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IN THE MATTER OF MEDIATION/ARBITRATION PROCEEDINGS  
WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION

BETWEEN

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ROCK COUNTY DEPARTMENT OF  
PUBLIC WORKS EMPLOYEES, LOCAL  
1077, AFSCME, AFL-CIO

and

ROCK COUNTY (DEPARTMENT OF  
PUBLIC WORKS)

Case 192 No. 34332  
MED/ARB 3114  
DECISION AND AWARD  
OF ARBITRATOR  
Decision No. 22551-A

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I. BACKGROUND

This is a matter of final and binding interest arbitration pursuant to Section 111.70(4)(cm)6 of the Wisconsin Municipal Employment Relations Act. Rock County Department of Public Works Employees, Local 1077, AFSCME, AFL-CIO (Union) is the exclusive bargaining representative of certain employees of Rock County (County or Employer) in a collective bargaining unit consisting of all regular full-time and regular part-time employees of the department of public works and general services.

The Union and the County have been parties to a collective bargaining agreement that expired on December 31, 1984. On September 18, 1984, the parties exchanged their initial proposals on matters to be included in the new collective bargaining agreement. On December 26, 1984, the Union filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the WERC initiate mediation-arbitration proceedings. On April 8, 1985, the parties submitted their final offers to the WERC investigator.

On April 12, 1985, the WERC certified that the conditions precedent to the initiation of mediation-arbitration had been met. The parties thereafter selected Jay E. Grenig as the mediator/arbitrator.

Following a public hearing, mediation proceedings were conducted on July 16, 1985. The parties were unable to reach voluntary settlement and the matter was submitted to the Mediator/Arbitrator serving in the capacity of arbitrator on the same date. The County was represented by Bruce K. Patterson, Employee Relations Consultant. The Union was represented by David Ahrens, Staff Representative,

AFSCME Council 40. The parties were given full opportunity to present relevant evidence and arguments. Upon receipt of the parties' briefs, the record was declared closed on September 12, 1985.

## II. FINAL OFFERS

The Union's final offer is for a 43¢ per hour wage increase. In addition, the Union proposed the following language be added to the contract:

14.01: Section C: However, if an employee is called in at any time prior to his/her normal hours of work, the employee shall not be sent home before the completion of the regular schedule of hours, provided, that either the County or employee can require the employee to end the shift after sixteen (16) hours.

The County's final offer is for an increase of all wage rates on the Wage Appendix by three percent.

## III. STATUTORY CRITERIA

In determining which offer to accept, the Arbitrator must give weight to the following statutory (Wis. Stats. sec. 111.70(4)(cm)7) criteria:

- a. The lawful authority of the employer.
- b. Stipulations of the parties.
- c. The interests and welfare of the public and 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 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 wages, 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, factfinding, arbitration, or otherwise between the parties in the public service.

#### IV. DISCUSSION

##### A. WAGES

1. **LAWFUL AUTHORITY OF THE EMPLOYER.** There is no contention that the County lacks the lawful authority to implement either offer.

2. **STIPULATIONS OF THE PARTIES.** While the parties were in agreement on many facts, there were no stipulations with respect to this issue other than a stipulation that health insurance premium increases will result in a cost increase of \$30,083 to the County. This represents 1.4% of the total wage and benefit package improvement for 19 85.

3. **INTERESTS AND WELFARE OF THE PUBLIC AND ABILITY TO PAY.** There is no contention that the County lacks the ability to pay either offer.

There is no evidence that the County has had to or will have to reduce or eliminate any services, that it will have to engage in long term borrowing, or that it will have to raise taxes if the Union's offer is implemented. There is no evidence that the County will reduce property taxes if its offer is implemented.

##### 4. **COMPARISON OF WAGES, HOURS AND CONDITIONS OF EMPLOYMENT.**

a. **INTRODUCTION.** In determining which party's offer is more reasonable, arbitrators attempt to determine what the parties would have settled on had they reached a voluntary settlement. Since the parties did not reach a voluntary settlement, one of the most important aids in determining where the parties would have settled is an analysis of salaries paid similar employees by other comparable employers. In addition, arbitrators have given great weight to settlements between an employer and its other employee bargaining units.

b. **INTERNAL COMPARABLES.** Arbitrators have given great weight to settlements between an employer and its other bargaining units when determining reasonableness

of offers. The frustration of a union's being locked into an established pattern of settlement is understandable, but, in the absence of compelling circumstances, late settlements above a pattern established earlier penalize employees involved in voluntary negotiations.

Although only non-union County employees have received pay increases for 1985, the County asserts that its final offer is consistent with the increase granted to its employees in non-union positions and its final offers to all units with which it is engaged in collective bargaining. The County contends many arbitration decisions support its reliance on internal comparables.

b. EXTERNAL COMPARABLES. The purpose of comparing wages, hours and conditions of employment of comparable employers is to obtain guidance in determining the pattern of voluntary settlements among the comparables and the wage rates paid by these comparables for similar work. If there is no basis for departing from the comparables, an arbitrator, in giving effect to the prevailing wage practice in the comparables, adopts for the parties that which has been adopted by other parties through collective bargaining under similar circumstances. An award based upon application of this standard is not likely to be too far from the expectations of the parties.

In determining which employers are comparables, arbitrators should take into account size, geographical location, number of employees, and equalized valuation.

The County believes that, if external comparables are used, the appropriate external comparables are the cities of Beloit and Janesville. Both are located within Rock County and are part of the same labor market.

The Union has selected as its comparables all counties with a population over 1,00,000, excluding Waukesha and Milwaukee counties. The Union also includes the cities of Janesville and Beloit and Walworth County.

Because the cities of Janesville and Beloit are the two largest cities in Rock County, perform many of the same functions as the County's Department of Public Works, and are in the same labor market as the County (Janesville is the County seat), it is appropriate to consider them in comparing wages, hours and conditions of employment.

Because it is nearly impossible to discern a settlement pattern with only two comparables (one of which has not even settled), a comparison of wages, hours and conditions of employment of comparable county employers would be helpful. Rock County has a population of 138,721. The populations of the counties used by the Union range from 333,950 (Dane County) to 72,942 (Walworth County). Dane County has

approximately two and one-half times the population of Rock County. Walworth County has a population approximately half the population of Rock County.

Dane County and Walworth counties are contiguous to Rock County. However, the Union does not include Green and Jefferson counties in its list of comparables--two other contiguous counties. Although Waukesha County is not included in the list because of its proximity to Milwaukee County, the Union includes Kenosha and Racine counties in its list of comparables.

The local property tax per capita in Rock County is \$82. The average local property tax per capita in the comparable counties proposed by the Union is \$82.8. The local property tax per capita among these counties ranges from \$58 (Outagamie) to \$117 (Walworth). The local property tax per capita in Dane County is \$76, \$91 in Racine, and \$84 in Kenosha. The average total operating revenue in the nine counties is 342.1. In Rock County it is 312; in Walworth, 615; in Dane, 260; in Racine, 311; and in Kenosha, 330.

The full value per capita of Rock County is \$23,610. The average full value per capita in the counties proposed by the Union is \$25,242. The full value per capita in those counties ranges from \$22,684 (Outagamie) to \$38,059 (Walworth). Of the nine counties used by the Union, five have full value per capita less than that of Rock County. Of those with a higher per capita rate, one (Marathon) is only five dollars higher than Rock County. The remaining counties with a higher per capita rate are Dane (\$27,040) and Sheboygan (\$24,168).

Taking into account the size, geographical location and equalized valuation of the counties proposed by the Union as comparables, it is concluded that the following counties are appropriate comparables for purposes of comparing wages, hours and conditions of employment:

Brown  
Kenosha  
Marathon  
Outagamie  
Racine  
Sheboygan  
Winnebago

Although Dane County is geographically proximate to Rock County, it is substantially larger than either Rock County or any of the other comparables. Furthermore, with the University of Wisconsin and the state government located in Dane County, it cannot be said that its economic base is similar to Rock County's. With respect to Walworth County, it is substantially smaller than Rock County or any of the other proposed comparables. Furthermore, the financial

picture in Walworth County is not similar to that in Rock County. Walworth County has the highest full value per capita by a wide margin. Walworth County's total operating revenue is twice that of Rock County.

If the reason for comparing Dane County and Walworth County with Rock County is their proximity to Rock County, then Green County and Jefferson County should also be compared. However, there is no data with respect to these counties in the record.

Although Racine and Kenosha are not adjacent to Rock County, they are closer to Rock County than all the remaining comparable counties. Their population and equalized valuation are sufficiently similar to that of Rock County to justify their inclusion as comparables.

While it is true that the Union has not proposed using Waukesha, Jefferson or Green counties, the evidence does not show what effect the inclusion of these counties in the comparison would have on the outcome of this proceeding. The Arbitrator cannot speculate on what the result might be if unknown information were considered.

The County's final offer provides for a three percent increase in wages. The Union's final offer would result in an average increase of 4.97% to all classifications.

The average unit base rate for 1985 in Janesville is \$8.99. This is an increase of 4.05% from 1984. In Beloit the question of the average unit base rate is in mediation-arbitration. The city has offered \$8.60 for 1985 (a wage freeze) and the union has offered \$8.94 (an increase of 3.93% from 1984).

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**CITY AND COUNTY COMPARISONS  
1985 Wage Rates\***

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County	Truck Driver	Patrolman	Mechanic	% Inc**
Brown	\$ 9.82 <sup>1</sup>	\$ 9.82 <sup>1</sup>	\$10.45	6.6% <sup>2</sup>
Racine	11.14 <sup>3</sup>	11.22	11.68	5.0% <sup>4</sup>
Winnebago	9.28	9.28	9.62	4.2%
Outagamie	8.86	----	9.42	4.5% <sup>5</sup>
Kenosha	12.57	12.57	12.94	9.0%
Marathon	--- <sup>6</sup>	--- <sup>6</sup>	--- <sup>6</sup>	
Sheboygan	9.38 <sup>7</sup>	9.38	9.58	4.0%
Janesville	9.15	---	9.42	4.0%
Beloit	--- <sup>6</sup>	--- <sup>6</sup>	--- <sup>6</sup>	
<b>COUNTY</b>	<b>8.68</b>	<b>8.85</b>	<b>9.12</b>	<b>3.0%</b>
<b>UNION</b>	<b>8.86</b>	<b>9.02</b>	<b>9.28</b>	<b>4.97%</b>

\* Classifications vary somewhat from county to county. These classifications represent generally equivalent job duties. Wage rates are highest rate in each classification.

\*\* Percent increases represent wage increases from 1984 to 1985.

1 Summer rate. Brown County pays a premium rate in winter.

2 Average increase based on winter and summer rates.

3 Racine increased wages on January 1 and April 1, 1985. These figures represent the final wage rate.

4 On January 1 wages were increased by three percent. On April 1 wages were increased by an additional three percent, for an annual increase in wages of five percent (resulting in a six percent lift).

5 On January 1 wages were increased by four percent. On July 1 wages were increased by an additional one percent for an annual increase in wages of 4.4 (resulting in a five percent lift).

6 The 1985 wages are in mediation/arbitration.

7 New employees hired after January 1 start at a lower rate.

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The 1985 settlements ranged from four percent to nine percent, with most being between four and five percent. The 1985 average wage increase in the comparables was 5.33%. Disregarding the Kenosha settlement which is considerably outside the pattern of settlements, the average settlement

was 4.72%. The County's offer is 1.72% below this average, while the Union's is .25% above the average. The median 1985 wage increase was 4.5%. The County's offer is 1.5% below the median and the Union's is .47% above the median.

The average hourly wage of patrolmen in the comparables is \$10.45 and the median is \$9.82. The County's offer would result in a Patrolman wage \$1.60 below the average and 93¢ below the median. The Union's offer would result in a Patrolman wage \$1.43 below the average and 80¢ below the median. Both offers would result in the lowest 1985 hourly wage for patrolman among the comparables that have settled.

The average hourly wage of truck drivers in the comparables is \$10.02 and the median is \$9.38. The County's offer would result in a Truck Driver wage \$1.34 below the average and 70¢ below the median. The Union's offer would result in a Truck Driver wage \$1.11 below the average and 52¢ below the median. Both would result in the lowest 1985 hourly wage for truck drivers employed by the comparables that have settled.

The average hourly wage rate of mechanics in the settled comparables is \$10.44 and the median is \$9.62. The County's offer would result in a Mechanic wage rate \$1.32 below the average and 50¢ below the median. The Union's offer would result in a Mechanic wage rate \$1.18 below the average and 36¢ below the median. Both offers would result in the lowest 1985 hourly wage rate for mechanics employed by the comparables that have settled.

Pointing to the relative ranking of the patrolman classification as compared with other wage classifications in the comparable counties, the County asserts that the Union's argument of low comparability is diminished because all the counties are internally consistent in how they handle the various classifications.

5. INCREASES IN THE COST OF LIVING. For calendar year 1984 the cost of living as measured by the Consumer Price Index for All Urban Consumers in small metropolitan areas increased at the rate of three percent. In The Milwaukee Metropolitan Area it increased by 3.8%; it increased 4.0% nationally.

The evidence also showed that the Janesville area has the lowest cost of living of the cities measured in Wisconsin.

6. OVERALL COMPENSATION. Employees presently receive paid vacation and holidays, excused time, life insurance, retirement benefits and medical and hospitalization benefits. There is an extremely low turnover level in the bargaining unit. When there have been vacancies, there has been a large number of job



applications.

Data with respect to the "incidental labor rates" compiled by the State of Wisconsin was submitted. The incidental labor rate purports to show labor costs in addition to wages (e.g., life insurance premiums, time off with pay, retirement, social security, unemployment insurance, hospital insurance, and workers' compensation).

While there is some question as to the method of computation used by the State, the evidence shows that the incidental labor rate in the comparable counties ranges from a low of 48.19% (Outagamie) to a high of 58.93% (Kenosha). The incidental labor rate in Rock County is 52.85%. The average incidental labor rate in the comparables is 53.38% and the median incidental labor rate is 53.44%. The County's rate is .53% below the average and .59% below the median.

7. CHANGES IN THE CIRCUMSTANCES DURING THE PENDENCY OF THE ARBITRATION PROCEEDINGS. No relevant changes during the pendency of these proceedings have been brought to the attention of the Arbitrator.

8. OTHER FACTORS.

a. BARGAINING HISTORY. The Union's final offer of five percent was taken by the County's negotiators to the County Staff Committee. The Staff Committee rejected the proposal after the County Board rejected the Attorney's contract (providing for a five percent wage increase) on second consideration and tied in a vote on the Deputy Sheriff's contract. The Union contends that this history demonstrates that the proposals were considered to be sufficiently fair to be brought to the Board for a vote.

b. ECONOMY. County witnesses testified with respect to the state of the farm economy in Rock County. The evidence showed there has been a significant decline in farm prices and land values. In addition, there has been an increasing rate of farm foreclosures. There was one foreclosure in 1981 and one in 1982. Four farms were foreclosed in 1983 and five were foreclosed in 1985.

In 1982 and 1983 Rock County had the highest tax delinquency rate among the comparable counties. The evidence does not show what the effect of acceptance of either offer would have on the tax rate.

The labor relations manager for a local company testified that the company had negotiated a three-year contract providing for no increase in wages and providing other concessions during the first year of the contract. He testified employment had declined by 40% in the last two years and about 300 employees were on layoff.

The unemployment rate in the Janesville-Beloit area ranged from 6.8% to 13.4% in 1984. The average unemployment rate was 8.1% in the Janesville-Beloit area, compared to the Wisconsin average of 7.4% during the same period.

According to economic data prepared in May 1985 by the State of Wisconsin, the average weekly earnings by production workers in Rock County is \$471 (it is \$537 in Janesville). This is down from \$521 a year ago. The average weekly earnings among the comparable counties range from \$362 in Kenosha County to \$466 in Brown County. Rock County has the highest weekly earnings of the comparables, according to the report. The average hourly earnings (excluding overtime) in Rock County is reported as \$11.57. Both offers would result in hourly earnings below this average.

#### B. WORK SCHEDULE

The record does not disclose the financial impact of the Union's proposal. It will certainly be an additional cost, since employees will be entitled to work more hours than they are now. The evidence shows that in January and February 1985 employees were called in prior to their regular scheduled hours 15 times because of snow. Each of those times employees were called in before the seven o'clock starting time and sent home with no more than eight hours. In January there were four times when there were at least 15 to 18 employees sent home after eight hours and 20 or more kept over eight hours. The other times there were five or less. There were a number of times when employees were not sent home after the eight hours. According to the Union's there were some employees that got sent home based on their work assignment and there were some employees that, based on their work assignment, worked more than eight hours.

A Union steward testified that when he was hired by the Department in December 1976 it had been a practice of the Department to allow people to work their full shift if they were called in early. He testified that the practice was discontinued sometime in 1976 or 1977. He said that some people want to go home after the eight hours have been worked and some people wanted to stay. On redirect examination the steward testified that, prior to this year, if an individual wanted to stay the individual was allowed to continue to work.

The President of the Health Care Center Local testified an employee who is called in prior to the beginning of her shift also works the regular eight hours in accordance with the Local contract. If a deputy sheriff is called in prior to the employee's regularly-scheduled hours, they work that early shift as well as the regular schedule.

The evidence shows that of the seven comparable counties, five (Brown, Kenosha, Marathon, Sheboygan, and Racine) do not send employees home after eight hours, where an employee has been called in because of a snow emergency. In two of these counties, the employers have the option of sending employees home. Outagamie and Winnebago counties send employees home after eight hours. Thus, in four of the seven counties the employer retained the authority to send employees home after eight hours.

## V. CONCLUSION

### A. WAGES

Comparing the wage rates of the seven comparable counties and two cities with Rock County demonstrates that both offers are below the established settlement pattern. The Union's offer is closer to both the median and the average rate of increase. The County's offer of a three percent increase is lower than the rate of increase in any of the comparables. Both offers would result in top wage rates lower than any of the comparables, including Janesville.

There is no reason for deferring to the "internal comparables" in light of the fact that there have been no settlements between the County and its other bargaining units. While the County has made uniform offers to the other bargaining units (three percent), these offers have been uniformly rejected. Thus, there is no established pattern of settlement.

The record shows that, like many areas of Wisconsin, Rock County has suffered difficult economic times in recent years. Economic conditions are usually similar throughout a regional economy and are reflected in the wage settlements of the comparable employers. The City of Janesville provided its public works employees with a percentage wage increase midway between the offers of the County and the Union.

While the Union's offer may result in some slight change in the relationship between the wages of employees represented by the Union and employees in other bargaining units, public works employees in other counties and cities are the most comparable employees. As noted above, even the Union's offer would result in a top wage rate lower than that received by public works employees in the comparables (including Janesville).

Although common sense would indicate that the greater the pay increase the more money needed to pay for the increase, there is no evidence as to what the effect of either offer would be on the tax rate. According to the evidence, a comparison of both the property tax per capita

and the full value per capita of the County with those of the comparables discloses no reason why the County cannot pay a wage increase similar to the established pattern of 1985 voluntary settlements.

The low turn over in the bargaining unit is insufficient, in and of itself, to justify disregarding the established pattern of settlement. Of greater importance is what employees doing similar work are paid by comparable employers.

Both offers provide wage increases at or above the increases in the Consumer Price Index. There is no reason to limit wage adjustments to increases in the CPI if the other statutory criteria indicate a larger increase is justified.

The County negotiator's taking of a five percent offer to the County Staff Committee and the Committee's subsequent rejection of the five percent offer are of no probative value in this proceeding. First, if the Union believes this was bad faith bargaining, this is not the proper forum to present the issue. Second, treating the County's action as some sort of admission as to the reasonableness of the five percent offer would have negative consequences in future negotiations. Neither a union nor an employer would be willing to enter into tentative agreements or present proposals for ratification if the mere presentation of the proposals could be considered as an admission against interest.

Because the Union's offer is much closer to the 1985 pattern of settlement established in the comparable employers and because the County's wage rates are below those of the comparables, it is concluded that the Union's wage offer is more reasonable than the County's.

#### B. WORK SCHEDULE

Interest arbitration should not be used as a procedure for initiating changes in basic working conditions absent a showing that the conditions at issue are unfair, unreasonable, or contrary to accepted standards. Of the seven comparable counties, only three have a benefit similar to the one proposed here. This does not establish the benefit sought by the Union is an accepted standard.

The fact two bargaining units in the County have bargained provisions (the provisions were not put in evidence) providing a benefit such as that sought by the Union does not demonstrate that it is unfair to deny the same benefit to the Union here. First, there is no showing that the working conditions of the other bargaining units are the same as the bargaining unit here. The need for employees involved here to report for work early is

generally a result of snow removal requirements. There is no showing that the need for deputy sheriffs or Health Care Center employees to report early was related to snow emergencies. Further, while the County may have needs making it appropriate for deputy sheriffs or Health Care Center employees to work their regular shifts in addition to reporting early, it has not been shown that there is any need for the employees here to work their regular shifts in addition to reporting early because of snow.

Second, there are at least ten bargaining units in the County. The evidence shows that only two of the ten bargaining units have the work schedule benefit sought by the Union here.

The benefit proposed by the Union would certainly cost the County additional money. The Union's witness indicated that in January and February 1985 there were 15 times when employees were called in prior to their regular scheduled hours because of snow. Four times in January at least 15 to 18 employees were sent home after eight hours. The record does not show how much more it would have cost the County had those employees also worked their regular hours.

The Union's proposal would give employees the option of working or not working their regular hours. This proposal could make it more difficult for the County to schedule work in an efficient manner.

Because the introduction of a new benefit such as the one proposed here can have far reaching consequences, it is preferable that such a benefit be mutually agreed upon rather than instituted by the Arbitrator. Here there is neither a uniform practice in the comparable employers or in the other County bargaining units nor a compelling reason to disturb the status quo. An arbitrator should be reluctant to institute a new benefit where the cost (both in wages and efficiency) is uncertain. Accordingly, it is concluded that the County's proposal regarding work schedule is more reasonable than the Union's.

#### V. AWARD

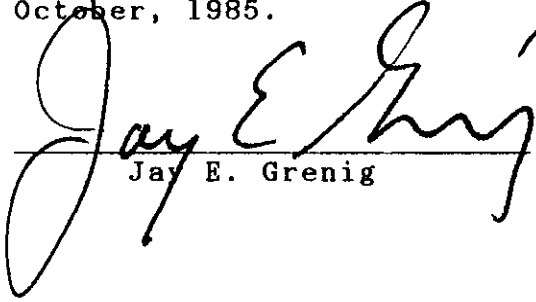
The Arbitrator has no power to pick and choose among the issues, but must choose one or the other offer based on the statutory criteria. This can be a difficult choice where there are two offers and one is more favorable to the Union and the other more favorable to the County.

Although the wage offer is of considerable importance to both parties, a wage increase below the established settlement pattern can be adjusted during the next round of bargaining. On the other hand, once a language item, such as the work schedule proposal, is in the contract it is very difficult to have the proposal removed from the contract in

the future. Because the impact of the work schedule proposal is so uncertain, it must be concluded that the County's final offer is more reasonable than the Union's.

The parties are directed to incorporate into their 1985 collective bargaining agreement the County's final offer together with all previously agreed upon items.

Executed at Waukesha, Wisconsin, this 14th day of October, 1985.



Jay E. Grenig