

ARBITRATOR

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IN THE MATTER OF THE FINAL AND BINDING  
ARBITRATION BETWEEN

DANE COUNTY

AND

THE DANE COUNTY ATTORNEY'S ASSOCIATION

Case No. XCV

No. 32655

MED/ARB 2571

Decision No. 21824-A

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DECISION

A. HEARING.

A hearing in the above entitled matter was held on Thursday, October 11, 1984 in the Dane County Highway Department Offices, 2302 Fish Hatchery Road, Madison, Wisconsin.

B. APPEARANCES.

1. On behalf of Dane County:

John T. Coughlin, Mulcahy & Wherry, S.C., Attorneys at Law;  
Anthony J. Diederich, Senior Accountant, Dane County Comptrollers  
Office; Gary Scott, Dane County Department of Administration,  
Personnel Division; Marion Smith, Director of Research,  
Mulcahy & Wherry, S.C.

2. On behalf of the Dane County Attorney's Association:

John R. Burr, Assistant District Attorney, Dane County;  
Stuart A. Schwartz, President, Dane County Attorney's  
Association.

C. NATURE OF PROCEEDINGS.

This is a final and binding arbitration proceeding between the above-named parties under Section 111.70(4)(cm), Wis. Stats., the Municipal Employment Relations Act. On December 20, 1983, the Dane County Attorney's Association filed a petition with the Wisconsin Employment Relations Commission (W.E.R.C.), alleging that an impasse existed between it and Dane County in their collective bargaining, and requested the Commission to initiate Mediation-Arbitration pursuant to the Municipal Employment Relations Act. Daniel L. Burnstone, a member of the staff of the W.E.R.C. conducted an investigation into the matter, and found essentially the following: On November 9, 1983 the parties exchanged their initial proposals for a new collective bargaining agreement; they met on two additional occasions in an effort to reach an accord on a new agreement; and on December 20, 1983 the Dane County Attorney's Association filed a petition requesting the W.E.R.C. to initiate mediation-arbitration. On February 15, and May 10, 1984, Mr. Burnstone conducted an investigation, which reflected that the parties were deadlocked in their negotiations and led him to conclude that the parties now are at an impasse in their negotiations.

On June 27, 1984, the parties were sent a list of names from which they selected the mediator-arbitrator on August 15, 1984. On August 22, 1984, this arbitrator was notified by the W.E.R.C. of his appointment. At the time of the hearing on October 11, 1984, this arbitrator was advised that additional mediation efforts would be fruitless. The parties proceeded to present evidence. Briefs were filed on behalf of the Dane County Attorney's Association on November 8, 1984 and on behalf of Dane County on November 16, 1984.

D. THE OFFERS.

1. THE UNION OFFER:

1. One and four tenths percent (1.4%) increase in base salary wages.

2. Modify Article XIV, Section 1. Health and Dental Insurance (a) and (b) as follows:

(a) A group hospital, surgical, major medical and dental plan as agreed to by the parties shall be available to employees. In the event the Employer shall propose a change in this plan, this Contract shall be reopened for purposes of negotiations on such a proposed change. For group health insurance the Employer shall pay up to sixty-nine dollars and forty four cents (\$69.44) per month for employees desiring the "single plan" and up to one hundred eighty six dollars and sixty three cents (\$186.63) per month for employees desiring the "family plan" and up to one hundred ninety two dollars and four cents (\$192.04) for spouse credit family plan. Employees with a spouse on Medicare Plus will receive a payment not to exceed that paid by the Employer for family coverage. For group dental insurance the Employer shall pay up to fourteen dollars and seven cents (\$14.07) per month for employees desiring the "single plan", up to thirty seven dollars and eighty three cents (\$37.83) per month for those desiring the "family plan" and thirty seven dollars and eighty three cents (\$37.83) for spouse credit family plan.

(b) The Employees agree that they and their dependents may elect to become members of any health plan made available and approved by the Employer. There shall, however, be only one (1) thirty (30) day enrollment period per year during which time employees may change plans. The Employer agrees to pay costs for employees and dependents choosing other plans equal to the dollar amounts stated in 14.01(a).

3. Amend Article VIII and Appendix A to reflect the following changes in the existing salary steps by adding three steps to be numbered 1 through 3 at the beginning of the salary schedule, renumbering the existing steps 1 through 17 (to 4 through 20), and adding three steps to be numbered 21 - 23.

<u>Step</u>	
1	10.09
2	10.51
3	10.95
21	22.69
22	23.69
23	24.75

Said steps to be governed by the existing provisions of Article VIII, Section 3(a) (b) (c) (d) (e), and said steps subject to the provisions of paragraph #1 of this Final Offer.

4. Proposals #1 and #2 to be effective December 25, 1983. Proposal #3 (Steps 21 - 23 to be effective on the last day of the 1984 contract). Steps 1 - 3 to become effective upon acceptance of this final offer by Dane County or on the date of the Arbitrator's award, whichever occurs first in time.

5. Nothing in this Final Offer is to be deemed a waiver of the right of the Association, or the individual members thereof, to bring any grievance, any unfair labor practices allegation, or any prohibited practices allegation against the County; specifically and without limitation, the Association and its members do not waive objections to the unilateral change in insurance benefits imposed by the County without negotiation in violation of Article XIV, Section 1(a), and Article XVI, Section 1, of the Agreement dated April 4, 1983.

2. THE DANE COUNTY OFFER:

1. 1.4% wage increase effective December 25, 1983.

2. Modify Article XIV, Section 1. Health and Dental Insurance (a) and (b) as follows:

(a) A group hospital, surgical, major medical and dental plan as agreed to by the parties shall be available to employees. In the

event the Employer shall propose a change in this plan, this Contract shall be reopened for purposes of negotiations on such a proposed change. For group health insurance the Employer shall pay up to sixty nine dollars and forty four cents (\$69.44) per month for employees desiring the "single plan" and up to one hundred eighty six dollars and sixty three cents (\$186.63) per month for employees desiring the "family plan" and up to one hundred ninety two dollars and four cents (\$192.04) for spouse credit family plan. Employees with a spouse on Medicare Plus will receive a payment not to exceed that paid by the Employer for family coverage. For group dental insurance the Employer shall pay up to fourteen dollars and seven cents (\$14.07) per month for employees desiring the "single plan", up to thirty seven dollars and eighty three cents (\$37.83) per month for those desiring the "family plan" and thirty seven dollars and eighty three cents (\$37.83) for spouse credit family plan.

(b) The Employer agrees that employees and their dependents may elect to become members of any health plan made available and approved by the Employer. There shall, however, be only one (1) thirty (30) day enrollment period per year during which time employees may change plans. The Employer agrees to pay costs for employees and dependents choosing other plans equal to the dollar amounts stated in 14.01 (a).

#### E. STATUTORY CRITERIA.

Section 111.70(4)(cm) Wisconsin Statutes provides that an arbitrator must consider the following:

- 111.70(4)(cm)7. FACTORS CONSIDERED In making any decision under the arbitration procedure authorized by this sub-section, the mediators-arbitrators shall give weight to the following factors.
- a. The lawful authority of the municipal employer.
  - b. The stipulations of the parties.
  - c. Interest and welfare of the public and the financial ability of the unit of government to meet the cost of the proposed settlement.
  - d. Comparison of wages, hours and conditions of employment of Municipal employees involved in arbitration proceedings with wages, hours and conditions of employment of other employees performing similar services and with other employees generally in public employment in the same community and in comparable communities.
  - e. The average consumer price for goods and services, commonly known as the cost of living.
  - f. The overall compensation presently received by municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
  - g. Changes in any of the foregoing circumstances during the pendency of 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.

#### F. ISSUES.

The only issue in dispute between the County and the Association is whether Article VIII of the agreement shall be amended to add three additional salary steps at the bottom, and three additional steps at the top of the compensation schedule, at the rates of compensation reflected in the Association's offers.

#### G. ASSOCIATION'S POSITION.

The Dane County Attorney's Association (the Association) contend that the starting salary for an Assistant District Attorney in Dane County at the entry level is currently very competitive with similar entry level jobs in the private sector. Dane County does not have any difficulties in filling vacancies for those

positions when job openings exist. The Association points out that the starting salary offered at the entry level for the position of assistant district attorney even exceeds the beginning salaries that are offered by some private law firms and corporations with whom they compete in recruitment of professional staff. However, they argue that an Associate working for a law firm is likely to become a partner in a 3 to 6 year time period, and at that point the private practice attorneys income will substantially exceed the income of an attorney employed in the public sector positions in Dane County. The Association argues that the purpose of a compensation plan for managerial and professional employees was to help the County retain competent personnel, and cites the Study of Compensation Paid to Professional Employees, commissioned by Dane County in 1974, (known as the "Griffenhagen-Kroger" Report in support of that proposition. The Association contends that by adding additional steps at the top of the compensation scale for those employees who merit a salary increase, the County would encourage experienced attorneys to remain with Dane County.

There are now eleven attorneys employed by Dane County at the top step of the present compensation schedule. The Association argues that Dane County and the taxpayers would benefit by retaining the services of those senior attorneys and that retention can best be achieved by adding steps to the top of the compensation schedule.

The Association also contends that by adding three steps both at the top and at the bottom of the compensation schedule, the fiscal effect of their proposal will be very slight. Dane County hired two attorneys since the date of the Association's proposal, one being hired on July 9, 1984 and the other on August 6, 1984. Had those new attorneys been hired at lower starting salaries proposed in the Association's offer, the County would have saved \$2,738.40, in 1984, and in 1985 the savings to Dane County on those two employees alone, would amount \$6,457.62. The Association projects, based on past experience, that in 1985 it is likely that 1.5 attorney positions will become vacant. The projected net fiscal effect of the Association offer for 1984-85 will be a total savings of \$11,530.82, as result of the reduction of "entry level" compensation for new attorneys. This reduction of cost, based on the Association computations would partially offset the cost of compensation increases at the top level of the schedule. The Association proposal would result in \$19,311.00 in increased wages at the top, but given the entry level offset, the total cost to the County in 1985 would be \$7,780.18.

The Association argues that the salary schedule of Dane County attorneys, when compared with Wisconsin Assistant Attorney Generals, is inadequate. The maximum pay for an Assistant Attorney General is \$27,718 per hour, or a total compensation of \$57,875.18 per year. The highest annual salary presently paid to a member of the Dane County Attorney's Association is \$45,351.51. Some Assistant City Attorneys in the City of Madison are also receiving higher levels of compensation than Assistant District Attorneys. Under the Association proposal, they contend that the top salary of a person who is a member of the Dane County Attorney's Association would be \$52,384.00 and that is still more than \$5,500.00 below the salary of the highest paid attorneys on the Attorney's General staff.

#### H. THE COUNTY'S POSITION.

An Arbitrator in proceedings such as this one, according to Dane County, should not change working conditions unless overwhelming evidence of the need for the change is shown by the party seeking the change. The Association has not met that burden, argues the County and the current salary plan for the attorneys of Dane County is a fair and reasonable plan.

The County takes the position that arbitration should not be a substitute for bargaining; fundamental relationships, such as the re-structuring of a salary plan, should not be accomplished thru the decision of an Arbitrator in an Interest dispute, but rather should be made only as a result of bargaining by the parties. Dane County further contends that for the Arbitrator to adopt the proposal offered by the Association, the equitable compensation plan that Dane County has adopted would be seriously altered and that this is unnecessary.

The purpose of a job classification system according to the County, is twofold: First, to retain internal equity; and, Secondly, to value various jobs in proper relationship to each other. They argue that the Association's offer would severely

distort the relationship between jobs in the classifications of Dane County. By this they point out that certain non-attorney jobs, in other departments have been placed at a compensation level based on responsibilities and authority similar to those of the attorney positions. These non-attorney jobs would be altered substantially by the adoption of the Association Final Offer if their compensation levels remained on a par with the attorneys.

The County argues that the Association offered no evidence to support the idea that competent Assistant District Attorneys could be still recruited at the lower entry level salaries proposed in the Association offer. The County sees no justification exists for dropping the starting salary to the level that is proposed by the Association.

The County further contends that Dane County ranks very high on wages and benefits for attorneys compared to other similar counties. They contend that the need for additional steps in the compensation schedule is not supported when viewing the compensation level, and method of progression thru that schedule, for other comparable counties. In some counties, the progression from entry level to maximum salary is reached in 2.5 years. In Dane County that progress would take 15.5 years under the existing plan, and even longer under the Association's proposal.

Dane County contends that settlements between employers and Unions within the City of Madison, the State of Wisconsin, and within Dane County, support the final offer of the County. The County points out that the offer that they have made to the Association exceeds the voluntary settlement made between City of Madison and their attorneys, and that State of Wisconsin and their attorneys. They further argue that the addition of six steps to the compensation schedule is not necessary to avoid a loss of rank between the city, the state or any other public employee units within Dane County. They argue that the County's offer is consistent with public sector settlements made within Dane County.

Finally, the County contends that the cost of the proposal by the Association is prohibitive. They dispute the Association's contention that the cost will merely be \$7,780.18 per year and instead contend that the costs to the County, including retirement costs, will be approximately \$19,311.00 per year.

#### I. DETERMINATION OF COMPARABLES.

Dane County contends that the Arbitrator should consider Brown, Kenosha, LaCrosse, Marathon, Outagamie, Racine, Rock, Sheboygan, Waukesha and Winnebago Counties as comparable units of Government. They also propose the City of Madison be considered as comparable since it is a public employer serving the largest portion of Dane County and therefore is likely to be in competition for entry level attorney recruitment. The County based its selection of comparable units of government on population statistics for 1982. Only one of the proposed counties, Waukesha, has a population that ranks near to Dane County's population. The remaining counties have populations of one half or less the population of Dane County.

Waukesha County differs demographically from Dane County in that Waukesha is not primarily an urban county; Waukesha does not have a central city with surrounding suburban communities. Waukesha County is a high income county suburban to Milwaukee County. It's very small central city has a population considerably less than the City of Madison. It lacks the social and cultural resources that are available in Madison. Although it is the third largest county in the State (ranking only behind Milwaukee and Dane) it is in many ways very different from Dane County.

Racine County and Brown County should be considered comparable counties. Both contain central urban communities, with their own suburbs, and populations close to half of that of Dane County. Populations in these counties are close to the City of Madison population.

The State of Wisconsin Attorney General's office performs functions similar to those performed by the Dane County District Attorney's office; so does the City of Madison City Attorney's office. Those two agencies provide reasonable basis of comparison to other similar employees performing similar services.

1984 ASSISTANT DISTRICT ATTORNEY HOURLY RATE

<u>Employer</u>	<u>Minimum</u>	<u>Maximum</u>	<u>Total Ave. Comp.*</u>
State of Wisconsin	10.53	26.91	35.95
City of Madison	12.71	24.21	34.54
Racine County	10.89	18.39	25.23
Brown County	9.74	17.69	24.05
Average	10.97	21.80	29.94
Dane Co. Attorney's Association Proposal	10.23	25.10	36.57
Dane County Proposal	11.57	22.03	32.26

\*Total Average Compensation includes Health, Dental, Retirement,  
Vacation, Holiday, and sick leave.

Dane County's offer ranks in the middle of the comparables, both as to the maximum salary and as to the total compensation. The County minimum would only be exceeded by the City of Madison. The State Assistant Attorney General's receive both a higher maximum salary and a higher total compensation. The Madison Assistant City Attorney's receive a higher maximum salary. The Racine County and Brown Assistant District Attorney's receive lower salaries.

The Association's Final Offer ranks at the top of the comparables in total compensation, second in maximum salary, and fourth in minimum salary.

J. DISCUSSION.

Arbitrator Zel Rice in School District of Colfax, Decision No. 19886-A, stated:

"Salary schedules are not something with which an arbitrator should tinker and ordinarily any changes are left to the parties to make through bargaining."

Arbitrator Byron Yaffe in School District of LaCrosse, Decision No. 19714-A in dealing with proposed changes in an agreement said;

"The Association is proposing a major change in the agreement. It has the burden of demonstrating not only that a legitimate problem exists, which requires contractual attention, which it has done herein, but that its proposal is reasonably designed to effectively address that problem."

The dispute that is being decided herein involves the same issue discussed by Arbitrators Rice and Yaffe. Major changes are being proposed in salary schedules. It is clear that the party proposing those changes has the burden of justifying the necessity of the changes. To do so they must show that a legitimate problem exists and that the proposal is reasonably designed to effectively address that problem.

The salaries paid to comparable public employees performing similar duties, indicate that the proposal by the County is more in line with existing wages.

No evidence has been offered showing a loss of senior level attorneys in Dane County because of dissatisfaction with salary; there has not been an exodus during the past several years because of the inadequacy of compensation. Consequently no problem has been demonstrated which the Association offer would solve.

A rational basis exists for the current salary and compensation plan. To alter it as the Association proposes could have a detrimental effect in other areas of employment. Such a fundamental re-alignment of existing salary structures should await the give and take of the bargaining process. It is a major change and should be dealt with as such.

K. AWARD.

The 1984 agreement between the Dane County and the Dane County Attorney's Association should therefore include the final offer of the County as set forth and explained herein.

Dated this 18th day of January, 1985.

Frederick P. Kessler  
Mediator/Arbitrator

Frederick P. Kessler