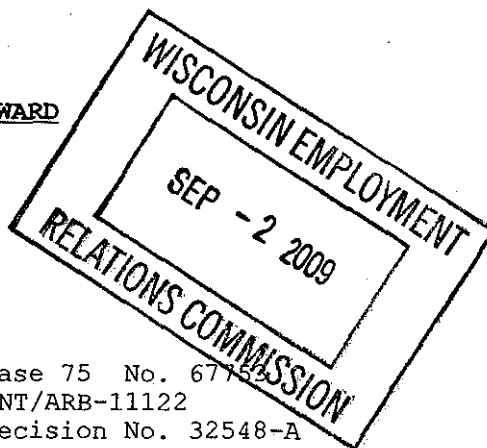


ARBITRATION OPINION AND AWARD



In the Matter of Arbitration)

Between)

KEWAUNEE COUNTY)
(Highway Department))

And)

WISCONSIN COUNCIL 40, AFSCME,)
KEWAUNEE COUNTY EMPLOYEES)
LOCAL 1470, AFSCME, AFL-CIO)

Case 75 No. 67135
INT/ARB-11122
Decision No. 32548-A

Impartial Arbitrator

William W. Petrie
217 South Seventh Street #5
Post Office Box 320
Waterford, WI 53185

Hearing Held

Kewaunee, Wisconsin
February 6, 2009

Appearances

For the Employer

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For the Union

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BACKGROUND OF THE CASE

This is a statutory interest arbitration between the Kewaunee County Highway Department and Kewaunee County Highway Employees Local 1470, AFSCME, AFL-CIO, with the matter in dispute the terms of a two year renewal labor agreement covering 2008 and 2009. After the failure to achieve a full renewal agreement the Union, on February 11, 2008, filed a petition with the Wisconsin Employment Relations Commission requesting the initiation of final and binding arbitration pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act. After completion of a preliminary investigation by a member of its staff, the Commission on September 8, 2008, issued certain findings of fact, conclusions of law, certification of the results of investigation, and an order requiring arbitration. Pursuant to selection by the parties the Commission, on January 22, 2008, appointed the undersigned to hear and decide the matter.

An arbitration hearing took place in Kewaunee, Wisconsin on February 6, 2009, at which both parties received full opportunities to present evidence and argument in support of their respective positions, and each thereafter closed with the submission of a post-hearing brief and a reply brief, after which the record was closed by the undersigned on June 29, 2009.

THE FINAL OFFERS OF THE PARTIES

During the course of their preliminary negotiations the parties reached tentative agreement on a variety of changes in the following areas of the Agreement: Article 2, entitled **PROBATIONARY AND EMPLOYMENT STATUS**; Article 3, entitled **HOURS OF WORK**; Article 4, entitled **WAGES**; Article 6, entitled **SICK LEAVE**; Article 16, entitled **GRIEVANCE PROCEDURE AND ARBITRATION**; and Addendum A, entitled **SOLID WASTE LANDFILL**. Thereafter, the County submitted its second amended final offer on July 31, 2008, and Union submitted its amended final offer on August 15, 2008. In reviewing the above documents, the single remaining area of disagreement between the parties is the size of their

proposed increases in the previous \$1.00 per hour shift differential for snow plowing, provided for in Article 3, Section B of the Agreement.¹

(1) The Union proposes the following increase:

"B. OVERTIME PAY

2. Any employee who is called in to work between the hours of midnight to 7:00 a.m., at any time between November 15 and May 15 shall receive a shift differential of ~~one dollar~~ ~~(\$1.00)~~ **five dollars (\$5.00)** per hour for hours worked between midnight and 7:00 a.m."

(2) The Employer proposes the following increase:

"B. OVERTIME PAY

2. Shift differential for plowing increased to **\$1.50** 1/1/08."

THE ARBITRAL CRITERIA

Section 111.70(4)(cm) of the Wisconsin Statutes directs the Arbitrator to utilize the following criteria in arriving at a decision and rendering an award:

"7. 'Factor given greatest weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give the greatest weight to any state law or directive lawfully issued by a state legislature to 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 arbitrator or arbitration panel shall give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

7g. 'Factor given greater weight.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall consider and shall give greater weight to economic conditions in the jurisdiction of the municipal employer than to any of the factors specified in subd. 7r.

7r. 'Other factors considered.' In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall also give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

¹ See Hearing Transcript, page 4(3-19).

- d. Comparisons 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. Comparisons 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 generally in public employment in the same community and in comparable communities.
- f. Comparisons 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 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 pension, 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 hearing.
- 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 POSITION OF THE COUNTY

In support of the contention that its final offer is the more appropriate of the two offers before the undersigned in this matter, the County emphasized the following principal considerations and arguments.

- (1) That the only remaining issue in this case is simple and straightforward, and consists of the size of an increase in the shift premium paid to Department of Public Works employees called in for snow plowing duties between the hours of midnight and 7:00 a.m. during the six month period of November 15 to May 15. The County is proposing a 50% increase to a level of \$1.50 per hour, while the Union is proposing 500% increase to a level of \$5.00 per hour.
 - (a) In addition to the above shift premium which applies to snowplow responsibilities, the arbitrator should consider the contents of two other contract provisions.
 - (i) Article 3, Section B. OVERTIME PAY, which generally provides for pay at time and one-half for hours worked in excess of eight hours per day or forty hours per

week, in addition to time and one-half for work on Saturday or Sunday, when they are the sixth or seventh day of the week.

- (ii) Article 3, Section D. MINIMUM CALL-IN PAY, which provides that an employee called-in for snow plowing is guaranteed, in addition to the County proposed \$1.50 per hour premium, a two (2) hour minimum call-in and overtime pay, at time and one-half, for all hours worked in excess of eight (8) in a day or forty (40) in a week.
- (b) That among the comparable counties in the northeastern part of Wisconsin, Kewaunee County is already the highest in base hourly wage rate.
 - (i) In only one classification is Kewaunee county second to Door County.
 - (ii) A majority of the comparables pay no premium at all for snowplow work performed between midnight and 7:00 a.m., although Door and Calumet Counties permit their employees to work their normal shifts, in addition to hours worked between midnight and 7:00 a.m., and Shawano offers a ninth hour of work in such situations.²
 - (iii) With the exception of Door County, for the truck driver classification, Kewaunee County maintains the highest hourly pay rate amongst comparable counties in the relevant winter classifications of Truck Driver, Patrolman/Sander, Grader and Mechanic.³
 - (iv) Because of superiority in base wage rates, Kewaunee County employees normally earn more doing midnight to 7:00 a.m. snowplow work than half of the comparable counties; and they additionally make more in a given calendar year for the same hours worked as compared to comparable counties.⁴
- (c) On the above bases, the County urges that its overall compensation scheme for DPW employees is superior to all but one of the comparable counties and, therefore, its final offer should be accepted.
- (2) The Union argues that a different set of comparables should apply in this proceeding, including Brown, Manitowoc and Outagamie Counties. These are the three largest counties in northeastern Wisconsin, and they dwarf Kewaunee County in key factors such as population, tax base, numbers of employees, and miles and types of roads plowed.

² Referring to contents of County Exhibit #18.

³ Referring to contents of County Exhibits #15, #16 and #17.

⁴ Referring to contents of County Exhibit #18.

The Union also argues that two small cities within Kewaunee County should also be considered as comparables. The County notes, however, that these communities are significantly smaller, in both employment levels and the number of miles to be plowed and, therefore, are too dissimilar from Kewaunee County to be proper comparables.

- (3) That the following considerations should be determinative in determining comparability.
- (a) The appropriate counties for comparability purposes are Calumet, Door, Langlade, Oconto, Shawano and Waupaca; the County rejects the Union's arguments proposing the inclusion of Brown, Manitowoc and Outagamie Counties.
 - (b) The six County proposed comparables are most like Kewaunee in all relevant aspects within the northeastern Wisconsin region.
 - (i) It has the smallest population, approximating 55% of the other six counties; in geographic area it is the second smallest, at approximately 47.6% of average; in income it is at the exact median, and in per capita income it is approximately 97% of the average; in overall valuation it is the lowest at approximately 37.9% of average, and in per capita valuation it is the lowest at 64% of the average; and if Door County, which has an enormously high per capita valuation, is excluded, Kewaunee County would then have a per capita valuation level of 87.7% of the average of the five remaining counties.⁵
 - (ii) Kewaunee has no sales tax, while Door, Oconto, Langlade, Shawano and Waupaca have local sales taxes as a revenue source.⁶
 - (iii) With respect to size of the work force, Kewaunee County ranks 47th in the state, and the comparables rank as follows: Calumet - 37th; Waupaca - 23rd; Shawano - 22nd; Langlade - 41st; Oconto - 35th; and Door - 30th.
 - (c) By way of contrast with the above are the following comparisons of the three additional Union proposed counties.
 - (i) In terms of size of work force they rank as follows: Manitowoc County - 25th; Brown County - 3rd; and Outagamie County - 5th.⁷
 - (ii) Brown, Manitowoc and Outagamie Counties are also not comparable to Kewaunee in terms of their larger populations and generally higher per capita valuations.

⁵ Referring to contents of County Exhibits #4, #5, #6, #7 and #8.

⁶ Referring to contents of County Exhibit #9.

⁷ Referring to contents of County Exhibit #10.

- (iii) Most importantly, the nature of the snow plowing responsibilities in these three counties is fundamentally different.
- While Outagamie County's pay practices are identical to Kewaunee's, Brown's and Manitowoc's are not.
 - The differences are due to the fact that in all three Union proposed counties, there are significant amounts of four lane interstate or state highways, which require much higher levels of winter maintenance; crews are called out much earlier and stay out much longer, and their compensation practices recognize this.⁸
- (d) The Kewaunee County proposed comparables are all similar in size, population, and, most importantly, in types of snow plowing work. Kewaunee has the highest tax rate and collects the lowest tax revenue, but it maintains the highest base hourly rate among the six comparables.⁹
- (e) By way of contrast the Union suggests that the largest of the counties, the smaller counties and the smallest cities be the comparables.
- (i) The levels of responsibility, the sizes of the population and the overall tax base for such counties as Brown, Manitowoc and Outagamie argue against them being comparables.
 - (ii) In Brown, Manitowoc and Outagamie Counties, the work is different, they have higher standards of responsibility with respect to roads, and their pay practices are a bit different.
 - (iii) The City of Kewaunee and the City of Algoma are very small and, although there is no evidence in the record as to the precise miles of roadway and their numbers of employees, they can be assumed to be substantially less than Kewaunee County, and the impact upon these two communities is minuscule when compared to Kewaunee County.
- (4) On the basis of all of the above evidence of comparability, the Employer urges that Kewaunee County is best compared to Calumet, Door, Langlade, Oconto, Shawano and Waupaca Counties.
- (5) In comparing the two final offers, what is not in issue in this case is whether or not employees of the Kewaunee County Department of Public Works should be paid a higher premium when called into work between the hours of midnight and 7:00 a.m.

⁸ Referring to contents of County Exhibits #13 and #14.

⁹ Referring to contents of Union Exhibit #7C and County Exhibits #15, #16 and #17.

- (a) The County has offered to increase the premium by 50% during the life of the renewal agreement, which compares with the Union proposed 500% increase.
 - (i) In evaluating the two proposals one cannot just look at the level of the premium or its financial impact upon the County.
 - (ii) To the contrary, it is appropriate to compare the premium increase with the overall pay schemes in the comparable counties.
- (b) There are four factors which impact upon the overall compensation an employee receives for plowing snow between the hours of midnight and 7:00 a.m.
 - (i) *First*, is the regular base hourly rate of pay. Kewaunee County has had the second highest 2007 and 2008 regular hourly wage rates for truck drivers, and the highest regular hourly wage rates for the Patrolman, Sander, Grader and Mechanic classifications, amongst the six comparables.
 - (ii) *Second*, is whether a county pays a premium for calling in employees during this period of time. Among the six comparables, only Langlade County pays an actual premium for work during this period, by paying an extra hour of straight time pay, plus compensation for the hours actually worked; no other county pays a premium; Shawano County provides a nine (9) hour guarantee, thus providing employees the opportunity to work an extra hour and earn additional compensation when called in for plowing.
 - (iii) *Third*, is whether a county pays time and one-half for hours worked outside the normal work hours. Only Shawano pays time and one-half for work performed outside of the normal work hours. Calumet, Door, Oconto, Waupaca and Kewaunee only pay time and one-half for hours worked in excess of eight (8) hours, while Langlade pays time and one-half only after an employee has worked forty (40) hours.
 - (iv) *Fourth*, is whether a county may require employees to go home after having worked eight (8) hours, or whether they are allowed to work their normal workdays after having been called in to work between midnight and 7:00 a.m. The right to work the normal workday after an early call in is found only in Calumet and Door Counties. Langlade, Oconto, Shawano and Waupaca do not allow an employee to work the extra hours. In Shawano, Calumet and Door Counties, the employee has to put forth additional effort to earn the premium; an employee called in at 4:00 a.m. to plow snow, must work eleven (11) hours, or until 3:00 p.m. in order to collect the full benefit of being allowed to work the normal workday.
- (c) Kewaunee County believes it is essential that the Arbitrator look at the overall level of compensation that DPW employees

receive for the work that they perform. Clearly, there are varying strategies to establishing a fair level of overall compensation.

- (i) Some counties have much lower hourly base rates, but are more generous with respect to minimum hours, premiums, or the opportunity to work extra hours.
- (ii) Kewaunee County, having the highest or nearly the highest wage rate among the base rates, pays employees more for all the work they perform throughout the year; this is a benefit for all employees because they are less subject to variations in annual compensation based upon the amount of snow or snow removal that is required in a given winter.
- (iii) The County compared the annual straight-time pay, overtime pay, and premium pay for selected Graders and Sanders.¹⁰
 - The information was then used to compare Kewaunee with the comparable counties in calculating annual pay based upon their hourly wage rates, a fixed straight-time hours of 2096, yearly overtime of 179, and total premium hours.
 - The above data allowed for an approximation calculation of overall compensation in each of the comparable counties; Kewaunee compared favorably with all six of the comparables.
 - It is clear, with the possible exception of Door County, Kewaunee County's overall compensation scheme for Graders and Sanders provides for higher annual compensation levels.
- (d) If we apply the above four (4) factors in overall compensation to a typical early call-in for snow plowing, we again see that Kewaunee County compares favorably within the six comparable counties. Assume employees were called in at 4:00 a.m. and allowed to go home at the end of eight (8) hours of work, except where an additional one (1) to three (3) hours of work were required. Overtime and other premium payments, such as is the case of Langlade and Kewaunee Counties, were included.

The results of the above exercise are as follows:

<u>County</u>	<u>Total Compensation</u>	<u>Hours Worked</u>	<u>\$ per Hour</u>
	<u>Received</u>		<u>Hrs. Week</u>
Door	\$255	11	\$23.18
Calumet	\$251.67	11	\$22.88
Shawano	\$187.06	9	\$21.46
Kewaunee	\$169.38	8	\$21.17
Langlade	\$162.63	8	\$20.32
Waupaca	\$153.28	8	\$19.16
Oconto	\$147.92	8	\$18.49

¹⁰ Referring to contents of County Exhibit #23.

- (e) The results of the above exercise show that Kewaunee is in the median between the six (6) comparable counties.
 - (i) Door, Calumet and Shawano have higher average rates because their pay schemes allow for employees to work additional hours, thereby earning time and one-half.
 - (ii) Kewaunee, with the higher average hourly rate paid throughout the year whether working overtime or not, falls in the middle.
 - (iii) Langlade, Waupaca and Oconto Counties, pay a lower effective hourly rate for this type of call-in, as compared to Kewaunee.
 - (iv) It is important to note that employees in Door, Calumet and Shawano Counties, have to work the additional hours to earn the overtime.
 - (v) In the event that additional plowing responsibilities required Kewaunee DPW employees to work beyond the eight (8) hour shift, they would be paid quite favorably in comparison to Door, Calumet and Shawano, since Kewaunee's base hourly rate is the highest.
- (6) The evidence relating to the summer vs. winter job classifications is material and relevant in this proceeding.
 - (a) The record indicates that the County Highway Department exists for two primary reasons: first, for summer road repair and other related duties; and secondly, for snow and ice removal during winter months.
 - (b) Highway Commissioner Jandrain testified that were it not for the local plowing responsibilities, not only State and County but every town within the County, the Department would be smaller.¹¹
 - (i) The record indicates that employees hold different classifications in the summer and in the winters.
 - (ii) In the summer the employees work in such classifications as Loader Operator, Dozer Operator, Truck Driver and Plant Operator; in the winter they hold essentially four classifications, Sander (Patrolman), Oshkosh Plow Operator (Truck Driver), Grader or Mechanic.¹²
 - (iii) The above situation is due to the fact that the winter duties primarily center around snow removal.¹³

¹¹ Referring to the testimony of Mr. Jandrain at Hearing Transcript, page 53(6-16).

¹² Referring to the contents of Employer Exhibit #11.

¹³ Referring to the testimony of Mr. Jandrain at Hearing Transcript, page 43(2-18).

- (c) Mr. Jandrain testified regarding the typical snow removal process and time frame.
 - (i) He indicated that typically during a snow event they would not plow snow in the evening or over the midnight time period, but rather would wait until early in the morning; and they would then complete the first round of snow removal, recognizing that snow removal of a 4-6 snow event would take several days.¹⁴
 - (iii) For the most part, however, the anticipated and normal work schedules during the winter months is from 4:00 a.m. until noon.
- (d) The point is that all employees, regardless of careers, have expectations regarding their normal or typical hours of work; working before 7:00 a.m. to plow snow is expected of DPW employees and that is built into their overall pay rate.
- (7) The differences in plowing responsibilities between Kewaunee, Brown, Manitowoc and Outagamie Counties are material and relevant in this proceeding.
 - (a) The parties disagree relative to whether Brown, Manitowoc and Outagamie counties are comparables with Kewaunee County.
 - (b) One important factor for the Arbitrator to consider in determining comparability is the type of snow removal responsibilities of each county.
 - (i) The plowing and ice control responsibilities depend upon the category of road being cleared.
 - (ii) Category 1 roads are major urban freeways and highways with six lanes or more, category 2 roads are high volume four lane highways and some six lane highways, and category 3 roads are all other four lane highways.¹⁵
 - (iii) As Mr. Jandrain testified, category 1-3 roads must be cleared to the pavement much quicker than the category 4-5 roads and, furthermore, category 1-4 roads receive 24 hour coverage during any winter storm event.
 - (iv) County highway departments are responsible for patrolling and removing snow on category 1-4 roads 24 hours per day, and they are responsible for getting at least one passable lane down to pavement as a first priority.
 - (v) Brown, Outagamie and Manitowoc counties contain many miles of Category 1, 2 and 3 roads, while Kewaunee County has no category 1-4 roads, and all of its

¹⁴ Referring to the testimony of Mr. Jandrain at Hearing Transcript, pages 44(3)-47(17), 53 and 57(16-25).

¹⁵ Referring to the contents of Employer Exhibit #12.

highways are in the category 5 level. While it also has the responsibility to provide 24 hour coverage, the expectation is only that it initially remove snow so that there is a passable lane, rather than getting to dry pavement.

(vi) Mr. Jandrain described the above differences in his testimony at the hearing.¹⁶

(vii) It is undisputed that Kewaunee County work is very hard. Employees in such counties as Manitowoc, Brown and Outagamie, however, all can expect to be called in any time, day or night, and spend considerably longer periods working, in order to meet the particular snow removal responsibilities set by the State for category 1-3 roads.

(viii) The above differences in working conditions would be expected to be reflected in a different pay scheme, and in the case of Brown and Manitowoc counties, that appears to be the case.

- The actual impact upon these counties is unknown because data concerning call-in times and hours of work was not made part of the record.
- It should be clear, however, that employees charged with the responsibilities and the hours of work associated with category 5 roads, i.e., 18 hour coverage, would be different than those involved in category 1-3 roads, requiring 24 hours coverage.

In summary and conclusion, the County has emphasized and relied upon the following principal considerations in support of its position.

- (1) Overall compensation, *including fringe benefits*, is not in issue here: both parties have reached agreement regarding these issues; both parties agreed on the need for an increase in the snow plowing premium; and the only dispute is the amount of the snow plowing premium increase.
- (2) Kewaunee County believes that in order to justify its proposal, the Union must demonstrate why this premium needs to be increased by a factor of five. To do so, it needs to demonstrate that Kewaunee County falls behind in direct compensation levels for comparable communities, which it has failed to do.
- (3) As the evidence shows, the direct compensation level for Kewaunee County DPW employees compares quite favorably, as against its comparables: there is no clear practice among these counties as to how to structure compensation in the context of snow plowing; only one county pays a premium for being called in early; others simply pay for time and one-half after eight (8) hours and expect, as part of the job, that someone would be called in early for snow

¹⁶ Referring to the *testimony of Mr. Jandrain at Hearing Transcript*, pages 49(15)-51(17) and 64(5)-65(10).

plowing, given that plowing is the primary wintertime responsibility for the DPW; two counties allow employees to work their normal shift in order to earn additional premium pay.

- (4) Given the above lack of consistent practice, it is appropriate to look at overall compensation levels as well as the effective hourly rates. Kewaunee County measures up very favorably in these comparisons.
- (5) The record makes it clear that the three additional counties that the Union seeks to include as comparables are different in important ways: they have larger work forces, larger tax bases, and, most importantly, significantly different plowing responsibilities; accordingly it would be expected that such differences would result in different compensation systems; for these reasons, the County submits that Brown, Manitowoc and Outagamie Counties should not be considered comparables. For similar reasons, including significantly smaller size, the work to be performed and the size of the work forces in the Cities of Algoma and Kewaunee are also not comparables.
- (6) When comparing the overall wage scheme in Kewaunee with its comparable counties, it is clear that Kewaunee compares favorably; with no uniform practice between these comparable counties, the Union has failed to meet its burden for such a significant increase in the snowplow premium.
- (7) While the overall cost to the County of the Union's proposal is not enormous, that should not be the measure upon which the Arbitrator views this dispute.
- (8) If the role of the arbitrator is to find a solution that the parties would have agreed upon had they been able to reach agreement, he does so by viewing the relative fairness of each proposal when compared to the comparable communities. Having failed to meet its burden, the Arbitrator should reject the Union's proposal and adopt the County's proposal.

In its reply brief it noted three principal arguments advanced by the Union in support of its position: *first*, that the County has not argued inability to pay and presented no evidence of economic difference between the comparable counties, and can thus afford the Union's proposal; *second*, that the dollar difference between the two final offers is so small as to be unimportant; and *third*, that when compared to contiguous counties (such as Brown and Manitowoc), it is a low payer. In rejecting these Union arguments it submits as follows: *first*, that while "inability to pay" is not an issue, there are important differences between the County and the Union comparables; *second*, while the overall cost difference between the two proposals is not significant, this is not a standard by which this matter should be judged;

and *third*, that Kewaunee is entitled to an assessment of which counties are really comparable, not simply contiguous, and when reviewing these comparables, which of the two proposals best meet the appropriate statutory criteria, and is thus representative of the agreement that the parties would have reached had they been able to do so.

Identification of the Primary Comparable Counties

In this area the County emphasizes or reemphasizes that Brown, Manitowoc and Outagamie counties are not comparable to Kewaunee, in population, size, tax base, urban character, and types of roads, all of which considerations are enough to exclude them as comparables. It rejects the Union's principal arguments for inclusion, which is that they are either contiguous, or contiguous to a contiguous county, and that a small percentage of each county commutes to or from Kewaunee.

- (1) The case at hand is about winter snow plowing and the appropriate overall compensation to be paid those who perform this work. Therefore, the urban or rural character of a county, its mix of roadways, the expectations associated with plowing Category 1-3 roads, versus Category 5 roads, are all relevant. The overall population, tax and revenue per mile help define these counties and, by all standards, Brown, Manitowoc and Outagamie are quite different from Kewaunee.
- (2) The Union has shown that the 2007 tax revenue for its three proposed counties are much higher than Kewaunee's \$8,576,029 tax revenue; Brown's is 9 times larger, Outagamie's is 6.4 times larger, and Manitowoc's is 3.4 times larger than Kewaunee. The same exhibit shows Kewaunee's tax rate (\$6.24) is substantially higher than Brown's (\$4.44), Manitowoc's (\$5.62) and Outagamie (\$4.45).¹⁷
- (3) The following populations and tax revenue dollars per mile also demonstrate significant differences between the four counties:

County	Total Population	Population Per Mile	Tax Revenue Per Mile
Brown	226,778	189	\$65,126
Outagamie	160,971	108	\$37,010
Manitowoc	82,887	60	\$19,923
Kewaunee	21,157	28	\$11,278

- (4) It also notes the following population per mile in the County's list of comparables: Calumet - 65 per mile; Door - 26 per mile;

¹⁷ Referring to the contents of Union Exhibit #7c.

Langlade 20 per mile; Oconto - 20 per mile; Shawano - 26 per mile; and Waupaca - 36 per mile.

- (5) The above figures, along with the urban versus rural character, as well as the highway systems of the counties, demonstrate how fundamentally different they are.¹⁸

It submits that the counties in the northeast region of Wisconsin most comparable to Kewaunee are those with commonality in relative size, population, tax base, character of roads, population density vis a vis miles of roadway, relative tax revenue and crew size. It urges that being contiguous is a factor, but it is not enough. The comparables offered by the County should be adopted, given the relevant factors under consideration in this proceeding.

The Wage Comparisons and Longevity

In this area the County notes that the Union had argued in its brief that the County's wage exhibits should be disregarded because they do not include longevity. It rejects this argument noting that longevity among the various counties is highly variable, that the record does not contain evidence of average or median seniority, thus making longevity impossible to accurately cost; it submits that the Union appears to have assumed the maximum amount in longevity payments, which is speculative given that it usually takes thirty years of service to earn the maximum.

County Exhibits 15-17 simply show the contractual base rate, while Exhibits 23-25 show the relative overall annual compensation of highway workers. While leaving out longevity had a slight effect, the purpose of these exhibits was to show that it is the base rate, not isolated premiums, which drive annual compensation. In an effort to show the relative hourly rates in snow plowing classifications, including longevity, it submits the following charts of 2007 and 2008 top hourly rates, including longevity, for

¹⁸ Noting that the total county populations are the latest State of Wisconsin estimate, and the tax revenue for the counties is not in the record.

all counties being discussed in the Patrolman/Sander and Heavy Equipment/Grader classifications.

2007 and 2008 Patrolman Top Base Rate with Longevity ¹⁹

County	2007	2008
Manitowoc	20.40	20.99
Door	20.07	20.66
Kewaunee	20.01	20.61
Brown	19.91	20.51
Outagamie	19.58	20.24
Calumet	19.54	20.13
Oconto	19.39	19.93
Waupaca	18.71	19.27
Shawano	18.41	19.01
Langlade	17.84	18.29

Heavy Equipment Operator/Grader Top Base Rate with Longevity ²⁰

County	2007	2008
Manitowoc	20.76	21.36
Kewaunee	20.55	21.17
Outagamie	20.41	21.14
Door	20.41	21.01
Oconto	20.20	20.76
Brown	20.04	20.64
Calumet	19.73	20.32
Waupaca	19.14	19.72
Shawano	18.61	19.22
Langlade	17.96	18.33

Assuming a Patrolman With a 7:00 a.m. Start Time at 2008 Rate is Called-in at 4:00 a.m., and Allowed to Go Home at the End of Eight Hours, Unless One to Three Hours of Work Required to Maximum Earnings ²¹

¹⁹ Noting as follows: use of the Sander rate as the Patrolman rate in Kewaunee County, since it is the more prevalent rate used for plowing roads; that 20 years of service is assumed for Waupaca, Shawano and Langlade counties; and that the Shawano figure includes recognition that employees hired after 1996 are not eligible for longevity.

²⁰ Noting as follows: 20 years of service is assumed for Waupaca, Shawano and Langlade counties; and Shawano figure includes recognition that employees hired after 1996 are not eligible for longevity.

²¹ Noting as follows: hourly rate with longevity plus $\frac{1}{2}$ time premium for 3 hours = 12.5 hours x hourly rate with longevity for Door and Calumet counties; hourly rate with longevity x 9 hours plus $\frac{1}{2}$ time premium for 4 hours = 11 hours x hourly rate with longevity for Shawano County; and hourly rate with longevity x 8 hours plus one hour at straight-time snowplow x hourly rate for Langlade County.

County	Total Compensation		\$ Per Hr. for Hours Worked
	w/longevity	Hours Worked	
Door	262.38	11	23.85
Calumet	251.63	11	22.88
Shawano	209.11	9	23.23
Kewaunee	169.38	8	21.17
Langlade	164.61	8	20.57
Waupaca	154.16	8	19.27
Oconto	159.44	8	19.93

As noted above, Kewaunee County has one of the highest hourly rates, including longevity, among all counties being considered. When calculating the effective hourly rate for snow plowing it falls in the median for comparable counties. More importantly, County Exhibits 23-25, although they do not include longevity, demonstrate that this higher base rate has a substantial effect upon total annual compensation.

Consideration of Other Factors

One of the reasons given by the Union for including Manitowoc as a comparable is that Kewaunee and Manitowoc counties both experience "lake effect" snow. This argument, however, supports the position of the County, that the nature and character of the snow plowing is at the center of this case. Brown, Outagamie and Manitowoc are more urban and less rural. Their mission is different in that they have miles of category 1, 2 and 3 roads which demand 24-hour coverage, quicker response time and more complete plowing, meaning down to the pavement in a shorter time frame. One would expect that with these expectations, the pay system for plowing would be different; this argument does not diminish the contribution of Kewaunee's highway employees, but it does distinguish it.

Summary and Conclusions

In this area the County urges as follows.

- (1) The primary comparables should not include Brown, Outagamie, and Manitowoc Counties as they are more urban, have different plowing standards, enjoy a broader tax base and more people and tax revenue per mile.
- (2) Kewaunee is one of the top payers on base rate (Including longevity) and this effectively offsets the need for a 500% increase in the snowplow premium. Overall annual earnings by

Kewaunee employees are quite comparable and, therefore, a 50% increase in the premium is sufficient.

- (3) The different roads and plowing responsibilities between Category 1, 2 and 3 roads, versus Category 5 roads, justify a different pay rate scheme. When compared with appropriate comparable counties, Kewaunee is a very comparable payer for snow plowing work.

On all of the above bases, the County asks that its final offer be adopted in this proceeding.

THE POSITION OF THE UNION

In support of the contention that its final offer is the more appropriate of the two offers before the undersigned in this matter, the Union principally emphasized the following considerations and arguments.

- (1) The case involves negotiations for a successor agreement between the parties; after months of negotiations, they reached full agreement on everything except the appropriate premium rate of pay provided for in Article 3, Section B, which provides for a shift differential for employees who perform winter maintenance between midnight and 7:00 a.m., between November 15 and May 15.
 - (a) The current shift differential for performance of the above work is \$1.00 per hour.
 - (b) The County proposes a \$.50 per hour increase, while the Union proposes a \$4.00 per hour increase in the shift differential.
- (2) It submits that several of the statutory criteria have no significant application to the dispute at hand.
 - (a) The significance and impact of *the greatest weight* and *the greater weight criteria* varies among arbitrators.
 - (i) Evidence showing the direct impact of implementing the Union offer is required to trigger the greatest weight criterion as determinative.²²
 - (ii) The lack of the above evidence in the case at hand is likely due to the fact that the average annual cost difference between the two final offers amounts to only \$6,086.50.²³
 - (iii) This average cost increase amounts to only 0.03% of the County expenditures in 2007, a difference which is

²² Referring to the decision of Arbitrator Vernon in Monroe County, Dec. No. 31318-B (12/1/2005).

²³ Referring to contents of County Exhibit #10.

hardly sufficient to make *the greatest weight criterion* determinative in the case at hand.²⁴

- (b) It also submits that the County has failed to present evidence of any differing economic circumstances between Kewaunee County and the external comparables, thus also rendering *the greater weight criterion* non-determinative.
 - (c) It also submits that no bases exist for significant arbitral consideration of various other statutory criteria in this proceeding.²⁵
- (3) It submits that the following statutory criteria have significant application to the dispute at hand: *the interests and welfare of the public and the ability to pay; comparisons with other employees performing similar services; comparisons with other employees generally in public employment in the same community and in comparable communities; the overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holiday, and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received; and other factors normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment in voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.*²⁶
- (4) Arbitral consideration of the *interest and welfare of the public* and the *financial ability of the County to meet the cost of the proposed settlement* favor selection of the final offer of the Union, on the following principal bases.
- (a) The County has the ability to pay the costs of the Union's offer: it presented no ability to pay argument at the hearing; and while it may be unwilling to pay the Union proposed \$4.00 per hour premium adjustment proposed, it is supported by the external comparables.
 - (b) The Union proposed adjustment serves the interest of the public on various bases: it provides an equitable wage structure in comparison to the compensation received by highway workers in the comparable counties; it will result in a fair day's pay for a fair day's work; the public has an interest in properly paid highway employees because it fosters human dignity which improves employee morale, and a loyal work force is more efficient and productive; and, without the Union proposed adjustment, morale may decrease as workers continue to earn less while performing a.m.

²⁴ Referring to *the decision of Arbitrator Honeyman in Wausaukee School District*, Dec. No. 29976-A (4/17/01).

²⁵ Referring to Sections 111.70(cm)(7)(a), 7(b), 7(f), 7(g) and 7(i) of the Wisconsin Statutes.

²⁶ Referring to Sections 111.70(cm)(7)(c), 7(d), 7(e), 7(h) and 7(j) of the Wisconsin Statutes.

winter maintenance than employees working the same shift and performing the same work in comparable counties.

- (c) The work performed by the Kewaunee County Highway Department employees during the winter months is essential to ensure safe, passable roads for the county residents: in emergencies the presence or absence of plowed roads may make the difference between life and death, as police and fire personnel travel to an accident scene, and/or as ambulances attempt to transport patients; under all types of conditions and during all hours of the day, Highway Department employees are expected to respond and report to work when called to duty; even in the absence of a contract provision mandating employees reporting to work when called, County expectations are high in this area; on rare occasions when it has been unable to contact employees, supervisors have gone to employee's homes to summon them to work; during winter months workers are actually, albeit not contractually, on call for every minute of every hour for months on end; the work is hard and sometimes thankless, and workers limit their social commitments at the first hint of snow. On these bases, appropriate compensation for those performing their winter snow duties is simply good public policy.
- (5) The reasonableness of the Union's proposal is also supported by the fact that employees in comparable counties who perform similar work receive significantly higher compensation for a.m. winter maintenance than Kewaunee County Highway Department employees.
- (a) The parties disagree, as follows, relative to the identity of the primary external comparables.
- (i) The Employer proposes that they consist of *Calumet, Door, Langlade, Oconto, Shawano, Waupaca and Kewaunee.*
- (ii) The Union proposes the addition of *Brown, Manitowoc and Outagamie* counties, in addition to the *City of Algoma and the City of Kewaunee.* It proposes rejection of *Shawano, Waupaca and Langlade* counties, due to their distance from Kewaunee County and limited shared labor market.
- (b) It urges that the Union proposed comparables are proximate to Kewaunee County: only three counties are contiguous to Kewaunee County (*i.e., Brown, Door and Manitowoc*); the additional counties proposed by the Union border the contiguous counties (*i.e., Calumet, Oconto and Outagamie*); and the cities of *Algoma and Kewaunee* are the largest cities in Kewaunee County.
- (c) The use of geographic proximity in establishing primary external comparables is appropriate for two principal reasons: *first*, commuting workers between proximate jurisdictions establish labor market interdependence and

competition for workers between the municipalities;²⁷ and, second, it is more likely that communities geographically close to one another will experience a similar cost of living.

- (d) The inclusion of Brown County is justified primarily because it is contiguous with Kewaunee County, and therefore shares a labor market: a significant number of Kewaunee residents rely on Brown County for their income; more residents of Kewaunee County work in Brown County than in any other county; nearly 70% of the total work force of Kewaunee work in either Brown County or Kewaunee County; and 876 residents of Brown County commute to Kewaunee County for work.²⁸
- (e) Manitowoc County also shares a border with Kewaunee County: over 400 residents of Kewaunee County commute to Manitowoc County for employment; nearly 300 Manitowoc County residents travel to Kewaunee for work.²⁹
 - (i) Like Brown County, Manitowoc County's close proximity and tie to the labor market of the region necessitates its inclusion as a comparable.³⁰
 - (ii) Kewaunee and Manitowoc Counties share similar income wealth, land wealth and property taxes; and the median household income and adjusted gross income of the two counties are similar.³¹
 - (iii) The two counties also border on Lake Michigan and both, therefore, are subject to lake-effect snow.³²
- (f) Outagamie County is also close geographically to Kewaunee County: the two counties compete for workers; they share similar growth in land value and per capita value; and their residents have similar income statistics.³³ It submits that the evidence of record also supports inclusion of Outagamie County as a primary external comparable.

²⁷ Referring to the decisions of Arbitrator Kessler in Grant County, Dec. No. 29200-A (6/29/98), and Arbitrator Baron in Juneau County, Dec. No. 28229-A (7/17/95).

²⁸ Referring to the contents of Union Exhibit #6c.

²⁹ Referring to the contents of Union Exhibit #6c.

³⁰ Referring to the decision of Arbitrator Oestreicher in Door County, Dec. No. 30096-A (10/01/01).

³¹ Referring to the contents of Union Exhibit #7c.

³² Referring to the testimony of Mr. Jandrain at Hearing Transcript, page 59.

³³ Referring to the contents of Union Exhibits #7a, #7b and 7c.

- (g) The cities of Algoma and Kewaunee are the two largest cities in Kewaunee County, both have street department employees who perform duties similar to those performed by Kewaunee County Highway Department employees, and who face identical economic realities as those employed by Kewaunee County.³⁴ On these bases it urges inclusion of the City of Algoma and the City of Kewaunee as primary external comparables.
- (h) It rejects the adoption of Shawano, Waupaca and Langlade counties as primary external comparables, due to their distance from Kewaunee County and their limited shared labor market. It submits that the Employer exhibits reveal no persuasive statistics which support the adoption of these counties as comparable.
- (6) It submits that it is appropriate for the Union to include longevity pay when comparing the earning of comparable employees employed by the primary external comparables.³⁵ Since they do not include longevity pay, it urges that the contents of County Exhibits #15, #16, #17, #23, #24 and #25 be disregarded in this proceeding.
- (7) It submits, as shown below, that Employees in Kewaunee County who perform a.m. winter maintenance receive compensation that is significantly less than workers in comparable municipalities performing similar work during the same time period; although this is due to various factors, the resulting rates are shown below.

Monday to Friday, 12:00 a.m.-
7:00 a.m. Winter Maintenance

Employer	Patrolman	Heavy Equip.	Mechanic
Algoma City	\$30.95	N/A	N/A
Brown	\$30.78	\$30.78	\$31.49
Calumet	\$30.20	\$30.48	\$30.48
Door	\$29.78	\$31.39	\$31.79
Kewaunee City	\$29.78	N/A	N/A
Manitowoc	\$31.49	\$32.04	\$32.62
Oconto	\$19.93	\$20.76	\$21.11
Outagamie	\$20.29	\$21.14	\$21.82
Comparable Average	\$28.03	\$27.79	\$28.22
Kewaunee (U)	\$25.35	\$26.17	\$26.94
Kewaunee (C)	\$21.85	\$22.67	\$23.44 ³⁶

- (a) As shown above, the a.m. winter maintenance compensation schemes in the municipalities of Algoma City, Brown County, Calumet County, Door County, Kewaunee City and Manitowoc

³⁴ Referring to the decision of Arbitrator Hafenbecker in Washington County Highway, Dec. No. 19812-A (11/17/82).

³⁵ Referring to the decision of the undersigned in Mukwonago School District, Dec. No. 25380-A (12/15/88).

³⁶ Referring to the contents of Union Exhibit #10, with the comparable averages modified.

County demonstrate that the Kewaunee County Highway workers are significantly under compensated when performing such duties.

- (b) The Union is not seeking immediate wage parity, in that its final offer does not close the gap with the comparables.
 - (c) The County's offer to provide an additional \$.50 per hour at the a.m. winter maintenance rate is insufficient as it does little to close the gap shown above.
 - (d) While both final offers contain statistically significant increases, the weight in this proceeding should be upon the actual rates paid versus the comparables.
- (8) Since both parties believe a change in the status quo ante is needed, no bases exist for a quid pro quo analysis by the arbitrator.³⁷
- (9) It urges that direct internal comparisons within Kewaunee County are not appropriate because no other bargaining unit has a winter maintenance provision in its collective bargaining agreement. The County's winter maintenance duties are unique, its highway employees remain on call twenty-four hours per day and seven days per week for several months each year. The external comparisons are more relevant and, as noted above, support adoption of the Union's final offer.
- (10) In evaluating the overall compensation of those in the bargaining unit, it urges as follows.
- (a) In terms of health and dental insurance, they are well compensated, but their overall compensation is average, at best, when direct wage compensation, vacation, holiday and excused time benefits are all taken into consideration.³⁸
 - (b) In terms of direct wage compensation, an evaluation of benchmark positions in Highway units indicates that Kewaunee's Heavy Equipment Operator and Patrolman rates are above average, while the Mechanic position is moderately below average.³⁹
 - (c) When their average wage rates are considered in conjunction with their below average number of overtime hours worked, Kewaunee County highway workers' annual wages lag considerably behind the primary comparables.⁴⁰
 - (d) Of the eight primary comparables five have settled contracts through 2009, all five of which have agreed to 3% across-

³⁷ Referring to the decision of Arbitrator Yaeger in City of Seymour, Dec. No. 32228-A (7/15/08).

³⁸ Referring to the contents of Union Exhibits #12b, #12e, #12g and #12i.

³⁹ Referring to the contents of Union Exhibits #9a and #9b.

⁴⁰ Referring to the contents of Union Exhibit #11a.

the-board wage increases; the parties have already agreed to the same 3% increase agreed upon by these comparables.⁴¹

- (e) It particularly urges that vacation, holiday and sick leave time is particularly important to those in the bargaining unit due to the twenty-four hour per day and 7 days per week on call schedules during the winter months. It urges that below average benefits in these areas exacerbates the strain on highway workers, and that the overall compensation criterion thus support adoption of the final offer of the Union.⁴²

In summary and conclusion it submits that Kewaunee County Highway Department employees performing a.m. winter maintenance duties are under compensated: the \$4.00 per hour premium adjustment proposed by the Union is justified, as it moves the rate more closely in line with external comparables; the Union proposed increase is a very small percentage of the County's overall budget; and, due to the fact that they receive less than average a.m. winter maintenance wage rates, the affected employees lag considerably behind that earned by those in comparable communities. It urges that the Union proposal remedies the winter maintenance wage disparity more significantly than the County proposal, by coming closer to closing the gap between Kewaunee County and the comparables.

In its reply brief the Union addressed various arguments which had been set forth by the County in its initial brief.

- (1) In the introductory portion of its brief it characterized the Union proposed increase in winter maintenance premium as a 500% increase in the premium, as compared to a 50% increase proposed by the County.⁴³ It urges that such an approach misses the mark, in that the significance of the present gap is best understood when placed in a context that enables the actual rate to be evaluated against the external comparables, in terms of actual dollars.⁴⁴
- (2) It disagrees with the County assertion that Kewaunee County Highway Department employees are the highest paid among its

⁴¹ Referring to the contents of Union Exhibits #8.

⁴² Referring to the contents of Union Exhibits #12e, #12f, #12g and #12h.

⁴³ Referring to the Employer Brief, pages 1-2.

⁴⁴ Referring to the decision of Arbitrator Bellman in CESA #9, Dec. No. 25697-A (3/24/89).

comparables.⁴⁵ The County's argument is without merit because it failed to include longevity payments when comparing the wages and, therefore, it should be dismissed.⁴⁶

- (3) It disagrees with the County proposed comparables. The County's rationale, in supporting inclusion of Shawano, Waupaca and Langland counties, is flawed, in that it notes that Kewaunee County ranks the lowest or close to lowest in population, geographic area, and per capital valuation. It then states that Manitowoc, Outagamie and Brown counties should be excluded because they are "larger in population and generally higher in per capital valuation," thus failing to acknowledge the significant upward variance in the demographic and economic indicators among its own proposed comparables.⁴⁷
- (a) Unlike Kewaunee County, Shawano, Waupaca and Langlade counties rely on county sales tax for revenue and, conversely, Brown, Manitowoc and Outagamie counties do not have a county sales tax.⁴⁸ This further supports inclusion of the latter three counties in the comparability pool with Kewaunee County.
- (b) The Union concedes that establishing comparability with Kewaunee County is difficult because of its small size, relative to other counties in northeastern Wisconsin. It is therefore unreasonable to limit the comparability discussion to factors identified by the County, i.e., population, equalized value and number of full time employees. In such a situation it urges that the comparisons based upon geographical proximity and economic interdependency makes the most sense, and supports the Union's selection of Brown, Manitowoc and Outagamie counties as comparables.
- (4) It disagrees with the County contention that it is appropriate to consider *the levels of road categorization*, as defined by the Wisconsin Department of Transportation, in determining a comparability pool.
- (a) An extensive search of WERC interest arbitration decisions fails to reveal a highway department comparability pool based upon road categorization.
- (b) Highway departments are responsible for many duties other than snow removal, which further detracts from the position of the Employer.
- (c) Road characterization does not change the services provided by the County nor necessarily is indicative of the actual work performed by employees as related to snow removal.

⁴⁵ Referring to the Employer Brief, at page 3.

⁴⁶ Referring to the *decision of Arbitrator Michelstetter in Delevan - Darian School District*, Dec. No. 22907-A (5/22/86).

⁴⁷ Referring to the Employer Brief, at pages 4-6.

⁴⁸ Referring to the contents of Employer Exhibit #9.

- (d) Road categories do not determine the type of equipment used or the skills required to operate snow removal equipment, every highway worker, despite the level of road, is subject to being called in to work 24 hours a day and seven days a week, and when they are called in for snow removal there is no less urgency for them to respond based on the categories of roads.⁴⁹
- (e) The work performed, the equipment operated, and the reporting responsibility for each employee is the same, and nothing in the record relating to road category alters these facts. Accordingly, the Employer's road categorization argument is without merit.
- (5) Central to the County's argument is the comparison of hourly wage rates among its comparables. This comparison, however, loses its value because it does not incorporate longevity payment into the wages; longevity payments augment the wage rates in Shawano, Waupaca and Langlade counties, and Manitowoc and Brown county employees also receive longevity payments. The following table illustrates the hourly wage rate, including longevity where applicable, for the Kewaunee Patrolman position, which is very close to the average among the Union suggested comparables. It also holds true for the Kewaunee County heavy equipment and mechanic positions.

Employers	2007	2008	2009
City of Algoma	\$20.03	\$20.63	\$21.25
Brown County	\$19.91	\$20.51	
Calumet County	\$19.54	\$20.13	
Door County	\$20.07	\$20.66	\$21.28
City of Kewaunee	\$18.64	\$19.20	\$19.78
Manitowoc County	\$20.40	\$20.99	\$21.60
Oconto County	\$19.39	\$19.93	
Outagamie County	\$19.58	\$20.29	\$20.90
Average	\$19.70	\$20.29	\$20.96
Kewaunee County	\$19.76	\$20.35	\$20.96

The issue in this proceeding is not, however, the establishment of an appropriate overall wage rate, but rather the size of an increase in the shift premium paid to DPW employees when called in for winter snow plowing duties between the hours of midnight and 7:00 a.m.

- (6) In accordance with the above, the Employer has failed to establish that wages paid to Kewaunee County employees offset the deficiency in the a.m. winter maintenance rate. As shown below, DWP Employees in Kewaunee County who perform a.m. winter maintenance duties receive compensation significantly less than those in comparable municipalities.

⁴⁹ Referring to the testimony of Commissioner Jandrain at Hearing Transcript, pages 60(13-24), 61(3-13) and 63(18-22).

Monday through Friday, Winter Maintenance 2008 Premium Rates

Employers	Patrolman	Heavy Equipment	Mechanic
Algoma City	\$30.95	N/A	N/A
Brown C'nty	\$30.781	\$30.78	\$31.492
Calumet C'nty	\$30.20	\$30.48	\$30.48
Door C'nty	\$29.78	\$31.39	\$31.79
Kewaunee City	\$29.78	N/A	N/A
Manitowoc C'nty	\$31.49	\$32.04	\$32.62
Oconto C'nty	\$19.93	\$20.76	\$21.11
Outagamie C'nty	\$20.29	\$21.14	\$21.82
Comparable Avg.	\$28.03	\$27.79	\$28.22
Status Quo Kewaunee	\$21.35	\$22.17	\$22.94
Employer Proposal	\$21.85	\$22.67	\$23.44
Union Proposal	\$25.35	\$26.17	\$26.94

Although the underlying reasons for the disparity lack uniformity, the ultimate rate for a Kewaunee County Patrolman is \$6.68 per hour less while performing a.m. winter maintenance work than the comparable average, and the Heavy Equipment and the Mechanic positions also receive significantly less per hour than such averages.⁵⁰

In summary and conclusion it submits that the Union's final offer is more reasonable and supported by the evidence of record, and asks that it selected by the undersigned.

FINDINGS AND CONCLUSIONS

The parties differ on only a single impasse item, the amount of increase in the *shift differential* provided in Article 3, Section B, Paragraph 2, of the agreement, for employees called in between Midnight and 7:00 a.m. for plowing snow. In arguing their respective cases they disagree in the following principal areas: the composition of the principal intraindustry comparables; the significance of longevity pay in the direct income comparisons; the significance of the overall compensation criterion; and the significance of the interest and welfare of the public and the ability to pay

⁵⁰ Noting that the comparable averages for the Patrolman and the Mechanic positions were modified from what is shown on Union Exhibit #10.

criteria. Each of these areas of consideration are separately addressed below.

The Primary Intraindustry Comparables

Apart from legally mandated priorities or unusual circumstances, *comparisons* are normally the most important arbitral criteria and so-called *intraindustry comparisons* are normally the most important of the various types of comparisons.⁵¹ These principles are well described in the following excerpts from the venerable and still authoritative book by the late Irving Bernstein:

"Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the Union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill...Arbitrators benefit no less from comparisons. They have the appeal of precedent...and awards, based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.

* * * * *

a. *Intraindustry Comparisons.* The intraindustry comparison is more commonly cited than any other form of comparison, or, for that matter, any other criterion. Most important, the weight that it receives is clearly preeminent; it leads by a wide margin in the first rankings of arbitrators. Hence there is no risk in concluding that it is of paramount importance among the wage-determining standards.

* * * * *

A corollary of the preeminence of the intraindustry comparison is the superior weight it wins when found in conflict with another standard of wage determination. The balancing of opposing factors, of course, is central in the arbitration function, and most commonly arises in the present context over an employer argument of financial adversity."⁵²

⁵¹ The terms *intraindustry comparisons* derive from their long use in the private sector. The same principles of comparison are used in public sector interest impasses, in which situations the so-called *intraindustry comparables* normally consist of other similar units of employees employed by comparable units of government; these groups may be referred to as *primary external comparables* or other equivalent terminology.

⁵² See Bernstein, Irving, The Arbitration of Wages, University of California Press (Berkeley and Los Angeles), 1954, pages 54, 56, and 57. (footnotes omitted)

Both parties recognize the importance of the *primary intraindustry comparisons*, and they disagree as follows: *the County urges that the comparables should consist of Calumet, Door, Langlade, Oconto, Shawano and Waupaca counties; the Union agrees with County inclusion of Calumet and Door counties, urges the addition of Brown, Manitowoc and Outagamie counties and the cities of Algoma and Kewaunee, and it disagrees with County inclusion of Langlade, Oconto and Shawano counties.* The normal considerations involved in arbitral identification of primary comparables is well described in the following excerpt from the authoritative book originally authored by Elkouri and Elkouri:

"It is not unusual for the parties to disagree on the array of communities to be considered and require the arbitrator to make the determination. Determining which cities are 'comparable' for purposes of arbitral resolution of a dispute between a city and its police officers has been made on the basis of the following factors: (1) proximity to a large city; (2) population; (3) size of the police force; and (4) size of the police department budget. Of course, the union status of the police force may also be a factor. After the cities to be used as the comparison group have been selected, one arbitrator then computed the mean, or average value of the settlements reached by these cities' unionized work departments, determined it to represent a wage increase of 4.5 percent, and applied that percentage uniformly across the parties' wage schedule.

Selection of the 'appropriate comparability group 'from among 25 counties offered by the parties for purposes of resolving percentage wage increase and medical insurance contribution issues has been made on the basis of three standards of comparability. They include close geographic proximity, population and density, and union representation. In identifying those standards on arbitrator explained:

[A] close geographic proximity may signal certain shared characteristics such as climate, avenues of transportation...and possibly socio-political values of the population...[L]abor markets tend to have geographic boundaries...[W]hat occurs in other counties within this range may be expected to affect the ability of Sioux City to employ or retain workers and may affect the nature of the duties of secondary employees.

...[Counties with metropolitan areas will typically have a larger tax base, and may have greater diversity of industry...Population therefore may be an important determinant of whether a county is comparable...with respect not only to its ability to pay but also to the nature of the duties required of secondary road employees.

Employees represented by a union have an effective vehicle by which to present their views on...salary and fringe benefits...Employees without such representation cannot be said to be similarly situated.

A 1997 factfinding report by an arbitrator for a unit of police officers contained the following observation concerning the inherent difficulties in making comparative wage and rate analyses:

Both parties submitted lengthy lists of communities deemed comparable. The Fact-Finder observed, not unexpectedly, the City's nominees tend to include departments offering terms less favorable than those available in Willowick. In contrast, the Union's candidates included, in the main, departments providing benefits more favorable than those available in Willowick.

The selection of representative communities is not easily made. This Fact Finder believes that ideally comparable communities ought to be located nearby in the same labor market...be of similar territorial size and population density, draw upon similar resources and tax bases, have a similar mix of commercial, industrial and residential properties with a similar need for police protection, and maintain similarly sized Police Departments.

Unfortunately, developing a list of comparable communities which meets all of these criteria is seldom possible, and the selection process is further complicated because information relevant to disputed issues may not necessarily be available from a community which does meet the criteria."⁵³

As described above, interest arbitrators, when called upon to determine the composition of primary external comparables, normally rely upon a variety of potential criteria, including such factors as geographic/labor market proximity, population and population density, size of the work forces, size of operating budgets, the nature of required duties, similarity of tax bases and tax income, and similarity in mixtures of commercial, industrial and residential properties. While the Union appropriately urges the importance of proximity and labor market considerations, these factors simply cannot alone be assigned determinative importance. The six counties proposed as primary comparables by the Employer are much more closely aligned to one another in terms of such factors as population, size, per capita income, overall property valuation, and per capita county tax base valuation, than those proposed by the Union.⁵⁴ Apart from these specific factors, it also seems clear that those in the bargaining unit in Kewaunee County, would be fully qualified to

⁵³ See Ruben, Allan Miles, Editor in Chief, Elkouri & Elkouri HOW ARBITRATION WORKS, Bureau of National Affairs, Sixth Edition - 2003, pages 1410-1411. (footnotes omitted)

⁵⁴ See Employer Exhibits #4 to #8.

perform winter plowing and related duties in Brown, Outagamie and/or Manitowoc counties; it is equally clear from the record that their winter duties in Kewaunee County involve different techniques, timetables and priorities, due to the fact that they service only category 5 roads.⁵⁵

Without unnecessary elaboration, the undersigned also notes that there is nothing in the record which persuasively suggests that the relatively small cities of Kewaunee and/or Algoma would be appropriate intraindustry comparables of any of the counties proposed by either of the parties.

On the above described bases the undersigned has preliminarily determined that Calumet, Door, Langlade, Oconto, Shawano and Waupaca counties are the primary intraindustry comparables to Kewaunee County in the case at hand.

**The Significance of Longevity Pay in
the Monetary Income Comparisons**

Both parties addressed the significance of longevity pay received by some of the primary external comparables, and the Union argued that failure of the County to include longevity pay in its wage comparisons should result in arbitral disregard of the contents of these comparisons.⁵⁶

In its reply brief the Employer addressed the Union's argument that its wage exhibits should be disregarded because they did not include longevity payments. It initially responded by pointing out that longevity pay is highly variable, that the record does not contain evidence of average or median seniority, thus making it impossible to accurately determine its cost among the comparables; in this connection, it also suggested that the Union appears to have assumed the maximum amount of longevity seniority payments, without regard to the fact that it takes up to 30 years to earn such maximum longevity. It presented charts for all ten counties urged as comparables by

⁵⁵ See contents of Employer Exhibit #12, and the earlier referenced testimony of Mr. Jandrain.

⁵⁶ Referring to the contents of Employer #15, #16, #17, #23, #24 and #25.

either party, showing the 2007 and 2008 top base rates for the Patrolman and the Heavy Equipment Operator/Grader positions. These charts include the Union estimated longevity increases for Brown, Door, Manitowoc and Oconto Counties, and it added its own estimated longevity increases for Waupaca, Shawano and Langlade County; in footnotes accompanying the figures for the last three counties, it noted that it had assumed 20 years of service in these counties, and had also taken into consideration the fact that Shawano employees hired after 1996 were not eligible for longevity.⁵⁷

In evaluating the above positions of the parties relating to longevity pay the undersigned first notes that the Union, in preparing its exhibits showing the 2007, 2008 and 2009 wage rates for the Patrolman, the Heavy Equipment Operator and the Mechanic positions, including longevity, for its proposed comparables, clearly used a rather questionable technique!⁵⁸ Four counties among the Union proposed comparables provide for longevity pay: Brown County provides up to a maximum longevity payment of \$360 per year at 16 years of service; Door County provides up to a maximum longevity payment of \$540 per year at 30 years of service; Manitowoc County provides up to a maximum longevity payment of \$1,289.60 per year at 21 years of service; and Oconto County pays up to a maximum longevity payment of \$3000 per year at 30 years.⁵⁹ Apparently, the Union divided the maximum longevity payment for each of these counties by 2080 (i.e., 52 weeks per year times 40 hours per week), and added the result to the hourly wages of the classifications. In Door County and Oconto County, proposed by both parties as comparables, the results were as follows:

- (1) In Door County, the \$540 maximum yearly longevity payment reached at 30 years of service was divided by 2080 and the .2596 result was rounded up to a \$0.26 per hour increase, which was added to top rates of pay for its winter work activity for 2007 and 2008.

⁵⁷ See pages 4-6 in the County's Reply Brief.

⁵⁸ Referring to Union Exhibits #9a, #9b and #9c.

⁵⁹ See the contents of Union Exhibit #12a.

- (2) In Oconto County, the \$3,000 maximum yearly longevity payment reached at 30 years of service was divided by 2080 and the 1.4423076 result was *rounded down* to \$1.44 per hour increase, which was added to the top rates of pay for winter work activity for 2007 and 2008.⁶⁰

It is next noted that even if the above described Union computation of hourly wage rates in Door and Oconto counties were disregarded, the Kewaunee County 2007 and 2008 wage rates for the Patrolman and the Heavy Equipment Operator/Grader, would be third of ten and second of ten, respectively, thus favoring the position of the County.⁶¹

Finally, it is clear, as urged by the Employer, that with or without inclusion of longevity in the comparable wage rates among the seven primary intraindustry comparables, representative Kewaunee County earnings in 2008, were first in both hourly wage rates and total yearly income in the Grader classification, and first in hourly wage rates and second in total yearly income in the Sander classification.⁶² In this connection it is noted that no appropriate basis exists for Union modification of the comparable hourly wage rates by factoring in overtime pay and overtime worked.⁶³

On all of the above bases the undersigned has determined, with or without the inclusion of longevity, that the hourly wage rate and yearly total income comparisons within the primary intraindustry comparables clearly favor selection of the final offer of the County in this proceeding.

**The Significance of the Overall Compensation
Criterion in these Proceedings**

What next of Union reliance on *the overall compensation criterion* which mandates arbitral consideration of a variety of factors, including "...vacation, holidays and excused time, ...and all other benefits received?

⁶⁰ See the contents of Employer Exhibits #15, #16 and #17 and Union Exhibits #9a, #9b and #9c.

⁶¹ See the comparisons at pages 5 and 6 of the Employer's reply brief.

⁶² See the contents of Employer Exhibits #23, #24 and #25.

⁶³ See the contents of Union Exhibit #10.

In this area it concedes that those in the bargaining unit are relatively well compensated in the areas of health and dental insurance, are average in their direct wage levels, but get fewer than average overtime hours, receive no clothing allowance, no workers compensation supplement, and receive at least slightly below average holiday and vacation benefits.

The Employer urges that overall compensation levels, *involving fringe benefits*, are not in issue in this proceeding, and submits that the parties have fully agreed in all other areas, with the single exception of the level of increase in the snow removal plowing premium. Accordingly, it submits that only the overall level of direct monetary compensation that DPW employees receive for plowing snow is in issue.

The Employer is quite correct that the only issue in this proceeding is the appropriate increase in the hourly shift differential for time spent plowing snow between midnight and 7:00 a.m. When only a single wage issue of this kind is being arbitrated within a final offer selection process, it does not automatically open up for arbitral consideration all other unrelated fringe benefits and/or conditions of employment. The basis for this is the fact that the parties have already accounted for these other items in their prior negotiations.

On the above described bases the undersigned has determined that the overall compensation criterion, as it applies to fringe benefits and/or other conditions of employment, cannot be assigned significant weight in the final offer selection process in this proceeding.

**The Interest and Welfare of the Public and
the Ability to Pay**

There is no serious disagreement between the parties with respect to the interest and welfare of the public being served by properly compensating and fairly treating employees, and the only remaining question in this area is the significance of the Union's reliance upon the fact that the Employer has the requisite ability to pay, and that the overall cost of the Union's final offer is manageable and would not significantly add to the County budget. The

Employer persuasively urges that employer ability to pay cannot alone justify arbitral selection of a final offer.

The application of the so-called ability to pay criterion involves a misnomer, in that only in the event of an absolute and proven *inability to pay* would this criterion alone be assigned determinative weight. On the basis of the record in this proceeding, the undersigned has determined that neither the interest and welfare of the public nor the ability to pay are entitled to significant weight in the final offer selection process in this proceeding.

Summary of Preliminary Conclusions

As addressed in greater detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

- (1) While the parties differ on only a single impasse item, in arguing their respective cases they disagree in the following principal areas: the composition of the principal intraindustry comparables; the significance of longevity pay in the direct income comparisons; the significance of the overall compensation criterion; and the significance of the interest and welfare of the public and the ability to pay criteria.
- (2) Calumet, Door, Langlade, Oconto, Shawano and Waupaca Counties are the primary intraindustry comparables to Kewaunee County in the case at hand.
- (3) With or without the inclusion of longevity, the hourly wage rate and the yearly total income comparisons within the primary intraindustry comparables, clearly favor selection of the final offer of the County in this proceeding.
- (4) The overall compensation criterion, as it applies to fringe benefits and/or other conditions of employment, cannot be assigned significant weight in the final offer selection process in this proceeding.
- (5) Neither the interest and welfare of the public nor the ability to pay are entitled to significant weight in the final offer selection process in this proceeding.


Selection of Final Offer

Based upon a careful review of the entire record in this matter, including all of the applicable statutory criteria contained in Section 111.77(4)(cm)(7) of the Wisconsin Statutes, the undersigned has determined that the final offer of Kewaunee County is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments, and a review of all of the various arbitral criteria provided in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

- (1) The final offer of Kewaunee County is the more appropriate of the two final offers before the Arbitrator.
- (2) Accordingly, the final offer of the County, hereby incorporated by reference into this award, is ordered implemented by the parties.


WILLIAM W. PETRIE
Impartial Arbitrator

August 29, 2009