

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BEFORE THE ARBITRATOR

---

In the Matter of the Arbitration :  
of a Dispute Between :  
ROCK COUNTY :  
and : AWARD AND OPINION  
ROCK COUNTY ATTORNEY'S :  
ASSOCIATION : Decision No. 16397-A

---

Case No. LXXVI No. 22661  
MED/ARB-53

Hearing Date October 27, 1978 and  
November 20, 1978

Appearances:

For the County MR. BRUCE PATTERSON and  
MR. JOHN PALMER

For the Association MR. THOMAS LEVI,  
MR. ROBERT C. RAYMOND and  
MR. GARY L. HEIBER

Arbitrator ROBERT J. MUELLER

Date of Award March 26, 1979

BACKGROUND

The above entitled parties were determined to have reached an impasse in the negotiation of a Labor Agreement covering the calendar years of 1977 and 1978 by the Wisconsin Employment Relations Commission by Decision No. 16397 issued on May 31, 1978. By Order dated July 31, 1978, the undersigned was appointed to serve as Mediator-Arbitrator to endeavor to mediate and/or arbitrate the dispute pursuant to the Wisconsin Statutes.

By mutual agreement of the parties, and no petitions having been filed by the public requesting a public hearing, the matter was set for an initial mediation session for October 27, 1978. Mediation efforts were engaged in on such date and on November 20, 1978 and on December 20, 1978. A mutually negotiated resolution of the dispute did not result, and a notice of intent to arbitrate was served upon the parties at the conclusion of the mediation session on December 20, 1978. The County submitted a proposal to modify their final offer to which the Association objected. The Association made no proposal to modify their final offer.

The matter then was presented to the undersigned in arbitration on the basis of the final offers of each of the parties, which final offers are hereinafter set forth, and the arbitrator is charged with the duty of resolving the impasse by selecting either the total final offer of Rock County or the total final offer of Rock County Attorney's Association pursuant

to Section 111.70(4)(cm) 6.c. through h. of the Municipal Employment Relations Act.

The undersigned must select one or the other of the final offers and to that end must consider the factors specified in Section 111.70(4)(cm) 7 of the Municipal Employment Relations Act, which provides as follows:

"7. 'Factors considered.' In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost-of-living.
- f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. 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."

At such hearing, both parties presented oral testimony and documentary evidence relating to some but not all of the factors designated by the Wisconsin Statutes for consideration. Each party was given full opportunity to present such testimony and evidence as they deemed relevant. Written briefs were submitted to the undersigned and copies of each party's respective brief was mailed to the opposing party on January 30, 1979.

THE FINAL OFFERS

Rock County Final Offer

	<u>1977</u>	<u>1978</u>
"STEP A	13,288.70	14,218.92
STEP B	13,953.14	14,929.86
STEP C	14,650.80	15,676.37
STEP D	15,383.35	16,460.19
STEP E	16,152.51	17,283.19
STEP F	16,960.14	18,147.35
STEP G	17,808.15	19,054.72
STEP H	18,698.56	20,007.46
STEP I	19,633.49	21,007.83
STEP J	20,615.17	22,058.23

ARTICLE II - INITIAL APPOINTMENT

"2.01 Attorneys may be appointed at Step A or Step B of the pay range, depending upon their training and experience and upon recommendation of the appointing authority (the District Attorney or Director of Social Services). Candidates with exceptional experience or ability may be hired above Step B with the approval of the County Board Staff Committee.

"Strike Article V - Promotion

(not applicable under a one-classification system)

"IMPLEMENTATION OF THE COUNTY'S  
FINAL OFFER

(Conversion from a two-classification  
system to a one classification system)

"1977

"On January 1, 1977, Attorneys will be placed on the pay step which is immediately higher than their rate of pay on December 31, 1976.

"Attorneys whose actual increase (under the 1976 contract) was greater than the above will maintain their more advantageous position.

"Attorneys employed as of December 31, 1977, whose increases for the year 1977 are below 6% will receive a lump sum payment to ensure that their wage compensation in 1977 is at least 6% higher than their rate of pay on 12-31-76 or an their actual date of employment if it is subsequent to that date.

"1978

"Attorneys who would have been eligible for advancement to the 'Senior Attorney' classification under the 1976 contract will be advanced to Step D of the pay plan.

"(Advancement through the range will be as provided in Section 4.01 of the contract.)

"3.01 Newly appointed employees shall serve a probationary period of twelve months."

Rock County Attorney's Association Final Offer

"Delete Articles II through V in the current 1976 Labor Agreement and substitute the following:

"ARTICLE II  
"INITIAL APPOINTMENT

"2.01 An attorney's initial appointment shall be made at the first step in the pay range, unless, at the recommendation of the appointing authority (District Attorney or Director of Social Services) he may be appointed at the second step in the pay range based upon the following criteria:

- (1) Excellence in grades in appropriate courses in law school;
- (2) Pertinent professional experience beyond graduation from law school; or
- (3) The overall training, prior experience, demonstrated ability, and personal qualifications of the attorney enables him to 'tower above all others' for the position.

"2.02 Newly-appointed attorneys shall serve a probationary period of six months, however, the employer may extend the probationary period for an additional six months for just cause. Probationary attorneys shall be evaluated one month prior to the completion of their probationary period. Unless otherwise notified, probationary attorneys shall gain permanent status upon completion of six months of continuous employment.

"ARTICLE III  
"SALARY ADJUSTMENT

"3.01 Attorneys will be eligible for advancement to the next higher step in their pay range upon completion of the probationary period. Thereafter, an attorney will be eligible for advancement to the next higher step at the completion of the next twelve months of continuous employment. An attorney will again be eligible for advancement to the next higher pay step at the completion of the next eighteen months of continuous employment. All further advancement eligibility dates shall be at subsequent 12 month intervals of continuous employment. Progression to the next higher pay step within the pay range shall be based upon the appointing authority's evaluation that the

attorney has performed his duties and responsibilities satisfactorily.

- "3.02 Those attorneys who were members of the Association prior to January 1, 1978 shall receive an increase of eight per cent (8%) over and above their actual compensation for the time period January 1, 1977 to December 31, 1977 to be distributed in a lump sum payment.
- "3.03 Those attorneys who were members of the Association on January 1, 1978, or who were appointed thereafter, shall receive a salary commensurate with the 1978 Salary Schedule, attached hereto and incorporated by reference herein as Appendix A, and shall be placed within that schedule as of January 1, 1978 (or as of their date of initial appointment where appropriate) according to the 1978 Implementation Schedule.

"APPENDIX A

"1978 SALARY SCHEDULE

"STEP A	\$15,592.00
STEP B	16,494.00
STEP C	18,696.00
STEP D	20,899.00
STEP E	22,687.00
STEP F	24,438.00
STEP G	26,167.00

"APPENDIX B

"1978 IMPLEMENTATION SCHEDULE

	Actual Salary Rate as of 12/31/77 with- out retroactive adjustment	Initial Appoint- ment Date	Salary Rate as of 1/1/78 under agreement	Next Advance- ment Eligibility Date under Agreement
Belling	\$16,000.13	1/17/75	\$18,696.00	1/17/78
Heiber		4/12/78	15,592.00*	10/12/78
Heitzman		4/2/78	16,494.00*	10/3/78
Keegan	13,821.51	4/1/76	18,696.00	4/1/79
Levi	13,163.34	7/12/76	16,494.00	1/12/78
Needham	13,821.51	3/28/77	16,494.00	9/28/78
Raymond	16,800.05	1/12/76	18,696.00	1/12/78 **
Van De Bogart	13,163.34	8/31/76	16,494.00	2/28/78

" \* Salary Rate as of initial appointment date

"\*\* Mr. Raymond received credit for one year prosecution experience prior to appointment to Rock County District Attorney's Office"

DISCUSSION

Both parties presented testimony, evidence and arguments which primarily fell within those factors of the statute identified in paragraphs 7.d.e. and h. Neither party directed any testimony,

evidence or argument with respect to the other factors referenced in the statute and the undersigned thereby limits the discussion and consideration herein to those factors to which the parties addressed their evidence and argument.

The County analyzes the impact of its final offer in its brief as follows:

"The 1977-78 salary schedule set forth in County Exhibit 1 provides the employees with a salary resulting in the following:

1. Two year increases averaging in total 22% per employee;
2. Reduction of the number of increments or steps on the salary schedule from twelve to ten;
3. Maintains the existing salary schedule percentage relationship of a 55% range from entry to maximum step with 5% step increments;
4. Increases the entry level salary by 13.4%;
5. Increases the maximum salary level by 13.4%;
6. Provides employees with increases averaging virtually four times the average annual growth in the CPI (Cty. Ex. 4);
7. Provides the County and the employees with a rational framework for future collective bargaining;
8. Provides the County with a salary schedule which is internally consistent with its twelve other contracts and pay schedules;
9. Provides the County with a salary schedule which will enable the recruitment and retention of employees of appropriate skill levels required to perform the service levels desired by the Rock County Board and the County tax payers.

"In support of the reasonableness of the level of its offer the County would point out the following:

1. Implementation of the schedule will result in increases (Cty. Ex. 5&6) ranging from \$2800.00 to \$4150.00 over the two year period for the five experienced employees. The three new employees (9 months or less of service) will receive lessor increases, but of course will receive step increases on their first anniversary of employment.
2. Analysis of County Exhibits 5 & 6 will show that the average increase in wages for the five senior employees in 1977 is 12.81% or \$1,672.00 per employee. Those same employees will receive increases in 1978 averaging 12.2% or \$1746.00.

3. When the above increases are combined with the increases granted the three short term employees the average increase received by the employee over the two year period is 22.54% or \$2900.00.

In addition, the County contends that the County negotiates and has contracts with ten other bargaining units and that the County's final offer in this case constitutes larger increases to employees in this unit than any of the other increases that have been granted and settled upon with other bargaining units for both 1977 and 1978.

The Association presented evidence and argument intended to show the history of negotiations from 1972 through 1976, allegedly to show that when the Association settled on the salary structure in 1976, that it accepted a significantly lower starting salary in the salary structure in exchange for an accelerated advancement procedure which allowed employees to advance to the senior attorney level at the end of two years.

With such background facts in mind, the Union predicates its argument and computations of the increases based upon what the County's final offer or the Association's final offer would yield to the employees as compared to the salaries that each has been paid under the extended 1976 salary schedule during the years of 1977 and 1978. They address such concept and set forth their computations based on such approach in their brief as follows:

"The County appears to base its entire argument that its final offer is more reasonable by using a comparison of figures. It is purportedly shown through figures that when comparing the wages offered by the County or the wages asked for by the Association to the 1976 contract there is a large percentage increase. The County's use of figures in this way is a classic example of how figures, when used in a void, can be misleading and deceptive. Only when viewed in the previously described historical context can the distortion be eliminated. For example, County Exhibit #3 purports to show a 12.81% wage adjustment in 1977 over the 1976 contract. This is broken down on an individual basis in County Exhibit #4. An inspection of that Exhibit shows that the brunt of the increase comes from the wages of Belling (\$16,001) and Raymond (16,801). What is not immediately apparent is that Belling and Raymond earned exactly those figures in 1977 under the 1976 contract (see Association Exhibit #1, page 4). The respective monetary increases of \$2,911.00 for Belling and \$2,685.00 for Raymond involve no actual dollar increase in that all of that amount has already been received. Viewed out of context, those figures (dollar increases and percentage increases) appear large. When put in their proper historical context, they do not even account for a cost of living increase in 1977 over 1976. The other three Association members received, according to the County, a dollar increase and percentage increase as follows: Levi (\$1,003.00, 7.96%); Van De Bogart (\$973.00, 7.76%); Keegan (\$790.00, 6.0%). Each would go up to \$13,953.00. However, as with Belling and Raymond, a great deal of those amounts have already been received through merit increases under the 1976 contract. Using the County's figures, each of those three would actually only get the following computed amounts:





Levi

$$1/1/78 - 7/12/78 \quad \$701.67 \quad (14,930 - 13,603) = \\ 1327 \times \frac{193}{365} = \$701.67$$

$$7/12/78 - 12/31/78 \quad \frac{-160.22}{541.45} \quad (16,460 - 16,800 \text{ (actual wages)}) = \\ 340 \times \frac{172}{365} = \$160.22$$

Raymond

$$1/1/78 - 1/12/78 \quad \$ 15.88 \quad (17,283 - 16,800 \text{ (actual wages)}) = \\ 483 \times \frac{12}{365} = \$ 15.88$$

$$1/12/78 - 12/31/78 \quad \frac{490.33}{\$506.21} \quad (18,147 - 17,640.15 \text{ (actual wages)}) = \\ 507 \times \frac{353}{365} = \$490.53$$

Van De Bogart

$$1/1/78 - 8/31/78 \quad \$947.37 \quad (14,930 - 13,510) = \\ 1420 \times \frac{243}{365} = \$945.37$$

$$8/31/78 - 12/31/78 \quad \frac{-\$113.64}{\$831.73} \quad (16,460 - 16,800 \text{ (actual wages)}) = \\ 340 \times \frac{122}{365} = -\$113.64$$

Keegan

$$1/1/78 - 4/1/78 \quad \$240.66 \quad (14,930 - 13,954) = \\ 976 \times \frac{90}{365} = \$240.66$$

$$4/1/78 - 12/31/78 \quad \frac{-\$256.16}{-\$ 15.50} \quad (16,460 - 16,800 \text{ (actual wages)}) = \\ -340 \times \frac{275}{365} = -256.16$$

Heiber      \$285.00

Heitzman    \$600.00

Shebiel     \$210.00

Total      \$3,449.25

The total actual dollar increase in 1978 for the eight Association members under the County's offer is \$3,345.63. The actual percentage increase is found by dividing that amount by the 1978 wages. The figure for the members in the Association is their actual salary on December 31, 1977. For the three new members it is what they actually received in 1978 under the 1976 contract (and is found in County Exhibit #6 by subtracting the dollar increase from the total 1978 wage): \$15,849.00 (Belling), \$13,630.00 (Levi), \$16,800.00 (Raymond), \$13,510.00 (Van De Bogart), \$13,954.00 (Keegan), \$9,903.00 (Heiber), \$12,600.00 (Heitzman) and \$7,335.00 (Shebiel), which equals \$103,554.00. Thus, the actual increase

The County directed its argument primarily at the matter of computing the percentage amount of the increases that is represented by their proposal and argued that such percentage increases when viewed and compared with those increases granted other County employees and the increase in cost of living, that such offered increases are reasonable.

The Association directed the majority of its presentation and argument at the comparative wage level that is represented by the County and Association's offer with other counties.

In the first instance, the County predicates its computation of the percentage increases upon the offers as submitted, using as a starting point, the salaries which the employees were receiving as of the end of 1976. The Association disputes such approach and contends that because the County continued the 1976 contract in effect during the negotiations and implemented increases to employees based upon such 1976 contract, that the starting point for purposes of computation should be from those respective wage levels at which employees were being paid during the years of 1977 and 1978. The arbitrator is of the judgment that the more accurate method of determining the total value of any increase which may be attributable and paid to employees for 1977 and 1978 appropriately includes all moneys whether already paid or to be paid as a result of this arbitration, to such employees over and above those salary levels at which such employees were at the end of 1976. It is therefore apparent that the County's computation of the percentages as represented by the two proposals is the more accurate.

The Association presented comparative data, entered as Association Exhibit No. 11, which contained the various wage plans that were in effect for 1977 and 1978 for Waukesha County, Dane County, Racine County, Sheboygan County, Outagamie County, Kenosha County, and Brown County. The salary schedule for Marathon County was also presented but contained only the 1977 schedule. The County presented no similar comparative data.

An evaluation of such comparative data is contemplated under subparagraph d of the Statute. The undersigned has made a diligent effort to evaluate such data as is contained in Association Exhibit No. 11. It is first apparent from such evaluation that the salary plans that are in effect in each County varies substantially, one to the other. The arbitrator has, however, attempted to determine an average starting salary therefrom and to also determine an approximate three to three and one-half year average level of compensation therefrom. Such evaluation indicates that the approximate average starting salary of such comparable counties is \$15,500.00. The average salary at the three to three and one-half year step is approximately \$20,057.00.

In comparing such averages to the final offers of each party herein, the undersigned, by utilizing the 1978 data for purposes of such comparison, finds that the Association's offer for 1978 of \$15,592.00 is approximately one-half percent higher than the average. The County's final offer for 1978 of \$14,218.92 is approximately eight percent below such average.

In further comparing the final offers to the average at the three to three and one-half year computed average for 1978, one finds that the Association's final offer is approximately four percent higher than the average while the County's final offer is approximately 13.8 percent lower than the average.

In evaluating and examining the top wage level to which employees can advance under the various salary plans, one finds that a composite average of the counties of Waukesha, Dane, Sheboygan, Outagamie, Brown,

an that  
Kenosha, and Racine, reveals /average/is approximately \$23,400.00. If one then excludes from such computation the County which is the highest, (Dane), and the County which is the lowest, (Brown), one finds an approximate average of \$23,093.00. In further computing the number of years necessary to reach the top step in the five counties but excluding Dane County which takes fifteen and one-half years and Brown County which takes three years, one finds that employees in such five counties reach the top in an average time of approximately six years.

In comparing the final offers of the two parties to such average computations, one finds that the County's final offer would provide for an employee to reach the top step of \$20,007.00 in nine years, which is approximately \$3,000.00 below the average of the other counties where employees reach such average in approximately six years. The Association final offer, on the other hand, would permit employees to reach the top level of \$26,167.00, which is approximately \$3,000.00 higher than the average, but which is attainable in six years.

The above analysis from a comparative standpoint clearly shows that the final offer of the Association as being more comparative to the averages paid comparable employees in other counties. One is then faced with determining whether or not the substantial increases that are reflected by the Association offer as computed by the County, should be entitled to more weight and greater consideration on the basis of recognizing the settlements reached with other units and the cost of living increase, which comparison would clearly result in a large and substantial percentage increase well in excess of the cost of living increase and the increases granted other employees. Against such consideration is the consideration of whether or not comparisons to the level of pay received by comparable employees performing similar services in other communities should be afforded greater consideration.

It is the considered judgment of the undersigned that where a group of employees is shown to be substantially below the level of pay received by comparable employees in comparable communities, that such comparative consideration should reasonably be entitled to the greater weight. Such inequitable standing of such type employees is not shown in this case to be justified. The only way to correct such inequitable comparative standing is to implement a substantial increase so as to improve it and correct the inequity. There is no doubt but that the Association offer in this case would serve to correct such inequity at a single stroke. Clearly, from an employer's standpoint it would be more desirable to work toward correcting such inequity over a more gradual time period. The County's offer, by virtue of its larger percentage yield than that represented by either the cost of living or settlement with other employees, does seek to accomplish some degree of correction in the inequitable comparative standing of these employees to other comparable employees. On the basis of the above analysis, however, it does not make a major significant stride toward such corrective improvement.

While the Association's offer would call for a top rate that is approximately \$3,000.00 above the top rate average, the facts reveal that no employees have been employed with the Employer a sufficient length of time so that such top salary rates would have any impact at this time. It is therefore possible for the Employer to seek through subsequent negotiations a more appropriate and comparable downgrading of the Association's offer herein with respect to the top salary levels so as to bring it more in line with the relevant comparables.

In the judgment of the undersigned the most critical and determinative consideration in this case concerns the comparability of the starting salaries wherein the County's offer is approximately eight

percent below the average of other comparable municipal employers and the comparability of the two offers at the approximately three to three and one-half year level, which is the level at which the present employees with the greatest length of service are currently at under which the final offers reveal that the County's offer would be approximately 13.8 percent below the average of other comparable employers. The Association's offer at the starting salary is approximately one-half percent higher than the average and at the three to three and one-half year level approximately four percent higher. Based on such comparison, it is therefore evident that the Association's offer is the more reasonably compatible with the comparable averages.

The undersigned has considered the arguments and evidence of the parties as they relate to the other statutory factors with which the arbitrator is charged to consider in this case and finds that such other evidence and arguments and other factors are not of sufficient persuasive consideration to override the more meaningful consideration, being that of the comparison to other employees in the same occupation with other comparable employers.

With respect to the difference in the final proposals of each of the parties with respect to the appointment language, probationary language, and salary adjustment and implementation provisions, the arbitrator finds no great preference, based on the evidence and argument submitted for either one or the other of the final offers.

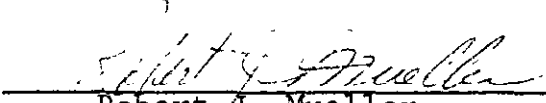
On the basis of the above facts, evidence, arguments, and considerations as applied to the statutory factors, it is the considered judgment and finding of the undersigned, that the Association offer, while containing step differentials that are higher than the average step differentials of comparable employers, and while containing a top salary step that is higher than the average, that the balance of such proposal constitutes a more reasonable offer than that of the County and that such two deficiencies are not sufficient to render the Association proposal as a total final proposal the least reasonable.

It therefore follows on the basis of the above facts and consideration thereof, that the undersigned renders the following decision and

AWARD

That the final offer of the Association is granted and the Employer is directed to implement such final offer for the contract years of 1977 and 1978 pursuant to the terms thereof along with those previously agreed upon provisions.

Dated at Madison, Wisconsin, this 26th day of March, 1979.

  
\_\_\_\_\_  
Robert J. Mueller  
Arbitrator