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IN THE MATTER OF MEDIATION-ARBITRATION

WISCONSIN EMPLOYMENT
INTEREST ARBITRATION
RELATIONS COMMISSION

between

Clark County, Neillsville, Wisconsin

Case 27 No. 34038

MED/ARB - 3008

-and-

Decision No. 22201-A

Clark County Professional Courthouse
Employees, Local 546-C, AFSCME

July 18, 1985

APPEARANCES

On Behalf of Clark County

Stephen L. Weld, Attorney, Mulcahy & Wherry, Eau Claire, Wisconsin

On Behalf of Local 546-C, AFSCME

Christel Manz, Staff Representative, AFSCME, Council 40

JURISDICTION OF MEDIATOR-ARBITRATOR

In October, 1984, the Parties, Clark County (hereinafter referred to as the "County") and Clark County Professional Courthouse Employees, Local 546-C, AFSCME (hereinafter referred to as the "Union") exchanged initial proposals on matters to be included in a new collective bargaining agreement to succeed the agreement which expired on December 31, 1984; that thereafter the Parties met on one occasion in efforts to reach an accord on a new collective bargaining agreement; the County filed an instant petition requesting that the Wisconsin Employment Relations Commission initiate Mediation-Arbitration pursuant to Sec. 111.70(cm)6 of the Municipal Employment Act; that on December 4, 1984, James W. Engmann, a member of the Commission's staff, conducted an investigation which reflected that the Parties were deadlocked in their negotiations, and, by December 10, 1984, the Parties submitted to said Investigator their final offers, as well as a stipulation on matters agreed upon, and thereupon the Investigator notified the Parties that the investigation was closed; and that said Investigator has advised the Commission that the Parties remained at impasse.

The Commission having, on December 12, 1984, issued an Order requiring that mediation-arbitration be initiated for the purpose of resolving the impasse arising in collective bargaining between the Parties on matters affecting wages, hours and conditions of employment of all regular full-time and regular part-time professional employees of Clark County, excluding sworn law enforcement, blue collar, highway, social service, health care center, professional, confidential and supervisory employees as well as the elected officials; and on the same date the Commission having furnished the Parties a panel of mediator-arbitrators for the purpose of selecting a single mediator-arbitrator to resolve said impasse; and the Commission having, on January 7, 1985, been advised that the Parties had selected Richard John Miller, New Hope, Minnesota as the mediator-arbitrator.

A mediation session was held on Wednesday, April 3, 1985, at 10:00 a.m. It proved to be unsuccessful. The arbitration proceedings convened at approximately 11:30 a.m. and ended at 1:30 p.m. The Parties were afforded full opportunity to present evidence and argument in support of their respective positions. Following receipt of positions, contentions and evidence, the Parties filed post hearing briefs which were received on June 7, 1985. The Parties also elected to file reply briefs which were received on July 8, 1985, after which the hearing was considered closed.

POSITIONS OF THE PARTIES

The County's final offer was submitted to the Commission on December 7, 1984, by Stephen L. Weld, Attorney, and it states the following:

The final offer of Clark County is that all items shall remain as in the 1984 contract except:

1. Adjust all October 1, 1984, wage rates by increasing them by 3.5%; and,
2. All modifications found in the Stipulation of Tentative Agreements attached hereto and made a part thereto. (County and Union Exhibit #3).

The Union's final offer was submitted on December 4, 1984, by Christel Manz, Staff Representative, AFSCME Council 40, and it states the following:

1. All items remain status quo as in the present agreement with the exception of tentative agreements reached during the course of negotiations.
2. Union issues in dispute are as follows:

WAGES

- A. 3% across the board on January 1, 1985.
- B. 3% across the board on October 1, 1985.
(Union and County Exhibit #4).

ANALYSIS OF THE EVIDENCE

The mediator-arbitrator evaluated the final offers of the Parties in light of the criteria set forth in Wis. Stats. 111.70(4)(cm)7, which includes:

- 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 employees involved in the arbitration proceedings with the 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 and in the 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 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 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.

A. The lawful authority of the municipal employer.

This factor is not an issue in the instant proceedings. The lawful authority of the County permits the retention of rights and responsibilities to operate the County so as to carry out the statutory mandate and goals assigned to it consistent with the provisions of the collective bargaining agreement.

B. Stipulations of the parties.

Except for the salary issue, the Parties have agreed to all other contract items for the 1985 contract year. The tentative agreements are contained in County and Union Exhibit #2. Among other things, the Parties have agreed to adjust Appendix A involving wages in the following manner:

- A. Delete Deputy Director/Investigator classification.
- B. Create a classification "Child Support Specialist" at a rate to be negotiated by the Parties.
- C. Adjust Juvenile Intake Worker classification by adding \$43.00 to the start, 6 month, and 18 month rates prior to making the wage adjustment called for in the final offer.
- D. Revise the Juvenile Intake Worker standby provision to read as follows:

The Juvenile Intake Worker shall be paid \$.90 per hour up to a maximum of 128 hours per week for 40 weeks and up to a maximum of 80 hours per week for 12 weeks as stand-by pay.

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.

For the 1985 contract year, the County's offer increases the October 1984 monthly and hourly wage rates by 3.5% while the Union's final offer is a split wage increase (i.e. a wage adjustment of 3% on January 1, 1985 and a second adjustment on October 1, 1985). There was a split wage increase on January 1, 1984 and on October 1, 1984. (County Exhibit #6). As such, the County has annualized (averaged) the employees' wages and benefits, and has used the traditional method of taking the 1984 staff and moving it forward into the 1985 year in determining the basis for costing this year's offer. The Union contends that additional costs in the 1985 contract year resulting from the split salary schedule in 1984 should not be considered as part of the increase received by employees in the 1985 contract year. Both positions are supported by case law as illustrated in their respective briefs. In this case, whether or not the arbitrator accepts the County or Union's costing method is immaterial because the difference in actual dollars between the Parties' final offers is relatively equal using either costing method.

Using the County's method of costing, the County's final offer for 1985 represents a wages only increase of \$9,847 or 6.7% over the 1984 wages while the Union's offer yields \$10,204 or 6.94%. (County

Exhibit #10). The difference is \$397. The total package cost for the County's final offer is \$11,395 or 6.0% compared to the Union's final offer of \$11,820 or 6.23%. The difference is \$425. The Union's method of costing shows that the County's final offer represents a \$.33 increase per hour per employee (Union Exhibit #12) while its own proposal yields a \$.36 increase per hour per employee (Union Exhibit #13). The difference between the two offers using the Union's method of costing is roughly the same as using the County's method. Accordingly, either method is acceptable to the arbitrator.

It is the position of the County that its own final offer is a more reasonable response to the needs of the public interest. The County contends that the population of Clark County, primarily rural and agricultural, is less able to sustain significant wage and benefit increases during this particular period of time because of the depression being experienced in the agricultural section of the economy.

This arbitrator, like most other arbitrators, gives due consideration to economic circumstances of the taxpayers, short of an inability to pay argument. County Exhibits #24 and #34-67 are all exhibits relating to the economic plight of rural and agricultural America, including the impact on the taxpayers of Clark County. These exhibits along with pages eight through eighteen of the County's post hearing briefs prepared by Attorney Stephen Weld were closely reviewed and examined in great detail by the arbitrator. Suffice it to say, the loss of farm income is substantial with no end in sight. The state of the agricultural sector of the economy and the general economic hardships experienced by the County's taxpayers (who foot the bill for salary increases to County employees) does not justify a substantial wage increase. It must be emphasized that in this case the difference between the total package cost and salary only increase of the Parties' positions is only \$425 and \$397, respectively. Certainly, even in light of the economy facing Clark County taxpayers, an additional cost of \$425 will not seriously impact on them. This amount is minor compared to the total package cost of \$189,968 for the bargaining unit members in 1984 and the increases proposed by the Parties for 1985 as they appear on County Exhibit #10. The arbitrator would have given more weight to the County's contention that the interests and welfare of the public would be damaged by awarding the Union's position had the difference been greater in total package or salary only costs between the Parties' final offers.

D. Comparison 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 and with other employees generally in public employment in the same community and in comparable communities and in the private employment in the same community and in comparable communities.

Section 111.70 (4) (cm) 7.d. requires that the arbitrator consider wage comparisons with the private sector. County Exhibit #20 details the settlement data provided by the private sector businesses contacted by the County. Additionally, at the hearing, Attorney Weld presented background on two additional businesses situated in Owen, a municipality located in Clark County. Finally, County Exhibit #21 provides a comparison of wage rates with Registered Nurses employed in the Memorial Hospital located in Neillsville.

As the County's representative indicated at the hearing, employees of Northland Foods received a two dollar per hour wage cut in 1985. Similarly, employees at Master Package received a five

percent wage reduction. Employees at Van Gordon Inc. received no wage increase for 1985. Employees at Neillsville Rendering received a 2.5% wage increase for 1985. Finally, employees at the Sunburst Home received increases ranging from 4.7% to 5.1%. These increases came on the heels of wage cuts in the past several years. (County Exhibit #20). If the arbitrator only considers wages, these exhibits have some bearing on this case. The arbitrator, however, must consider the total economic compensation as specifically mandated in Section 111.70 (4) (cm) 7.f. The County failed to supply this data, so the record is not complete. In addition, data is lacking from twenty-three other major industries in Clark County in regards to wages paid in 1985 and fringe benefits offered to its employees. In any event, both of the Parties' offers will significantly exceed the increases provided to private sector employees with the Union's final offer being slightly higher than the County's position.

The County also pays its Registered Nurses a competitive wage rate with Registered Nurses employed at Memorial Hospital. In October 1984, a Registered Nurse employed in the bargaining unit was paid \$9.22 per hour. Registered Nurses at Memorial Hospital start at \$8.72 and some receive the maximum rate of \$9.91. Clearly, either offer will exceed the starting pay but will be less than the maximum pay paid to Registered Nurses at Memorial Hospital.

Most arbitrators hold that internal settlements in themselves are not an improper basis of comparison and that arbitrators must be concerned that equitable relationships are maintained between all employees and the employer if the parties to the contract had adhered to that practice in the past or if some good reason exists to maintain that relationship.

The County has provided convincing evidence indicating that its final offer to the Professional Courthouse employees matches the wage increases negotiated between the County and its Highway and Law Enforcement unions as well as its non-represented employees and its Health Care Center employees. (County Exhibits #15-21, 69-71, 73). It should be noted, however, that the 3.5% increase for the non-represented employees applied to the various pay grades; they do not reflect how many employees have moved to different pay grades. Union Exhibit #11 shows that six employees moved to different pay grades, realizing wage increases ranging from 8% to 22%. Of the settled groups of County employees none of them but one have the same or even similar educational requirements and job duties as those performed by the Clark County Professional employees. Such a comparison is like comparing apples with oranges. There is, however, one group of employees who have similar education backgrounds and perform similar duties to those performed by some of the members in the bargaining unit. That group includes the nursing staff at the Clark County Health Care Center.

A comparison of the two groups of nursing employees in terms of their differences and similarities finds that the Public Health Department nurses in the bargaining unit are engaged in preventive nursing care whereas the similarly classified employees at the Health Care Center provide treatment nursing. Nurses at the Center are required to work different shifts and they work in a controlled environment where assistance from other staff is available if problems arise. This is not the case for the employees of the bargaining unit that deal with their clientele in the home of the client. Bargaining unit members like Health Care nurses, deal with geriatric and psychiatric patients but they perform their service on a one to one basis without assistance from other staff members. With respect to shift work, second and third shift nurses receive a differential of \$.25 and \$.35 respectively. This additional compensation is not paid to the staff of the bargaining unit when they are called upon to care for their clients during the night to deal with medical emergencies. Even though there are some

differences in the job duties, responsibilities and hours between these nurses, there are more similarities than dissimilarities. This same result does not exist when you compare bargaining unit nurses to other County employees who have settlements in 1985.

County Exhibit #73 shows, in the present rate column, the 1984 hourly wage schedule for the Registered Nurses at the Clark County Health Care Center. Union Exhibit #7 reveals the 1984 hourly wage rates for the two full-time public health nurses and the seven part-time Registered Nurses. These exhibits prove that full-time Registered Nurses at the Clark County Health Care Center receive \$.42 (start) and \$1.08 (maximum) per hour more than the Registered Nurses in the Clark County Professional Unit. This same pay disparity exists with part-time nurses in the bargaining unit, who receive \$.83 per hour less than Clark County Health Center Registered Nurses.

County Exhibits 72 (item 16) and 73, as well as Union Exhibit #14 reflect the 1985 wage rates for the Clark County Health Care nurses and the impact on the Parties' final offers. This relationship is summarized as follows:

	<u>Full-Time</u>	<u>Part-Time</u>
Clark Co. Health Care Center RN's	\$8.99-\$10.43	\$9.56-\$10.40
Clark Co. Prof. Unit Public Health Nurse (County Offer)	$\frac{8.67}{$.32} - \frac{9.64}{$.79}$	$\frac{9.54}{$.86}$
Clark Co. Health Care Center RN's	\$8.99-\$10.43	\$9.56-\$10.40
Clark Co. Prof. Unit Public Health Nurse (Union Offer)	$\frac{8.89}{$.10} - \frac{9.88}{$.55}$	$\frac{9.79}{$.61}$

These figures prove that an inequity in pay will continue to exist between the two groups of employees. In fact, the County's offer will increase the inequity for the part-time Registered Nurses by \$.03 per hour. This affects seven of the thirteen employees. (Union Exhibit #6). The importance of closing this wage disparity was one of the items addressed by the County Board in 1982 as shown by the documents attached to the Union's post hearing brief. The County alleges that these documents are not part of the record in this case. The arbitrator disagrees because the documents were alluded to by the Union during its presentation. In addition, these documents are public records generated by the County Board. The County cannot now claim that it did not have an opportunity to review these documents, to ask questions regarding them or to rebut them. In fact, the County had ample opportunity to respond to these documents in their reply brief, which was done on pages two and three.

The relationship of the two most similar and comparable groups of employees among County employees gives more credence to the Union's position with respect to internal comparisons.

The Wisconsin Statutes direct the arbitrator to give weight to the comparison of wages with other employees in comparable communities. Two arbitration awards have been issued in Clark

County and both arbitrators addressed the issue of comparability. In Clark County (Social Services), WERC Decision No. 18497-A (12/81), Arbitrator Imes found Chippewa, Lincoln, Monroe, Pierce, Polk, Taylor and Wood Counties to be comparable. (County Exhibit #28). In Clark County (Law Enforcement), WERC Decision No. 17584-A (9/80), Arbitrator Flaten found that Jackson and Taylor Counties were comparable to Clark County. The County asserts that Jackson and Taylor Counties are the most comparable; some of the remaining counties are not comparable at all; and some are only somewhat comparable. The Union, on the other hand, proposes using the counties suggested by Arbitrator Imes. In order to maintain some consistency in the past bargaining history for use in this case and in future cases, the arbitrator agrees that the comparable counties should be those used by both arbitrators in their awards. Thus, the comparable counties for purposes of this award include: Chippewa, Lincoln, Monroe, Pierce, Polk, Taylor, Wood and Jackson Counties.

County Exhibits #29-33 contains the data for comparing the 1984 rates to the 1985 rates of settled counties within the comparability group for the positions of Registered Nurse, Public Health Nurse, Home Care Coordinator, Developmental Disability Home Trainer and Juvenile Intake Worker.

Both the County and Union's final offers with respect to the Registered Nurses' hourly rates at the minimum salary exceeds the average of the comparable counties while the maximum rate is below the average. Public Health Nurses in the bargaining unit will receive less money at the monthly minimum rate, except the Union's offer will be one dollar more than the average at the minimum rate after October 1, 1985. At the maximum rate, both offers are below the average of the comparable counties. Clark County is below the average at the monthly minimum rate for the position of Home Care Coordinator but is average at the monthly maximum. Both offers are above the average at the monthly minimum and maximum rates for the positions of Developmental Disability Home Trainer and Juvenile Intake Worker.

The same data also shows that the average percentage increases granted to the employees in the comparable counties for the above positions compare favorably to either the Union or the County's final offer. Even if the arbitrator used the year-end percent increases as suggested by the County, the results remain the same.

In summary, the external comparisons in regard to the hourly, monthly or percentage increases have little if no bearing on this case. This is due to the fact that the Parties are only \$397 apart in salary only and a \$425 difference in total package cost. Consequently, whatever position is awarded by the arbitrator shall have no immense impact on the relative position of Clark County to the other comparable counties.

E. The average consumer prices for goods and services, commonly known as the cost-of-living.

This factor directs the arbitrator to consider the cost-of-living. Generally, in evaluating this factor arbitrators compare the total costs of the final offers with the inflation rate at the time the contract expires. The 1984 contract expired on December 31, 1984. In December 1984, the rate of inflation at the national level as measured by the CPI-U equalled 4%. (County Exhibit #11). The rate of inflation as measured by the CPI-W equalled 3.5% in December 1984. (County Exhibit #12). The County's total package increase of 6% and the Union's total package increase of 6.23% both exceed these measures of inflation. Both final offers provide the County's employees with a protective layer against inflation. Both allow employees to recoup any previous losses that they may had suffered due to the inflation rate. However, the Union's proposal, even without considering the impact of the split wage increase, will

result in increases that are slightly larger (.23%) than the County's final offer. Consequently, the County's offer is barely the more reasonable of the two with regard to the cost-of-living.

F. The overall compensation presently received by the 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.

All comparable counties offer similar fringe benefits in regard to vacations, holidays, retirement, insurances, overtime pay, on call pay and excused time as evinced from Union Exhibits #8-9.

G. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

The most recent salary and total package settlements to date, have been reported and incorporated into the decision of the mediator-arbitrator.

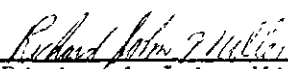
H. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

This factor was not given great weight because such other factors normally or traditionally taken into consideration in the determination of salary were already considered in the previous statutory factors.

The decision in this case at first blush seemed to be easy because the Parties are so close in salary only and total package dollars. It is easy in the sense that whatever position is awarded it will not have a severe financial impact on the County. The difficulty lies in the fact that both Parties have valid arguments pertaining to each of the factors set forth under state law which have been discussed in great detail by the arbitrator. Of all the factors discussed above, the one that left the most lasting impression on the arbitrator dealt with the internal comparison of Clark County Health Care Center Registered Nurses to similar members in the Clark County Professional unit. In that the Union's position will accomplish more towards alleviating this disparity and since the other factors under the law more or less cancel each other out, the arbitrator finds that the Union's final offer is more reasonable and should be awarded in this proceeding.

AWARD

Based on the above evidence and the entire record, the Union's final salary offer of 3% across the board on January 1, 1985, and 3% across the board on October 1, 1985, best satisfies the factors required to be considered by the mediator-arbitrator under such law. Therefore, any and all stipulations entered into by the Parties and the Union's final salary offer shall be incorporated into the 1985 collective bargaining agreement.


Richard John Miller
Mediator-Arbitrator

Dated this 18th day of July 1985
New Hope, Minnesota