

STATE OF WISCONSIN  
WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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MONROE COUNTY  
HIGHWAY EMPLOYEES  
LOCAL 2470,  
AFSCME, AFL-CIO

And

Case 193  
No. 66668 INT/ARB 10876  
Dec. No. 32286-A

MONROE COUNTY  
(Highway Employees)

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Appearances:

For the Union: Daniel R. Pfeifer  
Staff Representative

For the Employer: Ken Kittleson,  
Personnel Director

DECISION AND AWARD

The undersigned was selected by the parties through the procedures of the Wisconsin Employment Relations Commission. A hearing was held on February 29, 2008 in Sparta, Wisconsin. The parties were given the full opportunity to present evidence and testimony. At the close of the hearing, the parties elected to file Briefs. The Arbitrator has reviewed the testimony of the witnesses at the hearing, the exhibits and the briefs of the parties in reaching his decision.

## BACKGROUND

Monroe County is located in Western Wisconsin. One of the Bargaining Units consists of the employees that work in the Highway Department. The employees in that Unit are represented by AFSCME, Local 2470. In addition to this bargaining unit, there are four other bargaining units in the County represented by AFSCME. They are the Courthouse Employees, Human Services Paraprofessionals, Human Services Professionals, and Rolling Hills Employees. There are also two other units, a Law Enforcement Unit consisting of the Sheriff's Employees and a Dispatchers Unit. Both are represented by the WPPA.

The parties resolved most of the issues in their negotiations. The proposals for the remaining issues are<sup>1</sup>:

### Union:

Effective 1/1/07 – An increase of 2% ATB.  
Effective 7/1/07 – An increase of 1% ATB.  
Effective 1/1/08 – An increase of 2% ATB.  
Effective 7/1/08 – An increase of 1% ATB.

### County:

Effective 1/1/07, increase wages 2.0% across-the board  
Effective 1/1/08, increase wages 2.0% across-the board  
Effective 7/1/08, increase wages 0.5% across-the-board

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<sup>1</sup> Both proposals add a deductible for health insurance. It is \$100 for single coverage and \$200 for family coverage. Since it is included in both proposals it will be part of whichever proposal is accepted.

## Union's Other Proposals:

### Summer Hours:

The standard workday and workweek shall be ten (10) hours from 6:00 a.m. to 4:00 p.m., Monday through Thursday with the exception of shop personnel. Shop personnel work hours and schedules will be determined by seniority and mutual agreement among the shop employee, the Highway Commissioner (or his/her designee) and the Union President.

The summer work schedule starts on the Monday after Easter and ends at the end of the last full pay period in September. There will be no noon lunch break; paid breaks will be used for normal lunch activities. Paid breaks will be from 9:30 to 9:45 a.m. and from 12:30 to 12:45 p.m. Holidays for Shop Personnel on eight (8) hour days shall be eight (8) hours of holiday pay. All other employees shall receive ten (10) hours of holiday pay for holiday, which occur during the summer hours. When a holiday falls during the summer hours, the workweek for the ten (10) hour employees is three (3) ten (10) hour days with the holiday and Friday off. Call-in for paid time shall be one-half (1/2) before starting time. Vacation, sick, family sick, family medical, funeral and jury duty leave may be used on an hourly basis, i.e., 1 day = 10 hours.

Floating Holidays – If one-half (1/2) day is used it will be four (4) hours and must be supplemented with vacation to cover the other 1 hour. If one day is used, it will be eight (8) hours and must be supplemented with vacation to cover the other 2 hours. Leave without pay may also be granted to cover the 1 or 2 hours only if vacation balance is zero.

Fridays – If needed work on Fridays will be on a volunteer basis with normal crewmembers. If a normal crewmember does not volunteer, the position will be filled based on seniority within State and County crews, i.e., State stays with State and County stays with County, unless no one is available from within.

Vacation Hours Clean-Up – Vacations will continue to be scheduled in a minimum of one-half (1/2) day increments, except as follows: If an employee has less than a full-day of vacation balance and desires to “clean-up” vacation (i.e. zero out vacation balance), he/she shall be allowed to do so as long as a minimum of four (4) hours is actually worked during any day vacation “clean-up” is performed.”

CDL:

CDL - If an employee loses their CDL due to disqualification for reasons that do not arise out of or during the course of employment or are unrelated to criminal activity, the employee will be placed into an open patrolman position within the bargaining unit.

The employee will be scheduled to work within the Highway Department for a period not to exceed 13 months. This is subject to availability of work as determined by management. Availability of work may fluctuate based on factors such as: time of year, workload, and budget constraints. Job placement will also be determined by management. If there is not work available, the employee will be placed on lay off status. The employee will continue to accrue seniority and continue to be covered by all terms and conditions of the labor agreement.

It is understood that if a job assignment is in a classification that pays less than the employee's assigned position, the employee's wage will be adjusted accordingly. If the assignment is into a higher classification the employee will be paid at the patrolman position rate during the suspension of the CDL.

If the CDL is not reinstated within 13 months, the employee will be terminated. Additional CDL disqualifications are grounds for termination of employment.

No more than two employees at any one time may be assigned under the provisions of this side letter."

The Employer does not propose adding any of the above language to the Agreement. Both of the Union Proposals are new language.

#### DISCUSSION

The Statute requires an interest arbitrator to consider several factors in rendering a decision. As is always the case, not every factor is relevant in any particular proceeding. The Arbitrator shall only address those issues that he feels are relevant here or that need explanation given the arguments of the parties. Neither party has argued that the factors that are to be given the Greatest Weight or Greater Weight under the Statute are applicable here. The

Arbitrator agrees so neither factor will be discussed further. Since there are several issues raised in the Union proposal, each issue will be addressed separately. The discussion will begin with the parties wage proposals.

### Wages

External and Internal Comparables are the prime factors involved in this dispute. The parties have also argued that COLA favors their respective proposals. These are the factors that will be addressed.

### Internal Comparables

Four of the other six Bargaining Units represented by AFSCME accepted the County Wage proposal and have signed contracts. That proposal was identical to the proposal of the County here. They agreed to a 2% increase on January 1 of 2007 and 2008 and an additional .5% on July 1, 2008. The Dispatchers Unit also agreed to that increase. The Sheriff's Unit and this Unit are the only two Units that have not settled their contracts.

The Units that have settled together with the unrepresented employees comprise 85% of the workforce employed by the County. It is clear that a pattern has been set. Arbitrators, including this Arbitrator, have often said that when a pattern has been set, an Arbitrator should adhere to that pattern. A lone holdout should not be rewarded for holding out or it will discourage others from settling their agreements in anticipation of receiving a higher wage by holding out. That is why arbitrators have held that when a clear pattern has been established those same terms should be applied barring extenuating circumstances to the Unit or units that are holding out for more. Consequently, this factor unquestionably favors the County proposal.

## External Comparability

The Union has a hard task in front of them if it is to overcome the above factor. The Union believes it has met the challenge. It has argued that the employees in this Unit compare much more unfavorably versus the employees in the comparable communities than do the employees in the other units when compared to their counterparts elsewhere. In order to evaluate that argument, the Arbitrator shall look at and compare the wage increases in the other communities to the proposed increases here and then look at the actual wages paid to the highway employees here and in the comparables. Finally he will look at the wages paid to the employees in the others units in this County and compare them to the wages paid to the same types of employees in the comparable communities. Only then can the Union's argument be evaluated.

There is no disagreement as to which communities form the appropriate list of comparables. Those Counties are Buffalo, Crawford, Jackson, Juneau, La Crosse, Pepin, Richland, Sauk, Trempealeau, Vernon and Wood. The Cities of Sparta and Tomah have also been used in the past by other Arbitrators and shall be considered here. Buffalo and Crawford had not resolved their Agreements at the time of the hearing. Juneau's increase was not in the form of a percentage, but was \$.46 per hour. The average increase among the comparables who settled in 2007 was 2.6%. All of them gave an increase in excess of what the County is offering, except La Crosse, Trempealeau and the City of Tomah. La Crosse and Tomah employees received the same 2% increase offered by the County here. Trempealeau settled for no increase. In 2008, Jackson, Juneau and La Crosse as well as Buffalo and Crawford have not settled. The average increase among the remaining comparables was 3.1%.

The Union has proposed a 2% and 1% increase each year. The lift would be 3% and the actual increase in cost would be 2.5%. The County proposal is below the average in both years. The Union proposal is closer to the average than the County's. Thus, looking just at increases for the moment, the Union proposal is favored.

The average wage of the Patrolman Classification in 2006 using the highest rate including longevity was \$.61 below the average for the employees in this Unit. It was \$.35 below the average in 2005. For 2007, the wages would be \$.71 below the average under the County proposal and \$.54 below under the Union proposal. Looking just at the seven comparables that settled for 2007 and 2008, the County was \$.67 below the average in 2006. It would be \$.85 and \$.67 respectively in 2007 and \$1.02 and \$.76 in 2008. The County ranked 11 out of 14 in 2006. That rank is unchanged under either offer in 2007, although the County moves within \$.01 of two higher comparables under the Union proposal. If just the seven comparables who settled for both years are used, the County would rank 5<sup>th</sup> for 2006. That would also be true for 2007. It would fall to the bottom under the County proposal in 2008, as it would be \$.20 below Vernon and \$.23 below the City of Sparta. In 2007, it was \$.05 and \$.12 higher. In 2008, the rank would not change under the Union proposal, although the gap would again shrink under its proposal. These facts add further support to the Union's wage proposal.

The last issue to be examined is the Union's belief that only these employees are below the norm and that the County's other employees are above the average. Are they correct and does this justify "catch-up?" Union Exhibit 31 lists the wages for one or two classifications in the other bargaining unit and

compares those wages with the wages paid by the comparables. There are four positions listed in the chart comparing positions in Social Services, Courthouse and Corrections. The employees in this County receive or will receive wages above the average in each of the positions listed for other bargaining units. The Corrections Jailer, a position in the other Unit that is holding out and the Patrolman in the Highway Department were below the average. It is unclear whether that has historically been the case or is a recent development; whether that same disparity goes across the Board for all Classifications;<sup>2</sup> and whether the ranking among this County's employees increased in these other units while the ranking decreased or remained the same for this unit? Knowing this history is essential for these employees to gain here what the other Units did not. Thus, on the surface, though the Union argument might seem to carry some weight it just does not go deep enough for this Arbitrator to conclude that the time is now ripe to move these employees up versus the employees in the other communities in the face of the internal pattern that has been achieved.

In so finding, the Arbitrator is not dismissing out of hand the Union argument that there is a need for catch-up. It may very well be that the time is near to adjust these employees. The fact that under the County proposal these employees are falling even further behind the Highway employees in the comparables would buttress that argument in the future, especially if that were not true in the other Units. The Arbitrator simply cannot find at present based on the evidence before him that the Union has demonstrated that the time to make an adjustment is in this contract.

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<sup>2</sup> Figures for 2005 forward were offered, but none prior to that date.



## COLA

The Cost of Living rose approximately 4.4% in 2006. Both wage proposals are less than COLA. The Union argues and this Arbitrator agrees and has recently so stated that actual wage increases are used to compare with COLA and not total package.<sup>3</sup> Since the Union's offer is closer to COLA than the County's, this Arbitrator finds that this factor favors the Union proposal

## Summary

Internal Comparability strongly favors the County. COLA favors the Union. External Comparability slightly favors the Union. The Union contention that there is a need for catch-up for this Unit has, as noted, some viability, but the Arbitrator cannot find that the situation at present justifies overturning the internal pattern that has been set. The Arbitrator noted at the outset that once an internal pattern is clearly established, the proposal that is in keeping with that pattern is favored. The presumption can be overcome, but not easily. A strong reason has to be shown for deviating from that pattern. The burden falls on the party raising that argument to demonstrate that the need is so great that the time to address it is at hand. County Exhibit 11 shows the number of applications received by the Department when a position has been opened. While the number of applicants for the vacant position in 2006 was less than the number of applications received in years past and is dropping, it was not at its lowest point. If the wage situation were as severe as the Union claims, it would be expected that there would be little response to Notice of Vacancies. That has not been the case. Therefore, the Arbitrator finds that a justification

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<sup>3</sup> City of Oshkosh (Professional Employees) Dec. No. 32148, although the Arbitrator did also consider Health Insurance Cost increases in the calculations in Buffalo County, Dec. No. 32181.

for deviating from the pattern has not been shown and the Internals carry the day on this issue.

### Summer Work Hours

#### Position of the Parties

The Parties have entered into a side agreement addressing summer work hours each year since 2000. It has been modified to some degree over that period, but the basic concept has been agreeable to each side for many years. The Union wants to codify that into the main agreement. The County is not opposed to the concept of summer work hours, as indicated by its agreement over the years, but wants to maintain flexibility. It notes there have been and may in the future be technological or other changes that it may need to address. The fact that the agreement has been modified from time to time since 2000, it notes, highlights that point. Finally, it argues no quid pro quo was offered.

#### Discussion

The Union is attempting to add a provision to the Agreement. The County has been amenable to flexible summer hours and has agreed to it each year. The Union has not shown that there has been a problem that its proposal is seeking to address. That is the first condition that must be met when a party proposes adding new language. The Parties have effectively dealt with the issue and made changes from time to time as required. There is no indication that this attitude has or will change. If it does, the proposal can be addressed at that time. At present, there is no reason to add this language since no showing

of need has been made. Given this finding, it is not necessary to address the other arguments raised regarding this proposal.

### Commercial Driver's License

#### Position of the Parties

The Union argues that the State of Wisconsin changed the Rules regarding the loss of an Occupational License on September 30, 2005. The Rules address the loss of license for traffic offenses while on duty and for offenses that occur while the employee is off-duty. It points out that for the County's Police force an employee that loses his or her license for an OWI can get an Occupational License, but that a Highway Employee under the present system cannot. The Current Policy that has been in effect since the mid-1990's gives the County discretion to grant a Leave of Absence to the employee during the period covered by the loss of an Occupational License, but not the right to keep working in an alternate job. The Union believes the refusal of the County to address the new Regulations is a "fatal flaw" in the County offer.

The County maintains that the Policy that has been in effect since 1996 is the status quo. If the Union wants to change the status quo, it argues as it did regarding summer hours, a quid pro quo must be offered. None has been. It also notes that there is no clear pattern among the external comparable that the language like that proposed has been adopted by them. It then cited Buffalo County Highway Dec. No. 32180-A (Krinsky, 2008):

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.

### Discussion

The Exhibits show the contract language or actual practices of the External Comparables. The County is correct that there is no clear pattern. Some of the Counties, such as Crawford and Richland have no language. Trempealeau and Vernon have language similar to what has been proposed by the Union here. Others have contract language or practices, but how they handle the situation is not the same as how the Union proposes to address it. Sauk County appears to handle it in a manner similar to how this County presently does. Thus, there is no clear consensus.

The County contends that there is no reason to change the status quo. The new Rules would seem to weaken that argument. The Rules have changed and that change does provide impetus for this proposal. The Union proposal would include an option to keep the employee and assign that employee to other duties "subject to availability of work as determined by management." Discretion is retained by the County to determine whether there is work for that employee to perform that would not require driving. It is not an unreasonable proposal and it reasonably addresses the problem created by the new Rules. The County contends even if the above is correct that no quid pro

quo has been offered and that defeats the proposal. Presuming that there is work available for the employee, the proposal has no cost to the County. The employee is earning what he or she earned prior to the loss of license. Thus, the need for a quid pro quo is lessened. However, this proposal with or without the requirement for a quid pro quo is only one component of the entire Union proposal and the Arbitrator cannot pick and choose which parts of the offer to accept and which to reject. It is all or nothing. Therefore, this proposal must be weighed against all other components of it's and the County's proposals.

### Health Insurance

The Arbitrator noted at the outset that the parties had agreed to modify the Health Insurance Plan to make the deductibles \$100 for single coverage and \$200 for family coverage. Despite the fact that this item is not in dispute, the Agreement was discussed by the Parties as justification for its other proposals, and, therefore, needs to be addressed by the Arbitrator. Both contend that this concession impacts the acceptability of their respective proposals.

It is estimated that this insurance change will save the County approximately \$41,000 in 2008. The County notes that the inclusion of .5% wage increase on July 1, 2008 will cost the County \$43,000. It argues this is its quid pro quo for the insurance change. The other Bargaining Units deemed this same quid pro quo sufficient when they agreed to the County wage offer. The County believes that should also be the case here.

The County argument is not incorrect. As this Arbitrator noted when discussing Internal Comparability, the pattern has been set and provides precedent for this Arbitrator. The .5% was enough of a quid pro quo for the other Units and hence it is enough for this one.

The Union argues that its CDL proposal should be part of the quid pro quo for this concession. There is no showing that the other Unit's obtained other benefits in addition to the .5% wage increase in exchange for this concession. It is this Unit that is seeking an additional concession, and there is no basis for doing so given what the other Units did. The Arbitrator noted during the discussion of the CDL issue that there was some merit for the Union position. However, the Arbitrator cannot find that its insurance concession adds any more weight to its proposal regarding the CDL. It still must be viewed in the context of the entire scope of proposals of each side.

#### CONCLUSION

The Wage proposals are unquestionably the major issues in this dispute. As such, the issue carries the most weight. For all the reasons already noted, the scale has been tipped towards the County proposal on the wage issue. The Summer Hour proposal of the Union was not favored, but the CDL proposal was. Thus, these issues do not tip the scale any further in one direction or the other. On that basis, the Arbitrator finds that the overall proposal of the County is favored and shall be adopted.

#### AWARD

The County proposal together with all tentative agreement is adopted.

Dated: May 12, 2008

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Fredric R. Dichter,  
Arbitrator

