WISCONSIN EMPLOYMENT RELATIONS COMMISSION
BEFORE ARBITRATOR WILLIAM EICH

IN THE MATTER OF THE ARBITRATION BETWEEN:	
RUSK COUNTY (PROFESSIONALS)	**AWARD**
AND	DECISION NO. 32250-A
RUSK COUNTY PROFESSIONAL EMPLOYEES ASSOCIATION, LOCAL 608, LABOR ASSOCIATION OF WISCONSIN, INC.	CASE 117 NO. 66836 INT/ARB-10921

APPEARANCES

For the Employer, Atty. Mindy K. Dale

For the Union, Thomas A. Bauer, Labor Consultant

INTRODUCTION

After reaching an impasse in bargaining, the Union petitioned the Wisconsin Employment Relations Commission for arbitration under § 111.70(4)(cm), *Stats*. After investigating the matter and determining that the parties were deadlocked in their negotiations, and after receiving the parties' final offers, the Commission appointed the undersigned to arbitrate the dispute.

Hearings were held in Ladysmith on January 9, 2008. Initial briefs were filed by the parties or about February 19. The County's reply brief was received on March 18, 2008. The Union elected not to file a reply.

THE PARTIES' FINAL OFFERS

The final offers differ in only one aspect: wages. The County proposed the following wage increases for 2007 and 2008:

2007	2% across-the-board effective January 1, 1007 1% across-the-board effective September 1, 2007
2008	2% across-the-board effective January 1, 2008 1% across-the-board effective September 1, 2008

The Union's proposal is as follows:

2007	3% across-the-board effective January 1, 2007
2008	2% across-the-board effective January 1, 2008 1% across-the-board effective September 1, 2008 5¢ per hour effective December 1, 2008

FACTORS TO BE CONSIDERED BY THE ARBITRATOR

Interest arbitrators are required by statute, after hearing, to "adopt without further modification the final offer of one of the parties on all disputed issues submitted for arbitration." Section 111.70(4)(cm)6d, *Stats*. The statutory factors governing the decision—and the manner in which they are to be applied—are set forth in § 111.70(4)(cm)(7), *Stats.*:

> 7. "Factor given greatest weight." In making a decision under the arbitration procedures authorized by this paragraph, the arbitrator … shall consider and shall give the greatest weight to any state law or directive … which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer….
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> 7g. "Factor given greater weight." In making any decision … the arbitrator … 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 … the arbitrator … shall also give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services.

e. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees generally in public employment in the same community and in comparable communities.

f. Comparison of the wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost of living.

h. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

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

THE PARTIES' POSITIONS SUMMARIZED

The Union, asserting that wages for the professional bargaining unit are "substantially below their external comparables," frames the "controlling factor" in these proceedings as the unit's need to "catch up" to those comparables. There was some discussion at the hearing as to the Union's inclusion of Burnett County in the list of external comparables used by Rusk County and its employee bargaining units in several prior interest arbitrations. The Union does not refer to Rusk County in its brief, however, relying instead on data from the six counties used in the past: Barron, Chippewa, Price, Sawyer, Taylor and Washburn.

The County maintains that its offer is favored by the internal settlement patterns and by the "economic conditions" criterion of § 11.70(4)(cm)7g, *Stats.*, a factor that is, by statute, to be given "greater weight" than the others in choosing between the offers.

SUMMARY OF DECISION

The evidence satisfies me that the County's offer is favored by both the "economic conditions" and "internal comparables" criteria, and the Union has not persuaded me that consideration of the external comparables leads to a contrary result. Because the other factors are either a wash or have not been put in issue by the parties, I conclude that the County's offer more closely adheres to the statutory criteria and it will, therefore, be adopted.

DISCUSSION

As indicated, the Union's primary position in this Arbitration is that its offer should be preferred because the average wage rates in the six comparable counties are higher than those in Rusk County, and it says its proposal will move the Rusk County employees closer to their counterparts in those counties.

The County concedes that its wage rates “do not rank at the top of the comparables;” but it points out that “neither are they bottom-of-the-barrel.” The County asserts, for example, that even though the rates in the other counties may be higher in several instances, other factors tend to mitigate those differences:

> Employer Exhibits 41-42 compare minimum and maximum wage rates for social workers … and registered nurses… For both positions, Rusk pays more than Price. In addition, Rusk County’s employees reach the maximum wage rate after only one year, while most other counties require far more years of service (2½ years in Chippewa, 4 years in Washburn, 5 years in Price and sawyer, and 20 years in Taylor – see ER. EX 41… Moreover, in Rusk County there is automatic progression from social Worker I to Social Worker II to Social Worker III, which should be taken into account in any analysis of wage comparisons.” [Brief, at 23-24]

The County also points out that this is the first time this bargaining unit has ever been to arbitration and that the existing wage rates are the result of years of voluntary bargaining. And it notes that, other than providing partial wage comparisons for the two most recent contract terms, the union has “not shown any significant erosion in the County’s comparative standing among the external comparables” over time. [Brief, at 24]

There is substantial arbitral authority for the proposition that even in situations where bargaining units have historically been paid at a low level in relation to similar employees in comparable jurisdictions, where that pattern has been the result of voluntary bargaining—as is the situation here—departures from that pattern should not be ordered “absent compelling evidence …” ***Jefferson School District***, Dec. No. 27468-A (July, 1993) (Briggs). *See*, also, ***City of Algoma (Police)***, Dec. No. 29399-A (December, 1998), where Arbitrator Dichter stated:

> This Arbitrator and other arbitrators have noted in numerous cases that where wage increases are the product of voluntary negotiations, past wage comparisons are not significant. The parties chose to put themselves where they did.

And, in ***Slinger School District***, Dec. No. 26757-A (July 1991), Arbitrator Rice noted that:

> Each school distinct bargains out agreements with its teachers that reflect the local interests of each party and other circumstances involved. As a result, some school districts are higher or lower or average. There will be employees who are paid above the average and there will be employees who are paid below the average and there will be employees paid the average. When certain teachers achieve rankings above the average or below the average because of voluntary agreements, they do exactly what free collective bargaining was intended to do. Some units fall below the average with respect to salaries as a result of trade-offs they make on insurance or other issues that are important to them and may or may not have an economic impact. The mere fact that the Employer's teachers at some benchmarks are paid less than other teachers … with similar experience and training, does not necessarily mean that there is an inequity. When those differentials are the result of voluntary agreements, the arbitrator who did not participate in any of the negotiations should not disrupt the relationships.

Consistent with that analysis, the County points out first that several of the 3% increases shown for some of the comparables were—as are the wage proposals at issue here—"lifts" that were accomplished by split increases; and it is recognized that, while a 2% January increase and a 1% September increase do not amount to 3% for the entire initial year of the contract, the "overall impact" of the split raise is significant:

> Wages, of course, are an ongoing benefit to employees, not a one time payment, and while split wage increases do offer some relief to employers in the year in which they are implemented, the overall impact on the employer and the bargaining unit are long lasting. A 2/2 split, as proposed by the Union in this case, while having a 3% impact in the year of implementation, has a 4% life for the duration of their bargaining relationship. This Arbitrator has always, when making an analysis, considered the maximum wage of the bargaining unit and the comparables in any given contract year.

Monroe County (Highway), Dec. No. 29586-A (October, 1999) (McAlpin).

Beyond that, the County also points out that there were, as Arbitrator Rice discussed in ***Slinger***, health insurance “trade-offs" in several of the comparable settlements. In Barron County, for example, the 3% annual increase was implemented by a 2% - 1% “split” increase, and the parties agreed to change the existing health plan to one with a higher deductible. And in Chippewa county—where the employees received a “straight” 3% increase, they also agreed to begin making premium payments for their health insurance and accepted higher deductibles. In Taylor County, too, the employees, while receiving a “split” 3% increase, also agreed to implement a high-deductible health insurance plan.

I am not persuaded, as the Union argues, that the external comparables require adoption of its final offer.

Internal consistency is another factor to be considered under § 111.70(4)(cm), *Stats*. While not argued by the Union, the evidence on the point put forth by the County establishes that all of the County’s other employee groups received the same the 2% - 1% “split” increases proposed for the Professionals in the years 2007 and 2008. [County Exh. 36] And this has been the case—with only minor deviations—since 2003. [*Id.*] The evidence also shows that the County and its bargaining units have negotiated near-uniform health insurance provisions over the years. [*Id.*] And, as before, arbitral authority places great emphasis on maintaining consistency between agreements with other units. As Arbitrator Rice noted in one case:

> An award by this arbitrator that departed from the pattern agreement reached with other bargaining units as a result of negotiations and as a result of other medication/arbitration proceedings would do violence to the bargaining process…

To a similar effect, *see*: ***City of Milwaukee***, Dec. No. 25223-B (September, 1988) (Rice); ***City of Appleton (Police)***, Dec. No. 25636-A (April, 1989) (Vernon); ***Oneida County***, Dec. No. 26116-A (March, 1990) (Gundermann) (internal consistency should be given “significant weight” in the decision); ***Douglas County (Health Department)***, Dec. No.

25966-A (November, 1989) (Kerkman) (internal settlement patters "are among the most persuasive criteria to be considered in establishing which party's final offer should be accepted").

While I do not believe that consistency with internal settlement patters is the be-all and end-all of interest arbitration, it is clear that this is a factor accorded considerable weight by most arbitrators. And that makes sense, for, as Arbitrator Krinsky noted in ***City of New Berlin (General Employees)***, Dec. No. 27293-B (February, 1993):

> [G]ranting a final offer greater than the pattern creates instability in the municipality's bargaining processes and discourages voluntary settlements. If arbitrators break patterns, why then should bargaining units voluntarily agree to terms if they have reason to think that by holding out until after other bargains have been reached, they will obtain more favorable settlements from an arbitrator?

At the very least, then, the internal comparability factor strongly favors the County's offer.

Other than arguing, as indicated above, that the professional employees' wage rates are lower than those applicable in several comparable counties, the Union assets that the County has not shown that it is unable to afford the additional, rather small, increase contemplated in its final offer and, additionally, that its offer is consistent with the Consumer Price Index.

As to the first, the County did put on evidence relating to prevalent economic conditions in the area. And while not arguing that it is wholly unable to meet the relatively small add-on increase proposed by the Union, it points out that such evidence is relevant to the "greater-weight" criterion of § 111.70(4)(cm)g, *Stats*., which states that the arbitrator is to give "greater weight" to "economic conditions in the jurisdiction of the municipal employer." The County's evidence established, among other things, that: (a) Rusk County is one of the slowest-growing of the comparables [County Exh. 12]; (b) its

equalized valuation ranks well near the bottom [County Exh. 13]; (c) its 2005 adjusted gross income per tax return ranked it 70th of Wisconsin's 72 counties [County Exh. 15]; (d) it ranks last among the comparables in median household income [County Exh. 17]; (e) it has one of the higher unemployment rates in the state; and (f) as its Finance Director testified at the hearing, the Rusk County Board has had to resort to raids on the general fund over the years in order to keep its levy within acceptable limitations. [County Exh. 23]

Considering similar information in a 2006 Rusk County interest arbitration, Arbitrator Krinsky concluded that the "greater-weight" factor favored the County—"even though the difference in the costs of the final offers in the present dispute is of no consequence." ***Rusk County (Courthouse/Human Services)***, Dec. No. 31522-A (June, 2006). I reach a similar conclusion here: while the dollar difference between the two offers—as it was in the 2006 arbitration—is minimal, the evidence compels a finding that the "greater-weigh" criterion favors the County's offer.

Finally, as to the Consumer Price Index, the evidence suggests that both offers are consistent with the CPI with the result that this criterion favors neither side.

CONCLUSION & AWARD

In light of the evidence submitted, and the arguments presented, by the parties to this Arbitration, I conclude that both the established internal settlement patterns and the economic factors—which § 111.70(4)(cm), *Stats*., directs me to accord "greater weight"—favor the County's offer. As also indicated, the Union has not persuaded me that consideration of the external comparables compels a different result.

Therefore, for all of the reasons discussed above, and in consideration the applicable statutory criteria, together with the evidence, exhibits and arguments put forth by the parties, I conclude that the Final Offer of Rusk County, Dated July 24, 2007, more

closely adheres to the statutory criteria than that of the Union, and I therefore direct that that offer be incorporated into the parties' Collective Bargaining Agreement in resolution of this dispute.

Dated at Madison, Wisconsin, this 19th day of March, 2008

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William Eich, Arbitrator