

JAN 16 1986

BEFORE FREDERICK P. KESSLER

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

ARBITRATOR

IN THE MATTER OF THE FINAL AND BINDING
ARBITRATION BETWEEN

TEAMSTERS LOCAL 579

and

ROCK COUNTY

Case No: 187 #34206
Med/Arb 3066

Decision No. 22572-A

DECISION

I. HEARING

A hearing on the above-entitled matter was held on Tuesday, July 30, 1985 at the Rock County Courthouse in the City of Janesville, Wisconsin. Testimony was taken at that hearing and exhibits were received in evidence from both parties.

II. APPEARANCES

Attorney Frederick Perillo of the law firm of Goldberg, Previant, Uelmen, Gratz, Miller & Brueggeman, S.C. appeared on behalf of Teamsters Local 579 (hereafter "Union"). Also appearing were:

David McCann, Union Stewart, Juvenile Probation Department
John Witcomb, Committeeman, Juvenile Probation Department
Marvin Lewis, Business Agent, Teamsters Local 579

Present on behalf of Rock County were:

Bruce Patterson, Esq., Labor Consultant
James Bryant, III, Personnel Director, Rock County
Eileen Keller, Personnel Analyst, Rock County

III. NATURE OF THE DISPUTE

This is a final and binding arbitration proceeding brought between the above-named parties under Section 111.70(4)(cm) Wis.Stats., the Municipal Employment Relations Act.

On November 28, 1984, the Union filed a petition with the Wisconsin Employment Relations Commission indicating that they were at an impasse in their bargaining with Rock County regarding the collective bargaining agreement for 1985 and requested that the commission initiate the mediation-arbitration procedure under Section 111.70(4)(cm) of the Municipal Employment Relations Act. On March 1, 1985 and April 9, 1985, William C. Houlihan, a member of the Wisconsin Employment Relations Commission staff conducted an investigation. The results of his investigation indicated that the parties were deadlocked in their negotiations. On April 9, 1985, the parties submitted their final offers to the mediator. He notified the commission that the investigation was closed and indicated that the parties remained at an impasse. On April 22, 1985, the Wisconsin Employment Relations Commission ordered that mediation-arbitration be initiated for the purpose of issuing a final and binding award to resolve the dispute. The parties were then sent a list of names from which they could select a mediator-arbitrator. On May 8, 1985, Wisconsin Employment Relations Commission advised this arbitrator that he was selected as the mediator-arbitrator in this dispute.

A hearing on this matter was scheduled on July 30, 1985. At that time, an additional mediation was attempted in order to resolve the dispute. When it appeared that further mediation would be fruitless, the hearing was convened and evidence was presented. Briefs were received by the arbitrator by letters dated September 12, and 13, 1985. The opportunity to file reply briefs was not requested by the parties.

IV. THE FINAL OFFERS

1. The Employer's Final Offer: The final offer of Rock County was as follows:

"The employer makes the following final offer on all issues in dispute for successor agreement to begin January 1, 1985.

- 1) All provisions not modified by this final offer or a stipulation of agreed upon items, if any, of the 1984 agreement between the Union and County shall be continued.
- 2) Wages: Increase all hourly wage rates on the wage appendix by three per cent (3%)."

2. The Union's Final Offer: The final offer of the Union reads as follows:

"The Union makes the following final offer on all issues in dispute for a successor agreement to begin January 1, 1985 and run through December 31, 1985. All present contract articles not mentioned shall remain same.

- 1) Wages: January 1, 1985, four per cent (4%); November 1, 1985, four per cent (4%) in all classifications.
- 2) Article 19 - Funeral Leave, include the following:
Immediate Family includes spouse, child, parent, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparent or grandchild."

V. STATUTORY CRITERIA

Section 111.70(4)(cm) Wis. Stats provides that an arbitrator must consider the following:

"11.70(4)(cm)(7) Factors Considered. In making a decision under the mediation-arbitration procedure authorized by this subsection, the mediators-arbitrators shall give way 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 costs 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 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."

VI. ISSUES

There are two issues between Rock County and the Union. First, the amount of the wage increase to be granted during the term of the collective bargaining agreement, and second, an alteration in the funeral leave provisions of Article 19 of the contract.

VII. THE UNION'S POSITION

The Union offered evidence indicating that very few counties that it considered comparable have a job classification of Juvenile Probation Officer which Rock County has. The functions of Juvenile Probation Officers are performed in all the other counties in Wisconsin, but most counties do not have a separate classification for the employees who perform them. The Union contends that those functions are usually performed by Social Workers. They point out the work performed by the Juvenile Probation Officer in Rock County is similar to that performed by a Social Worker I or Social Worker II, which are job classifications recognized and in use state-wide. The Union also points out that there is an overlap of the functions performed by Juvenile Probation Officer and Social Worker I or II.

The Union indicates the compensation paid for Social Workers in Brown, Kenosha, Marathon, Outagamie, and Racine County is a proper comparison with Rock County Juvenile Probation Workers. In addition, they cite wages for Social Workers in Sheboygan County, Eau Claire County, Fond du Lac County, Walworth County, and LaCrosse County. The Rock County Juvenile Probation Officer is the lowest paid employee compared with Social Worker I or Social Worker II in the other counties. The Union shows that even the lowest paid Social Worker I receives a higher pay rate than the maximum pay for a Juvenile Probation Officer in Rock County. They argue that even under the County's proposed 3% pay increase, a Probation Worker's maximum pay would be lower than the minimum pay for a Social Worker I in Rock County, Brown County, Kenosha County, Racine County, and Eau Claire County, and it would be less than all the Social Worker II positions in the comparable counties.

The Union contends that its final offer would classify Juvenile

The Union argues in conclusion that its final offer more closely conforms to the pattern of settlements in comparable counties than the final offer of Rock County. They contend that the pattern of settlements in the area is above the employer's offer of 3% while the Union's offer of 4.6% is within the 4% to 5% pay range of the comparable.

VIII. THE COUNTY'S POSITION

The County, in its final offer, proposes a 3% increase in wages for all employees in the 1985 labor agreement. The keystone of their argument is that Rock County is in a serious economic crisis. Within Rock County agriculture and related businesses are a very significant portion of the economy. The Agriculture is facing a major economic crisis at this time. There has been a substantial increase in mortgage foreclosures in Rock County, and a dramatic drop has occurred in prices for some of the crops which are a large part of crops produced in Rock County. There has been a 260% increase in tax delinquencies in Rock County for the last four-year period. This crisis in agriculture, the County contends, has had a major impact in the County's ability to bear the cost of the Union's proposal.

The County next argues that the arbitrator should give weight to what they describe as "internal consistency." Sec. 111.70(cm)(7) encourages "internal consistency." "Internal consistency" is evidenced by the fact they have made a uniform 3% increase offer to all of the bargaining units in the County. To deviate from this proposal could cause inequities with some units receiving more substantial increases than others, which could result in a decline in employee morale.

The County also presented evidence that the cost of living increase for all consumers in small metropolitan areas was 3% for 1984. That evidence indicated that of all the cities measured in the State of Wisconsin, the City of Janesville, which is located in Rock County, had the lowest cost of living increase during 1984.

The County further shows that there has been a history of abnormally low turnover rates in County employment in Rock County. A very large number of people apply for positions whenever a job in the county government becomes vacant. They conclude from that fact that county employment is highly prized by Rock County residents and is so desirable that it is not necessary to grant a substantial wage rate increase in order to secure or retain competent employees within county government. They believe that the 3% wage increase will be adequate to attract such new employees as are needed and to keep the present work force.

IX. DETERMINATION OF COMPARABLES

The Union has proposed as comparable units of government Brown, Kenosha, Marathon, Outagamie, and Racine Counties, all with populations ranging from 111,000 to 176,000 persons. They have also proposed five counties with populations under 101,000, namely Sheboygan, Eau Claire, Fond du Lac, Walworth, and LaCrosse County. The County has offered as its list of comparable units of government Brown, Outagamie, Sheboygan, LaCrosse, Fond du Lac, Washington, Eau Claire, Dodge and Green Counties.

Both proposals of comparable governments contain counties that are neither geographically close to Rock County nor that have populations substantially similar in size to that of Rock County. This arbitrator feels that geographical proximity is not as crucial as population size and the relative urban or suburban nature of the county. Rock County is not a "bedroom" county for any other county as is Washington County. It would be inappropriate to include that county along with Waukesha or Ozaukee Counties in any list of comparable governments.

The list of appropriate governments should be similarly situated counties of approximately the same size. Those counties are determined to be all those counties within the state with a population between

100,000 and 200,000 which are not suburban. They are Brown, Kenosha, Marathon, Outagamie, Racine, Sheboygan, and Winnebago Counties.

X. DISCUSSION

A. Ability to Pay

The County in its arguments relies heavily on the contention that its ability to pay an award is impaired by the dire economic straits that agriculture is currently facing. Rock County, though a major agricultural county in Wisconsin, is not as dependent on farming as some other counties in the state. General Motors in Janesville and the many smaller plants in Beloit have a substantial positive impact on the county tax base. These manufacturing concerns are not in the depressed state of some county agricultural enterprises.

The burden rests on the County to show an impairment so substantial that it would affect the County's ability to pay an award. A decline in farm employment, five farm foreclosures in 1985, and a 10% drop in the value of farm land is not sufficient to support the conclusion that the County lacks the ability to pay.

B. Comparison with Other Rock County Bargaining Units

Since the hearing on this matter and the receipt of briefs, three other arbitrators have issued decisions involving other bargaining units in Rock County. Edward B. Krinsky issued a decision relating to the mediation/arbitration between the Rock County Handicapped Children's Board and the Rock County Education Association. Arbitrator George Fleischli issued a decision involving the Healthcare employees, and arbitrator Jay E. Grenig issued a decision regarding the Rock County Department of Public Works.

These three awards were not identical. Arbitrator Grenig, considering the final offers of both Rock County and the Union, chose to incorporate the County's final offer as the award in his decision. He did so for specific reasons. He stated in his award:

"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 a 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 uncertain, it must be concluded that the county's final offer is more reasonable than the Union's."

In that dispute, the Union was seeking a 43¢ per hour wage increase and the County was offering its standard 3% wage increase. The work schedule proposal that the Union sought would allow a worker to claim a full eight-hour day of pay if he or she were called in prior to their normal hours of work.

Arbitrator George Fleischli ruled in the Mediation/Arbitration proceeding involving the District 1199W United Professional for Quality Health Care and Rock County. In these particular negotiations, there were a series of issues. The Union proposed a two-year agreement while the County proposed only a one-year agreement. The Union asked for the County to pay the full amount of the employee's share of contributions to the Wisconsin Retirement System equal to 6% of gross earnings, effective January 1, 1986. The Union also proposed a four-step pay increase involving a total increase of 17% over the two-year period. The basis for their high wage increase demand was their perceived need to "catch up" with other similarly situated employees. Fleischli, when he evaluated the two offers, concluded that the county's offer was the most reasonable

under the statutory criteria. He did note that if the Union had proposed a one-year bargaining contract he might have chosen their offer, because it did offer compelling arguments for a "catch-up" wage increase. He did not, however, support their proposal for a two-year contract term.

Fleischli also rejected the proposal for contribution to the employee retirement fund.

The third decision involving Rock County bargaining units was issued by Arbitrator Edward B. Krinsky, who handled the dispute between the teachers and the Handicapped Children's Education Board. In that situation, Krinsky accepted the Association's final offer as the award. The County, in its offer, made its 3% wage increase proposal, while the Union asked for a 10.46% wage increase. The comparable units of government that were chosen were the eight School Districts that send children to the Handicapped Children's Education Board facilities. The Union's offer allowed the teachers to substantially maintain their current ranking in the salary schedule while the County's offer would have resulted in a deterioration of their standing as compared with the other eight schools. Krinsky acknowledged that the Union's offer was substantially in excess of the cost of living, but the salaries paid to other teachers in Rock County indicated what level of salaries other systems had agreed to pay their non-handicapped schools and that same level should be reflected in salaries to persons teaching the handicapped.

In addressing the internal comparability issue, the decisions by other arbitrators are significant. There have not been any voluntary settlements reached between the County and any of its bargaining units during the 1985 negotiation period. For internal comparability to be significant, there should have been some voluntary agreements that reflect the position of Union and management. For County merely to maintain a uniform bargaining position is not the type of internal comparability that must be recognized by the arbitrator.

C. Comparisons with Other Counties

The most difficult problem faced in developing comparable wages in other counties arises because that other counties do not have the specific position of Juvenile Probation Worker. In most counties this work is performed by a Social Worker I. The Union's final offer would place the probation worker in the same pay range as Social Worker I. This arbitrator must conclude that it is appropriate to treat the position as such.

When the wage rate information available for Social Worker I's in other counties are examined, it is clear that Rock County lags far behind the comparable counties both as to minimum and maximum rates.

1984 Hourly Rates for Social Worker I			
Rank	County	Minimum	Maximum
1.	Outagamie County	\$ 7.29	\$ 9.48**
2.	Sheboygan County	7.69	8.31
3.	Marathon County	7.90	9.14
4.	Racine County	8.58	11.89
5.	Brown County	9.13	13.01*
6.	Kenosha County	9.74	11.78
	Average of Comparables	\$ 8.42	\$10.60
	1984 Rock County	\$ 7.19	\$ 7.96
	1985 County Final Offer	\$ 7.41	\$ 8.20
	1985 Union Final Offer	\$ 7.77	\$ 8.60

*From Union Exhibit 7.

**From Union Exhibit 5.

The pattern of settlements in the comparable counties is as follows:

1984 Pattern of Settlements

<u>County</u>	<u>Percentages</u>
Brown	5%, 1/1/85
Kenosha	N/A
Marathon	N/A
Outagamie	4%, 1/1/85 -- 1%, 7/1/85
Racine	N/A
Sheboygan	4%, 1/1/85

It is clear that the County's wage offer is below the pattern of settlements in the comparable counties. It is also clear that even with the Union's 8% pay boost the Juvenile Probation Workers minimum would be at a rate less than the minimum paid for similar work in all but one of the comparable counties. The Union maximum would exceed the maximum rate in only one comparable county while the County maximum is below the maximum in every other comparable county. Therefore, when looking at comparable units of governments, the Union's proposal is more reasonable.

D. Cost of Living

The statute allows consideration of increases or decreases in the consumer price index in determining which final offer is more reasonable.

Evidence was received that, according to the Wisconsin Job Service in 1984, the C.P.I. increased 3% in small metropolitan areas. Evidence was also received that in a comparison of cost of living for selected cities, Janesville had a cost of living of 91.6% of the national average. Janesville cost of living was below Appleton, Green Bay, Oshkosh, and Wausau, all of which are communities located in comparable counties.

The cost of living comparison suggests that the County's offer is the more reasonable. The County proposal wage rate increases at the C.P.I. found for small metropolitan areas, and Janesville is already an inexpensive place to live.

E. Stability of Employment

The County places great emphasis on the low turnover and large pool of applicants who apply when a vacancy occurs in the Juvenile Probation Worker position. Fifty-seven persons applied for the last vacancy in that position in 1985. No Probation Worker left his job in 1984. There is no doubt that employment by Rock County is sought after by its residents. This factor supports the reasonableness of the County's final offer.

F. Funeral Leave Provision

The Union's final offer contains an amendment to Article 19 of the Contract which expands the funeral leave provisions of the contract. It appears to be patterned after the agreement with the Rock County Youth Home.

Neither side gave significant attention to the issue during the hearing. It appears that it was not a matter of great significance to either side. There is, however, a presumption that items other than wages ought to be left to the parties at the bargaining table. Therefore, the County's final offer on that subject is the more reasonable.

G. Summary

The most persuasive of the various factors to be weighed is Rock County's relatively poor wage rate paid to the Juvenile Probation Workers. Rock County is at the bottom of the scale in 1984 with the selected comparable counties. Rock County will remain at the bottom regardless of which of the two final offers is selected. Indeed, Rock County maximum rates under the County offer is below the minimum rate of the three of the six comparable counties for which rates are available. This disparity is so overwhelming that it offsets the other factors which are in favor of the County's offer. To move wages even closer to wages paid in other comparable counties, the Union's offer must be adopted so the existing disparity is reduced to the maximum extent available.

XI. AWARD

Therefore, the 1985 Collective Bargaining Agreement shall incorporate the Final Offer of the Union.

Dated at Milwaukee, Wisconsin,
December 31, 1985



Frederick P. Kessler
Arbitrator