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BEFORE THE MEDIATOR ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of

ROCK COUNTY EMPLOYEES
LOCAL 1258, AFSCME, AFL-CIO

To initiate Mediation-Arbitration
Between Said Petitioner and

ROCK COUNTY

Case No. 193
No. 34333 MED/ARB-3115
Decision No. 22550-A

Stanley H. Michelstetter II
Mediator-Arbitrator

Apearances:

Mr. David Ahrens, Staff Representative, appearing on behalf
of the Union.

Bruce Patterson, Employee Relations Consultant, appearing on
behalf of the Employer.

MEDIATION-ARBITRATION AWARD

Rock County Employees Local 1258, AFSCME, AFL-CIO, herein referred to as the "Union," having petitioned the Wisconsin Employment Relations Commission to initiate mediation-arbitration pursuant to section 111.70(4)(cm) 6 of the Municipal Employment Relations Act, involving certain employees of Rock County, herein referred to as the Employer and the Commission having appointed the Undersigned as mediator-arbitrator by order dated April 24, 1985; and the Undersigned having conducted a hearing for the benefit of the public, followed by mediation on July 22, 1985, and the hearing on August 26, 1985, in Janesville, Wisconsin, and the parties each having filed posthearing briefs the last of which was received on October 29, 1985.

ISSUES

The parties 1984-1985 collective bargaining agreement provides for a wage reopener for the year 1985: the Union proposes to increase all unit wages by 32¢ per hour effective 1/1/85 and an additional 5¢ per hour increase for the classifications of building service worker, laundry worker, and food service worker effective 1/1/85. The Employer purposed to increase all unit wages effective 1/1/85 by 3%.

POSITIONS OF THE PARTIES

The Union takes the position that its offer, which it characterizes as a 5% wage increase, is fully consistent with the final offers of, essentially, all of the other bargaining units in Rock County. It states the reason for the consistency is that the Employer accepted the attorney's contract at a 5% wage increase and then subsequently withdrew its ratification of the agreement. The Employer's negotiators tentatively agreed to a 5% contract with the deputy sheriffs, which was not ratified by the Employer. It relies upon comparisons to wages paid in similar units in the nine counties, excluding Milwaukee County, a population of over 100,000. It also relies upon Walworth County because it is contiguous. It supports the selection on the basis of the reasoning of the Undersigned in Dane County, (decision No. 21587-A) 10/84. It takes the position that if the mediator-arbitrator takes into account the comparison to local private sector facilities that they should be given far less weight because they are, by in large, small units, the county center is more of a mental illness hospital than a nursing home, there is no showing the historical relationship between the county and the private sector homes or showing of a relationship between nursing assistants classifications among the alleged comparisons. Further, it notes that the Medicaid reimbursement rate through the Rock County Health Center is \$61.66 while the highest of the others is \$46.49. It alleges that Rock County's Medicaid reimbursement is much more comparable to those of the counties for which it offers comparisons. Looking at the wage comparisons, it takes the positions that unit

wages are generally low, in some cases very low, by comparison to others counties. From a total compensation stand point, it notes that Rock County unlike most of the comparable counties lacks dental insurance and longevity. It takes the position that it is proposing the 5¢ per hour increase for laundry workers, food service workers and housekeepers as its latest response in a continuing struggle concerning seniority. It takes the position that in 1983 the Union took a wage freeze to gain seniority language (section 5.02 and 5.03 of the current collective bargaining agreement). It then won an arbitration award before arbitrator Kessler in August of 1984 concerning whether nursing assistants, by virtue of that language, were entitled to transfer to the entry level position of building service worker. It alleges that in response there to the Employer changed the qualifications for a basically entry level position to require experience and, therefore, preclude transfer.

It takes the position that the county's local property tax per capita operation revenue are average to the comparable group of counties with population with over 100,000 and that the tax base of the county is also average. It also uses data from Wisconsin Economic Indicators for the proposition that the average weekly earnings of production workers in Rock County are the highest in the state and that the level employment in the area is about the same as a year ago. It denies that the Employer's allegations of the tax impact on the farmer in Rock County is worthwhile, in that it denies there is sufficient evidence to show that its offer has any significant impact on the tax rate (because of substantial portion of its expenses are reimbursed through medicaid). Finally, it notes that only two to three percent of the county's employment is based on agriculture. It also denies that the private sector comparisons offered by the Employer are appropriate in that 1. they appear to be on a hit or miss basis 2. there is no indication of a pattern or relationship between county wage increases and the private sector employers to whom it is comparing itself now. The principle position of the Employer is that the rate for its chief source of funding (Medicaid reimbursement) is frozen, and therefore, a large share of the cost of operating the county institution is now being thrown upon the taxpayer. It contends that its taxpayers are already over burdened in that the agricultural economy is in severe trouble in Rock County and private sector employees have been receiving no wage increases. It argues the chief reason for its predicament is that the state has chosen to limit Medicaid reimbursement (which is ordinarily intended to reimburse costs) to those institutions which have higher cost, including wage costs, than the average among all of the institutions, private and public, compared in the state. It notes that the institutions which tend to have the higher wage costs are chiefly the institutions of the various counties around the state. Essentially for that reason, it takes the position that the mediator-arbitrator should not rely upon comparisons to the other counties' institutions. It takes the position that its offer of 3% is entirely consistent with its final offers to all of the other units in the county "with which it is bargaining." It also takes the position that this offer is heavily favored by the cost of living increase for the prior year. While it does not see the need for the mediator-arbitrator to look at external comparisons it suggests that the wage levels in Rock County are substantially different than the wage levels in other counties. It notes that in all classifications there the same relationship to the similar wages in other counties viewed by the Union. It also relies on the local comparisons to nursing homes to demonstrate that its wage rates are higher than all but one of the health care institutions in the county and essentially equivalent to the other institutions.

DISCUSSION

The principle issue in this case is the appropriate size of wage increase. The Employer's wage adjustment is 3%, total package 4.3%. The Union's wage adjustment is 4.89% (cost), total

package 6.01%. The Union allocated its wage increase as cents per hour with additional wage increase in certain classifications. Although some litigation was devoted to the rationale for the latter allocation, neither party is challenging the allocation as inappropriate, nor as being costed against the total increase. Therefore, discussion is limited to the appropriate cost to be applied.

The decision in this matter rests on the following factors from section 111.70 (4) (cm) 7:

"
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.

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."

Cost of Living

The Employer's wage adjustment is 3%, and total package 4.3%. The Unions wage adjustment is 4.89% and total package is 6.01%. The Employer presented evidence that from December 1983 to December 1984, the Urban Wage Earners & Clerical indices experienced relevant changes of from 3.2% to 3.5%. a comparison of the total package increase to the cost of living and any one of these favors the Employer's final offer.

Comparisons

A principal issue in this case is what, if any, comparisons should be used.

Internal

The bargaining history of the parties indicates that historically settlements in this unit have had a strong relationship to the increase granted in the other county bargaining units. There have been some variations. There is no testimony or other evidence supporting the historical use of others comparisons.

The evidence indicates that the Employer has adopted a final offer position of 3% wage adjustment for all bargaining units of the county which are relevant. There have been no voluntary settlements. The Union offered evidence, without objection by the Employer, that the Employer failed to ratify a tentative agreement with the 68 person deputy sheriff unit, which agreement allegedly contained a 5% wage adjustment. It also offered evidence that the Employer rescinded ratification of a tentative agreement with the 10 person attorney bargaining unit, again allegedly with 5% wage adjustment. This latter dispute is pending determination by the WERC of a prohibited practice complaint, the exact nature of which was not disclosed. Since 1976, the attorney's unit settlement usually has born little or no rela-

tionship to other settlements. Settlements with the deputy sheriffs' unit have usually been close, with significant variations, to other County settlements. That tentative settlement was predicated on reduction in staff.

Shortly, before the rendering of this award, the Union, with the consent of the Employer, submitted two arbitration awards affecting units in this county, both adopting the position of the unions therein for this contract year. In Rock County, Department of Social Services and IAM, Lodge 1266 (Med/Arb 3229) 12/85, Arbitrator Mueller adopted the 4.6% wage only adjustment offered by the union over the 3% wage adjustment proposed by the Employer for the 45 member social worker unit. In that case, the Employer argued its internal position based on internal comparison and, alternatively, comparable counties. Arbitrator Mueller selected the comparison counties upon which the parties could agree and applied the average wage adjustment in each of the two groups: contiguous counties (excluding Dane) [3.8% average] and, most heavily, comparable size (4.2% average). Arbitrator Mueller rejected the use of local large manufacturing comparisons. Since 1978, settlements in this unit have been relatively close, but varied from settlements in the institutions unit.

The second award involved the 203 member court house unit, the second largest unit in the county after the 323 member instant unit. In Rock County and Local 2489 AFSCME, AFL-CIO, (Med/Arb-3113) 1/86 Arbitrator Briggs choose the union offer of 30¢ per hour (3.8%) wage adjustment over the employer offer of 3%. In reaching his decision, Arbitrator Briggs relied extensively on counties of comparable size and local city settlements, rejecting the use of surrounding counties. He also rejected the use of local large manufacturing settlements. Since 1978, annual wage increase settlements in the court house unit have been identical to the settlements in the instant unit. Over these years, these settlements have been for the same percentage increase and in other years these have been for the same dollar per hour increase. Under these facts, internal comparisons have no impact on the result of this case.

External Comparisons

The Union offered comparisons to the nine largest counties in Wisconsin, excluding Milwaukee. It also used Walworth County (as a bordering county). The nine largest counties excluding Dane are: Brown, Racine, Rock, Winnebago, Outagamie, Kenosha, Marathon, Sheboygan. These counties, apparently, all have institutions of, essentially, a similar nature to that of Rock County. The Employer's arguments against using these counties, are directed more to the weight that should be given them than to their relevance as comparables. The Employer has challenged the use of Dane, and suggest the use of other surrounding counties, Jefferson and Green.

Rock County with a population of 138,000 is a county for which there are many counties of relatively similar population. Dane County, being the second largest county in Wisconsin is so much larger and different economically that it is not comparable on the basis of size. However, Dane County is one of the counties surrounding Rock County and is comparable on that basis, as are Walworth, Green and Jefferson (providing they have similar units.) The following is the available data with respect to wage

comparisons among the counties offered:

NURSING ASSISTANT MAXIMUM
COUNTIES OF SAME SIZE

	1984	1985	increase	% change
Waukesha	6.86	7.07	21¢	3.1%
Brown	7.54	7.91	37¢	4.9%
Racine	7.81	8.04 1/85 8.28 4/85	47¢	5.2% 6.0 lift
Winnebago	7.04	7.33	.29	4.1%
Outagamie	6.52	6.72	.20	3.1%
Kenosha	----	----		----
Marathon ^{1/}	----	5.46		
Sheboygan	6.35	----		
			average	4.1% 4.2% lift

SURROUNDING COUNTIES

Dane	8.40	8.74	.34	4.0%
Walworth	7.35	7.61	.26	3.5%
			average	3.75%

ROCK COUNTY

Rock	6.54	6.86 Un. 6.74 Er.		4.9% 3.0%
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1/ It appears Marathon County granted a 4% general wage increase.

I have used the nursing assistant maximums because comparisons to the private sector are limited to nursing assistants and they are sufficiently representative of the public sector. The data shows a wide variation in 1984 wages paid nursing assistants in 1984, from less than \$5.46 per hour to \$8.40 per hour. Rock County, at \$6.54 per hour, is the third lowest. Among counties of comparable size it appears the average 1985 increase is 4.11%, a figure favoring the Union slightly. Although surrounding Dane and Walworth each pay much more than Rock County, they have given increases averaging only 3.75%, a figure favoring the Employer.

The Employer's position claiming its limited wage proposal is necessary solely because Medicaid reimbursement is frozen tends to be contradicted by the activities in other counties. Counties of similar size, paying higher wages are apparently under the same pressure. Yet, on the average they, too, have given increases closer to the Union's offer herein.

The evidence in this case supports the use of comparisons to private sector nursing homes and hospitals in Rock County. They are, essentially, in the same industry as the Employer and, although there are variations, the skills and duties of employees are similar to those applied in the county institutions. As such, they and the county must deal with the same labor pool and non tax funding source. The following is the available data:

NURSING ASSISTANT MAXIMUM

	1984	1985	increase	percent
Beloit Memorial	6.10	6.23	13¢	2.13%
Carlyle	4.78	4.93	15¢	3.13
Cedar Crest	6.17	6.45	28¢	4.5%
Evansville Manor	6.25	6.30	5¢	.8%
Janesville HCC	5.50	5.80	30¢	5.45
Meadow Park	3.60	3.70	10¢	2.77%
Edgerton LTCF	5.44	5.44	N/A	N/A
Mercy Hospital	6.56	6.89	33¢	5.03%
St. Elizabeth Homes	3.60	3.60	0	0
				2.97625

By comparison to this data, and total compensation, Rock County is the highest paying institution in the County. For 1986, they range from a low of \$3.60 per hour to \$6.56 at one place. The data also shows that increases of size comparable to both the Union's and the Employer's offer have been granted. However, by comparison to the average wage increase, the Employer's offer is clearly appropriate.

The evidence in this case indicates that the Employer's wages, even taking into account differences in the type of duties, are favorable by comparison to the private sector in Rock County.^{1/} Further evidence indicates that most of the employment in the county institution comes from people in Rock County, that there is far less turn over than would be normally expected in this type of employment, and a large number of applications for vacant positions. While the Employer argued that the county's wages throughout its employment are lower than comparable wages because wage levels in Rock County are lower, the evidence is contradictory and insufficient to conclude whether or not that argument is true.

Although both parties have sought to have their positions weighed more heavily because of alleged disparity, neither party is seeking a fundamental adjustment of the wage level. There is no evidence that anyone else has done so in 1985. Under the circumstances of this case consideration of a fundamental adjustment or weighting is inappropriate.

It is clear that the comparison factor could support the offer of either party in this case, depending on whether comparisons to the size of increase granted in similar size counties, contiguous counties or the private sector are relied on.

Interest of the Public

While there are some differences in the local economy, the evidence does not support the conclusion that Rock County is more depressed than other counties in the state. There was direct testimony suggesting that Rock County has lost a large number of high paying manufacturing jobs. Statistics from the May issue of the DILHR's "Wisconsin Economic Indicators" indicates that manufacturing employment has remained essentially constant from the levels of a year ago. There has been substantial migration from Rock County. There is evidence that incomes are "depressed" from their former high levels. There was direct testimony that many area manufacturers have had settlements for little or no increase. The same issue of economic indicators indicates that average hourly wage has risen, but that average weekly earnings are far less than a year ago. While Rock County enjoys some of the highest manufacturing earnings in the state, average weekly earnings here have declined more than any other area of the state. The relative cost of living in Rock County is lower than any other part of the state measured.

The evidence also indicates that Rock County is experiencing the result of the nationwide farm crisis. A substantial part of the employment in Rock County is in agriculture and its dependent businesses. Rock is near the top of the state in corn and soybean production and a leading producer of milk. Its producers, like many of those in the nation, are caught in a high cost, low price squeeze. The number of farm foreclosures has risen dramatically. 17% of property taxes raised in Rock County comes from the farm sector.

The tenor of the testimony of nursing home administrator Scieszczinski is that Rock County, like other county run nursing homes, is under direct pressure from the state administrator of Medicaid financing concerning its costs of operation (principally

^{1/} There is no indication that settlements in this county have had any relationship to local manufacturing settlements and, therefore, they have not been used.

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wages). The county home operation is intended to be primarily self financing. The main source of revenue is Medicaid reimbursement which is paid at a rate computed upon the costs of the home. The state, as Medicaid agent, has targeted the "high cost" (chiefly county type) homes by limiting their reimbursement by capping the wage reimbursement component through comparisons of the wages paid at the 450 total public and private nursing homes in the state. The home has a budget of \$10 million of which \$2.5 million comes from Medicaid reimbursement. Because the reimbursement rate has been frozen for some time, the county now supplies \$450,000 from its total \$12 million annual property tax levy to support the home. It is very likely the reimbursement formula will remain frozen. If so, the County's tax support will increase to at least \$750,000 to \$1,000,000. While the state's conduct is exceedingly myopic, it is nonetheless a reality in the work place.

Conclusion

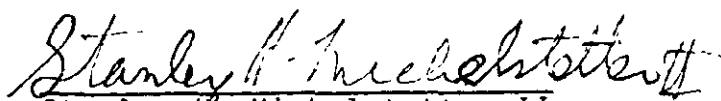
Under Section 111.70(4)(cm), Wis. Stats., I am required to select the final offer of the party deemed most appropriate, without modification or compromise. While either offer is clearly supportable, the unusually heavy preponderance of the factors indicates that a settlement approximately mid-way between the two offers would have been appropriate.

In this case, comparisons to the size of wage increase granted in counties of similar size is entitled to heavy weight because they share the same primary funding source and similar problems to Rock County. On the average, these counties have granted increases closer to the offer of the Union herein than to the Employer. While on the average the private sector comparisons favor the Employer, the institutions upon which the Employer most closely relied as examples, all granted increases of a higher percentage than the Union is asking herein.

AWARD

That the final offer of the Union be incorporated under the terms of the parties' current collective bargaining agreement.

Dated at Milwaukee, Wisconsin this 14th day of January, 1986.


Stanley H. Michelstetter II,
Mediator-Arbitrator