's increase is 3%. Pepin's increase is 3%.

The County characterizes its wage offer for 2007 as "conservative when compared to settlements in 2007." It acknowledges that if only base wages are considered, the County's wages are low. However, it argues, when longevity is factored in the County's wages rank 5th out of 8 among the comparables. The County rejects the Union's contention that "catch-up" pay is needed, since there has been no evidence presented demonstrating that the relative wage position of the County has deteriorated in relation to the comparables.
The County notes also that "Buffalo County...was the only County held to a maximum 2% tax levy increase each year due to low growth in new construction...[and] two of the comparable counties, Pierce and Dunn had much higher allowable tax levy increases."

Under these financial constraints, the County argues, ”maintaining external comparability is simply not feasible given the variation in allowable revenue increases.”

The County argues that there are “not enough settlements in 2008 to determine a distinct pattern,” since only Clark and Dunn had settled for 2008 at the time of the arbitration hearing. The County acknowledges that Pepin has ratified a 3% increase, but the County argues that the increase of that size was possible only because of sharply reduced health insurance costs under the State plan.

The Union presented wage data for 2006-2008 by job classification. Since the employees in this dispute receive longevity benefits, the arbitrator has focused on the top wage rates of the comparables, including longevity. (The arbitrator realizes that some counties have longevity and some do not, and that the longevity which is paid is a different amount or percentage in each jurisdiction, and that eligibility requirements for longevity payments are different in each jurisdiction. Still, the maximum rate with longevity is a reasonable rate to use, since it represents what long-service employees are able to earn).

Since the parties did not argue that particular classifications in the County should be given more/less favorable treatment in relation to the same classifications in comparable counties, for purposes of this discussion the arbitrator has limited his analysis to the Patrolman classification.

For “Patrolman” in 2006 the data show that the 7-County average, excluding Buffalo County, at the end of 2006 was $ 17.77. The top Patrolman wage in Buffalo County for that period was $ 17.59, which is $ .18 below the average ($.14 below the median, and ranked 5 of 8).

For 2007, all of the comparables have settled, except Monroe County which is in arbitration. In order to make “apples-to-apples” comparisons between 2006 and 2007 the arbitrator has computed the 2006 year end average for the six comparable counties excluding Monroe. The 6-County average for 2006 was $ 17.93. Using that comparison, the Buffalo County top Patrolman wage was $ .34 below the average ($.17 below the median, and ranked 5 of 7). The 2007 average for the same six counties is $ 18.42. The Union’s offer is $ 18.13, which is $ .29 below the average ($ .16 below the median, and ranked 5 of 7). The County’s offer, which is $ 17.94 is $ .48 below the average ($ .35 below the median, and ranked 5 of 7).

For 2008 only three counties have settled: Clark, Dunn and Pepin. If only those three counties are used for comparison the Union’s offer for 2007 is $ .53 below the average of $ 18.66 ($ .19 below the median, and ranked 4 of 4), and the County’s offer is $ .72 below the average ($ .38 below the median, and ranked 4 of 4). For 2008, the Union's offer is $.46 below the average of $ 19.22 for the same three counties ($ .12 below the median, and ranked 4 of 4), and the County’s offer is $ .92 below the average ($ .58 below the median, and ranked 4 of 4).

This analysis shows that the Union's final offer results in wages which remain below the median wage and average wage of the comparables, but with some narrowing of the gap. The County's final offer results in further deterioration in relationship to the median wage and average wage of the comparables.
There are no data presented which allow the arbitrator to view the historical relationship between the wages paid by the County and the comparables, and thus there is no evidence presented to support the Union's argument that a "catch-up" increase is needed.

The Union's final offer better maintains the wage relationship with the external comparables than does the County's final offer, and is thus favored with respect to this factor.

cost of living

Factor 7r(g) of the statute requires the arbitrator to consider the cost of living.

Both parties presented federal government statistics, but emphasized different time periods. In the arbitrator's opinion, since the contract which is being arbitrated is for calendar years 2007 and 2008, the most relevant data are the changes in the cost of living which occurred during calendar years 2006 and 2007. During 2006 the monthly average increase was 2.4% for both the all Urban Consumers index, and for the Urban Wage Earners and Clerical Workers index. The increase in 2007 for both of these indices was also 2.4%.

As noted above, there was no costing of the package represented by the parties' final offers. The arbitrator would normally compare the increases in the cost of the packages to the increase in cost of living. In the absence of those figures, the relevant comparison is with the wage increases offered by the parties. Using that measure, the Union's final offer keeps abreast of the cost of living changes, while the County's final offer does not.

other factors

Statutory factor 7r(j) requires the arbitrator to consider "other factors...normally or traditionally taken into consideration

The Union argues that its final offer should be selected because, among other things, the County did not offer a quid pro quo for the significant health insurance changes which it will implement in the new Agreement once the arbitration has been concluded. In the Union's view, its higher proposed wages represent an appropriate quid pro quo for the health insurance changes. The Union argues that even before these changes, which involve greater costs to bargaining unit employees, "...Buffalo county ranked at the bottom of Employer premium contributions. With the changes, Buffalo County

ranks last in Employer premium contributions and at the bottom when looking at the combined deductibles, co-pays and office visit payments by employees."

The County contends that by agreeing to lower the employee premium, and contributing to an employee Health Savings Account and allowing the employee to maintain any unused amounts in the HSA for future use, the County has provided a quid pro quo even though, in its view, none was required.

The arbitrator is not persuaded by the Union's argument for several reasons. First, health insurance is not an issue in this dispute. Neither final offer references changes in health insurance. Second, the Union and the County agreed to the health insurance changes voluntarily, and without conditions. That is, the Union did not condition its acceptance of the health insurance changes on the offer by the County of a quid pro quo, whether higher wages or anything else. Third, the insurance changes have previously been put into effect in two of the bargaining units as a result of arbitration awards by Arbitrator Hempe [Paraprofessional unit, in May, 2006] and Arbitrator Grenig [Law Enforcement unit, in February, 2006]. In their decisions, they did not view the health insurance changes (the same changes being implemented for this bargaining unit) as requiring a quid pro quo by the County. Similarly in his recent Courthouse unit decision, Arbitrator Dichter did not view a quid pro quo as being required in order to implement the changes in health insurance. For all of these reasons, in the present dispute the arbitrator is not persuaded that the failure of the County to provide a quid pro quo for the health insurance changes agreed to by the parties should be viewed as a basis for favoring the Union's final offer.

additional factors

There are other statutory factors which the arbitrator is required to consider. The parties made no arguments with respect to some of them: (lawful authority of the employer; stipulations; comparisons with conditions in the private sector; overall compensation). The arbitrator has considered the remaining factors, as argued by the parties, although he has not analyzed them separately above: (greater weight; interests and welfare of the public and the financial ability of the County to meet the costs of the final offer; overall compensation). Consideration of these factors has not led him to reach a different conclusion about which final offer should be selected.

Conclusion

As is true in most interest arbitration decisions, there are aspects of each final offer in this dispute which merit the arbitrator's support. The CDL issue as well as the greatest weight factor and the internal comparables favor the County's final offer, while the external comparables and the cost of living factor favor the Union's final offer. As noted earlier, however, the statute requires that one party's final offer be selected in its entirety. It is the arbitrator's conclusion that on balance the County's final offer should be selected.

Based upon the above facts and discussion, the arbitrator hereby makes the following AWARD:

The final offer of the County is selected.

Dated this 24th day of March, 2008 at Madison, Wisconsin

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Edward B. Krinsky
Arbitrator