

**STATE OF WISCONSIN
BEFORE THE ARBITRATOR**

**IN THE MATTER OF INTEREST
ARBITRATION**

OPINION AND AWARD

between

WASHINGTON COUNTY

**WERC Case 167,
No. 67633,
INT/ARB-11089
Decision No. 32424**

and

**THE LABOR ASSOCIATION OF
WISCONSIN, INC. ON BEHALF OF
THE WASHINGTON COUNTY
DEPARTMENT OF SOCIAL SERVICES
EMPLOYEES ASSOCIATION,
LOCAL 809**

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the Employer: Nancy J. Pirkey, Attorney - Davis & Kuelthau, S.C.

On Behalf of the Union: Benjamin M. Barth and Jason E. Ganiere, Labor Consultants - Labor Association of Wisconsin

I. BACKGROUND AND FACTS

The Employer, as can be garnered from the case caption, is the Washington County Department of Social Services. The Union represents, as the sole and exclusive collective bargaining agent, all regular full-time and regular part-time employees working twenty (20) or more hours per week, employed by the Washington County Department of Social Services, excluding professional, supervisory, confidential, and managerial

employees. The unit, in other words, includes the para-professional or clerical employees of the department. Professional employees in the social services department are in a separate bargaining unit. The job titles in the instant bargaining unit include Clerk Typist, Program Support Clerk, Adult Family Aide, Account Clerk, Economic Support Specialist, and Financial & Employment Planner.

The Employer and Union were parties to a Collective Bargaining Agreement (CBA) covering the term of January 1, 2006, to December 31, 2007. In spite of exchanging initial proposals in bargaining, the parties had not agreed on terms for a successor agreement by the time the Union filed a petition with the Wisconsin Employees Relations Commission (WERC) to initiate arbitration pursuant to Sec. 111.70(4)(cm)6 of the Municipal Employment Relations Act. On March 19, 2008, a member of the WERC's staff conducted an investigation, which reflected that the parties were deadlocked in their negotiations, and, by April 18, 2008, the parties submitted to said investigator their final offers and positions regarding authorization of inclusion of nonresidents of Wisconsin on the arbitration panel to be submitted by the WERC, and thereupon the investigator notified the parties that the investigation was closed. The investigator also advised the WERC that the parties remained at impasse. The parties were ordered on May 14, 2008, to select an arbitrator. The undersigned was selected. He was appointed by the WERC and advised of his appointment on May 27, 2008.

A hearing was scheduled and conducted on July 31, 2008. Post-hearing briefs were filed on September 8, 2008.

II. ISSUES:

The parties were successful in reaching tentative agreements relative to all terms of a successor agreement except one issue. The only item remaining in dispute is the wage increases for 2008 and 2009. The parties' final offers contain the following wage increases:

County's Final Offer		Union's Final Offer	
1/1/2008	3.00%	1/1/2008	2.00%
		7/1/2008	2.00%
1/1/2009	3.00%	1/1/2009	2.00%
		7/1/2009	2.00%

III. ARGUMENTS OF THE PARTIES (SUMMARY)

A. The Union

While the Union acknowledges that most comparable counties received a 3.0% wage increase for 2008, they assert that even with the Union's proposed 4.0% wage increase, the Union will continue its trend of falling behind the average wage earned by fellow employees in the comparable county's "social service departments." This is due to the mathematical fact that constantly applying the same percentage to a lower base wage rate results in that wage level falling further behind in absolute dollars. If awarded by the Arbitrator, the Union says its wage offer will not cost the Employer much more money (\$18,000 over two years.) But, awarding the Employer's offer will drive the wages of the Union even farther below the average of the comparables, thereby resulting in continued high employee turnover.

As to the statutory factors to be applied, the Union rejects the notion that this case is a simple "fight over internal and external comparables." They believe the controlling factors are whether the Employer's offer is adequate when external comparables, caseload, the consumer price index (CPI), and most importantly, the public interest are considered. Even if this was a matter of whether internal comparisons should prevail over external comparables, the Union submits that the few internal settlements cited by the Employer are an insufficient pattern to justify selection of the Employer's final offer.

Factors the Union does not believe are applicable, in this particular case, and/or not disputed in this case are: (1) the lawful authority of the Employer; (2) the stipulations of the parties since they add to significant costs; (3) ability to pay; (4) comparisons with private employees, and; (5) other factors.

In terms of external comparisons, the Union asserts the evidence shows that employee turnover still plagues the Union, largely because their wages trail that of the external comparables. In the meantime, the case load for the twenty-eight (28) employees in the unit has more than doubled since 2001, rising to 4,992 in 2007. The full-time equivalent (FTE) of the unit is down one as well.

In terms of the interest and welfare of the public, the Union feels that the public interest is well served if the citizens and taxpayers of Washington County are provided with public servants who are well paid and of high spirits and morale. This is best done by their offer because employees are aware of how far behind they are. If their offer is not selected high turnover and low morale will result and adversely impact the welfare of the public in that the safety net for its most needy citizens, the County's Department of Human Services, could be decimated by an exodus of Union members.

When compared to employees performing similar services in comparable communities, the Union stresses that the Employer's comparisons are flawed. This is because they combine several job classifications in other counties in order to show lower comparators (thereby making Washington County levels look better.) They give several examples. In contrast to the Employer's methodology, the Union's averages are based not only on titles, but also on job descriptions that were obtained from the various counties. After reviewing the job descriptions, it became clear that the job requirements placed upon the Union's membership justify comparing their wage rates to the higher rate found in the comparable counties.

Concerning the criteria that directs the Employer to give weight to "the comparison of the wages, hours, and conditions of employment with employees in public employment in the same community and comparable communities," the Union argues that because some units within Washington County voluntarily accepted wage settlements of 3.0%, should not preclude the Union from requesting a different wage package. The fact is that different bargaining units enjoy different levels of power and have different sets of concerns. Each bargaining unit must be allowed to determine what is, and what is not, worth fighting for.

Throughout the negotiations that took place over wages, the Union has consistently argued that its final offer was supported by higher wage rates of the comparable counties.

Last, the Union argues that the 'cost of living' and 'overall compensation' factor favors their position. They note by June 2008 the CPI-W had shot up to 5.6%, which is well above their offer. Regarding overall compensation, their evidence shows that the overall benefit level received in Washington County is average, at best, when compared to both other county

employees and employees in the surrounding counties. Indeed, in one important respect, Washington County employees are clearly disadvantaged. They pay more towards health insurance than anybody else and this must be considered when considering which wage offer is more reasonable.

B. The Employer

The Employer's first argument relates to the settlement among other employee groups (the internal comparables.) They assert there is a consistent pattern of wage increases for 2008 and 2009, which, it is argued, strongly favors their final offer of 3.0% each year of the contract. Five of the eight employee groups representing 92% of all county employees have settled at 3.0% for 2008. Three groups (representing 20% of the County's total employee count) have settled at 3% for 2009. No one has settled at a higher rate for 2008 or 2009. It is noted, as well, that these were voluntary agreements establishing a clear and consistent pattern, which arbitrators they say with citation deserves controlling weight. This is especially true when there is a history of consistent internal bargaining. The Employer's brief details the county's bargaining history showing that wage increases, insurance benefit levels, holidays, sick leave benefits, WRS retirement contribution, longevity and funeral benefits all have, historically, been consistent among Washington County employee groups.

While they believe the internal comparables are controlling, the Employer addresses the external comparisons, noting first that the parties agree on the counties to include in the external comparable pool. Based on its analysis, the Employer concludes that the Washington County Social Services clerical employees are not only among the highest paid they are also recipients of a very competitive benefit package. Further, in this regard, the County also submits that its wage comparisons are more accurate than the Union's wage comparisons because the County has matched the job duties of the positions in Washington County to the job duties in the comparable counties. They present a job-by-job analysis. The following summarizes their findings:

- (1) Clerk Typist: Both offers will retain Washington County's leadership position by either \$.48 per hour or \$.62 in 2008 and by \$.38 per hour or \$.68 in 2009.
- (2) Account Clerk: Both offers will retain Washington County's leadership by either \$.61 per hour or \$.78 in 2008 or \$.56 per hour or \$.92 in 2009.

- (3) Adult/Family Aide: The wage rate comparison for this position was not quite as dramatic as the wage comparisons for the prior positions. The comparison did, however, demonstrate that Washington County is at the mid-point of the range, with two counties at a higher wage rate and two counties at a lower wage rate. In terms of comparing Washington County to the average, the Employer notes that the average year-end wage rate is somewhat skewed due to the much higher than average wage rate in Fond du Lac County for its Family Support Worker position. Without Fond du Lac, the Employer's offer is above average.
- (4) Economic Support Specialist: In analyzing the wage rates for this position, the Employer believes it should be noted that Ozaukee County has a wage rate which exceeds the wage rates paid in the remaining counties by approximately \$4.00. Thus, they remove Ozaukee from its comparisons before calculating the average rate for this position. The result shows that Washington County is approximately \$.50 per hour below the average, which the County does not believe to be significantly out of line with the pay rates in the comparable counties.
- (5) Financial and Employment Planner: They compare this to Financial and Employment Planner in other counties. Again, they discount Ozaukee County because it is more than \$5.00 per hour in excess of the second highest wage rate, which is the Washington County wage rate for 2008. For counties with comparable positions both offers exceed the average of \$18.52 in 2008. Only one comparable is settled for 2009. The Employer's offer results in an hourly rate of \$19.07 and the Union's rate is \$19.26 since Washington County is one of the highest ranking counties with respect to wage rates. Thus, there is no justification for the Union's demand for a higher wage increase than all other Washington County employees receive.

The Employer also offers some critical analysis of the Union's wage comparisons contending they are flawed and must not be considered. The Union picked only the highest paid of possible comparable positions to include in their average, which skewed the average against Washington County. Moreover, no job duty comparisons were offered by the Union and, for that reason, the wage rates compared are the classic "apples to oranges" variety which serve no purpose in this proceeding.

For the economic support specialist position, the Union included Milwaukee and Walworth Counties in the average when these two counties have never been included in the Washington County comparable pool. Also included were state wage averages (which included seven tribes), other cities, such as Eau Claire and La Crosse and other counties, such as Marathon and Rock. This only serves to distort the objective evidence and

muddy the waters. Overall the Employer submits its wage rate comparisons are more accurate, having been assessed and compared to the job duties for the positions in the comparable counties. The Employer's wage comparisons establish the reasonableness of the Employer's final offer.

The Employer also addresses the Union's assertion that there is higher turnover in the unit thereby justifying "catch-up" pay. The fact is, however, one of the social services unit employees left the employ of Washington County and accepted a position in Marathon County, which is not even contiguous to Washington County and is not a member of its comparable pool. Indeed, nothing demonstrates that the individual employee in question moved to another part of the state to earn more money. In addition to no turnover problem, there is no evidence that the pay rates in Washington County are considerably lower than the comparable counties. There is also no evidence on whether the workload in Washington County exceeds the workload of employees in the comparable counties. The Union has not justified its catch-up argument.

In the Employer's favor are the following: (1) the County maintains its ranking under its final offer; (2) the 3.0% increase under their final offer is consistent with increases in the comparable pool of between 2.5% and 3.0% with an average of 2.75% in 2008. The Union's offer resulting in a 4.0% lift is not justified; (3) the County provides a fair and competitive benefit package to its social services clerical employees, and; (4) that the cost of living is best reflected by the settlement pattern.

IV. OPINION AND DISCUSSION

This is a rather diverse bargaining unit with a number of different positions with wide ranging duties. It is a unit of 28 employees and it is helpful to see how many employees are in each classification (listed from lowest to highest paid):

<u>Title</u>	<u>Number of Employees</u>	<u>2007 Rate</u>
Clerk Typist	2	\$14.22
Program Support Clerk	5	\$15.23
Adult/Family Aide	4	\$15.43
Account Clerk	2	\$16.25
Economic Support Specialist	13	\$16.58
Financial & Employment Specialist	2	\$18.51

This is not the first time these parties have been to arbitration and they are not strangers to the manner in which arbitrators generally apply the applicable statutory criteria. Where there is an internal pattern of wage increases it is generally accepted that such a pattern deserves great weight, unless it can be said that application of the internal pattern of wage increases would be unreasonable and unacceptable for some reason. A common reason to deviate is that adherence to the pattern would result in wage level disparity compared to employees doing similar jobs in comparable municipalities.

Of course, there is a threshold question and that is whether an internal pattern exists. The parties went to interest arbitration concerning the 2002 and 2003 CBA. Arbitrator Torosian noted, in agreeing with the Employer on a general principal, that “It is said for reason that Arbitrators favor internal comparables over external comparables where a pattern exists, unless there is good reason to deviate.” However, he disagreed with the Employer that given the nature of the internal settlements, that a pattern existed. He agreed, however, with the Union that there was an unusually high turnover rate that needed to be addressed, just as the Employer had addressed high turnover in other units by agreeing to variable settlements. He agreed the Union’s offer, while higher than it should be, better addressed the turnover issue than did the Employer’s offer. He noted the turnover rate was 33%. The Union’s evidence was that in the two years of the contract, 12 of 27 employees left the unit and 8 of those were economic support specialists. He was also convinced wages were a factor because 11 employees who left had been with the County less than 4 years and that most of those that left (economic support staff) were in a classification ranked last in the external comparables.

The facts, in this case, are largely distinguished from the circumstances in which the parties found themselves in 2002-2003. There is a clear pattern of internal settlement at 3.0% annual wage increases and there has been no exodus of employees (only one.) Not only does a turnover of one employee not establish a turnover problem, it can not be said with any certainty, as could be said in 2002-2003, that wages were a primary factor.

In this Arbitrator’s opinion, this leaves the Union, in this case, to justify deviating from the internal pattern on the basis that it would cause the external wage level relationships to lag too far behind.

For about half the bargaining unit, namely everybody other than economic support specialists, the evidence is simply insufficient to establish that the Washington County positions lag behind (in wages) comparable employees in comparable counties.

Because this is a diverse department and comparable departments in comparable counties are equally diverse, it is difficult, for other than economic support specialists, to establish position to position comparability or at least it is not accomplished, in this case, by the Union. Comparing a teacher to a teacher in a district of 1000 students is easy. Comparing a policeman or fireman in towns of similar size is easy. Finding comparisons to a “clerk typist” in Washington County in the comparable counties is not.

For example, a clerk typist in Washington County earned \$14.22 per hour in 2007. It is difficult to tell whether this is good, bad, or average compared to comparable counties, based on job titles alone, because there are so many different positions in other counties that are potentially comparable in duties and responsibilities. For example, Dodge County has job classifications for Clerk, Typist I, Typist II, and Typist III. The 2007 wage rates ranged from \$13.59 to \$15.86. Fond du Lac County has a Clerk Typist and a Senior Clerk Typist classification. Ozaukee County has three clerk typist classifications, two of which were well below Washington County’s wages in 2007 at \$12.88 and \$13.95 per hour. Both Sheboygan and Waukesha Counties have two clerk typist classifications; one above and one below Washington County in pay. Similar diversity exists for account clerks. Every county has at least two account clerk classifications. Some wage rates are below Washington County and some above.

As for Program Support Clerk and Adult-Family Support Aide positions other counties don’t have similar job titles. Some, but not all have, on its face, something similar sounding to financial and employment planner. Other counties may have similar jobs with similar duties, but there is scant information offered by the Union to lend the Arbitrator any meaningful degree of confidence in making these assessments. The Employer is right in its critique that the Union apparently based its wage rate comparisons on job titles alone and for no apparent reason picked the highest paid classification for comparison purposes when there are many instances where there are job title positions paying less. The Employer’s analysis isn’t perfect either, but the Union has the laboring oar in this instance to justify breaking the pattern. The evidence, apart from Economic

Support Specialist does not establish a wage disparity relative to the external comparables for about half the bargaining unit.

Comparison is a little easier for economic support specialists who are paid \$16.58 in 2007 in Washington County. This is an important comparison because there are so many economic support specialists in the bargaining unit. There is more uniformity in job titles among comparable counties, but, even so, not all are necessarily 'apples to apples.' Dodge County has two levels of economic support specialists (I and II); one paid in 2007 below Washington County at \$16.75 per hour and one above at \$17.19 per hour. Fond du Lac was at \$17.25 in 2007. It is not clear from Sheboygan job titles (used in the Union exhibits) who does this work. The Employer says, based on job descriptions (certainly more informative than job titles), there are two levels of economic support specialists in Sheboygan; each with a minimum and maximum rate. Washington County pays economic support specialists more than one of the two classifications in Sheboygan (at both the minimum and maximum rates) and more than the minimum rate at the economic support specialist II level. Sheboygan, however, pays more at the maximum rate for Economic Support Specialists II (\$17.70). Waukesha County, according to Union Exhibit 601, pays economic support specialists at \$16.93. Ozaukee is, for some reason, head and shoulders above everyone at \$21.75 per hour.

In general, there is a wage disparity at the economic support specialist positions. However, the Union's data makes it difficult to judge how much. The Employer's data is more detailed and even it shows, discounting Ozaukee County from the average that, at the maximum level, there was a disparity in 2007. The average was \$17.08 versus \$16.58; a difference of \$.50 per hour or slightly less than 3%. This isn't dramatic and significantly there is no evidence of turnover.

All things considered, the Arbitrator does not believe the Union has justified deviating from the internal pattern. The data for economic support specialists does not show a dramatic negative difference resulting in turnover and the wage rate for the rest of the unit, if not inconclusive, is susceptible to a conclusion they are above average.

Consequently, the final offer of the Employer is more reasonable and consistent with the statutory criteria.

AWARD

The final offer of the Employer is accepted.

Gil Vernon, Arbitrator

Dated this 4th day of November 2008.